

INFORMAL

Vol. 26, No. 1, January-March 2009



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Sustainable Peace**

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INSEC's Quarterly Publication on Human Rights & Social Justice



INFORMAL

South Asian Human Rights Solidarity

Vol. 26, No. 1, January-March 2009

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Price

Nepal : NRs 25
South Asia : US\$ 15 (equivalent)
Rest of the World : US\$ 25

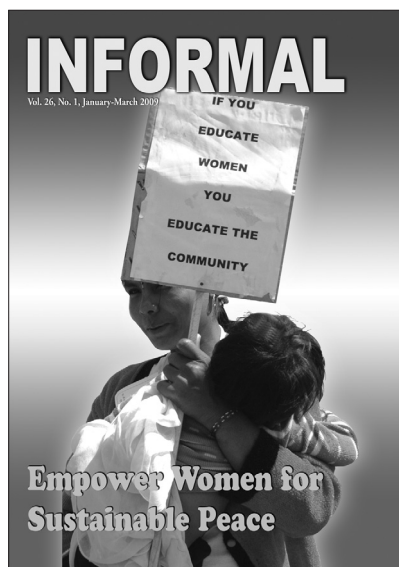
Published By

Informal Sector Service Centre (INSEC)

P.O. Box: 2726, Kathmandu, Nepal
Tel: 977-1-4278770, Fax: 977-1-4270551
E-mail : informal@insec.org.np
Web-site: www.inseconline.org

Printed at

Indreni Offset Press
Anamnagar, Kathmandu
Tel. 4771448



- From Exclusion to Inclusion of Nepali Women: A Myth or Reality?/5
- Inclusion of Women's Human Rights and Politics of Exclusion/10
- Peace Initiatives in Nepal: State and Challenges/16
- Situation of Domestic Violence in Nepal/20
- Violation of Women Health Rights in Nepal: A Study of Cases/22
- Impact of Armed Conflict in Women/30
- Do They Fit at All? Assessing Incorporation of ICCPR in Nepal's Interim Constitution/33

Regular Columns

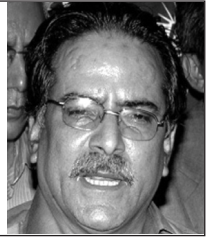
- Formal-Informal/2
- Interview/43
- Editorial/3
- Book Review/46
- Letters to the Editor/4
- Reality Check/48
- View Point/24

Formal—Informal

'The future constitution would be totally different from the 1990 constitution, which had beautiful words but had failed to reflect the people's aspirations.'

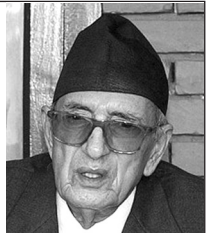
Pushpa Kamal Dahal
Prime Minister

Inaugurating a conference on issues of women and children in the future constitution



'Prime Minister Pushpa Kamal Dahal himself will become a prey if he acts foolish to move the country ahead from the state of impunity.'

Girija Prasad Koirala
Nepali Congress President
Addressing a programme organized by Nepal Trade Union Congress



'It is often women human rights defenders, such as Laxmi Bohara of Kanchanpur district, who are the targets of those who are emboldened by the climate of impunity and the absence of rule of law, and it is essential that particular measures are taken to safeguard women human rights defenders,

Navi Pillay
Chief of the Office of the High Commissioner for Human Rights
During her interaction with Civil Society in Kathmandu



'It is clear that parents send their daughters to be Kamalaris as a last resort when they are under extreme pressure to settle debts; many of them end up being, so I urge the Government to take concrete steps to prohibit this practice, search for the missing Kamalaris, and provide for rehabilitation to those who have been victims of this practice.'

Richard Bennet
Chief of UN-OHCHR in Nepal, Issuing a press release



'It was the Maoists who benefited the most after the establishment of OHCHR in 2005. But now that they are in power, they don't want it.'

Subodh Raj Pyakurel
In an Interview with the Kathmandu Post Daily



Empower Women for Sustainable Peace

The country is drafting a new constitution to institutionalize the historic achievements of *Jana Aandolan* (People's Movement) II but if the voices of women were not incorporated in this constitution this will invite another catastrophe in the country. Women waited silently for a long time in the hope that their issues will also be prioritized along with the issues of national interest, security and people's livelihood but even after the country became republic none of these agendas got prominence. After the election of the Constituent Assembly all the political actors are engaged into political games and takes while sidelining the pressing issues of the country.

Women actively took part in the pro-democracy movement of 1990, during the decade long People's War and also during the 19-day long April movement of 2006 that resulted in historic changes in the country but their issues did not get any highlight. The state remained biased towards women, which constitutes nearly half of the country's population, and overlooked their agendas. At least 1,013 women were killed during the period of Maoist insurgency while two women received martyrdom during the 19-day long April movement, which is enough to know the role of the women for the historic changes but they were not given peace dividends as they were entitled to. The constitutional provision of representation of five percent women included in 1990 constitution remained unfulfilled till the third election of parliament. Though there is a presence of sizable number of women in the Constituent Assembly, they were bypassed while some of the most important decisions were being taken at there. The government's commitment to ensure proportional representation of women in every sector has remained unfulfilled.

Despite positive indicator that there was sizeable representation of women in the Constituent Assembly, lack of specific laws to address the violence against women and domestic violence, apathy of government to the victims, hypocrisy of the Nepali society and transitional situation of the country are the hindrances to ensure women's rights. Despite being a party to 16 international human rights instruments, including the CEDAW and constitutional guarantee to right to equality and non-discrimination, Nepal still has discriminatory legal provisions against women. The law enforcement mechanism also remains reluctant to ensure women's rights. During a study conducted by INSEC about the incidents of rape in the year 2008, in most of the cases police did not take strong action against perpetrators and in some cases police also denied filing complaints under various pretexts.

Though the government and political parties have recognized that the denial of women's rights not only as violation of women's rights but the gross violation of human rights but they are yet to translate their commitments into reality. CEDAW provides a working forum for the process of eradicating gender - based violence and promoting gender equity in international community and every level of national life. Similarly, Article 20 of the Interim Constitution of Nepal 2007 has stated that every woman shall have the right to reproductive health and other reproductive rights and no physical, mental or other form of violence shall be inflicted on any women, and such an act shall be punishable by law. But our reality is very bitter as our rulers lack commitment to translate their commitments into reality. All the provisions related to women's rights and violence against women are limited in papers in the context of Nepal due to the indifference of the government and the political parties.

The objectives of sustainable peace and creating a just and favorable society will not be achieved unless women were mainstreamed and proportional representation of women ensured in every organs of the state machinery. The state should suspend all the discriminatory laws and provide grounds to the women as equal citizens of the state. Participation of women should be ensured in the peace process.

Letters to the Editor

Bring more reporting

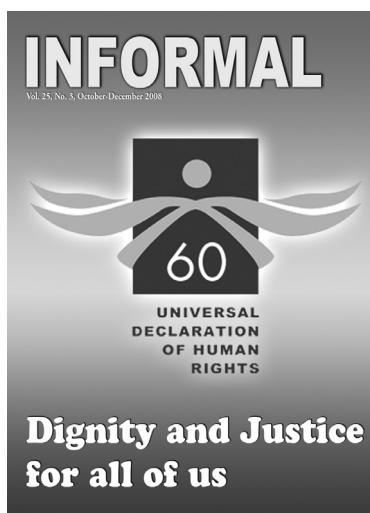
"In terms of economic and social rights, widespread and degrading poverty is probably the biggest violation of human rights in Nepal. People had high expectations that following the abolition of monarchy and advent of genuine democracy, there would be rapid progress in their livelihoods." Mr Kul Chandra Gautam had rightly captured the aspiration of Nepali People in your October-December 2008 Issue of INFORMAL. Failure on the part of the ruling governments of the past (After popular movement of 1990) has resulted in the royal takeover of King Gyanendra and also the fall of direct rule of King Gyanendra, so the governments of republican Nepal must understand the reality and act accordingly. The Magazine had focused more on Economic, Social and Cultural rights, which is a must for protection and promotion of Civil and Political rights as hungry stomach can not enjoy any right. The comparative study of rights by Tejman Shrestha really deserves appreciation. I would also like to suggest you to bring more reporting and situation of grass-root level rather than just reviewing the literatures and giving intellectual inputs.

Prakash Kunwar

Koteshwor Kathmandu

INFORMAL: True reflection of government's Commitment vs Reality

I had an opportunity to go through your quarterly publication INFORMAL (October-December 2008) and found it very interesting



for the readers like me who are interested in the issues of human rights. All the articles in the magazine are not just the articles but eye-openers as these articles exhibited our government's commitments and the ground reality. The facts presented in the article 'Government's Apathy towards People's Right to Food and Pain of Karnali' show how indifferent our government is towards the issues of general people. As the country is moving towards drafting a new constitution, the members of the Constituent Assembly should be able to reflect the issues of deprived region in the new constitution. Otherwise it will invite another crisis in the country. As the country is engaged in the constitution drafting process, I

request you to bring the issues related with constitution drafting process in the next issues.

Samikshya Gautam

Kalopul Kathmandu

Good beginning, more needs to be done

I have gone through your quarterly publication October-December 2008 issue of INFORMAL. The theme of the publication 'Dignity and justice for all of us' is very relevant and has been able to satisfy my long time hunger for human rights knowledge. The article of Bidhya Nath Bhurtel has elicited the new dimension of economic, social and culture rights. The interview with Kul Chandra Gautam is very relevant and has added the bricks to make the magazine strong and relevant. On the whole, INFORMAL has tried to cover every aspect of human rights but I did not find some information that I was seeking for. It could be better if you have incorporated the full text of Universal Declaration of Human Rights, natural rights and fundamental rights more specifically. I hope you will try to satisfy us in the coming editions.

Raju Thapa

Dhumbarahi Kathmandu

Dear readers,

How do you find this edition of INFORMAL? Please send us feedback about the contents of this magazine. Please also write on what type of content you prefer to read in the INFORMAL. Please send your valuable suggestions/ comments to us at infor-mal@insec.org.np. Your valuable suggestions will be the best guidelines for us.

From Exclusion to Inclusion of Nepali Women: A Myth or Reality?

» Tejman Shrestha «

In Hinduism, women are regarded as the goddess but it has become more of a ritual. Moreover, they are treated as weaker and less wise than men. The instance of Sita requiring to prove her chastity when she was accused by her partner Ramchandra shows how the position of women created within the Hindu society disregards notion of placing them in the position of goddess.

Background

The development of human civilization seems to have been influenced either by patriarchal or matriarchal mode. However, the matriarchy could not be as influential as the patriarchy is. So, the obvious traces are seen in the treatment on human beings by their gender. If we see the practice, women have been treated as second sex in different civilizations and cultures. The Christianity regarded women as the subordinate to the male as the story of the Bible says that Eve was created out of Adam's rib¹ and she was the cause of fall of men from the garden of Eden. In Hinduism, women are regarded as the goddess but it has become more of a ritual. Moreover, they are treated as weaker and less wise than men. The instance of Sita requiring to prove her chastity when she was accused by her partner Ramchandra shows how the position of women created within the Hindu society disregards notion of placing

them in the position of goddess. An effort has been made to discuss the issues of exclusion to inclusion of Nepali women in this article.

Let me focus on the Nepali society where a woman is not given an independent status. When she is young, her father controls her. And when she is grown up and gets married, this role of father is substituted by her husband. When she is old, her son will do this job. Before marriage as well, she is patronised even by her junior brother as if he is her senior and guardian. Thus all the time throughout her life, she is treated as if she is not able to make her own decision independently.

The inequality of relationship between husband and wife in Hindu society is appalling. If husband passes away, the wife is supposed to discard the vermilion powder—the token of her marriage, the red colours and red clothes. Her second marriage is hardly acceptable. Thus, she is forced to live without colours and without

desires after her husband's death. It seems that she does not have her own life at all after her husband's death. Unlike this, if a wife dies, the husband can remarry immediately after he completes 13-day long death ritual. Thus he can mourn the wife's death by remarrying if he wishes so. And the society welcomes it as if it is his need and compulsion to run the family. Thus, the relationship between husband and wife is unequal and unfair even after the death of the spouse.

Unlike oriental society, the European/western society is free from such unfair practices. However, it does not mean that it was always so; westerners also suffered from such drawbacks. In early days of Renaissance in Europe, the perspective on viewing women was what the Nepali society still has. The marvelous example of renaissance literature, Hamlet by William Shakespeare is enough to depict the picture of women in those days. There is a line

1. *The Holy Bible*, Genesis, Chapter Two, The Gideon

“Oh frailty! Thy name is women”²—
Hey weakness, your other name is
women. It seems that women are not
able to live their independent lives as
a responsible member of a society/
family without the guidance and sup-
port of males. Thus, women were
treated as weaker sex than the male.

The Road is not Rosy

During the Rana regime women attending the school was almost beyond imagination. Even the elite group of the society believed that sending daughter to school was to spoil them. So, Nepali society had to wait for long time to provide education for girls and women. Before the Sixth Five Year Plan (1980-1985), policies on the reintegration of women into the development process was largely confined to education and training programmes. It is only in the Tenth Five Year Plan the issues of gender and human rights were included. This shows that how slow we are in addressing the issue of women rights.

On the one hand, we have some positive indicators that Nepali society is moving towards the fairness. We have so many instances of brutality of violence against the women which have hardly been addressed. That really makes everyone who believes in rule of law think twice whether we are really moving towards making the just society or towards anarchy. One of the examples is of the murder of Laxmi Bohara, 28. Bohara died on 6 June 2008, after her husband allegedly beat and then poisoned her. She was a member of the Women's Human Rights Defenders Network (WHRDN) in Kanchanpur district and her husband and her in-laws did not like her involvement in this social work and constantly

harassed her. It is reported that her husband regularly assaulted her. He even threatened to throw her out of the house³. The police denied receiving the First Information Report (FIR) against the alleged murderer saying that the husband should perform the "ritual".

The government's irresponsibility in bringing the perpetrator of the murder of Laxmi Bohora fuelled the protest programmes of women rights activists against the government's unwillingness to set up an autonomous women's commission to end all forms of violence against women. The conversion of protest programme of relay hunger strike and staging semi-naked protest programme shows that the state has hardly had any ear to listen the voice of women narrated in the normal and gentle manner. It is reported that the protestors were repeatedly harassed by security personnel. Human Rights Post, a monthly publication of National Human Rights Commission (NHRC) reports that the women rights activists got threatened from unidentified groups for consolidating their voice for demanding that the perpetrators be brought before the law⁴.

Another instance is of the allegation of witchcraft in the adjoining area of the capital city Kathmandu. Kalli Kumari BK of Pyutar Lalitpur was accused of being a witch and treated inhumanly by the headmaster of the local primary school. However, the administration failed to bring the perpetrator under the law for weeks. And the three National Commissions--NHRC, National Women Commission (NWC) and National Dalit Commission (NDC) held a joint meeting⁵ at the NHRC Nepal to

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2. In Shakespeare's one of the greatest tragedy, this line is spoken by Hamlet to his mother who marries her brother in law (uncle of Junior Hamlet) after his father (Senior Hamlet) death.

3. www.ahrchk.net visited April 12, 2009

4. National Human Rights Commission, Nepal, Volume 1, Issue 4, July Aug, 2008

5. NHRC Nepal Press Release, March 30, 2009.

address the situation. Still the case remained unheard and NHRC summoned the IG of Nepal Police, Secretary for Home Ministry and the CDO of Lalitpur District to inquire why the incident had gone unheard for weeks⁶. Thus, it shows that the common people hardly feel the presence of state in this transitional situation. So, to expect everything to be fine will be rather too early.

Slow but Steady Race of Nepali Women in Politics

If we see the world scenario, the women of New Zealand were the first women who got the right to cast vote in 1893⁷. In Nepal, not only female but also male got the voting rights in 1951 after the end of Rana regime. But, no woman occupied any seat in the governments formed after the introduction of democracy in 1951. Even the woman holding such chair was a distant dream during the period. It was Dwarika Devi Thakurani who was elected as the member of the parliament in the General Election of 1958. She also held the post of Assitant Minister for Health and Local Development⁸.

1991, 1994 and 1999 female candidates won only seven, seven and 12 seats or which is only 3.41%, 3.41% and 5.88% respectively of the total 205 seats despite constitutional provision of the 5%⁹. The number of women involvement in politics never crossed the single digit till the Constituent Assembly Election held in 10 April 2008. Obviously, the status of women is better and equal to that of men if the country is democratic. So, the more Nepal is becoming democratic, the better the status of women is getting.

In the CA Election, 2008, out of 240 seats allotted for the First Past the Post, only 29 women candidates could secure their position¹⁰.

Out of 240, only 29 female candidates won in the First Past the Post system and in proportional system, in 335 seats the number of women representative is 145. Altogether the number of female CA members is 174 which is nearly one third of the total number of 575 excluding the 26 members nominated by the CA. And out of 26, five female members are selected as the CA members.

If we see the world scenario, the women of New Zealand were the first women who got the right to cast vote in 1893. In Nepal, not only female but also male got the voting rights in 1951 after the end of Rana regime. But, no woman occupied any seat in the governments formed after the introduction of democracy in 1951.

Genderwise Representation in CA							
S N	Party	Female Candidates	Male Candidates	Total	Female Winner	Male Winner	Total
1	CPN M	42	198	240	23	97	120
2	NC	26	214	240	2	35	37
3	CPN UML	27	212	239	1	32	33
4	MJAF	3	100	103	2	28	30
5	TMLP	4	90	94	1	8	9
6	NSP	4	83	87		4	4
7	Janamorchha	28	175	203		2	2

The participation of women in politics was always discouraging. In the general election of parliament of

Enshrining Women Rights in the Constitution and in the Conventions

As the society always seems to

6. Ibid, April 8, 2009.
 7. Regmi, Padam Sharan, Women Participation in Politics and Held Constituent Assembly Election, Mamata, Kanya Campus: Pokhara, 2009.
 8. Ibid
 9. Adhikary, Rabindra, *Constituent Assembly, Democracy and Restructuring*, New Hello Stationery & Books House: Pokhara, 2063 BS.
 10. National Electoral Commission, (NEC) Nepal, website, <http://www.election.gov.np/EN/legal/acts.php>

The Constitution of Kingdom of Nepal, 1990 provided non-discrimination and the equality as the fundamental rights. It also says that all people are equal before the law. Thus, the journey to equalizing men and women is moving ahead though not to the extent it should be. Interim Constitution of Nepal, 2007 is quite significant from this point of view.

have been tilted towards either of the genders, the human endeavour are devoted to maintain the fairness between them. Within the nation, the state has formulated its municipal laws whereas in the global level, different charter or treaty mechanisms have been developed. Here we can trace it with the Universal Declaration of Human Rights (1948). In the preamble of the Declaration, it has been rightly observed that the foundation of the world peace is recognition of dignity of the people. So, without realizing the dignity of women, no sustainable peace can be realized.

The UN brought a separate convention -- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) to address the women's rights. Though Nepal became the signatory party to the Convention without any reservation in 1991, no major achievements have been achieved as far as ending VAW is concerned except the enactment of considerable number of laws relating to the elimination of all forms of discrimination against women. But enactment of laws alone can't bring about any change in the society. More important is to let people know that there exists a law against domestic violence and that it works. Moreover, only becoming the signatory to the international conventions also does mean everything. We have the examples that some of the South Asian countries have tried to better their human rights record by signing almost all the UN conventions but the situation has not improved significantly. On the other hand, there are some countries who have their municipal law quite well functioning despite the fact that they have not ratified many international conventions.

The Constitution of Kingdom of Nepal, 1990 provided non-discrimination and the equality as the fundamental rights. It also says that all people are equal before the law. Thus, the journey to equalizing men and women is moving ahead though not to the extent it should be. *Interim Constitution of Nepal, 2007* is quite significant from this point of view. In its preamble, it is mentioned that the constitution has been promulgated having determined to resolve the existing problems related to gender along with other problems of inclusion of backward groups. It is for the first time in the constitutional history of Nepal that the issue of gender is addressed so directly in the preamble.

Likewise, in the chapter of Citizenship it is mentioned that any person whose father or mother is Nepali is a Nepali¹¹. Thus, now a child can get Nepali citizenship on the basis of his/her mother's citizenship certificate. However, there is still discrimination that a foreign man marrying Nepali woman can not get citizenship as the foreign woman can.

Interim Constitution of Nepal, 2007 can be said as a landmark in the movement of women rights in Nepali history since for the first time the women's rights has been incorporated as the fundamental rights in the constitution. Under the Section of Fundamental Rights subsection "Rights of women"¹², rights of the women are mentioned as:

- (1) No woman shall be discriminated against in any way on the basis of gender.
- (2) Every woman shall have the right to reproductive health and other reproductive rights.
- (3) No physical, mental or other form of violence shall be inflicted on any woman, and such an act shall

11. Part 2 of Chapter 2, Citizenship, Interim Constitution of Nepal, 2006

12. Ibid, Article 20

be punishable by law.

- (4) Sons and daughters shall have equal rights to ancestral property.

Thus, for the first time in Nepal, daughter also has the equal rights on her ancestral property and any violence against women is punishable by law. Previously, daughter had to remain unmarried for 35 years for enjoying the property rights. And if her brothers have already parted from their parents, then the law was silent about the remedy. However, only writing in the constitution does nothing except adding more ornaments to the text unless it is materialized in practice. Similarly the special provision on care of women under Right to social justice¹³ it is mentioned that—Women, Dalits, indigenous ethnic groups [Adivasi Janajati], Madhesi communities, oppressed groups, poor farmers and labourers, who are economically, socially or educationally backward, shall have the right to participate in state structures on the basis of principles of proportional inclusion. Likewise, there is a constitutional provision that the political parties must be “inclusive” in choosing candidates for the constituencies and ensure proportionate representation of women, Dalits, indigenous tribes, people from backward regions, Madhesi and other groups in their lists for the election under proportional representation system. And overall at least one-third candidates must be women.

Likewise, in the formation of the National Human Rights Commission, there is a constitutional provision that it must be inclusive through the mandatory representation of women. Except for this, there is no such mandatory provision for the formation of other constitutional commissions and other commissions.

Thus, the process of inclusion of women seems to have been geared up albeit slowly.

The then His Majesty Government of Nepal (HMG/N) established National Women's Commission (NWC) in 2002 with the aim of getting advice on effective implementation of the international human rights instruments and developing policies and programmes. But the Commission itself is not still clear about its mandate and does not have enough resources—both physical and human. It has been handling the registered cases of gender violence and conducting workshops on how can the Commission be more effective. Not only the women rights defenders but all who believe in just society are pointing at the need of treating domestic violence as a criminal offence punishable by law. Delayed passing of bill in domestic violence itself shows the mentality of the society in this regard.

Violence against women (VAW) has taken a variety of forms. It is shameful that despite a steady increase in incidents of gender-based violence, the country has no specific law to punish the perpetrators so far. So, most of such cases remain unreported as there is no specific municipal law to take domestic violence as a criminal offence.

Social and Economic Rights and Women

As Nepal has patriarchal society, the ultimate decision maker in the family in economic issues is either father or husband. Until and unless women are equipped with the economic backup, the debate of equality and independency remains confined to the text of the law or constitution or other literature. According to

Robert Alan Dahl¹⁴, economic and social rights are rarely mentioned in the American constitution and the constitutions written in the 19th century. And they are incorporated in the constitutions which are written after the World War II. However, it is found that even the long narrated such rights in the constitutions are mere indicative ones. Thus only mentioning such rights in the constitutions with our proper mechanisms of enjoying them is no more than the ornaments of such constitution.

Conclusion

To sum up, we don't have long recorded history of women movement from exclusion to inclusion. Since, the country experienced a century of Rana regime, subsequent instability for a decade followed by three decades of autocratic Panchayat regime, the movement of inclusion could not get the first priority in the national politics. Again, after the restoration of democracy in 1990, the politics of mutual trust and co-existence could not flourish and it did not address the voice of down trodden people. The constitutional provision of representation of five percent women also remained unfulfilled till the third election of parliament in 1994. The representation of women in CA elected after the formal ending of a decade long armed conflict is encouraging. Despite this positive indicator, lack of specific law to address the violence against women and domestic violence, apathy of government towards the victims, hypocrisy of the Nepali society and transitional situation of the nations are the hindrance to overcome to reach the destination. Moreover, the journey to fairness is always a process rather than hitting the destined goal.

13. Ibid, Article 21

14. *Prajatantrako Barema*



» Advocate Sapana Pradhan Malla «

Inclusion of Women's Human Rights and Politics of Exclusion

With the eleventh amendment of Country Code, equal right to parental property and legalization of abortion at its core, the women's rights movement has been a successful movement even though it is not comprehensive, despite all the social hurdles that are present in any undertaking of this kind. At the formal level, there have been few positive changes in the law.

The women's right movement in Nepal has a fascinating—albeit relatively short—history. While voices about discrimination between the sexes have been raised since much earlier in different forms, the issue—and the horrible impact it had on women—began to come to the fore arguably as a result of the decision of the Supreme Court in Meera Dhungana¹ in 1995 in the case of inheritance right of a daughter. It's been more than seven years since the decision and some achievements have been made ever since.

With the eleventh amendment of Country Code, equal right to parental property and legalization of abortion at its core, the women's rights movement has been a successful movement even though it is not comprehensive, despite all the social hurdles that are present in any undertaking of this kind. At the formal level, there have been few positive changes in the law. However, the story does not end—but merely begins—there. This article has attempted to analyze some of the positive steps, gaps in the initiatives, remaining discrimination against

women after the publication of "women's right at the cutting edge of international human rights."²

Inclusion Of Women's Right

The Supreme Court has recognized treaty jurisprudence interpreting international human rights instruments as a national law in Reena Bajrachray's case³ and also declared existing discriminatory policy of Royal Nepal Airlines Corporation ultra-vires. This significant step taken by the Supreme Court was encouraged by the concerns raised in the Concluding Comments of the CEDAW Committee⁴ on the views expressed by Supreme Court while interpreting discriminatory laws against women, which stated that any laws that do not confirm with culture and tradition of the society shall be disrupted. Important power and responsibility lies in the hands of the judiciary for the inclusion of women's human right.⁵

Rape is Rape, No Matter Whoever Commits it, Marital Rape Cannot be Excluded from Rape

In Meera Dhungana for

1. Meera Dhungana vs. Ministry of Law and Justice, NKP, 2052, Vol 6, p.462
2. Annual Survey of Nepalese Law 2001, Nepal Bar Council, pp 260-265
3. Reena Bajracharya vs. RNAC, NKP, 2057, Vol. 5, p376.
4. On the Initial Report to CEDAW about the interpretation of discriminatory laws by the Supreme Court.
5. Supreme Court of Nepal has interpreted that six months probation time mentioned for women health employees cannot be assumed different from the special probation period of Women Civil Servant.

FWLD vs. HMG/N⁶, a writ petition was filed challenging the Constitutional validity of No. 1 of Chapter on Rape in the Country Code 1963 that has defined rape as the act of having sexual intercourse with a girl, widow or other's wife not attaining the age of sixteen years with or without her consent in whatsoever manner or attaining the age of sixteen years without her consent in whatsoever manner either exerting threat, pressure or coercion or with undue influence. This definition of rape did not include the act of sexual intercourse with one's own wife without her consent and excluded such act as a crime. In this case the Supreme Court said rape is one of the major offences amongst the criminal offences of grave nature. Rape is an inhuman act that violates women's human rights and directly causes serious impact on individual liberty and right to self-determination. It also causes adverse impact on physical, mental, family and spiritual life of a victim woman. Unlike consensual sexual intercourse in which both persons willingly participate in the intercourse, rape involves use of force and threat by the rapist. Therefore, in a civilized society, rape is taken as a heinous criminal offence without exception. Rape being a heinous criminal offence and since it has not been categorically immune by law, interpretation of No.1 of the Chapter on Rape has to be reformed reflecting the international law including international treaties, instruments, and principles of law. The Court also said if a woman is human; they are also entitled to all rights that a human being is entitled. A marriage does not mean that a woman needs to be a slave. To say that a husband can have intercourse with his wife without the wife's consent is to deny independent existence, right to live with self-

respect and right to self-determination. Any act which results in non-existence of women, adversely affects on self-respect of women, infringes upon right of women to independent decision making or which makes women slaves or an object or property.

The Court further said it can not be said that any man who commits heinous and inhuman crime of raping a woman may be immune from criminal law simply because he is her husband. Such husband has to be liable to the punishment for the offence he has committed. It has also mentioned in its decision that as a punishable offence, there is a situation of gap of legal provisions following the rape of one's own wife – such as providing immediate relief by allowing to live separately or to divorce the rapist husband; prescribing the degree of offence in rape committed in the circumstance of child marriage. Hence a directive order has been issued by the Supreme Court to the Ministry of Law, Justice and Parliamentary Affairs, to introduce a Bill for bringing necessary amendments with regard to the said gaps and for making complete legal provisions for justifiable and appropriate solution in an integrated manner with regard to marital rape taking into account the special situation of marital relationship and position of a husband.

Lower Punishment in Raping a Prostitute is Discrimination based on Profession

A writ petition filed by Sapana Pradhan-Malla for FWLD vs. HMG/N⁷, challenged the Constitutional validity of No. 7 of Chapter on Rape in the Country Code 1963 that stated 'in case, any person commits rape in any manner to a prostitute without her consent

A directive order has been issued by the Supreme Court to the Ministry of Law, Justice and Parliamentary Affairs, to introduce a Bill for bringing necessary amendments with regard to the said gaps and for making complete legal provisions for justifiable and appropriate solution in an integrated manner with regard to marital rape taking into account the special situation of marital relationship and position of a husband.

6. Publication of decisions relating to human rights, 2059, Special Issues, Supreme Court, p.129.

7. Ibid, p.144.

The main components for rape are threat, intimidation and use of force. Mens rea and actus reus of the criminals exists in a same manner in a rape no matter if it is against any woman. And the legal provision which punishes less and more for the same type of crime only on the basis of a victim's character and profession becomes discriminatory according to the spirit of the Constitution and various International Conventions on Women and Human Rights and the recognized principles of the Justice as well.

and through the use of force he shall be punished with a fine not exceeding Rs. 500 or, with imprisonment not exceeding one year, and whereas, No. 3 of the Chapter has provided that if any person rapes a woman depending on the age of the girls, he shall be imprisoned for three to ten years. Thus, the law itself has provided punishment differently to the culprit as per the status of women, where as culprit should not be punished differently on the basis of victim's personal, professional, social or legal status.

In this case Supreme Court said the provision, which provides less punishment for rape to a prostitute, has discriminated against them without any reasonable grounds, construing them as lower class. The existence of such laws, which are discriminatory and unequal among citizens, does not comply with the spirit of the Constitution. It is not reasonable to think that the punishment for the crime should be different only on the basis of any profession or any individual's character. If we keep in force such discriminatory legal provisions, it further encourages the rape of prostitutes. It is, therefore, not reasonable to keep in force such legal provisions that encourage grave crimes.

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well.

These initiatives form judiciary is seen as an adoption of International human rights framework to provide women de facto rights. As a result of judicial interventions in many test cases⁸ filed on equality issues, the government submitted Country Code (11th amendment Bill) in the parliament in 1997 and after seven years of social and political battle the bill was passed by the House of Representatives in March 14, 2002.⁹ Initiatives to bring comprehensive and effective laws were made by registering the Bills on Domestic Violence and Trafficking in Persons in the Parliament. However, the Bills lapsed as the parliament dissolved in May 23, 2002.¹⁰

Daughter is Recognized as an Heir of the Family

Daughters are accepted as heir to inherit paternal property, widows are provided full right to inheritance, Right of wife is created in husband's property before attaining the age of 35 and complete 15 years of marriage, duties for upbringing of the daughter is provided and one share of husband is given to a wife at the time of divorce. It has also created effectiveness in judgment execution in the cases relating to share of property.¹¹

Some Discriminatory Laws on Adoption has been Amended

The new amendment has changed the provision that women whose husbands are still living or who have living sons of their own or of co-wives are precluded from adopting a child. Now the law provides a wife who has separated from her husband after taking her share of property to adopt a child, if she does not have her

8. Chanda Bajracharya vs. Parliament Secretariat et. al. NKP 2053, Vol. 7, p.537. Sapana Pradhan Malla for FWLD vs. Ministry of Law and Justice, writ No. 2824, Decided on 2053.4.3 B.S. (July 18, 1996).

9. However, Bill got royal seal only on 26th September 2002 and under the law until bill gets royal seal it cannot be enforced. Hence Bill became effective only from 26th September 2002.

10. Jestha 9, 2059 B. S

11. Eleventh Amendment to the Country Code.

own son. The new law has also restricted for adoption if it is only daughter, before this amendment adoption was restricted if it was only a son.¹²

Mental Torture Ground for Divorce

The law has provided new grounds for divorce, one is mental torture, and another is if the spouse has sexual intercourse with any other person. Before, only husbands had right to divorce on the ground of infidelity of their wives.¹³

Abortion is Legalized in Certain Situations

The new law provides right to abortion up to 12 weeks of pregnancy for any woman and 18 weeks in case the pregnancy is due to rape or incest. The law provides for the right to perform abortion with the advice of medical practitioner at anytime, in case any pregnancy poses danger to

the life of the pregnant woman or to her physical or mental health or it leads to the birth of a disabled child. Sex based abortion is prohibited and a mother's consent is important before performing abortion.¹⁴

Increased Punishment in Rape Cases

The amended law has increased the punishment in rape. The law regards pedophilia as rape and provides for an additional punishment in pedophilia,¹⁵ gang rape and rape of disabled and pregnant woman.¹⁶ The law also provides equal punishment of imprisonment of up to 1 year or fine up to five thousand for both men and women who commit bestiality.

Increased the Age of Marriage

Discriminatory punishment on misrepresenting marriage has been amended. The law has also increased

the age of marriage for 18 years both for a girl and a boy with consent of marriage. Without the consent of parents, the age for marriage has been increased for 20.¹⁷ It has increased punishment for child marriage. It has also decriminalized unmatched marriage.

Politics Of Exclusion

Eleventh Amendment has not been able to Eliminate all the Discriminatory Laws against Women

Despite being a party to 16 international human rights instruments,¹⁸ including the CEDAW, and constitutional guarantee to right to equality and non-discrimination, Nepal still has discriminatory legal provisions against women.¹⁹ Eleventh amendment to the Country Code²⁰ has created rights of women on the basis of their marital status. The discriminatory laws against

12. Ibid.

13. Ibid.

14. Ibid.

15. Country Code 1963 (11th amendment), Chapter on rape, No.9A.-If any person commits, or causes to be committed, any kind of unnatural sexual intercourse with any minor, such person shall be deemed to have committed rape and shall be punished with imprisonment of up to additional one year, in addition to the punishment referred to in number 3 of this Chapter, and the court has to get reasonable compensation provided by the offender to such minor, taking into account, inter alia, of the age and grievance caused to that minor."

16. Country Code 1963 (11th amendment), Chapter on rape, "No.3A- Those who commit rape of a woman in group, or one who commits rape of a pregnant, disabled or incapacitated woman, shall be punished with imprisonment of additional five years, in addition to the punishment referred to in this Chapter."

17. Country Code 1963 (11th amendment), Chapter on marriage, No.2.- No marriage shall be contracted or got contracted if the man and woman are not of 18 years of age where the consent of guardian is available and not of 20 years of age where such consent is not available. If the marriage is contracted contrary to this provision, the principal offenders having attained majority, out of those committing the offense, shall be liable to the following punishment:- Where the marriage of a girl below 10 years of age is contracted/procured, punishment of imprisonment for a term from six months to three years and a fine of one thousand to ten thousand rupees-----1

Where the marriage of a girl over 10 years and below fourteen years of age is contracted/procured, punishment of imprisonment for a term from three months to one year and a fine of up to five thousand rupees-----2

Where the marriage of a woman over fourteen years and below eighteen years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both-----3

Where the marriage of a woman or man below twenty years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both-----4

One who contracts or arranges marriage without knowledge that marriage is arranged or contracted lying that it is within the limitation of law is not liable to punishment-----5

Out of the priest, matchmaker and other abettors who knowingly performs the acts of marriage prohibited under the above-mentioned provisions, one having attained majority shall be punished with imprisonment for a term of up to one month and a fine of up to one thousand rupees-----6

Notwithstanding anything contained in the above-mentioned clauses of this number, in cases where marriage has not yet been contracted but it has already been set after performing the rites and rituals, the principal who has arranged it shall be punished with a fine of up to five hundred rupees and the set matter shall be invalidated-----7

The fines imposed under clauses 1, 2, 3 and 4 above shall be collected, if they are paid, and be given to that girl, woman or man. If the fine is not paid, the partition property of that person subject to punishment shall be confiscated, and the figure of punishment recovered there from shall be provided to that girl, woman or man. If the fine cannot be recovered from the confiscation of property, the offender shall be punished with imprisonment for up to three months for the fine not recovered-----8

Where the marriage has been contracted before the man or woman has attained the age of eighteen years and no offspring is born to them, the man or woman who has so got married before his or her age of eighteen years may, if he or she does not accept the marriage after he or she has attained the age of eighteen years, void such marriage-----9

18. Though, the Parliament had passed a resolution to ratify the Convention on the Suppression of Immoral Trafficking and Exploitation of Prostitution of Others, 1949, it is yet to be deposited with the UN Secretary General.

19. Discriminatory Laws in Nepal and Their Impact on Women: A Review of the Current Situation and Proposals for Changes, FWLD, August 2000.

20. The Country Code (Eleventh Amendment) Bill has been passed by the Parliament on March 14, 2002 and it has received the Royal Seal on September 26, 2002.

Lack of conceptual understanding among the legislators, interpreters and enforcers on principle of equality has created confusion reinforcing protectionist approach, which further limits women's fundamental rights and freedom.

Negative arguments against special measures obstruct the achievement of substantive gender equality as they hamper the implementation of special measures in favor of disadvantaged group.

women pose a major hurdle in the road to achieving gender equality. Although eleventh amendment of the country code has recognized daughter as heir equally as the son, it provides that daughters should return her share in case she gets married after taking her share. Similarly, a provision in the Code that daughter should return intestate property after her marriage is more discriminatory than the previous law where a daughter was not required to return intestate property once she received. The Code established that men are entitled to divorce if it is proven by the Medical Board recognized by HMG that he has no children within 10 years of their married life. Women are not entitled to divorce on the same ground. The recent amendment has not been able to change many discriminatory provisions in the Country Code.

Insufficient Special Measures

Recognizing the special needs of women, efforts have been made to uplift them by enacting special laws and by initiating few specific programs in their favor. However, the existing special measures are insufficient in quantity and inadequate in quality.²¹

Lack of Awareness on Women's Rights

Women themselves, for whom the rights are created and demanded, are not aware of their rights. Patriarchy and gender stereotypes are some of the major hurdles to women's empowerment and equality. As existing laws are scattered, it is difficult for the average person to be

aware of the rights without wider dissemination of information. In a country like Nepal, where limited resource is allocated for women's development, this poses a major challenge. Though much effort has been made to increase sensitization/awareness of gender issues at various levels, there is still a long way to go. The patriarchal norms and values still reflect in the laws, judicial interpretation, policies and programs. The lack of gender sensitization has led to biases against women, which generally result in violation of women's basic human rights and fundamental freedoms.

Lack of Conceptual Clarity on the Principle of Equality

Lack of conceptual understanding among the legislators, interpreters and enforcers on principle of equality has created confusion reinforcing protectionist approach, which further limits women's fundamental rights and freedom. Negative arguments against special measures obstruct the achievement of substantive gender equality as they hamper the implementation of special measures in favor of disadvantaged group.

Some positive initiatives reflected in the judicial decision cannot be said to be sufficient to reflect the protection and promotion of human rights of women in the national context, as even today Court has been excluding women from the Constitution as an independent citizen to confer citizenship to their children or spouse.

There are existing discriminatory citizenship laws,²² and which was challenged in Chadrakant

21. Special Measures and their impact on women, FWLD 2003.

22. The law provides citizenship right to those children whose father is citizen of Nepal at the birth of the child by descent (Article 9(1) of the Constitution of Kingdom of Nepal 1990) that excludes mother from lineal descent. A child found in Nepal is deemed to be citizen until father is traced (Article 9(2) of the Constitution of Kingdom of Nepal 1990) that denies existence of mother. A provision where a foreign woman married to Nepali citizen providing right to acquire citizenship (Article 9(5) of the Constitution of Kingdom of Nepal 1990) that denies similar right to Nepali women marrying a foreign citizen is denied.

Gyawali's case²³ the court quashed the writ petition arguing court lack jurisdiction for judicial review of constitutionality of the constitutional provision. Going beyond the interpretation made in Benjamin Piters²⁴ where Court argued "Article 11 of the Constitution is a general provision and the provision in the part two of the Constitution, relating to citizenship, is a specific one, the Court claimed that the special provision will prevail in case of contradiction with the general provision", whereas in this case court said that "if there is a contradiction between two articles of the constitutions harmonious construction can not be applied as each article have its own objectives and they are independent from each other". This decision reflects how patriarchal values are deeply rooted in the mind of law makers and law interpreters denying same treatment to women in the name of women being subject to go away, subject to give away. Policy makers and even politicians bringing arguments that nationality issue is very sensitive and also matter of national security, even raising the concern about open border with India. But my simple argument is, can in the name of open border, you can discriminate only women and deny right as an equal citizen. Why State donot want to recognize a woman, as a mother, as an independent identity and as a citizen?

I would also like to bring another example, where Foreign Employment Act, 1986 was amended inserting a new²⁵ provision, which requires foreign employment agencies to take approval of guardians of women and the HMG/Nepal before

sending women for foreign employment. Men need no such requirement.

A ministerial level decision has also been taken restricting women's employment in the Gulf countries in the Middle East. However, this has not deterred women from seeking foreign employments, and many are leaving the country illegally and are therefore more vulnerable to exploitation. Sabin Shrestha for FWLD filed a writ petition²⁶ against the violation of fundamental right to equality guaranteed by the Constitution arguing that the women should enjoy the same employment opportunities as men. Unfortunately, the judges of the Supreme Court were unable to distinguish between substantive equality and discriminatory laws. Though this provision is based on protectionist approach, which restricts various rights of women in the name of protection, the Supreme Court has validated the provision on the basis of the constitutional provision, which allows for special laws for the advancement and protection of women.

Similarly in another writ petition filed by Prakash Mani Sharma of Pro-Public vs.HMG/N challenging the provision that requires a woman below 35 years of age to take approval from her guardian to get a passport, according to Passport Rules, 2027 B.S. The Supreme Court quashed the petition without even issuing the show cause to the government. This is a clear example reflecting the ignorance of the law interpreters at the highest level about the concept of substantive model of equality. As a result of this, the international com-

mitment shown regarding the women by Nepalese Government is confined in the commitments only. In this situation the challenge seems to be to recognize the need for an accountable state - a state that is made responsible for its actions nationally and internationally in the clear-cut understanding of human rights frame work and concept of equality.

In recent years, gender equality movement has made some progress in various fields, especially on elimination of discrimination against women. The wide disparities between men and women cannot be narrowed down only through inclusion of formal law. It requires bridging the gender gap, which is a result of long history of women's social and cultural exclusion, through the inclusion of substantive equality in the laws, policies and programs to bring equality in result.

At least all the organs of the Government, Political Parties have recognized denial of women's rights not only as violation of women's rights but as gross violation of human rights and realized their legal responsibility for such wrongs but also their accountability for inclusion of women. However the challenge is to reconceptualize human rights to include the human rights of women and to extend beyond the dictates for equality to cover concerns particular to women as a women.²⁷ We have to remind our government and political parties today that in spite of the apparent consensus on inclusion of women, the politics of exclusion of women has been questioned and will continue to be questioned.

(Courtsy: www.fwld.org.)

23. Chandraknat Gyawali Vs HMG Nepal, Supreme Court bulletin 2059, Vol 9 p 1.

24. Benjamin Piters Vs Department of immigration, NKP 2048, vol 11, p 479

25. Section 11 of Foreign Employment (Second Amendment Act, 2054).

26. Supreme Court Bulletin, 2058, Vol. 19 p1

27. International Human Rights law and Practice: Implications for Women, Florence Butegwa, From Basic Needs to Basic Rights, Edited by Margaret A. Schuler, page 38.



» Bijay Raj Gautam «

Peace Initiatives in Nepal: State and Challenges

Now the period of political transition offers both opportunities and challenges for the protection and promotion of human rights and establishment of peace in the society. There is no coherent state policy on transitional justice and peace building. Debate on transitional justice has remained central during the entire peace process and even after the formation of the Interim Parliament.

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 nature and dynamics of possible conflicts and outline of the peaceful and democratic nation-building process have been detrimental to this course.

After the election to the Constituent Assembly (CA) in April 2008, Maoist party is leading a new government. Nepal's political transition to peace has largely demanded proper address to the long-standing causes and outfits of impunity. The programme and policy introduced by the government on 14 September 200-- states logical ending of peace process, establishment of rule of law by ending existing situation of impunity in the country. However, extended and deepened haggling politics suggests that the restoration of rule of law and promotion to full respect for human rights is not in the priority of current government.

Now the period of political transition offers both opportunities and challenges for the protection and promotion of human rights and establishment of peace in the society. There is no coherent state policy on transitional justice and peace building. Debate on transitional justice has remained central during the entire

peace process and even after the formation of the Interim Parliament. Comprehensive Peace Accord, 2006, Interim Constitution, 2007, the Common Minimum Programme, 2007 of the Interim Government and 23-point agreement by the Seven-Party Alliance, 2007 provide for an establishment of the Truth and Reconciliation Commission, Peace and Rehabilitation Commission, High Level Investigation Commission on Disappearances and Commission for Restructuring of the State to ascertain rule of law and sustainable peace and create conditions propitious for national reconciliation.

State of Peace Initiatives

Nepal is now witnessing history in the making. A new political, economic and social transformation is underway. After successfully holding the election of Constituent Assembly, the newly elected body of CA declared Nepal a federal democratic republic. As a consequence of this, almost two and half century old monarchy was abolished which was primarily responsible for the perpetuation of underdevelopment, poverty and hunger in Nepal. Consolidation of feudalism under the monarchy had aggravated discriminations in every sphere of state structure and Nepali society. Now we are in the process to unblock the progressive transformation of Nepalese society.

No doubt Nepal took a big

step towards establishment of sustainable and democratic peace. The completion of CA election was itself a landmark achievement in this regards. The composition of CA is probably the most inclusive in the country till date. Out of the total members, women representation in the CA is one third. The representation of ethnic community and dalits in CA is almost at par with their size of the population. The minorities and most deprived communities with a danger of gradually losing their identity are members of the CA. The diversity of the nation has been in a large extent reflected in the institution of the CA. This reflects democratic aspirations of the people.

The broad based inclusive and participatory constitution making process would be an efficient and authentic way to address the conflict, and it could also be a tool for the conflict transformation and peace building. But still Nepal has a long way to go to establish a genuine and sustainable peace. The justice, human rights, and democratic and genuine participation are the basic elements of peace. Despite the possibilities, Nepal is facing a difficult and painful transition and is now in extremely vulnerable and fragile stage.

It is in the process of creating mechanisms to deal with the past human rights violations through truth and reconciliation commission, inquiry commission on disappearances, forming a commission on state restructuring and also launching wide ranging agrarian reform with abolition of feudal production relations through scientific land reform will form the cornerstone of new Nepal.

Basic Issues and Challenges

Despite so many successes on the way to consolidate peace process, there are still some downside risks. Often the commitments made publicly by leaders are ignored at the ground. Below are some issues to be addressed at the soonest:

Addressing Impunity and Rule of Law

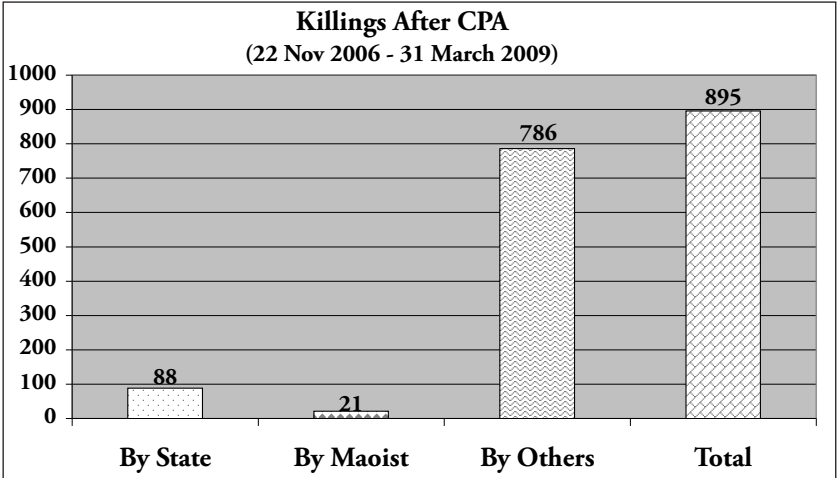
The country is undergoing a transitional phase from armed conflict to democracy and peace. The issue of impunity has been an issue of prime concern for human rights defenders in Nepal since the success of people's movement for democracy in 1990. However, the concerns remained unaddressed throughout the decade and still the state apparatus is not serious in taking up the issue at the political level. Instead, it has entirely encouraged the perpetrators of grave human rights violations of the past, regain power and enjoy impunity. No one is brought to justice for the wrongdoing or the serious crimes committed in the past. The justice delivery mechanism has also become weak and hapless. Nepal needs an effective and credible mechanism for transitional justice.

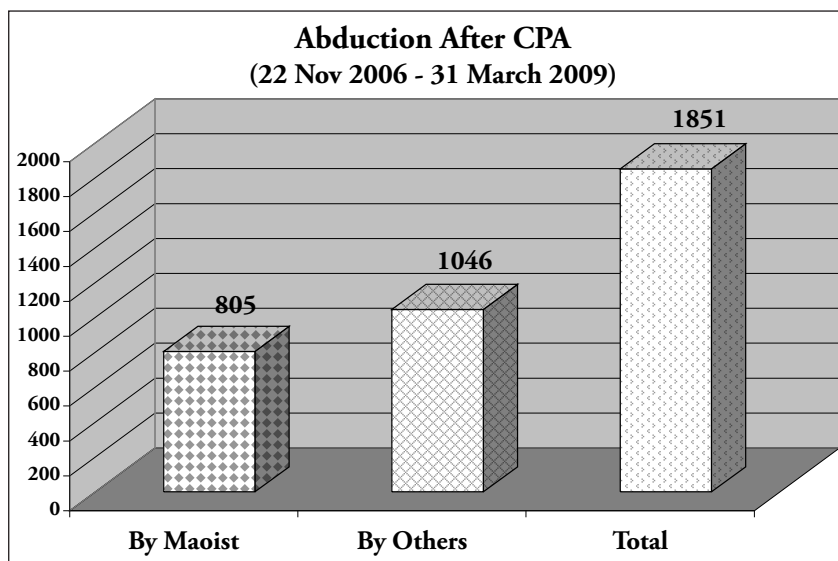
The respect for the rule of law is a basic ingredient of any peace initiative and is also the hallmark of a civilized society. But in contrary to this, there is a state of lawlessness and anarchy in Nepal. The law enforcement agencies and institutions have become weak, fragile and inefficient. Nepal is suffering from the soft state syndrome, a state which is unable and inefficient to properly implement its own laws.

Integration of Maoist Army

One of the most sensitive issues is regarding the integration or

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participation of women and people from marginalized communities is must in any peace building effort. But in contrast no such effort has been made to include women or any marginalized community in peace building effort in Nepal.

Engagement of Civil Society

There is no effective and meaningful civic engagement in this process. The civil society groups and organizations, which played a significant role in the democratic movement, are largely excluded from the process. They are not consulted or engaged in the process. There is a growing gulf between civil society organizations and political actors. The peace process is not run and owned by the people. The people are not encouraged to actively participate in the process. So instead of being actively engaged in the process, people have just become silent spectators.

Civil Society Strategy

Renovation of crucial democratic institutions such as political parties, judiciary, law enforcement agencies as well as civil society organizations is keys to lead towards an inclusive democratic state. Ensuring human rights is the capability that should be enshrined in all policy frameworks as a core issue that can adequately address democracy and peace dichotomy. Way to establish an inclusive democratic state also depends upon the extent the political actors follow their commitments 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 the challenges.

- Ending impunity
- Compensation to the victims of

management of the Maoist army. There is no unified voice coming from the concerned parties on such a contentious issue. Although in the common minimum program of the government there is a clear reference to the way this issue will be resolved, certain party's interpretation seems to be often different from other mainstream political parties.

Terai Unrest

There are some armed groups particularly in Tarai which are continuing their involvement in the armed conflict. The series of killings, abductions, extortion, looting and other violent activities by armed groups have been reported in Tarai. Moreover, the armed Tarai outfits are morphing into criminal gangs from political ones adding concerns over peace and security in the southern plains for sometime to come.

Participation of Marginalized Communities

The democratic practice of 12 years since 1990, the historic people's movement of 2006 followed by growing assertiveness of dalits, indigenous people, ethnic community, madhesi, women and minorities indicates that unless their voices and demands are met or resolved amicably, there is a risk of disturbance toward the consolidation of peace process. The effective

Ensuring human rights is the capability that should be enshrined in all policy frameworks as a core issue that can adequately address democracy and peace dichotomy. Way to establish an inclusive democratic state also depends upon the extent the political actors follow their commitments and agreements of the past that have been leading towards peace and forward to the CA.

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

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 in their area, and encouraging other stakeholders to support these initiatives.

Conclusion

There is serious and growing political disagreement over key politi-

cal issues among major political actors. The widening gap might derail the entire peace process and constitution making process. The unreasonable delay in constitution making would also disrupt taking the peace process to logical end.

The successful peace process needs an effective monitoring mechanism. One small mistake can derail the entire process. There is no effective monitoring mechanism in place till now. There must be an inbuilt mechanism for accountability. Under it, all the actors must be held accountable for their actions.

Human rights are the central theme for any peace building effort. There can be no genuine peace without full guarantee of basic human rights and fundamental freedom. There is widespread violation of national and international human rights law in Nepal. The nation lacks an effective mechanism to enforce national and international human rights norms and standards. The national institutions to enforce and monitor human rights are largely ineffective and weak.

The peace building and conflict transformation is a gigantic task. It is directly associated with nation building process. To deal with post conflict society Nepal needs a set of institutional mechanism to deal with past violations and abuses and create a basis for peace and justice. No such mechanism such as- truth and reconciliation commission, peace commission, commission on state restructuring etc is at place yet.

Recommendation

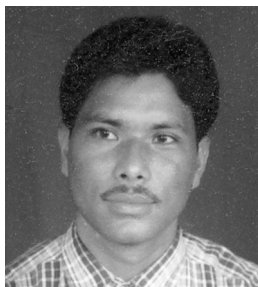
The peace process needs to be democratized. The ownership of the people in the peace process is must for the successful conflict transformation. The process which is far away from the people and where the people at large are alienated from it cannot go very far and would not produce any meaningful result. An effective civic engagement will provide real strength to entire effort. The participation in the peace building effort

must not be cosmetic only but should rather be genuine and meaningful. The structural cause of conflict needs to be addressed. The exploitation and marginalization of the population such as dalit, women, indigenous and ethnic groups will obstruct the conclusion of the peace process.

The Comprehensive Peace Accord must be complied. Likewise, the other agreements of the past including the provisions of the latest Common Minimum Programs signed by the coalition partners must be obeyed. There is a necessity of initiating dialogue with some armed splinter groups active particularly in Tarai so as to bring them in the democratic mainstreaming.

The new constitution must be drafted and promulgated within the specified time table made by the constituent assembly. And the constitution should incorporate the progressive agendas of the people. At the same time, some fundamental rights of the people in the areas of education, health, shelter, food sovereignty, drinking water and employment have to be guaranteed. A special consideration has to be given in the Nepalese context as Nepal passed through a more than decade-long violent conflict and still is confronting with various forms of social contradictions. Scheme for Progressive socio-economic transformation will be essential to enhance equitable growth and development for the prosperity of the people within a short span of time.

As the country is still passing through a transitional period, building national level consensus and maintaining it among the major political parties' main political and socio-economic issues is the need of the moment. Acting as facilitator to take the ongoing peace process into a logical conclusion, draft and promulgate a new democratic constitution by encompassing people from various walks of life and transform Nepal into a sovereign, independent, democratic federal republic is the major task before us.



» Bajare Chaudhari 'Sushil' «

Situation of Domestic Violence in Nepal

Article 20 of the Interim Constitution of Nepal 2007, has incorporated the provision of rights of Nepalese women. The Article mentions that no women shall be discriminated against in any way on the basis of gender. Every woman shall have the right to reproductive health and other reproductive rights and no physical, mental or other form of violence shall be inflicted on any woman, and that such an act shall be punishable by law.

'Hasrun Idrishi, 23 of Municipality-8 was brunt by her husband Ushim Idrishi and mother-in-law Ruksana Idrishi accusing her of not bringing more dowries.'

'Kalli Kumari Bishwokarma of Pyutar VDC-7 in Lalitpur district was forcefully fed human excreta by a school principal accusing her of practicing witchcraft but the police have not been able to arrest the perpetrator because of the obstacles created by the community.'

'Domestic child labourer Usha Thapa, 10, of Manow in Bardiya district was raped by school teacher Bhim Prasad Rijal in Nepalgunj in January 2008.'

These are few representative examples of domestic violence in Nepal. INSEOnline documented a total of 134 incidents related to domestic violation in Nepal in the year 2008. However, the number could be much more as most of the cases did not surface due to patriarchal nature of the society and the social stigma associated with such violence. Violence which occurs within the periphery of household is domestic violence. Domestic violence against women in country is an open secret; however, Nepal does not have separate law addressing domestic violence against women.

The Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclu-

sively and explicitly address the issue of violence against women. It affirms that the phenomenon violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms. The Declaration provides a definition of gender-based abuse, calling it "any act of gender based violence that results in, or it likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

This has been reflected in the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Convention provides a working forum for the process of eradicating gender-based violence and promotes gender equity in international community and every level of national life. In the domestic domain, Article 20 of the Interim Constitution of Nepal 2007, has incorporated the provision of rights of Nepalese women. The Article mentions that no women shall be discriminated against in any way on the basis of gender. Every woman shall have the right to reproductive health and other reproductive rights and no physical, mental or other form of violence shall be inflicted on any woman, and that such an act shall be punishable by law.

There are different types of domestic violence against women in

Nepali society. We usually come to know about physical abuses of domestic violence. But the issues like sexual, psychological, emotional and economical abuses which are more dangerous and harmful than physical abuses do not surface due to exiting social structure. We have been practicing federal democratic republic system in Nepal following the abolition of the monarchy. The Interim Constitution of Nepal 2007 is a landmark constitution in the history of Nepal, which has paved the way for formation of the 601-member constituent assembly to draft a new constitution for republic Nepal. Civil society and right activists including women human rights defenders (WHRDs) have been campaigning for human rights friendly constitution. There are many burning issues in the community including domestic violence. The members of the constituent assembly should pay proper attention to this effect as thousands of women have been victimized due to domestic violence every year. There are different causes of domestic violations in Nepal- poverty, superstition and misunderstanding between families to name few. Feudal culture, lack of awareness and education among other also create an environment for domestic violence.

Chairperson of the Constituent Assembly expresses the hope that the new constitution will include the rights of women. The need of the hour is to unite the women, who are divided on the grounds of caste, language, religion, geography, class and political ideology, to exert pressure for incorporating women's rights in the upcoming constitution. "Violence against women is a common problem for all women so we should stand against patriarchal and feudal cultural concept and work together to get success," says vice-chairperson of the Constituent Assembly Purna Kumari Subedi.

President of WOREC, Dr Renu Rajbhandari says that the Nepalese laws deal with women vio-

lence only as a family problem while the problem lies in the judicial system as women are re-victimized during the legal process. Coordinator of INSEC Mid-Western Regional Office Nepalgunj Bhola Mahat holds insufficient laws against domestic violation and weak implementation on the part of the state as responsible factors for rise in the incidents of domestic violence in Nepal. According to Mahat, of the victims visiting INSEC Regional Office, most of the victims are not aware about their rights. Though leaders of various political parties have been expressing their commitments to end the domestic violence, their commitments are yet to be translated into reality. Prime Minister Puspa Kamal Dahal announced to form a cell against domestic violence two months ago but such cell is yet to come into operation. Patriarchal thinking, discriminatory laws, social practice of early marriage, different cultural norms, weak portrayal of women by media, economic dependency and lack of awareness are some of the factors adding fuel to the problem of domestic violence. Therefore, proper attention should be given to these factors to reduce domestic violence in the country. Similarly, the government should also take effective action against domestic violence immediately and pass the Domestic Violence (Crime and Punishment) Bill.

References

1. Prachi, 68th Edition by INSEC
2. Domestic Violence against Women in Nepal: Concept, History and Existing Laws by Proff. Dr. Bhakta Pradhanaga& Advocate Purna Shresth
3. Declaration on the Elimination of violence against Women, 1993
4. www.inseconline.org
5. www.fwld.org
6. www.jagarannepal.org
7. Interim Constitution of Nepal 2007
8. Nayapatrika, March 30, 2009 edition

Civil society and right activists including women human rights defenders (WHRDs) have been campaigning for human rights friendly constitution. There are many burning issues in the community including domestic violence. The members of the constituent assembly should pay proper attention to this effect as thousands of women have been victimized due to domestic violence every year.



» Bidya Nath Bhurtel «

Violation of Women Health Rights in Nepal: A Study of Cases

Out of a total of 20 cases studied, 10 were directly related with violation of Reproductive Health and/or Reproductive Rights, four were violation of women rights through domestic violence, four were about abuse of women rights manifested in social malpractices and the remaining two were about abuse of women rights by means of rape.

Background

This article attempts to look at some of the findings of a research task in the area of women's health rights that INSEC carried out at the end of the year 2008 from a slightly different perspective, albeit within the human rights framework. Though INSEC, as a human rights organization, has been getting involved in many instances for issues on health rights in general¹, this specific theme itself is comparatively new to INSEC.

In November-December 2008, INSEC undertook an initiative, with support from the UNFPA, to explore into the kinds and extent of abuse/violation of women rights in the country. The study identified 20 cases of women's health rights abuses from all over the country and carried out fact-finding missions on these cases. The identification of the 20 cases was done through regional level interactions among INSEC regional office staff members, its district partner organizations and district representatives of the selected 10 districts of the country. Four cases were selected in each of the development regions. Prior to the interactions, the district representatives and the repre-

sentatives of the district partner organizations were instructed to list down and carry out preliminary studies on the cases of severe violations of women health rights in their respective districts. The district teams were asked to present their cases in the interactions and through open discussion, 20 final cases were selected out of almost 50 cases for further exploration and reporting.

The following were the districts and cases selected for studying cases of women health rights violations.

Out of a total of 20 cases studied, 10 were directly related with violation of Reproductive Health and/or Reproductive Rights, four were violation of women rights through domestic violence, four were about abuse of women rights manifested in social malpractices and the remaining two were about abuse of women rights by means of rape.

The key finding of the short study was re-establishment of the fact that the issue of women's health or any other aspect of the Economic, Social and Cultural (ESC) rights for that matter, can not and should not be dealt with in isolation. The state of enjoyment of health rights by women

1. For instances,

1. Community Assessment of Health Services in Dadeldhura, April-May 2007, with UNFPA

2. Measles vaccination campaign in September-October 2004, with UNICEF and the government

Regions	Districts (No. of cases studied)	Types of cases
Eastern	Sunsari (2)	Domestic violence and Social Malpractice
	Udayapur (2)	Rape case and Reproductive health right violation
Mid	Sindhupalchok (2)	Rape case and Reproductive health right violation
	Makwanpur (2)	Reproductive health right violation and Domestic violence
Western	Kapilbastu (2)	Both reproductive health right violation
	Kaski (2)	Social Malpractice and Domestic violence
Mid-Western	Rolpa (2)	Reproductive health right violation and Social Malpractice
	Dang (2)	Reproductive health right violation and Domestic violence
Far-Western	Doti (2)	Reproductive health right and Social violation Malpractice
	Kanchanpur (2)	Both reproductive health right violations

could be taken as a clear indication of the state of enjoyment of the ESC rights as a whole in general. In other words, health is one aspect of looking at well being of people along with their education, employment and the environment in which they live. Since health is directly related with one's earnings, food and nutrition, sanitation and the environment in which a person lives, those countries where the state has scored poorly in guaranteeing its citizenry their economic, social and cultural rights, violations in their health rights is bound to occur. In other words, the findings of this brief assessment reconfirm the indivisibility and interdependence of rights as they relates to health in this case. This article highlights the need to have a more integrated way of analyzing violation of ESC rights by placing the health rights at the centre stage. For the purpose of this article, two cases will be given special focus to demonstrate the extent of violation of health rights of marginalized women in the country and to demonstrate that health rights are intricately related with numerous aspects of other rights, such as right to food, employment, shelter and many more.

Before going into details of

the selected cases, let us briefly review the human rights framework for basing the analysis on the violations of rights to health in our context.

The Human Rights Framework for Right to Health

It is very useful to refer to the common human rights framework of respect, protect and fulfill at this point. The obligation to respect the right to health prohibits states from taking action that would directly injure health and may include a prohibition on torture and cruel punishment. This obligation may require the state to protect against destruction of access to clean water or food for vulnerable populations². Under the obligation to protect, the state must offer redress that people know about and can access if a violation of the right does occur³. The obligation could also cover measures to preserve clear air and water, eliminate environmental pollution, reduce toxic substances and prohibit the marketing of dangerous products⁴. The obligation to fulfill the right to health encompasses state obligations to provide and facilitate medicines and services. It also incorporates an obligation to promote because of the critical importance of

The obligation to respect the right to health prohibits states from taking action that would directly injure health and may include a prohibition on torture and cruel punishment. This obligation may require the state to protect against destruction of access to clean water or food for vulnerable populations

2. Hunt Paul, State Obligations, Indicators, Benchmarks and the Right to Education, 1998

3. The Right to Development; A Primer, Centre for Development and Human Rights, New Delhi, 2004

4. Ibid

Prioritize Women's Issues

There has not been much improvement in the situation of women despite historic change of April 2006. The incidents of women's rights violations and discrimination against women continued. In this context, we asked different people about what should be done to ensure women's rights and uplift women. Excerpts:

Jaya Ghimire

Member of Constituent Assembly / Secretary, All Nepal Women's Association

Representation of women in every sector of the state should be ensured in the new constitution. Rights of women including health and education should be incorporated as fundamental rights. Similarly, equal rights of son and daughter be ensured in parental property and there should be equal access, ownership and participation of men and women in the state resources.

Separate law should be formed to end domestic violence against women. We hope that the parliament will immediately endorse the Domestic Violence Act. Legal provision should be made for ending the dowry system of Tarai and ensuring strict punishment to the perpetrators involved in sexual violence.

If a mother becomes healthy, the whole country will become healthy so the new constitution should prioritize the issue of maternal health rights. Proportional representation of women should be ensured in Legislature, Executive and Judiciary, three major organs of the state. Legal provision should be made for the protection of the women of deprived community and poor background. The constitution should be made for making equal participation of men and women.



Dhan Kumari Sunar

Member, National Women's Commission

Various forms of discrimination against women continue till date as the decision of the government to ensure 33 percent representation of women in every aspect has not been materialized so far. Constitutional provision for proportional representation of women should be ensured to secure women's rights. Women's rights should be guaranteed as fundamental rights in the new constitution. The rule for providing citizenship is discriminatory. There is a provision that if a Nepal man marries a foreigner she will get the citizenship certificate but if a woman marries a foreigner, he will not get the citizenship, so such discriminatory provision should be amended and equal rights be ensured. Women lawmaker should raise this issue in the Constituent Assembly.

Legal provision should be made to ensure proportional representation of women in every organs of the state. As discussions are on about Federal Democratic Republican Set Up, the proportional representation of women in various structures should be



ensured. Legal provision should be made to ensure proportional representation of women in constitutional commission. Women are facing discrimination. The new constitution should include legal provision to ensure special rights of women.

Nirmala Sharma

General Secretary, Sancharika Samuha

Women have been deprived from political, social and community-level decision making process since long time. Proportional representation of women should be ensured in every sector. The fundamental base of the Federal Democratic Republic is the political parties and democracy could be sustainable only if the political parties are able to democratize themselves and make the party structure inclusive and transparent. Proportional Representation of women should be ensured from decision making level to village committees. Legal provision should be made not to recognize political party as national party if it failed to ensure proportional representation of women.

Equality is important not only between men and women but also among the women. The new constitution should make special provision for women, who were lagging behind due to race, religion, physical disabilities, geographical areas and occupation among others to mainstream them.

Women should have equal access to all means of communication and media. Media have to disseminate information to promote gender equality and mechanism should be developed to monitor women's representation in media sector. Writings and television programmes that will re-victimize the women should be discouraged. Legal provision should be made to discourage news, features and television programmes that humiliates women or violates women's rights.

The Constituent Assembly should draft a women friendly new constitution after changing the feudal structure of the state. Women's participation in every structure of the state should be increased to 50 percent from existing 33 percent. The atrocities committed against women in the name of religion and culture should be stopped and women should be assured that they also have some stake in the state, which is the main challenge of the Constituent Assembly.



Laxmi Pokhrel

Officer, Nepal Bar Association Human Rights Project

The new constitution should be free from all sorts of discrimination. The gender-based biasness should be resolved. For example of a Nepali boy marries with a foreigner she will get the citizenship but if a Nepali girl marries with a foreigner he will not receive the citizenship, such provisions should be suspended. As the Interim Constitution only guarantees reproductive health as the fundamental rights, protection of motherhood shall be ensured in the new constitution. Provisions like free education to girls upto bachelors' level and no discrimination on the marital status should be incorporated in the new constitution.

There should be constitutional guarantee to ensure proportional representation of women in every organ of the state. Male and female should have equal access, and control over the state resources. The state should adopt the policy of giving preferential treatment to the women for job and promotion of industries.

The government should adopt special policy to make the access of single, physically challenged, dalit, indigenous, janajati and Madheshi women in education and employment sectors. All sorts of violence against women at the workplace, public places and within the home should be made a punishable offense and provision shall be made to ensure appropriate compensation to the victims.



(Compiled by Raju Paswan)

health promotion.

To sum up, Paul Hunt, in his preliminary report on the Right to Health (2003) has succinctly clarified, 'Although subject to progressive realization and resource constraints, the right to health imposes various obligations of immediate effect. These immediate obligations include the guarantee of non-discrimination and equal treatment, as well as the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to health'.

The most important international human rights instruments that directly oblige its state parties is the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the UN in 1966 and which came into force in 1976. Article 12 (1) is perhaps the statement that outlines the broadest frame for the state to act regarding the right to health. It states that 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'⁵. In other words, if the state does not show willingness to use the maximum of its available resources for the realization of the right to health, its obligations under this article is violated. Article 2(1) does touch upon taking steps by state parties, individually and through international assistance and co-operation, to achieve progressive realization of the rights recognized in the covenant⁶. This means that if the states are not able to meet its obligations under Article 12 (1), it has to take steps towards progressively realizing the rights. However, the General Comment 14 clearly states

that a state party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations, which are non-derogable⁷.

The state obligation relating to the right to health mentioned in the ICESCR can be summarized as follows⁸.

The states must

- Ensure access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups
- Ensure access to the minimum essential food which is nutritionally adequate and safe
- Ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water
- Provide essential drugs, as defined from time to time under the WHO Action Programme on Essential Drugs
- Ensure equitable distribution of all health facilities, goods and services
- Adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population

Obligations of comparable priority are

- To ensure reproduction, maternal (pre-natal as well as post-natal) and child health care
- To provide immunization against the major infectious diseases occurring in the community
- To take measures to prevent, treat and control epidemic and endemic diseases,
- To provide education and access

to information concerning the main health problems in the community, including methods of preventing and controlling them

- To provide appropriate training for health personnel, including education on health and human rights

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, takes the issues mentioned in the ICESCR concerning women to another level and has specific points in ensuring health and reproductive health rights of women. It specifically states that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, state parties should take appropriate measures⁹

- To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status
- To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances
- To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.
- To provide special protection to women during pregnancy in types

5. Article 12 (1), ICESCR

6. Article 2 (1), ICESCR

7. The Right to Development; A Primer, Centre for Development and Human Rights, New Delhi, 2004, pp 98

8. Adopted from The Right to Development; A Primer, Centre for Development and Human Rights, New Delhi, 2004, pp 99

9. Article 11 (2:a-d), CEDAW

of work proved to be harmful to them.

In addition, concerning health care, CEDAW states that discrimination against women should be eliminated in terms of their access to health care services, including those related to family planning¹⁰. Moreover, it also states that women should be provided with appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation¹¹.

Concerning the domestication of these international instruments in paper, the government of Nepal has made commendable progress, especially after the April 2008 popular movement. Several amendments have been made in the Interim Constitution 2063 to do away with discriminatory provisions in the constitution against women. It has recognized health as fundamental rights of people and has established women's rights to reproductive health, control over one's own body and sexuality rights that are of immense importance for women to fully enjoy their right to health. However, there is still a long way to go in order to translate these provisions into concrete laws, policies and every day practice by all women of the country, especially the marginalized and the vulnerable sections of population.

The Stark Ground Reality

Case 1: Ex-kamaiya women in Kanchanpur

The following assessment is of a situation of a community of kamaiya (bonded labourer) women who are living in Dharampur

kamaiya camp in Daiji VDC-3 of Kanchanpur district after being declared free by the state. To discuss on the case of these women, fundamental details of four representative cases have been taken. The women chosen are from 23-42 age group, living in the kamaiya camp. The table 1 gives a brief summary of their reproductive status.

All of these women live in poor shelter and are mostly illiterate. All of them have to make their living by engaging themselves in wage labor, both agricultural and non-agricultural, whatever comes their way. None of these women have sought medical assistance, in any form whatsoever, during pregnancy or after the birth of their children. All gave birth to their babies inside the camp in conditions that lack very basic facilities. Their nutritional status is extremely poor, whether or not they are giving births. Regular health check ups, taking in iron capsules or other vitamins during pregnancy, special pre-natal and post-natal care is almost unheard of among these women. In the cases of woman1 and woman2 above, these women were not even aware that they were carrying twins or triplets during pregnancy. The use of contraceptives or any other family planning measures, either by males or females is very low. The whole community is characterized by high birth rate as well as very high child mortality. The inhabitants in the camp reported that there was no health worker in the camp. However, the local Assistant Health Worker (AHW) posted in the nearby health post does not agree with this. The younger generation appeared to be better aware about contraceptives. For instance, the woman4 in the table 1, did approach the health post just after the birth of her second child and asked for pills to avoid further preg-

Several amendments have been made in the Interim Constitution 2063 to do away with discriminatory provisions in the constitution against women. It has recognized health as fundamental rights of people and has established women's rights to reproductive health, control over one's own body and sexuality rights that are of immense importance for women to fully enjoy their right to health. However, there is still a long way to go in order to translate these provisions into concrete laws, policies and every day practice by all women of the country, especially the marginalized and the vulnerable sections of population.

10. Article 12 (1), CEDAW

11. Article 12 (2), CEDAW

Table 1:

ID*	Age	No. of children given birth	No. of children death just after birth
Woman1	24	5 all daughters, 2 earlier, triplets later	Later triplets
Woman2	35	5 all daughters, 3 earlier, twins later	Later twins
Woman3	42	11, 6 months pregnant (8 daughters)	4
Woman4	23	3 (1 M, 1F), 1F just born	--

Source: Field survey, December 2008

* Names withheld due to privacy reasons

nancy. The health post provided condoms instead since they said that they had run out of stock of pills. Another important aspect that has to be noted is that in all the above cases, their husbands had the final say on reproduction issues. This was the main reason for a large number of unwanted pregnancies and hence high birth rates since the men insisted that they wanted sons. This is clear from the larger number of girl children in the camp. Interestingly, it was found that the women have never approached the health workers seeking abortion since they have the impression that it will be equal to murdering of their babies. Due to the fear of punishment, no woman has made any attempts for abortion.

Case 2: Chepang women in Makawanpur

Chepangs are indigenous people inhabiting sub/tropical forested foothills of the country. They are widely considered as the 'endangered' groups of people and number 52,237 (0.23% of total population)¹² in the whole country. Around 20,000 of Chepangs live in Makawanpur district alone. Their livelihood is still dictated by fishing, hunting and gathering to a large extent. They depend on the wild fruits and yam for about nine months of the year. The rest is met by their

agricultural production, which they have learnt from neighboring ethnic groups, mainly the Tamangs. The average family size among Chepangs in this region is 6-14, with 7-12 children per family. Early marriage is an established tradition and the life expectancy is around 45 years¹³. The case of four women in the table 2, shows this tradition quite clearly.

In terms of their health, malnutrition is the most conceivable character of the people in the community. This is directly linked with poor availability of food items and large family sizes. Due to early marriage and high birth rate, infections and complications in reproductive and sexual parts of the women is quite prevalent. The physical stature of both males and females is small and frail. The males are engaged in manual labor works when they are not hunting or gathering, in growing towns like Hetaunda and Chitwan and in the construction sites in the east-west national highway. The men do not want to use any temporary or permanent means of family planning because of the widespread conception that doing so will reduce their physical capabilities to do labor work. The women appear to be interested in using contraceptives. However, the women reiterated that the men do not give them support and unwanted

pregnancies are rampant. Awareness on very fundamental health and hygiene is nowhere to be noticed. Most of the women wait at home while their men go for hunting, gathering or doing labor work. They do not have any alternative way to procure other means of feeding their children or themselves. Taking nutritious food during lactation is out of question when there is not enough food in normal days. In sum, most of the families are living in abject poverty in every sense of the term. The state of their access to health care services is very poor. They have to walk for at least half a day to reach the nearest health post. It is estimated that only 5% Chepang women visit health post for any kind of service¹⁴. These women lack information on health issues, including those that are beneficial to them, such as the provision of Rs 1,000 by the district hospital if they go to the hospital to give birth. But a district health worker reported that there not a single record of a Chepang woman receiving such facility.

Interpretations

In both the above examples several rights have been violated at a time. From an inability or unwillingness dichotomy, the case of this country is very difficult to decipher. Perhaps, we need a third angle to interpret the reality, which is the tendency of giving least priority to the issue by the state. In the two cases of mentioned above, there are clear failure by the state to comply with its obligations under the ICESCR and/or CEDAW. For instance, no steps have been taken by the state to ensure access of the women to minimum essential food that is nutritionally adequate and safe, access to basic

12. National Report, CBS, 2001

13. Personal communication during fieldwork

14. Personal communication with local Health Worker

Table 2:

ID*	Age	No. of children given birth	Age at Marriage
Woman1	35	9 (and 6 months pregnant)	14
Woman2	25	7 (5F, 1M)	15
Woman3	31	10 (7F, 3M)	16
Woman4	17	5 (All F)	13

Source: Field survey, December 2008

* Names withheld due to privacy reasons

shelter and to health facilities. The general appearance of these women, their food intake, their living conditions provide ample evidence to this. Nevertheless, the provision of some amount of money to poor women after giving birth is a positive step. However, such a decision has to be equipped with dissemination of adequate information to the people living in far-off remote places about available health facilities, methods of preventing and controlling common health problems. As far as these cases are concerned, it is also clear that the state has failed to ensure reproduction, maternal, both pre and post-natal, and child health care. The provision of adequate health workers, both numerically and qualitatively, in the remote areas, medicines and supplies is another aspect where very little attention seems to have been given by the state. As pointed out earlier in this article, the first step that the state needs to take is to recognize that an integrated approach is needed to ensure the women their rights to health. The key elements that must be considered in the case of these women is their right to adequate standard of living, right to adequate food or the means of its procurement, right to be engaged in income earning work with proper working conditions and, of course, their right to health care services, especially that pertain to reproduction.

Conclusions

The concluding observations on Economic, Social and Cultural rights in Nepal by the thirty-eighth session of the UN Committee on Economic and Social Rights, has expressed deep concerns over the limited or no access of significant number of people to health care services, especially the reproductive health services and inadequacy in number, quality of staffing and supplies in the health care facilities and the traditional attitudes among some caste and ethnic groups that is contributing to the reproductive health problems of women¹⁵. These concerns sum up the states failure to give enough attention to the health and reproductive rights of women in Nepal.

The international human rights instruments related to health rights of women repeatedly emphasizes on the marginalized and vulnerable sections of the population and is meant for all individuals regardless of their caste, ethnicity, gender, religion or any other parameter of categorization. The two cases chosen above are arguably the most deprived and vulnerable people in the whole country. The degree of violation of their health rights, as well as other fundamental rights, is at its peak and any steps on part of the state towards progressive realization, let alone ensuring full respect, protection and fulfillment, of the rights of these women appears to be a far cry.

The provision of adequate health workers, both numerically and qualitatively, in the remote areas, medicines and supplies is another aspect where very little attention seems to have been given by the state. As pointed out earlier in this article, the first step that the state needs to take is to recognize that an integrated approach is needed to ensure the women their rights to health.

15. 38th April 2009



»Pratibedan Baidya«

Impact of Armed Conflict in Women

The discrimination faced by women exacerbated due to the conflict. Women had to take care of the children and family matters as men and young people had left the villages due to the fear of being caught in the conflict between state security forces and Maoists. Women were also forced to take up the work that was traditionally restricted to men like ploughing the land and performing funeral procession.

The decade long Maoist insurgency concluded formally with the signing of the Comprehensive Peace Agreement in November 2006 and Maoists gained the leading role of the government but the wounds of insurgency are yet to be healed. Women, who were the most affected section in the insurgency, are yet to get peace dividends due to rigid patriarchal structure and apathy of the political parties to address their demands.

Women suffered a lot during the decade long armed insurgency. Women had taken part in the war activities from the side of the state and Maoist rebels. The plights of women and girls were more severe than that of their male counterparts due to gender specific violence and inequalities exacerbated by the conflict. Rape, sexual abuse, and torture by both warring sides were widespread. Sexual violence was used as a tool to punish women for their alleged connection with either side of the conflict. A research report entitled 'Janayuddha ko Serofero bhitra Mahila ra Balbalika' (Women and Girls in the periphery of the People's War) carried out by IHIRICON said that Devi Khadka, Lali Roka, Kamala Bhatta, Nirmala Pun, Sunsara Buda and other three women who were arrested from Irlung area of Lalitpur were raped before being murdered.

The report further said that some of the victims of rape had joined the Maoists after their release. Laxmi Shahi and Laxmi Rijal of Dailekh were murdered after rape by then Royal Nepalese Army on charge of being Maoist supporters. These are just a few examples while there are certainly more unreported cases of sexual abuses.

Of the total 13,344 people killed during the period of Maoist insurgency 10,297 were men and 1,013 were women while the gender of 2,034 people were not verified as they were killed during the clashes and they were buried or taken by the conflicting parties in an attempt to hide the identity of the deceased persons. Of the total 1,013 women killed during the period 193 were killed by the Maoists while others were killed at the hands of the state security forces.

Similarly, of the 84,969 people abducted during the period of Maoist insurgency 2,087 were women, while identity of 69,403 people abducted during the period was not known. The discrimination faced by women exacerbated due to the conflict. Women had to take care of the children and family matters as men and young people had left the villages due to the fear of being caught in the conflict between state security forces and Maoists. Women were also forced to take up the work

that was traditionally restricted to men like ploughing the land and performing funeral procession. According to IHRICON the number of households headed by single women as a result of the enforced or voluntary displacement of men caused by the conflict, or the phenomenon known as "conflict wives" referring to women marrying soldiers deployed in a certain area and then abandoned to their fate when these soldiers were moved to another area of the country was on rise during the period of conflict. This phenomenon was particularly important in the places where there were military barracks and it especially affected teenagers, generating situations where these women were abandoned and stigmatised. Mothers faced particular hardship. As men and young people migrated out of the country to avoid the conflict and seek opportunities abroad, married women were left behind to take care for children and the elderly, creating a heavy burden of responsibility.

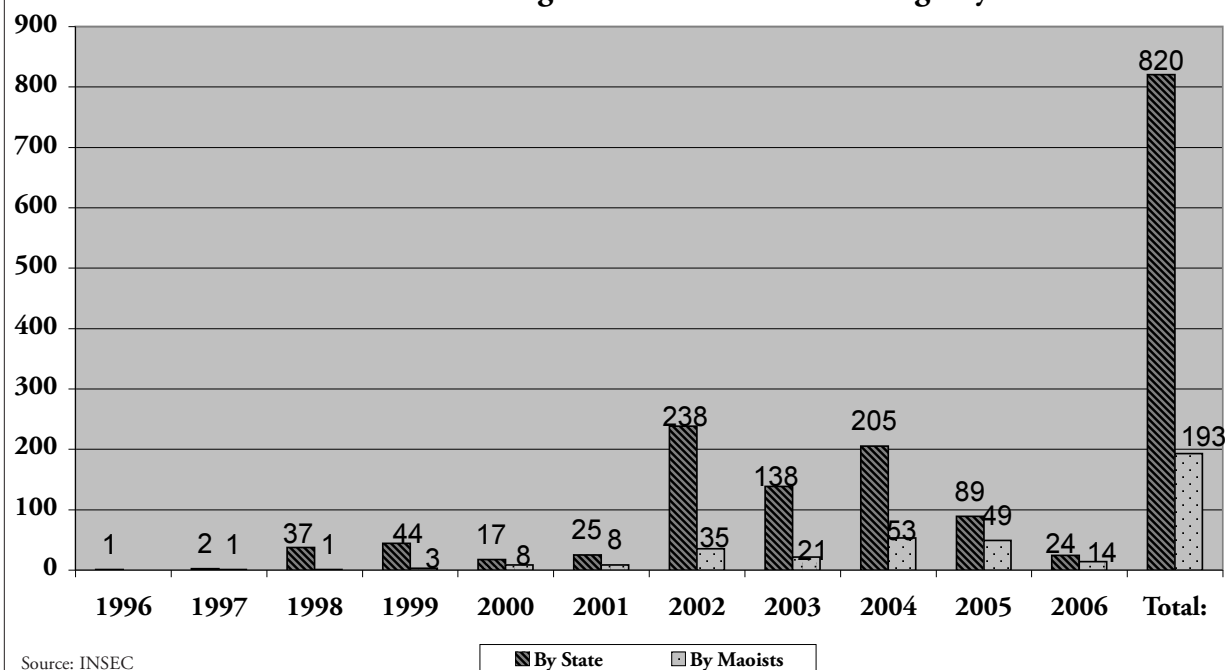
The IHRICON research report said during 1997-98, there was no man in Mirul VDC of Rolpa because the police activities generated fear among the villagers that they might be attacked by police in the name of being involved in the Maoist activities. Only women were elected in the election of the local bodies as men not only Maoist supporters but also cadres of other political parties could not enter into the area for filing nominations. Maoists murdered chairperson of Women Empowerment Forum Devisara Chand on charge of spying against their party. Similarly, Maoists murdered Durga Rana, who was affiliated with local Everest Club, on charge of trying to marry with a soldier. Pratiba Rijal, 34, of Lung VDC-5, who was kept at the labour camp by Maoists, said that she had to suffer various problems / diseases due to the torture inflicted by Maoists during their cap-

tivity. Madhudevi Buda, 30, of Jogbudha VDC-4, Gajeligadha has been suffering from mental illness after her husband was shot dead in front of her eyes on 17 August 2004 and was sexually abused. Similarly, Ganga Devi Khadka of Jogbudha VDC-6 has been suffering from mental problem due to the beating of security personnel during insurgency.

Women suffered as conflict victims, they performed as women combatants and also performed the role of household heads. Women actively participated in the People's War. It was estimated that the women combatants in Maoist force consisted of 40 percent of the total combatants. Based on the 2003 National Women's Commission's report, women accounted for around 33 percent of the Maoist militia in some districts, while the figure is as high as 50 percent in "the most highly mobilized Maoist districts." However, according to the United Nations Mission in Nepal, of the 19,602 people making up the PLA, 3,846 are women, that is, approximately 20% of the combatants. If the data published in the report of National Women Commission are correct most of the women deployed as Maoist combatants are not eligible for the job. Apart from facing the problems like lack of security of life and property, violation of human rights, internal displacement, forced migration & unsafe migration, encroachment of land and household by the conflicting parties, unemployment and use of landmines, women have to face gender specific violence and inequalities. With increasingly insecure food supply, women and girls' health was threatened by inequitable food distribution resulting in malnutrition and severe anemia. Girls' educational opportunities, already less than those of boys, further diminished because of the need for girls to enter the workforce in order to support the family as most of the men had left the villages. Girls

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Women Killed during the Period of Maoist Insurgency



Though the awareness level about their rights increased among people of marginalized communities during the Maoist insurgency, violations of women's rights continued as well from both the warring sides. Rape, sexual abuse, and torture by both warring sides were widespread at that time.

with little education and no skills were often forced into exploitative jobs.

Though the awareness level about their rights increased among people of marginalized communities during the Maoist insurgency, violations of women's rights continued as well from both the warring sides. Rape, sexual abuse, and torture by both warring sides were widespread at that time. Sexual violence was used as a tool to punish women for their alleged connection with either side of the conflict. Women, impregnated with children conceived in rape, had little recourse to abortion.

The trauma of sexual violence, forceful eviction of women from their homes, beating, torture and arbitrary detention among others faced by widows and orphans has been terrible during this phase. To date, there has been no accountability for the thousands of crimes of sexual violence or other appalling human rights abuses committed during the Maoist war in Nepal. Violent activities are going on in Tarai region mak-

ing the situation worse. Special measures should be taken even during the period of conflict to keep women and other vulnerable groups out of the adverse impact of the conflict and to minimize the risk of conflict to them.

Proper understanding of conflict actors, structures, issues and conditions is central aspect of conflict resolution. As women have suffered a lot during the period of conflict, addressing the problems being faced by women and healing their wounds is a pre-requisite for sustainable peace. However, the peace process of Nepal has routinely failed to include women and to deal with gender issues, which can result in gender-based persecution and violence being rendered trivial and invisible in peace agreements not taken into account in interpretation and implementation of the agreements. If the leaders and stakeholders are committed to sustainable security and peace, the women must be empowered politically and economically and should be represented adequately at all levels of decision making.

Do They Fit at All?

Assessing Incorporation of ICCPR in Nepal's Interim Constitution



» Bidhya Chapagain «

The primary task of the Constituent Assembly is to draft a Constitution for the democratic republic of Nepal. In the meantime the Interim Constitution remains the law of the land. In order to ensure the success of the peace process and to achieve credibility for the new Nepal, it is essential that the new Constitution is compatible with international human rights standards. This article will critique the Interim Constitution's compatibility with civil and political rights with a view to advising those drafting the new Constitution to ensure that it contains the necessary protections.

The International Covenant for Civil and Political Rights (ICCPR) provides the minimum standards which must be adhered to. Nepal ratified the ICCPR in 1991 and is obliged to provide for all persons in its jurisdiction full guarantee of the civil and political rights contained within it. The ICCPR is the most comprehensive treaty governing civil and political rights and is widely ratified amongst UN member states therefore it will be the main point of reference in assessing compatibility.

Other international treaties pertinent to civil and political rights protection that Nepal has ratified

include the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). In a post-conflict country that wishes to forge a new identity for itself as a democratic republic then Constitutional protection of these civil and political rights obligations is essential to ensure that the international legal obligations Nepal has assumed have real meaning and effect.

Legal Status Concerns

The Interim Constitution does not make it clear that international law, such as treaties like the ICCPR, have primacy over national laws. Neither does it state that the fundamental rights contained within the Constitution are to be construed in accordance with international standards. To provide for the maximum protection of human rights, it would be preferable for the Constitution to allow for the automatic operation of

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The ICCPR makes a distinction between rights which are non-derogable and those which are derogable in certain circumstances. The prohibition on torture, for example, can never be suspended for any reason, no derogation from its absolute prohibition is ever justifiable. Other civil and political rights can be curtailed or suspended in limited circumstances in international human rights law.

international human rights law (whether treaties or customary international law) in the Nepali domestic system, and that such law has a 'constitutional status' such as to invalidate inconsistent legislative/administrative actions.¹ The new Constitution should contain a provision that unequivocally states that any domestic laws which are inconsistent with international legal obligations are null and void. It would also be of benefit to provide that the provisions of the Constitution to be interpreted consistently with the meaning of human rights in the International Bill of Rights: thus facilitating courts and those administering the Constitution to draw upon the extensive international jurisprudence on human rights issues.² This would uphold international standards within the legislature which would be compelled to only promulgate laws which were consistent with international human rights law and give those persons within Nepal's jurisdiction the best standard of human rights protection as a Constitutional right.

Restrictions

Right to Freedom

The qualifications on the Right to Freedom provision of the Interim Constitution are a cause for concern. The ICCPR makes a distinction between rights which are non-derogable and those which are derogable in certain circumstances. The prohibition on torture, for example, can never be suspended for any reason, no derogation from its absolute prohibition is ever justifiable. Other civil and political rights can be curtailed or suspended in limited circumstances in international human rights law. The ICCPR's provisions on freedom of speech and assembly, for example, allow restric-

tions on the right in circumstances where it is 'necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'³

The Right to Freedom provision in the Interim Constitution, however, allows for a much wider range of justifications to be invoked and is plainly incompatible with the international standard. It permits laws which 'impose reasonable restrictions on any act, which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities'. The ICCPR is clear that any restriction is only permissible if it is 'necessary', this is a much stricter test than one of 'reasonableness'.⁴ What is 'reasonable' could be interpreted in a number of ways while a test of 'necessity' is much clearer and evinces a much greater respect for democratic principles.

Similarly the ICCPR provides for the 'interests of national security or public safety, public order, the protection of public health or morals...'⁵ This list is interpreted much more narrowly than the vague and ambiguous 'any act which may undermine the sovereignty and integrity of Nepal...' This could apply to just about anything leaving this provision open to abuse. Equally troubling is the permission to restrict freedoms in order to maintain 'harmonious relationships...' Clearly a Constitution for Nepal should be cognizant of the fact that there are a great variety of ethnicities and that harmony between them is a sensible goal.

It is easy to imagine, however, that this excuse can be applied exces-

1. See OHCHR-- 'Preliminary Comments on the Interim Constitution from Human Rights Perspective', p.4

2. Ibid

3. Articles 21 and 22, International Covenant on Civil and Political Rights

4. Article 12, Interim Constitution of Nepal, 2006

5. Ibid, article 21

sively, liberally and can result in an unfair curtailment of the freedom of an individual in a manner that is against the democratic spirit of the Constitution. A final concern in this provision is permission of restrictions 'on any act which may be contrary to decent public behavior or morality.' The ICCPR clearly allows for the protection of public morals, this is a concept which will vary from state to state, from a human rights point of view it is hoped that this is narrowly construed. What the Interim Constitution drafters exactly mean by 'decent public behavior' is unclear and, as such a phrase does not appear in the ICCPR. And given the subjective nature of what amounts to 'decent behavior' this could apply to a variety of circumstances and is open to abuse and an unnecessary and unjustifiable intrusion into democratic freedoms.

Both *Jana Andolans* are testament to the power of protest and expression in achieving democratic goals in Nepal. The protests played an integral role in returning democracy to Nepal and it would be of great regret if the rights of opinion, expression, speech and association were not given to the people of Nepal fully and without any compromise. The new constitution should incorporate the exact language of the ICCPR so that freedoms could only be curtailed in the most narrow and exceptional of circumstances.

Right to Equality

The principle of equality before the law contained in the Interim Constitution only provides that all "citizens" are equal before the law.⁶ The new constitution should provide that all persons under the jurisdiction of Nepal are equal before the law.

The general application of

laws is that there shall be no discrimination on the grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction. It is of concern that discrimination on the grounds of sexual orientation, disability, birth, age, marital status, health status and property status have not been specified as these forms of discrimination are all pertinent to the Nepali context.

Articles 2 and 26 of ICCPR provide that no person shall be deprived of civil and political rights on the grounds "such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Moreover the use of "such as" infers that this list is not exhaustive, the emphasis is on discrimination of "any kind" and so, in theory, all types of discrimination are included within its rubric. The nondiscrimination provision is one of the most fundamental guarantees of any constitution, including an interim constitution, and so should be drafted comprehensively and accurately.⁷

The new Constitution therefore should include the ICCPR's prohibition on the grounds of "national or social origin" and "property, birth or other status" and should subscribe to the UN Treaty Bodies views which have interpreted these broadly to include the types of discrimination mentioned above so that widest possible range of protections for groups are included. The constitution should, furthermore, ensure that the list is not exhaustive so that it can be applied to any form of discrimination.

Also of concern is that the Interim Constitution's protection against discrimination only applies to "citizens". This should be amended to include all persons under the jurisdiction of Nepal, even those who are here illegally. Again the types of dis-

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6. Ibid, article 13

7. International Commission of Jurists - Letter to Mr Subas Nembang the Speaker of the Legislature/Parliament, pg 2.

The Interim Constitution does not specify that the discrimination can be both direct and indirect. Indirect discrimination occurs when a particular law or condition is promulgated which, although not ostensibly discriminatory, has the effect that one particular group is likely to be disproportionately affected.

crimination are limited to the grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction as contained in Part 3 of the Interim Constitution. The provision contains the exception for 'positive discrimination' measures to be taken to correct inequalities of the past.⁸

The Interim Constitution's failure to specify such measures are only justifiable if they are temporary and will be discontinued as soon as the objective of attaining equality has been achieved.⁹ Similarly the distinct notion of 'substantive equality' and what is required to achieve it; positive action taken by the state to achieve substantive and real equality such as the obligation to provide equal access to buildings for able and disabled persons has not been made clear in the Interim Constitution. There is also a concern that the Interim Constitution does not specify that the discrimination can be both direct and indirect. Indirect discrimination occurs when a particular law or condition is promulgated which, although not ostensibly discriminatory, has the effect that one particular group is likely to be disproportionately affected. The new constitution must be clear that discrimination must be judged by its effect and that not only direct and obvious measures are precluded.

Untouchability and Racial Discrimination

Although the caste system has long been abolished such discrimination continues in many areas of Nepal

and remains a salient issue.¹⁰ It is encouraging, therefore, that a whole article is dedicated to it in the Interim Constitution. "No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be denied to perform any religious act." The protections in Article 14 only specifically apply to discrimination of this kind occurring in the 'public sphere'.

The new Constitution should aim to preclude the legality of such discrimination in the 'private sphere' as well. Only by extending this protection can the scourge of caste and racial discrimination in Nepal ever really be eradicated.

Press Freedom

This article positively precludes censorship of the media. Recent events in Nepal have indicated the need for a strong system of protection for the freedom of the press as the free dissemination of information has been compromised many times by special interest groups seeking to censor information unfavourable to them or their cause. This guarantee is limited however by the same limitation included in the Rights of Freedom provision.¹¹

As was recommended in the discussion regarding the Rights of Freedom it would be preferable if this was amended in the new Constitution to more closely resemble the standard of 'necessity' and 'exceptionality' used in the ICCPR.

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8. "Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madeshi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated."
9. See OHCHR – 'Preliminary Comments on the Interim Constitution from a Human Rights Perspective', pg 4.
10. See INSEC Yearbook 2009 for incidences of such discrimination occurring even in the last year.
11. "Provided that nothing shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty or integrity of Nepal, or which may jeopardise the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality."

The final part of this provision states that “No communication means including press, electronic broadcasting and telephone shall be obstructed except in accordance with law.”

This indicates that obstruction will be justifiable under the Constitution provided that it is “in accordance with law”. This grants an extensive power to the legislature to legalise certain forms of obstruction which are against the spirit of press freedom rights. The language in this provision should be tightened to ensure that obstruction is only legal in strict circumstances and only when absolutely necessary.

Right of Woman

Given the tradition of male dominance in Nepal and the number of violations against women recorded every year, including many incidences of physical and sexual violence, it is encouraging that the Interim Constitution includes a whole article on women’s rights. After stating simply that “No one shall be discriminated in any form for being a woman”, the article specifies three main areas particularly pertinent to gender discrimination in Nepal; reproductive health, violence, mental, physical and any other, against women and equality in ancestral property rights. CEDAW, which Nepal ratified in 1991, explicitly provides for other rights such as the right to maternity leave and contains an important paragraph dealing with the obligations inherent in substantive equality. Article 3 states that; “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women.”

This concept should be included in the Constitution in order

to give the prohibition on gender discrimination real meaning for women in Nepal and create a state obligation to take measures which place them on an equal footing with men.

Right of the Child

Children are particularly vulnerable in Nepal due to poverty and the ravages of conflict. The child rights provision in the Interim Constitution covers a wide range of issues; the right to identity, nurture, health, social security, the right against exploitation, the right of orphans and other helpless children to receive benefits from the state and the prohibition on child labour and child soldiering. There are a few more provisions that must be included in the new Constitution in order to provide children with the widest possible range of protections.

The Constitution should specify the age at which a person ceases to be a child. Currently the domestic Childrens’ Act 1992 determines that those below 16 years are entitled to its protections. The CRC, which Nepal ratified in 1990, specifies that 18 years is the appropriate age. Given the CRC’s almost universal ratification¹² it appears that 18 is the international standard and should be the age specified in the Constitution.

Although the Interim Constitution positively asserts the rights to not be exploited the prohibition here is potentially weakened by the lack of a full articulation of the principles and no real guarantee. The fact that exploitation “shall be punished by law” only has real meaning if an effective law exists to enforce it. It follows that while the executive would be unable to flout this Constitutional right the legislature could, in theory, severely limit its application. Furthermore the compensation right “as determined by law” relies on future legislation to bring the

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12. The CRC has been ratified by every United Nations member state except Somalia and the United States of America.

There is obviously a difference between coercing another to join a religion and the entitlement to convert another person. The former is clearly a more reasonable and more democratic prohibition than the one contained in the Interim Constitution. Religious persons should be entitled to encourage and facilitate others to join them, if they are using coercive tactics that prevent the true and unfettered consent of person wishing to convert then this is a reasonable and sensible prohibition.

Constitutional guarantee into effect. While it is reasonable that the exact mechanism of how compensation is awarded should be left to later laws the new Constitution should include a full articulation of the principle of compensation in order to ensure its full guarantee. OHCHR have also expressed concern over this issue which applies to many articles within the fundamental rights section of the Interim Constitution.¹³

A comparison with the protections guaranteed in the CRC reveals the paucity of the Interim Constitution's provisions with regards to children and the law. The new Constitution should incorporate the CRC's obligations. Article 40(b) requires: the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law and whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

The State obligation to segregate accused minors from adults, and convicted minors from adults and to only detain children as a matter of last resort should be made clear in the Constitution.¹⁴ Children who come into conflict with the law in Nepal are often not treated in a manner commensurate to their vulnerability and lower level of responsibility. The new Constitution must establish laws, procedures and institutions

which provide for a separate juvenile system.

Right to Religion

The right to practice and preserve one's religion is found in this article as is the right of every religion to maintain an independent existence. An ominous qualification, however, is included in the article, it states "provided that no person shall be entitled to convert another person from one religion to another, and shall not act or behave in a manner which may jeopardize the religion of others. The ICCPR's similar provision states "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

There is obviously a difference between coercing another to join a religion and the entitlement to convert another person. The former is clearly a more reasonable and more democratic prohibition than the one contained in the Interim Constitution. Religious persons should be entitled to encourage and facilitate others to join them, if they are using coercive tactics that prevent the true and unfettered consent of person wishing to convert then this is a reasonable and sensible prohibition. Accordingly the new Constitution should replicate the ICCPR's coercion based approach.

The right of independent existence is, like many any rights in the Interim Constitution, left to the legislator to fully guarantee as it states that it will be maintained "in accordance with the law". It is preferable that the extent to which this right can be exercised is clarified in the new Constitution rather than left up to the legislator to determine.

Rights of Justice

The Rights of Justice provision contains the requisite fair trial

13. The Articles which contain such a phrase are 12(2), 15(4), 16(2), 17(1), 17(2), 18(1), 18(2), 23(2), 24(10), 30(2).

14. See OHCHR, *supra* n.9, pg. 4.

and due legal process rights necessary in a human rights respecting democracy. The provision contains the right to consult a lawyer “at the time of the arrest” and “in court proceedings”. The ICCPR (article 14(3)(b)) states that accused persons have the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

The UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment dedicate two provisions to the right to consult with a lawyer. It is clear therefore that the international standards require that a person is entitled to legal assistance throughout the entire legal process and not only at the time of arrest. As such the “time of arrest” and “in court proceedings” proviso should be removed and replaced with the right of access to legal assistance throughout the legal process insofar as it is required for an accused to defend themselves.

Another major concern is the fact that certain protections do not apply to those in preventative detention and, erroneously, “enemies of the state”. During the counter-insurgency the use of preventative detention was widespread and was specifically provided for under the TADO Act. Clearly such persons detained under it were those “enemies of the state”. The UN Body of Principles unequivocally state that such protections apply to *all* detained purposes. Clearly the preclusion of persons detained under legislation or executive orders pertaining to ‘preventative detention’ from such protections is contrary to international human rights law.

The new Constitution should not include this exception and, given the prevalence of such violations

within the legal process, should explicate that the protections contained in the rights of justice provision also apply to any persons under preventative detention.

The ICCPR (article 9(1)) holds that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The new Constitution should contain this protection in order to ensure that the powers of police to arrest are not limitless and open to abuse.

The Rights of Justice provision part four contains the principle of non-retroactive criminality. OHCHR have opined that this should also contain a clause which clarifies that this does not apply to crimes considered to be international crimes. Article 15¹⁵ of the ICCPR contains an exception in its prohibition of retroactive criminality.

The new Constitution should contain a similar exception so that prosecution for international crimes cannot be countered by a defence using the blanket ban that is currently found in the Interim Constitution. The ICCPR’s reference to “general principles of law recognised by the community of nations” could be adequately satisfied now by a reference to the war crimes and crimes against humanity found in the Rome Statute of the International Criminal Court.

There are many other due process rights which are in the ICCPR but have not been recognised in the Interim Constitution. One major omission is the right to be informed of the grounds of arrest in a prompt manner. Others include the right to obtain information that can help in one’s defence, the right of an interpreter if required, the right to

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15. "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

appeal one's conviction. Another pertinent right to the Nepali context is the right to be tried with undue delay. Court processes in Nepal are notoriously slow and a Constitutional provision guaranteeing timeous justice would provide an incentive for action to be taken to direct resources towards making the judicial system more efficient.

The rights of due process and fair trial are at the very core of human rights law and are essential in a democratic state. It follows therefore that the new Constitution should be closely modelled on the ICCPR's protections and should include the same rights and language used to express those rights.

Right against Preventative Detention

This provision prohibits preventative detention except in situations where "there is a sufficient ground of existence of an immediate threat to the sovereignty and integrity or law and order situation."

The international standard requires that arbitrary arrest does not occur save in extremely limited circumstances. The Interim Constitution's reference to the "law and order situation" is concerning as it could potentially be applied to a wide range of circumstances and, arguably, indicates that such arrests are part of routine police work. OHCHR have called for a 'tightening' of the language of this provision so that it can only be interpreted to apply in extremely limited circumstances.¹⁶

Part two provides that a person wrongfully detained has the right to compensation. Given the history of wrongful detention in Nepal this inclusion is encouraging but, again, it is weakened by the fact that such a

compensation mechanism is to be in a "manner as prescribed by law".

Right against Torture

Encouragingly this provision contains not only the prohibition against torture but also cruel, inhuman and degrading treatment. The CAT, which Nepal ratified in 1991, refers to treatment *and* punishment and it is advisable that the new Constitution makes this clear as well.

The article provides that acts of torture be made "punishable by law" and that victims be compensated "in accordance with the law". Currently there is no domestic legislation criminalizing torture, this is incongruous considering that the UN Special Rapporteur on his last trip to Nepal concluded "that torture and ill-treatment are systematically practiced in Nepal by the police, the armed police and the Royal Nepalese Army".¹⁷

There is legislation providing for compensation of torture victims; the 1996 Torture Compensation Act. Given the prevalence of torture and cruel, inhuman and degrading treatment in detention centres and prisons in Nepal it is essential that the new Constitution establishes that torture is a heinous crime in order to instigate its criminalisation and the institution of a more effective and just compensation mechanism.

Right to Information

This provision ensures the right of persons under the jurisdiction of Nepal access to information concerning them. It is limited by the following proviso "provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law."

The exact meaning of this

exception is not precisely clear and appears to give the state a wide discretionary power to determine which types of information people have the right to request. More appropriate explanation of the limitation would be the ICCPR's language referring to limitations that are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order or of public health or morals.

Right to Privacy

The right to privacy of a person, their residence, property, documentation, statistics, correspondence and character is protected in the Interim Constitution. This provision should also include the wording of the ICCPR's privacy provisioned in article 17¹⁸.

Declaring a State of Emergency

The 1990 Constitution contained very wide powers governing the declaration of a state of emergency which allowed for controversial measures such as the Terrorist and Disruptive Activities Act as well as the 2005 royal takeover when King Gyanendra was able to suspend democracy and democratic freedoms assuming authoritarian rule. Obviously such powers were not provided for in the Interim Constitution for the republic of Nepal however the provision governing states of emergency is, by international standards, still not strict enough.

The ICCPR does allow for a state of emergency to be declared during which certain rights contained within the treaty can be suspended.¹⁹ This can only occur, however, in situations 'threatening the life of the nation' and measures derogating from obligations must be 'strictly required by the exigencies of the situ-

16. See OHCHR, *supra* n.9, pg. 6

17. Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, MISSION TO NEPAL, E/CN.4/2006/6/Add.5, 9 January 2006, pg. 1.

18. Everyone has the right to the protection of the law against such interference or attacks.

19. Article 4, International Covenant on Civil and Political Rights

ation'. The ICCPR makes it clear that such a situation can only arise in the most exceptional circumstances. The Interim Constitution on the other hand allows for a state of emergency to be declared 'if a grave crisis occurs in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external invasion, armed rebellion or extreme economic disarray'.²⁰ The inclusion of 'extreme economic disarray' is a worrying one for it indicates that a wide range of reasons are available to the executive in declaring a state of emergency. Moreover it's difficult to see why its inclusion is necessary; Nepal currently ranks 142nd out of 177 countries on the UN Development Index,²¹ 'extreme economic disarray' seems to be the *status quo* not an exceptional crises for which fundamental rights should be suspended.

The ICCPR also specifies the principle of non-discrimination in its article on the state of emergency; 'provided that such measures... do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.' The history of the use of 'states of emergency' as a fascist tool which can be employed to persecute certain groups is well known. The new constitution must include the principle of non-discrimination within its provision governing states of emergency in order to ensure constitutional protection for minority groups who, under the lax rules of a state of emergency, could be adversely affected.

Potential Restrictions on Scope

Many of the rights contained in the Interim Constitution have a potential to be severely restricted in the future as they typically state

'except in accordance with the law' or 'as provided for in the law'.²² Future laws could have the power of restricting these rights making their place in the constitution virtually meaningless. Others, such as the provision on torture and the compensation mechanism, require further legislation to become, in any way, effective and confer a lot of power to the legislature to determine the exact form such a right will take in law. The new constitution should aim to be a definitive statement of the fundamental rights of the people of Nepal, if decisions on implementation are to be left to others then inconsistency of application and susceptibility to abuse will be rife.

Other Concerns Pertaining to Civil and Political Rights Protection

A country's constitution, while providing the minimal standards of human rights protection, should also reflect the particular circumstances of that country. In Nepal's case, therefore, it is incongruous that enforced disappearance is not expressly prohibited in the Interim Constitution. Neither has Nepal ratified the International Convention on Enforced Disappearances. This is a glaring omission in a country where conflict resulted in widespread disappearances which have not yet been adequately dealt with by the peace process.²³ Although the Supreme Court has directed that a domestic law be promulgated to criminalize enforced disappearance, it is also essential that this heinous practice be prohibited and criminalized in the constitution.

Many other rights which are contained in the ICCPR are not provided for in the Interim Constitution and their inclusion must be seriously considered if the new constitution is

Many of the rights contained in the Interim Constitution have a potential to be severely restricted in the future as they typically state 'except in accordance with the law' or 'as provided for in the law'. Future laws could have the power of restricting these rights making their place in the constitution virtually meaningless. Others, such as the provision on torture and the compensation mechanism, require further legislation to become, in any way, effective and confer a lot of power to the legislature to determine the exact form such a right will take in law.

20. Article 143, Interim Constitution of Nepal, 2006

21. 2007/2008 Human Development Report, http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_NPL.html

22. Articles 12(2), 15(4), 16(2), 17(1), 17(2), 18(1), 18(2), 23(2), 24(10), 30(2).

23. See INSEC report 'Impaired Accountability: State of Disappearance in Nepal', available at http://www.inseconline.org/report/Report%20on%20Disappearance_English.pdf

The courts and the national institutions including National Human Rights Commission are the institutions to seek a specific remedy in relation to human rights violations. They are thus of particular importance when ensuring effective remedies. However, the government's reluctance towards the implementation of the directive order of the Supreme Court and the recommendation of NHRC has further undermined rule of law and human rights in the country.

to be compatible with international standards. OHCHR have compiled a comprehensive list of such omissions including²⁴: The right of men and women of marriageable age to marry and found a family (Article 23(2) ICCPR), and that no marriage entered into without the free and full consent of the intending spouses (Article 23(3) ICCPR); the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution (Article 23(4) ICCPR); the right of peoples to self-determination (Article 1, ICCPR); separation of accused from convicted persons (Article 10 ICCPR); separation of accused juvenile persons from adults and separation of juvenile offenders from adults (Article 10 (2) ICCPR); procedural rights on aliens facing deportation: ie that only expelled in pursuance of a decision reached in accordance with law, and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority (Article 13 ICCPR); the right of citizens to take part in conduct of public affairs (Article 25 ICCPR), to vote and 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, and to have access, on general terms of equality to public service (Article 25, ICCPR)

There is no other general provision concerning the right to a remedy for human rights violations, or recognition of the State's obligation

to ensure access for gaining a remedy, and effective redress including reparations, although Article 32 provides a right to seek constitutional remedy. Article 2 of the ICCPR obliges State parties to ensure effective remedy for the persons whose rights or freedoms are violated by persons acting in an official capacity. It further says that the state has a responsibility to ensure remedy determined by competent judicial, administrative or legislative authorities (or other authority) and to develop the possibilities of judicial remedy. Where there has been a serious human rights violation, the State must investigate and wherever appropriate, prosecute persons responsible for the violations.

The courts and the national institutions including National Human Rights Commission are the institutions to seek a specific remedy in relation to human rights violations. They are thus of particular importance when ensuring effective remedies. However, the government's reluctance towards the implementation of the directive order of the Supreme Court and the recommendation of NHRC has further undermined rule of law and human rights in the country.

The drafting of the constitution will signify a momentous step in Nepal's peace process and hail the dawn of a new, democratic state. It is crucial, therefore, that it encompasses the full range of civil and political rights that international human rights standards require. Only by protecting these rights at the highest level, through the constitution, can Nepal proceed to a peaceful and liberated society where its people can live with equality of opportunity and respect for human rights.

24. See OHCHR-- 'Preliminary Comments on the Interim Constitution from Human Rights Perspective', p.12



Unity among Women is The Need of The Hour: Thapa

Naina Kala Thapa is the chairperson of the National Women's Commission. Though the Commission was formed with the objective of empowering women, it failed to deliver the expected outputs due to various constraints. Amid criticism that it had failed to play effective role for the promotion of women's rights, Editor of INFORMAL, **Pratibedan Baidya**, talked with Thapa in a range of issues. Excerpts:

1. How do you assess the current situation of women's rights?

It is a well known fact that women were deprived from enjoying their fundamental rights and freedom due to patriarchal society. They have been suffering from class division. Women were suffering from two kinds of exploitation. They have played laudable role for political change of the country after actively taking part during the armed struggle and political movements which were aimed against the class oppression and in favor of women's rights. Though the women got relief from feudalism, they are yet to get relief from gender-based discriminations. There has been no change in the perspective to see women as there was no change in the thought and behavior regarding women. Women have not been able to get the status of equal citizen as some laws formed by the state are discriminatory and the situation that women have to face violence only for being women continues.

Though historic achievements have been received in terms of women's rights as compared to past, women have not been able to get justice and equality in absence of law and

passivity of the law enforcing agencies of the state. Active participation of women in the 10-year-long People's War and People's Movement of April 2006 has forced all to address the problems being faced by the women.

2. What are the challenges for protection of women's rights?

First of all, women were not empowered with full rights as of equal citizens. All the governments of the past did not address the women's issues and adopted the policy of discrimination due to feudal ideology. Extensive national discussions are going on about the issue of rights of all deprived races, castes and regions after the formation of new Federal Democratic Republic Nepal. Women's rights could only be protected by incorporating these rights as fundamental rights in the new constitution. There is a need of unity among women in some common agendas. If consensus were not made, women would have to live difficult life. The issues of women's rights should not be limited to slogans and articles of the constitution; the state should feel its responsibility and formulate necessary laws for implementation.

The feudal mentality of taking women as obstacle and problem should be changed. Women will be able to fulfill their responsibility honestly if they were given chance to do so. Women should not be limited to the household activities and the state has the responsibility of ensuring women's involvement in the development activities. The main challenge at present is securing the political rights as we could not be able to protect and promote other rights without political rights. Women should always keep their morale high and move ahead.

3. It's said that there has not been much improvement in the situation of protection of women's rights even after the country became republic. What are the challenges for it?

The democratic republican set up has been established in the country after the abolition of 240-year-old feudal monarchy. The country is passing through transitional phase as the new structure has not been institutionalized after the removal of the old structure. Nepali people have received historic opportunity of drafting the new constitution and all has the responsibility of contributing for drafting the

The issues of women became a means for earning to some organizations. In the real sense, we are committed to resolve the issues of women wherever we are. Rather than being indulged in the blame game, unity among women is the need of the hour.

new constitution. Mockery has been made of the Constituent Assembly, which has the mandate of drafting the new constitution. The country is passing through irregularities and impunity. As the issue of national interest, security and people's livelihood are not getting any priority how the issues of women can get priority. The legislation related with domestic violence, which was drafted some eight years ago has not been adopted so far. Women's issues were not addressed properly due to the struggle between progressive forces and status-quoists. Nobody can check the flow of time so the voice of the deprived people will no longer remain unheard. The attempt to deviate from moving in a progressive way is just like inviting catastrophe.

4. Different organizations have been criticizing the role of National Women's Commission for not playing effective role for protection and promotion of women's rights. How do you respond to it?

The National Women's Commission was formed in 2002 but it failed to continue after two years of its inception. Though the constitution was restructured three times in eight year, it remained vacant for a long time. The National Women's Commission Act was formed in December 2006 following historic change of the country after abolition of monarchy on the ground of Armed Insurgency and People's Movement of 2006. The commission was re-constituted in October 2007 under the Act. Since the formation of present Commission, it has been able to fulfill its responsibility despite limited resources, lack of skilled human resources and technical difficulties. First of all, making institutional development of the Commission is the challenge. The problems of women will be resolved

along with the problems of other community and sector. The Commission itself is not the implementing agency, so resolving the problems being faced by women is not possible only through the lone effort of the Commission. The Commission was formed recently but why the organizations, which are working in the field of women's rights, did not bring any changes in the society. It's not difficult why they criticized the Commission as the issues of women became a means for earning to some organizations. In the real sense, we are committed to resolve the issues of women wherever we are. Rather than being indulged in the blame game, unity among women is the need of the hour.

5. What are the priorities of your office?

The Commission was formed with the objectives of mainstreaming women in the mainstream of development through protection and promotion of their rights and to establish gender justice. More things need to be done in the women right's sector. Various problems of women surfaced after the recent political development of the country. All the activities as mandated by the National Women's Commission Act fall under regular activities. The main responsibility of the Commission is to formulate national policies and programmes related to the women's rights and submit it to the government for implementation. The Commission is also studying the contemporary national issues from gender perspective and submitting its recommendations to the government. It has been organizing various public hearing and other programmes for women empowerment and raising awareness on women's issues.

The Commission has also

been collecting opinions about the women's issues to be incorporated in new constitution by holding discussions with experts and concerned stakeholders on women's issues and submitting it to the concerned committees. A task force was formed at the leadership of National Women's Commission to study the draft constitution prepared by Ministry of Women, UNFPA and Pro-Public from gender perspective and the committee will submit the draft to the constitutional committee. We should pay proper attention to make the new constitution women friendly and women should not face the fate as they faced it in the past.

The Commission organized programmes to exert pressure on the government to immediately pass the bill related with the domestic violence and also submitted a memorandum to the Chairperson of the Constituent Assembly. The commission is planning to launch radio and tv programme to raise awareness about the women's rights targeting the women of rural areas. It is in the final stage to finalize its five-year-long strategic plan. The strategic plan will be implemented on the basis of short and long term planning. The Commission will always give top priority to the issues of women's rights and concerns.

6. Women have faced multiple challenges during the period of Maoist insurgency. How your office is pressurizing the government to address their woes?

From the history we came to know that women were the subject of oppression in all the conflicting areas. Women were targeted the most during the decade long armed insurgency of the country. From the world history we come to know that state was involved in more incidents of human

The Interim Constitution has for the first time established political rights of the women, which is a great achievement but it will take some time to fully materialize the concept. National Women's Commission has been organizing interaction, discussion, advocacy and public hearing programmes about women's participation in every organ of the state. There is a need of raising political awareness and enhancing capacity of women to utilize the rights entitled to them.

rights violations during the period of conflict.

The main priority of the state is to restore peace in the country after taking the conflict into logical conclusion and efforts are being made to this effect. We have already submitted the recommendations after studying the bill drafted to form the Truth and Reconciliation Commission and Commission on Disappearances from the gender perspective. If these bills were passed, such Commissions will be formed and will address the problems being faced by the conflict-hit people. The Commission is planning to raise the women's issues in the UN resolution number 1325 and 1820. As we are passing through the transitional phase, we have not been able to meet the people's expectation. Rather than prioritizing the issue of conflict management following the signing of the Comprehensive Peace Agreement, political parties have been spending time in dilly dallying and blame-game. As women and children were affected the most from the conflict, women should initiate the efforts and also exert pressure for conflict management. The government elected after the promulgation of new constitution will implement its policies and programmes and it will help for conflict management and lead the country towards development.

7. There has not been representation of women in major organs of the state despite their sizable representation in the Constituent Assembly. What may be the reason and how your office is taking the issue?

Women received opportunity

to take part in the constitution drafting process and there was 33 percent representation of women in the Constituent Assembly at the new political base which was established by the People's War and People's Movement. The issues of people of deprived race, place, gender and language have been prioritized after the historical political development. Those people who can't speak about their rights in the past have been able to speak. The Interim Constitution has for the first time established political rights of the women, which is a great achievement but it will take some time to fully materialize the concept. National Women's Commission has been organizing interaction, discussion, advocacy and public hearing programmes about women's participation in every organ of the state. There is a need of raising political awareness and enhancing capacity of women to utilize the rights entitled to them. Various excuses were made to prove women as weak due to traditional thinking. But the fact that development of the country is not possible without meaningful representation of women in every organ of the state has been established. Proportional representation of women should be ensured in every organ of the state for restructuring of the state.

8. A recent report has said that various existing laws made discrimination against women. Why your office is not taking the issue seriously and initiating efforts to amend these laws?

The laws formed in the past are discriminatory from the perspective of gender justice. Women have not

been able to get justice due to discriminatory legal provisions. National Women's Commission is serious in this issue and has been raising it seriously. We are struggling to incorporate women's rights as fundamental rights in the new constitution. The Ministry of Women has studied about the discriminatory legal provisions and recommended the government to amend these provisions. Forum for Women and Law Development also publicized the report about the discriminatory provisions. Discriminatory laws will not be tolerable but as the country is moving towards forming new laws after promulgation of new constitution these things should be amended in new laws and constitution.

9. What are the issues that need to be incorporated in the upcoming constitution for protection and promotion of women's rights?

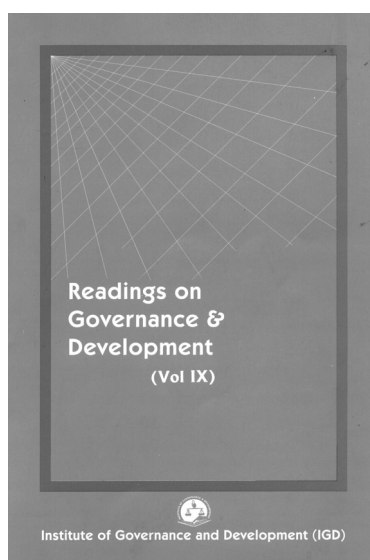
The new constitution should be formed adopting the principle of non-discrimination based on human norms, values, justice and equality. The new constitution should recognize women as equal citizens as women were being treated as citizens of second grade till date. Recognizing and respecting the specific physical condition of women, political, economic, social and cultural rights of the women should be ensured in the new constitution. The trend of exploitation to fellow human being should be stopped. The need of the day is the constitution which will be able to make a country independent, sovereign and rich..

Readings on Governance & Development: A Good Reference for Constitutional Governance, Political Economy and Politics of Inclusion

The book "Readings on Governance & Development" published by Institute of Governance and Development (IGD) has made an attempt to explore and discuss the issues relating to constitutional governance and political economy with a specific focus on Nepal. Confined in 195 pages, the publication encompasses 12 articles contributed by scholars in the field of public policy, governance and development.

The first article "The Paradox of a weak state: Distributional Struggles and Social Transformation in Nepal" written by Dev Raj Dahal deals with the social transformation process, the framework condition, paradoxes of Nepali Politics, state in the changing world, historical context of state society relations, social formation of the state, economics of the state, the condition of the Nepali state, national accumulation, state restructuring & global dynamics and choices of Nepal's future. The article is a coherent setting of the emerging national contradictions and has subsequently interlinked the social transformation process with different variables. It has given a good try in identifying the conflict generating causes with possible remedies in Nepalese context.

The second article "Ethnicity and Democracy in Nepal:



Readings on Governance & Development (Vol IX)

Publisher: Institute of Governance
and Development (IGD)

Edition: 2007

Price: Rs. 300.00

Transforming the Unitary state into a Federal Organization" by Mukti Rijal revolves around the tendencies of ethno-politics in Nepal especially after 1990. It has also outlined how CPN (Maoist) took advantage of the democratic environment and exploited the ethno-political tendencies to

press in favour of the ethnic federalism in Nepal.

In its third article "Identity Politics in South Asia", Rohit Kumar Nepal has briefly pointed out inequity between the haves and have-nots prevalent in South Asian countries and how the marginalized and minority communities are widely excluded by the state. Setting an example of LTTE movement in Sri Lanka, north east separatist's movement in India, Chakama minority agitation in Bangladesh, MQM agitation in Pakistan, Maoist movement in Nepal and emerging religious fundamentalists, he has well hinted that unless proper transparent and accountable mechanism is developed to address this identity crisis, a fight for an identity of politics in various forms and nature will carry on.

The fourth article "Restructuring of the state: Some Challenges" composed by R.C. Poudel has attempted to relate the heterogeneity or diversity of the country from the perspective of functionalism. He has explored the problems of stereotyping, homogenizing and reductionism of the intricate social and politico-economic mosaic of the country and has focused on the issues of ethnicity, national/regional autonomy and their challenges.

In sixth article "Antinomies in Civil Society of Nepal" the author

Chandra D. Bhatta has elaborated how political and urban middle class elites in Nepal have created their civil society empire and how the concept has been used and abused in various ways.

The seventh article "Assessment of Restructuring of State" written by Prem Sharma rests on the brief argument on the restructuring of the state, the author has pointed out the maturity of the political parties an unavoidable option for genuine restructuring process.

The eighth article of the book is the "Exogenous vs. Endogenous Development: A quest for Survival of Donor Harmonization" written by the writers duo Narayan Dhakal and Kazuhiro Ueta. Divided into eight different sub headings, the article has nicely articulated the relation of development with series of external influencing factors. The writers have logically tried to prove the theory that pragmatic development approach rests in between 'exogenous' and 'endogenous' factors; none being totally dominant.

In its ninth article "A Comparative Study of National Conferences: Experiences of African Countries", the writer Onyebuchi Emmanuel Ezeani, has made a comparative look at the experience of African Countries like The Republic of Benin, Congo Democratic Republic, Republic of Togo, Niger, Congo-Brazzaville, which had convened a national conference.

Similarly, the disparities and uneven development in different areas and strategies to address the issue in Pakistan with Local government 1979-2000 have been analyzed in the tenth article "Local Government and Economic Governance in Pakistan" by its writer Ayuz Muhammad. In his article, Ayuz has identified several possible kinds of tools and methods, which

may theoretically be pursued to achieve the target of financial equalization.

"Human Trafficking in Nepal: A Situational Assessment", by Srijana Kafle has highlighted and diagnosed the prevailing trafficking problem in Nepal and the inefficiency of state mechanism in curbing the issue despite several progressive policy measures. The author has come up with wide array of recommendations to be taken into consideration while dealing with the issue.

In the last article "Decentralization Experience in Nepal: Concept and Practice" by Dwarika N Dhungel, an in-depth discussion has been made in the concept of decentralization with the main features and implementation status of Local Self-Governance Act, 1999. Dhungel has also made a critical assessment of the Local Self-Governance Act indicating that the devolutionary type of decentralization is only possible in the condition that all the existing contradictory legal provisions are seized and the better ones are introduced.

The book is worth reading particularly to the readers interested in constitutional governance, political economy and politics of inclusion. The authors have not only explored the emerging issues but have also come up with wide range of recommendations. However, somewhere the articles in this publication lack comprehensive exploration of the discussed subject matter. This inadequacy may confuse readers who are totally new to the topic and go through the compilation with a view of generating ideas on it. Whatsoever, the effort of Institute of Governance and Development (IGD in bringing out this publication is commendable and one can say that it is one of the best that could have ever come up.

Susmita Sharma

The discrimination faced by women exacerbated due to the conflict. Women had to take care of the children and family matters as men and young people had left the villages due to the fear of being caught in the conflict between state security forces and Maoists. Women were also forced to take up the work that was traditionally restricted to men like ploughing the land and performing funeral procession.

Ensure Meaningful Representation of Women at All Levels

With the most inclusive Constituent Assembly in place, it was hoped that the new Constitution would take into account the current problems faced by ethnic and minority groups, and women under a patriarchal system in Nepal but the activities of the political parties then after are turning the hope into despair.

The Constituent Assembly has a sizeable number of women representatives from across the country. The significant number of women representatives in the Constituent Assembly was ensured as women played important role for the success of April movement and various movements of the past. Women who faced multiple hardships during the period of decade long Maoist insurgency have not been able to take the sigh of relief even after the establishment of republican set up in the country.

The female representatives come from all walks of life, mothers, career women, grandmothers, those belonging to the so called 'low caste', rich and poor, educated and barely literate but the major political parties have sidelined them in most of the important issues like the peace process and policy making level of the country. There was no women's representation in the selection process of President, Vice-President, Prime Minister and Deputy Prime Minister following the election of the Constituent Assembly, and also none in major organs of the state in the process of establishing peace in the country.

Nepal also has the moral obligation of adopting a policy in line with the Resolution 1325 of the UN Security Council, which is aimed at increasing women's participation and

responsibilities in countries passing through peace process. The resolution reaffirms an important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution, and also stress on adopting gender perspective.

The policies and programmes revealed by the government on 14 September 2008 stated that plan-wise programmes will be issued to ensure proportional representation of women in all organs of the state along with making effective role of the National Women's Commission for women empowerment and efforts will be initiated to make the National Women's Commission as a constitution body. The government's commitments were limited merely on papers. At a time when the government is expressing its commitment towards ensuring equal representation of women and ending violence against women, women right activists were compelled to organize a sit-in protest in Kathmandu demanding independent probe on death of Kanchanpur-based women rights activist Laxmi Bohara. All the political parties raise the issue of women to gain cheap popularity or the support of women voters but they do not seem serious towards uplifting the condition of women. The political parties have found time to amend discriminatory laws against women.

Domestic violence is a continuing problem in Nepal. Discrimination and violence against women is deeply

entrenched in Nepalese society, despite increased political awareness. In the absence of laws against domestic violence, the perpetrators often face little or no punishment, justified by patriarchy that defines men as having the right to control women. According to a recent study conducted by Forum for Women and Law Development 85 laws, which make discrimination against women, exist in Nepal.

According to Nepal Human Rights Yearbook 2009, 204 incidents of Domestic violence, 44 incidents of violence against women on charge of practicing witchcraft and 319 incidents of rape, attempt to rape and sexual abuses were reported during the period of 2008. The data show the situation of women's rights in the country.

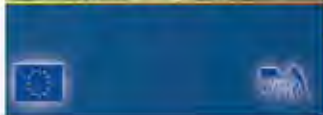
A report by INSEC said that in most of the cases police did not register cases of sexual violence. The report said that Area Police Office Morang refused to file a case of 35-year-old rape victim saying it costs 2,200 rupees to register the case. Similarly, a 12-year-old girl of Wamitaxar VDC-1 Gulmi was threatened by Sub Inspector of Police of Wami Police Post Mohan Bahadur Gharti for disclosing the information of rape.

Issues of reproductive rights, health care, domestic violence and education must be addressed and the participation of women and ethnic and minority groups be encouraged. Ensuring proportional representation of women in all major organs of the state is a must to ensure gender equality and providing justice to the women being suppressed for long.

Pratibedan Baidya

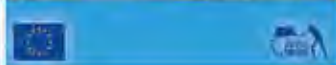
Livelihood at Risk

Findings from Mid-western Nepal



Land Holding Pattern

in Mid-western Nepal



नेपाल

सुरक्षासम्बन्धी कानूनी प्रावधान



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