

# INFORMAL

Vol. 28, No. 3, July-September 2009



**Ensure Accountability for Sustainable Peace**



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# INFORMAL

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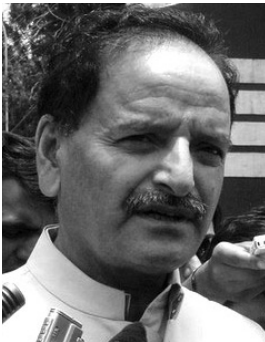
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# Formal–Informal



*"The government will leave no stone unturned to remove those obstacles so as to bring the peace process to its logical ends."*

- Rakam Chemjong, Minister for Peace and Reconstruction



*"It is already late but not too late for an outstanding step to boost the peace process."*

- Krishna Prasad Sitaula, Nepali Congress Leader



*"Both parties-the government and the Maoists- had made unwavering commitment to uphold the right to life. But, they haven't adhered to it."*

- Kedar Nath Upadhyaya, Chief Commissioner, NHRC

*"A failure to agree on a vision for the future and to draft the constitution on time will be a clear disregard of the expectations and aspirations of Nepal's citizens."*

- Press release issued by the Heads of Diplomatic Missions in Nepal



# Ensure Accountability for Sustainable Peace

Three years have been passed since the signing of Comprehensive Peace Agreement, an agreement which has formally ended the decade long Maoist insurgency, but no efforts have been made to end impunity of the country.

The government failed to take action against perpetrators involved in grave human rights violations that took place during the period of armed conflict. Political parties and their sister organizations continue to take law and order into their hands while the political parties competed for giving protection to the criminals for political benefit. Various armed groups of tarai have been engaged into criminal activities in the name of politics but the state failed to control these activities.

A joint report entitled Still waiting for Justice jointly published by the New York-based Human Rights Watch and Advocacy Forum says that in 10 of the 62 cases of rights violation committed during the period of Maoist insurgency and documented by Advocacy Forum, the police have still refused to register the criminal complaints, sometimes in the face of a court order to do so. In 24 cases where the complaints were registered, there is no sign that investigations are being conducted. In approximately 13 cases police appear to have tried to pursue investigations by writing to relevant agencies to seek their cooperation to interview the alleged perpetrators. The army, Armed Police Force, and Maoists have refused to cooperate. The report presents how our state is neglecting the issue of impunity.

Lack of political will and consensus, prevailing political instability, and lack of progress in the peace process are some of the fueling factors for the rise in impunity and absence of accountability. The government failed to form Truth and Reconciliation Commission, Disappearance Commission as mentioned in the Comprehensive Peace Agreement and also failed to provide justice to conflict victims. Bringing human rights violators to book and ending the state of impunity are two most important tasks for restoring sustainable peace in the country but none of the political parties have been giving priority to these issues.

The political parties are the prime movers of the society. They could play important role to ensure accountability and end impunity in the country but all the political parties have been competing to take law and order situation into their hands and sustain impunity.

Governments are not willing to make the National Human Rights Institutions independent. Though the Interim Constitution accorded Constitutional Status to the National Human Rights Commission most of the recommendations made by the commission went unheard. Of the 147 recommendations made by the NHRC, only 16 (11%) are fully implemented. Likewise 20 (14%) recommendations are partly implemented. And 111 (75%) are not implemented at all. So scenario is really mockery for rule of law and human rights culture.

The government, political parties and the security agencies should take the issue of impunity seriously as accountability is the foundation of democratic system. Restoration of peace is not possible before ending existing trend of impunity and ensure accountability in the country.



» Bijay Raj Gautam «

## Question of Accountability; A case of diarrhea outbreak of Mid and Far West

*Lack of health personnel at the districts, demolished health posts were also some of the other factors which created the disease and was turned into an epidemic with a serious damage to the basic health and their day to day life. Diarrhea outbreak in Jajarkot and surrounding districts has taken a near-epidemic stage with the death toll reaching almost hundreds and hundreds being affected with the disease.*

### Context

In the month Baishkash some districts of Mid and Far West regions of Nepal were heavily affected from diarrhea. Recent reports show 464 people have lost their lives, many became sick and many more were in a health risk syndrome. In the remote areas of mid and far west regions most of the people suffered from severe hunger, poor nutrition, lack of basic health facilities, safe drinking water sanitation and proper hygienic food.

More than 400 people who have died during these months did not get proper health treatment, unavailability of oral suspension, a medicine which is used as a first aid on diarrhea. Lack of health personnel at the districts, demolished health posts were also some of the

other factors which created the disease and was turned into an epidemic with a serious damage to the basic health and their day to day life. Diarrhea outbreak in Jajarkot and surrounding districts has taken a near-epidemic stage with the death toll reaching almost hundreds and hundreds being affected with the disease.

As per the Nepal Hunger Index the Mid-Western districts are characterized by extreme remoteness, low agricultural productivity, and limited access to basic services such as health care, agricultural extension services, sanitation, safe drinking water, etc. A study has revealed highest prevalence of hunger in the Far and Mid Western Hill and Mountain regions and has underscored the seriousness of the food security situation in Nepal. The study further says one

of the most striking findings is that the Mid-Western Mountain region of Nepal ranks one from the bottom of the 88 countries on the GHI list, just above the Democratic Republic of Congo. The Far-Western Mountain region also does not fare well in comparison, with a ranking similar to Ethiopia. Other factors are undernourishment and underweight are the main contributing factors to the hunger index score. Underweight is a more important contributor in the Tarai than in the Hills and Mountains where undernourishment (and thus chronic malnutrition) is more prevalent. In the Mountain zone, childhood mortality is extremely high.

Those who were killed from diarrhea were mostly from the Dalit communities, unprivileged and backward people of the society. The

people who died did not receive proper medical treatment on time.

The district of Jajarkot, where the disease spread at first, is one of the remotest parts of the country and least developed district. The disease, which turned into an epidemic, spread from Jajarkot to neighboring districts of Mid and Far Western Regions. The outbreak

Caste	No. of Victims
Brahman	8
Chhetri	210
Janjati	32
Dalit	210
Sanyasi	4
<b>Total</b>	<b>464</b>

drew attention of all sectors of the society with many unanswered questions. In the remote areas where the diseases became an epidemic the reluctance of the medical personnel to serve in those districts, along with persisting problem of illiteracy, malnutrition, poor maintenance of water resources, food shortage compounded by long dry spell added fuel to exacerbate the situation. The death toll was of nearly about 200 when Nepal government claimed that the problem was under control and the situation was stable. The death toll increased as the day went on and many more lives could not be saved due to the naked negligence from the government. .

Informal Sector Service Center (INSEC) during an interaction program at Nepalgunj on August 2 raised serious concern over the diarrhea and questioned the accountability of the government towards vulnerable people. During the same program INSEC mentioned that the food distributed by World Food Program (WFP) under Food for work program since a decade was also one of the adding factor for the spread of diarrhea. INSEC also in the same program mentioned that other reasons for

spread of diarrhea in the districts are existing practice of rigid tradition, people choosing domestic treatment and shamans over modern treatment, no maintenance of the water resources damaged during the period of conflict, the compulsion of the people to drink polluted water from dirty water tanks and defecating in the open. INSEC in addition mentioned that in these districts WFP has been distributing food under the Food for Work Program and the quality of the food has been found sub standard.

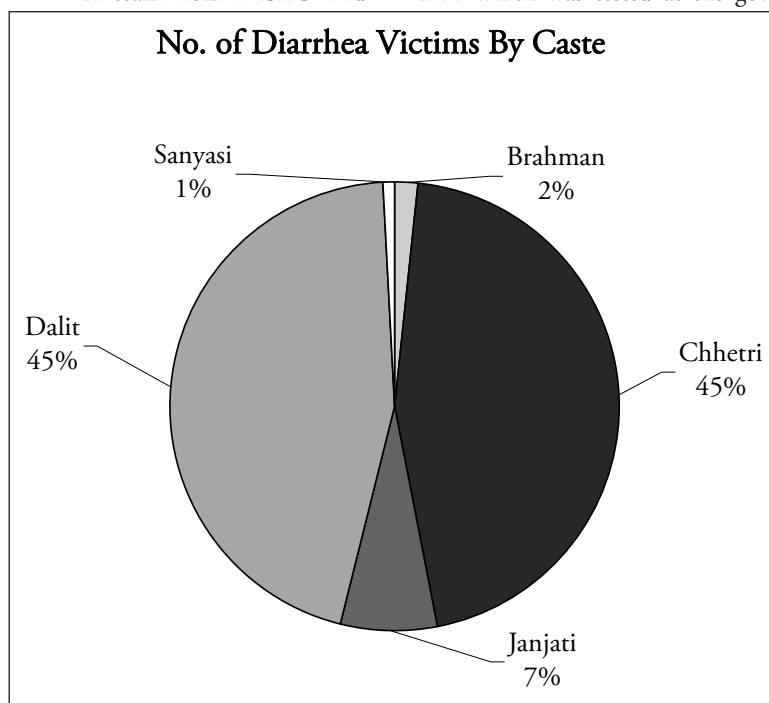
Most of the epidemic hit districts are hardly affected from the decade long armed conflict and some of the infrastructures like health posts and drinking water facilities were destroyed in these areas during the period of Maoist insurgency and these installations are yet to be fully repaired. The government has not been able to effectively monitor as well as make any mechanism to support the health facilities.

#### Non edible food at the epidemic hit districts

A team from INSEC Mid-

Western Regional office carried out field monitoring of Khalanga, Khagenkot, Rokayagaun, Jhapra and Dhime VDCs of Jajarkot district from August 4-9, 2009. During the monitoring visit, locals of these VDCs complained that DEPROCS Nepal, a local NGO, and some INGOs distributed substandard foods in the areas. Similarly date expired water purifying medicine 'Water-guard' and 'Pyeush' were also found distributed in these areas. INSEC collected samples of such goods in presence of locals and handed over the food samples to Consumers Rights Protection Forum (CRPF) for quality test. INSEC raised the issue as it was directly related with people's right to health. Department of Food Technology and Quality Control found that the samples of the food collected in Jajarkot were inedible even not edible to animals.

A team led by the National Human Rights Commission also conducted fact finding mission at the diarrhea hit areas and collected samples of food distributed by the WFP which was tested at the gov-



ernment laboratory later on. Supplementing to the fact that the food distributed by WFP was inedible the food technology department issued the statement that the samples collected by the NHRC also report what has been released to the samples collected by INSEC

INSEC in different occasions stressed the need of monitoring the quality of food upto the point of distribution. Also it drew attention of all the concerned to initiate efforts for providing hygienic food to people as most of the people of diarrhea-affected districts were suffering from malnutrition. The report presented was the true picture of the epidemic-hit districts and INSEC urged all to monitor their activities and provide quality services to the people.

#### Poor accountability

In this whole process the question of accountability has become a major issue. Poor governance system, lack of responsibility, ineffective monitoring system and uncontrolled mechanisms and system are some of the factors which have the correlation on this difficulty. Interim Constitution of Nepal has guaranteed the food sovereignty as fundamental rights. Article 18 (3) of the Interim Constitution has stated that every citizen shall have the right to food sovereignty as provided for in the law.

WFP has been distributing food under food for work program since decades. No effective mechanisms have been made from the Nepal Government to monitor its distribution system from the point of entry to the point of destination. This has been mentioned during an interaction program conducted by INSEC on August 24 where spokesperson of the Ministry of Agriculture and Cooperatives (MoAC) Dr. Hari Dahal said that the UN WFP is not transparent and

it is surprising that rather than apologizing the WFP has been issuing different statements even after the food distributed by WFP was found not edible. During the same program he also alleged that international organizations are playing role to make Nepal dependent on food aid by unnecessarily highlighting the issue of food crisis of the country. Presenting the examples of Somalia and Ethiopia Dahal warned that the situation of Nepal could be similar of these countries if the food dependency keeps on rising. He also informed

*Despite several reports claiming that the food distributed by WFP was inedible, WFP ignoring all the facts said the rice distributed is standard. WFP further in one instance even said if the rice is rotten, nothing will happen if the people know how to use it properly.*

that the provision of informing the MoAC about the food distribution process has not been followed. Stating that the WFP has been giving Rs 75 per kg to supply food in remote parts of the country against the government rate of Rs 40 per kg, the state run Nepal Food Corporation has not been able to transport food to these districts and underscored the need of amending the Foreign Assistance Policy.

Likewise senior food technologist Pramod Koirala of Department of Food Technology and Quality

Control has also confirmed the ignorance from WFP towards the directives of the government to import rice accompanied with certificate of food quality, certificate informing whether it is genetically modified or not, clarifying the standard of rice. The direction was issued in writing on June 1, 2008 asking WFP to buy rice in the presence of food technologist and distribute it only after testing the quality. The quality of the rice that was tested by Department after receiving samples from CRPF is similar to the quality of the rice that was stopped from entry to Nepal in Bhairahawa on June/July of 2009. On that incident, the Department had stopped import of 16.5 tones of rice for being sub-standard in quality. The whereabouts of the rice is still unknown.

These examples show there is no mechanism of the state to monitor and control the food distributed by WFP whether it is in-line with the bilateral agreement made with the government.

#### Ignorance of the fact

Despite several reports claiming that the food distributed by WFP was inedible, WFP ignoring all the facts said the rice distributed is standard. WFP further in one instance even said if the rice is rotten, nothing will happen if the people know how to use it properly. WFP communication officer Heather said that if people use unclean hand to eat and use the food without washing, they might get cholera. She also denied that food distributed by WFP had caused cholera in the Mid-Western Region. These kinds of statement from WFP made more controversy and gave more room for the suspect over the distribution system of WFP.

WFP which has been supplying the food since decades did not feel necessary to apologize to the people to whom the whole organiza-



tion is accountable. In one occasion WFP stated that it is ready to stop distribution of food if Nepal government says that it is not upto the standard. They claim that WFP is working in coordination with all the concerned government ministries. Also in other instance the representatives of the WFP informed that it would file a case against INSEC after INSEC charged that WFP distributed low standard food had caused diarrhea in Jajarkot district. Claiming that there was not wrong with the food distributed by WFP, its Bheri-Rapti coordinator said INSEC Chairperson would be dragged to court for making baseless charge. He also challenged to prove that the food distributed by WFP was of sub-standard quality during an interaction program. In another instance WFP wrote a letter to INSEC claiming that how food became a human rights issue. In a letter written to INSEC Chairperson Subodh Raj Pyakurel on September 4, Regan said, "You also reference in your chronology issues around alleged sale of WFP food. I'm not sure why you've raised this issue since it has little to do with either human rights or the epidemic."

#### **Food rights a human a rights issue**

The right to be free from hunger and malnutrition is a fundamental human right of every woman, man, youth and child. Universal and sustainable food security is part and parcel of reaching the social, economic and human development objectives governments agreed upon at world conferences in Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and elsewhere. The right to adequate food is also enshrined in legal terms in the most basic international human rights treaties, including the Universal Declaration of Human Rights, the

International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

***The right to adequate food is also enshrined in legal terms in the most basic international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.***

The right to food is human rights and is a binding obligation well-established under international law, recognised in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights, as well as a plethora of other instruments. The right to food has also been recognised in numerous

national constitutions. In the interim constitution of Nepal 2009 food sovereignty has been mentioned explicitly. The right to food has been also well defined in the General Comment No. 12 of the Committee on Economic, Social and Cultural Rights. This defines the right to food as:

"the right of every man, woman and child alone and in community with others to have physical and economic access at all times to adequate food or means for its procurement in ways consistent with human dignity."

According to the General Comment, the right to food also implies three types of obligations - the obligations to respect, protect and to fulfil. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means that States must pro-actively engage in activities intended to strengthen peoples access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly."

Under Article 2(1) the International Covenant on ESCR States agreed to take steps to the maximum of their available resources to achieve progressively the full realization of the right to adequate food. Under Article 2(2) of the Covenant States agreed to guarantee that the right to food will be exercised without discrimination.

Finally, under article 3 of the Covenant States agreed to ensure the equal right of men and women to the enjoyment of the right to food

### **The Paris Declaration on Aid Effectiveness.**

The Paris Declaration on Aid Effectiveness which was developed at a forum in Paris in February - March 2005 looks at the responsibility of developed and developing countries for delivering and managing aid in terms of five principles:

**Ownership:** Partner countries exercise effective leadership over their development policies, and strategies and co-ordinate development actions

**Alignment:** Donors base their overall support on partner countries' national development strategies, institutions and procedures

**Harmonisation:** Donors' actions are more harmonized, transparent and collectively effective

**Managing for Results:** Managing resources and improving decision-making for results

**Mutual Accountability:** Donors and partners are accountable for development results

Both the state and the WFP also lack the obligation provisioned under the above generally accepted international principles.

### **Problems/Shortcomings/Recommendations**

Few problems could be cited on this whole episodes are

- ▶ The first is the absence of health personnel in the health offices and hospitals in remote districts as per the assigned number of positions. No effective government system of monitoring the health facilities.
- ▶ Lack of state sensitivity and attention towards checking the disease when it showed a sign of being an epidemic.
- ▶ Lack of coordination among the

authorities involved in the rescue after the spread of the disease (Returning of the health personnel due to such absence of coordination).

- ▶ Failure to dispatch health personnel and medicine in the affected areas and failure of launching awareness program in these areas leading the patients and their families to rely more on unscientific healing systems as shamanism.
- ▶ Failure at the part of local administration to monitor the quality of food distributed under Food for Work Programme.
- ▶ Failure to give proper attention towards the fact that 60 percent children (under the age of 5 year) suffering from malnutrition in Mid Western and Far Western Region.
- ▶ Use of open latrine and lack of awareness among people about sanitation.
- ▶ Failure of proper maintenance of drinking water installations destroyed during the period of armed conflict.

### **Suggestions/ Recommendations**

- ▶ Effective coordination should be established among government agencies, I/NGOs and other volunteers working to tackle the problem.
- ▶ A system should be introduced to ensure presence of deputed government health workers in all health facilities and a mechanism to monitor them should also be brought.
- ▶ A compulsory provision should be brought to end the tendency of the doctors and specialists avoiding duty in the remote districts.
- ▶ All political parties also focus on deploying their cadres of village-based networks as volunteers on such epidemic hit cases.

- ▶ The government should launch sanitation campaign in these districts and make provision for providing clean drinking water.
- ▶ High level of caution should be adopted on such potentially vulnerable areas.
- ▶ Immediate relief support should be provided to the families and relatives of the deceased.
- ▶ Food should be supplied immediately in districts hit by food shortage.
- ▶ The government should monitor the quality of food distributed by different agencies.

### **Conclusion**

Within this whole episode the question of accountability has arisen at different points proved negligence to the situation by government agencies, bilateral agencies such as UN WFP and other agencies. The political parties busy on the debate of making Nepal a welfare state with the equal distribution of resources did not feel necessity to this venerable situation. Neither any other political party who claims to have their presence all over the districts made any strong interventions to stop the outbreak.

Many people could have been saved if the rescue efforts were made in the beginning. We wish that in future not a single person die in absence of primary health care and it could be a good lesson for all the concerned stakeholders.

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*(The writer is Executive Director of INSEC)*

# Political Parties have become The Vehicle to Sustain Impunity: Pyakurel



*Sushil Pyakurel is former Commissioner of National Human Rights Commission and founder of INSEC. Amid reports that impunity is on the rise in the country even after the end of armed insurgency INFORMAL talked with Pyakurel on present situation of Human Rights. Excerpts:*

**INFORMAL:** How do you assess the current HR situation of the country? Are you satisfied with the existing situation?

**Pyakurel:** The parameter of being satisfied with the HR situation is always contextual. It depends upon the context and the time factor in which some human rights such as civil and political rights are more important in a dictatorial regime similar to non-derogable rights in a situation of emergency.

After the twelve years of the violent armed conflict, the Government and the ex-rebel, CPN (Maoist) signed the comprehensive peace accord. The enactment of the interim constitution has ensured human rights as the fundamental principle of the political and governance system. Above all, Nepal has already

ratified the core human rights conventions/treaties that guarantee rule of law as the prime responsibility of the state.

While examining the HR situation from the above mentioned parameters, it is well-known fact that we are in a situation of transition which requires to address the past human rights violations and abuses on the basis of the transitional justice principle. Three years have already passed, however, the victims' family such as those of killed (13,000) or disappeared have been waiting for justice. Not even a single accused perpetrator has been brought to justice. And the victims' reparation is a subject of ignorance to the mainstreaming peace process.

Similarly, the rule of law

is continuously being challenged by the old and the newly emerged armed groups. The culture of impunity has been deeply rooted. The state delivery system has proved to be ineffective. The serious matter is that the government is not serious enough to tackle the above mentioned HR challenges. In this context, the HR communities including the national institution such as the NHRC have more challenging tasks.

**INFORMAL:** There has been a growing concern about the issue of impunity and many argue that it is due to the lack of accountability. What is your opinion about this view?

**Pyakurel:** As mentioned above, there is no serious effort to address the causes of past

human rights violations. The transitional justice mechanism also seems ineffective to combat the systematic culture of impunity. The culture of impunity is the byproduct of non-accountability. Thus, the problem of accountability emerges as the major threats to deal with impunity.

**INFORMAL: What are the major challenges for ensuring accountability on the part of the government and the political parties?**

**Pyakurel:** The political parties are the prime movers of the society. The nature of the government is always determined by the very behavior of the political parties. However, in our context, it is sad to say that the political parties have become the vehicle to sustain impunity.

**INFORMAL: Do you think the civil society organizations and media have been playing satisfactory role to make the state accountable?**

**Pyakurel:** We must understand that civil society is not an agency that can held perpetrators accountable. It can only create awareness and mobilize the public opinion for the accountability at the same time create pressure to the concerned authorities. However, it can't enforce the law by itself. Relatively, the civil society in Nepal is vibrant in comparison to the other South Asian countries. But because of the apathy from the political parties, its voice for justice goes unheard.

**INFORMAL: What would be the implications on amending the constitution drafting schedule**

**time and again? Would not such postponement affect in drafting the constitution with consultations and participation of wider sections of the populace?**

**Pyakurel:** Any effort to extend the tenure of the Constitutional Assembly is unconstitutional. The Interim Constitution has clearly given mandate to enact the new Constitution within two year. There is no question of extension beyond the mandate. Only in a situation of emergency, it can be extended for the maximum of six months. Declaring

*The political parties are the prime movers of the society. The nature of the government is always determined by the very behavior of the political parties. However, in our context, it is sad to say that the political parties have become the vehicle to sustain impunity.*

an emergency is not a prerogative either for the government or legislature. It must be rational. The current CA or the legislature does not have the authority to extend the tenure on a very subjective ground.

**INFORMAL: What should be done to make the new constitution human rights friendly constitution?**

**Pyakurel:** To make a human rights friendly constitution, the universally accepted principal of

human rights should be enshrined in the constitution.

**INFORMAL: There has been debate among national human rights organizations and UNWFP about the quality of food distributed in Mid and Far Western Regions? In your opinion what should be role of the government as well as civil society organizations about it?**

**Pyakurel:** A right to food is a basic human right of the people. This right can be ensured through the quality of food. The food distributed in some districts of Mid and Far-Western regions was found substandard. Government has set the minimum standard of food. Distributing the date-expired food is a serious crime and a subject to punishment. How can the Government be silent when the UN agency provides such rotten food to the people? It shows how the government is irresponsible to its people. It fails to make accountable to the WFP which is a kind of immunity. This is a way of encouraging impunity. The civil society has done a lot within their limit to expose the issue and create awareness among the people to fight against this culture of impunity. INSEC stands in the front to raise this issue. The consumer society has also raised the issue loudly.

The UN system should uphold the principle of human rights and the Government is bound to protect the rights. However, in this case, the UN and the Government both have violated their own responsibility. One should be clear that the food has not been given free of cost as it has been exchanged with the labor of the people. ●



# National Human Rights Commission, Nepal: From Accountability Perspective

» Tejman Shrestha «

*When the government is not fair and able, who should take the accountability of it? Who would take the accountability of clarifying before people in this regard? The behaviors and practices of the members of the Parliament is not desirable, who would be accountable of such issues? There is no easy access to justice for the ordinary people? Who would be accountable for this?*

## Background

Accountability is often used almost synonymously with such concepts as responsibility, answerability, enforcement, blame-worthiness, liability, and other terms associated with the expectation of account-giving. However, these terms are not exactly synonyms. Oxford Advanced Learners' Dictionary defines the 'accountable' as 'responsible for your decisions or actions and expected to explain them when you are asked' where as the term 'responsible' (somebody in authority) is defined

as 'to have to report to somebody or something with authority or in a higher position and explain to them what you have done'. Thus, accountability means to be responsible for what one has been assigned to do and what he has done. In this article, the primary concern is not to demarcate line between accountability and responsibility rather it will try to review the performance of National Human Rights Commission, Nepal from accountability perspective.

The public institutions always should be accountable to the people for whom they have been set

up to work. One should be responsible for what he/she is assigned for. Senior advocate Ganesh Sharma has the opinion in this regard<sup>1</sup>:

When the government is not fair and able, who should take the accountability of it? Who would take the accountability of clarifying before people in this regard? The behaviors and practices of the members of the Parliament is not desirable, who would be accountable of such issues? There is no easy access to justice for the ordinary people? Who

1. Quoted in Constitutional Law of Nepal, Forum for Development and Investigation of Law (FREEDEAL), Page 7,

would be accountable for this? \*

For every deed, there must be someone responsible and accountable. Only then we can imagine a fair and conscientious society. The development of society is not possible without developing the culture of being accountable. The then High Commissioner for Human Rights Mary Robinson stresses on high level of accountability both in regional or international level "...[The] defining attribute of human rights in development is the idea of accountability. [...] All partners in the development process-local, regional national, and international-must accept higher levels of accountability."<sup>2</sup> From local to international arena, the degree of accountability equally matters for creating a better world. Without accountability, the obligation remains incomplete in itself—"[...] rights and obligations demand accountability: unless supported by a system of accountability, they can become no more than window dressing."<sup>3</sup> So, until there is proper mechanism of making accountable, just obligation alone can not make it sure that there is conducive environment for enjoying rights.

### **Accountability and National Human Rights Institution**

Established in the middle of the decade long armed conflict in

2000, the NHRC has survived turbulent times and has faced many challenges in these years ranging from limited resources and support from the government to question of credibility and support from key civil society actors between the

*Established in the middle of the decade long armed conflict in 2000, the NHRC has survived turbulent times and has faced many challenges in these years ranging from limited resources and support from the government to question of credibility and support from key civil society actors between the period when the appointment of the commissioners was made by the former king Gyanendra Shah in June 2005.*

resignation of the commissioners of the NHRC succeeded the fall of the royal government in 2006.

With the appointment of new commissioners in 2007, the commission got a promising opportunity to (re)build its (lost) credibility and visibility in the eyes of civil society. In the changed political scenario as well, where the past victims of human rights violation have become the government, the recommendations of the NHRC went unheard as before. Thus, faced with an unresponsive government which is not ardent on implementing its decisions, the commission after the restoration of democracy as well has to struggle with the challenges of resolving the cases that is heavily backlogged, combating impunity, and reaching out to Nepalese who remain vulnerable to various forms of human rights violations. In addition, addressing the human rights situation in Tarai and to the places where there is no conducive environment to enjoy the rights in any name is another challenge as the NHRC has to operate within a space affected by political tensions and divided along ethnic and caste lines. Despite these facts NHRC has to be accountable to the Nepalese people for whose human rights protection this institution has been set up.

Governments are not willing to make the National Human Rights Institutions independent. So

period when the appointment of the commissioners was made by the former king Gyanendra Shah in June 2005. It raised the question of political admissibility as well. The

\* In Nepalese language it is often difficult to demarcate between responsibility and accountability. Literally, responsibility has been translated as JIMMEWARI OR UTTARDAITWA whereas for accountability as JABAFDEHITA means the state of being answerability. Literally, in this collection, Senior Advocate Sharma has used the term UTTARDAITWA. However, when we explore its deeper meaning, then it is not so difficult to interpret that it connotes the accountability. So the term accountability has been preferred to responsibility though the term UTTARDAITWA has been used in Nepali.

2. Bridging the gap between human rights and development: from normative principles to operational relevance, lecture by the United Nations High Commissioner for Human Rights at the World Bank, 3 December 2001, available at <http://www.unhchr.ch/Hurricane/Hurricane.nsf/60a520ce334aaa77802566100031b4bf/2da59cd3ffc033dccc1256b1a0033f7c3?OpenDocument> visited 10 October 2009
3. Human Rights and Poverty Reduction, A Conceptual Framework, Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2004, P 16

the discussion about how to guarantee the independence of such institutions is going on so much that less attention is paid to the question of how they are held accountable for what they do. According to Richard Carver,

Accountability cuts both way. It is partly about creating a line of authority that will ensure the national institution can do its job without interference from those whom it is trying to hold to account. It is also about ensuring that the institution's clientele – the public at large—are able to see what it is doing in their name and ensure that it is performing properly<sup>4</sup>.

Thus, while interpreting the accountability of national human rights institution, twin issues has to be addressed simultaneously—creating a line of authority ensuring it free from interference of other specially of the executive and ensuring that its performance has been taking place properly.

The more the institution is accountable, the better it achieves its performance. National Human Rights Commission, Nepal can only be as strong as its accomplishment. It should not be interpreted as an end in itself. "Institutional effectiveness requires the development of system of accountability based on specific, ascertainable goals"<sup>5</sup>. On legislative basis, NHRIs will invariably be legally and financially accountable to the Government and or Parliament.

This aspect of accountability of the NHRIs is most usually dealt with through reporting obligations. NHRC Nepal is accountable to the Legislative Parliament at current as

*To measure the degree of accountability of such institutions, some indicators like transparency, dissemination of information to the stakeholders, participation in structure and process, inclusiveness, efficiency, timely response, relationship with non-governmental human rights bodies, regular consultation with human rights activist and civil society can be used. The transparency should incorporate from the appointment of the commissioners, appointment of its staffs to all its activities.*

it has to submit its annual report to the president and the president make the prime minister produce the report before the Parliament<sup>6</sup>.

Besides this legislative basis, the NHRIs should be directly responsible to its clients as any

other public institutions. So, NHRC Nepal is equally accountable to the victims of human rights violations as it was established to protect and assist them.

### **Indicators for Measuring Degree of Accountability of NHRC**

To measure the degree of accountability of such institutions, some indicators like transparency, dissemination of information to the stakeholders, participation in structure and process, inclusiveness, efficiency, timely response, relationship with non-governmental human rights bodies, regular consultation with human rights activist and civil society can be used. The transparency should incorporate from the appointment of the commissioners, appointment of its staffs to all its activities. One of the ways of making transparent about it is through its publications. NHRC Nepal has been publishing its annual report. It has already published eight annual reports, and is publishing the ninth one soon. Besides this, it has published implementation status reports of its recommendations, thematic reports on the issues like Internally Displaced Persons (IDPs), on disappeared persons and the likes. So, far it has made 109 publications of which 58 are reports and remaining 51 are information, brochures and leaflets<sup>7</sup>. During July 2007 to June 2008, NHRC conducted 101 interaction, meeting and training programs.

The annual report of NHRC is a vital public document that not only regularly audits the

4. Performance and Legitimacy: National Human Rights Institutions, International Council on Human Rights Policy, Geneva. Page 70

5. Centre for Human Rights, Professional Training Series No. 4, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights, United Nations, Geneva and New York, 1995, Page 136-138,

6. Interim Constitution of Nepal, 2007, Article 133

7. Source: Human Rights Resource Centre of National Human Rights Commission, Nepal, Hariharbhawan, Pulchowk, Lalitpur

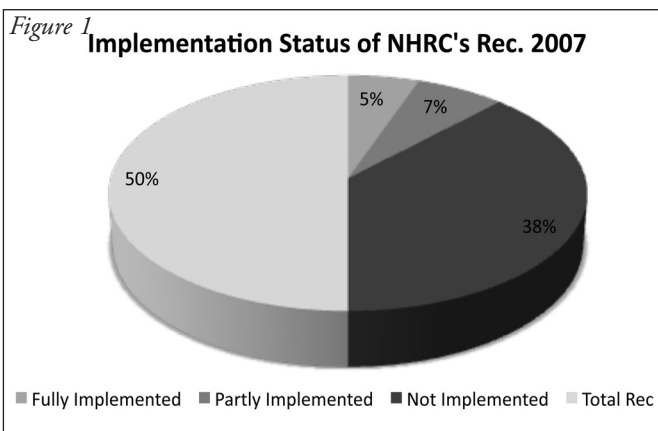
government's performance on human rights but also audits its own performance. It is vital that all its findings and recommendations be publicly available, whether through annual report, other periodic report, or thematic report or through some other mechanisms like regular press meetings, workshops and seminars on the issues. The use of media to publicize the exemplary recommendations should be made. However the commission maintains balance in this regard as there is always like to be conflict between the confidentiality of the investigation process and the source of information, which is often in the interests of the complainant from their protection point of view and the need to publicize the findings of the commission.

Rendering a full public account of its action is also part of making NHRC more effective in its performance. The relationship NHRC maintains with non-governmental human rights organizations is one of the ways of achieving this broader public accountability of the commission. Richard Carver writes "If membership of the national institution includes non-governmental human rights bodies and other civil society organizations, this creates a line of accountability"<sup>8</sup>. This modality of working

Time Period	Fully Implemented	Partly Implemented	Not Implemented	Total Rec
May 2000-June 2007	16	20	111	147

is very much vital in creating accountability of NHRC from keeping it safe from the influence of other state organs. Furthermore, he writes, "[...], regular consultations with human rights activist and civil society organizations not only allow the NHRI to benefit from their experience and insights but give the latter an opportunity to scrutinize the institution's performance"<sup>9</sup>.

ways. One of the suggestions provided in the handbook is making it compelled to conduct public evaluations of its activities and to report on the results. The handbook remarks on the open scrutinizing of the reports of such institutions, as "All the official reports of the institution should of course be subject to open scrutiny and comment"<sup>11</sup>. The inputs put forward by the public can be a good guide to make it more accountable to its clients. At the same-time the process and procedure of the commission should be visible and transparent. The Office of the United Nations High Commissioner for Human Rights provides concrete guideline through its handbook for the NHRIs as:



During July 2007 to June 2008, NHRC conducted 101 interaction, meeting and training programmes<sup>10</sup>.

Based on the existing legal provisions, NHRC is the only one constitutional commission on which formation process, it has clearly stated that the inclusion of women and diversity be guaranteed<sup>\*\*</sup>. NHRC Nepal can achieve its public accountability in various

"Its decision making processes should be open, rational, consistent and shared. Developing mission and values statements, strategic objectives and plans, staff codes of ethics, quality service standards and procedural handbooks can be an important tool for the national human rights institution to ensure, communicate and be

8. Supra note 4, page 71

9. ibid

10. Annual Progress Report, 2008, National Human Rights Commission, Nepal, page 2.

\*\* Interim Constitution of Nepal, Article 131(2) While appointing the chairperson and members of the National Human Rights Commission, diversity, including gender diversity, must be maintained

11. Supra note 5



accountable for high standards of achievement.<sup>12</sup>

### Efficiency and Timely Response

How efficiently and in timely manner NHRC has responded to the complaints lodged at the commission is another indicator of its accountability. During May 2000 to June 2007, NHRC received 8457 cases and it finalized only 1232 cases comprising only 15% of logical ending of the case. But, in the latter days, the scenario has been significantly changed. During Aug 2007 to April 2009, NHRC received 1707 cases and it finalized 1103 cases which comprises 65%<sup>13</sup>. This changing scenario has given hope that NHRC holds promise of affordable access to justice for the poor and the vulnerable. Thus it has been trying to become the voice of the voiceless people. Without the strong societal awareness, support from human rights communities and civil society, cooperation from the government and belief of the victims and perpetrators as well, NHRC can not be fully accountable to the parliament and the human rights victims.

### State Accountability and Response to the Recommendation of NHRC Statutory Status

By its legal mandate, NHRC itself is not implementing body. It is the watchdog and recommends to the government in two ways -- one in policy related and another upon the individual cases that NHRC deals with thus making

Duration	Fully Implemented	Partly Implemented	In Process	Not Implemented	Total Rec.
Aug 2007 to April 2009	5	2	78	53	138

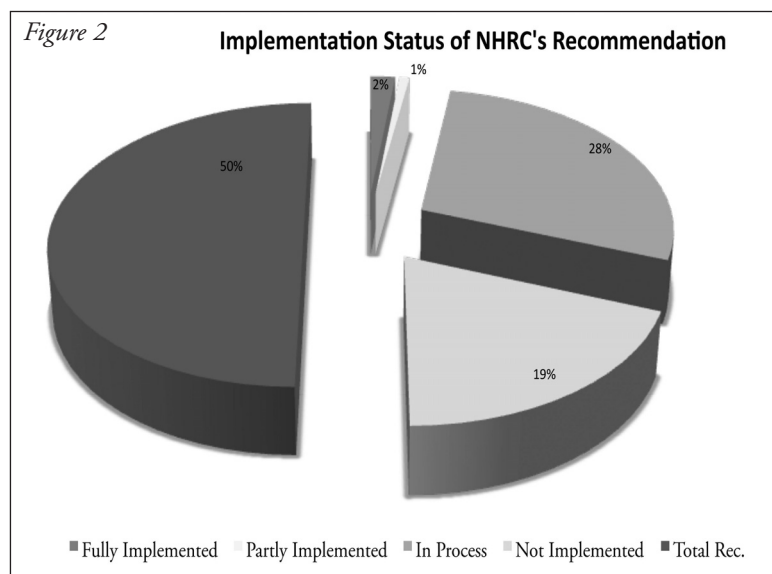
the perpetrator responsible for his violation or abuses. The recommendation of the commission has been categorized in two groups, when it had statutory status and after having constitutional status. When it had statutory status, the commission made 147 recommendations to the government of Nepal out of which 29 were on policy related and remaining on its handled cases<sup>14</sup>.

In totality out of these 147<sup>\*\*\*</sup> recommendations, only 16 (11%) are fully implemented. Likewise 20 (14%) recommendations are partly implemented. And 111 (75%) are not implemented at all. So scenario is really mockery for rule of law and human rights culture. How can we expect the accountability of state to its peo-

ple's protection and promotion of human rights if the three fourth of the recommendations of the National Human Rights Commission lies in the litter box for year? Then it is really a challenge to the commission itself to claim it as it is voice of voiceless people. Thus it shows the state of impunity is prevalent in the country. If we deep down the reality it is even more interesting. Out of 16 fully implemented recommendations, 13 are about the witchcraft allegations. Regarding the 29 policy related recommendations, only one has been implemented so far<sup>15</sup>.

With the promulgation of Interim Constitution of Nepal, 2007, the commission has been elevated to the status of constitutional

Figure 2



12. Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, Professional Training Series No. 12, Office of the United Nations High Commissioner for Human Rights, Newyork and Geneva, 2005, Page 39

13. Implementation Status of the Recommendation of National Human Rights Commission, Nepal, 2066, page. 4-13

14. Implementation Status of the Recommendation of National Human Rights Commission, Nepal, 2065, page. 4

\*\*\* See Figure 1

15. Ibid

body. However, with this elevation of the commission to the constitutional status, the state seems to be intended in making it just an elephant of plastic to be kept in the garden just to create an image rather than for functional purpose. Unlike provisioned in the Human Rights Act, 1997 that the commission to be an independent and autonomous body, there is no such provisions in the interim constitution. Despite the government's efforts of making the commission toothless body, 138 recommendations\*\*\*\* were made to the government between Nov 2007 to April 2009 (Asoj 2064 till end of the year 2065)<sup>16</sup>. And the implementation status is not encouraging.

So far after the establishment of the commission to April 2009, the commission made 285 recommendations. Out of that 285 recommendations 21 are fully implemented comprising only nearly 7.5% of the total recommendation. Similarly, nearly 8% (22 recommendations) of the total recommendation have been partly implemented. Likewise nearly 28.5% (78 recommendations) are in the process of implementation. And 164 recommendations (58%) are not implemented at all. Thus, if we analyze the accountability of the government in protection and promotion of human rights, this statistics itself speaks that the government is not keen in this regard.

## Conclusion

National Human Rights Commission, Nepal as public institution should always be accountable to the parliament and the people for whom it has been set up.

Transparency, dissemination of information to the stakeholders, participation in structure and

### ***National Human Rights***

***Commission, Nepal as public institution should always be accountable to the parliament and the people for whom it has been set up.***

***Transparency, dissemination of information to the stakeholders, participation in structure and process, inclusiveness, efficiency, timely response, relationship with non-governmental human rights bodies, regular consultation with human rights activist and civil society are some of the indicators that should be applied to measure the accountability of this institution. All the findings and recommendations of the commission should be publicly available.***

process, inclusiveness, efficiency, timely response, relationship with non-governmental human rights

bodies, regular consultation with human rights activist and civil society are some of the indicators that should be applied to measure the accountability of this institution. All the findings and recommendations of the commission should be publicly available. Making NHRC more effective in its performance, rendering a full public account of its action is required. The process and procedure of the commission should be visible and transparent. NHRC Nepal can motivate its internal excellence by encouraging public debate on its reports. It also ensures that the concerned stakeholders are aware of what the commission is doing and the standards of achievement it has set. Thus, the commission will enhance its external credibility by being more transparent.

The commission's performance of only logical ending of the 15% of the total cases lodged at the commission up to June 2007 (Asar 2064) has been to some extent soothed by its 65% of case load settlement between Aug 2007 to April 2009. Thus, it can be said that it is being more accountable as it has becoming grown up. However, the implementation status of the recommendation of the commission is still quite discouraging as nearly 60% of the recommendations remain unheard. However, with the regular consultation with the human rights communities, making its activities and process more transparent, and rendering timely response, it can speed up its gear to the way of being accountability.

●  
(The writer is Officer of National Human Rights Commissions)

\*\*\*\* See Figure 2

16. Human Rights Post Monthly, Volume 2, Issue 5, July Aug 2009

# Transitional Justice in Post-Conflict Countries



►► Shobhakar Budhathoki\* ◀◀

*In general, transitional justice incorporates the issues of promoting justice, ensuring reparation and initiate reconciliation. The process of acknowledging, prosecuting, compensating and forgiving for past crimes after the conflict is commonly described as transitional justice process. Systematic abuses of human rights that are not adequately addressed could create a social unrest, and often contributes for the escalation of conflict and renewed violence.*

**I**ncreasing impunity and hesitation of post-conflict governments to conduct a thorough investigation and carry out action against perpetrators creates vulnerability in efforts of establishing sustainable peace, rule of law and inclusive democracy. In post-conflict situations, the state is responsible for addressing trauma of victims of conflict, ensuring justice, and establishing mechanisms that documents the stories of victims, analyzes human rights abuses and atrocities, identifies perpetrators and recommends authorities to initiate appropriate judicial and administrative action. While permanent mechanisms in post-conflict states are usually slower and time-consuming, the government should take initia-

tives to set up transitional justice mechanisms to provide justice quickly, but responsibly, to the victims of conflict through reparations and their recognition in nation-building process.

In general, transitional justice incorporates the issues of promoting justice, ensuring reparation and initiate reconciliation. The process of acknowledging, prosecuting, compensating and forgiving for past crimes after the conflict is commonly described as transitional justice process. Systematic abuses of human rights that are not adequately addressed could create a social unrest, and often contributes for the escalation of conflict and renewed violence. Therefore, it is important to maintain the rule of

law after the conflict or authoritarianism to build a foundation for sustainable peace, and well-functioning and responsible states.

Each post-conflict situation has unique character and may require different measures to address past wrongs. International experiences demonstrate that transitional justice mechanisms are found effective if they are combined with other approaches such as judicial (trials and legal reforms) and non-judicial (truth commissions and reparation schemes) measures. However, the basic challenge of transitional justice strategy is to effectively respond to past abuses in ways that establishes truth, acknowledges victims' suffering, holds perpetrator accountable, pro-

\* Budhathoki is a human rights advocate and conflict resolution specialist.

## Ending Impunity Requires Substantive Legislative and Institutional Reforms

Amid various reports that impunity is rampant in the country, INFORMAL asked human rights defenders what should be done to end impunity. Excerpts:



**Rameshwor Nepal**  
Amnesty International Nepal

While talking about present situation of impunity in the country discussions are being held about failure to take action against perpetrators involved in grave human rights violations during the period of 11-year-long Maoist insurgency and People's Movement of April 2006.

If we talk in these contexts, the government and Maoists have agreed to end impunity and improve the situation of human rights during the Comprehensive Peace Agreement between Nepal government and CPN-Maoist and these commitments should be fully implemented.

Second major reason for not ending the trend of impunity is lack of political will power as none of the political parties have left to mention in their official documents or public speeches that they will play role for ending impunity. However, there seems lack of political will whether it is the issue for forming the Truth and Reconciliation Commission or Disappeared Commission or taking action against persons indicted by the Rayamajhi Commission. If they have the political will they could play important role as the commissions, which were to be formed within 60 days of the signing of CPA, have not been formed till three years.

So, if we really want to end impunity in the country all the agreements reached with different groups including CPN-Maoist should be immediately implemented and action should be taken against perpetrators of grave human rights violations. If it was not done there will be anarchy in the country with the rise in the incidents of human rights violations. Political will and honesty for ending impunity are also the need of the hour. Though these acts may not end impunity it will initiate some action for ending impunity in the country.



**Bhanu Bhakta Acharya**  
Communication Officer, NHRC

There was no end of impunity in the country regardless of the political system. Nepal had suffered from impunity during the Rana Regime, Democratic Period, Party-less Panchyat System, restoration of democracy and direct rule of King Gyanendra. There has been rise in impunity following the success of April movement of 2006.

The state mechanisms have been suffering from Paralysis even if there was law as it failed to function effectively. The main cause of impunity is providing political cover to perpetrators. Cases of Journalist Birendra Sah, businessman Ramhari Shrestha of Koteswor, Prachanda Thaiba of Butwal, Journalist Uma Singh of Janakpur and Journalist JP Joshi of Kailali are some of the incidents that took place in the so called democratic period but the state failed to book the perpetrators to Justice despite national and international pressure. They reiterate that their party is working for protecting human rights, ending impunity, establishing rule of law in the country but the situation seems reverse. For example, various provisions have been included in the Comprehensive Peace Agreement signed between the then seven political parties and CPN-Maoist for ending impunity and ensuring accountability.

5.1.4. Both parties shall inform each other about the demarcation and storage of ambush or mines planted during the war period within 30 days and help each other to diffuse or dispose them off within 60 days.



- 5.1.5. Armies of both parties shall not appear with arms or combat dresses in any civil meeting, political gathering or public programs.
- 5.1.8. Both parties agree to prepare the details of the governmental, public, private building, land or other properties captured, locked or restricted from being used during the period of armed conflict and return these things immediately
- 5.2.1. There won't be cash or kind collection or tax collection against anyone's will or existing laws.
- 5.2.3. Prepare the details of the disappeared persons or those killed in the conflict with their real name, surname and residential address and publicise it within 60 days from the day of signing this agreement and inform the family members of concerned persons.

Such provisions have just become show pieces though all have agreed to implement these provisions. Rule of Law could not be established unless and until political commitments are translated into reality but the political parties lack such courage. Security situation could not be improved before establishing Rule of Law and accountability could not be ensured before meeting these conditions.

### Govinda Sharma "Bandi", Advocate

For this particular purpose, the principal concern is the failure of the Nepali authority to investigate and prosecute crimes allegedly committed in connection with the armed conflict by the both parties. If impunity continues there will be no lasting peace. Hence, it needs to be addressed as part of the peace process.

It is, therefore, as part of the transition, the government has been tasked with a number of critical responsibilities, including addressing past violations by establishing transitional justice mechanism, and reforming the legal system to address a prevailing culture of impunity. However, due to lack of political will power, no significant development has been seen so far.

One of the fundamental challenges to address impunity and uphold accountability is collapsed rule of law situation and absence of an independent legal institution. Hence, strengthening rule of law and building an independent legal institution are key tasks to end impunity.

The starting point of this journey could be a truth seeking mechanism, essentially associated with rule of law mechanism, which not only identify and investigate the direct perpetrators of extrajudicial killing, enforced disappearances, torture, but also those who planned or ordered them, establishing chain-of-command responsibility and thereby by prosecuting them in court of law.



### Bhawani Prasad Kharel

#### General Secretary, Manab Adhikar Pratisthan

All Nepalese people have becoming pessimistic as impunity is rising in the country. Criminal activities and crime against humanity has been leaving behind the act of human rights violations committed during the period of 104-year-old Rana Regime and Panchyat System.

Sustainable peace and development is not possible in the country before ending impunity and establishing Rule of Law. First of all, the Rome Statute of International Criminal Court should be ratified to take action against persons involved in grave human rights violations and ending impunity and existing rules and regulations should be amended timely. Taking action against perpetrator is not sufficient for ending impunity provision of justice and compensation should also be made compulsory for victims. It will be effective if the amount of compensation was recovered from the perpetrators.

Leader of political parties have to rise above from party and group interest and take people as supreme for ending impunity and ensuring accountability. Similarly, the law enforcing agencies should be independent, impartial and effective for justice delivery. They should be informed about the rights and responsibilities of people. The trend of providing political protection to criminals should be ended and Rule of Law should be established in the country for ending impunity and ensuring accountability.



vides compensate for past wrongs, prevents future abuses, promotes social healing, and reforms security and justice institutions.

Determining transitional justice mechanisms is always difficult task that depends on many factors and the unique circumstances of a period of abuse and conflict. Some of the factors must be considered prior to make formal decision regarding transitional justice mechanism, which includes level of crime, number of perpetrators responsible and their current status, country's political context and available resources, credibility of national judicial mechanisms and nation's capacity to afford individual reparations.

### **Transitional Justice Approaches**

In post-conflict situations, transitional justice issues are commonly addressed in four ways that includes conducting criminal prosecution, establishing truth commission, carrying out reparation programs and launching vetting, which are described briefly herewith.

**Criminal Prosecution** is considered as one of the most direct form of accountability, and found effective if credible courts are available to hold trials. However, strong political will is essential to sustain prosecutions, which is often lacking when perpetrators or their political partners are still sharing power. Prosecutions take significant time and money to conclude, and only address a narrow range of individual crimes, and prosecute typically small number of perpetrators. But successful prosecution gives the strongest statement against impunity, and signals to victims that the new government is committed to introduce accountability mechanism to break with an abusive past.

Prosecuting perpetrators of

mass crimes is an international legal obligation, and is often seen as a moral good as well as sending a strong social message that criminal act cannot be tolerated in the future. Prosecution helps to avoid lawless revenge and retaliation, and to maintain or restore the rule of

***Determining transitional justice mechanisms is always difficult task that depends on many factors and the unique circumstances of a period of abuse and conflict. Some of the factors must be considered prior to make formal decision regarding transitional justice mechanism, which includes level of crime, number of perpetrators responsible and their current status, country's political context and available resources, credibility of national judicial mechanisms and nation's capacity to afford individual reparations.***

law. However, prosecutions are often expensive, time consuming, and divisive, and no state will have adequate resources to prosecute all of the hundreds if not thousands of perpetrators who have committed crimes during a period of conflict.

Several conditions are necessary to ensure the capacity and

technical ability to investigate and prosecute systematic crimes, as well as analyze historical, military and political details of the conflict and relevant laws, and study about sophisticated and appropriate trial management techniques that handles complicated evidence, and provides guidelines to organize a complicated trial, protects evidences from destruction, gathers crime-scene information and identifies crime investigation process.

In many countries recovering from conflict, national judicial systems are not well functional to handle the size and complexity of prosecutions of mass crimes. Domestic courts are seen as politically biased even they have expertise to conduct hearing on complex cases. In such cases, it may be necessary to appoint an independent board or commission to oversee investigations and prosecution. It may also be helpful to include civil society groups, victims' groups or international actors during an entire process.

Combining prosecutions with other transitional justice mechanisms seems effective to conduct trials. In this regard, a truth commission may work side by side to a tribunal, so that both mechanisms can offer a more complete accounting of the causes and consequences of a conflict.

**Truth Commissions** are suitable for analyzing widespread patterns of abuses or atrocities, whether committed in secret by the state. It aims to ascertain the facts and causes of abuse in the most objective way possible, and not necessarily to directly punish individuals involved. As official investigative bodies, truth commissions require significant political will to implement, and generally not effective unless the commissioners are truly

independent from the parties to the conflict. Truth commissions should be formed on the basis of extensive public consultations and while underway should undertake significant public outreach and engagement.

Truth commissions should comprise independent experts, responsible for investigating and reporting on patterns of human rights abuses over a certain period of time in a specific country or in relation to a particular conflict. Truth commissions allow victims, their relatives and perpetrators to produce evidence of human rights abuses, providing an official forum for their accounts. Truth commissions officially acknowledge past abuses, recognize the suffering of victims, identify patterns of violence and more specific acts of wrongdoing, and make recommendations to prevent a recurrence of violence in the future. Truth commissions may also identify individuals responsible for acts of violence and even recommend cases for prosecution, but cannot be expected to find the ultimate truth for all individual cases.

Some of the main reasons to establish a truth commission includes establishment of facts about violations of the past, acknowledge past abuses, a contested or denied history, restore victims' dignity and respond to some of their concrete needs, prevent future abuses by recommending reparations or institutional reforms and by reaffirming social norms, and promote accountability and justice, as well as initiate reconciliation in the society.

Truth commissions are not appropriate for all situations. If a commission is to be established, many strategic decisions need to be taken prior to design appropriate mechanism. Therefore, it is advis-

able to hold broader consultation with civil society and victims and involve them from the beginning of the process. Such consultations must be focused on the process of establishing truth commission and the mandate of the truth commission (objectives, legal authority to interview witnesses and collect testimony, types of violations that the commission will investigate, time period to be investigated, granted timeline to complete its task, and authority to issue recommendations).

While determining the mandate and framework for a truth commission, the interrelationship with other justice mechanisms and rights institutions should be clarified. No truth commission can investigate each and every violation that occurred during a period of prolonged conflict. Truth commissions operate under time constraints and the desire for an expeditious process imposes limits on the number of cases a commission can investigate. This is often very disappointing for victims, who often seek specific truth about their personal case. Victims also often expect reparations, which truth commissions are neither mandated nor resourced to give.

Issuing comprehensive recommendations for reparations or reform is relatively easy for a truth commission. Even when a truth commission mandate requires that a government implements its recommendations, there are often few resources available and political will typically erodes as time passes. Mechanisms for follow-up should therefore be considered even before a truth commission is established. A successor body can be designated to monitor the implementation of the recommendations, to continue investigations and preserve the archives, which can be an existing

institution such as a National Human Rights Commission in Nepal. Civil society should also be encouraged to monitor and follow-up the implementation of the commission's recommendations. A trust fund may also be created in advance to pay for the commission's most important recommendations.

Truth commissions can foster a common understanding and acknowledgement of an abusive past, and if they are effectively embedded in a comprehensive justice perspective, they can provide a foundation for building a strong and lasting peace.

***Reparations and Compensation*** to victims of conflict, are often the most demanded recourse for past violence, but the most difficult to achieve, particularly when the government has few resources to give as compensation. For reparations to work effectively, victims must be identified, their injuries must be quantified, and resources must be available to provide some form of cash payment or in-kind service to the aggrieved party. Compensation may be symbolic (a memorial or an apology), or in-kind (such as free health or education benefits) as well as monetary support recognizing that no material payment can fully compensate for an emotional loss. Reparations are a powerful tool for helping victims to recover from conflict, but can also sow division when one group is favored for reparations over others who may deserve them.

Reparations are either payments or services given to victims of past abuse as compensation for the harm they or their loved ones have suffered during a period of conflict. International human rights and humanitarian laws recognize that victims of systematic human rights abuses are entitled to prompt, ade-

quate and effective reparation and states have a duty to provide comprehensive reparations. States are responsible for ensuring the enjoyment of human rights by all individuals within their borders. A state must also provide reparations to victims of non-state actors.

In post-conflict environments, no payments can ever fully compensate for torture or killing, and the reality that many governments cannot afford large cash payments to thousands of victims. Reparations are intended to recognize and repair harm, restore victims' dignity and rebuild trust and solidarity among communities that have been torn apart by violence. Reparations range from purely symbolic acts to mostly material benefits. Symbolic reparations can be apologies, re-naming streets, commemoration days, dignified burial sites, etc. The right of victims to a remedy and reparations is firmly included in human rights law and humanitarian law. Reparations can make other transitional justice mechanisms more effective because they directly change the situation of victims. The benefits of a sound reparations program can positively affect not just the victims but society as a whole. Reparations are essential to build sustainable peace and civic trust as well as to reaffirm essential social norms and values.

Among the different types of reparations include restitution (re-establish the situation before the violation was committed); compensation (economically assessable damages are compensated); rehabilitation (medical, psychological care, administrative rehabilitation, legal and social services); satisfaction (cessation of violations, attempts to reveal the truth, search for the disappeared, reburials, apologies, judicial) and administrative sanctions (such as vetting), commemorations,

memorials, etc.); and guarantees of non-repetition (steps to prevent reoccurrence of abuses such as initiating security sector reform programs, enhancing judicial independence and access to justice, improving social services, etc.).

Reparations are most effective if they fit into a coherent overall plan of transitional justice including, for example, revelation of the truth or the removal of perpetrators from public institutions.

**Vetting** is designed to restore public trust in institutions by removing perpetrators from official positions, or preventing unqualified or abusive individuals from being appointed to government posts where they might corrupt the credibility and performance of a new regime. Vetting programs are useful in cases where violence was committed by government officials, such as police and military officers, who remain in government posts even after violence has ended. Vetting is an administrative rather than a judicial action, and therefore requires a lower standard of evidence to implement, which must be conducted according to objective standards and fair procedures.

Vetting refers to the reform of an institution's personnel by removing or excluding abusive, corrupt, or unqualified employees. Vetting program focus particularly on reforming the police, prison services, the army and the judiciary because they are often responsible for past human rights abuses. Vetting is based on the assumption that fair and efficient public institutions are crucially important to prevent future human rights abuses. Vetting processes are therefore undertaken to restore public trust in institutions, increase their legitimacy and efficiency in delivering

services to all citizens, and to signal the break with the abusive past.

Vetting is generally less expensive and less complex than large-scale criminal prosecutions, but still provides a form of individual accountability for those who were responsible for violations and their individual conduct. Vetting aims at excluding from public office those who are responsible for past human rights violations and serious crime. Two basic forms of vetting processes include review and reappointment. Based on either of these processes, individuals who are well qualified and have not contributed to abuses may receive a certificate that allows them to continue employment. In extreme circumstances, an individual may be permanently banned from all types of public employment. The criteria for excluding someone from public office must always be established with a view to the context. These criteria should be transparent and as clearly defined as possible. Vetting should not be based on large-scale purges or removals on the basis of party affiliation.

Vetting can be used to regain the population's trust in institutions and serves to prevent the recurrence of violence stemming from public institutions. If vetting is carefully planned, adequately resourced, mandated and overseen, it can contribute to improve the institutions' commitment to serve all citizens and to safeguard the human rights of all.

### **Transitional Justice and Nepal**

In Nepal, the debate of transitional justice has remained central during the entire peace process and even after the election of the constituent assembly. The Comprehensive Peace Agreement (CPA) of November 2006 and the Interim Constitution (IC) of



January 2007 recognize the importance of establishing truth, prosecution of perpetrators and ensuring justice and reparations for victims of the conflict, as well as the formation of disappearance, and truth and reconciliation commissions.

Nepal's past experience demonstrates that commissions have been formed as part of face-saving strategies and a way to avoid public pressure for bringing perpetrators to account. The state has set precedent for the protection of perpetrators from judicial action, which has institutionalized impunity and threatens the rule of law. Although the 1990 Mallik commission submitted a comprehensive report with the name of perpetrators, the government made the choice to disregard the recommendations on the basis of inadequate legal arrangements for initiating cases in the court. With the report having little to no circulation among the public, many of those found responsible in the report were elected into the democratic parliament and able to gain power in the legislative, as well as in the cabinet.

Similarly, the five-member High-Level Probe Commission formed in May 2006 to conduct an investigation into loss of life and property due to the repressive acts of the King's regime and into the abuse of state funds and violation of human rights. Despite its mandate, the government was once again reluctant to enforce the initial decisions of the commission, and instead gave amnesty to the senior Army officials, including retired Chief of Army Staff Pyara Jung Thapa and Rookmangud Katawal. The commission conducted secret hearings with the accused, keeping the media and the human rights community at bay, thereby excluding the public from the proceed-

ings. Even though the commission found the King responsible for suppression and abuse of state funds and authority, it brought incomprehensive and incomplete recommendations with divided opinions, as well as biased recommendations in terms of actions against senior and junior office holders, and retired officials that drew questions of their professionalism and efficiency.

More importantly, the government's inaction and decision not to disclose the commission's report disregards the sentiment of the people's movement. Ignoring the commission's recommendations and consequent inaction by the state demonstrates the cycle of impunity that exists and will continue to exist if appropriate judicial actions are not taken in a timely manner. Since state and non-state actors have been responsible for human rights abuses and atrocities since the beginning of the conflict in February 1996, it is essential to set up transitional justice mechanisms to handle appropriately and impartially, and ensure justice to the victims timely and quickly.

However, serious human rights abuses and atrocities committed by the parties to the conflict that saw the loss of nearly 15,000 lives, more than 1300 known cases of disappearance, and thousands held in illegal detention, tortured, and raped, must be dealt with through transitional mechanisms to ensure justice and deter future violations. As per the articles 5(2)(3), 5(2)(4) and 5(2)(5) of CPA the parties to peace process (Government of Nepal and the CPN-Maoists) have agreed for setting up commissions to gather details of disappeared persons, the national peace and rehabilitation, and the truth and reconciliation commission. In reality, none of these commissions are formed, and even close to be

formed. In past, the government has made several attempts to set up a disappearance commission through ordinance, but failed to form as a result of immense pressure from national and international stakeholders. However, the government has currently re-drafted the Disappearance Commission Act and prepared to submit in parliament. In terms of Truth and Reconciliation Commission, the Peace and Reconstruction Ministry has been actively engaged holding public consultations to prepare the foundation and increase support from the stakeholders.

While justice holds a central place for the establishment of rule of law and an inclusive democracy, the well-planned formation of these commissions remains important to bring some healing, closure and justice to victims. Due to the destabilizing effect of an inaction for justice, the peace process and transition to democracy is dependent upon establishing responsible and timely mechanisms to pursue justice, which would also contribute to ending the ongoing impunity that has plagued Nepal. In Nepal's context, initiating transitional justice process seems essential for sustainable democratic polity, good governance, and support constitution-making and nation-building process, as well as set up guidelines for security sector reform and management of former combatants.

## Conclusion

Transitional justice process (criminal prosecution, truth commissions, reparations, and vetting) provides golden opportunity for nation-building, and stops the legacy of violence. It can also initiate the process for national healing, returning the dignity of citizens, strengthening state institutions to serve the public, and ending the

culture of impunity. While carrying out transitional justice process, transparency, fair and due process, political will, inclusion of national organizations, and sincere communication with the public are considered fundamental elements for successful outcome, which can significantly increase the chance for sustainable peace and good governance, thereby preventing future abuses.

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# Need of Human Rights Mechanism in SAARC

» Raju Thapa «

*Much to the misfortune of our people, South Asia happens to be one of the most polarized and poverty ridden regions of the world. Multi-facet polarization, illiteracy and poverty are not only complimentary to each other but also create many hurdles in promotion & protection of Human Rights. It has been rightly emphasized at various forums that "One does not enjoy Human Rights on a bare body and empty stomach".*

The success of the human rights movement is the best measure by the extent to which some governments have incorporated human rights concerns into their policy-making. Countries whose rulers would not even have paid lip service to human rights a decade ago are now declaring their importance. The contributions of different stakeholders, human rights defenders, journalists and other activists have helped greatly to further respect for human rights throughout the SAARC region, however these effort alone are not sufficient. It is pertinent to reflect on this as 40 percent of the 'Worlds' poor and more than one-fifth population of the World live in this region. Some of the World's worst dictatorial regimes are members of this group and South Asia itself is a laboratory of continuing ethnic and religious conflict. Besides these member

countries of SAARC, consider human rights to be a 'domestic' matter and are averse to international scrutiny. Similarly, the biggest movements of refugees have taken place in the South Asian block after the Second World War, however no SAARC country has signed any of the international covenants about the rights of the refugees. These are some glaring example to reflect the situation of human rights in Asia.

Much to the misfortune of our people, South Asia happens to be one of the most polarized and poverty ridden regions of the world. Multi-facet polarization, illiteracy and poverty are not only complimentary to each other but also create many hurdles in promotion & protection of Human Rights. It has been rightly emphasized at various forums that "One does not enjoy Human Rights on a bare body and empty stomach". Hence, poor

countries not only require faster economic growth but also a faster rate of poverty and illiteracy eradication, human development and greater commitment to respect and protect the human rights. There is a growing realization that the universality of human rights demands across the borders cooperation. It is encouraging that most of the developed countries have now started consideration on economic cooperation with human rights. Analyzing the worldwide human rights movements and the increased awareness in the Civil Society and consistent efforts being made by Non-Governmental Organizations for forging regional cooperation on human rights issues, leaves no option to the South Asian Countries but to establish independent and statutory/official National & Regional Institution/Mechanism for the pro-

motion and protection of the Human Rights.

Unlike the SAARC countries most of the other Regional or Sub-Regional Alliances, have appreciated the need to have uniform human rights convention and officially constituted machinery to ensure observance and enforcement of the same. The first initiative in this direction was taken by the EU countries, which had not only adopted a common convention but also established 'European Court of Human Rights' with wide jurisdiction on all matters concerning human rights and powers to grant relief to any person, NGO or group of individuals and to disapprove any policy, legislation of any member country and conduct trials. Such Human Right Conventions, Commissions or Courts have also been established by 'Organization of African Unity', Latin American countries. In our neighborhood Members of the Association of South East Asia Nations (ASEAN) have been debating on this issue and the final approval on the draft agreement to establish ASEAN Human Rights Commission is under active consideration of its member states.

Despite sustained efforts by civil society, the respective governments of the SAARC countries have not made any serious effort to adopt a uniform human rights code or convention and to provide any common forum or mechanism to supervise adherence and implementation of the same. Except Bhutan there are a large number of NGOs in the SAARC countries who actively support various human rights causes. However, not all the SAARC countries have autonomous official statutory institutions devoted exclusively to address the grievances of the people on human rights issues.

India, Nepal and Sri Lanka are perhaps the only South Asian countries, which have independent statutory National Commission to provide some relief to their people.

SAARC has not adopted any specific and detailed uniform human rights convention or charter nor have they agreed to create any common Regional Institution or Mechanism to monitor adherence and implementation of various

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human rights conventions, charters and treaties signed by the member countries or to provide redress to the victim of human rights abuses and to impose sanctions/punishments on the perpetrators, may it be government of the member countries or their citizens.

If we consider the international practice, when domestic institutions fail to uphold the law and are in some cases the violators

of the law, it may be possible or necessary to seek redress beyond national boundaries. Regional legal framework means that one can claim their rights to be assessed at a regional level, providing the country is put of this framework, and providing all national remedies have either been exhausted or deemed inefficient. Regional systems of promotion and protection can further help strengthen the enjoyment of human rights. The UN organs have been playing an increasingly supportive role to encourage countries to set up national human rights institutions and also to establish regional & sub-regional human rights institutions or mechanism to ensure adherence and protection of human rights in the member states.

In this context there is strong need of SAARC human rights mechanism and its most important objective should be establishment of an intergovernmental Human rights commission for SAARC. It should consist of representatives of government institutions, parliamentary human rights committees, the academic areas, and NGOs. This body may include a commission with monitoring, promotional, and recommendatory functions. It may also receive complaints from states and individuals and conduct court of Human Rights with wide jurisdiction on all matters concerning Human Rights

If SAARC be able to establish a regional human rights mechanism it will assist SAARC member states in addressing human rights concerns in their respective areas of jurisdiction and ensure international human rights laws and help people to have a common understanding of universal human rights issues and perspectives. ●

*(Writer is the president of Human Rights Without Frontiers, Nepal)*



# Nepal: Still Waiting for Justice - No End to Impunity

*New York-based Human Rights Watch and Advocacy Forum, a Nepali NGO working in the area of Human Rights, released a joint report entitled, "Nepal: Still Waiting for Justice - No End to Impunity". The report mentions that the Nepal government has failed to conduct credible investigations and prosecute those responsible for thousands of extrajudicial killings, torture, and enforced disappearances three years after the end of the country's decade-long armed conflict. Summary of the report:*

*The Government is committed to establishing constitutional supremacy, to ensuring the rule of law and good governance, to implementing the understandings and agreements [associated with the peace process], and to providing a positive conclusion to the peace process by eliminating anarchy, insecurity, and impunity.*

Policies and Programmes of the Government of Nepal for the Fiscal Year 2009 — 2010, as presented to parliament on July 9, 2009, unofficial translation. *There is no justice in Nepal, no rule of law and no government but I want to see a Nepal where even the senior most government officials cannot escape justice. The security officials must be punished, they are not employed to kill citizens. All those responsible for*

*human rights violations must be brought to justice.*

Dhoj Dhami, uncle of Jaya Lal Dhami, killed by security forces in February 2005, Kanchanpur, September 18, 2009

Three years after a historic peace agreement ended a decade-long armed conflict, specifically promising greater respect for human rights and accountability, impunity remains firmly entrenched in Nepal. No member of the security forces or the Maoists has been held to account in civilian courts for grave human rights abuses committed during the conflict; most cases that have been filed are stalled. Human rights violations committed since the end of the

conflict also continue to go unpunished: cases against suspects are routinely withdrawn, with the victims offered token amounts of money. Ending impunity for past and continuing violations is essential if Nepal is to continue to move away from violence and more firmly establish the rule of law.

One emblematic case is the torture and death in army custody of 15-year-old Maina Sunuwar, (Case 31 in the Update on Pending Cases below), in February 2004. Sunuwar's mother, when offered NRs 100,000 (US\$1,307) compensation for her daughter's death and suffering, said, "If there is liberty of killing a human being on payment of NRs 1 lakh, the right to life has no meaning at all."

This report is a follow-up to our 2008 report, *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict*, and provides updates on the 62 cases highlighted there. Despite official commitments to end impunity, and intensive litigation and campaigning by families of those killed or disappeared during the armed conflict of 1996–2006, no one has been arrested, let alone brought to justice in civilian courts, for the crimes we documented. Only in a couple of cases, including that of Maina Sunuwar, military tribunals have convicted soldiers on minor charges and handed out weak punishments.

After the Communist Party of Nepal (Maoist) (CPN-M, the former armed group which declared the “people’s war” in 1996), won Constituent Assembly elections in April 2008, the political consensus vanished and was replaced by an increasing lack of trust between the main political parties. As a result, there was little or no progress in the peace process.

At another level, all the political parties (including the CPN-M) have put pressure on the police not to investigate certain cases in order to protect their members. Institutions long opposed to accountability—most notably the Nepal Army—have dug in their heels and steadfastly refused to cooperate with ongoing police investigations. Nepal Army assurances that army officers responsible for human rights violations will be excluded from United Nations peacekeeping duties or from being promoted appear meaningless, since the army not only makes no efforts to investigate the worst abuses but indeed resists such investigations by police. Furthermore, the army command has recently nominated for promotion several

officers suspected of being responsible for grave human rights violations. Among the Maoists elected to the Constituent Assembly are alleged perpetrators of human

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rights abuses who are under police investigation.

As a result of political instability, the Constituent Assembly (which also functions as the parlia-

ment, formally called the Legislative-Parliament) has been largely paralyzed. Key legislation to put in place transitional justice mechanisms as well as initiate reform of the criminal justice system has not progressed.

As the evidence presented here demonstrates, the quest of family members of victims for justice and clarity on what happened to their loved ones continues to be blocked by both *de facto* and *de jure* impunity. *De facto* impunity refers to the state’s failure to prosecute human rights offenders under existing laws due to factors such as lack of political will or pressure from perpetrators. *De jure* impunity occurs when laws are either vague, or explicitly permit offenders to escape punishment.

#### **De Facto Impunity: Problems Remain**

Analysis of developments in the past year on the 62 cases shows continuing obfuscation and failure by state authorities to initiate meaningful investigations and prosecutions relating to past grave human rights abuses. All 62 cases are, or were, the subject of formal complaints lodged with police in 49 different First Information Reports (FIRs), which the police are charged with investigating.

Only in the case of Maina Sunuwar the authorities filed charges, only under the pressure of sustained campaigning and litigation. However, although the police and public prosecutor identified four army officers as suspects in that case, murder charges were brought *in absentia*. Despite the court issuing arrest warrants, to date police have not arrested the suspects. Very recently, on September 13, 2009, the court ordered the army to suspend one of

the accused and to submit all the documentation it has on the case to the court.

In the case of Manoj Basnet (Case no. 44) who was killed by the Armed Police Force (APF) in Morang, in August 2005, litigation to compel the authorities to properly investigate has come to an end. The APF was able to influence the victim's father not to proceed with the case through the offer of jobs and money. Advocacy Forum tried to convince the Supreme Court to reverse the decision, pleading public interest, but the court quashed the petition.

In several other cases, relatives are losing hope and are no longer actively pursuing the case, tired of constantly fighting obstacles put in their way by the police and other authorities. Bhumi Sara Thapa, mother of Dal Bahadur Thapa and Parbati Thapa, (Case nos. 5 and 6), told Advocacy Forum on September 20, 2009:

When I filed a First Information Report with the police, I had hoped that my family would get justice; the accused would be punished and my family would receive compensation for the living and education of my children. Although it has been years since I started struggling for justice, nothing has happened yet. I have visited the police station many times but there has been no progress in investigation. I don't have much hope because I think the government is reluctant to provide justice.

In one of only two cases concerning victims of Maoist abuses, the family is no longer actively seeking to register the FIR, possibly as a result of threats.

After the Maoist-led government, in August 2008, announced that it would compensate "victims of conflict," some relatives suspend-

ed their pursuit of criminal investigations, fearing that doing so might negatively influence their applications for compensation.

However, the large majority of the relatives of the 62 victims highlighted in this report continue their fight for justice, despite repeated delays and obstacles erected by the authorities.

In ten cases, the local police have still refused to register FIRs, sometimes in the face of a court order to do so. A ruling by the Supreme Court in the disappearance of Sanjeev Kumar Karna and four other students in Dhanusha district, where the court directed the police to register and proceed with investigations, should have solved this matter. Instead the Dhanusha District Police Office informed Advocacy Forum that it would not act on any conflict-related FIRs and that such FIRs have been filed away separately. The Dhanusha police continue to refuse to file FIRs in several other cases.

In 24 other cases, though FIRs were registered, there is no sign of investigations being conducted. In some of these cases, families have sought two writs of mandamus (an order from a superior court directing a government official to perform a duty correctly), the first one to force the police to register the FIR; the second to get a court order for the police to proceed with investigations. Despite two court orders, there are still no meaningful investigations.

In the case of three men who all were killed under the same circumstances in Morang district, in September 2004, the police finally registered a FIR in October 2008, in one case after being ordered to do so by the Biratnagar Appellate Court. The police continue to refuse to file FIRs relating to

the other two, forcing the families to also file mandamus petitions, despite the precedent established by the court ruling in the companion case.

In approximately 13 cases, police have seemingly endeavored to proceed with investigations, sending letters to relevant agencies to seek their cooperation to interview the alleged perpetrators. However, the army, Armed Police Force, and Maoists have constantly refused to cooperate. In the killing of Arjun Bahadur Lama (Case no. 32) who was last seen in the custody of members of the Maoist CPN-M party, the Kavre police finally filed an FIR and began investigations to identify the whereabouts of the alleged perpetrators after the Supreme Court ordered them to do so, but without cooperation from the Maoist leadership, police have had no success to date in locating the suspects. Purnimaya Lama, wife of Arjun Lama, told Advocacy Forum on September 22, 2009:

I once met Prachanda, [the chairman of Unified Communist Party of Nepal (Maoist)]. He promised that he would uncover the truth about my husband and then inform me, but I have received no information yet although I have tried to meet him again several times.

Attempts by relatives to force the police either to register an FIR or, if registered, to proceed with investigations by petitioning the courts for writs of mandamus have proved largely unsuccessful. On June 18, 2009, Advocacy Forum assisted 28 families across 13 districts to file petitions. The responses from the police and public prosecutors have varied but show similar patterns of neglect and delay in different districts.

In their responses to the

Baglung Appellate Court in three cases, both the district police and public prosecutor informed the court that, “charge sheets can be filed only if investigations find evidence,” and that filing of charges is a decision of the Attorney General’s Office. On that basis, they sought the annulment of the petitions. However, to the best of the families’ knowledge, police have not initiated any investigations to date and Advocacy Forum lawyers have not been able to find evidence of progress in any of the three files.

The authorities’ use of these arguments in court appears to be an attempt to side-step the fact that no investigations have actually been conducted and police have gathered no evidence. In other cases police and public prosecutors have so far simply failed to respond. Jay Kishor Labh, father of Sanjeev Kumar Karna (Case no. 15), told Advocacy Forum on September 22, 2009:

Even after the Supreme Court’s order of February 3, 2009, the District Police Office, Dhanusha has not registered the FIR according to law. Although I have visited the DPO at least on 3 different occasions and met the deputy superintendent and the superintendent of police there, there has not been any progress in the investigation of the case. I don’t think the police are willing to work in accordance with the law.

In yet other cases, particularly from Kavre district, police claim they are not proceeding with investigations because the court has not returned the file the police were ordered to submit to the courts after the writ was filed. A similar argument has been used by the Morang police in the killing of Sapana Gurung and another related case where police claim investigations cannot proceed because the

Parliamentary Probe Committee has not returned the file.

There appears to be a lack of consistency in how these cases are dealt with by the Appellate Courts and Supreme Court. Though the Supreme Court has ordered the police to proceed with investigations in the high-profile cases of Maina Sunuwar and Arjun Bahadur Lama, in other cases it has repeatedly postponed hearings. As Bhakta Bahadur Sapkota, father of Sarala Sapkota (case no. 14) told Advocacy Forum on September 22, 2009:

I think the court has postponed the hearing of my petition because the judges do not know about my daughter’s inhuman killing. If the media had written a lot about the killing, the judge would have known about the case and would have given it priority for hearing.

The Appellate Court in Nepalgunj when considering mandamus petitions in five cases brought with the help of Advocacy Forum expressed skepticism regarding the likelihood of its writs being acted upon when Supreme Court orders were not followed even in high-profile cases like that of Maina Sunuwar.

The Biratnagar Appellate Court has been particularly inconsistent in the way it has handled mandamus petitions. For instance, in the case of two men killed together in October 2005, the court refused a petition on behalf of one of them, while ordering the DPO to register a FIR on behalf of the other.

The underlying reasons for the lack of effective investigations by police are already discussed at length in *Waiting for Justice*. An important factor is the esprit de corps between the army and the

police. In informal conversations with individual police officers, other reasons mentioned include instructions from higher police officers not to investigate cases involving soldiers; fear that the government might change and the army again be in power, putting the police officers concerned at risk; and considerable difference in rank between the junior police officers often responsible for these investigations and senior army officers named in the FIRs. A sub-inspector of police in Pokhara who wishes to remain anonymous told Advocacy Forum on September 20, 2009:

There are many cases of human rights violations filed before the police. As the people implicated are often high-ranking officials, it is difficult to investigate the cases because of their influential positions.

This once again reinforces the recommendation made in *Waiting for Justice* that a separate specialized police unit should be set up to conduct these investigations, staffed by senior officers.

### **De Jure Impunity: The Disappearances Bill and Truth and Reconciliation Commission Bill**

None of the three governments in power since the peace agreement was signed have introduced any changes to the laws that impede effective criminal investigations into past human rights violations. These laws include the State Cases Act, Army Act, Police Act, Evidence Act, Commission of Inquiry Act, Public Security Act, and *Muluki Ain* (Nepal’s traditional legal code). There has been little or no progress toward establishing the transitional justice mechanisms called for in the peace agreement despite pledges by all three governments to set these up.



The current coalition government committed to addressing impunity in the formal “Policies and Programmes” it presented to parliament on July 9, 2009. It stated:

The national security policy will be formulated in keeping with the suggestions of the Legislative-Parliament and political consensus. The national peace and rehabilitation commission, the high-level truth and reconciliation commission, the high-level state structuring suggestions commission, [and] the commission for the investigation of the disappeared will be constituted/re-constituted. The act of monitoring the implementation and compliance of the understandings and agreements will be done by the national peace and rehabilitation commission.<sup>[1]</sup>

Prime Minister Madhav Kumar Nepal in his address to the UN General Assembly on September 26, 2009, reiterated that the government “was determined to” set up a commission to investigate “disappearances.”

During its time in power, the UCPN-M in November 2008 released the Disappearances (Crime and Punishment) Bill, but the bill was never tabled and discussed in the parliament. Provisions in the Bill—including the definition of enforced disappearances and the punishments provided for violations—fell short of international human rights standards, contravening a June 2007 Supreme Court judgment directing the government to enact legislation that would criminalize enforced disappearance in line with international standards. After the session of parliament was closed, the UCPN-M government in February 2009 passed the bill as an ordinance.

Despite strong condemna-

tion from national and international organizations, the then government went ahead with the promul-

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gation. However, amid the political crisis, the ordinance was not endorsed by the next session of par-

liament and it lapsed. At this writing, a new draft of the bill is on the verge of being presented again to parliament. A group of national and international human rights organizations have issued a strong joint appeal to bring the bill fully in line with international standards.

The organizations proposed a number of amendments to the draft of the bill, including:

- ▶ Defining “enforced disappearance” consistent with the internationally recognized definition and in recognition that, under some circumstances, the act of enforced disappearance amounts to a crime against humanity;
- ▶ Defining individual criminal liability, including responsibility of superiors and subordinates, consistent with internationally accepted legal standards;
- ▶ Establishing minimum and maximum penalties for the crime of enforced disappearance, and for enforced disappearance as a crime against humanity;
- ▶ Ensuring the independence, impartiality, and competence of the Commission;
- ▶ Ensuring that the Commission is granted the powers and means to effectively fulfil its mandate;
- ▶ Ensuring that all aspects of the Commission’s work respect, protect, and promote the rights of victims, witnesses, and alleged perpetrators;
- ▶ Ensuring that the recommendations of the Commission are made public and implemented.

An important aspect of the Comprehensive Peace Agreement (CPA) of November 2006 was a promise to create a Truth and Reconciliation Commission (TRC) to, in the words of the document, “investigate those accused of serious

violations of human rights and crimes against humanity during the course of the armed conflict and develop an atmosphere for reconciliation in the society.”

Some TRCs have been helpful in acknowledging the grievances of those affected by conflict or repression. So long as such a commission is viewed as a complement to justice efforts, not a substitute for them, and does not lead to amnesties for serious human rights abusers, it could assist the peace process in Nepal. Many of the extrajudicial and other unlawful killings and disappearances listed in this report are largely unexplained, leaving the families of victims yearning not only for justice or reparations, but for truth and, ultimately, reconciliation. The creation of a TRC could be an important step in this process. Unfortunately, the current parliament has been almost totally paralyzed since it came into being after the April 2008 elections and has not considered many legislative initiatives.

In the absence of independent bodies such as a Disappearances Commission or a TRC which would normally make recommendations for compensation and other forms of reparation to the victims, some reparation initiatives are underway. However these are informal and decisions to award compensation are being made without law or standards to guide them.

Under the Common Minimum Program of the Maoist-led government, a decision was made by the government to compensate, “victims of conflict and those who suffered during the People’s Movement, People’s War and Madheshi agitation.” As a result, a process has been put in place where people can make appli-

cations solely based on a reference from their Village Development Committee. Non-governmental organizations (NGOs) like Advocacy Forum have assisted victims and their families to receive the interim relief of NRs100,000 (US\$1,307) provided by the government to conflict victims. NGOs help victims by drafting applications, getting their case registered in the District Administration Offices (DAOs), and opening bank accounts. However, reports from Advocacy Forum staff and other non-governmental sources in some of the districts, especially Bardiya, show that the disbursement of the interim relief has not been impartial. These reports suggest that most of the victims receiving the money have been members of influential political parties. On several occasions, Advocacy Forum expressed its reservations that governmental reparation policies and schemes of economic assistance and relief for conflict victims would not be comprehensive. Furthermore, as highlighted in the “Update on Pending Cases” chapter of this report, some families are not proceeding with litigation fearing that it may affect their requests for compensation under this scheme.

The National Human Rights Commission (NHRC) is mandated to investigate alleged violations of human rights. However, it has repeatedly expressed concern about the lack of implementation of its recommendations by successive governments. At this writing, the Commission is awaiting information on whether its recommendations have been implemented and in particular, whether compensation it recommended has been provided.

There is a need for appro-

priate and fair mechanisms to identify who is entitled to reparation and ensure there is no political manipulation or duplication. The lack of clarity is confusing families and is stopping them from taking further legal action, as explained above. Others continue to wait for the government to pay compensation recommended by the NHRC and are confused about whether or not the compensation they applied for and/or received from the government will jeopardize this.

Despite the lack of accountability as a result of police investigations and the government’s failure to provide adequate compensation, relatives of victims are continuing to file FIRs. In the last year, another 16 FIRs have been filed, bringing the total number of FIRs filed with the help of Advocacy Forum so far to 65 concerning 77 cases.

Extrajudicial executions by the police and APF continue, especially in the southern Terai region where there is continuing political unrest in the ethnic minority Madheshi community, with a rise in crime and villagers taking the law into their own hands.

Once again, the relatives of the victims are facing familiar obstacles: police are refusing to file FIRs, police are not taking bodies for post-mortem examinations and, when they are, the hospitals are not providing families access to post-mortem reports.

Unless and until Nepal’s political leadership puts in place and implements a comprehensive plan to address impunity, including prosecution of those responsible for crimes and compensation for affected families, victims and their relatives will continue to wait for justice.

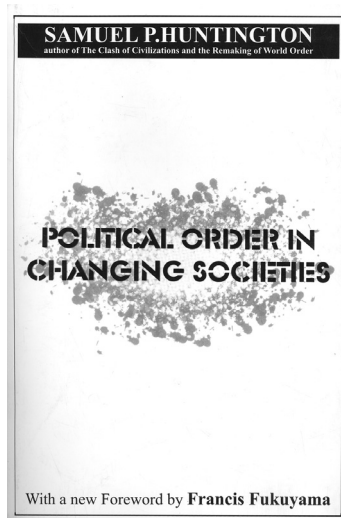
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# Political Order in Changing Society

As a time when the country is passing through transitional phase and seeking political discourse, the second edition of the book *Political Order in Changing Society* has come up. The edition that come up exclusively for India and Nepal has covered the Foreword by Francis Fukuyama.

The book is very relevant at present context of Nepal as the country has been seeking political discourse. Divided into seven chapters the book gives comprehensive picture of political order in changing societies. The first chapter of the book *Political Order and Political decay* deals with the Political institutions especially social forces and political institutions, criteria of political institutionalization and political institutions and public interest. Similarly second part of the chapter deals with *Modernization and Political Decay*. In the sub-chapter *Political Stability : Civic and Praetorian Politics*, the writer argues that modern polities are in some measure distinguish from traditional polities by their level of political participation. If we relate this statement in Nepalese context, there was sizeable number of women in the constituent assembly for the first time in the parliamentary history of Nepal.

In the second chapter *Political Modernization : America vs Europe* the writer describes about three patterns of Modernization, rationalization of authority, differentiation of structure, Tudor Institutions and Mass Participation and Tudor Polity and Modernizing



Societies.

In the third chapter the writer presents views on *Political Change in Traditional Politics*. The writer presents views on *Power, Institutions, and Political Modernization, Traditional Political Systems, Policy Innovation : Reform vs. Liberty, Group Assimilation ; Pluralism vs. Equality and The King's Dilemma : Success vs. Survival*. In 1957, to be sure, in terms of per capita income, both the richest country in the world (Kuwait, \$ 2,900) and the poorest (Nepal, \$ 45) were ruling monarchies. But the general pattern is quite different. Eight of the 14 traditional monarchies have per capita national incomes of \$ 100 or less; four ranked between \$ 100 and \$ 200, only two had per capita incomes over \$ 200.

Fifth chapter of the book deals with *Revolution and Political*

*Order*. The writer deals with modernization by revolution, institutional and social circumstances of revolution, the city and Revolution and peasants and Revolution among others. The sixth chapter deals with *Reform and Political Change*. The writer deals with *Strategy and Tactics of Reform: Fabianism, Blitzkrieg and Violence, Reform: Substitute or Catalyst and The Politics of Land Reform*. The writer writes in terms of an overall reform program, one can, however, make a logical case for a blitzkrieg strategy. In the sub-chapter *Reform: Substitute or Catalyst* the writer writes *The twentieth century revolutionaries, however, have become increasingly dubious about Lenin's modified catalyst theory of reform*. The failure of Marxist expectations in the developed societies of the west has made it difficult to believe that revolutionaries can have reforms and their revolution also.

In his concluding part the writer describes the role of political party for political stability. In this chapter the writer writes that societies with highly developed traditional political institutions may evolve to higher levels of political participation through the adaptation of those institutions.

In his foreword Francis Fukuyama evaluates the book as, "Samuel Huntington's *Political Order in Changing Societies* was perhaps the last serious effort to produce a grand theory of political change. Since then, there has been a good deal relatively useful middle-range theory related to issues like democratic transitions, institutional design and specific regions, as well as somewhat less useful mathematical models coming out of rational-choice political science."

Informal Desk

# Diarrhea Outbreak

**I**NSEC record shows the death toll of diarrhea is 464 in 18 districts of Mid and Far Western Region from April 30 to September 18. The Jajarkot district, where the disease spread at first, is one of the remotest parts of the country and areas where the diarrhea outbreak occurred is quite remote and least developed of districts. The disease spread from Jajarkot to neighboring districts of Mid and Far Western Region turning it into an epidemic. The reluctance of the medical personnel to serve in remote districts, along with persisting problem of illiteracy, malnutrition, poor maintenance of water resources, food shortage compounded by long dry spell added to exacerbation of the situation. Nepal government claimed that as the problem is now abating and health posts are being merged.

## November 6

Informal Sector Service Centre (INSEC) and Consumer's Rights Protection Forum (CRPF) have raised concern over the report made public by the government on quality of food distributed in the mid and far west areas affected by the diarrhea outbreak. Saying that the committee formed to probe quality of food adopted wrong measures, the rights bodies questioned fairness of the report at a press meet in Kathmandu on November 6.

The panel headed by Joint-Secretary of Ministry of Local Development Dinesh Thapaliya had stated that the WFP distributed food met quality.

INSEC and CRPF challenged the report as the government panel has not clarified from where it collected samples for quality test and date of distribution of food on which it conduct-

ed test. Rights bodies also questioned about the independence and impartiality of the investigation process as the WFP, which has been distributing substandard food, and the government, which has the responsibility of monitoring, completed the investigation process to cover their own mistakes.

## October 28

National Human Rights Commission has stated that substandard food was distributed in diarrhea-hit districts of Mid and Far Western Regions.

A investigation report about the death of people due to diarrhea and cholera in Mid and Far Western Regions and distribution of food released by NHRC, national rights watchdog, on October 28 has stated that it has been found that inedible food was distributed in affected places, no matter whatsoever the reason of the outbreak of the epidemic was. UN WFP has been distributing food in these districts since last 40 years.

The report further said that the food samples collected by NHRC in Jajarkot district were found substandard in a test at Food Technology and Quality Control Department.

## October 26

State Minister for Health and Population Khadag Bahadur Basyal Sharki has claimed that cholera outbreak had turned into epidemic in hilly districts of Mid-western Region due to wrong reporting of doctors.

## September 15

Government sent a team to the districts affected by recent diarrhea epidemic to assess the causes and the standard of food distributed by WFP.

## September 9

INSEC issued a statement expressing strong reservation over the allegation of DEPROCS Nepal that food distribution was stopped in Jajarkot district after INSEC raised concern over the quality of food distributed by the organization.

The news report published in Annapurna Post and The Himalayan Times dailies on September 9 quoted Jagat Dutt Pant of WFP's partner organization DEPROCS in Jajarkot as saying that food distribution was stopped in the district after INSEC raised question about the quality of food distributed in Jajarkot district.

## September 7

NHRC organized an interaction programme among the stake holders on September 7 to discuss the issue of WFP food quality. Speaking at the program, Chief Commissioner of National Human Rights Commission, Kedarnath Upadhaya has opined that a judicial commission should be set up to investigate whether the food distributed in the Mid and Far Western Regions is also a cause of diarrhea. Another commissioner of the Commission Gauri Pradhan said that the Commission will carry out further investigation on the issue. Chairperson of INSEC, Subodh Raj Pyakurel said that many media carried out news reports in the past as well about the food distributed by WFP. Representative of World Food Program Lila Raj Upadhaya said the food is being distributed after meeting the quality set by the Nepal government and added sample collection process is a technical one and the quality test was below the standard claiming there was no ground to say that the WFP-distributed food is substandard.

## September 4

Richard Ragan, Representative of WFP wrote a letter to Subodh Raj



Pyakurel, chairperson of INSEC. The letter further states " You also reference in your chronology issues around alleged sale of WFP food. I 'm not sure why you have raised this issue since it has little to do with either human rights or the epidemic".

WFP issued a statement saying its country director Richard Ragan had received a letter from the government as refuting the claim of WFP-distributed food being cause of diarrhea outbreak in Mid and Far Western Region. Saying that the government had commended the WFP claim and efforts on quality control regarding food and attempt to distribute quality food in remote area, WFP statement added the government had informed about formation of a committee to investigate into the questions raised by civil society.

INSEC learnt that in Jajarkot district, Rural Infrastructure Development Program, a local NGO, destroyed 270 kg rice supplied by WFP to distribute under Food for Work Program on August 9 after the food was found rotten and not consumable. The rice was destroyed in presence of official of WFP Regional Office Nepalgunj Anil Rupakheti after the food stored in a depot in Sima VDC-8. GTZ, another partner organization of WFP, dumped 16 quintals of lentil stored at the godown in Deshara VDC-8 Tahal in Cheda River after it was found substandard. The Department of Food Technology and Quality Control had dispatched a team led by food inspector Bhesh Bahadur Thapa on August 21 to inspect the quality of food distributed by WFP under Food for Work Program. Local journalists and rights defenders claimed that the visit of food inspector is irrelevant as the partner organizations of WFP had already destroyed the substandard food.

#### **August 27**

A team of CA members led by Humla CA member Karnajit Budhathoki held a press conference in Birendranagar of Surkhet on August 26 after its visit to the diarrhea-hit Kalika

VDC of Humla. At the press conference, CA member Budhathoki said that though there were news articles saying the people had got diarrhea from rotten meat, the team did not find anybody consuming meat around that time in Kalika VDC. The team concluded that consumption of rotten rice distributed WFP was responsible for the outbreak. Budhathoki added that the team found that the rice seemed inedible with color changed into green.

#### **August 25**

WFP Nepal country director Richard Regan said that WFP was ready to stop distribution of food if Nepal government says that it is not upto the standard. WFP communications officer Heather Stuliff stated that her office was working in coordination with all the concerned government ministries but spokesperson of Ministry of Agriculture and Cooperatives Dr Hari Prasad Dhakal said that there was no coordination with his Ministry and that decision process of procurement and distribution of the food items is not transparent.

#### **August 24**

Consumers Rights Protection Forum (CRPF) made public the report of quality test of the samples of food items collected in Jajarkot at a press conference in Kathmandu. Saying that the rice was so decayed that its color has changed, the Department of Food Technology and Quality Control said the food is not consumable for animals and birds as well.

World Food Program has suspended food distribution in Jajarkot district. According to DEPORCS Jajarkot head Kusum Kishor Bhattarai, the distribution was halted from second week of August after INSEC raised the issue of food quality.

#### **August 20**

Senior food technologist Pramod Koirala of Department of Food Technology and Quality Control said that WFP has been ignoring the Department's direction to import rice

accompanied with certificate of food quality, certificate informing whether it is genetically modified or not, clarifying the standard of rice. The direction was issued in writing on June 1, 2008 asking WFP to buy rice in the presence of food technologist and distribute it only after testing the quality. The quality of the rice that was tested by Department after receiving it for testing from Consumers' Rights Protection Forum is similar to the quality of the rice that was stopped from entry to Nepal in Bhairahawa on June/July of 2009. On that incident, the Department had stopped import of 16.5 tones of rice for being sub-standard in quality.

#### **August 20**

Department of Food Technology and Quality Control found that the samples of the food collected in Jajarkot were inedible.

WFP informed that it would file a case against INSEC after INSEC charged that WFP-distributed low standard food had caused diarrhea in Jajarkot district. Claiming that there was not wrong with the food distributed by WFP, its Bheri-Rapti coordinator Kishor Bhandari said INSEC Chairperson would be dragged to court for making baseless charge. He also challenged to prove that the food distributed by WFP was of sub-standard quality.

#### **August 15**

INSEC handed over the food samples collected in Jajarkot to CPRF to be tested for their quality after making them public at a report release program.

INSEC released a monitoring report on diarrhea outbreak of Mid-Western and Far-Western Regions where INSEC chairperson Subodh Raj Pyakurel said rigid tradition, people choosing domestic treatment and shamans over modern treatment, no maintenance of the water resources damaged during the conflict, the compulsion of the people to drink polluted water from dirty water tanks and sub-

standard quality of the food are the causes for the outbreak of diarrhea.

#### **August 13**

The World Health Organization, country office for Nepal, has denied that WFP rice, edible oils and lentils had caused the outbreak of cholera in the mid-west hills of Nepal.

#### **August 9**

INSEC Mid-Western Regional Office, Nepalgunj conducted a fact-finding mission in Jajarkot from August 4 to August 9 to collect the samples of rice and pulses distributed under the 'Food for Work' program.

#### **August 6**

United National Office of the Coordination of Humanitarian Affairs publicized a report on the diarrheal outbreak in the Mid-western region on August 6. According to the report, the death toll in 115 VDCs of 17 districts had reached 223 till now. It also said that the number of districts reporting diarrheal cases were on the rise.

INSEC Far-Western Regional coordinator Khadak Raj Joshi issued a statement asking all the concerned bodies to seriously take steps to resolve the problem of diarrhea which spread to the districts Far-West from Mid-West.

#### **August 4**

WFP Nepal's communications officer Heather Sutliff said that even if the rice is rotten, nothing will happen if the people know how to use it properly, otherwise people will suffer from diarrhea. She added that if people use unclean hand to eat and use the food without washing, they might get cholera. She also denied that food distributed by WFP had caused cholera in the Mid-Western Region.

Appellate Bar Association, District Bar Association, Informal Sector Service Centre (INSEC), Nepal Bar Association Human Rights Project, Advocacy Forum, HimRights, KIR-DAC, Human Rights Council, RRN, Nepal Human Rights Association, Human Rights and Peace Society and

Human Rights Protection Forum among other human rights organizations urged the government to test the food distributed in the remote districts of mid-western region by World Food Program (WFP).

National Human Rights Commission (NHRC) demanded for the identification of the causes of diarrhea spread in the districts of Mid and Far West Regions and asked for steps to contain the disease and action against the individual or organization responsible for the spread of the disease. Releasing its report, NHRC demanded for a special investigation committee and publicizing of the facts.

#### **August 3**

Supreme Court has issued an interim order in the name of the government asking it to check the spread of diarrhea outbreak by immediately managing medicines and health personnel. The order was issued saying that the government had neglected containing the contagious disease.

The UN World Food Programme (WFP) and World Health Organization (WHO) deny the allegations made by chairperson Subodh Raj Pyakurel of the Informal Sector Service Centre (INSEC) that WFP rice, edible oils and lentils have caused the cholera outbreak in the Midwest of Nepal. This is an unscientifically proven statement that could further endanger the lives of people who may decide to skip or reduce desperately needed food in a misguided attempt to protect themselves from this outbreak. Spreading false information that food is the source of cholera contamination will only put more lives at risk.

#### **August 2**

INSEC Mid-Western Regional Office released a report on the diarrhea outbreak spread in the region. Speaking at the program, INSEC chairperson Subodh Raj Pyakurel said that the sub-standard quality of food distributed World Food Program as aid was also responsible for worsening situation of

diarrhea outbreak. He further said that the lack of basic information regarding diarrhea, rigid tradition, severe drought, defecating in the open, malnutrition and indifference towards reconstruction of drinking water sources destroyed or damaged by the Maoists during the conflict had also aggravated the situation. He also demanded for the quality test of the standard of the food being distributed under WFP project. Former INSEC chairperson and former NHRC commissioner Sushil Pyakurel said that the transfer of CDOs for their inability to fulfill the duty without taking action was impunity.

#### **July 31**

A parliamentary sub-committee has been set up to monitor the government efforts in diarrhea-hit area. The parliament's Women, Children and Social Welfare Committee had formed the 11-member sub-committee with CA member DB Karki as the coordinator.

#### **July 8**

INSEC Mid-Western Regional Office, Nepalgunj issued a statement expressing concern over the increasing diarrhea death toll. The statement said 88 persons in Jajarkot had been killed and asked the government for finding out the cause of the disease and controlling it.

#### **June 4**

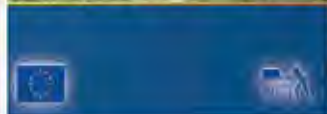
Diarrhea outbreak came to notice for the first time with 21 villagers dying by June 3. Media reports said a team of health workers led by Chief of district health office Jajarkot Dr Krishna Hari Subedi went to affected areas during third week of May but seven more died after the team returned and claimed that the outbreak was under control. The villagers reported they were taken ill after consuming rice and pulses distributed by DEPROCS Nepal under WFP project adding the rice was rotten and powder-like and pulses are very hard to be cooked.

(Visit [www.inseconline.org](http://www.inseconline.org) for detailed report)



## Livelihood at Risk

Findings from Mid-western Nepal



## Land Holding Pattern

in Mid-western Nepal



नेपाल

सुरक्षासम्बन्धी कानुनी प्रावधान



मानव अधिकार संरक्षण केन्द्र  
मानव अधिकार संरक्षण केन्द्र

अन्तराष्ट्रिय

फौजदारी अदालतको

रोम विधान



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