

# INFORMAL

Vol. 30, No. 3, July-September 2010



**Nepal's First Review Under the  
UPR in 2011**

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## Implement the Recommendations That Are Made Following the Review

**T**he Universal Periodic Review (UPR) is an innovative mechanism under the UN Human Rights Council. It assesses all the UN member states' adherence to human rights norms and functions on an equal basis with a philosophical basis that through this process a genuine dialogue will be created among nations and best practices will be shared. Nepal is being reviewed under the Human Rights Council (HRC) in January 2011. Towards this end, NGOs and National Institutions have already submitted their report to the HRC and the Government of Nepal has made its draft report public.

This particular issue of *INFORMAL* deals with Nepal's review under the UPR, especially, by considering the report preparatory phase, the role of Nepali NGOs in the overall process of review and the implementation concerns of the recommendations. INSEC, as a secretariat of the coalition of 235 NGOs for the purpose of drafting the NGO report for the UPR, has actively involved in the overall process of report writing and submission.

Undoubtedly, Nepal does have various human rights concerns and problems. We believe that the NGOs, especially those working in the field of rights issues, can and should have crucial roles in mitigating and solving them. The review will be a process and platform to provide opportunity to Nepali NGOs, though there is only nominal space for them in the process, to internationalize the human rights concerns of Nepal. In the mean time, this process is an opportunity for Nepal to express or reiterate its commitment for a better human rights situation in the country. Besides, the state can extend or consolidate diplomatic roles and relations through this process as well. The issues like constitution writing, succeeding peace process, ratifying international instruments like the Disappearance Convention and acceding to the Rome Statute are very urgent issues at hand. However, it doesn't mean that the other concerns raised by NGOs and National Institutions are less weighty.

The UPR, being itself a state-to-state or state-driven process based on persuasion and gradual change, it is highly likely that the government of Nepal might try to shy away from presenting true realities during the review. Nepali NGOs, in this connection, should play the role of the watchdog in the whole process of the review, instilling a sense of accountability and honesty in the government. At the same time, NGOs have to urge the government to explore the ways in which recommendations of the outcome document can be implemented at least by the time Nepal is reviewed next time after four years. Failure of Nepali NGOs to properly shepherd the process before, during and after the review will increase the chances that problematic human rights issues are reviewed but, remain as they are following the review. If such situation prevails, it puts the government at ease not compelling it to adopt proper measures for improving the human rights situation in the country.

The NGO Coalition Submission and preliminary draft prepared by the government have perceived the same issues differently. The comparative presentation of the issues on the ensuing pages shows clearly how things have been differently perceived. So, it is highly likely that the state will overplay the rhetoric and downplay the application or implementation of the recommendations. In such situation, grievances of civil society will remain unaddressed. NGOs, so, have to devote their fullest attention to make the government realize that the UPR is more than a ritualistic process. As it is a new mechanism, the NGOs have to endeavor to bring the issue to public attention primarily because the recommendations in the outcome report of the review do have far reaching implications in the lives of ordinary people. So, people have to be informed about the significance of the UPR through media mobilization and other means.

Similarly, there are several formal and informal entry points for the NGOs before and during the review process. The Nepali NGOs have to be able to utilize these points by collectively lobbying with the OHCHR, troika, and the reviewing and the observer states. Hopefully, the review process will provide the outcome as expected by the civil society in Nepal and the Government of Nepal will implement the recommendations that are made following the review honestly.

# Nepal's Review under the Upcoming Session of the Universal Periodic Review



» Govinda Sharma Bandi «

*The UPR is a newly introduced human rights mechanism under the Council, a subsidiary body of the UN General Assembly, which primarily aims to review the compliance of human rights obligation of each and every members of the UN.*

## Introduction

The 10<sup>th</sup> session of the Universal Periodic Review (UPR) under the Human Rights Council of the UN (hereinafter the Council) is going to review Nepal in Geneva in January 2011. The review session will take place in the *Pale de Nation*, the human rights headquarters of the UN. The UPR is a newly introduced human rights mechanism under the Council, a subsidiary body of the UN General Assembly, which primarily aims to review the compliance of human rights obligation of each and every members of

the UN.<sup>1</sup>

Nepal is a party to the key international human rights instruments including the Bill of Rights. The treaty bodies and special procedures under the UN have made various recommendations and observations on its compliance to those commitments. However, due to the lack of a proper follow-up mechanism, these recommendations have had a very limited impact. In this context, the UPR is particularly important as it will reinforce the implementation of the findings that have been made by the various other UN mechanisms. Therefore,

the January session of the Working Group of the UPR is being considered as a new hope for the protection and promotion of human rights in Nepal. Nevertheless, the UPR, as an inter-governmental process, remains inherently political. Therefore, it has only a limited capacity to offer specific recommendations.

A joint coalition submission by 235 Nepali NGOs, a joint submission by National Institutions and a couple of individual submissions by INGOs on the national protection of human rights were submitted to the Working Group of

<sup>1</sup> Resolution adopted by the UN General Assembly in its 72nd plenary meeting in which the UPR was created to be based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States. For details see GA Res. 60/251, UN Doc. A/60/L.48.

the UPR in July 2010. The government of Nepal has also conducted a series of consultations and has prepared a draft report incorporating its efforts to realize its human rights obligations. However, the state report is yet to be submitted. The OHCHR which is responsible for compiling and summarizing the stakeholders' submissions is also to prepare a separate report. All these reports play a key role in the review process.

While majority of the stakeholders' reports highlight the need for accountability for human rights abuse, ending impunity, the ongoing peace process, public security and structural discrimination as the key issues for the UPR to examine; the UPR will also look into the entire human rights obligations of Nepal. During the review in January 2011 a number of noteworthy issues will be discussed regarding the human rights situation in Nepal. Furthermore, the government will have to answer to the international community as to why it has not been able to comply with the commitments that it has already made.

This article primarily aims to discuss the process of the UPR, the preparation for the upcoming session and the issues to be raised during the review. Firstly I will briefly discuss the objective, mandate process and challenges of the UPR. Secondly, I will discuss the issues and the human rights concerns that have been raised by the various submissions and reports including the draft report of the government of Nepal. Finally, I will suggest some strategies for using

*During the review in January 2011 a number of noteworthy issues will be discussed regarding the human rights situation in Nepal. Furthermore, the government will have to answer to the international community as to why it has not been able to comply with the commitments that it has already made.*

this mechanism effectively during and after the review.

### **Function and Mandate of the UPR**

The primary objective of the Council is to effectively promote the universal protection of human rights. This includes, amongst others, to addressing and preventing human rights violations, developing international human rights law, reviewing the compliance of human rights by the member states, responding to emergency situations and to providing an international forum for dialogue.

In order to fulfill the mandate of the Council, the General Assembly (GA) created the UPR and tasked it to review the compliance with the human rights obligations of the member states. According to the resolution concerning the institutional building of

the council, all 192 UN members are reviewed over a 4 year cycle<sup>2</sup>. This involves reviewing 48 states a year spread over 3 review sessions each of 2 weeks. The review is conducted by the Working Group consisting of all 47 Council members. The non-members and the observer states are given a chance to speak during the Review.<sup>3</sup>

The power, functions and mandate of the Council are almost similar to that of the Human Rights Commission (Commission), which was replaced by the Council in 2006. While the Commission focused too much on certain regions and was highly affected by the interest of some powerful states, the UPR process is designed to be applied universally and uniformly. The UPR, therefore, is a great opportunity to the member states, NGOs and the international community to ensure that human rights are respected and protected around the world.

The main function of the UPR is to review the fulfillment of every State's human rights obligations and commitments, irrespective of the State's political, economic and cultural systems, it has the potential to become an extremely important mechanism. The Council has to ensure that the states protect and promote all human rights and fundamental freedoms without any distinction and in a fair and equal manner. However, the practice of the previous review suggests that the Working Group is not quite comfortable in making specific recommendations on the cases of human rights violation or a country situation. Rather, they

2 HRC Res. 5/1, UN HRC OR, 5th sess, Annex [IC], UN Doc. A/HRC/RES/5/1.

3 HRC Res. 5/1, UN HRC OR, 5th sess, Annex [18(a & b)], UN Doc. A/HRC/RES/5/1.

seem pretty happy to call upon the governments to accede to, withdraw the reservations from or ratify the international human rights treaties. This simply means that the UPR has also failed, as the other UN mechanism did, to make concrete efforts for the protection and promotion of human rights on the ground. This seems to be the biggest challenge for the UPR process and Nepal's review as well.

The effectiveness of the UPR process is yet to be examined, as the first round of the review is still going on. A preliminary assessment may be done when the first cycle is over and the process will be reviewed by the Council in 2011 as a part of the review of the functioning of the Council itself. However, it might take a few more years to do an objective and comprehensive assessment.

### The Review Process

The review process of the UPR has three major events. Firstly, a three hour session will be spent discussing the human rights situation in Nepal. Secondly, a half hour session will be allocated for the adoption of the report of the discussion by the working group and finally a plenary meeting of the Human Rights Council will adopt a number of recommendations concerning Nepal's obligation to protect and promote human rights at a domestic level. The Working Group will review the situation of human rights in Nepal during a three-hour long session where a high level delegation from Nepal will introduce its official report and the members of the Working Group will raise

issues, concerns and questions. These questions are mostly based on the background information submitted by various stakeholders including the NGO submission. This is why the stakeholders' submission is very important in the UPR process.

The second step is the adoption of the report by the Working group. This step is very important in terms of the further adoption of the report by the plenary of the Council. It is generally done within the first two weeks of the review but not before 48 hours of the review. In Nepal's case, this is expected to

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be done in the first week of February. The third step involves the adoption of the report over a one hour session at the plenary level of the Human Rights Council during its regular session. This is the time when NGOs are given an opportunity to make oral intervention. The Nepali NGOs in collaboration with other international NGOs are currently trying their best to optimize this opportunity during the review process.

Both the first and second sessions are public events and the NGOs can observe the process. However, the NGOs are, unless the state under review gives permission, not allowed to make any interventions during either session. Therefore, some of the international NGOs and some member states are keen to review the UPR process itself so that its effectiveness can be evaluated and an agenda for further reform would be possible. Hopefully, the UPR process itself will be reviewed by the Council in 2011 after the completion of the first cycle of the review. Until then, let's wait and see how effective and different the UPR will be in comparison to the other traditional UN mechanisms on human rights.

### The Draft Report of the State

As stated above, the Government of Nepal is yet to submit its report. So, it is not possible to make any comment at this stage. However, the Government has shared a draft version of the report which has been prepared by a report preparation committee formed by the Government of Nepal.<sup>4</sup> The Committee consulted the govern-

<sup>4</sup> The committee was formed under the convenorship of the secretary (law) at the Office of the Prime Minister and Council of Ministers and comprised representatives of relevant Ministries as its members.

mental and national institutions and some civil society actors including the media and NGOs while collecting the information to be incorporated in the report.

The draft report prepared by the state is a typical state report giving all the demographic details and historical background of Nepal. It provides detailed information relating to the normative framework of the protection of human rights. The issues and concerns like the Bill of Rights included in the constitution. Similarly, the creation of national institutions, the legislative framework against discrimination, the protection of minority rights in the constitution, non-derogable provisions on some of the rights in the constitution are the other issues raised in the report. The power of the judiciary on judicial review, the governmental plan and policy against discrimination, the issue of domesticating the international law and the judicial activism to protect human rights are also discussed in the draft report. In other words, the state report only talks about the positive developments and the best practices; it has tried to conceal the systematic human rights violations. Interestingly, the state report recognizes its failure to realize the economic social and culture rights to some extent. It seems that the government is trying to use this process as an opportunity to get technical cooperation and international assistance for development projects.

The draft report deliberately covers up the government's failure to implement the provision of the international treaties which it is party to and also conceals the non-implementation of the recommen-

*In other words, the state report only talks about the positive developments and the best practices; it has tried to conceal the systematic human rights violations. Interestingly, the state report recognizes its failure to realize the economic social and culture rights to some extent.*

dations of the UN mechanisms. The report has also failed to clarify the status of impunity in the country. The unwillingness of the government to establish accountability for past human rights violation, to maintain the rule of law and public security, to eliminate discrimination particularly on the basis of caste, gender, language, religion and geographical ground is disappointing. Nevertheless the process that the government has followed while preparing the report is commendable.

#### **Stakeholders' Submission on Nepal's Review**

As mentioned above, a coalition of 235 Nepali NGOs made a joint submission on 5 June 2010; it is probably the biggest coalition submission to the Working Group of the UPR made so far. The joint submission was prepared by three coalitions namely Nepal NGO Coalition for UPR, National Women Coalition and Durban Review Conference Follow-up Committee Nepal comprising of 235 civil society organi-

zations altogether. The NGO coalition held a series of regional, national and thematic consultations with relevant stakeholders including the government and national institutions before making the submission. The coalition submission also includes two different thematic submissions of the DRC Follow-up Committee and Women Coalition as an annex to the main submission.

Similarly, a joint coalition submission from the National Institutions comprising of the National Human Rights Commission, the National Women Commission and the National Dalit Commission has also been made within the time frame determined by the OHCHR. Furthermore, some international human rights organizations including ICJ, AHRC, Amnesty International and Save the Children have also made individual submissions to the Working Group regarding Nepal's human rights situations.

Both the NGO coalition and the coalition of National Institutions have consulted various groups, such as the representatives of the political parties, the development and security agencies, the human rights NGOs, the women and Dalit human rights network, the indigenous/marginalized communities, CSO, academia, media and human rights defenders. Both the coalitions have also conducted various thematic, geographic and national level consultations while collecting the information and finalizing the submission. Although the government has not completed the state report, it has conducted a number of consultations and has produced a draft report for public

comment making the UPR process consultative and broader.

Almost all the stakeholders' reports have raised a number of human rights concerns that need to be addressed following the review of Nepal under the UPR. The report submitted by the NGO Coalition is focused on impunity for human rights violation and discrimination related issues. The stakeholders' submissions cover the concerns encompassed by both civil and political Rights and economic, social and cultural rights. The issues raised by the stakeholders submission includes, among other, impunity, the rule of law, public security, the independence of the judiciary, transitional justice, the peace and constitution making process, accountability for human rights violations, the independence of the judiciary, non cooperation with the national institution and the UN mechanisms and disregard for orders of the court. The submission also highlights the realization of rights of Dalits, Madheshis, Muslims, persons with disability, the right to life, liberty and security, the right against torture, freedom of expression, assembly and opinion, the freedom of the press and the protection of human rights defenders. Similarly, the submission raises concerns over the right to land, the right to food, the right to health and the right to education. The Nepal NGO coalition submission also identifies the right of the indigenous people to natural resources, land, language and culture. Furthermore, the joint submission provides information about the compliance of human rights

with regard to the rights of the child and also women.

## The Key Issues to Be Addressed

### Impunity

Although there have been positive developments since the signing of the Comprehensive Peace Agreement (CPA), the human rights violators in the country are still enjoying impunity. There have been a number of credible studies which reveal the systematic violations of human rights and serious breaches of humanitarian law during the decade-long armed conflict in Nepal. Not a single case has been

*The institutions such as the courts and the police are either weak or are unwilling to fight impunity. This fact has been raised by almost all the stakeholders' submissions. For example, a joint submission by the coalition of 235 NGOs submits that the victims of crimes against humanity, war crimes, extrajudicial killing, disappearance, kidnapping, torture, rape and sexual violence and human rights violations are still waiting for truth, justice and reparation.*

brought to justice. The institutions such as the courts and the police are either weak or are unwilling to fight impunity. This fact has been raised by almost all the stakeholders' submissions. For example, a joint submission by the coalition of 235 NGOs submits that the victims of crimes against humanity, war crimes, extrajudicial killing, disappearance, kidnapping, torture, rape and sexual violence and human rights violations are still waiting for truth, justice and reparation<sup>5</sup>. The ICJ submission has raised two concerns in relation to the impunity prevalent in Nepal. Firstly, the government is undermining the separation of powers and the independence of the judiciary which is a dangerous precedent that will impact on all other attempt to prosecute serious crimes. Secondly, the ICJ is concerned about credible reports regarding the arbitrary use of the security powers, including a pattern of alleged extrajudicial killings in the Tarai region. The ICJ submission further suggests that both de jure and de facto impunity continue due to a number of policies and strategies adopted by the Government of Nepal and the Maoist Party. The joint submission of the National Institutions suggests that the government is not willing to take action against the perpetrators of human rights violations<sup>6</sup>.

In order to address the human rights violations of the past, both parties involved in the conflict agreed to setup a TRC and Disappearance Commission. However, the government of Nepal is making slow progress to adopt transitional justice legislations as

<sup>5</sup> For details see the Joint submission made by national institutions.

<sup>6</sup> *ibid*

agreed in the CPA. In this regard, the stakeholders' submissions draw the attention of the Working Group to the proposed bills on the TRC and the Disappearance commission which are not fully in line with international standards and best practices. The principal concern in relation to impunity is the failure of the state to prosecute the perpetrators involved in serious violations of human rights. If impunity continues there will be no lasting peace. Hence, there is a need to support, strengthen and assist the Nepali state and civil society for investigating and prosecuting the crimes allegedly committed in connection with the armed conflict.

The Nepali NGO coalition has urged the Council to call upon the government of Nepal to urgently enact the legislation promised by the CPA to establish Truth Commission and the Commission on Disappearance and to ensure this legislation complies with international standards. It also calls for the insurance of independent and prompt investigation of the cases of human rights violations and serious crimes committed during the period of armed conflict. It further calls for securing the independency of the judiciary by taking urgent action to implement court orders. The submission has also demanded immediate reparation to the victims of armed conflict and the introduction of a comprehensive institutional reform programme to prevent the recurrence of such crimes.

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The ICJ in its submission calls upon the Council to recommend that the government conducts prompt and thorough investigations into alleged cases of past human rights abuses. It has also demanded that charges be brought against the persons against whom there is evidence of criminal responsibility- including the chain of command responsibility, to ensure they are brought to justice

before a civilian court.

Therefore, the UPR should be able to address the systematic pattern of impunity in Nepal.

### **Discrimination**

The second serious concern is the issue of discrimination in Nepal. Despite the constitutional guarantee of equality before the law and equal protection of law, discrimination on a number of grounds is systematically practiced in Nepal. There is widespread discrimination against Dalits, Women, Madhesi, indigenous peoples, persons with disabilities, Muslim and other religious minorities, sexual and gender minorities and other marginalized groups. Furthermore these groups continue to be severely underrepresented in most of the public sector including the decision making bodies, the civil service, the judiciary, the law enforcement agencies and the local authorities<sup>7</sup>.

The patriarchal structure of the society continues to discriminate against many women during her marital life; widows are even more vulnerable to being killed or tortured.<sup>8</sup> Despite the existence of several specific legislations and gender based violence in the form of trafficking, rape, domestic violence; sexual harassment remain largely unaddressed.<sup>9</sup> There are 62 existing laws that have discriminatory provision against women. Another 49 laws contain degrading and prejudicial provisions against women.<sup>10</sup>

7 For details see Nepali NGO coalition submission page 2.

8 For details see annex 3 of the Nepali NGO coalition submission.

9 For details see national Institutions joint submission para 45

10 Forum for Women, Law and Development 2009 (FWLD) "Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with Disability"

The Dalit community that lives in many regions of Nepal and practices many faiths is multi-caste and multi-lingual embracing a rich multi-cultural diversity<sup>11</sup>.

Similarly, the Sexual and Gender Minority continue to bear social, economic and political discrimination based on their sexual orientation and gender identity. Madhesi people in Nepal are discriminated against on the basis of color, region, language and socio-cultural identity. There is a major problem with widespread extra judicial killings in the Tarai-Madhes. Similarly *de facto* discrimination against persons with disability still occurs in the field of education, employment, health, housing, and many other areas.

The NGO submissions call on the Council to recommend to the government of Nepal to immediately enact a law to eliminate discrimination, including caste-based discrimination and untouchability, to ensure 'proportional representation', to repel all the discriminatory laws, regulations, rules, directives, policies and programs and to adopt the administrative, legal and institutional measures for the effective implementation of all national and international obligations, policies, programs so that discrimination can be eliminated.

### ***Economic, Social and Cultural Rights***

All three reports have raised the issue of Economic, Social and Cultural Rights. The Nepali NGO coalition submission and the joint

submission of the National Institutions have given significant space to the right to food, the right to health, the right to land and the right to education. The coalition submission calls on the Council to encourage the government to adopt and implement a strong development framework with affirmative policies and implementation commitments for food security, food rights and food sovereignty, the right to health and right to land to the marginalized population<sup>12</sup>. The ICJ submission has also raised a number of issues of economic social and cultural rights. The ICJ is concerned at the lack of significant progress by Nepal in addressing the human rights situation in the country in respect of economic, social and cultural rights<sup>13</sup>. The ICJ calls on the Working Group and the Council to recommend that the government take steps to ensure that the districts that have been badly affected are targeted to receive

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public health information, sanitation supports, water purification supplies and to ensure that sufficient staff and medical supplies are immediately in place.

### ***Implementation of the UN Recommendations***

Despite the fact that various UN mechanisms have recommended the need to domesticate and implement the treaty obligations, the Government of Nepal has made nominal progress to realise those commitments at domestic level. For example, the crimes under international law including the war crimes, crimes against humanity, disappearance and torture are yet to be criminalized. There is no comprehensive human rights protection legislation providing effective remedies for human rights violations. Therefore, almost all the stakeholders' submission raise concerns and call upon the Council to recommend that the government of Nepal fully incorporate international law obligations into Nepali law through the adoption of a Human Rights Act and amend the national legislation that contradicts the treaties that Nepal is party to. It has been suggested that Nepal take necessary measures to ensure that war crimes, crimes against humanity, genocide, and other international crimes such as disappearance, torture, extrajudicial killing, violence against women and the recruitment of children as soldiers are incorporated in the domestic law and that the Constitution guarantee the right to effective remedies.

11 For details see annex 2 of the Nepali NGO coalition submission.

12 For details see the Nepali NGO coalition Submission page 6.

13 For details see page 4 of the ICJ individual submission.

## ***Ratification of International Treaties***

There are a number of important human rights instruments that Nepal needs to ratify. The legislative parliament, the national institutions and various UN mechanisms have requested that the Government of Nepal ratify these instruments. However, the government has not taken any effective measures to be the party to these treaties. Therefore, the Nepali NGO Coalition submission has recommended that international community put pressure on the government to immediately ratify the Disappearance Convention, the Convention on the Right to Development, the Convention on Migrant Workers, the Refugee Convention and the Convention against Trans-national Organized Crime and its Protocols, accede to the statute of the ICC (Rome Statute), ratify the Optional Protocol to ICESCR; the Optional Protocol to CAT and the Additional Protocols to the Geneva Conventions and accept the individual complaints procedure under the international Convention on the Elimination of Racial Discrimination and the Convention against Torture.

## **Conclusion**

As discussed above, the UPR is an inter-governmental process and therefore remains inherently political. However, it is a unique opportunity for Nepal and we should try to effectively use this mechanism for the protection and promotion of human rights on the ground.

The drafting process adopted by the Government of Nepal

*Many of the issues that are raised by the state in the draft report are less concerned with the structural problems witnessed in Nepal, such as the discrimination against women, Dalit and the minorities. The pressing issue of impunity has also not been addressed in the draft report. Rather, the report seems to exaggerate a number of issues. However, the government's commitment towards peace, democracy and human rights is there in the report.*

shows that the Government is willing to work with the civil society; however, the draft report significantly fails to address the prevalent human rights issues in Nepal. Many of the issues that are raised by the state in the draft report are less concerned with the structural problems witnessed in Nepal, such as the discrimination against women, Dalit and the minorities. The pressing issue of impunity has also not been addressed in the draft report. Rather, the report seems to exaggerate a number of issues. However, the government's commitment towards peace, democracy and human rights is there in the report.

The National Institutions' joint submission identifies the

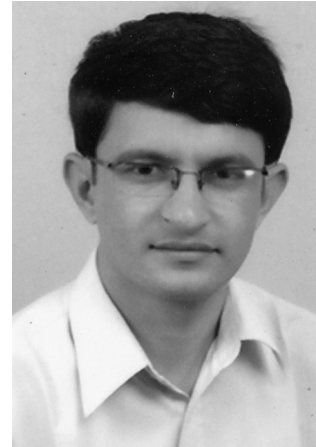
issues of human rights concerns adequately, but it fails to make specific recommendations to the Human Rights Council. The Nepal NGO Coalition submission is more comprehensive and suggests a number of recommendations to be adopted by the Council; however, it is too detailed and raises a number of issues that may not necessarily fall under the mandate of the UPR. The INGOs submissions are particularly focused on the issues they are working on but these submissions are much more UPR- friendly than the other stakeholders' submission.

Nevertheless, the pre-UPR work in Nepal seems very strategic as the OHCHR, the National Institutions, the INGOs, the national NGOs and the Government, to some extent, have worked in collaboration. National consultations conducted by the stakeholders and the government were friendlier than before.

We still have a crucial step ahead. To lobby the troika and members of the Working Group should be top priority. The NGOs need to work more closely and in a collaborative way. Particularly NGOs based in Geneva and Nepal will have to work together to influence the international community during the session of the Working Group.

In terms of the outcome of the UPR process, past experiences are not very encouraging; therefore all the issues raised by the joint and individual submissions may not be addressed as expected. But, it will definitely be able to address at least a couple of issues more effectively than the recommendations made in the past by the other mechanisms of the UN.

# Nepal's Review under the UPR and the Role of Nepali NGOs



» Dipendra Prasad Pant «

*The UPR under the Human Rights Council has also not been taken for granted. It has been suggested that the UPR itself should be reviewed. Many commentators view it as a state-to-state business and very little space is provided to the NGOs. There are grievances that the NGOs have little influence over the outcomes adopted by the Human Rights Council.*

## Introduction

The Universal Periodic Review (UPR) appraises to what degree nations comply with the obligations contained in the human rights instruments which they are party to. Improving the human rights situation on the ground is the objective of the UPR. The members of the UN Human Rights Council and the observer states provide recommendations and suggestions after the three hour review session. Nepal will be reviewed in January 2011.

The member states are reviewed as per the normative bases like the UN Charter, the Universal Declaration of Human Rights, the human rights instruments to which the states are party and the volun-

tary pledges and commitments expressed by the states. The non-discrimination principle of the UNO applies in the process of assessing the human rights situations of the countries. This mechanism is in place under the UN to address the flaws in the Commission of Human Rights- the predecessor of Human Rights Council. The Commission of Human Rights and its assessment mechanism was regarded as flawed. Raising issues like selectivity on the individual country situation and double standards, it has also been critiqued that the commission considered only a small number of countries at its annual sessions and shied away from addressing some of the more pressing situations, often

for political reasons.

The UPR under the Human Rights Council has also not been taken for granted. It has been suggested that the UPR itself should be reviewed. Many commentators view it as a state-to-state business and very little space is provided to the NGOs. There are grievances that the NGOs have little influence over the outcomes adopted by the Human Rights Council. NGOs also have complaint that the UPR process has ignored them. Resolution 5/1 states that NGOs and NHRIs may make general comments before the adoption of the report but, generally, it is too late to exercise any influence and this provision is only a formality. However, the submission of report

by the NGOs is an opportunity. Through the submission NGOs provide the true reality of the country providing counter reference to the Human Rights Council. This article has tried to examine the role of Nepali NGOs in between the submission of the report and after the review.

### **Before and during the Review**

Nepali NGOs had a broad civil society contacts to the UPR process. A coalition of 235 NGOs working in Nepal had prepared the report. Earlier to the preparation, sufficient consultations and interactions were held through the network of the coalition. It is quite necessary to hold regular meetings among the coalition partners and with the government contacts in between submission and the review. The NGO Coalition submission and the submissions by the National Institutions have included so many issues. However, the NGOs' collective efforts and lobbying is necessary for a fruitful outcome.

It is possible that the government might manipulate the information included in the NGOs submission while defending themselves during the review. Such possibility remains there primarily because the report submitted by the NGOs and the preliminary report released by the government see the realities and situation of Nepal differently.

During the review, NGOs participation is important. Their participation demonstrates civil society's presence and certainly mounts moral pressure on the Council members and the observer states to question and recommend

*Despite the fact that Nepal has a weaker economic status, it has to be assessed on an equal footing with many other richer countries. It is too expensive for Nepali individuals from civil society organizations to represent and participate in the UPR process by going to the UN.*

*Failure to lobby with the concerned persons, states and authorities will reduce the efficacy of the civil society's efforts, despite how well it contributed while preparing the report. Organizing hearings or national consultations, informing and encouraging people to watch the live webcast of the review is a significant role of NGOs.*

the issues in line with the NGOs and National Institutions in Nepal. However, economic viability stands as the obstacle for the Nepali NGOs to take part during the review. Guaranteeing meaningful participation of the Nepali NGOs during the review is a problem Nepali NGOs must overcome. Holding regular meetings with government contacts, lobbying the

reviewing states to include human rights experts in their delegation in the UPR working group and remaining in contact with human rights council members and the observer states should be the prioritized agenda of the Nepali NGOs now. Such activities should aim at encouraging the concerned countries to raise relevant issues and questions during the review by understanding the realities of Nepal.

Despite the fact that Nepal has a weaker economic status, it has to be assessed on an equal footing with many other richer countries. It is too expensive for Nepali individuals from civil society organizations to represent and participate in the UPR process by going to the UN. Failure to lobby with the concerned persons, states and authorities will reduce the efficacy of the civil society's efforts, despite how well it contributed while preparing the report. Organizing hearings or national consultations, informing and encouraging people to watch the live webcast of the review is a significant role of NGOs. This will make people aware of the significance of the review and will provide an opportunity for them to see how their government has to face a myriad of fusillading questions from the other countries as to the yawning gap between the rhetoric and the realities of human rights issues and concerns in Nepal.

Another significant way in which the NGOs can play a role for the effectiveness of the process is by involving the media. Tellingly, Nepali media has not paid proper attention to the Universal Periodic Review and Nepal's review in January 2011. If the NGOs can

mobilize an intense media campaign before and during the review process, this will certainly mount pressure on the government to present the facts on Nepal as they are and this also creates an environment to responsibly respond to the queries raised during the review.

Similarly, identifying the reviewing states' particular areas of interests and lobbying them to raise the issues to make recommendations accordingly does have a paramount importance. Experience has it that some states often ask questions on the same issues. For example, Australia is reported to have asked questions on NHRIs and Slovenia often asks on women's rights issues. When India was reviewed, the UK noted that India didn't ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, or its optional protocol. Canada raised issues concerning the armed forces (special powers) act (AFSPA) the situation of civil society and the situation of Dalits. Similarly, Brazil asked several questions regarding the measures taken to promote the empowerment of women and the main policies taken to mainstream gender into national plans and child rights issues. China asked how India intended to implement the national rural employment guarantee program further.<sup>1</sup> Certainly, there will be many countries to ask many questions to ask to the government of Nepal. For instance, no less than 54 countries had questions and recommendations for the Norwegian delegation, and Norway received

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more than 100 recommendations.<sup>2</sup>

The Republic of Moldova, Cuba and Qatar have been selected as the troika for Nepal. Despite the creation of the role of the Troika rapporteur, the review is effectively carried out by those states that take the floor during the interactive dialogue or submit questions in advance to the state under review. Hence, lobbying these countries certainly has meaning. NGOs have to orient their efforts in this aspect as well. The Republic of Moldova is a parliamentary Republic after it got independence in 1991 from Russia. The Cuban administration has often been commented for torture practiced in the country, arbitrary imprisonment, and unfair trials. Qatar seems to keep a relatively tight rein on freedom of expression and moves for equality. This issue has been referred to here only to state that how our issues are raised during the review has something to do also with understanding our country's background by the rapporteur Troika and vice versa. It is primarily because the Troika is to lead and coordinate the review of Nepal in the UPR process. If the NGOs can influence the troika before it prepares the list of issues and questions for Nepal, outcome recommendations can meet the expectations of Nepali civil society.

The recommendations that Nepal receives following the review are not binding, rather, accepting or rejecting them is based on a moral ground. The Government of Nepal doesn't need to, as per the UPR process, give reasons why some of the recommendations are not

1 See at <http://www.hinduonnet.com/fline/fl2607/stories/2009041026070...> - 29k

2 As reported at <http://www.norway-osce.org/news/Latest-news/UN-UPR-Review-on...> - 15k

acceptable to it. So, it is natural that the government of Nepal also tends to adopt the recommendations that are easier to implement. Nepal has many issues at hand that have drawn international attention. The issues that are likely to be questioned and recommended can be projected right now. The peace process related concerns, the disappearance situation, the Nepal Army in connection with the Peacekeeping Mission, human trafficking, custodial deaths, the food shortage, among others, are already known to the international community. Encouraging, urging and compelling the government to accept even the difficult recommendations should also be the role of Nepali NGOs.

#### After the Review

Often governments that lack political will don't implement the recommendations. Non-implementation of the past agreements is a chronic problem in Nepal as well. The recommendations covered by the outcome report are not binding. So, whatever recommendations Nepal receives are also soft. Therefore, it is wrong to assume that the Government of Nepal will take steps easily to implement the recommendations. In this context, Nepali civil society especially the NGOs involved in the rights issues have to make a conscious effort to have the recommendations implemented. As the recommendations that Nepal receives following the review will be a strong base for the NGOs to pressurize the government for the better human rights situation in the country, the recommendations will be an asset for the NGOs.

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*The recommendations covered by the outcome report are not binding. So, whatever recommendations Nepal receives are also soft.*

*Therefore, it is wrong to assume that the Government of Nepal will take steps easily to implement the recommendations. In this context, Nepali civil society especially the NGOs involved in the rights issues have to make a conscious effort to have the recommendations implemented.*

The NGOs have to take the outcome document as the main basis for lobbying. How Nepal presents itself after four years in another review or how well the human rights situation will improve by then is, to some extent, connected with NGOs activism. We have had a bitter experience; the government of Nepal doesn't stir and move towards implement-

ing the recommendations until and unless civil society puts pressures on it. The NGOs have to work towards this end in such a way that even the voluntary pledges, if Nepal accepts any following the review, should be addressed at the next review of Nepal under UPR. The functioning and effectiveness of the efforts of the government towards implementing and applying the recommendations can be further enhanced if the NGOs and NHRIs contribute with their expertise and knowledge on human rights concerns in Nepal.

#### Conclusion

The information included and the commitments expressed in the governmental report alone don't reflect the reality of the rights situation in the country. The NGOs certainly will have to orient their efforts towards avoiding such discrepancies. The essence of the Nepali NGOs involvement in the UPR process and its meaningfulness also lies in the fact that the actual human rights situation of Nepal won't be manipulated. For a long time, the Nepali NGOs have been endeavoring to make the government of Nepal ratify or sign and accede to the international instruments, treaties, conventions and covenants being guided by the objective that the human rights situation in the country should be improved. We have our assertion that the Nepali NGOs will contribute to the full before, during and after the review process and also hope that the government will Nepal will experience a better human rights situation by implementing the recommendations.

# Drafting the NGO Report for the UPR:

## The Process Applied and the Issues Raised



*Together with Nepal, another 15 countries are also being reviewed in the tenth session of the working group of the Universal Periodic Review (UPR) that begins on 24th January 2011 and ends on 4th February of that year. As provided for in the review mechanism of the HRC, Nepali Human Rights NGOs have submitted the collective UPR report.*

Nepal, as a member of the UN, is being reviewed by the UN Human Rights Council (HRC) in January 2011. The UN Human Rights Council will review everything with respect to the Human Rights situation of Nepal. The prime concern during the review will be whether or not Nepal is fulfilling its human rights obligations and commitments. Together with Nepal, another 15 countries are also being reviewed in the tenth session of the working group of the Universal Periodic Review (UPR) that begins on 24th January 2011 and ends on 4th February of that year. As provided for in the review mechanism of the HRC, Nepali Human Rights NGOs have submitted the collec-

tive UPR report.

A coalition of 235 Non-Governmental Organizations (NGOs) coordinated by the Informal Sector Service Centre (INSEC) has submitted a 10-page long report to the UN Human Rights Council. The report contains the human rights issues and concerns of Nepal with concrete recommendations in relation to the issues, like the ongoing peace process and the making of the constitution. Similarly, issues and concerns like equality and non-discrimination, impunity and transitional justice, torture, rule of law and public security, security of person, economic, social and cultural rights, indigenous peoples, the rights of persons with disabilities,

child rights and women's rights are encompassed in the report. Although the UPR is a new mechanism even to the UN, and Nepal is being reviewed for the first time, NGOs in Nepal are paying special attention towards an effective and fruitful review, so that following the review the human rights situation on the ground will be improved.

This submission also includes two different thematic submissions, one from the Durban Review Conference (DRC) Follow-up Committee and another from the Women Coalition as the annexure. The report prepared by DRC provides information on the human rights situation of six thematic groups such as indigenous peoples, the Dalit community, persons with

disabilities, Madhesi peoples, the Muslim community and sexual and gender minorities. Similarly, the report prepared by the Women Coalition deals with the particular concerns of women, such as equality and non-discrimination, the situation of violence against women, their access to the administration of justice and participation in public and political life, just and favorable conditions at work and migrant workers. Both briefly describe the current situation and suggest specific recommendations for further improvements.

The report provides an in-depth record of all the commitments made by the state regarding human rights and the rule of law. It is the outcome of a series of regional, national and thematic consultations with relevant stakeholders including the Government of Nepal and national institutions. Considering the fact that the 10-page report will be an integral part of the process and will go in a package alongside the government's submission, Nepal's civil society organizations were encouraged to prepare and submit the UPR report. According to the regulations adopted by the UN General Assembly, the National Report has to be prepared with national scale consultations of all related parties. However, the government and National Institutions initiated a very limited number of consultations with civil society.

### **The Process of Preparing the Report**

Nepali NGOs started preparing the UPR report in 2009. During that year, regional events were conducted under the leadership of INSEC targeting the NGOs

*The formal process of writing reports, however, started when INSEC held a two-day National Consultation jointly with the Asian Forum for Human Rights and Development (FORUM-ASIA) in April 2010 in Kathmandu. The Nepal NGO Coalition for the UPR (NNC-UPR) was set up during the consultation. By the time of the submission in July, the coalition partners had increased to 238 including seven federations and 11 coalitions.*

working at the regional level. Such events were meant to spread awareness about the UPR process and the importance of engaging in that process. The formal process of writing reports, however, started when INSEC held a two-day National Consultation jointly with the Asian Forum for Human Rights and Development (FORUM-ASIA) in April 2010 in Kathmandu. The Nepal NGO Coalition for the UPR (NNC-UPR) was set up during the consultation. By the time of the submission in July, the coalition partners had increased to 235 including seven federations and 11 coalitions. This proves that the coalition was highly successful in achieving cooperation from and

forging consensus among the human rights NGO's in Nepal. During the consultation in April, the working groups of this coalition came up with their plan and decided to make joint submissions on 24 different issues including constitution making and the peace process, transitional justice, impunity and the rule of law.

Later, the DRC Follow-up Committee and the Women Coalition on the UPR came under the umbrella of NNC-UPR and the three coalitions agreed to submit a single report on behalf of the Nepali NGO community, with two annexes- one on women issues and another on the six thematic issues identified by the Durban Review Conference. The coalition conducted consultations at the regional level to collect the issues to be included in the report and to receive recommendations from the grassroots level. Consultations on thematic issues were also held. Then, the report was drafted and the draft was shared at the National Level Consultation to get feedback from relevant stakeholders, including the government agencies and National Institutions. The National Coalition for the UPR submitted its UPR report to the UN Human Rights Council in Geneva on 5th July 2010. Non-governmental organizations (NGO) had many opportunities to take part and influence the UPR process by sending submissions on human rights violations. The report submitted to the Council informing them about the realities of Nepal is expected to influence the overall process and recommendations.

The drafting of the report was a good learning tool for the

Human Rights NGOs in Nepal. It has been learnt that there are ample grounds for the Human Rights NGOs to work collectively for the sake of rights issues and concerns. It has also been learnt that networking from the centre to the regions and down to the districts from the regions can make impacts. Success can be achieved efficiently if the collectivism among the members in the coalition continues in almost every human rights issue. There has been a realization that the collective efforts of the coalition partners in course of the UPR report preparation and submission process has increased cooperation and unity among human rights NGOs in Nepal. An increased number of coalition partners will certainly make the efforts efficacious.

Similarly, the cooperation and communication among the members of the civil society organizations made it easier to mobilize people for the collection of information required to be covered in the report. Networking from centre to regions and vice versa, created such a synergy that the coalition was able to prepare and submit the report within the limited time frame. A larger-sized coalition had succeeded in drawing national and governmental attention and continuation of such a coalition, it is hoped, will influence the international community and the UN agencies including the UN Human Rights Council.

### Concerns Raised in the Report

While submitting the report to the Human Rights Council on July 5<sup>th</sup>, the NNC-UPR outlined its concerns about the failure of the Government to protect human

rights and promote rule of law in the country. Worry primarily was expressed over the current transitional situation of the country. The submission has also expressed doubt as to the promulgation of the new constitution within the extended timeline. The continuation of the deadlocked peace process has been understood as the prime hindrance towards this end. It has been suggested that the Government of Nepal must ensure the promulgation of the new constitution within the stipulated time, with full consultation with the people of Nepal.

The submission has focused on Nepal's non-compliance with its obligations in relation to the respect, protection, and fulfillment of the rights guaranteed in the international human rights treaties of which Nepal is a party to. Concern has also been raised about

the crimes that Nepal has to criminalize under international laws. War crimes, crimes against humanity, enforced disappearance and torture are the crimes the report has recommended be criminalized. A lack of comprehensive human rights protection and legislation providing effective remedies for human rights violations is another concern of the report. Similarly, governmental apathy and inattention to the establishment the Truth and Reconciliation Commission (TRC), the High-Level Commission of Inquiry on Disappeared Persons and the deep-rooted culture of impunity have been raised with equal importance.

Furthermore, the report has expressed concern over the non-implementation status of the recommendations of National Institutions (National Human Rights Commission, National Women's Commission and National Dalit Commission) and their budgetary and human resource constraints. Suggestions are there as to ensuring the independence and autonomy of all National Human Rights Institutions (NHRIs) through the constitutional and legislative provisions. The report expects capacity and performance enhancement of the NHRIs through the allocation of adequate resources and implementation of their recommendations.

The submission thoroughly describes and analyses the existing discrimination against Dalits, Women, Madhesi, indigenous peoples, persons with disabilities, Muslim and other religious minorities, sexual and gender minorities and other marginalized groups on

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the grounds of caste, ethnicity, gender, and geographic region. Their low representation in the public sectors including in decision making bodies, civil service, judiciary, law enforcement agencies and local authorities has been taken into consideration. The submission describes the current legal challenges in ensuring equality and non-discrimination, and highlights the dangerous atmosphere for these groups and other critics of the Government.

The governmental and political parties' indifference as to establishing accountability for the serious human rights violations and the breaches of international humanitarian law during the decade long armed conflict are other concerns of the report. The state's unwillingness to carry out prompt and independent investigations in relation to ongoing violations has promoted impunity in the country has also been examined. The submission expresses concern over the truth, justice and reparation for the victims of crimes against humanity. It has been warned that war crimes, extrajudicial killings, disappearance, kidnapping, torture, rape, sexual violence and other human rights violations are likely to further deteriorate the rights situation in the country if not addressed immediately.

Similarly, the unwillingness of the government security agencies and the UCPN (Maoist) to allow prosecutions of those responsible for past abuses has further hampered the human rights situation of the country. The report gives examples of Maina Sunar and Ram Bahadur Shrestha in which the military refused to surrender Major Nirajan Basnet to the Kavre district

*Human rights defenders like journalists, teachers, lawyers and Women Human Rights Defenders (WHRDs) have been the most vulnerable people in post-conflict Nepal.*

*The report has highlighted their situation. Challenging impunity by taking up individual cases, raising concerns about the torture in detention and advocating rights of the detainees and women put them at risk. They receive threats from the police and members of the community as well.*

court as required by an arrest warrant. The Maoist party also refused to surrender Kali Bahadur Kham to the Chitwan district court. Thus, the report gives clear picture of non-cooperation by the concerned authorities. There are also concerns regarding not incorporating vetting approaches to reform institutions in transitional justice approach adopted in the Nepali peace process whereas the provisions of the Comprehensive Peace Accord and the constitution talk about reforming state institutions. Absence of a vetting approach, the report expresses, might pose a threat to the peace process and victim's right to truth, justice and reparation.

The emergence of armed and other splinter groups of various political parties, political instability, cross-border criminality, violent activities of youth wings of political parties and inadequate human and logistic resources to the security agencies have been understood as the major challenges for the rule of law and security in the country. The report cites security related laws on Local Administration, Public Security, Arms and Ammunition, Offence Against State Act and Punishment, Act of Some Public Offences and Penalties, Explosives Act, Police Act, Nepal Army Act, Armed Police Force Act, Torture Compensation Act, Prison Act, Prison Regulation, Government (State) Cases Act, Evidence, Country Code and other laws in contradiction with the international human rights norms of security of persons as major contributors to the deprivation of liberty and security of persons in Nepal.

Human rights defenders like journalists, teachers, lawyers and Women Human Rights Defenders (WHRDs) have been the most vulnerable people in post-conflict Nepal. The report has highlighted their situation. Challenging impunity by taking up individual cases, raising concerns about the torture in detention and advocating rights of the detainees and women put them at risk. They receive threats from the police and members of the community as well. In addition, the report has focused on various forms of harassment and intimidation, including physical attacks against journalists that have forced the Nepali media to operate in an atmosphere of self-censorship going against media pluralism.

The submission has present-

ed and analyzed the key problems in relation to people's economic, social and cultural rights such as rights related to food, land, education and health. With a set of recommendations for the remedial actions, the report has also provided information on fundamental challenges relating to the enjoyment of these rights.

Information on the situation and rights of peoples from specific groups such as the rights of indigenous peoples, rights of Persons with Disabilities (PWDs), child rights and women's rights are also encompassed in the report. Highlighting the critical situation of these groups, the submission describes the current legal challenges and the protection mechanisms as to ensuring various rights of these people. Suggestions are there for the meaningful inclusion of traditionally marginalized groups in the peace process and the Constituent Assembly's deliberations so that exacerbating ethnic and regional tensions can be mitigated.

The report has also raised concern on the state of violence against women and domestic violence in Nepal. Despite constitutional guarantees and legislative reform gender based violence in the form of domestic violence, trafficking, rape and sexual harassment remains largely unaddressed. The lack of effective enforcement of existing legal provisions is primarily responsible for this. There is also a lack comprehensive legal framework and enforcement mechanisms. The human Trafficking Act and its Regulation, Domestic Violence (Control and Punishment Act), Foreign Employment Act and

Regulation have been cited lacking provisions to control violence against women. Measures have been suggested for the guarantee of the rights of indigenous women, women with disabilities and Muslim Women.

*The submission will serve as an effective tool in providing information to the international community including the Human Rights Council. It certainly has presented the real human rights situation in Nepal. At a time when Nepal is going to promulgate the new constitution through the Constituent Assembly next year, it has been expected that this report will help the Council in making concrete recommendations. Nepal's review under the UPR will make a fresh assessment of Nepal's Human Rights situation on the ground. The outcome of the review will be a historic document to be used as a background in terms of Nepal's human rights record.*

The report makes specific recommendations on each topic it has dealt and calls on the Human Rights Council to address the concerns in its submission. It also urges the HRC to issue recommendations to the Nepal Government.

## Conclusion

A single report for the UPR, presented on behalf of 235 human rights NGOs shows the gravity of the human rights situation of the country. Numerically, there has been an unprecedented convergence of the NGOs for a cause. It is a concrete initiative by human rights NGOs of Nepal despite differences in their goals and operational priorities. Time and space constraints were a major challenge for the NGOs to incorporate further human rights issues.

The submission will serve as an effective tool in providing information to the international community including the Human Rights Council. It certainly has presented the real human rights situation in Nepal. At a time when Nepal is going to promulgate the new constitution through the Constituent Assembly next year, it has been expected that this report will help the Council in making concrete recommendations. Nepal's review under the UPR will make a fresh assessment of Nepal's Human Rights situation on the ground. The outcome of the review will be a historic document to be used as a background in terms of Nepal's human rights record. In the mean time, it will also serve as a guideline for further improvement of the human rights situation and the rule of law in the country.

**Nepal's review under the UPR is impending. Report preparatory phase has been over and Civil Society and the Stakeholders have already submitted their reports to the HRC. In this context, INFORMAL had talked with the concerned responsible persons and the convener regarding the report preparatory process, the issues raised in the reports, the recommendations following the review and the implementation aspect. Edited version of the interviews:**



**Subodh Raj Pyakurel**

*Focal Person, Nepal NGO Coalition for the UPR*

► ***How important, do you think, is the review with reference to Nepal?***

- Considering the grave situation of impunity in the country and the derogation of the past political commitments made by the political leaders regarding the peace process and the rule of law, I firmly believe that the counter report prepared by a large coalition of more than 235 NGOs for the UPR shall create an international concern towards Nepal paving a better way for the solution of current political impasse which the Nepalis have been the victim of. To be a party to different international human rights instruments and covenants is one thing and to be appraised and to receive necessary recommendations for the better human rights situation in the country is equally

important. The Government of Nepal has to do what is necessary following the review to ameliorate the human rights situation in the country. For me, the essence of the review of Nepal under the UPR lies in the conviction that the review will make the government of Nepal initiate better steps for the improvement of the rights situation in the country.

► ***Do you think the grassroots people are well-informed about the concept, process and importance of the review?***

- People at the grassroots level were consulted by the local Human Rights Defenders representing different movements and organizations through dialogues. Nepal NGO Coalition for the UPR being itself a network of the NGOs

ranging down to the local level, it had been easier for us to hold interactions, consultations and disseminate information on the UPR among the ordinary people. However, it is wrong to assume that we could inform all the people on the concept, process and importance of the UPR. There is the possibility that some of the stakeholders especially the victim's groups might have been left out uninformed. However, as our experiences of the past have been documented and reflected in the UPR counter report, the problems of almost all the groups and sectors have been covered by the report.

► ***Nepal NGO Coalition (NNC) including other institutions has already submitted its report. You had led the report writing phase***

## View Point

**INFORMAL** had collected representative views from across the country from the professionals, social workers and the Human Rights Defenders on how they contributed in course of drafting the Nepal's NGO report for the UPR and what recommendations they expect following the review. Abridged Versions:



**Arjun Prasad Koirala**  
*Human Rights Officer*  
*National Human Rights Commission, Biratnagar Regional Office*

The Universal Periodic Review (UPR) is a new and special process started by the UN to review the Human Rights situation of its member states. The Human Rights Council (HRC) of the UN reviews the member states based on the reports provided by the states and following the review the latter are provided with recommendations for the improvement of the rights situation. As a member of the UN, Nepal also has to submit a report to the UN Human Rights Council on the rights situation in the country. It has been provisioned by the HRC that submissions from civil society are required, along with the governmental report. INSEC, with other human rights NGOs, organized a one-day consultation seminar in Biratnagar in course of preparing the civil society report. I had an opportunity there to discuss the rights situation in the region. The seminar was highly successful in analyzing the existing human rights situation and identifying the areas for improvement.

Following the review Nepal will receive recommendations. It has to be expected that Nepal will experience extensive improvement especially in the areas of Economic, Social and Cultural Rights. Until and unless people are able to enjoy these rights in a dignified way, it is impossible to avoid conflict and unrest in the country. Economic, Social and Cultural rights have to be prioritized in developing countries therefore the review and recommendations of the HRC should be focused on these rights.

Once accepting the recommendations of the Council, Nepal has to work towards implementing them. Undoubtedly, civil society has a significant role in protecting and promoting human rights in the country. The UN itself has acknowledged this fact and has provided space for the Human Rights NGOs and civil society to play crucial roles. Civil society in Nepal has to have influential roles following the review. Society has to be well-informed about the recommendations of the HRC and also has to have follow-up as to whether or not the Government of Nepal implements the recommendations. In case the recommendations are unsatisfactorily implemented, civil society has the duty to remind and pressurize the government to ensure their implementation. It is equally important that the civil society leaves no stone unturned in its duty and efforts to have the recommendations implemented. In case the government is indifferent towards the rec-

ommendations or they fail to implement them, civil society must exert moral pressure on the government by internationalizing the situation.



**Yam Bahadur Kisan**

*Member*

*Technical Committee for Preparing the Civil Society Report for the UPR*

As a member of the technical committee preparing the report for civil society, I participated in four of the five regional consultations held across the country. The consultations were held for the purpose of informing the people about the UPR and collecting the issues from them to be included in the report. I contributed there by providing my knowledge especially on the issues of Dalits, women, the indigenous people, Madhesi, Muslims, the persons with disabilities and gender and sexual minorities.

Given that Nepal is being reviewed in 2011 for the first time, the poor human rights situation in the country has been a matter of concern now. Following the review, recommendations have to be made to punish the human rights violators of the past and to form the Truth and Reconciliation and the Disappearance related commissions. Similarly, the government of Nepal has to be recommended to accept some of the protocols and individual complaint systems that are still to be signed by Nepal. There also have to be recommendations for the formulation of legislation and the establishment of an infrastructure to implement the issues especially of the Dalits, women, the indigenous people, Madhesi, Muslims, persons with disabilities and gender and sexual minorities.

The situation exists that civil society in Nepal is unsure of the role it plays now. The Nepali civil society has been changing its role as per the changing situation. It has to be clear that civil society can not play roles on all the matters. However, it has to have a role as a pressure group to pressure the government to implement the recommendations that are made following the review. Besides this, the society has to make people aware of the recommendations through publications, training and other means.



**Surendra Thapamagar**

*Advocate, Pokhara*

I had the opportunity to attend an interaction program organized in this region for preparing a report for the upcoming review of Nepal under the UPR. In the interaction, I discussed the obligations to be fulfilled by Nepal as a party to different international covenants. My discussion primarily focused on the failure of the state to fulfill the Economic, Social and Cultural Rights of the Nepali people.

It is very important following the review under the UPR that even the ordi-

nary Nepalis have to know the implementation level of the commitments expressed by the government of Nepal in the international forums. People at the grassroots level are still not aware that there exists the Universal Periodic Review for appraising rights situation of the member countries of the UNO. The grassroots people will have to be able to hear the voices speaking for them. The review also has to inquire with high priority - how the right to life has been prioritized by the state. Similarly, the laws in the country have not been amended as per the treaties and covenants signed by the state on the issues of women and indigenous people. The review has to make recommendations for the amendment of the laws in the country that are inconsistent with the international covenants and agreements to which Nepal is a party.

Following the review civil society has to have the role of a watchdog. The society has to make the people aware of the responsibilities of the state and has to exert moral pressure on the government to fulfill its obligations.



**Mohan Dev Joshi**

*Human Rights Officer*

*National Human Rights Commission, Nepalganj Regional Office*

The Working Group on the Universal Periodic Review (UPR) under the Human Rights Council of the UN will review Nepal in 2011. With the aim to prepare a report to be submitted by the National Institutions and NGOs, consultation programs were held in the Mid Western Region as well.

To my knowledge, two consultation programs were held in this region in course of report preparation. The National Human Rights Commission held a consultation meeting at Ghorahi, in Dang district. The heads and representatives of the responsible stakeholders participated in the program. A similar program was organized by Informal Sector Service Center (INSEC) in Nepalganj, where stakeholders and the representatives of the human rights network participated. This region has been involved in different follow-ups and research to find out about the overall human rights situation. The main problems and concerns of human rights were identified based on follow-up and research. Human rights violations by the state and their various facets were appraised during the programs. Discussions were held on responsibilities of the state and prioritization of human rights. I participated in the discussions that were aimed at realistically analyzing the strengths and weaknesses of the government in relation to the human rights issues to be encompassed by the UPR report.

Nepal has submitted different periodic progress reports to the committees under the various Conventions which Nepal is a party to. Likewise, there have emerged various questions as to the human rights violations/abuses committed during the conflict in the past. Political changes have taken place in the country. The UPR has to be able to fulfill its objectives taking the context of Nepal into consideration. In an underdeveloped country like Nepal, the situation has to be created for ending impunity, establishing rule of law, helping in the management of transitional justice and guaranteeing right to life. Similarly, guaranteeing the rights provisioned in the interim constitution and covered by the international human rights instruments

which Nepal is a party is equally important. De facto enjoyment of these rights should be guaranteed. The expectations of the people in the changed political situation and the human rights concerns, primarily the basic ones, like food, shelter, education, health and employment have to be addressed. The issues floated on the surface especially after the political system change in Nepal like non-discrimination, participation, inclusiveness, rights of minorities, among others, have to be addressed following the review. Proper recommendations have to be made regarding sustainable peace, transitional justice, and social justice. Similar recommendations have to be there as to institutionalizing the changed political and state mechanism.

The main responsibility of civil society is to make the state responsible and accountable for the human rights situation in the country. Civil society has to work as a watchdog. The government of Nepal is responsible for the implementation of any recommendations that it receives following the review. It has been seen that no governments in Nepal, from the past to date, have been responsive on human rights issues in reality. In this context, implementing the recommendations received after the review is also a matter of international reputation for Nepal. Spreading awareness on the recommendations, conducting intensive follow-ups in relation to the human rights situation, forming networks among the rights related organizations pressurizing the government to implement the recommendations, lobbying nationally and internationally and helping the government as the mediator and facilitator have to be the main activities of the civil society in Nepal following the review.



**Dharma Raj Pathak**  
*President, Civil Society Organization, Kailali*

I was one of the participants in the consultation organized amongst the stakeholders in Dhangadhi in the course of preparing the report for the Universal Periodic Review (UPR). In the program, I raised concerns on the incidents of human rights violations in the Far-Western Region and also provided necessary feedback to prepare the report.

Given that the international community is going to review Nepal and make necessary recommendations for the improvement of the human rights situation here; following the review, recommendations have to be made to make the Government of Nepal more accountable for the respect, protection and fulfillment of human rights in the country. This has to be done because the state bears the sole responsibility in these matters. Similarly, the recommendations should focus more towards Economic, Social and Cultural Rights which have not been given proper importance due to the tendency to give more attention to Civil and Political Rights in our context.

Civil society organizations, on the one hand, have the moral responsibility to mount pressure on the government for the respect, protection and promotion of human rights. On the other hand, they have to make people aware of their basic rights. Talking about the implementation of the recommendations that are received by Nepal following the review under the UPR, the civil society organizations have the moral obligation to pressure the government to take concrete steps towards their implementation. Civil society should also act as a watchdog reminding the government of its commitments expressed internationally.

*and there was the involvement of 235 NGOs of Nepal. As a responsible person of the coalition, could you share the experience?*

- Nepali Human Rights Defenders have ability to work together on most of the crucial issues and at difficult moments. A good example can be the collectivism shown by the Nepali NGOs against the king when he usurped power unconstitutionally in 2005. Though we have a very difficult terrain, bad communication and travelling infrastructures, thanks to the well-spread local Media and perennial HR awareness efforts by the Human Rights Defenders and organizations, people are aware of their basic Human Rights and all the political groups have officially and formally recognized HR as an unquestionable philosophy.

Unprecedented convergence of a large number of NGOs for the cause of the UPR is a best example of a collective effort. Amidst their diverse operational priorities, the NGOs played a pro-active role for incorporating their agenda and concerns into the UPR report. I am quite confident that we will be able to maintain our solidarity and partnership in the days to come as well.

► *It is believed that the pre-review preparation and role of the NGOs can influence the review process and the recommendations that are listed in the outcome report. What preparations have been made so far and what roles and activities, you think, should be there on behalf of the NGO Coalition of Nepal regarding this?*

- The incumbent Government of Nepal (GoN) has invited our coalition to advise on the gov-

*Unprecedented convergence of a large number of NGOs for the cause of the UPR is a best example of a collective effort. Amidst their diverse operational priorities, the NGOs played a pro-active role for incorporating their agenda and concerns into the UPR report.*

ernmental report for the UPR. We are in touch with the concerned diplomats to lobby our concerns. We will certainly approach several INGOs working in different sectors. The National Human Rights Commission (NHRC) and Nepal Office of the High Commissioner for Human Rights (OHCHR-Nepal) are and will be a good link for getting support from them. We have already briefed them about our process and the expected outcome recommendations. We got support from both the organizations while preparing report. There have been utmost attempts from our side to make this civil society report the best representative of Nepali civil societies. Hopefully, all the concerned parties, national, international and UN bodies will consider our report accordingly. To affirm our voice at the Human Rights Council we are trying to send an effective, inclusive and strong delegation representing Nepali civil societies.

► *There are comments that the government of Nepal didn't hold adequate interactions and consultations with the stakeholders while preparing the governmental report for the UPR. What's your say regarding this?*

- This time we were a little more hopeful that the government

would hold sufficient consultations and interactions with the civil society while preparing its report. There are many contentious issues in the governmental preliminary report. The government hesitates to adopt an inclusive, transparent and public process. However, we will spare no effort till the last moment to make the national report for the UPR factual.

► *Which concerns and rights issues, though there are many important and serious issues in Nepal, should be addressed by the UPR process with high priority?*

- Nepal is party to many important international treaty bodies. However, there lie problems in implementing the commitments. National plans and budgets, to some extent, reflect the commitments in principles but the implementation aspect remains a big challenge. The review has to challenge the non-implementing tendency of the Government of Nepal. Human Rights can not be attained until and unless impunity is addressed through the rule of law. Here, one has to understand that redressing the past crimes through the penal system and addressing the caste, gender, decent etc based discriminations by formulating necessary rules and regulations should also come under the definition of

the rule of law. Correcting social discriminations and implementing social justice through progressive efforts in law and practice is the urgent now. The review has to address these concerns with high priority.

► ***How optimistic are you regarding the implementation aspect of the recommendations that are made by the Human Rights Council in its outcome report following the review?***

- It is unrealistic to be optimistic that the government will implement the recommendations made through the outcome report of the UPR on its own volition. The Human Rights Council (HRC) will examine the human rights situation of Nepal on the basis of multiple sources of information. Considering the past remarks made by the treaty bodies, we hope, the recommendations will remind the government of Nepal of its commitments and will make

comments on the unfulfilled commitments related with political impasse as well. The HRC's remarks and recommendations primarily will be a tool for us in influencing the stakeholders to act responsibly. We want to see the recommendations as a tool for the HR Defenders to monitor, lobby and advocate nationally and internationally for a better human rights situation in the country. ☐



**Gauri Pradhan**

***Member, National Human Rights Commission***

► ***How has the National Human Rights Commission perceived the impending review of Nepal under the Universal Periodic Review?***

- The Universal Periodic Review (UPR) has been perceived by the Human Rights Commission as an important mechanism. Before this mechanism was introduced by the UN, there also existed mechanisms to assess whether or not the state parties were domesticating the international instruments.

However, these mechanisms failed to assess the overall rights sit-

uation in a country at one given time. The UPR assesses the overall rights situation of a country once every four years. It reviews the overall situation including the achievements and challenges of a country on human rights issues, the domestication of the international instruments and the ways ahead for the improvement of the human rights situation in the country. Nepal is in a transitional justice delivery phase now. In terms of the human rights situation, it is also undergoing a very challenging situation even after the end of a decade long

armed conflict. Given that bringing the persons involved in crimes against humanity to justice and proceeding with the ongoing peace process safely are equally important, we are in need of establishing an inclusive democratic set up by addressing the rights of the people of all the sectors and strata. The UPR has to be instrumental in this regard. Many other countries were reviewed prior to Nepal so we have had the opportunity to study the reports of these countries while preparing our own reports. At least three reports have been sent to the

UN. After the interaction and synthesis of these reports we will certainly receive proper recommendations for the improvement of the human rights situation in the country. So, the review is a wonderful opportunity for Nepal.

► ***There are comments that the Government of Nepal didn't hold adequate interactions and consultations with the stakeholders while preparing governmental report for the UPR. What's your opinion regarding this?***

- I have also heard such comments. The draft report for the UPR was sent to the National Human Rights Commission as well for the commentary. The commission was mentioned as one of the members draft report committee. We couldn't be involved while preparing the governmental report because the commission itself, being an independent and autonomous organization, was preparing a separate report. However, we do submit our commentary and suggestions on any human rights related reports prepared by the Government of Nepal. This is our duty as well. So, we gave suggestions to the government on the basis of the report that was prepared by the NHRC after holding interactions amongst the human rights activists and the concerned stakeholders. Reports, regardless of who drafts it, have to be made only after holding ample discussions with the stakeholders. Reports made in this way are process oriented, not mere intellectual write ups. The reports should include and reflect the facts and not be overly flowery. The governmental report has to be broader and because of this we have to understand that a

*The governmental report has to be broader and because of this we have to understand that a wide-range of people and stakeholders have to have access while preparing the report. People have to be able to feel like they have ownership of the report prepared by the government.*

wide-range of people and stakeholders have to have access while preparing the report. People have to be able to feel like they have ownership of the report prepared by the government.

► ***Don't you think that the government is reluctant to present the true realities of Nepal in its report as they are?***

- Governments, everywhere in the world, tend to bring their positive works to publicity and conceal the matters of human rights violations. We all are aware of the human rights situation in Nepal. While studying the governmental report we have to take three perspectives into consideration. Firstly, compared to the period of conflict we have a better human rights situation in the country. Secondly, from the standpoint of transitional justice delivery, the victims are not provided with justice effectively in practice. And thirdly, if Nepal is considered as a country with a normal rights situation, there are many human rights challenges. However, we are not in a normal situation now. We do have problems regarding law and order, peace building, transitional justice and increasing impunity in the country. Facts have to be reflected in the report.

► ***What will be the implementation of the recommendations that are made following the review?***

- This is an important question. There are many mechanisms under the UN to know the situation of its member countries. We can't conceal the reality, neither can we destroy it. Situations are verified and following the verification of facts, a country gets an opportunity to improve the human rights situation as well. So, while implementing the recommendations that are made following the review, the government of Nepal has to have implementing agencies. The government being a permanent implementing agency, the office of the prime minister or any other concerned bodies has to form a permanent mechanism to implement the recommendations. Probably, one of the objectives of the UPR is to set up such mechanisms in the member countries to monitor the democratic and developmental process through the human rights approach. If the government of Nepal is able to establish such a mechanism, we can be hopeful regarding the implementation of the recommendations.

► ***People doubt that the government of Nepal has readiness and***

**capacity to develop infrastructure for implementing the recommendations. What do you say regarding this?**

- The question whether or not Nepal has the infrastructure to implement the recommendations received following the review haunts me as well. As I said earlier, we need to establish a permanent

infrastructure and this has to be done in coordination with the National Human Rights Commission and other human rights organizations. Both the governmental and non-governmental agencies have to follow up the implementation level. In this connection we have felt the necessity to strengthen the capacity of the

National Human Rights Commission. Similarly, the government has to implement the recommendations made by the commission in course of implementing the recommendations made following the review under the UPR. ☐

*As interviewed by Raju Paswan*



**Dr. Trilochan Uprety**

***Secretary, Office of the Prime Minister and Council of Ministers***

► ***NGOs have been stating that the government didn't hold adequate discussion and consultation while preparing the national report. What's your say regarding this?***

- We can't agree with such statements. Consultations have been held in all five development regions of the country in course of preparing the national report for the UPR. Consultations were held in Dhangadhi, Nepalganj, Pokhara, Kathmandu and Biratnagar. The human rights NGOs and other NGOs, civil society, media, intellectuals, ordinary people and representatives of the governmental and private offices were invited in all the programs held in the regions.

Apart from participating in the consultations, the invitees provided important suggestions and comments. Their suggestions that were incorporable have been included in the report. The Prime Minister himself was present in a program held in Kathmandu in course of preparing the report. We held sufficient consultation at the regional level.

The reports of the NGOs, national institutions and of the government have inconsistencies and contradictions on the issues like ratification of different international human rights treaties, the recommendations made by the NHRC and its independence, impunity/transitional justice, the

CPA related provisions, the delay in justice delivery by the courts, freedom of expression, the constitutional provisions and the enforcement level of the ESC rights, to name some, have been differently perceived by the reports.

► ***What do the contradictions indicate?***

- The reports presented by the civil society, international organizations and the government certainly have differences on some points. Differences of perspective, operating modality, the positive and negative tendency to perceive the things and the differences in the objectives of the organizations might have been a reason for the

differences seen in line with the reports. Reports presented by the non-governmental sector do have more criticisms against the government. Tendency to undermine the positive works of the government and to amplify the negative deeds has been influential for years in Nepal. Sometimes government has to take a defensive stance on some issues. The reports presented by all the stakeholders have the similarity that all the reports have acknowledged the existing political instability, corruption and lack of good governance in the country. However, certainly, things have been presented differently in the reports.

► ***Given the situation that Nepal does not have a good political and human rights situation, what particular difficult questions, do you think, Nepal is likely to face during the review?***

- The issues like the incidents of human rights violations, peace and security, killing of the journalists, crime and criminal groups, the people killed in Tarai during clashes and the killings alleged as extra-judicial are likely to be raised during the review. Similarly, non-implementation of the recommendations made by the National Human Rights Commission and the Supreme Court's directives and other orders might be commented on.

► ***How has the government perceived the impending review?***

- We have to present our report before 192 countries. Our report will be reviewed and questions will be raised regarding it. The government of Nepal will defend themselves there. Now is the time

*Now is the time that the government has to present itself strongly. The government will present itself strongly this time regarding the commitments made by Nepal internationally, the responsibilities arisen out of the commitments and the application of the commitments in domestic law.*

*Our defence to the international community will be the fact that the government has positive intentions to address these matters.*

that the government has to present itself strongly. The government will present itself strongly this time regarding the commitments made by Nepal internationally, the responsibilities arisen out of the commitments and the application of the commitments in domestic law. Our defence to the international community will be the fact that the government has positive intentions to address these matters. We will also inform them that the government is working whole-heartedly for the implementation of its commitments on human rights and the development in the country although some of the human rights concerns are shadowed due to political instability and transition.

► ***What will be the implementation of the recommendations that are made following the review?***

- It's the moral responsibility of the state to implement the recommendations made following the review. The government is committed notionally to and has belief in the rule of law, the national laws also mentions it. So, I think, the recommendations that are received following the review will be implemented creating a situation where

Nepali people will be able to enjoy maximum human rights.

► ***People doubt that the Government of Nepal has readiness and capacity to develop infrastructure for implementing the recommendations. What do you say regarding this?***

- It's not that we don't have infrastructures in the country. The government's presence is there down to the VDC level. We have policies, laws, infrastructures and commitments. The legal bodies in the country are very active. The security bodies are with the human rights cells to respect human rights while implementing law, the human rights issues are included in their curricula. The government of Nepal does have infrastructure to implement the recommendations; however, we have to make them further active through direction, coordination and follow-up. Talking about health and education, we might be in need of some resources. Our available financial sources might be insufficient. So, there needs cooperation, collaboration and technical assistance from the international community. ☐

*As interviewed by Gopi Krishna Bhattarai*

# Comparative study on the issues and common concerns raised in the NGO report and the joint report of the National Institutions of Nepal submitted to the HRC for the purpose of the upcoming Universal Periodic Review in January 2011

» Compared and tabulated by Bidhya Chapagain and Puspa Pokharel «

Issues Raised		
	Nepal NGO Coalition for UPR	National Institutions
<b>Scope of the International Obligations</b>	<ul style="list-style-type: none"> <li>Need of ratification of numerous human rights treaties to make the transition successful and to protect and promote human rights in a better way.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Government should ratify: <ul style="list-style-type: none"> <li>Convention on Right to Development</li> <li>Refugee Convention</li> <li>Convention Against Transnational Organized Crime and its Protocols</li> <li>Optional Protocol to ICESCR</li> <li>Additional Protocols to Geneva Conventions</li> </ul> </li> <li>Need of acceptance of the individual complain procedure under the International Convention on the Elimination of Racial discrimination and Convention against Torture.</li> </ul>	<ul style="list-style-type: none"> <li>The role of Government, Parliament and Judiciary is proactive in internalizing the provisions of international human rights instruments the status of those instruments equal to statutory law.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Government should ratify: <ul style="list-style-type: none"> <li>Convention on excavation and removal of Landmines.</li> </ul> </li> <li>Need of withdrawal of the reservation made to ICERD in order to widen the area of protection of the rights of dalits.</li> </ul>
<b>Constitutional and Legislative Framework</b>	<p><b>Constitution drafting process</b></p> <ul style="list-style-type: none"> <li>The failure to adopt a new constitution in the stipulated time requires an assurance that the constitution be adopted within the extended time of 1 year.</li> </ul> <p>Domestication of international law:</p> <ul style="list-style-type: none"> <li>Number of national legislations still in place which contradict the treaties that Nepal is party to.</li> <li>No comprehensive human rights protection legislation providing effective remedies for human rights violations.</li> </ul>	

	<b>Recommendations:</b> <ul style="list-style-type: none"> <li>- Incorporation of international law obligations into Nepal law through the adoption of a Human Rights Act and amendment of national legislation that contradicts the treaties that Nepal is party to.</li> <li>- Taking all necessary measures to ensure that various international crimes including war crimes, genocide etc are crimes under domestic law.</li> <li>- Constitutional guarantees to the right to effective remedy.</li> </ul>	<ul style="list-style-type: none"> <li>• The status of international human rights treaties is equal to the statutory law.</li> </ul>
<b>Institutional and Human Rights Infrastructure</b>	<ul style="list-style-type: none"> <li>• Failure of the government to implement the recommendations of NHRC, NWC and NDC.</li> <li>• Lack of adequate budgetary and human resources.</li> </ul> <b>Recommendations</b> <ul style="list-style-type: none"> <li>- Ensure the independence and autonomy of all the NHRIs via the constitution and legislation.</li> <li>- Consideration of recommendations from those commissions and allocation of adequate resources.</li> </ul>	<b>Recommendations</b> <ul style="list-style-type: none"> <li>- Independence and autonomy of NHRC.</li> <li>- Providing equal status to all human rights institutions in compliance with the Paris principles.</li> </ul>
<b>Promotion and Protection of Human rights on the Ground</b>		
<b>1. Equality and Non-discrimination</b>		
<b>A. Rights of Dalit Community</b>	<ul style="list-style-type: none"> <li>• The government has failed to take necessary measures to eliminate caste-based discrimination and untouchability by not enacting a special law.</li> <li>• GON of Nepal has made little effort to implement the recommendation of UN mechanisms as to making NDC a statutory body</li> <li>• Same is the case with ex-haliyas.</li> </ul> <b>Recommendations</b> <ul style="list-style-type: none"> <li>- Need of a separate law to eliminate the caste based discrimination and untouchability practices.</li> <li>- Address the issues of ex-haliyas through policy, laws and programs to ensure suitable areas of land which will provide an adequate standard of living.</li> <li>- Arrange laws, policy and programs to provide adequate land to landless dalit families, prerogative rights for their indigenous knowledge and occupation and ensure the equal benefit of sharing the natural resources.</li> </ul>	<ul style="list-style-type: none"> <li>• Commitments as to Ex-haliyas by an agreement in 2008 still not met.</li> </ul>

<b>B. Rights of Sexual and Gender Minority</b>	<ul style="list-style-type: none"> <li>• Sexual and Gender minorities are denied citizenship and marriage.</li> <li>• The government has made no effort to implement the directive of the SC which requires formation of a task force to study the problem and enact an appropriate legislation.</li> </ul> <p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>- Citizenship rights to LGBTI.</li> <li>- Grounds of protection for them in the constitution and legislation.</li> <li>- Amendment of all the discriminatory and LGBTI unfriendly laws and promotion of affirmative action to ensure their participation in public sector.</li> </ul>	
<b>C. Rights of the Muslim Community</b>	<ul style="list-style-type: none"> <li>• Non-recognition of muslims as a religious minority due to which they have been excluded from the public sector and are continuously discriminated.</li> <li>• Madarsa schools are recognized as formal education institution due to which muslim girls are disadvantaged.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Need of recognition of muslim people as a community and assurance of their participation in public spheres.</li> <li>- Establishment of a Muslim Commission to monitor the implementation of programs to protect and promote the full enjoyment of their human rights.</li> <li>- Recognition of Madarsa as per the international human rights standards of education extending up to higher level.</li> </ul>	
<b>D. Rights of Terai-Madhesi People</b>	<ul style="list-style-type: none"> <li>• Discrimination of madhesi community on the basis of color, region, language and socio-cultural identity exists.</li> <li>• Representation of madhesi people in decision making bodies is low.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- Elimination of discrimination by adopting special legislation.</li> <li>- Investigation of the allegation of extra-judicial killing and torture.</li> <li>- Ensure proportionate representation in all levels of public sector.</li> </ul>	<ul style="list-style-type: none"> <li>• Madhesi dalits are discriminated in the process of issuing citizenship certificates.</li> </ul>

## 2. Right to life, liberty and security of the persons

<p><b>Impunity and Transitional Justice</b></p>	<ul style="list-style-type: none"> <li>• While impunity continues, the state is not willing to carry out prompt and independent investigations of past grievous violations of human rights.</li> <li>• No political will to prosecute past human rights abuses.</li> <li>• Delay in the adoption of transitional justice legislation and mechanisms.</li> <li>• Non-investigation of complaints by police and non-cooperation with the criminal justice system by military, police and UCPN</li> <li>• Lack of a vetting approach to reform institutions due to which a threat to the peace process and victim's right to truth justice and reparation is posed.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Urgently enact the legislations promised by the CPA to establish a Truth Commission and a Commission on disappearance.</li> <li>- Ensure independent and prompt investigation of the cases of human rights violation and serious crime committed during armed conflict.</li> <li>- Secure independence of Judiciary.</li> <li>- Introduction of a comprehensive institutional reform program to prevent reoccurrence of such crimes.</li> </ul>	<ul style="list-style-type: none"> <li>• Incidents such as those of National Bardiya National Park in March 2010, killing by security personnel in the so called encounters and killing of journalist Birendra Shah are few of the examples which exemplify the threat to right to life.</li> <li>• NHRI have separately recommended the formation of Truth and Reconciliation Commission and Disappearance Commission giving responsibilities to deal with conflict related grievances of the victims and their families.</li> <li>• The international commitment for women's participation that may include the provisions of SA resolution 1325 was not properly addressed during the process of making laws relating to transitional justice system.</li> <li>• Impunity culture is flourishing due to the non-prosecution of perpetrators of heinous human rights violations.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Urge government for timely prosecution of the perpetrators.</li> </ul>
<p><b>Systematic Practice of Torture</b></p>	<ul style="list-style-type: none"> <li>• There is no provision of effective redress to victims.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Requirement of legislation to criminalize the torture and provide reparation to the victims.</li> <li>- Impartial investigation of torture complaints.</li> </ul>	<ul style="list-style-type: none"> <li>• Some instances where tortures resulted in custodial deaths include the case of dalit name Sanu Sunwar in June 2010.</li> <li>• Delay in delivery of justice which affects the right to fair trial and right to effective and timely judicial remedy.</li> <li>• Non-enforcement of a number of judicial decisions made on serious human rights violations.</li> </ul>
<p><b>Rule of Law</b></p>	<ul style="list-style-type: none"> <li>• Major challenge to maintaining law and order because of emergence of various armed groups, cross-border criminal activities and so on.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Take necessary measures to strengthen law enforcement agencies including Nepal Police, adopt new laws that can address organized crimes and establish accountability of state mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>• Enjoyment of many rights and freedoms including right to movement, freedom from fear, right to work and so on are restricted.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Technical support of international community to strengthen human rights protection measures; and training and education in such measures would help strengthening the capacity of HRDS.</li> </ul>

<b>Rights of Persons Deprived with their Liberty</b>	<ul style="list-style-type: none"> <li>• Government has paid little attention in the improvement of existing prisons.</li> <li>• Prisoners of all age are detained together.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Comply with international standards with regards to detention including basic facilities.</li> <li>- Separate detention of children below 18 and adults, regard detention as a last resort in case of children.</li> </ul>	
<b>Freedom of expression, freedom of association and peaceful assembly</b>	<ul style="list-style-type: none"> <li>• Despite constitutional provisions regarding these freedoms journalists have been facing serious problems.</li> <li>• Like wise Tibetan Refugees have been denied their freedom of association and peaceful assembly rights.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- ensure all these freedoms.</li> <li>- ensure necessary measures to systematically investigate intimidation, threat, physical, harm and aggression against journalists.</li> </ul>	
<b>Human rights Defenders</b>	<ul style="list-style-type: none"> <li>• Human Rights defenders have been targeted in huge numbers in post-conflict Nepal.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Take all measures to ensure that incidents against HRDs are prevented, investigations are properly conducted, and perpetrators are brought to justice.</li> </ul>	
<b>3. Economic, Social and Cultural Rights</b>		
<b>Right to Food</b>	<ul style="list-style-type: none"> <li>• Effective enjoyment to the right to food remains a serious problem</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- adopt and implement a strong development framework with affirmative policies and implement commitment to food security</li> <li>- Fulfill human rights and constitutional obligations by allocating maximum resources</li> </ul>	<ul style="list-style-type: none"> <li>• In the absence of law there is a difficulty to support creating an environment free from hunger and malnutrition</li> <li>• Access to food mainly in the remote parts of the country is limited</li> </ul>
<b>Right to Land</b>	<ul style="list-style-type: none"> <li>• The forest department continues to forcibly evict and destroy the homes of landless people-women are affected more by this</li> <li>• Failed to pass any law to protect tenancy rights for landless people</li> </ul>	

<p><b>Right to Health</b></p>	<p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Enact tenancy law to protect tenancy rights and ensure adequate budget allocation to provide rehabilitation of landless people</li> <li>- Ensure land reform policy and programs</li> </ul> <p>• Failure to bring new plan and programs on health insurance and health social security services</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Ensure allocation of resources to the health service is proportionally distributed</li> <li>- Recognize health needs of marginalized groups</li> <li>- ensure an improved health service and make it accessible to everyone</li> </ul>	<p>• Access and availability of health care services to the poor people in interior parts is limited</p> <ul style="list-style-type: none"> <li>• Unaffordable medical services</li> <li>• Women's access to health care is limited</li> </ul>
<p><b>Right to Education</b></p>	<ul style="list-style-type: none"> <li>• Yet to ensure right to education for all</li> <li>• Free education scheme has failed to attract common people as there is no easy access to schools</li> <li>• No compulsory education plan as required by the UDHR</li> <li>• Access to technical and professional education is beyond the reach of marginalized people</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Strengthen free education scheme</li> <li>- Adopt measure to realize compulsory education at elementary stage</li> <li>- take measures to improve accessibility of girls and eliminate prevailing disparity between girls and boys as well as urban and rural areas</li> </ul>	<ul style="list-style-type: none"> <li>• Gap in male and female literacy rates, literacy rate of disadvantage communities including dalits and rural population is much lower</li> <li>• High female drop out rate</li> <li>• Prevalence of child marriage, social obligations and discrimination -deterrents for women and girls education</li> <li>• Lack of policy measures and programs</li> <li>• Shortage of qualified teachers and educational materials</li> <li>• Private sector involvement has made education expensive</li> <li>• Quality gap in education provided by government and private schools</li> </ul>
<p><b>4. Rights of Indigenous Peoples</b></p>		
<p><b>Implementation of ILO 169</b></p> <p><b>Right to Language, culture and religion</b></p>	<ul style="list-style-type: none"> <li>• Yet to implement the international standards as set in UNDRIP and ILO 169 and the right to self determination</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Implement ILO 169 and UNDRIP</li> <li>- Implement recommendation of the SR and concluding observations of CERD committee</li> </ul> <ul style="list-style-type: none"> <li>• Despite recognizing 59 groups of indigenous peoples-many groups are still left out from official documents.</li> <li>• Constitutional recognition of Nepali language as the official language has</li> </ul>	

	<p>created obstacles to access education, government services and information</p> <ul style="list-style-type: none"> <li>• Many indigenous languages are under threat</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Recognize all language including indigenous for use in state affairs</li> <li>- Adopt policy for multi-lingual education</li> <li>- Ensure rights of indigenous peoples to maintain and develop their language, distinct cultures and religions</li> </ul>	
<b>Right to land and natural resources</b>	<ul style="list-style-type: none"> <li>• Historically deprived of land and natural resources as a result of discriminatory laws and practices</li> <li>• Development projects, leasehold, community forest, national parks and hydro-projects have displaced indigenous peoples from their ancestral lands</li> <li>• Denied those peoples right to consultation, participation, benefit-sharing and natural resources as recommended by the ESCR Committee</li> <li>• Indigenous knowledge is not protected through legal provisions such as copyright, certification marks and design, trademarks, patent law, moral rights and equitable sharing of the benefit</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Take measures to recognize and protect rights of indigenous peoples to own, control, develop and use their ancestral lands, territories and natural resources</li> <li>- Adopt special measures to get Free Prior Informed Consent (FPIC) from indigenous peoples prior to executing any development project or undertaking any other activity which materially affects their lives.</li> <li>- Take measures to protect indigenous knowledge and take legal action for patent rights in line with CBD 8 (j), Article 27 of ICCPR, ILO 169 and UNDRIP.</li> </ul>	
<b>Ongoing Constitution Making Process</b>	<ul style="list-style-type: none"> <li>• Yet to begin implementing the provisions of FPIC to ensure the participation of indigenous peoples through their own freely chosen representatives in the drafting processes of the new Constitution</li> <li>• The thematic committees of the</li> </ul>	

	<p>Constituent Assembly do not incorporate the fundamental rights of indigenous peoples in line with international standards</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Take steps to ensure the participation of indigenous peoples through their own freely chosen representatives with FPIC in the ongoing constitution-making process and in all decision-making processes.</li> <li>- Recognize UNDRIP as the principal framework for drafting the New Constitution and recognize the right of self-determination of indigenous peoples in the New Constitution.</li> </ul>	
<b>5. Right of Persons with Disabilities (PWDs)</b>		
<b>Representation, participation, education and Social security of PWDs</b>	<ul style="list-style-type: none"> <li>• Participation of PWDs in the Constitution- making process and in the public sector has yet to be realized</li> <li>• Discrimination against PWDs still occurs in the fields of education, employment, health, housing, and many other areas.</li> <li>• Nearly half of all children with disabilities have not been able to benefit from education services</li> <li>• Education system is not user-friendly towards PWDs.</li> <li>• No provisions for personal assistance (PA) for PWDs, elderly people, orphans, homes where people with disabilities live, especially women and children, have been made</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Adopt the policy of providing reasonable accommodation for employment, transportation, sports, personal attendance and health services, in housing, transport, sports and cultural life, for PWDs.</li> <li>- Take stricter measures to combat discrimination against PWDs in line with the DDPA.</li> <li>- Implement the CRPD and its Optional Protocol and incorporate the provisions of this convention in the new Constitution of Nepal.</li> <li>- Adopt special measures to provide education including the use of Braille script and sign language, with reasonable accommodation for PWDs.</li> <li>- Take steps to ensure the participation</li> </ul>	<ul style="list-style-type: none"> <li>• Although the state has promised the participation of PWDs in the state structure within the ambit of social inclusion policy, the law safeguarding those rights has yet to be made.</li> <li>• Women with disabilities are discriminated by law in respect of remarriage, divorce and right to reproductive health.</li> </ul>

	<p>of PWDs in the ongoing Constitution-making process and ensure their participation and representation of PWDs in public sector.</p> <ul style="list-style-type: none"> <li>- Ensure multi language policies for official use, and mother language in curriculum and text books of school, including brail script and tacdil language for person with disabilities.</li> <li>- Enact and implement laws guaranteeing basic social security arrangements for PWDs.</li> </ul>	
<b>6. Child Rights</b>		
	<ul style="list-style-type: none"> <li>• Children are challenged by severe violations of their rights.</li> <li>• an alarming rise in child prostitution and trafficking- children are trafficked by falsifying their age and put at more risk</li> <li>• Children are kept in detention, often together with adult inmates.</li> <li>• Government monitoring and assistance doesn't exist to monitor worst forms of child labor</li> <li>• Primary education is not yet completely free due to various fees charged to parents, such as for school supplies and uniforms.</li> <li>• great disparities in enrolment in primary schools between girls and boys and between the Brahmin and other castes, ethnic or indigenous groups, the high repeat and dropout rate among pupils, and low quality of education in public schools.</li> </ul> <p>Recommendations:</p> <ul style="list-style-type: none"> <li>- Implement appropriate policies and programs for the prevention, recovery and reintegration of child victims (trafficking, prostitution and child labor) and establish rehabilitation centers with prevention programs in all regions/districts.</li> <li>- Take measures to ensure legislative and administrative mechanisms to ensure that children are only detained as a very last resort and if detained are kept in rehabilitation centers.</li> <li>- Take measures to ensure accessible free education to children, and ensure that children with disabilities, Dalit children and HIV/AIDs infected/affected</li> </ul>	<ul style="list-style-type: none"> <li>• Children of Nepal seem to be the victims of violation and abuse of human rights in various walks of life.</li> <li>• Displacement of children as a result of conflict. Some of those children are spending life in the streets without any work and opportunities for their development.</li> <li>• A number of conflicts affected and disadvantaged rural family children including dalits coming to urban areas seeking work.</li> <li>• Girl children are forced to involve in prostitution, other forms of sexual abuses and exploitation. A number of those children are the victims of trafficking as well.</li> <li>• Children are used in the demonstration and campaigning activities by most of the political parties. The call for strikes and blockades by various political forces have seriously impaired the right to education as in all those situations schools are closed.</li> <li>• Ill practices such as Child marriage and offering of girl child in the name of God and Goddesses giving the title to those children as Jhuma, Deuki, Kumari are still prevalent in different communities, acceptance of bonded labor of girl child (commonly called as Kamalari) is prevalent in the western part of Nepal.</li> </ul>

	<p>children are not discriminated in schools.</p> <ul style="list-style-type: none"> <li>- Implement measures to enforce children's rights to education, adequate food, health services and freedom from child labor, trafficking and sexual violation.</li> </ul>	
<b>7. Women Rights</b>		
<b>Discrimination and Unequal treatment</b>	<ul style="list-style-type: none"> <li>• Discrimination on the basis of sex still exists despite constitutional guarantee</li> <li>• 62 existing laws that have discriminatory provision against women.</li> <li>• 49 laws contain degrading and prejudicial provisions against women</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Review all existing laws to determine their compatibility with international law</li> <li>- Ensure equal rights of women to provide citizenship to their spouse as required by CEDAW.</li> <li>- enact laws that are pending in parliament with regard to women, Dalits rights as well as their rights to equality and non-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>• The contribution of women mainly in house hold chores has not been accounted in GDP.</li> <li>• The government commitment for the abolition of harmful traditional practices like chhaupadi and witchcraft are not met.</li> </ul>
<b>Violence against women and domestic violence</b>	<ul style="list-style-type: none"> <li>• Gender based violence in the form of domestic violence, trafficking, rape, sexual assault remain unaddressed mainly due to lack of effective enforcement of existing legal provisions.</li> <li>• Despite the criminalization of domestic violence, very little progress has been made to adopt measures to prevent such crime</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Review all existing laws to determine their compatibility with international law</li> <li>- Establish, enforce and continuously monitor appropriate and immediate measures to end all kinds of unequal and unjust barriers and obstacles against women of all backgrounds</li> <li>- Take measures to ensure that violence against women and girls is prevented and the allegation of such violation are effectively investigated and perpetrators brought to justice thereby providing reparation to the victim. Adopt measures to discourage the defective value system and cultural practices, which violate women rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Despite several specific legislations, gender based violence in the form of trafficking, rape, domestic violence; sexual harassment and trafficking remain largely unaddressed.</li> </ul>

<p><b>Under Representation</b></p>	<ul style="list-style-type: none"> <li>- Eliminate dowry (Dahej) practices and other atrocities towards Madhesi women.</li> <li>• To date, women's participation in political processes was only a fifth of the male rate.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Ensure proportional participation of women in decision making process in accordance with the UN Security Council Resolution 1325 and 1820</li> <li>- Consider the recent decisions of the Supreme Court of Nepal.</li> </ul>	<ul style="list-style-type: none"> <li>• The participation of women in all state mechanisms such as executive, legislature and judiciary and political parties are dismal.</li> <li>• No policy has been introduced by the government on implementing proposal made by Parliament regarding minimum 33% women participation.</li> </ul>
<p><b>Citizenship</b></p>	<ul style="list-style-type: none"> <li>• Some of the people from Madhesi Dalit community have been denied their right to citizenship in their family name even if it is conferred by law.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Ensure citizenship to all women according to CEDA and other international instruments.</li> <li>- Ensure the rights of citizenship for the Terai-Madhes women and Dalits.</li> </ul>	
<p><b>Right of indigenous Women</b></p>	<ul style="list-style-type: none"> <li>• Lack of disaggregated data for indigenous women</li> <li>• The systematic practice of social exclusion of indigenous women is experienced at various levels such as literacy rates, land ownership status, occupation, language, and educational status</li> <li>• Indigenous women are severely under-represented in decision-making structures of the state.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Ensure the proportional participation of indigenous women at all decision-making levels.</li> <li>- Take steps to include disaggregated data for indigenous peoples and indigenous women in the forthcoming National Census 2011.</li> </ul>	
<p><b>Rights of Women with Disabilities</b></p>	<ul style="list-style-type: none"> <li>• Considerable social stigma attached to disabled women and they suffer from gender based violence in the form of rape.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Enact a separate law to eliminate discrimination against PWDs and ensure the participation and representation of</li> </ul>	

<b>Muslim Women</b>	<p>women with disabilities in the public sector.</p> <ul style="list-style-type: none"> <li>• Muslim women suffer from multiple forms of discrimination. They are- ill represented in all levels of governance.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Ensure the participation and representation of Muslim women in state mechanisms on the basis of the principles of inclusion.</li> <li>• Domestic violence and sexual harassment.</li> <li>- discriminated against in relation to education, employment, marriage and access to resources</li> </ul>	
<b>Senior Citizens</b>		<ul style="list-style-type: none"> <li>• Number of issues relating to the protection of the rights of senior citizens is raised in the recent times.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>- Strategic national efforts are required in this regard.</li> </ul>
<b>Internally Displaced Persons</b>		<ul style="list-style-type: none"> <li>• Hundreds of thousands of people were displaced during the armed conflict. A number of them are still unable to return due to security reasons.</li> <li>• The victims of displacement were not provided adequate rehabilitation related support such as housing, food, health-care and schooling of children or a humane living.</li> <li>• The majority of displaced persons did not get compensation against the damage of their property as there was lack of access in getting compensation by many displaced persons.</li> <li>• The ongoing civil disturbance in Tarai and eastern hills in particular has created the problem of internal displacement.</li> <li>• The population of certain castes and origins were displaced as they were the target of armed groups.</li> <li>• A number of people have left their homes after receiving threats to life, abduction and extortion.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Ensure proper consideration on grievances and loss of IDPs.</li> </ul>

<b>Common Concerns</b>	
<b>Scope of International Obligation</b>	<ul style="list-style-type: none"> <li>• Need to expedite the work to ratify</li> <li>- The disappearances Convention</li> <li>- Convention on Migrant Workers</li> <li>- Rome Statute of ICC</li> <li>- Optional Protocol to CAT</li> </ul>
<b>Rights of Dalit Community</b>	<ul style="list-style-type: none"> <li>• Need to expedite the work to ratify</li> <li>- The disappearances Convention</li> <li>- Convention on Migrant Workers</li> <li>- Rome Statute of ICC</li> <li>- Optional Protocol to CAT</li> </ul>
<b>Rights of Dalit Community</b>	<ul style="list-style-type: none"> <li>• Under representation in the state structure in decision making implementation levels.</li> <li>• UN mechanisms' recommendation and in particular proportional representation in the organs of state still not yet met.</li> </ul>
<b>Right to life, liberty and security of the persons.</b>	<ul style="list-style-type: none"> <li>• Immediate reparation to the victims.</li> </ul>
<b>Systematic Practice of Torture</b>	<ul style="list-style-type: none"> <li>• Legislation criminalizing torture still has not been made.</li> <li>• Torture is still systematically practiced by police in criminal investigation.</li> </ul>
<b>Right to food</b>	<ul style="list-style-type: none"> <li>• Lack of just fair and reasonable food distribution, food shortage are major violations of the right to food</li> <li>• Lack of proper supply and distribution system followed by a national food policy.</li> </ul>
<b>Right to Education</b>	<ul style="list-style-type: none"> <li>• The government is yet to ensure education for all</li> </ul>
<b>Rights of Persons with Disabilities</b>	<ul style="list-style-type: none"> <li>• The law safeguarding those rights has yet to be made.</li> </ul>
<b>Child Rights</b>	<ul style="list-style-type: none"> <li>• Children are the victims of trafficking</li> <li>• Child labor in various forms is common in Nepal. At times thousand of children are employed in life threatening, hazardous conditions.</li> </ul>
<b>Women Rights</b>	<ul style="list-style-type: none"> <li>• Despite the constitution guaranteed women's rights as fundamental right, 62 laws exist that have discriminatory provisions against women.</li> <li>• Despite Constitutional guarantee and legislative reform gender based violence in the from of domestic violence remains largely unaddressed</li> <li>• Despite the Constitutional and legislative arrangements on the right to citizenship, practice of providing citizenship in the name of mother embodies series of problems due to patriarchic structures in all administrative authorities;</li> </ul>

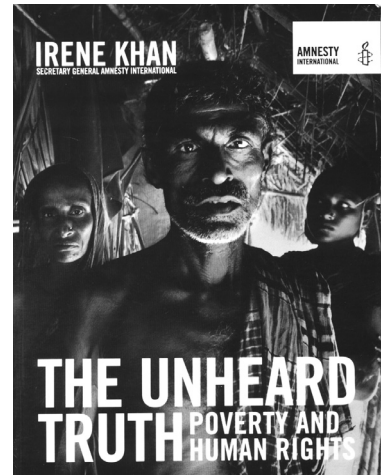
# The Unheard Truth: Poverty and Human Rights

This book attempts to substantiate that poverty has to be alleviated by dealing with it through a human rights perspective; as this perspective helps secure basic rights quicker. Incorporating human rights concerns is a must for economic development to be achieved and sustained. This is the proposition the writer has put forth in the book. As the writer has offered a thorough examination of the scandal of global poverty seen through the lens of human rights, a more careful assessment makes one think that this book might be both disturbing and inspiring. It draws heavily on the writer's experience as the Secretary General of Amnesty International and the materials produced by the organization. However, the author takes responsibility for the views expressed in the book.

The foreword about the book is written by the former Secretary General of the UN, Kofi Annan. Annan critiques that the author has made a convincing case for putting human rights at the centre of the efforts to end poverty. For

the former UN High Commissioner for Human Rights, Mary Robinson poverty is the world's worst human rights crisis and this book makes a powerful statement about not only why but how we can turn the tide. The author maintains in the book that the poor are denied freedom and justice. Guaranteeing freedom and justice and ending poverty is the first and foremost way of securing human dignity. Her convincing arguments in the book center on this very premise. Therefore, some commentators have viewed the book as a well-argued critique of mainstream thinking on development and poverty.

The book is divided into 10 chapters. The first chapter discusses economic aid, fairer trade and increased foreign investment. The increment and improvement in these areas alone, the chapter discusses, can not improve the poverty stricken peoples' situation. It is because growth alone is not a panacea. The chapter further argues, "Economic analysis doesn't capture the full picture of poverty



**Writer:** Irene Khan, Secretary

General, Amnesty International

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and the economic solutions alone can not fully address the problem of poverty". Rather, poverty is a human rights problem and it can be addressed effectively through respect for human rights.

The second chapter of the book discusses giving information to the poor about the available development choices. The chapter avers that this empowers people living in destitution. Ensuring participation is giving freedom. Taking the "bread before ballots" as the repressive approach of authoritarian regime and market-friendly allies, the writer has underscored the need for transparency and accountability.

The third chapter has dealt with the links between discrimination and poverty showing, how the

former is both the cause and consequence of the latter.

Taking a lack of food, work and shelter, disease, hunger, gangs, guns, police brutality, family violence or armed conflict, among others, as the factors for creating fear and reinforcing poverty on people, the author has argued well, in the fourth chapter, as to what should be done to protect the poor from these threats.

The Cold War rivalries that intensified after 1948, Irene argues, helped develop the dual track approach throughout the UN's human rights machinery. Such an approach has continued with political and ideological debates trapping and distorting the thinking on poverty. The advocacy of all human rights is to some extent political, but, advocacy of poverty as denial of rights is thought of as political issue. Still, the attack on economic, social and cultural rights is deeply rooted in the philosophical trap that these rights haven't "attained the status of moral absolutes". These are the issues Irene Khan has dealt with in the fifth chapter.

The sixth chapter deals with the right to a safe motherhood. For her, the story of maternal mortality is a story of prejudice, discrimination, inertia and inaction, denial of life and of a healthy and safe motherhood. Unsafe motherhood is a problem of different types of deprivations. Insecurity and violence is equally responsible for an unsafe motherhood. Dealing with cultural sensitivities and understanding the social and cultural norms that hold women back can increase the par-

ticipation of women. The writer affirms that access to information is a key in breaking down the barriers of exclusion and overcoming discrimination.

The seventh chapter is about the global slums and depiction of lives there through the human rights perspective. With the

*Her persuasive writing in the tenth chapter urges the stakeholders to translate acknowledgement of human rights issues and problems into action. She also urges to place human rights perspectives at the centre of our efforts to end poverty. To quote the writer, "the struggle to end poverty is no less momentous; it is this generation's great struggle. We will win it if we put freedom, justice and equality at its core."*

state almost entirely absent in these communities, except as a predatory force; insecurity, exclusion, voicelessness and deprivation are distinctive of life there. She comes up with solutions to this problem; such as ending forced evictions, guaranteeing tenure rights and improving

lives in the slums by making the slum dwellers part of the solution.

Taking the examples of Equatorial Guinea, Chad, Eastern Congo, Nigeria, and Angola she has, in the eighth chapter, tried to prove that an economic boom in communities also hampers the rights situation. People in such situation will have to suffer what she admits a 'Resource Curse' or 'Paradox of Plenty'.

The ninth chapter is about ending poverty through legal empowerment. Irene believes-poverty is about the lack of power, law gives the poor power. In many poor countries laws are in place but the problem lies with their enforcement.

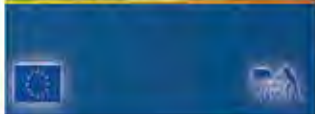
Her persuasive writing in the tenth chapter urges the stakeholders to translate acknowledgement of human rights issues and problems into action. She also urges to place human rights perspectives at the centre of our efforts to end poverty. To quote the writer, "the struggle to end poverty is no less momentous; it is this generation's great struggle. We will win it if we put freedom, justice and equality at its core."

Though it might sound quite idealistic to many, she has tried to convince with a deeply pragmatic proposal that poverty has to be understood as a human rights concern. Data, facts and situations mentioned and dealt with in the book, and her argumentative, plain language has made her assertion further convincing.

- By Dipendra Pd. Pant

## Livelihood at Risk

Findings from Mid-western Nepal



## Land Holding Pattern

in Mid-western Nepal



नेपाल

सुरक्षासम्बन्धी कानुनी प्रावधान



संविधान सभा  
संविधानसभाको कार्यवाही

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## Jana Andolan-II A Witness Account



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