

INFORMAL

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Joint Issue



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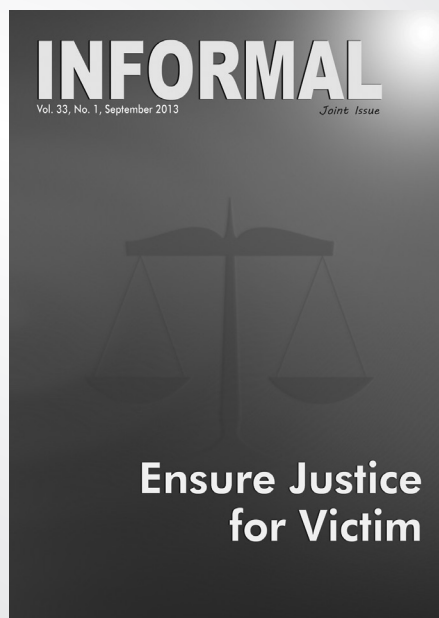
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Prolonged Quest for Peace and Justice

While the United Nations and Human Rights activist organizations and individuals around the world are marking the 3rd year of the International Disappearance Day, Nepal's commitment towards ensuring justice to the victim of the enforced disappearance remains at stake.

Nepal has entered the 7th year of the peace process and people have heard to the elected governments expressing their commitments to provide justice to the affected people. While agreeing to the Comprehensive Peace Agreement (CPA) of 2006, the signatories agreed to disclose the whereabouts of the disappeared persons within 60 days, but no development until this time has been seen. The election government, led by the Chief Justice Khilaraj Regmi, who was supposed to protect the right of the people violated by the executive through judicial decision, is seen to be reluctant in implementing the decisions he wrote; the case in point here is of Bal Krishna Dhungel who was convicted of killing of Ujjwan Kumar Shrestha.

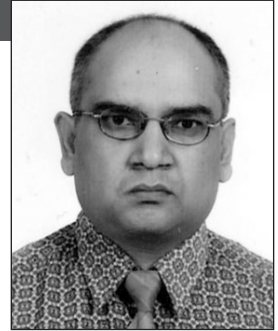
Justifying the words of Abraham Lincoln "Threat to justice anywhere is a threat to justice everywhere"; the adoption of Ordinance on Investigation of Disappeared and Truth and Reconciliation Ordinance (TRCO), 2012 has gathered the attention of the world community for posing threat to justice and protection of the human rights of the people. The executive organ adopted the ordinance as according to the order of the Supreme Court, however, failed to comply with the principles of human rights and transitional justice. The formation of single commission instead two; the blanket amnesty provision and no criminal liability to the perpetrators of the crime of non-political nature and reconciliation without the consent of victims have tried to mock the believers of justice. And once again the TRCO is under the consideration of the Supreme Court.

Moreover, the government has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and the Rome Statute of International Criminal Court that would incur the international responsibility of the government to criminalize and penalize the crime.

INSEC has been involved in documenting and conducting advocacy on pressuring the government to take concrete steps to address the concerns of the victims through press release, interaction and lobby with the government. Thriving for the universal protection and promotion of human rights, INSEC has urged the Government to repeal the ordinance under the consideration of the Supreme Court and introduce a new undiluted Act to form the Commissions.

This issue of INFORMAL provides an intensive discourse on the present ordinance and has specifically opined about the steps that government should undertake to guarantee the justice to the victims of disappearance taking the references of incidents related to it as well as constructive dialogue on the post-conflict armed violence; threats and opportunities for establishment of democracy.

Meanwhile, the issue also incorporates other major issues of national concerns like responsibility towards labor migrants and reflection of the commitments of Nepal Government to protect human rights of people in Budget 2013/14.



Ensuring Justice for Victims in Nepal Remains a Challenge

1. Indispensability to Probe into the Past Human Rights Violations

The incidents of grave human rights violations committed in the past, if not addressed prudently, are likely to result in serious repercussions. Because of either the inability to pay due attention or total disregard towards so many human rights and armed conflict related issues, Nepal's human rights situation had been a matter of worry even to the international community during the armed conflict.

If International Humanitarian Law (IHL), International Human Rights Law (IHRL), the ICRC rules of customary international humanitarian law, common article 3 of the Geneva Conventions, the principle of distinction, indiscriminate attacks, the proportionality and precaution in attack, principle of humanity, double jeopardy and the attack directed against any civilian population¹ had been taken into consideration by the warring sides violations and violence could have been minimized at that time. Also, the trajectory of Nepal's armed conflict probably would not be so grim. The parties of the armed conflict in Nepal disregarded these grave

issues and as a result of this an unprecedented spate of violence and violations occurred, which still call for the formation of related commissions for unearthing truth about the incidents of rights violations committed in the course of armed conflict.

Therefore, it is indispensable to dig up the bloody and repressive past of the country despite the fact that it might be risky, with the view of present necessity of traveling along the road of reconciliation, and painful at the same time in terms of memory of the traumatic past.

2. Condemnable Ordinance

The government of Nepal has taken some steps for the establishment of transitional justice mechanism through an ordinance but due to the flaws contained in it, the Ordinance has been criticized nationally and internationally. Some diplomats have expressly said that they will not be supporting the transitional justice mechanism citing the Ordinance not being on par with international standards.²

However, on June 25, 2006, the Appellate Court, Rajbiraj quashed the

it is indispensable to dig up the bloody and repressive past of the country despite the fact that it might be risky, with the view of present necessity of traveling along the road of reconciliation, and painful at the same time in terms of memory of the traumatic past.

* The writer is Executive Director of INSEC

1. These aspects have been especially focused by the Nepal Conflict Report published by the UNOHCHR. Details can be accessed from http://nepalconflictreport.ohchr.org/html/2010-12-00_legal-framework_applicable-law.html
 2. Donors against funding TRC under existing law, <http://www.ekantipur.com/the-kathmandu-post/2013/05/04/top-story/donors-against-funding-trc-under-existing-law/248347.html>

Murder Convict Remains Free: An Extreme Case of Impunity

Ujjan Shrestha alias Bhuwan, 35, of Pokali VDC-2, Okhaldhunga was killed on June 24, 1998 as he had gone to Dhobighat of Ramechhap district because he had to buy things needed for paddy planting. He was shot dead by a group of Maoist insurgents led by Okhaldhunga district in-charge Bal Krishna Dhungel. His body was thrown in Likhu River that separates the districts of Okhaldhunga and Ramechhap.

Ujjan's one of a brothers, Ganesh Kumar Shrestha filed an FIR on June 30, 1998 accusing Bal Krishna Dhungel and few others of being involved in the killing.

Ujjan's family claims he was killed because he had an inter-caste marriage with a Brahmin woman and who was Dhungel's relative. Ganesh Shrestha was killed on November 22, 2002 in front of his daughter. The family claimed he was killed for filing the FIR against the Maoists. Ganesh's daughter, disturbed by seeing the murder of her father, committed suicide.

The Okhaldhunga District Court convicted Bal Krishna Dhungel on May 10, 2004 and was awarded life sentence with seizure of his property.

District Court verdict. When the government moved to the Supreme Court, it quashed the decision of Appellate Court and upheld the District Court verdict. After being exonerated by the Appellate Court, Rajbiraj on June 25, 2006, Bal Krishna Dhungel contested the election from Okhaldhunga constituency no. 2 on UCPN-M party ticket and won. The government had moved the Supreme Court contesting the Appellate Court decision. The Supreme Court made the final decision on January 3, 2010 quashing Appellate Court decision and seconding the District Court decision. The Supreme Court's guilty verdict is yet to be implemented.

Truth and Reconciliation Commission (TRC) is and has been established worldwide for assessing the human rights violations and abuses committed in the past and also for identifying the causes

of such incidents. However, the ordinance put forth by the Government of Nepal does not contain meaningful provisions to delve into these aspects. It is also due to this fact that conflict victims and other concerned organizations have been affirming that the move of the government to form the transitional justice mechanism is unfair and illegitimate.³ Also, they have been requesting the government to retreat from its 'ill-intention' to form the TRC through an illegitimate foundation. As the commissions to be formed on enforced disappearances and, truth and reconciliation do not execute their findings and recommendations by themselves, INSEC has been expressing its concerns emphatically that such the commissions should provide a concrete guideline for the implementation of the commissions' recommendations. Given that

non-implementation or under-implementation of the court verdicts, including those of the Supreme Court, and also the recommendations made by various commissions formed for different purposes in the past are not encouraging us to be optimistic because of their hardly non-implementation, such guideline is a must. The Ordinance provides that required regulations can be prepared for implementing the objectives of this commission. However, considering the gravity of the issues the Ordinance has to deal with, the vague statement included in the Ordinance does not assure us of the implementation of the recommendations of the commission formed through this Ordinance.

The Human rights community in Nepal has been expressing strong opposition to this Ordinance. Their position will remain unchanged until and unless such the commissions are formed by consulting with the concerned stakeholders. We are well aware that the international principles and standards for the TRC require that the human rights community and advice, agreement and the involvement of its representatives have to be taken into consideration. However, these stakeholders have been totally disregarded in the course of preparing and issuing this Ordinance.

This disregard has made us circumspective and less optimistic of the justice delivery to the conflict victims in timely manner. (see box for such an example of government indifference towards the victims and their families)⁴ The hu-

3. Raut, Janak. Nepal's TRC ordinance is a product of an illegitimate process, <http://southasia.oneworld.net/peoplespeak/nepals-trc-ordinance-is-a-product-of-an-illegitimate-process#.UcZe4tLTy-k>

4. Forced Admission of Adhikari Couple at Mental Hospital Condemned; <http://www.inseconline.org/index.php?type=news&cid=12072&lang=en>

man rights activists issued a statement on August 28 criticizing the government move of endorsing the Ordinance calling it an amnesty ordinance.⁵

As well, UN High Commissioner for Human Rights, Navi Pillay urged the Government to rectify the truth and reconciliation ordinance that authorizes TRC to grant amnesty, contravening international standards.⁶

We feel that the initiative of the government on the formation of the commissions is likely to be just a ritualistic one, not having anything to do with justice for conflict victims. We have been very worried on this possibility. As these provisions might be (ab) used as to apply politico-administrative discretion in the matter of granting amnesty, the amnesty provision laid down in the ordinance has made us anxious. We have bitter experience that in the name of political give-and-take and consensus, Nepali people's human rights have not been paid proper attention by the political parties. Having said this, it does not mean amnesty should not be applied by the transitional justice mechanism. Rather, our concern (in this connection) is directly related to the possibility that conflict victims might remain displeased even after the exhaustion of the full process of transitional mechanism, and thereby, stage's set for the repetition of violence and revenge. On this account, it is desirable to have the provisions of amnesty accompanied by national and definitional clarity of human rights violations or their levels. This Ordinance does not seem to

Apathy towards Family of Conflict Victims

Nanda Prasad Adhikari, 56, and his wife Gangamaya, 55, on hunger strike demanding action against the killer of their younger son, were forcibly admitted to the government mental hospital at Lagankhel in Lalitpur on June 13. Their son, Krishna Adhikari, 18, was abducted and killed by the Maoists on July 8, 2004. Police arrested the elder son of the couple, Noor Prasad Adhikari, 30, in front of the Prime Minister's Office in Baluwatar on June 12. Metropolitan Police Sector Kamalpokhari took him to MPR Hanuman Dhoka after arresting him from Baluwatar while he had gone there to meet Chairperson of the Interim Election Council Khilaraj Regmi demanding action against those involved in the killing of his brother on June 6, 2004. He was released in the presence of INSEC staff few hours later. The National Human Rights Commission summoned Chief District Officer (CDO) of Kathmandu Basanta Gautam, CDO of Lalitpur Shashi Shekhar Shrestha, Chief of Metropolitan Police Range Kathmandu SSP Subodh Ghimire and Chief of Mental Hospital, Lagankhel Surendra Sherchan on June 18 and directed them to humanly treat the couple. The president of Nepal Mental Institute, Jagannath Lamichhane released a press statement on June 20 condemning their admission at mental hospital. Despite criticisms from the NHRC and human rights activists, the couple remains at the mental hospital.

After sit-in fast unto death by the couples, the chief of the election government directed police for investigation of the case. One of the suspect was arrested by police and later the office of district attorney ordered to release the suspect on call-on-bail showing the absence of adequate reason to keep them in custody.

Various human rights organizations have staged a sit-in in front of Bir hospital demanding for the protection of the right to life of the couple. Adhikari couple refused to withdraw their strike saying that there was no credible basis until the legal process moved ahead with the arrest of the perpetrators.

have paid attention towards the possible consequences that might appear because of the undue application of such provisions.

The current Ordinance apparently attempts to define serious human rights violations and has tried to be specific regarding the qualification and disqualification for the Chair or members of the Commission, besides providing recommendations for the implementation arrangement. Since the

government, through the discretion of the Attorney General, has been made the decision maker on whether or not to prosecute the person recommended by the commission, section 28 of the Ordinance is likely to make the commission formed through this ordinance quite discretionary.

The Supreme Court (SC) on April 1 issued an interim order against implementation of the ordinance on Truth and Reconcilia-

5. Amnesty Ordinance Unacceptable: Rights Activists, <http://inseconline.org/index.php?type=news&lang=en&cid=10433>; AWC Expresses Serious Concern over TRC Ordinance, <http://inseconline.org/index.php?type=news&cid=11598&lang=en>
6. <http://un.org.np/headlines/un-high-commissioner-human-rights-navi-pillay-says-nepal-commission-must-not-grant-amnesti>

tion Commission (TRC). A group of lawyers led by advocate Madhav Kumar Basnet had moved the apex court arguing that the provision in the TRC ordinance to give amnesty even to those involved in heinous crimes during the insurgency is against the principle of transitional justice and international humanitarian law.⁷

3. Conclusion

The decision to form a commission on disappeared persons and on the TRC through an undemocratically brought Ordinance is against the Comprehensive Peace Accord, the Interim Constitution of Nepal 2007, various agreements reached in the past, the bills tabled in the erstwhile parliament and the responsibility of the

government on human rights and victims' right to justice. Until and unless civil society and the conflict victims are allowed to be involved in finalizing the contents of the Commission meaningfully and their comments and grievances relating to the formation of the commission are incorporated, the Ordinance will be unacceptable.

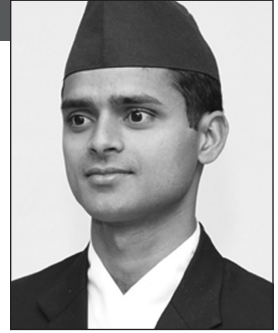
Bringing the Ordinance which does not deal with concerns of the conflict victims and accommodate provisions accordingly will turn out to be a politically crafty move rather than a serious step towards socio-psychological process of conflict transformation. Therefore, the commission formed through this Ordinance is highly likely to keep the possibility intact that the conflicting parties

relapse into violence. Given that political dishonesty is ruling over us, such a move has to be judged cynically, if not as an attempt to grant amnesty to the perpetrators of armed conflict. Although material welfare is one of the means of providing justice to the conflict victims, more importance has to be given as to how the conflict victims' and their independents' lives have been affected due to what they lost and how they were treated. The gruesome effects of the human rights violation committed during conflict-era cannot be faded into oblivion. It is, therefore, the duty of the organizations committed to human rights to stick to the cause until and unless the conflict victims are justly dealt.

7. SC stays TRC ordinance; http://www.myrepublica.com/portal/index.php?action=news_details&news_id=52477



INSEC Staffs during a Rally on International Disappearance Day, 30 August 2013



Post-conflict Violence in Nepal Threat to Peace Building and Democratization

Introduction

Nepal, as a modern state, is at the crossroads of nation building, post-conflict peace settlement and state restructuring process. The fundamental of democracy is accepted as the minimum requirement by all the political forces at the policy level. The practice of constitution making and the elements of the on-going peace process need to be revisited as the parties and social forces with differing views in terms of ethnicity, federalism and feature of government are unable to reach the settlement.

Democracy, both as a form of governance and representation, has been practiced only in the certain phase after the ouster of Rana Regime. Political revolutions of 1950, 1990 and 2006 were all in the quest of freedom and democracy. The governance mechanism in the decade of 1950s experienced the democratic notion of representation but only for few months. After Panchayat regime was introduced, multiparty democracy again observed a great setback. The reinstated multiparty democracy was paralyzed after armed conflict was launched in 1996 by the Maoists.

The environment of confidence is polluted after the Nepalese political structure changed as it was in the state

during the 12 point understanding in New Delhi in 2006 and after the signing of Comprehensive Peace Accord in November 21, 2006. The result of the Constituent Assembly election on April 10, 2008, backstage activities seen on the incident of presidential election and exercise for new equation for the formation of all governments after the CA election show that the political parties have lost the moral ground of culture of consensus. The movement launched by the UCPN-Maoist with the rhetoric of Civilian Supremacy after the fall of government led by them in June 2009 created a serious political stagnation and politics of reaction has become a culture in Nepal.

Constitution building within the stipulated time, lack of consensus among the political parties, delay in establishment of vital commissions mentioned in the CPA, social integration of ex-combatants, centralized tradition of decision making and implementation of CPA are the major challenges of peace process and these are again fuelled by the Madhesh Movement in the Tarai and Eastern Hilly region and the formation of militant type youth organizations by the major political parties.

In Nepal, transitional justice and assistance to the conflict of victims became only the seasonal agenda of political parties without a proper institutionalization of the mechanisms to address the existing problem.

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Conceptualizing Violence

Violence is an avoidable insult to basic human needs, and more generally to life, lowering the real level of needs satisfaction below what is potentially possible. Threats of violence are also violence (Galtung 1996: 197). Violence is not only limited to the use of physical force. Armed violence that is characterised with the use of small arms, indigenous arms or the weapons of mass destruction is often observed as the manifestation of grievances and resentment.

Violence in broader sense is categorized as structural violence and direct violence. Poverty, discriminatory state policies, discriminatory laws make the example of structural violence. Direct violence consists of the use of physical force of which the armed violence is a part.

Democratization and Peace building

Since the early 1990s, autocratic regimes appear to have been on a steady decline collapsing under their own weight and this decline has been considered with a trend toward elected governments (Kumar & Zeeuw 2008: 1)

Political parties have traditionally been regarded as the main intermediary organization of liberal democracy, linking citizens with the state. At one hand, political parties are expected to perform a variety of representative functions aiming at converting the interest and preferences of the people into policy proposals. On the other hand, they also perform a variety of procedural or institutional functions that serve to organize the political system of the state (Bartolini & Mair 2001: 32).

However, Grugel argues that party systems in new democracies lacking institutionalization enjoy low levels of legitimacy, have weak roots in society, are poorly organized and there are few opportunities for structural interaction among the parties. The major political parties in Nepal seem to be in the transitional phase. Nepali Congress, CPN (UML) and UCPN-Maoist had undergone through the launch of armed struggle in the years 1950, 1971 and 1996 respectively. The political parties, also formed after the April Movement 2006 are being criticized as they have mechanised the youth wings whose members are often found to be involved in violent incidents.

Peace building is action undertaken at the end of a civil conflict to consolidate peace and prevent a recurrence of fighting. (Paris 2004: 38) In Nepal, the nature of post-conflict peace building has stemmed from the mediated concept which the government and the rebels reached in the CPA 2006.

Jarstad has identified four types of dilemmas viz. the horizontal, the vertical, the systematic and the temporal which decide the fate of peace building and democratization. Temporal dilemma is induced when the question of exclusion or inclusion of armed groups is raised. Inclusion might challenge the principle of democracy as it explores heightened demand of violent groups in the political process without election, while exclusion of certain group may breach the peace process as they play the role of a spoiler. In this regard, violence becomes a complex decisive phenomenon both for democratization and peace building.

Armed Violence in Nepal

Both rural and urban part of Nepal experiences the tragedy of armed violence. Domestic disputes and community level conflict raised from the issue of local irrigation system often induce rural armed conflict. Small Arms Survey 2012 has reported that unemployment, high proportions of youth in population, low levels of education, presence of youth gangs, poverty and inequality, poor urban design, the proliferation of firearms and high demographic density in informal settlements are some of the many factors linked to urban armed violence.

Responses to armed violence have not been based on clear information about the scale or distribution of weapons in the country. It is not clear what kinds of firearms are in Nepal or where they are concentrated. Private firearms in Nepal are estimated to number 440,000. Roughly one-eighth (55,000) are believed to be legally registered. Most privately owned firearms are unregistered craft weapons, referred to as country-made or *katuwas*. There are estimated to be roughly 330,000 of these. (ibid)

The history of state level armed violence is found to be recorded from the late 18th and early 19th century, when Limbuwan groups rebelled against the Gorkha state in response to its attempt to erode local autonomy (ICG, 2011, pp. 3–4). Indeed, between 1900 and 1950 at least six rebellions occurred in Nepal, most of them had an ethnic or religious character. The majority were swiftly suppressed by the 'Rana Oligarchy' (1846–1950), which executed, expelled, or imprisoned dissidents and rebels.

Though it called for a peaceful transition, the party secretly recruited an armed force named the Jana Mukti Sena (the People's Liberation Army), which was expected to help overthrow the regime. The Jana Mukti Sena was mobilized at the Nepal–India border, from where it went on to capture several cities in the Eastern and Midwestern Region of the country. The Jana Mukti Sena was the first armed force that opposed the state in which people from all backgrounds participated—including women, indigenous groups, and members of lower castes. The prosecution of cadres and suspension of democratic politics led to the first communist uprising in 1971. Influenced by the Naxalite movement in West Bengal, a group of communist cadres attacked and killed several individuals perceived to be 'class enemies' in Jhapa district (Small Arms Survey 2013).

The nature of armed groups in Nepal includes ethnic militias, politically motivated insurgencies, urban gangs, and organized crime networks. However, gun availability in Nepal is moderate. As the country wrestles with post-conflict violence and democratization, it is not burdened by massive arsenals of weapons. (Small Arms Survey 2013) But the violent culture that roots in the formation of modern Nepal, use of domestic and indigenous weapons as well as the threat of small proliferation due to global arms trade impose the security threat to peace building and democratization in Nepal.

Among the 19,602 verified combatants by UNMIN, Special Committee Secretariat regrouped 17,052 in three separate packaged provisions of voluntary retirement, rehabilitation and integration into

Nepal Army. The cash allocated monthly to 2,550 UNMIN recorded ex-combatants for almost six years is never analysed in terms of economic cost and benefit, but has been made the issue of corruption by oppositions. The rehabilitation package with lots of economic and social opportunities was chosen by only six ex-combatants. Under the integration package, 1,460 ex-combatants have been selected for the various ranks. Among 15,585 ex-combatants who opted for voluntary retirement received the hard cash in two instalments (the allocated amount is Rs. 500,000 for lower rank to Company Commanders, Rs. 600,000 for Company and Battalion Commanders and Vice-commanders, Rs. 700,000 for Brigade Commanders and Vice-commanders, and Rs. 800,000 for Division Commanders and Vice-commanders).

When 15,585 ex-combatants go for voluntary retirement, the allocated cash will amount to more than seven billion rupees only in terms of cash distribution. The incidents of grabbing cheques issued to individual ex-combatants by their commanders during the distribution of first instalment have already questioned the utility of cash for them. The request/order of the high ranked Maoist combatants to the lower one for 'gift' in terms of material such as gold or cash itself provides the platform to think politically rather than economically. The formation of "People's Volunteer Bureau" by CPN-M led by Mohan Baidya and "Ex-People's Liberation Army Association" by UCPN-M in the last week of April 2012 makes one sceptic about the use of cash by the ex-combatants to make their life non-violent and tolerable to the

community as civilians. Neither, they will get the access to invest as a small amount of capital. It is not necessarily true that distribution of cash itself is a wrong attempt. But it is equally important and rational to think that who will track where the money goes—Maoist, bureaucratic authorities, political parties or the cash recipients themselves. (Bhandari 2012:54)

In the post-conflict transition Nepal, former combatants merely, are not the sources of potential armed violence. Increased trend of small arms proliferation and youth militia type of sister wings of political parties show the close correlation. Clashes occurred between the youth wings of political parties in which small arms reportedly are used and the political patronage of the criminals has fuelled such incidents. Even small arms are found to be used in the clash within a single youth association. Use of home-made guns during the festivals Dashain and Tihar and also in the marriage ceremony is accepted as part of Nepalese culture. Due to the 10-year long armed conflict this cultural practice got setback while in the post-conflict phase, the arms collection scheme of the government has supported this cultural degradation. But this is also taken positively as the weapons are potential sources to armed violence. Weak and fragile state mechanism is the feature of war turned societies as the various sectors' demand should be incorporated and former agents of violence should be adjusted to prevent the immediate resort to guns. This might lead of the emergence of armed groups as the imitation of insurgents with the motive of getting a stake in the power sharing mechanism acceler-

ates as in the case of Tarai region.

The threat that 'political' groups pose to the state is often threatened by 'mainstreaming' them, which implies negotiating with the government and disarming. Groups perceived to be motivated by economic gain, in contrast, are judged to be a law and order problem and are treated accordingly (Advocacy Forum, 2010, p. 14). The greed model of armed violence suggests that the armed groups often engage in activities such as kidnapping or extortion, and may use or threaten to use improvised explosive devices or IEDs. If such groups subsequently articulate political goals, officials tend to assume they do so to conceal their economic motives. (Small Arms Survey 2013)

Election and the position of Armed Violence

In post conflict societies, elections are considered as the landmark for stability since a quick fix of the settlement is practiced through the process of election. Despite the type of electoral representation, free and fair election bears the universal requirement. In Nepal, the previous parliamentary and local elections were also characterized with certain level of violence which ultimately was under the control of state mechanism.

Booth capturing, intimidation by the oppositional political parties, use of symbolic antagonistic behaviors and local level clash while opting the space for assemblies were some cases of election violence. Besides, assassination of electoral candidates has also been registered. The Constituent Assembly election held in April 2008 observed the most violent incidents in Dang and Tanahun

districts where the former home ministers were the candidates. In Surkhet, the candidate from CPN (UML) was murdered. Despite the noted violent incidents, obstacles posed in reaching the polling stations have been also found to be reported. Post-election violence was not observed.

The previous elections held under the democratic regimes in Nepal were led by the political forces. This time, it is said to be mechanized and devised to be held by a bureaucratic government. The interparty diplomatic mechanism, as well as coordination and bargaining approaches are destroyed at the local level and uncertain at the central level. In this tensed situation, the range of electoral violence seems to be amplified. The electoral victory has become synonymous to the political dominance and existence but not the performance height which accelerates the desire of victory by using any means.

The Constituent Assembly election dated for November 19, 2013 in Nepal holds the suspicion about its actuality from the very beginning of Election Day declaration. The bureaucratic government under the direct control of four major political forces is found to be determined towards the election. Two prominent propositions can be drawn behind this promptness, the bureaucratic efficacy is one on the verge of ordinance; and the other, if the election is not held on time, the whole political, constitutional and public crisis thus created would be the result of incompetency of the government. On the other hand, election would be the only curative measure for the political forces to return to the power structure. The activities of the ma-

jor political parties do not support peaceful environment. Political parties still are unable to put forward their agenda regarding nature of federalism and are still observing the activities of former king as a civilian as threat to 'Loktantra'. Public comments made by the political party leaders against the former king's humanitarian support for the flood victims have become an issue of debate which attracted the former king and his supporters as an active stakeholder in the mainstream transitional politics. Youth militia-type organizational structures created by the political parties now have been observed as the sources of the potential electoral violence. The increased demand of Nepali Congress party workers for the creation of youth wing parallel to Young Communist League of UCPN-M and Youth Association Nepal (formerly named Youth Force) of CPN (UML) reveals the uncertainty of security for the public. The central dilemma here is the lack of confidence upon the "Self-Created" electoral government by the political parties and the attempt to mobilize their youth wings to be 'protected' from each other.

In the initial days after the formation of the electoral government, the activities of CPN-M led by Mohan Baidya, a splinter group of UCPN-M, were limited to obstructing voter list collection. This political block with the demand of dismissal of the bureaucratic government the formal statement by the government compelled Election Commission and the political parties to issue formal statements for talks and flow their voices to go to the election coercively. If tension between the forces for and against the election exists within

a country, it leads to pre-election violence. This political imbalance will produce a new power equation resembling the war time features in which one force ultimately might go through agitation against the government. The conflict lines at grassroots level bear the roots that turn to horizontal level and the violent episodes take place which is the symptom of civil war. Though the integration process of the former combatants is instrumentally supposed to have been ended, the challenges of social reintegration and political threat from the former combatants still persist. Statement made by the Home Minister on the last week of July 2013 about surveillance of former combatants' activities indicates the severity of the security situation.

Conclusion

The end of war is the major concern of the Comprehensive

Peace Agreement. End of war is associated with not only managing the immediate violence but also disarming the combatants and collection of the weapons. For stable peace in the society, arms control is equally important as weapons that bear socio-cultural meaning can't be destroyed. Arms Control during the cold war assumed a high priority on the national security agenda as a way of managing the super-power nuclear rivalry. The new importance of arms control was a reaction to the bipolar structure of the international system and the revolutionary nature of nuclear weapons. (Larsen 2005:9)

After the end of the cold war, most of the armed conflicts were intrastate in nature and armed violence was the domestic governments' concern rather than the international system. Countries with the quest of democratic

transitions face the armed violence as a major challenge due to the ruptured economic and security strength. Grassroots initiative in peace-building agenda is replaced by the international frame. In Nepal, transitional justice and assistance to the conflict of victims became only the seasonal agenda of political parties without a proper institutionalization of the mechanisms to address the existing problem. Political parties, considered as the safeguards and regulator of democracy suffer themselves from the violent back up of youth militia type of wings. Disputes and incompatibilities are widely accepted in the political process. In the nation building process if instruments of violence are centred to the political forces rather than the state capacity it would be a great threat to human rights and sustainable peace.

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“You Can Flee Justice But You Cannot Escape Justice”

Dinesh Tripathi, LL.M from University of Baltimore, USA is an Advocate at Supreme Court, particularly having a wide range of experiences in constitutional law and human rights. He is also executive member of South Asians for Human Rights, a regional South Asian Organization and International Advisor to Global Majority, which is working for global human rights and peace. Mr. Tripathi has been continuously engaged in the Transitional Justice issue and also leads the movement against “blanket amnesty”. He talked in details on issue of Disappearance and the context in Nepal with reference to Truth and Reconciliation Commission Ordinance with INSEC. Excerpts:

Nepal is under obligation to constitute a credible commission to investigate all the cases of people who were subjected to enforced disappearance during the conflict era.

● How would you relate the need of the ratification of International Convention for the Protection of All Persons from Enforced Disappearance (CPED) in context of Nepal? Why?

During the armed conflict, Nepal was the country which got the highest number of disappearances which the UN sub-committee on disappearances has also recorded. During the conflict, disappearance was very wide spread but not a single perpetrator was brought to the justice. And under the CPED, state is under obligation to criminalize the crime of enforced disappearance as it is a serious crime which is also considered as international crime which means that there should be no amnesty for crime of disappearances. Even though Nepal has not formally ratified this convention, the Supreme Court gave a verdict in response of writ petition that Nepal has to constitute a Commission on enforced disappearance in compliance with international norms and standard to investigate

the crimes of disappearance. Now, Nepal is under obligation to constitute a credible commission to investigate all the cases of people who were subjected to enforced disappearance during the conflict era. So Supreme Court said in its verdict that the commission needs to be according to international standards. It needs to be independent, credible and it has to be competent to investigate all crimes. Because Supreme Court is the final interpreter of the constitution, the verdict of the Supreme Court is mandatory to each and every agency, instrumentality and organ of the state, they are under constitutional duty to implement and give effect to the verdict. Also the Supreme Court has said that the commission needs to be established that is in accordance with the norms of international law.

Secondly, the Comprehensive Peace Agreement (CPA) clearly mentions that the situation or whereabouts of all the disappearances need to be brought to the knowledge to the public within sixty

days. The authors and the signatories of the CPA had realized that the crime of enforced disappearances is a serious issue and it has to address it very urgently and because of that the provision about bringing the whereabouts of disappeared persons to the public knowledge within 60 days was incorporated although there are not any formal legal mechanisms or legislation on enforced disappearances.

Article 100 of the ICN, 2007, says that the recognized principle of justice shall be taken as the sources of law while rendering justice. Also, the Preamble of the Constitution uses the same. Here, the recognized principle of justice means the norms which are accepted by the international community. The UN charter Article 55 and 56 say that member states are under the obligation to take individual and collective effort to give effect to human right of the people. Under the auspices of UN, series of other international instrument have been adopted. In the same course, the CPED was also adopted. The convention puts an obligation on states to bring enforced disappearance offenders to justice. They must do so not only with regard to persons who commit enforced disappearances on their own territory, but also in cases of alleged offences in other jurisdictions: in those cases states have to either prosecute or extradite the alleged offender, so that no one can escape justice. Under the Convention disappearance is a crime against humanity. In order to show our full commitment to human rights and justice, it's high time that Nepal has to ratify this convention on disappearance as a large number of people have disappeared and no perpetrator were brought to the justice.

● Why do you think Nepal is hesitant to ratify the Convention?

Clearly, there is lack of political will on the side of the state. There is interim constitution, Nepal is party of several international human right conventions, and we also have the CPA in order to facilitate this transition. The political parties need to understand that peace process is not a license to stay immune from the criminal activities. The basic purpose of the peace process is to strengthen the rule of law and the purpose of CPA is to ensure human rights for the citizens, because peace is not only absence of war. In order to have a genuine peace you need to ensure the rule of law, fundamental rights and freedom of the people, so there is a misunderstanding that peace process means forgetting the past. A fact is that under the peace process, there must be effective instruments, mechanisms and a credible process to address the past.

Peace requires rule of law, peace requires human right and justice. But, the then rebels, the Maoists, wanted to hijack this peace building process; they interpreted the peace process being a gateway to amnesty. But the underlined theme is "blank Amnesty and peace does not go together". There must be accountability for crime. The perpetrator must be held accountable for their crime and brought to justice. There are politicians who continue to have the outdated impression that if you ensure justice, peace will disappear. Now it is well established notion that in order to have peace, justice is must. If you sacrifice justice there is no peace. Peace and justice should go hand in hand together. The misconception and the lack of political will are the determinant of non-ratification of the CPED.

● Do you think that ratification of CPED would aid in pushing ahead the movement in Nepal to ratify the Rome Statute as the CPED has also enlisted "Crime against Humanity" as an offence that ICC also has?

Yes, the ratification of CPED would aid in pushing ahead the movement to ratify the Rome Statute of International Criminal Court (ICC). Disappearance is a serious crime; it is a crime against humanity and an international crime. It also attracts a universal jurisdiction. It is also crime under ICC. The emergence of ICC is a landmark achievement in International law. It established the notion that- serious crime should not go unpunished. Under ICC serious crimes became the legitimate concern of international community. The trial can be conducted in ICC for serious crimes- If there is unwillingness or lack of capacity on the domestic level. Previously, the trial used to be under domestic law and jurisdiction, but now, with the view that the serious crime should not go unpunished there is ICC. So these crimes that are specified under statute are also adjudged by the ICC.

Nepal is sceptic (both the state actors and the political parties) to prosecute such act but in context of the international crime, if the national jurisdiction is unwilling or there lack of capacity, the jurisdiction of ICC starts. Nepal has not yet ratified CPED and Rome Statute, but Nepal has gone through serious crime. Though ICC has no retrospective effect; we need to create safeguard for future. Also, the basic purpose of Transitional Justice (TJ) is the creation of institutional and legal mechanism so in future such crime should not happen.

Nepal is party to Geneva Conventions (GCs), but we have not done anything to criminalize the crime under GCs, we don't have any legislation and we didn't even ratify the Rome Statute. So the requirement is to take series of institutional and legal measures so that in future these things will not occur. The basic purpose of TJ is to design national, institutional and legal mechanisms for the future so that we have an adequate and credible mechanism, institution, process and law which will address the issue. Nepal as gone through decade long conflict, there was violation of International Humanitarian Law (IHL) and GCs; but no one was brought to justice. This has led to the feeling that no serious crime will be punished. So if Nepal will ratify this convention and also Rome Statute, then we will have an additional safeguard if the national level is unable to address the impunity and serious violation of humanity and law.

Under our treaty regime, article 9 of Nepal Treaty Act, 1990, if we ratify any convention, it is under higher norm so if any national provision is in contradiction to int'l law, then national law will be null and void. Therefore it is a logical feeling that if we ratify CPED it will pave the way and create a conducive environment to ratify Rome Statute.

● **How far do you think Nepal has been able to criminalize the act of enforced disappearance?**

No concrete legal steps have been taken at this point. Also the Truth and Reconciliation Commission Ordinance (TRCO) has enlisted disappearance as the serious violation of Human Rights. But the Truth and Reconciliation Commission (TRC) is empowered to recommend amnesty to any crime;

there is no negative list. The original draft in parliament and the promulgated ordinance are different and contrasting to each other. The ordinance which is now published is a much diluted form of the original one because the original bill clearly mentioned that the crime of Disappearance would not be recommended for amnesty.

The Supreme Court has also given a mandate which says that there are needs to have a credible investigation of all the crime of Disappearance which took place during conflict. By implication, there is liability on state as it is under constitutional and legal duty and it is bound by the duty to give effect/ implement the verdict of the court. For eg. the Indian Supreme Court even when CAT was not ratified by India, said that it is widely accepted that torture is a serious crime and even though it has not ratified, it is a crime and India has duty to take serious steps to address it. So by this virtue as well, though the CPED is not ratified by Nepal, it incorporates the universal principle of justice and human rights and it is an obligation to criminalize it. Disappearance has been put into the list of serious international crimes which cannot be amnestied under international law by United Nations Security Council (UNSCR) and the Secretary General Guideline on Principle of TJ and Reparation also says that the crime of disappearance is not liable to amnesty under any peace process.

Since we (Nepal) are a member of the United Nation system, we are under legal obligation to take concrete step to criminalize this crime.

● **Do you think that TRCO, in any extent have been able to incorporate the essence and theme of CPED?**

No, TRCO is totally against the norms of convention. The Ordinance says the investigation of "disappeared persons" but it rather should have said "involuntarily (enforced) disappeared persons". The definition itself is not in accordance with the jurisprudence because the TRCO implies the missing persons but it is important to note that missing and enforced disappearance are two different things. Anyone can be missing or have disappeared (voluntary) but in context of enforced disappearance it must be involuntary and must be done by the state agencies or through authorization of state. That's why it is a serious crime, but TRCO does not carry basic component of convention. Therefore, the ordinance is inadequate and there is no clear accountability under TRCO for those who committed the crime.

Moreover, under the ordinance, the crime of disappearance can be recommended for amnesty, but under the CPED it is mandatory, it must be criminalized. It is crime against humanity under CPED. If it is a serious international crime, the perpetrator must be brought to justice. But under the TRCO there is no obligation.

● **Do you think that Truth and Reconciliation Commission and Disappearance Commission should be two different commissions? Why?**

Yes it must be two different commissions because TRC is an investigating body; it only establishes truth and in addition can also provide recommendation but it is not a court. Under the TRC in case of petty crimes, in consent of victims, reconciliation can be made. But Disappearance cannot be amnestied. The CPA signed among the political parties have also agreed to set up two different Commissions,

viz., TRC and Commission on Disappearance. Both of these commissions have two different natures. The former is to find the truth and the latter is to investigate the status of the disappeared persons. TRC is only to deal with the past and it has nothing to do with the present and future. Disappearance is a continuous serious crime. There is a lack of clear conceptual understanding on the part of drafter of the TRCO and a lack of political will on the nature and functioning of the two commissions. So there should be two different commissions.

● **How do you think the victims would benefit or have an easy access to justice by having a separate Commission on Disappearance?**

If there is a different commission with different mandate, the Commission on Disappearance will be designed for the particular need of disappeared people. We need separate mechanism; procedure and process that are victim centric. There must be easy access for them and the process needs to be streamlined, the victim's confidence needs to be restored and the victim should believe that this process is credible and result oriented. It will do justice.

But under this mechanism there is no guarantee that the perpetrator will be punished and there will be justice because they can be given amnesty. So, it goes against the principle of International law in which it cannot be amnestied. Bringing to justice is a minimum requirement. For e.g. In Sierra Leon, under the Lome Peace Accord (7 July, 1999), it was mentioned that nobody will brought to justice which the International community and the UN did not accept that because there needs to be prosecution in serious crime. In post conflict

society the criminal justice system needs to be strengthened.

● **How do you think the victims would get justice if the TRCO continues to be under consideration of Supreme Court and Nepal does not even ratify the CPED? Will the justice merely be the myth or are there any other possible way outs?**

Under this ordinance, justice is not possible. It undermines the rights of the victims. One of the basic/important components of TJ process is the victim justice system. To ensure justice, there must be criminal accountability. But TRCO has not established criminal accountability, so this ordinance is a fraud against the victims and their rights, undermining their right to get justice. It does not either fulfil the 4 components of TJ process 1) Truth establishment, not only to the victim but also to the society and for future generation so that they know the history of the country and who were the perpetrators which is also a kind of naming and shaming process; 2) Right to justice. It was promised that within 60 days the whereabouts of the disappeared persons would be established but it has now been 7-8 years passed nothing has been done; the process has not gone forward. 3) Criminal accountability should be established. The political parties are avoiding the process to escape from punishment, 4) TJ should be a victim centred process but the perpetrators are hijacking this so under this TRCO justice is not possible.

The ordinance was promulgated by the President under recommendation of government but it was rejected by the Civil Society Organizations (CSO) because the negative list of the crimes presented in the original bill was omitted. The

whole process of promulgating the TRCO became a tool of heavy political bargaining. The Maoist did not want any accountability and other political parties took a very opportunistic stand. Now the ordinance has been challenged in the Supreme Court and the SC has given interim order not to implement certain provision of the ordinance.

The TRCO is a seriously problematic, and not acceptable. Also the ordinance was promulgated without the consultation of the victims. The NHRC was also not consulted and the TRCO was promulgated so this ordinance will not do justice. Therefore the only way out is to bring a new ordinance with two separate commissions.

● **Is it possible to re-open all the cases of crime occurred during conflict and deliver justice through TRC Commission? Is it in accordance to Human Rights Principle?**

Yes, it is possible to reopen the cases. We cannot say that the crime is done under political garb and the perpetrator will not have accountability. There is no immunity and amnesty for crimes. Prosecution can be done for the acts prescribed under the common article 3, which applies for the non-international armed conflict in Nepal. For e.g. references can be taken to the Yugoslavian tribunal and the Rwandan tribunal which were constituted by the Security Council because there was serious violation of IHL. So even if Nepal has not ratified Rome Statute, the Security Council has special power to refer to any situation. If the Security Council finds that there is threat to international peace and security, any situation can be referred to the ICC and tribunal can also be constituted.

Also, in Sierra Leon and

Cambodia, there were extra ordinary tribunals which were set up by pressure of the international community. And there are also hybrid court that constitutes of international judges and the judges of the respective countries. If there is lawlessness and impunity, peace can't prevail. Peace means accountability, justice and dignity of human persons. Re-opening of the cases is in accordance with the Human Rights Principle.

● **How do you relate the transitional justice process to the Criminal Justice system? Are they complementary to each other?**

TJ process is a supplementary process which cannot replace CJS. The notion of international law is that supremacy of CJS needs to be established. For serious crime there should be prosecution and there is not any alternative to it.

For e.g. In Agni Sapkota case, Supreme Court said that the investigation needs to be continued. In Dekendra Thapa case as well the accused are in judicial detention. Similarly, in Maina Sunuwar case, the court said that a First Information Report needs to be registered and the investigation must be continued. In Bal Krishna Dhungel case, the conviction has already been made by the final court.

So TRC has its limited mandate it can't replace the entire CJS system; it aids the CJS by finding the truth. Rest of the prosecution and all relevant activities are done by the formal legal system.

Even UN has said that in a post conflict society the CJS needs to be strengthened; it needs to be made effective and cannot be undermined. It is only through persecution, now criminal accountability can be ensured. For e.g. in South Africa, there were 8000 application for amnesty and only 1500-2000

were accepted. This clearly emphasizes that if there is crime it must be punished. "IPPR" which means if the crime happens it must be Investigated, similarly if there is evidence it must be Prosecuted, and if there is sufficient evidence there must be Punishment, and the Rehabilitation has to be given to the victim.

In Nepal, under Government Cases Act, 1992 there is a separate list of crimes where government is party which includes the crime of murder, rape etc. Similar is the crime of disappearance even though it is not listed. People who have disappeared are dead now. So I would say the investigation has to be done under murder act; initially it might look like a case of disappearance but after investigation it might convert to murder. So if credible investigation starts, the murder will be established. But, there is no initiation of investigation. Government is under no liberty to say it cannot investigate. It is legal constitutional duty and duty under international law to investigate the crime. The basic duty of a state is to ensure rule of law but the impunity goes against the very notion of rule of law as well as against the dignity of its citizens. Impunity and rule of law cannot go together.

● **At last, what message would you like to give to the families of victims of disappearance and what would you like to suggest to the government?**

"You can flee justice but you cannot escape justice". But our politician has taken an ostrich like approach of avoiding it. But sooner or later justice must be done. There is no alternative to justice. The issue of justice will always be live. For e.g. in Nazi Germany, still the trial is going on. Similarly, even after 40 years, tribunal has been constituted in Bangladesh and the trial is go-

ing on. The message to the victims is "We should not lose faith in justice".

The government being a part of international community should also understand that even if you don't ratify the Rome Statute, the common article 3 of GC is a customary international law and by the very virtue of being a jus cogens, Nepal has the obligation to abide by it. Similarly, the crime of torture, whether you ratify or not, it is a principle that torture should not be done. So, universal principle of justice and rule of law cannot be undermined. If Nepal fails to start a credible investigation process for accountability and justice, international jurisdiction will arise. For e.g., In Colonel Lama case, justice was not done so the international jurisdiction started. And it is dismaying at the way political parties reacted in that case. It is very unfortunate that they claim it as an issue of sovereignty and nationality. It has nothing to do with sovereignty and nationality because the issue of justice has nothing to do with borders. It is a legitimate concern of international community. If the crime is against humanity is perpetrated, the entire humanity has a duty to ensure justice; it is a collective responsibility to ensure justice, rule of law. Upon the serious violation of humanitarian law and war crime, the international community has the responsibility to prosecute it. For e.g. in case of George Bush, former president of USA, his international travel is restricted to Canada, Switzerland, France as in several jurisdiction, there is complaint against him for committing the crime of torture. It is to be noted that we can't escape justice permanently. Justice is paramount, rule of law is paramount and no justice means no permanent peace.



Labor Migration: A Socio-Economic Perspective

1. Background Introduction

Nepal being the home for 27.47 million people is one of the developing countries with struggling economy, unstable political situation, sluggish development, unemployment and poverty. In earlier days, Nepal witnessed migration both internal as well as across the border to India especially for the labor purpose. Economic globalization flourished the trend of migration and with it Nepali people began travelling across the border and abroad as migrant workers, sometime for a short period as temporary migrant workers, sometime for longer span, and known as Diaspora workers. Temporary Migrant Worker is defined as skilled, semi-skilled or untrained workers who remain in the destination country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise, also called contract migrant worker.¹

It is estimated that 1.5 million Nepali nationals are working in India. However, they are not officially accounted as migrant workers by the Indian authorities due to the no visa policy between the two countries.² Qatar, Saudi

Arabia, Malaysia, and the UAE are the top four destinations and account 87% of labor migration from Nepal. As compared to other South Asian countries, Nepal especially has a high dependence on Malaysia as a migration destination and 16% of the outgoing migrant workers from Nepal went to Malaysia in 2010.³ The CBS data 2011 shows that 29% of the total household in Nepal have at least one member living abroad. It proves that the labor migration has become source of livelihood strategy for huge source of human capital.

Each year, thousands of skilled, semi-skilled and unskilled labor force enters the global labor market from Nepal. The official record of the Department of Foreign Employment (DoFE) Nepal reflects that the trend of foreign employment has been increasing. 3,605 people have migrated as registered labor migrants in the FY 1994/1995 which has summed up to 170,7024 at the end of FY 2010/11. Comparison between FY 2011/12 and 2012/11 reveals that more people have migrated in later year showing the difference of 68,878. 384,665 people (361,707 Male and 22,958 Female) migrated in FY 2011/12 whereas 453,543 people (425,830 Male; 27,713 Female) migrated in FY 2012/13.⁴

Comparison between FY 2011/12 and 2012/11 reveals that more people have migrated in later year showing the difference of 68,878.

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1. Available at <http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html>
2. Asian Development Bank, Worker's Migration and Remittance in South Asia, Working Paper Series, No-12, 2012, p-3
3. Ibid.
4. Available at <http://www.dofe.gov.np>. (The data represents the number of people who received labor permit from the DoFE, and use legal channel for migration)

High levels of unemployment and underemployment, low wages and widespread poverty prevalent in the South Asian countries are often cited as the reasons that propel large-scale migration from South Asia to the Gulf countries.

Hence, DoFE's data reflects that 29, 19,242 people (28, 34,430 Male; 84,812 Female) have migrated since FY 1994/1995 till the end of FY 2012/13 and the feminization of migration has also increased in recent years. These are the data of migrant workers registered under DoFE. Apart from this, it is assumed that the data on migrant labor exceeds these recorded data as many people have been migrating as labor migrants via open border with India and working there that are unreported or unrecorded. Similarly, people use Indian routes which are also not monitored.

2. Causes of Labor Migration

Unemployment (2%), poverty (25.2% of the people are living below the poverty line),⁵ low wage/payments (NRS RS 8,000 as minimum monthly salary for industrial worker and NRS 318 as daily wage),⁶ instable political situation, internal conflict, violence, lack of industrialization, social discrimination at work, lack of implementation of investment policy by the government are some of the pushing factors of migration for Nepal. High levels of unemployment and underemployment, low wages and widespread poverty prevalent in the South Asian countries are often cited as the reasons that propel large-scale migration from South Asia to the Gulf countries.⁷ Poverty seems to be the driving force for labour migration from Bangladesh, Nepal and Sri Lanka, and partially for Pakistan.⁸ These statements justify some of the causes of labor migration from the developing countries.

Internal conflicts are also a variable for labor migration. In Nepal, the beginning of Maoist Insurgency in 1996

AD, people expelled or forced to leave their places, internally displaced with minimum and or no source of income and livelihood. The decade-long insurgency and the development impasse followed by closures of industries, and an unfavorable situation for new investments decreased economic growth rate of the country within a decade. As a result, the labor force opted for the international labor market and the trend has been incessant with an increasing graph till now. Contextual with conflict, like Nepal, Sri Lankan labor migration was sought due to poverty, unemployment, underemployment and almost three decades of civil war.⁹

It is estimated that more of the young labor forces, approximately 400,000, come in the market each year with high hopes and aspirations and only one fourth gets employment. Therefore, unemployment is triggering factor to join the international labor market. On the other side, even for the employed, low payments and insecure jobs are other reasons to join the international labor market for lucrative wage rates offered by foreign employers compared to country of origin. The Nepal Institute of Development Studies (NIDS) and the World Bank (2009), for example, showed that the monthly income of Nepalese migrants in Middle Eastern countries was 7.4 times higher than the average monthly income in Nepal. Internal migrants also earned 7.61% more than those who do not migrate within Nepal. Filipino and Indonesian migrants who move abroad earn four to five times more than what they earn at home.¹⁰

5. CBS 2011

6. Available at <http://www.fncci.org/downloads.php>

7. V.Vgiri National Labor Institute and UN Women, *Migration of Women Workers from South Asia to Gulf, 2012*, p-12

8. Ibid

9. B. Skanthakuman (Ed.), *Rights, Remittances and Reintegration; Women Migrant Workers and Returnees in Sri Lanka, 2011*, p-3

10. Adhikari 2011; Afsar 2009; Billah 2011; Guest 2003: 11; Srivastava et al. 2011, *Migrating out of poverty, Research Programme Consortium, Tasneem Siddiqui, Refugee and Migratory Movements Research Unit (RMMRU)*, Working Paper 2, September 2012, p-13

"The showing off by the returnees from gulf and the pride the guardian have on their wards are some reasons that the belief is getting stronger in the villages that affluence and happiness can be achieved through foreign employment."¹¹ The labor migration flourishes the economic status of families at the village level and so it becomes a matter of prestige to accelerate migration outflow. Thus, long term unemployment and recently imitating the trend of labor migration itself are reason amongst others.

3. Labor Migration, Remittance and Development

It is not easy to leave one's place of residence and move to some other alien land for earning livelihood. The migrants encounter with new culture, climate, food habit, language, lifestyle as challenges and learning. Consequently, labor migration has both the advantages and disadvantages over new opportunities. The economic cost is always high as the migrant sends back money in the form of remittances that are counted in cash and even in kinds as transfer of technologies and knowledge.

When people are displaced from their traditional livelihoods, they become a mobile population of wage workers, actively selling their labor in whichever market will accept them. Under these conditions, migration serves as a type of self-insurance policy against unemployment or underemployment

for families who send members to labor market in different locations—rural, urban, or overseas—to diversify their income portfolio.¹² There is no doubt that remittance has eased the Nepali economy by decreasing the trade deficit, compensating the balance of payments and has supported the national economy in these areas. In Nepal, 55.8 per cent of the households receive remittance. About 31 per cent of income among remittance receiving households in Nepal comes from remittances (CBS 2011). In recent years, remittance has obviously helped to reduce incidence of poverty and inequality. Poverty head counts ration at national poverty line has decreased from 41.8% in 1996 to 30.9% in 2003 and 25.2% in 2010. Nepal ranks within top 10 countries receiving migrant remittance as a share of GDP in 2011 which accounts 22% of the total GDP.¹³ Likely, the budget of FY 2013/14 shows that the remittance income has increased from 21.3 per cent and amounted to NPR 388.46 billion. Apart from the formal channels, it is estimated that much of the remittance comes from informal channels like Hundi. A study show that about 55% of the remittance inflow to Nepal from informal source.

A study among different countries reflects how remittance has helped to flourish the economy. For example: African migrants sent at least \$40 billion in remittances to African countries in 2010. The true size of remit-

tance flows, including unrecorded flows, is believed to be significantly larger. Remittances are the most tangible link between migration and development. Remittances are a large source of funding in many African countries: in Lesotho, they are close to 30 per cent of GDP; in Cape Verde, Senegal, and Togo, more than 10 per cent of GDP. In Egypt, remittances are larger than the revenue from the Suez Canal, and in Morocco they exceed tourism revenue.¹⁴ India followed by China, Philippines, Mexico, Nigeria, Egypt, Bangladesh, Pakistan, Vietnam and Lebanon are the countries are the top ten recipients of remittance among developing countries in 2012. The developing countries like Tajikistan followed by Liberia, Kyrgyz Republic, Lesotho, Moldova, Nepal, Samoa, Haiti, Lebanon and Kosova stood as top ten recipients of remittance as a share of GDP.¹⁵

Labor migration has contributed in social development also. More people have migrated to cities for better education, thus producing a better human capital. Evidence from rural Pakistan, India, Nepal, Sri Lanka, Bangladesh, the Philippines and South Africa suggest that temporary international migration is associated with increased school enrolment.¹⁶ Research studies also show development in access to technologies like televisions, laptops and mobile phones that have increased people access to information.

11. Tarai Human Rights Defenders' Alliance, *Impact of Remittance in Madbesh, Study Report 2012 July*, p-20.

12. Christine G.T. HO and James Loucky (quoting Massey 2009), *Humane Migration 2012*, p- 19

13. The World Bank, *Migration and Development Brief*, April 19, 2013.

14. Dilip Ratha and Sonia Palza, *Harnessing Diasporas/* www.imf.org/external/pubs/ft/fandd/2011/09/pdf/ratha.pdf

15. The World Bank, *Migration and Development Brief*, April 19, 2013

16. Tasneem Siddiqui, *Migrating out of poverty*, Research Programme Consortium, Refugee and Migratory Movements Research Unit (RMMRU), Working Paper 2, September 2012, p-18

4. Labor Migration -Could it have Negative Consequences?

Labor Migration brings economic and social prosperity but it breeds negative consequences in the long run, making the active population more inactive and dependent on the remittance. Various studies have found that families of migrant workers tend to become more extravagant than before on remittances income for their daily subsistence giving up income generating activities, abuse of such income and other behavioral changes. Furthermore, remittances have a limited impact on long-term growth because it is used mostly for daily consumption purposes by the recipient households.¹⁷ Therefore, if proper investments are not made, industrialization and entrepreneurship neglected, labor migration making the country dependent on remittance and also lead to a huge trade deficit in long run can stagnate the economic growth.

Migration has many benefits but there is a human cost in terms of sacrifice. Labor migration accelerates family fragmentation. The absence of a family member matters in each family. The children are left behind with either of their parents or with grandparents if the family is a joint one. Otherwise, the mother or father alone takes care of the children in absence of their spouses. Sometimes, the children are even left at hostels or under the custody of other family members if both of the parents are off for employment. The socialization affects the early child-

hood development and results are visible in case where children are derailed from education, sometimes are addicted to drugs and undergo psychological trauma in absence of family members and proper guidance. The growing children, left back spouses and ageing parents are the sufferers, though in a way remittance fulfils their financial needs. It is even worse in cases, where husband and wife migrate for the employment and children are left behind. The sociological aspect of family values does not serve its function in this situation and family bonds dwindle. Therefore, the separation of family member and feeble families' ties remain as major challenges caused by migration in forthcoming days.

Infidelity and promiscuity among husbands and wives have destabilized the marital bond. Young married male and female migrate at their productive ages and left either their husband or wife at home. A study report on Impact of Remittance in Madhesh, Nepal, 2012, illustrates cases where wives have eloped with some other men leaving the children behind. Other study shows that husbands often heavily rely on wives' earnings and subsequently give up working or do not seek work for themselves. With an excess of free time and money, husbands often turn to drinking, gambling and womanizing.¹⁸ In Senegal, cases of unwanted pregnancies outside of wedlock in women left behind often leading to infanticide attempts.¹⁹ As one of the causes for labor migration is the sustainabil-

ity and prosperity of family, labor migration itself may results in the fragmentation of family.

Men are more prone to death in hazardous works while women face physical, psychological and even sexual violence. The returnees also face many problems. Such as, returnees undergo depression, are vulnerable to HIV/AIDS and even return being physically handicapped. One of the Nepal's national daily reported that migrant workers are mostly suffering from depression, anxiety and other forms of mental illnesses. According to the report, out of the total patients visiting hospital, half of them are returnees from foreign employment. Most of them are suffering from depression which has a direct link with their social and economic status. The returnees are more focused on improving their economic condition as they failed to earn an equal amount of money in the country.

In severe cases, depression can lead to suicide.²⁰ Therefore, there is no certainty for the returnees with full hand money. They might have to face other problems in their return and reintegration process.

5. Vicious Cycle of Migration

Migration is a product of unequal development, but also perpetuates it as it undercuts the development of local productive forces by removing most segments of population. This constitute to underdevelopment, which in turn, promotes and propagates migration. Thus, it leads to a vi-

17. Guna Raj Bhatta, Remittance and Trade Deficit Nexus in Nepal: A VECM Approach, , NRB economic review refering Hettige, S (1991) and Arunatilake et. al., (2010), p-38

18. B. Skanthakur (Ed.), *Rights, Remittance and Reintegration; women Migrant Workers and Returnees in Srilanka*, Publisher: Law and Society Trust, 2011, p-18

19. DR Thomas Weiss, *Pre Global Forum on Migration and Development, UNIFEM, 2010*

20. Laxmi Maharjan, *Depression: Alarming Rise in Migrant Returnees*, The Himalayan Times, 2012 October

“No Amnesty on Enforced Disappearances”

INSEC has been standing alongside the victims in their fight for justice & will continue to do so. Through various non-violent measures in this course. Activist & opinion bulders were sought opinion on “what measures should Nepal Government take to render justice to the victims of enforced disappearance”.

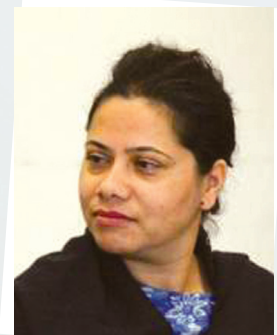


Om Prakash Aryal
Lawyer

We don't think that the Government of Nepal is serious on measures it has to take rendering justice for the victims of enforced disappearance. The government has intentionally delayed the formation of a disappearance commission, it has been diluting the issue-. For example, it passed an ordinance to merge disappearance commission with the truth commission. This ordinance ignores the norms enumerated in the constitution and international law. We therefore must put pressure on the government to uphold state's legal obligations towards victims of armed conflict. Particularly, following recommendations are offered to the Government of Nepal to ensure justice to the victims of enforced disappearance:

- ▶ Revoke the ordinance which merged the disappearance commission with truth commission, enact a separate law to form an independent, impartial and competent commission of inquiry on disappearance and criminalize enforced disappearance.
- ▶ Implement the Supreme Court's landmark judgment on enforced disappearance dated 30th May 2007, which has passed a number of binding orders (mandamus), such as the requirement to initiate criminal as well as disciplinary proceedings against government officials responsible for the enforced disappearances of Rajendra Dhakal, Bipin Bhandari and Dil Bahadur Rai; and the murder of Chakra Bahadur Katuwal following his enforced disappearance.
- ▶ Proceed to become a state party to the UN convention relating to enforced disappearance with the aim to prevent such crime in future.
- ▶ Ensure that reconciliation and amnesty shall not be allowed in the serious crimes, including enforced disappearance.
- ▶ Provide adequate reparation to the victims and their family members.
- ▶ Proceed to make a vetting law with a view to prevent persons involved in abuse of human

rights, including enforced disappearance, to contest election or any public posts.



Mandira Sharma
Chairperson, Advocacy Forum

First of all government should recognize that family members of disappeared persons are suffering every day for not knowing the fate of their loved ones and they have the right to know the truth, get justice and reparation. Second, the government should respect rule of law and ensure that there is no one above the law and that it is committed to address impunity by investigating the cases of disappearance. For this matter, a law has to be enacted criminalizing disappearance and detailing out the procedures. The act should also have a forward looking approach and be compatible with

Nepal's international obligation. To establish the truth of still disappeared persons of the government should form a commission as prescribed by the Supreme Court. Victims and civil society actors have to be consulted while finalizing the legal frame work for setting the mandate of this commission. The current ordinance has to be withdrawn and the process of drafting legislation on the TRC and disappearance commissions should be started.



Raju Prasad Chapagai
Chairperson, Justice and Rights
Institute-Nepal (JuRI-Nepal)

Regrettably, there is increasing hopelessness of justice for the victims of conflict-era violations within the country, in particular, for the victims of enforced disappearance. In such a situation, it is natural for victims and rights activists to seek options at the international level- e.g. jurisdiction of foreign courts and the UN human rights committee. The support of human rights community to such efforts beyond the border appears to have been aimed at generating pressure upon the State to implement on its repeated commitments to ensure justice within the Country. The Government must take such quest for justice seriously bearing

in mind that the legal remedy for the victims of the serious violations including enforced disappearance is not a matter of mercy or prudence but an immutable right of the victim guaranteed under national and international law. Against this backdrop, it is high time for the government and responsible political parties to abandon their hidden policy of de facto impunity and undertake the following steps towards ensuring justice to the victims of enforced disappearance:

- ▶ Initiate a constructive engagement with stakeholders including victim groups and garner their confidence that there can be a joint action with a view to advance justice to the victims of enforced disappearance.
- ▶ Offer adequate interim relief and reparation measures to help the families of the disappeared to enjoy their fundamental right to live with human dignity.
- ▶ Devise a victim and witness protection program and implement it to create a conducive environment for the victims to seek justice.
- ▶ Acknowledge the fact that the State committed a mistake by adopting the Ordinance on Disappearance and TRC that undermines the notion of justice and initiate the process to replace this with one that is into line with the Supreme Court decision, international legal standards and best practices.
- ▶ Make sure that all apparatus of the Government accept their complementary role of transitional justice and criminal justice and they fully cooperate with the justice system including enforcing arrest warrants and conviction decision issued by the courts in relation to past human rights violations.

- ▶ Take concrete initiative to enact a law which criminalizes enforced disappearance



Ram Kumar Bhandari
Coordinator, NEFAD
Chairperson, Committee for
Social Justice

Since the disappearance, families have demanded:

- a) the disclosure of the truth,
- b) the return of human remains,
- c) public acknowledgement and
- d) respect for family rights: (the right to know the truth, justice, reparation and family peace)

However, these demands go unanswered and as the time passes, it becomes difficult to sustain the necessary pressure on the government to hold the perpetrators accountable. The government is not serious about addressing the legacy of disappearance. Hope for a strong independent commission for the investigation of enforced disappearances has been abandoned. The new Truth and Reconciliation Commission Ordinance has failed to define disappearance as a crime against humanity and to provide victims' family any support or for the exhumation process, and, instead, has made perpetrators eligible to receive amnesty.

Following the end of the conflict, the families of the disappeared started to unite in hopes of achieving justice through a disappearance commission. Now the commission itself has disappeared. Instead of providing answers or admitting the disappearances, the Nepali state distributed monetary compensation, taking advantage of the victims' economic needs, and tactically diverted the truth agenda. Instead of creating sustainable transitional justice mechanisms, the government drafted a Truth and Reconciliation Commission without consulting the victims, thus strategically diverting the justice agenda. Instead of addressing the needs of the victims and the delivery of justice, the state followed the prescriptions of donors, diverting the victims' needs and agency in the name of superficial peace and reconciliation. This not only betrays the legacy of disappearances but also neglects the victim families' right to know the truth. History will neither not forgive those criminals nor forget those who were disappeared. To create a transitional justice environment, enforced disappearances need to be made a national and family agenda to ensure respect towards the victims' dignity.

The Supreme Court passed a decision on disappearance cases on 1 June 2007, but none of the components of that decision has been implemented. The Court ordered that the government enacts a law to criminalize enforced disappearance in line with the International Convention for the Protection of all Persons from Enforced Disappearance, establishes a high level commission of inquiry on disappearances in compliance with the

international criteria on such commissions of inquiry, require investigations and prosecutions of persons responsible for disappearances, and provides adequate compensation and relief to the victims and their families. The families of the disappeared demand to the government of Nepal immediately:

- ▶ to implement past agreements and
- ▶ to execute Supreme Court decisions

In the name of charity and assistance, the government has offered monetary compensation, essentially placing a price on the people lost during the conflict. Money was offered in return for silence; silence regarding the lack of justice in our post conflict transition and silence about the difficulty, hardship and inequality that is perpetuated throughout Nepali society on a daily basis.



Sunil Kumar Pokharel

Secretary General,
Nepal BAR Association

During the armed Maoist insurgency in Nepal, cases of enforced disappearance occurred massively. Enforced disappearances were carried out by both state and non-state actors. This kind of serious human right violence created bad face of Nepal in international community.

In the Comprehensive

Peace Agreement (CPA) and promulgation of Interim Constitution 2007, cases of enforced disappearance were considered as serious issue to be dealt about.

Article 33(q) of Interim Constitution has mentioned about formation of disappearance commission and proper compensation to victim's family.

Supreme Court, too, in its ruling on Rajendra Dhakal v. Nepal Government, Ministry of Home Affairs, among others cases, has issued directive orders in the name of government to make necessary arrangements to provide justice to victims, formulate necessary laws to address the crime against humanity and for formation of inquiry commission to find out truth of cases of enforced disappearance occurred during the conflict.

In spite of above constitutional provisions and Supreme Court's ruling, victims of enforced disappearance are still struggling for justice. Hence, Nepal Government, without any delay, must take following initiatives to render justice to the victims of enforced disappearance.

1. Make public of whereabouts of disappeared person or disclose their status Immediately
2. Formulate effective laws or amend existing laws to guarantee of no repetition of the cases of enforced disappearance
3. Provide necessary financial support to victims' families and make necessary arrangement for education to children and employment to the victims' spouses.
4. Make necessary arrangement for rehabilitation of the families, whose loved ones

were subjected to enforced disappearance and those who have lost their lives in quest of justice.

5. Prosecute those who were involved in perpetrating enforced disappearance



Rameshwar Nepal

Director, Amnesty International
Nepal

Nepal witnessed a serious trend of disappearances during a decade long conflict between 1996 and 2006. The number of disappearances reached at the top and this country was known as “country with highest number of disappearance in the world” in 2003 and 2004. The fate and whereabouts of more than 1,300 possible victims of enforced disappearance are still unknown.

Victims, their family members and human rights organizations are campaigning regularly, urging Nepali government to ensure that the investigations to determine the fate and whereabouts of disappeared persons are carried out without further delay, and that those suspected of criminal responsibility for these gross violations of human rights are brought to justice in fair trials. But the progress to that end is almost non and not a single person suspected has been brought to justice.

The Government of Nepal and Communist Party of Nepal (Maoist) signed the Comprehensive Peace Agreement (CPA), which committed both parties to investigate and reveal the fate of those killed or disappeared during the armed conflict within 60 days. Both parties promised they would “not protect impunity” and vowed to safeguard the rights of families of the disappeared. More than six years later, the promises made in the CPA have still not been fulfilled. Instead, the government has actively protected and even promoted those accused of committing human rights violations.

Early this year, the President approved an ordinance to establish a Commission on Investigation of Disappeared Persons, Truth and Reconciliation to investigate human rights violations committed during the armed conflict. However, the establishment of the commission was temporarily halted after the Supreme Court issued a stay order in April following legal challenges. The proposed commission is not in compliance with international law and standards on commissions of inquiry, to effectively discharge Nepal’s duty to provide remedy and reparation to victims because the Commission has wide discretion to recommend amnesty for crimes under international law, including enforced disappearance, which violates a number of Nepal’s obligations under international law. Similarly, the Commission would not have the power to recommend prosecutions against suspected perpetrators.

The ordinance to establish a Commission on Investigation of Disappeared Persons, Truth and Reconciliation is the result of a bargain between political parties, and seems designed to enable those suspected of criminal responsibility to avoid accountability for human rights violations and crimes under

international law. Enforced disappearance is not recognized as a crime or even defined under Nepali law.

In such a complex scenario, the government must take meaningful initiatives to address its human rights obligations. Ending impunity, ensuring accountability, and strengthening the rule of law are essential for a durable transition from armed conflict to sustainable peace in Nepal.

The government of Nepal has to begin following steps at a minimum to ensure justice to the victims of disappearance:

- ▶ Ensure that any transitional justice mechanisms established to address conflict era violations do not replace judicial proceedings and are in accordance with international law and standards and do not have the power to grant or recommend the granting of amnesties for crimes under international law;
- ▶ Respect court orders calling on the police to investigate human rights violations and crimes under international law and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility in trials that meet international due process standards;
- ▶ Define and criminalize enforced disappearances in domestic law in line with international standards;
- ▶ Promptly accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, without making any reservation or declaration amounting to reservation.

cious cycle of migration and underdevelopment.²¹ The country's socio-economic development and opportunities are one of the determining factors for labor migration. International labor migration occurs when the opportunities are not created within own country. In Nepal, the ratio of unskilled labor force migrating is more compared to skilled ones. Most often, the migrants are indebted with high rate of interest when they go aboard. Their earnings are fractioned in paying back the loans, sustaining the family with daily consumptions, educating children, and fulfilling other basic needs. Thus, the outflow of the productive forces for income generation and utilization of money in unproductive sectors creates dependency. The CBS 2011 data mentions that about 79% of the total remittances received by the households are used for daily consumption while 7% is used for loans repayment. Other uses are – to acquire household property (5%) and for education (4%). Only a small percentage of the remittances (2%) is used for capital formation and the remaining (3%) is used for other purposes. The trend of inflow and expenditure seems to increase the dependency on foreign labor and thus extending the vicious cycle of migration if proper investments are not made.

External migration has also accelerated internal migration where the family are focused on migrating towards cities leaving their place of origin. The family totally depends upon a single bread winner and the money is increasing consumerism with no produc-

tive expenses. It creates a vicious cycle of migration. For example: In the case of Nepal, remittances are mainly invested into urban areas and thus migrant's origin areas do not receive economic benefits from remittances, other than to maintain subsistence.²²

The working habits of the returnees change with new working environment and high level of payments. Outgoing labors, upon their arrival, no longer want to stay in the village/town and start any entrepreneurship, but are willing to migrate again or choose another destination country for the earning. This kind of movement continues the vicious cycle of migration.

6. Migration laws and Nepal

The Universal Declaration of Human Rights has recognized the freedom of movement as a human right. Nepal being a party to many international conventions like ILO and other covenants is obliged to respect the human right to movement and right to work. Ministry of Labor and Transportation Management, Department of Foreign Employment, Ministry of Foreign Affairs and Foreign Employment Promotion Board are the government agencies for foreign employment promotion in Nepal. Nepal has Foreign Employment Act 2007, the Foreign Employment Rules 2008 as well as the Foreign Employment Policy 2012 and other national acts to regulate foreign employment. The government has recognized 108 destination countries for labor migration. The country has signed MOU with

few countries where Nepali people board as labor migrants. However, the Government of Nepal is yet to ratify the United Nations Convention on the Rights of all Migrant Workers and Members of Their Families. The human right community has been lobbying with the government for the ratification so as to protect the right of the all migrant workers within as well as outside the country.

7. Channeling Migration

Each year, many people migrate throughout the world as labor migrants. The labor migrants from developing countries often migrate for the unskilled works and are tend to be more vulnerable and face difficulties throughout the process from pre-departure to re-integration. The Nepali youths have been migrating for employment through different sources via registered manpower companies, and sometimes through agents which are more insecure and risk prone. Often, they are cheated for the wage with lower payments than in the contract, unpaid, held as captives by employers who seize their travel and identification documents to prevent them from leaving the work, are denied medical treatment for any injuries and even trafficked. For example, 45 Nepali migrant workers suffered and exploited in without pay in Qatar.²³ Seemingly, the migrants to Iraq and Afghanistan fall as the victims of terrorism. For example, in 2004, 12 Nepali were killed in Iraq. Compared to the male migrants, the women migrant workers are extremely vulnerable and

21. Nanda R Shrestha, *The political economy of Land, landless and Migration in Nepal*, p-4

22. Tasneem Siddiqui, *Migrating out of poverty*, Research Programme Consortium, , Refugee and Migratory Movements Research Unit (RMMRU), Working Paper 2, September 2012, p-24

23. Available at <http://www.ekantipur.com/the-kathmandu-post/2013/03/10/money/45-nepali-migrant-workers--left-high-and-dry-in-qatar/246253.html>

face more risks from the time of pre-departure to the time of reintegration with the family. In the country of destination, they might face and have been facing severe forms of violence like long hours of work, and even physical abuse, sometimes even rape. Though the country of origins have their migration legislations, they treat female migrants unequally which is one cause for the victimization of the females. A study writes, "Despite the increasing presence of women in migration flows, especially as workers, the migration policies in both the sending and receiving countries in the South Asia–Gulf migration corridor tend to be gender-stereotypical. Migration policies in the regions are often formulated placing women at the margins, reproducing existing gender stereotypes—women as victims of all sorts of violations and incapable of deciding on cross border migration. The State intervenes to protect and control women, thereby, curtailing women's right to make their own decision and earn a decent living. As noted by Kapur (2005), constructing women as 'victims' delegitimises women's movement, in search of work. Further, they are left with no option apart from depending on informal and often illegal agents, increasing the probability of women ending up in trafficking networks."²⁴ To minimize the vulnerability, the Government of Nepal has fixed the minimum age to be 30 years, for female migrant workers. But, it promoted the usage of open border for migration and further accelerating human trafficking and stranded workers.

The destination countries for unskilled labor force are the Middle East countries and/or countries under GCC (Gulf Cooperation Council –Oman, Bahrain, Kuwait, Qatar, Saudi Arabia and United Arab Emirates) and Israel, the East Asian countries like Japan, South Korea and South East Asian countries like Malaysia amongst others (where huge number of labors migrates every year). Nepal does not have labor pact or bilateral agreement with Saudi Arabia, Malaysia, and Israel where a huge number of labors migrates. Despite having bilateral agreements and the Memorandum of Understanding (MOU) with Bahrain, Qatar and the UAE, these agreements do not say anything domestic workers. The GCC hires labor force for private sector in contracts through Kafala System (sponsorship system). It is a system in which the recruiting agencies have direct contracts with the migrants. It is possible through the intermediaries like social networks, friends, and relatives of earlier migrants or also through the recruitment agencies that are granted permission by the concerned ministries of gulf countries. In this system, the employee assumes the economic and legal responsibility of the worker. This process often pushes the migrants to difficulties as it involves visa trading in which the migrants submits identity documents to the owner and at times are held as captives through them, involved in long hour working, low payments, placement at work different than promised, exploitation and violence. These migrants can hardly have access to justice as the

sponsorship system is not legalized by the labor law of GCC countries. The system is prevalent for Nepal also. Yearly, unaccounted numbers of labors migrates to the GCC countries through Kafala system and their monitoring is almost impossible as these migrants are recorded nowhere.

Despite facing challenges and difficulties in doing the 3D (Dirty, Dangerous and Demeaning) works, the Nepalese migrant worker works and sends remittance to their country. A returnee migrant puts on his views, "Migrant workers from Nepal and other countries are like cattle in Kuwait. Actually, cattle are probably more expensive than migrant workers there. No one cares whether we die or are killed. Our lives have no value."²⁵ Therefore, channelling of migration outflow and inflow of remittance is the necessary step the government should intake to regulate the labor migration and safeguard the rights of the migrant workers in the destination countries. For this, the government should prepare a one-window policy for the outflow of productive forces and inflow of remittance. The government should have bilateral agreements with the destination countries so that it can negotiate for the better working conditions and perks for its human capital that it sends at no cost basis. Most of all, the government should open embassies and or appoint labor attachés at the destination countries so that the Nepalese abroad could contact their country representatives to solve their problems. Even if there are these mechanisms, it should be empowered, capacitated

24. V. Vgiri National Labor Institute and UN Women, *Migration of Women Workers from South Asia to the Gulf*, 2012, p-26,

25. Available at <http://blog.amnestyusa.org/asia/exploitation-of-nepals-migrant-workers/>

with staffs, facilities like shelter and other improved services. The system not only ensures the work of migrant workers but also saves them from being cheated, trafficked and held as captives as well as facing other enormous violence and exploitation.

8. Migration and Future Projections in Nepal

New projections on remittance flows to developing countries, meanwhile, are expected to reach USD 515 billion in 2015.²⁶ The generalizations could be made here that obviously more people would work in the international labor market in future. Based on earlier data on labor migrants, the trend of Nepali labor migrants seems to rise.

The labor forces that have been sustaining the economy of their home country do not receive any facility or services in the long run, neither by the home country nor the destination country where he/she works for the long time and spends most productive years of his life. Therefore, in the upcoming days, the government should initiate necessary steps to secure livelihood of returnee migrants.

Meillassaux argues that migration represents the transfer of productive labor of surplus value to the capitalist sector at expense of the domestic economy, which bears the burden of producing the migrant's labor power through his least productive boyhood and sustaining him after his retirement back to the source community.²⁷

Thus, the government should have bilateral agreements with the destination countries so that it can manage unemployment at home and manage regular labor migration so as to secure the due respect of its citizens and a better remuneration at work. Similarly, within the country, the government should initiate programs like issuing government bonds, develop mechanisms to participate in equity shares through investment in infrastructures, hydropower projects and industrial projects, promote pension scheme insurance policies for the migrant labors so as to secure the future of migrants who return with their unproductive ageing years.

Returnees could transfer their knowledge gained during their stay abroad and in fact some returnees have been trying to start their entrepreneurship. But, it is difficult for them due to high interests provided by cooperatives and individual money lenders at the village level, the undeveloped complete market channel. For example, a migrant returnee operating a pig farm is unable to expand the farm because of financial shortcomings.²⁸ There are similar cases found throughout the country. Thus, government should foster the decentralization system to encourage the agro-based family towards technical farming, horticulture, animal husbandry, thereby, initiating a chain market approach so that the trained human capital could be promoted and utilized for the economic development

of its own country. Likewise, the government should work participating with Financial Institutions especially through Micro Finance Companies/Cooperatives to ease the access to financing at a subsidized rate.

Because adequate remittance flow alone cannot cause significant changes until it is fostered by functioning institutional, missioned planning and policy interventions; the government should indulge a strong public policy and programs to encourage investment. For example, the Philippines and Mexico developed pension plans or business ventures for returning migrants. Similarly, India provides preferential access to the capital goods and raw material imports for returnees. Indonesia has captured remittance transfer through the Micro Banking Division of Bank Rakyat Indonesia (BRI) putting it in productive use in rural areas, and offering additional financial services as well as credits to migrant workers at the time of departure.

To conclude, the Government of Nepal should initiate migration awareness programs, train its human capital through vocational training, provide financial education to channelize remittance through formal sources and utilize it for productive results and utmost of all channelize the labor migration through bilateral agreements with the labor receiving countries to ease the labor migration process.

26. Available at http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21121930~menuPK:3145470~pagePK:64165401~piPK:64165026~theSitePK:476883,00_b

27. Nanda R Shrestha, *The political economy of Land, landless and Migration in Nepal*, p-95

28. Available at <http://www.thehimalayantimes.com/fullTODays.php?headline=Returnee+migrants+seek+financial+support+&NewsID=358431>.



Nir Lama*

Nepal's Progress on Human Rights Dismal in 2012

Rampant impunity and matters related to Transitional Justice has remained central to Post-CPA situation in Nepal. The reports of the major international & national Human right organization has unveiled the impunity and no consensus between political parties to be a major reason for failure of estd. of justice in Nepal.

Background

Various organizations' report on Nepal's Human Rights Record in 2012 demonstrate deteriorating human rights situation of the country. Promotion of alleged perpetrators of human rights violations, withdrawal of criminal charges, attempts to establish a transitional justice mechanism with the power to recommend amnesties for crime under international law were the common issues raised by rights bodies organizations. This article is a compilation of the analyses of Nepal's human rights record in 2012 by national and national human rights watchdogs.

Human Rights Watch

World Report 2013 published by the Human Rights Watch attributed ongoing political instability, and problems with law and order to the political stalemate, along with weak governance, corruption and impunity. HRW said that the closure in March of the United Nations Office of the High Commis-

sioner for Human Rights (OHCHR) symbolized the government's retreat from promises for accountability. The rights watchdog added that the forceful eviction of squatters in May by the municipal government of the Kathmandu, and the city's armed police force along the Bagmati River to make way for a planned urban development project did not comply with UN-developed specific standards and due process, left over 800 people homeless, nearly half of them children.

Under the sub-heading "Disability Rights" HRW pointed out that many schools remain inaccessible and the current curriculum is inadequate for students with different learning needs. HRW lauded the Nepal government's efforts towards ensuring equality for lesbian, gay, bisexual, and transgender (LGBT) people in recent years. "The government's 2011 census allowed citizens to self-identify as male, female, or "third gender," though independent observers reported problems with tallying

Promotion of alleged perpetrators of human rights violations, withdrawal of criminal charges, attempts to establish a transitional justice mechanism with the power to recommend amnesties for crime under international law were the common issues raised by rights bodies organizations.

* The writer is Assistant Documentation Officer of INSEC

census figures,” it said, adding “In May, the Ministry of Home Affairs issued a directive to allow citizens to identify as male, female, or “other” on citizenship documents based on self-identification, in line with a 2007 Supreme Court decision.” The rights body also mentioned the US removal of the ruling Maoist party from its list of terrorist organizations in September which allowed US entities to legally interact with the party and its members after a nine-year ban. The report highlighted that flaws in the citizenship law continued to make it difficult for women to secure legal proof of citizenship, especially when male family members refuse to assist them or are unavailable to do so. “Without proof of citizenship, Nepali women cannot assert their rights to marital property, inheritance, or land,” it said. The report also expressed concern saying that the current law continues to deny citizenship to children born to non-Nepali fathers, effectively leaving them stateless. HRW put focus on the Tibetan refugees’ citing several incidents of intervention by authorities in the events organized by Tibetan refugees.

Amnesty International

The Nepal Section of Amnesty International (AI)’s “Annual Report 2013 The state of world’s human rights” expressed concern over the Council of Ministers’ forwarding of an ordinance to establish a Commission of Inquiry on Disappeared Persons, Truth and Reconciliation, sidelining plans for two separate commissions to cover these issues. “The new Commission would have power to recommend amnesties for serious human rights violations but no mandate to recommend prosecutions for alleged crimes, ignoring Nepal’s legal obligations to prosecute crimes under international law,” AI said.

Under the sub-heading “Im-

punity”, AI sheds light on the governments’ misinterpretation of the provision to withdraw cases of “political” nature as agreed in the Comprehensive Peace Agreement and subsequent agreements. Referring to the continued request of the government to withdraw criminal cases against individuals affiliated to political parties, AI stated that many cases recommended for withdrawal involved murder, abduction and other serious crimes at a time when no clear definition of a “political case” was provided. Citing promotion of Kuber Singh Rana to the rank of Inspector General of Police and Raju Basnet to Brigadier General, AI says “Efforts to ensure accountability for human rights violations and victims’ rights to justice, truth and reparation were seriously undermined by the government’s promotion of individuals alleged to have committed human rights violations to senior public positions”.

AI also took note of the passing of the law relating to National Human Rights Commission which increased state control over the work of the NHRC. The rights body said that recruitment agencies continued to traffic migrant workers for exploitation and forced labor and to charge fees above government-imposed limits, compelling workers to take large loans at high interest rates. While stressing on the UN Human Rights Committee’s reminder of July 2012 to Nepal of its obligation to enact a law defining and criminalizing torture, and to repeal all laws granting impunity to alleged perpetrators of torture and enforced disappearance, AI said that torture and other ill-treatment of men, women and children in police custody remained widespread. It also highlighted the UN Committee against Torture’s conclusion in its annual report that torture in Nepal was habitual, widespread and deliberate, and was ultimately practiced systematically.

“Efforts to ensure accountability for human rights violations and victims’ rights to justice, truth and reparation were seriously undermined by the government’s promotion of individuals alleged to have committed human rights violations to senior public positions.”

The US Department of State

The US Department of State's "Country Reports on Human Rights Practices for 2012" also presented a sorry state of human rights situation in Nepal. According to the report, the most significant human rights problems were the country's inability to promulgate a permanent constitution that would enable a more stable political structure for the national government, the failure to hold elections to replace the dissolved CA, the continued absence of transitional justice mechanisms such as a truth and reconciliation commission to account for past human rights abuses, and the related failure to implement court-ordered arrests of military personnel, Maoists, and other individuals accused or convicted of human rights violations stemming from the country's 10-year insurgency. The US Department of State also took note of other human rights problems including extremely poor prison and detention center conditions. "Corruption existed at all levels of government and police, and the courts remained vulnerable to political pressure, bribery, and intimidation," the report said. It added that there were problems with self-censorship by members of the press and the government sometimes restricted freedom of assembly. The annual report also raised issue of the Tibetan refugees stating that the government

limited freedoms for refugees. Sex trafficking of adults and minors remained a serious problem, the report said.

INSEC HR Yearbook

Annual publication of Informal Sector Service Centre (INSEC) Nepal Human Rights Yearbook 2013's take on the human rights situation of the country was no different that the reports of international human rights watchdogs. "This year, there was no remarkable contribution towards protection and promotion of human rights as per the commitments made by the country to the international community and to the treaties to which Nepal is a state party," the report said. INSEC documentation showed a total of 423 people were killed at the hand of state and non-state actors. Among them, 13 were killed by the state. The killers of 57 people could not be identified until the end of the year. INSEC expressed concern over the vulnerable situation of women, children and senior citizens. Stating that 264 HRDs were rendered victims of human rights violation in 2012, the report said that human rights defenders were targeted by both the state and the non-state actors. Likewise, INSEC data showed rise in incidents of domestic violence. A total of 910 incidents of women rights violations were recorded in INSEC

documentation this year. The figure under this category was 648 in 2011. Five women were killed over dowry issue in 2012, according to INSEC. Emphasizing on the Nepal Conflict Report 2012 made public by UN OHCHR, INSEC said that the Government should have been able to resolve issues of transitional justice through TRC and Disappearances commission. "Absence of elected representatives, the enmeshed peace process, impunity, obstruction in the rule of law and the increasing gender based violence portrayed a disappointing situation of human rights in 2012," INSEC report said.

Conclusion

While positive developments like the integration of the Maoists army have been hailed by the rights watchdogs, it is necessary that they continue to keep a close watch in order to pressure the Government of Nepal to address rampant impunity and to constitute transitional justice mechanisms in accordance with international standard. As their reports paint a dismal picture of the human rights situation of Nepal, they should include recommendations relating to the human rights violations they have pointed out in their reports so that there are efforts by the state mechanisms and other organizations to improve the human rights record of the country.



Reflection of Commitment Made by Government of Nepal in Budget

Background

The last two elected governments presented a partial budget for Nepal i.e. for the fiscal year 2011/12 and 2012/13. Now, a new non-elected interim government has been formed and one of the major responsibilities that the election government accomplished was the Budget Ordinance of 14 July 2013 (30 Ashad, 2069).¹ After two consecutive years, the Government of Nepal came up with a full budget of NPR 517.24 Billion.

The Chief Justice-led election government announced the budget and there the Finance Minister Shankar Prasad Koirala said “rule of law, protection of Human rights and end of impunity as the highly prioritized agenda of the government”.² However, it is also equally important to recall the commitments made by the Government of Nepal to the national as well as international bodies and forums while formulating the budget. Budget ordinance says: Rule of law, protection of Human Rights & end of impunity are the highly prioritized agenda of the government.

The current budget highlights are the government investment in the projects of national pride, development, expansion and promotion of hydroelectricity and alternative energy, transformation of agriculture, road infrastructure, Constitutional Assembly election as well as the local elections and the increased budget in the social sectors.

Establishing a connection between Budget and Human Rights

Budget stands as the most important economic tool of any country in which the visionary plans of the government for its development are reflected. It not only determines the issues of national priority but also emphasizes on how the government aims to achieve the fulfilment of fundamental human rights of the people through putting forward the plans for poverty alleviation and ensuring other basic needs of the people. The willingness of the government to abide by the basic human rights obligation should be embodied in the national (and local) policies and those policies should be reflected in the national budgets.³

The current budget highlights are the government investment in the projects of national pride, development, expansion and promotion of hydroelectricity and alternative energy, transformation of agriculture, road infrastructure, Constitutional Assembly election as well as the local elections and the increased budget in the social sectors.

* The writer is Assistant Officer of INSEC

1. Available at http://www.mof.gov.np/uploads/document/file/Final%20Translation%20Bud%202013-14_20130812024525.pdf
2. Donors against funding TRC under existing law, <http://www.ekantipur.com/the-kathmandu-post/2013/05/04/top-story/donors-against-funding-trc-under-existing-law/248347.html>
3. Paragraph 346, Budget Speech 2013.
3. Fundar – Centro de Análisis e Investigación, International Budget Project, International Human Rights Internship Program Dignity Counts, A guide to using budget analysis to advance Human Rights, 2004. Pg 1.

The plans and the policies stated in the budget also reflect whether the Fundamental Rights, the State Policies and the Directive Principles kept in the constitution can be fully guaranteed and achieved. The program that the budget introduces plays a significant role in how the government works towards the attainment of the full realization of human rights. While a government budget directly or indirectly affects the lives of every citizens, it can have the greatest impact on certain groups, such as the elderly, children, the poor, rural residents, and minorities.⁴ For example, poor budgeting or a weak budget especially hampers the marginalized communities because the transfer of the fund to these beneficiaries is very thin.

Budget formulation is a key to national development and development has inherent relationship with the Human Rights. The development of the physical infrastructure is not an indicator of the development but rather the increase of the living standard of its citizen as well as access to basic needs is actually the essence of the achievement of the Human rights.

The Interim Constitution has guaranteed the rights to education, health, employment, religion, right against discrimination and untouchability, special rights to the vulnerable population of the country like women, children, disabled, dalits etc. Thus, the following paragraphs assesses and analyses how the budget 2013/2014 has incorporated these issues as the matter of priority and what efforts have made to fully guarantee these rights.

Thematic focus of the Budget Education

Educational rights are a fundamental part of the Interim Constitution of Nepal (ICN), 2007. The government has been prioritizing the education rights by introducing various programs and policies. The education sector receives one of the largest shares in the national budget.

The budget has incorporated measures to make the primary education free and compulsory and aimed at framing the legal policies shortly. Funds have been allocated to provide scholarship to all girls and Dalit boys as well as 60,000 poor and talented students which include two thirds of female students in secondary level. Also, scholarship for all students of endangered and marginalized classes and disabled students of class I to X is prescribed. Primary education has been made free to 60,000 street children and children suffering from HIV/AIDS.

Government has aimed at the free supply of books to students studying from Class I to X and also for the grades XI and XII in Karnali and to disabled people. Also, scholarships are provided in the area of technical education to Dalit and Muslims girls; endangered ethnic groups are aimed at expansion for additional two districts from 12 districts.

Health

Health rights are also the fundamental rights under the ICN, 2007. These rights are the fundamental human rights and the government has the obligation to respect and ensure the sound health of its citizens.

The government has made

the basic health service free. Also, the programs related to the health insurance policy are set as the priority of the government and they will be initially implemented in 15 districts starting from the next fiscal year. The budget has been allocated for the establishment of 238 health institutions including District Hospital; District Health Offices, Primary Health Centres, Health Post and Birthing Centres.

Similarly, the budget looks forward for the establishment of senior citizen ward for ensuring the health service for them, medical facilities for the heart patients above 75 years and below 15 years and also for expanding of free treatment of kidney dialysis service up to the regional level. Also the safe motherhood, safe birthing centers and supply of the delivery related goods are the priority of the government.

Moreover, mobile health camps targeting the vulnerable, Dalit, marginalized and backward groups who have remained out of the access of health services are targeted to be expanded. Also arrangements of the medical practitioners in the remote districts have been focused.

Employment and Poverty Alleviation

The rights regarding the employment are enlisted in the fundamental rights of the Constitution, however they are non-justifiable rights. They cannot be challenged in the court and their exercise is also subject to the enforcement via framing the law. Though the poverty rate has been decreasing; it is undeniable that the substantial mass of the population is still under the poverty line.

4. Why are Budgets Important available at <http://internationalbudget.org/getting-started/why-are-budgets-important/> accessed on 18 July 2013.

Unemployment is the major problem faced by the youth's across the country and as a result of this, the foreign employment has been the most preferred means of earning. Though remittance is a source of national economy, the creation of employment opportunities at the national level is equally important. The government has allocated shares of the national budget in the employment sector as follows:

- ▶ Make new legislation regarding Labor welfare, benefits and social security;
- ▶ Skill development, entrepreneurship and self-employment training to increase youth employment;
- ▶ Provide vocational training to 50,000 people;
- ▶ Provide skill development training to 10,000 people and give capacity building training to 4,000 among those again.

Social Security

The Constitution has provided its citizens the right of social security, though it is not justifiable. The budget speech declared the operation of the Social Security Fund which will start its operation after the formulation of a separate law. Under the social security title, the budget aims at providing the workplace accident, reproductive health, unemployment and health insurance.

Similarly, the concern over the responsibility towards the Senior Citizens has been reflected in the budget by allocating money for a senior citizen allowance. Moreover, establishment of old age home and senior citizen villages, one each in five development regions and two senior citizen villages in Kathmandu Valley have been planned.

Similarly, providing scholarships and incentive allowances to Dalit, Janajati, endangered groups, marginalized group, freed bonded labors, badis, haruwa, charuwa, martyrs' children, conflict affected children and girls, and disabled is also taken under social security scheme.

Women

The vulnerability of women has always been a major concern in Nepal and as a result of this the rights of women (article 20) have been specifically recognized in the Constitution. The ratification of the Convention on Elimination of all Kinds of Discrimination against Women (CEDAW) has obliged Nepal to adopt the Temporary Special Measures and Special Measures⁵ for the achievement of de facto equality (substantial equality) between men and women in regards to access to opportunities; benefits and resources.

As a partial fulfilment of the obligation, the budget has framed certain plans and policies for women and girls under various themes. 2013/14 budget has increased the size of the direct Gender Responsive Budget to 21.75 per cent to uplift gender equality through women's empowerment. Major programs are as follows:

- ▶ Capacity Development and empowerment of Kamlaris;
- ▶ Multi-dimensional empowerment programs to school deprived girls and Baikalyas;
- ▶ Women Development Programs extension to additional 165 VDCs;
- ▶ Seed capital to Women's groups for group formation, skill development and vocational trainings as well as for business;

- ▶ Self-employment for 45,893 members of women's group;
- ▶ Empowerment of women to minimize Gender Based Violence (GBV);
- ▶ Temporary Shelter for the protection and security of violence affected persons;
- ▶ GBV Elimination Fund for legal treatment to minimize GBV and those affected worth Rs. 10 million;
- ▶ Single Women Protection Fund worth Rs. 30 million for their development and empowerment;
- ▶ Rehabilitation fund worth Rs. 10 million for the extension of the services in additional districts on human trafficking victims and affected persons;
- ▶ Conduct special preparation class in five development regions for female candidates for Public Service Commission (PSC) examination to make civil service inclusive.
- ▶ Provide vocational training to 1027 single women;
- ▶ Fund for Women Entrepreneurship Development Fund;
- ▶ Capital Grant as seed capital for women cooperatives.

Children

Children occupy a special column in the universe of human rights, and likewise, their protection is of utmost important in the community because they bear the responsibility to guarantee the human rights of all in future, particularly in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. Realizing that children constitute an important fraction of the total population, the rights of the child have also been guaranteed in the ICN, 2007.

5. Article 4, CEDAW 1979.

The budget of the fiscal year 2013/14 focuses on the following issues:

- ▶ Eradication of the Worst forms of Child Labor by 2016 A.D. and all forms by 2020 A.D.;
- ▶ Operation of Child Welfare Homes according to the standard norms;
- ▶ Addition of Juvenile Benches to eight districts with the expansion of services to another 48 districts;
- ▶ Allocation of Rs. 20 million to Central Emergency Child Rescue Fund;
- ▶ Establishment of Day care Centers for Children in additional four development regions for the children of civil servants;
- ▶ Child Protection subsidy to children under five years of all Dalit children and children of all castes of Karnali Zone and Bajhang and Bajura districts.

Disabled Persons

The rights of persons with disabilities are now a part of core International Human Rights Treaties. The obligations towards the people with disabilities are not merely the legal ones, rather they are the matter of moral of every person. The disabled people are entitled to the rights regarding social security under the ICN, 2007. Therefore, in the same lieu, Government of Nepal has brought various programs and policies for the fiscal year 2013/14 that would secure the rights of the disabled people.

- ▶ Public Service Commission preparation class targeting disabled people in all development regions;
- ▶ Community based rehabilitation and capacity enhancement

programs for disabled persons;

- ▶ Establishment and operation of day-care services and residential rehabilitation centers in Central Development region;

Dalits, Madhesi and marginalized people

The so-called untouchables, the Dalits, are the social victims who remain restricted and prevented from being part of many social functions. Caste-based discrimination is deep-rooted social practice in Nepal, which was eliminated by the adoption of Anti-discrimination Act, 2007 that penalizes the act of discrimination. Also, the right against untouchability and racial discrimination has been guaranteed under article 14 of ICN, 2007. Moreover, being a party to Convention on Elimination of all kinds of Racial Discrimination (CERD), which prescribes non-discrimination on the basis of race, Nepal is obliged to introduce measures for uplifting those discriminated by the community.

The National economy in this fiscal year allocates the subsidy for the inter-caste marriage between Dalit and Non-Dalit of NPR 10,000. It has been made mandatory for the representation of poor, women, Dalits, indigenous people, Janajati, Madhesi, disabled, deprived and backward communities to user committee formed for development activities and programs. Similarly, the Vocational Education Program is supposed to continue targeting the Dalits, poor and Muslim women of Tarai-Madhes. Further, the government has planned to provide the grant to the Dalits, Marginalized and endangered communities for transformation of the traditional occupation into modern enterprise

as well as training on the tourism and hotel management targeting women, indigenous people, Janajati, backward and the deprived class. *The focus on the Dalit, Madhesi and marginalized communities in the areas of education, health and employment has already been discussed above.

Transitional Justice; Relief, Reconciliation and Reconstruction

The 10-year long conflict left many victims, both direct and indirect. The responsibility of the state towards the victims and their families is very important. Also, the state is responsible to reconstruct the destroyed infrastructures. Under the Relief, Reconciliation and Reconstruction title, the government has continued with the scholarship programs for the children of the martyrs and the wounded people. Also the financial support for the legitimate heirs of the people losing their lives and those subjected to enforced disappearance has been allocated for the persons who have not received the fund yet. Also the financial support for the physically handicapped people and to the families of those people who lost their lives after the CPA, 2006 have been provided.

As a part of the reconstruction of the infrastructure, continuity to the Conflict Affected Area Special Program will be given continuity and also the finance has been given to the projects being implemented under Development for Peace Programs.

Furthermore, the Constituent Assembly election is to take place again; the funds under the Peace Trust Fund will be mobilized for the election and for the programs related to the sustainable peace.

Miscellaneous

The government has made efforts to ensure the right of consumers to have fresh and nutritious food products, for that introduces measures of regular supervision and monitoring activities inspecting food industries, hotels, restaurants and markets. Similarly, the budget has provided the transport subsidy to seed and fertilizer as an effort to ensure the food security of the people as well as launching the agriculture and introduce food security program in six districts (Rukum, Rolpa, Salyan, Pyuthan, Arghakhachi and Gulmi) to enhance the food security of those areas.

Conclusion

The budget 2013/14, being a full-fledged budget itself, is an achievement and progress because the budget of the last year merely was a partial one. Compared to last year, the government has increased its budget by 40% in the social sector especially on education, health and social security. More than NPR 130 billion, around 25 per cent of the total budget, has been allocated to the three sectors in the current fiscal year compared to NPR 92.76 billion in the last fiscal year.⁶ An increment of 34.62% has been traced in the educational sector. Technical education; special schemes for HIV/Aids affected and street children as well as Dalit's and girl children are the praiseworthy. Various other positive approaches have been made in sectors of health, social security, employment and also to the targeted groups like women, children, Dalit and marginalized communi-

ties. Nevertheless, the budget has shortfalls in various regards.

The focus on making the primary education free seems promising. However, the context of Nepal is to be considered where the government run schools have lower success rates (results of School Leaving Certificate (SLC)) and the quality of education has been challenged. Thus prescribing the free education could be over-ambitious as the education seekers (both students and the parents) would opt for the private schools in search of quality education instead the free education.

Government of Nepal has aimed at providing free education at secondary level when formulating its National Action Plan on implementation of the recommendations made by the working group on Universal Periodic Report (UPR); however the budget has failed to prioritize this issue.

Similarly, scholarships have been allocated to the disabled students but the special needs of these disabled people have been overseen. The budget does not give consideration to introduce the means for guarantee education to the children with disability including blind, deaf and other physically disabled. Similarly, for those physically challenged people who struggle to go to the schools, no arrangements regarding boarders have been made. Measures to achieve and implement the scholarships schemes to these people are under question. Moreover, the conditions of the school structure and the availability of teachers for operation of the classes are

also miserable. Due considerations to these aspects are also required. Also, measures and budget allocation for providing education in mother tongue is missing.

Similarly, no new efforts are seen from the government regarding strengthening and supporting the "Madarsa" system of education that is prevalent among the Muslim communities. The girls of the Muslim community discontinue their education once they finish their primary level education. These institutions lack licensed teachers, physical infrastructures, class rooms, educational materials etc.⁷ Also, priorities are not given to the Muslim community in providing scholarship upto higher education as well as in the preparation of people from these community to enrol in government service.

Another area of shortfall of the budget is regarding the right of housing. The concern over the landless people, referred as *Sukum-basi* in Nepal has also been undermined. Though the reconstruction allowance for victim of natural disaster and flood are arranged, there is no budget for the genuine landless people that may cause problems to Government of Nepal during road management and land management.

It is a matter of regret that the Government of Nepal has failed to address the need of third gender people. Not even a single penny of the 217.54 Billion budget is dedicated towards addressing the concern of the third gender people. Being quite aware of the fact that third gender people have

6. Social Sector Budget sees a whopping 40 pc increase available at <http://www.ekantipur.com/2013/07/15/business/social-sector-budget-sees-a-whopping-40pc-increase/374797.html> accessed on 19 July, 2012.

7. Research center for Educational Innovation and Development (CEIRD), 'Formal Education in Madarsas in Nepal: A Study in Emerging Trends and Issues', 2008, Pg vi.

special concern over their health, the budget has failed to introduce a separate ward for health check up to those people. Also, scholarships have not been allocated to them to encourage them to join school as well as neither prioritization in employment-oriented training nor social security allowances have been provided to them.

Similarly, though there have been arrangements for relief, reconciliation and rehabilitation for the conflict affected people/ disappeared and people who have lost their lives, the budget loses its weight on giving priority to the people who are mentally challenged. Priority has been given to the people who have been traumatized; mentally suffered have been ignored in providing the relief, reconciliation and rehabilitation facilities.

Additionally, the utilization of the Peace Trust Fund's money in

CA election can directly challenge the non-fulfilment of activities outlined under the National Action Plan on the implementation of 1325 and 1820 as well as the providing of compensation to the conflict victims and delay of the rehabilitation or rescue packages.

The budget for the targeted groups and other fundamental rights has lacunas and loop holes because the objective sketched in the budget itself has projected of its being more as a political and economic document. The objectives pencilled have focused on the CA election and have built the strategies for the economic advancement of the country through investment, public service and economic activities at public, private and cooperative sectors.

The budget has also lacunas in considering the commitments made by the government to the Working group on UPR which

has been traced out in the National Action Plan prepared by the government. Not just the commitments at the international level but also the commitments made to the citizens through the constitution in fulfilling the fundamental human rights have been ignored. The government should be giving due consideration to its promises made to different agencies, both national and international, while making the budget as well as consultations should be made with various Civil Society Organizations (CSOs) that represent the specific group of people (e.g. children. Women, migrant worker, disabled people, third gender and others) and advocate on specific agendas (e.g. education, health, employment etc.).

However, the priority of the government on health, education, drinking water and sanitation cannot be overlooked.



Father Nanda Prasad Adhikari and Mother Gangamaya Adhikari in Fast unto Death Demanding Fair Investigation of Murder of Son Krishna Prasad Adhikari



Disappearance in Nepal: An Unresolved Issue

1. Introduction

The history of the crime of enforced disappearance dates back to the context of the Second World War where for the first time Adolf Hitler (on December 7, 1941) issued “Nacht und Nebel Erlass” (the Night and Fog Decree).¹ The purpose of forceful (involuntary) disappearances was to seize persons in Nazi occupied territories that were “endangering German security” and make them vanish without a trace. No information was given to victim’s families as to their fate, even when, as often occurred, it was merely a question of the place of burial in the “Reich”.² This practice re-emerged in the late 1960s in Brazil and Guatemala and in Iraq, Sri Lanka and the former Yugoslavia which traced the highest number of enforced disappearance, during 1970s and the early 1980s.³

The complexity of enforced disappearances is well known. It involves multiple human rights violations such

as: the right to security and personal dignity; the right not to be subjected to torture or other cruel, inhuman or degrading treatments or punishment; the right to humane conditions of detention; the right to legal representation; the right to a fair trial; the right to a family life; even the right to life, when the abducted person is killed⁴ and a violation of those who love them.⁵ The most important is the infringement of the right to protection of law. The victim becomes double victimized if the state parties are the perpetrators of the crime, because the agencies who are supposed to fully guarantee their freedom and security are the culprits, leaving them defenseless. This gravity of the human rights violations of the victim of the disappearance signifies the act being a grave.⁶

An enforced disappearance takes place when a person is arrested, detained or abducted by the state or agents acting for the state, who then deny that the person is being held or conceal their

It involves multiple human rights violations such as: the right to security and personal dignity; the right not to be subjected to torture or other cruel, inhuman or degrading treatments or punishment; the right to humane conditions of detention; the right to legal representation; the right to a fair trial; the right to a family life; even the right to life, when the abducted person is killed and a violation of those who love them.

* The writer is Assistant Documentation Officer of INSEC

1. Boot, M.; Hall, C. K., *Crimes against Humanity. In Commentary on the Rome Statute of the International Criminal Court: Observer's Notes, Article by Article*, Second Edition. Triffterer, O. (ed.). C.H. Beck-Hart- Nomos, 2008, p. 221.
2. Ibid.
3. Nowak, M., *Torture and enforced disappearance. In International Protection of Human Rights: A Textbook*. Krause, C.; Scheinin, M. (eds.). Turku: Institute for Human Rights, Abo Akademi University, 2009, p. 152.
4. Available at <http://www.amnesty.org/en/enforceddisappearances>.
5. Dalia Vitkauskaitė-Meurice, Justinas Žilinskas, *The Concept of Enforced Disappearances in International Law* Mykolas Romeris University, Faculty of Law, Department of Comparative Law, jurisprudencija jurisprudencija, 2010, 2(120), p. 197–214.
6. The decision of 29 March 1982, Communication No. 30/1978, case of *Bleier Lewboff and Valiño de Bleier vs. Uruguay* available at <http://www1.umn.edu/humanrts/undocs/newscans/30-1978.html>.

whereabouts, placing them outside the protection of the law. Very often, people who have disappeared are never released and their fate remains unknown. Their families and friends may never find out what has happened to them. But the person has not just vanished. Someone, somewhere, knows what has happened to them and someone is responsible. Enforced disappearance is a crime under international law but all too often the perpetrators are never brought to justice. The act can be committed by governmental or non-governmental actors including particular groups and individuals taking a person into control.

2. International Legal Frameworks on Enforced Disappearance

- ▶ **The Universal Declaration of Human Rights (UDHR), 1948** states that every human being has the inherent right to life, liberty and security of person; right to be free from torture or cruel, inhuman or degrading treatment or punishment; right against being subjected to arbitrary arrest, detention or exile; right to a fair and public hearing.
- ▶ **International Covenant on Civil and Political Rights (ICCPR), 1966** does not provide specific protection against the enforced disappearance but there are other associated rights. It provides that no one shall be deprived of his liberty; anyone who is arrested shall be informed of the reasons for his arrest and shall be promptly informed of any charges against him; anyone who is arrested shall be timely brought before court; and anyone who has

been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

- ▶ The UN General Assembly issued the **UN Declaration on the Protection of All Persons from Enforced Disappearances 1992** on December 18, 1992. The declaration says that enforced disappearance is an offence to human dignity and it constitutes a violation of the rules of international law of the right to recognition as a person before the law, the right to liberty and security of the person and the right against torture and other cruel, inhuman or degrading treatment or punishment. It requires states to contribute by all means to the prevention and eradication of enforced disappearance; criminalize and penalize it and take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.
- ▶ **International Convention for the Protection of All Persons from Enforced Disappearance, 2006**⁷ has been ratified by 10 countries while 81 countries have signed it till March 2009. The convention would come into force after 20 countries ratify it. The convention's main aim is to provide protection to persons subjected to enforced disappearance. It has the provisions to provide protection to all persons from enforced disappearance with regard the international standard. This convention was issued at a time when there was no

legally binding international instrument to address the grave human rights violation of enforced disappearance. But, it has not been implemented. Nepal has also not ratified the convention.

- ▶ **Rome Statute of International Criminal Court, 1998** also incorporates enforced disappearance as a crime against humanity⁸. The statute also prescribes the criminal liability against the perpetrator of the crime. Nepal has not yet ratified the statute but the government is being pressured to do so.
- ▶ **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984** recognizes that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

There are other legal provisions regarding enforced disappearance too, however, criminal offense such as acts of disappearances mostly take place during the time of conflict, internal political instability and state of emergency due to lack of implementation of these provisions.

3. Enforced Disappearance in Nepal

The practice of enforced disappearances in Nepal during 10 years of conflict (1996 – 2006) was amongst the worst in the world. Both sides of the conflict, the Nepali security forces and members of Maoists, were responsible for numerous acts of enforced disappearance. These egregious crimes were aided and abetted by a climate of political and legal impunity for perpetrators. It is generally esti-

7. Endorsed by the UN Human Rights Council on June 27, 2006 and adopted by UN General Assembly on 20 December 2006.

8. Article 7 (1)(i).

mated that over 3,000 people were victims of enforced disappearance. The UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) has noted that 532 cases were transmitted to the Government of Nepal.⁹ Initially, in its annual report for 2005, the UNGWEID stated that Nepal was the source of the largest number of urgent actions cases transmitted by the Working Group to one country in 2004.

According to Informal Sector Service Centre (INSEC), conflict victim's profile, 13,236 people lost their lives; whereabouts of nearly thousand people are unknown while hundreds of thousands became conflict victims.¹⁰ Many incidents against human rights and humanitarian laws occurred during the conflict period. Whereabouts of nearly thousand people who are victims of enforced disappearance following arrest and abduction carried out by the state and non-state actors have not been made public.

The then government has repeatedly imposed the state of emergency to quell the warring Maoists since 26 November, 2001. The government issued various ordinances including Terrorist and Disruptive Activities (Crime and Punishment) Act 2002 targeting the Maoists. Though the act and ordinance stated that the names of arrestees and the reason for their arrest would be made public while keeping them in custody, it was not implemented. Year 2003/2004 saw the most number of incidents of enforced disappearances in Ne-

pal. INSEC record shows that 224 persons disappeared in 2003 and 285 persons disappeared in 2004. Between 2000 and 2003 Nepal was responsible for a greater number of cases of disappearance reported to the UN's Working Group on Enforced Disappearances than any other state¹¹ making it the defining violation of the conflict. Nepal topped the list becoming the country with most number of enforced disappearances during that period.

Since the end of the armed conflict, the Government of Nepal has publicly expressed its commitment to address the issue of enforced disappearance. Under the Comprehensive Peace Agreement (CPA) of 12 November 2006 that ended the conflict between the Government of Nepal and the CPN-M, the parties undertook to disclose the status of detainees and to release all of them within 15 days; to release, within 60 days, details of people subjected to enforced disappearance or killed during the conflict, and to inform their family members.¹² Point 8 of the 23-Point Agreement of 23 December 2007 between the Government and CPN-M provided that, "as per the Comprehensive Peace Accord, ... with regard to the disappeared, relief shall be provided based on the report of the Investigation Commission. The preliminary report shall be submitted within a month after the Investigation Commission begins work."¹³ The interim Constitution of 15 January 2007 also obliges the Government of Nepal "to provide relief to the families of the victims,

on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict."¹⁴

In furtherance to this, in May 2007 the then interim Legislature-Parliament proposed a Bill to amend the Civil Code to criminalize the practice of "enforced disappearances" and "abduction or hostage taking." While the Bill was a positive initiative, a number of elements failed to accord with applicable international human rights law and standards. It was heavily criticized by human rights groups and eventually withdrawn.¹⁵

Even after six years of the CPA, the government has not taken any concrete decisions regarding disappeared persons. Five governments were at the helm following the elections of the Constituent Assembly after the CPA but the whereabouts of those subjected to enforced disappearances during armed conflict in the country are still unknown. The family members of the disappeared are desperately waiting for their missing beloved ones, still with a bleak hope that they will show up. The families of the disappeared are even deprived from their right to information—only the wearer knows where the shoe pinches.

No agency has exact data and details until now regarding which side committed how many incidents of enforced disappearances. Neither the government nor the Maoists have details regarding authentic and true information about disappeared persons. Ac-

9. International Commission of Jurist March 2009, *Briefing Paper Disappearances in Nepal addressing the past securing the future*, p. 2 available at http://nepalconflictreport.ohchr.org/files/docs/2009-03-00_report_icj_eng.pdf.

10. Available at http://www.insec.org.np/victim/pdf/karyakari_saransha.pdf

11. Human Rights Watch, 2003.

12. CPA Articles 5.2.2, 5.2.3, 12 November 2006, available at: <http://nepembseoul.gov.np/doc/nov21.doc>.

13. Available at: www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.ENG.pdf.

14. Article 33(q) of the Interim Constitution, 15 January 2007

15. ICJ letter to the Speaker of the Interim Legislature-Parliament, 30 May 2007 available at http://www.icaed.org/fileadmin/user_upload/recommendation_on_Disappearance_draft_bill_final_30.05.2007-english_version.pdf

cording to INSEC, 933 persons were subjected to enforced disappearance.¹⁶ ICRC has record of 1401 missing persons. This list is not a comprehensive one of everyone who went missing during the conflict. It only includes people whose families have approached the NRCS or the ICRC looking for information about a missing relative.¹⁷

After the incorporation of National Human Rights Commission (NHRC), numbers of complaints were lodged. Between May 2000 and January 2007, the NHRC received 2,028 cases of enforced disappearance. Over 600 of these cases remained unsolved. The whereabouts of 625 persons who were made disappeared by the government during the armed conflict are still unknown. According to the complaints received by the NHRC, the fate of 169 persons made disappeared by UCPN-M from the conflict to today is unconfirmed.¹⁸

There is no uniformity in the statistics of NHRC, human rights organizations and government bodies. In such a situation, it is not clear how many persons were subjected to enforced disappearance during the conflict. However, the government is silent on making public the status of those persons in the list of disappearances. This is due to the negligence of the state.

4. National Legal Frameworks and Status of Commitments regarding Disappearance

The government and political parties repeatedly made written and verbal commitments to make whereabouts of disappeared persons public. However, the family

members of disappeared persons have been deprived of the right to know their condition due to the non-implementation of such commitments.

- ▶ Point no. 17 of the ceasefire code of conduct of 2006 reiterates commitments of the state and CPN-M to immediately make public the status of disappeared persons. The Code of Conduct was agreed upon and enforced by the Government of Nepal (GoN) and the CPN-M during a peace talk of 26 May 2006. This requirement remained unimplemented.
- ▶ A meeting of the top leaders of the SPA and CPN-M agreed on 8 November 2006 in the Decision No. 1(b) and 4(2), to form a high-level probe commission to investigate into the cases of disappearance and make public the whereabouts of the persons disappeared by both the state and CPN-M in the past, and provide relief to the families of disappeared persons on the basis of report of the high-level probe commission. Both sides remained silent regarding making status of disappeared person's public without forming the commission.
- ▶ The Supreme Court issued a directive order to GoN on 1 June 2007 to provide relief to the families and persons who were subjected to enforced disappearance. As per the SC directive, the government had started providing relief to families of those persons killed and disappeared during the conflict since fiscal year 2008/2009. The distribution of relief continues.
- ▶ Both sides agreed at Point No.

5.2.3 of the CPA to make public the information about the real name, surname and address of the people who were made disappeared by both sides and who were killed during the war and also the family to inform about it within 60 days from the date on which the CPA was signed. However, both sides breached the agreement. Neither the government nor the UCPN-M provided information regarding those killed and disappeared during the conflict from their sides even in six years.

- ▶ Point 33 (q) of Part 4 of the Interim Constitution of Nepal (2007) has provided that the State has the responsibility to provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of persons who were the subject of enforced disappearance during the course of the conflict. A commission to investigate into the disappearances was formed but it was incomplete from its inception. The government formed a 3-member high level investigation committee on 28 July 2007. The committee chaired by former Supreme Court justice Narendra Bahadur Neupane had Advocates Sher Bahadur KC and Raman Kumar Shrestha as its members. The commission was given six months' time to complete its work according to the Investigation Commission act. It was mandated to investigate into the disappearances that took place during the conflict from 13 February 1996 to 21

16. Available at http://www.insec.org.np/victim/candidate_display_user.php?pageno=1

17. Uniharu Kaha chhan? Part -3, 10 December 2010.

18. Available at http://nhrcnepal.org/nhrc_new/doc/newsletter/Annual Report-Nep-2067-68.pdf p. 22.

November 2006. But the commission remained defunct after families of disappeared persons, Maoist CA members, Maoist leaders and cadres criticized its formation saying that it lacked their representation.

- ▶ To address the rights of the disappeared persons and their families, the government issued 'Disappearances of Persons (Crime and Punishment) Bill 2009' on 31 April 2009. Though the government, through the bill, presented its motive to criminalize acts of disappearances and form commission of inquiry into disappearances which took places during the armed conflict from 13 February 1996 to 21 November 2006, it could not be implemented. Later the bill got merged with the TRC bill and formed on ordinance, TRCO.
- ▶ The Truth and Reconciliation Ordinance (TRCO)¹⁹ has been promulgated by the president after the Constituent Assembly was dissolved. But this ordinance is also being challenged because it has failed to impose the criminal liability and criminalize the act of disappearance. Also the ordinance is under the consideration at the Supreme Court for establishing one commission on Truth and Reconciliation and Disappearance breaching the CPA which stated the establishment of different ones. The court issues an interim order not to implement those provisions of the ordinance.

5. Effects of Enforced Disappearance:

The silence of the state agencies and the then rebels Mao-

Representative Incidents

According to Arati Sharma of Kichnas VDC-6, her family and relatives have been pressuring her to perform final rituals of her husband Tanka Sharma, who was made disappeared by the state. She said that they told her that he was killed. Whereabouts of Tanka, who disappeared by the army on January 2002, remains unknown. She demanded that the government show his burial site and give details about his death if he was killed or make him public if he was alive. "How can I perform his final rituals until his death is not confirmed?" she questioned. She expressed grief saying that she could not reply to his son when he asks when his father would return.

Likewise, Shalik Ram Paudel, father of Hari Prasad Paudel (Sanjay) who was disappeared by the state in November 2001 said that the family suffers mental pain when various information regarding the condition of his son come from different persons, organizations and media regularly. "The government has caused mental stress to the family by not verifying formally when there are media reports that he was killed in security action at Khurkot of Parbat on March 21, 2002," he said.

The status of Anand Acharya (Sahas) of Sardikhola VDC in Kaski who is said to have been killed in the same incident is also unknown. Brother of Anand, Kedar said that the family who was waiting for his return was in confusion after the media reported about his death. "The government should formally verify about his death," he says. IN-SEC human rights yearbook 2003 has stated that Maoist cadre Sanjay and Sahas, who were arrested from Kaski, were killed in a security action at Khurkot in Parbat. However, the government has not confirmed the incident.

ist on revealing the status of the disappeared persons have left the concerned peoples with lots of negative effects. The family of a disappeared person has to undergo fear, terror and serious mental effects. The incident of enforced disappearance creates an environment of fear and terror in the society and the families of disappeared persons may be looked upon with doubt and have to face degrading behavior. Since the international criminal law defines enforced disappearance as a crime against humanity; a country may lose its credibility as questions would be raised regarding the implementation of its commitments on state, security agen-

cies over human rights context.

Family and relatives of disappeared persons are going through such misery. Some have been shattered by the memory and moaning for their beloved. They are passing days waiting for the return of their disappeared family members. Their repeated calls to the State and the then rebels demanding information about the fate of the disappeared persons fell on deaf ears. Their only hope is that one day truth would surface after formation of the Commission of Inquiry on Disappearances, Truth and Reconciliation Commission and they would get justice after actions are taken against those in-

19. Adopted on 14 March, 2013

volved in disappearances.

This ethnographic exploration of the form commemoration of the missing can take in a particular context, and the potential impacts of such memorialization, challenges many of the assumptions that underlie the transitional justice process. Whilst families seek the sanction of the authorities in remembering the missing, they also feel that memorialization can serve to reshape the social spaces in which they live and in which many of the most extreme impacts of disappearance occur. This leads to the concept of a therapeutic memorialization, one which serves not the interests of power or a party to the conflict, but enhances the well-being of victims. Rather than an institutional process in an elite space in the capital, in the rural and dispersed societies of Nepal the most valuable memorialization is a highly local one that can reshape local understandings of the violence to which families and communities have been subject. Rather than seeing through the trope of trauma, in which truth is something provided by an institutional process that reconciles across the divide of the conflict victims seek to reconcile themselves to what has happened and to their community, creating positive meanings that can provide hope for the future. Memorialization is a social process that can create meanings and reconstruct identities and, when performed locally, can collectively reconfigure the social space in which survivors live.²⁰

6. Conclusion

Incidents of enforced disappearances carried out by State and warring parties, extra-judicial

killing, torture and sexual abuses are not only political in nature, but grave crimes in the perspectives of human rights and humanitarian laws. Those involved in such incidents should be brought to justice and justice should be ensured to the victims.

However, making whereabouts of disappeared person's public did not get priority while the government remained uninterested to form commission of inquiry into disappearances disregarding the 1 June 2007 directive of the Supreme Court. Meanwhile, the incumbent government endorsed the TRCO. The government merged the two separate bills related to formation of two commissions and promulgated one commission through an ordinance.

If the ordinance has the provision to grant amnesty even in grave crimes committed during the armed conflict, it would derail the peace process of the country and perpetrators involved in grave crimes would get pardon. Human rights activists and the conflict affected people have been demanding the amendment of the mandatory provision providing amnesty without the consent of victims. They have further demanded that provision to bring a charge should be based on the victims' complaint, not on the recommendation of the Ministry.

None of the governments and political parties have expressed concern or given priority regarding the disappeared persons. The government and parties have not become responsible towards the people. Questions have been raised on the implementation of the written and verbal commitments regarding

making public whereabouts of disappeared persons.

Family of disappeared persons have been neglected and insulted. Their only demand is to either present them alive or show their body if they are dead. Though Article 27 of part III of the Interim Constitution 2007 of Nepal, grants Right to Information, the family of disappeared persons have not been able to enjoy that right till now.

Without wasting further time, a high-level investigation commission should be formed to make public the whereabouts of persons disappeared during the conflict and it should start work immediately; legal action should be taken by bringing the perpetrators to justice; interim relief and various facilities should be provided to the victims by State.

Also the International Convention for the Protection of All Persons from Enforced Disappearance should be ratified. Similarly, the government should provide essential facilities like free education and health treatment, training on income generation and capacity building, facility of loan without interest or in low interest, facility of housing, employment to the victims and their families. The government should be sincere in delivering justice to the victims by making laws regarding disappearances and express commitment to end such incidents that the Nepal government might commit in future.

The International day for the disappeared would be meaningful only if such steps are materialized. The victims will not experience justice by only celebrating such a day.

20. Robins, S., 'Transitional justice as an elite discourse: Human rights practice between the global and the local in post-conflict Nepal', (2012) *Critical Asian Studies*, 44(1).

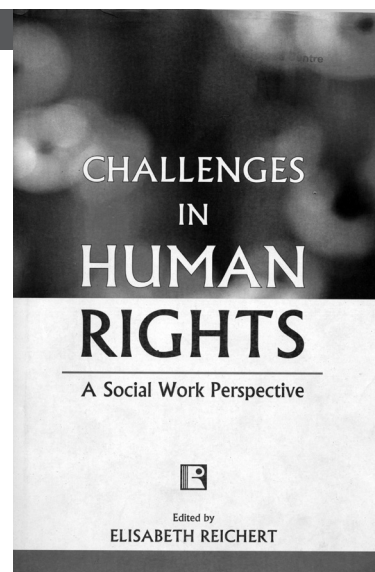
Challenges in Human Rights Work A Social Perspective

The book, "Challenges in Human Rights, a Social Work Perspective" edited by Elisabeth Reichert is a must read book, especially for those working in a human rights sector. She is a professor at the Southern Illinois University of Carbondale School of Social Work. The main theme of this book is to use the human rights as a guide so that the social workers can create policies which will be better for the societal needs. Elisabeth tried to demonstrate social work from the perspective of human rights by bringing essays from a diverse group of authors. This book tries to fuse human rights with the perspective of social work which can affect various aspects such as legislation or enforcement of the policy. This book creates a healthy debate on using human rights in societal needs. The book also examines how human rights can be used as a central to the social work, community development and broader human rights services.

Dr. Reichert published this book with the purpose of identifying human rights, recognizing and analyzing it so that these principle can be used or apply to the social work profession. The collection of 11 essays from various writers

critically discusses about the concepts, historical influences, Universal Declaration of Human rights, cultural relativism, ethics and the relationship to social work practice. The book is an overview of human rights, its challenges and law for the social workers and stresses the importance of human rights in all types of social work policy and practices. The strength of this book is that it gives a clear overview to the reader about the complex concept about human rights in theory and in practices. Reichert connects the concept of human rights to the social work profession and states that the social workers have an obligation to advocate for the human rights.

Lena Dominelli illustrates in her essay UDHR based on both its history and provision. She emphasizes the importance of human rights in a globalizing world by considering the deliverance of human rights to social practices. In her essay, she further argues for making human rights an essential part of the social work curriculum. By applying the human rights principles, social workers can play a vital role and make a major contribution to guide the road to justice by eliminating social inequalities. Jim Ife further argues



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The collection of 11 essays from various writers critically discusses about the concepts, historical influences, Universal Declaration of Human rights, cultural relativism, ethics and the relationship to social work practice. The book is an overview of human rights, its challenges and law for the social workers and stresses the importance of human rights in all types of social work policy and practices.

that bringing community development and human rights together provides not only a fertile ground for moving beyond the problems of universalism and cultural difference but it also provides a powerful framework for social work practice based on human rights.

Silvia Staub-Bernasconi in her essay "Economic and Social Rights" emphasized that social work and human rights are the two heads on a coin. Human rights can only clarify the long term objectives of the social work. The history of social justice and human rights with the topics of Universal Declaration of Human Rights is depicted very beautifully. She has integrated human rights perspective in social work, so as to obtain the long term objectives. Silvia further stressed to follow the lead of the Universal Declaration in order to promote the human rights with the same vigor.

Joshep Wronka thinks that the gap between the rich and the poor countries raises important issues for social workers everywhere.

He further questions whether nations and individuals with more wealth should address this inequality within the context of Human Rights. He raises doubts whether there will be chances of global redistribution if such situation prevails.

This book is essential for the scholars, students and practitioners. This book shows how an implicit understanding of human rights principle can provide a foundation for a practice that is central to social work, community development and the broader human services. The book merely advances social work values and ethics and guides the reader to view them in a human rights context. The issues raised are whether political and civil human rights should have greater priority than the economic and social rights as well as the role of the wealthier nations to assist less economically developed countries. It talks about the cultural relativism issues and discusses various issues of human rights globally.

The life and the development of children in the perspective of United Nations Convention on the Rights of the Child have been clearly explained by Rosemary Link in this book by connecting the convention to social work practice and demonstrating the importance of this policy in addressing the issue of child well-being.

Robert McCormick discusses human rights from a legal and social perspective. He further examines the approaches to link lawyers and social workers together to promote the human rights.

Overall, the book is full of interesting thoughts of various writers to help social workers understanding human rights, analyse its complexities and apply these concepts to social work practices. The book definitely advances social work values and ethics and guides the reader to see them in a human rights context and perspective. This book is not only beneficial to the people working in human rights sectors but also to those who are interested in this field.

- Reviewed by: Rajesh Mishra

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Discussion Program on the Investigation of the Disappeared and Truth and Reconciliation Commission Ordinance

INSEC organized a discussion program on “Investigation of the Disappeared and Truth and Reconciliation Commission Ordinance (TRCO), 2013” on 25 August 2013 to mark 3rd International Disappearance Day. More than 25 NGOs and representatives from the victims of the enforced disappearance as well as other conflict victims participated in the program.

Advocate Om Prakash Aryal made presentation on the TRCO and highlighted the provisions of the ordinance. He focused on how the ordinance was not in compliance with the Human Rights principle. He also traced out the flaws in the definition of the victims of enforced disappearance and also stressed that the provision regarding the blanket amnesty and reconciliation without the consent of the victims have posed threat to justice to the victims. He also made some critical comments on the ordinance that challenged the independence and autonomy of the Commissions. Specially referring to the victims of Disappearance, he urged that there should be establishment of two different Commissions, TRC and Disappearance Commission with different mandates and responsibilities.

Chairperson of INSEC, Mr. Subodh Raj Pyakurel, emphasized that National Human Rights Commission (NHRC) needs to be more active and involved to protect the rights of the victims. Referring to the example of India’s Human Rights Commission, he said that NHRC, Nepal should be active enough to lodge complaints against the departments and the ministries, who refuse to implement the recommendations made by the commission. Similarly, he also said that when the national law is inadequate to bind the government to respect the human rights; international laws steps in to rule the situation. For e.g. Since Nepal has no specific law relating to enforced disappearance, the Common Article 3 of the four Geneva Conventions would interfere to criminalize and penalize the act of enforced disappearance, being it a customary international law, “jus cogens”.

During the floor discussion, the participants expressed their concern over the formulation process of the TRCO, which lacked the consultation with the public, particularly with the victims of the conflict and victims of enforced disappearance. The participants expressed their grief saying that

the TRCO was not victim-centric; that the ordinance had a tendency to institutionalize the “impunity”. The representatives of the organizations working in the Transitional Justice stressed that inspirations should be taken from the South Africa while formulating the TRCO however, it should also acknowledge the differing political context in South Africa and Nepal. The representatives of the conflict victims focused on the irresponsibility shown by the government in not providing the victim identity card and measures to protect the rights of the victims.

In conclusion, the discussion voiced that the TRCO was not compatible with the principle of Human Rights and Transitional Justice having incorporated the provisions of blanket amnesty, reconciliation without the consent of victim, no criminal liability to perpetrators of the violation of the human rights and lack of criminalization of act of enforced disappearance. The discussion urged that a new human rights compatible ordinance has to be introduced that directs to set up two different Commission, i.e., Commission on Disappearance and Truth and Reconciliation Commission.

25 August 2013

Swarnima Bhandari

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