



# **HUMAN RIGHTS IN NEPAL**

## **A Status Report 2003**

**National Human Rights Commission**

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## Religion on the responsibility of the rulers:

“According to Cakkavatti Sihanada Sutta, a king’s duty could be summarised as protection of the state, elimination of crime, effecting economic stability and ruling in consultation with the clergy (samana - brahmana). The Pali term ‘dhammikam rakkhavaranam guttim’ means watch, ward and protection righteously.

According to this Sutta, protection had to be provided not only to the subjects, army, religious bodies etc, but even to beasts and birds. Here word ‘dhammikam’ is of importance because a ruler can give protection even by unrighteous means (adhammikam).”

- Sita Arunthavanathan in *Buddhist Political Thinking*

“It is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained. The chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, coordinated with other rights, defended and promoted, so that in this way each one may more easily carry out his duties. For “to safeguard the inviolable rights of the human person, and to facilitate the fulfilment of his duties, should be the chief duty of every public authority.”

-*Peace on Earth (#60), Encyclical Letter of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity and Liberty*

“मत्स्यन्यायाभिभूताः प्रजाः मनुं वैवस्वतं राजानं चक्रिरे ।  
धान्यषड्भागं पण्यदशभागं हिरण्यं चास्य भागधेयं प्रक्ल्पयामासुः ।  
तेन भृता राजानः प्रजानां योगक्षेमवहाः ॥”

[People suffering from anarchy, as illustrated by the proverbial tendency of bigger fish devouring the smaller ones, first elected Manu, the Vaivasvata, to be their king, and allotted one-sixth of grains grown and one-tenth of merchandise as sovereign dues. Being fed by this payment, the kings took upon themselves the responsibility of assuring and maintaining the safety and security of their subjects and of being answerable for the sins of their subjects when the principle of levying just punishment and taxes has been violated.]

- Kautilya, (Source: *Legal and Constitutional History of India, Vol. I*)

“Verily, each one of you is a guardian (shepherd), and each guardian (shepherd) is responsible for his subjects (flock)”; the emir who is in charge of people is a guardian for them and he is responsible for them...”

- In the Hadith, Narrated by Al Bukhari and Muslim

### *Attention*

*The Commission wishes to clarify that use of terms such as “upper caste”, “lower caste” and “untouchables” are solely for the purpose of highlighting the prevalence of such discriminations in the society. The Commission does not recognize such differentiation between human beings on the basis of caste or class; nor does it condone such discriminations prevalent in the society. The Commission is fully committed to the principle of equality.*

# FOREWORD

In the year 2001 (B.S. 2057), almost a year after the formation of the National Human Rights Commission, we felt the need to prepare a status report that could generally cover all the major human rights issues in Nepal as a ready reference material. The absence of such a comprehensive resource material motivated us to work in that direction. We understand that such a document can not only inspire debates among and between the government departments and the civil society, but can also draw attention to the key areas requiring immediate improvements for the promotion and protection of human rights in all aspects of governance in Nepal. In addition, the report is also expected to serve as a reference document for the international community and the donors to closely link their development assistance with human rights, since we believe that the development interventions must promote and protect the fundamental rights of the people, especially of those who are marginalized by the existing political, social and economic structures. This report is the result of that vision.

The restoration of a pluralistic system of government in 1990 through the promulgation of the new Constitution brought a new wave of change in the human rights discourse in Nepal. This change instilled high hopes in the minds of the people, for they believed that they would now be able to exercise and enjoy rights guaranteed by the new Constitution through the various institutions, norms, principles and procedures enshrined in it. The successive governments elected over the last twelve years also enacted and modified a number of important laws in line with the spirit of the Constitution and the State has shown its commitment to protect and promote human rights by ratifying a number of international human rights instruments. Thus every government of the country is responsible to uphold not only the traditional, civil and political rights, but also a variety of economic,

social and cultural rights that the people of Nepal are entitled to under these national and international instruments.

While these achievements are laudable, there are many challenges before us. The first and foremost is our capability to enforce human rights, as they only exist on paper. We have been lacking in devising concrete strategies to achieve genuine progress. Very often there is much talk and little action, and even our activities fall far short of our aspirations. The legacy of traditional caste-based society, rigid social structure and resulting caste and ethnicity based discrimination hinder the promotion and protection of human rights in Nepal. Even today the citizens' civil and political rights often continue to be violated. All current indications are that social and economic inequalities are increasing rather than decreasing, and many minority communities such as ethnic communities are still struggling to fully exercise their basic human rights. Moreover, the people's right to development appears bleak as they face increasing poverty as well as continuing discrimination and marginalization. In this regard, one of the fundamental challenges faced by Nepal, not only for the protection of human rights, but also for democratic stability and sustainable development, is to enforce the existing laws fully in line with the principles enshrined in the Constitution and the international human rights treaties to which Nepal is a party.

The *modus operandi* of the political leaders and the State machinery largely remains the same as during the pre-1990 partyless system. A lot of the work towards achieving good governance, which is essential to protect the fundamental rights of these people through a functioning democracy, remains to be accomplished. The human rights situation remains far from satisfactory. As such, there

are serious gaps between the promises made and their implementation by the State machinery.

The rise of the Maoist insurgency, by and large, can be attributed to the absence of protection of economic and social rights of the marginalized people. Because of the violent conflict between the Maoists and the State, human rights of the people are being violated repeatedly, not to mention the loss of over 7,000 lives, which include many innocent men, women and children. It has now been established that both parties have flagrantly violated the fundamental rights of people during the seven-year conflict.

This report is based on an objective, independent and impartial study of the current human rights situation in Nepal. It has been prepared after thorough, extensive consultations between human rights stakeholders and prominent members of the civil society. It tries to capture the perspective of the intelligentsia as well as of the people at the grassroots in all possible ways. Since human rights embrace wide-ranging issues, some may feel that this report does not concentrate on other pressing subjects, but no document can include everything in the ever-expanding frontier of human rights today. Moreover, keeping in mind that there are many issues in which people differ in significant ways, we have tried our best to present and discuss what we perceive to be the major human rights issues in Nepal. Thus,

we have deliberately presented a non-prescriptive report. The report helps the readers to identify the areas needing improvements and transformations in the Constitution, various legislations and administrative procedures and practices, as well as issues in the process of development planning and its implementation mechanisms.

The National Human Rights Commission sincerely hopes that our leaders, legislators, development planners, human rights activists, civil society and citizens at large will benefit from this situation paper. I hope the report will serve our government institutions as an important reference document and that will be of special importance to the many human rights NGOs and professional organizations that have been fighting long and hard for the human rights of the Nepalese people.

We will be publishing such reports periodically to keep the stakeholders updated on the changes in the status of human rights in Nepal. Any shortcomings in this report will therefore be addressed in future publications.

The report is the outcome of a lot of hard work put in by a team of researchers, editors and staff of the National Human Rights Commission. I especially acknowledge the contribution of Vickram Chhetri as the coordinator of the research work without which this report would not have been possible.

**Nayan Bahadur Khatri**  
Kathmandu  
June 2003

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The Commission also convened five focus group discussions on general and particular themes of human rights, held across the five development regions with women, *Dalits*, *Janajatis*, social workers, human rights activists, lawyers, former parliamentarians and political activists, bonded labourers (*Kamaiyas*), agricultural and industrial labour groups, media persons and senior citizens above 60 years of age. The Commission acknowledges their participation and contribution in deepening and enhancing the quality of the Report.

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Finally, the National Human Rights Commission wishes to make clear that although it solicited contributions from various experts, scholars and ordinary citizens from various walks of life, the Commission alone assumes full responsibility for the opinions expressed in the Report.

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# ABOUT THIS REPORT

## 1. Objective of the Report

The National Human Rights Commission believes that in the contemporary world, it is impractical to discuss development of people and nations without giving equal consideration to promotion of human rights. This Status Report on the situation of human rights in Nepal is expected to stimulate a vigorous debate among various government bodies, donor agencies, local and international nongovernmental organizations and the civil society on the correlation between human rights and development. Following such debates, if the authorities concerned implement the various national and international human rights instruments and related laws, the Commission would feel that by carrying out the research and presenting this Report, the Commission has made a genuine contribution toward positively enhancing the status of human rights in Nepal.

## 2. Methodology

Both primary and secondary data have been used in preparing this Report. The researchers and contributors, in close coordination with the Commission's research coordinator, made extensive use of secondary sources available in major libraries, including the NHRC collection, as well as information available on the Internet. Additionally, the Constitution, national laws, rules and regulations, regional and international human rights covenants/conventions, particularly those to which Nepal is a signatory party, and media reports were examined, and relevant topics and issues were incorporated into the Report. Furthermore, contributors and participants in this research exercise were requested to identify and discuss appropriate topics in the areas of political science, democracy, good governance, human development - and how they affect human rights.

A two-pronged strategy was designed to gather primary data. The NHRC researchers and the officials concerned held wide-ranging discussions with the prominent development thinkers, human rights activists, political scientists and academic experts on the topics of rights-based governance and on the condition of human rights situation prevailing in Nepal. These discussions were followed by regional seminars on rights-related topics in Dhangadhi, Nepalganj, Pokhara, Kathmandu and Biratnagar.

Meanwhile, almost simultaneously, in the same five areas, NHRC fielded researchers, aided by local nongovernmental organizations or other professional bodies, and conducted focus group discussions among the local population to obtain regional perspectives on human rights. Thus the NHRC research team members remained busy interacting with human rights activists, lawyers, university professors, ex-politicians and party activists, social workers, students, women, members of the Dalit and Janajati groups, the elderly, local administrators, ex-MPs, security officials and other interested parties throughout the nation. Relevant excerpts from the seminar papers and the written critiques, comments and suggestions from the audience, and statements and observations, both positive and negative, offered at the focus group discussions were all included into the appropriate segments of the Report as well.

The focus groups mainly concentrated on the meaning and understanding of the concept of human rights, and to what degree they thought their political, economic, civil, social and cultural rights were being fulfilled by the government at the central level and the local levels. They were also urged to suggest how those rights could be guaranteed at these two levels, and in the private and public spheres. The focus group discussions were held in

Sunsari, Kavre, Parbat, Kanchanpur and Bardia. The sample size of various target groups was selected according to the local needs, time and situation, and on average 7 to 15 people took part in each focus group. There were a total of 288 participants, of whom 178 were men and 110 women. Only women participated in women's focus groups.

S. N.	Groups	No. of Women	No. of Men	Total
1.	Ex-political representatives and political workers	5	44	49
2.	Human rights activists and social workers	11	32	43
3.	Agriculture labourers, Kamaiyas and porters	13	26	39
4.	Dalits and exploited groups	10	27	37
5.	Elderly people	17	27	44
6.	Media persons	2	12	14
7.	Women's groups	47	-	47
8.	Ethnic groups	5	10	15
Total		110	178	288

The breakdown of focus groups, which included various ethnic and caste groups, and the participating men and women was as follows:

The first draft of the Report was reviewed by experts who provided detailed suggestions to improve the Report. The second revised draft was sent to a select group of reviewers, whose feedback was incorporated into the final Report.

### 3. Limitations of the Research

Due to the then prevailing political environment of the country the field work could not be conducted as extensively as desired, and certain areas were off limits for security reasons – especially since the armed conflict, which was in full swing. The NHRC research team felt that the presence of the Maoists and/or State security personnel tended to inhibit adequate articulation of opinion in the discussions. Furthermore, due to other procedural constraints (such as meeting

deadlines), questionnaires could not be disseminated widely on a national level as was initially planned, and many interviews could not be conducted at the desired level and were instead limited to personal contacts and comparatively easy access to the interview subjects.

### 4. Research Timeframe

Research work commenced in November 2001 and completed by the end of June 2003.

### 5. Organization of the Report

The report progresses from the general issues to the specific and ends with a general conclusion, but makes no specific recommendations.

**Chapter 1**, the Introduction, briefly sketches out a historical, geographical, cultural and socio-economic portrait of the nation, as it briefly updates the reader on the political scenario prevailing in the nation at the time of the research. As the armed conflict has played such a decisive role in the status of human rights in Nepal, the trajectory of the conflict is summarized.

**Chapter 2** explains human rights in contemporary Nepalese context; it also takes up international human rights instruments and Nepal's obligations, compliance, non-compliance, inconsistencies and contradictions with regard to such international treaties and covenants.

**Chapter 3** sketches various constitutional guarantees that the Nepalese citizens are entitled to enjoy, including the right to life and liberty and freedom of opinion and expression. Provisions in the Constitution of the Kingdom of Nepal 1990 and other legislations that could be interpreted as sanctions against the violation of people's rights are also pointed out.

**Chapter 4** explores the conditions of the penal system in Nepal. The chapter explains the condition of the prisons and violation of

prisoners' rights, and mentions some of the key steps being taken by the government and the civil society to improve the conditions and protect the rights of the prisoners.

**Chapter 5** discusses torture in Nepal and the government bodies most responsible for inflicting torture upon the people. Torture and other cruel and inhuman acts by the Maoists are also pointed out.

**Chapter 6** describes the position of the independent judiciary and how various elements within the process of Fair Trial encourage or prevent people from enjoying their fundamental freedoms and human rights.

**Chapter 7** is devoted to the issue of basic needs and human rights and concentrates on the issues of health, education, food, shelter and work. It discusses the success and failure of the State to provide these basic rights to the Nepalese people.

**Chapter 8**, explores at length the various forms of prejudice, discrimination and violence that Nepalese women have suffered, formally and informally, in the public as well as the private domain. Violations of women's rights in the form of rape, trafficking of women, mental and physical abuse, etc. are noted, along with the obstacles women face when pursuing legal recourse to redress such wrongs. While discriminatory legislation has been noted, efforts to amend such laws have also been stated. Furthermore, the role — or lack thereof — of women in politics, civil service and the society at large has been given due consideration.

Likewise, in **Chapter 9**, the rights of the child are explained and why, despite constitutional and other guarantees, children continue to be exploited at every level in the Nepalese society. Exploitative child labour is especially highlighted, along with the State's efforts to protect children from further violence and exploitation at the hands of unscrupulous agents, including representatives of the State, such as the police, factory owners, industry

and household employers, etc. Problems facing children in detention are also examined.

**Chapter 10** is on the Janajatis and explores the discrimination they have faced over the centuries. Violations of various rights of the Janajatis are enumerated along with the attempts by the Janajati groups to reclaim their lost rights and participate in the mainstream of the Nepalese society amidst the socio-cultural and religious differences between the traditionally non-Hindu Janajatis and the Hindu ruling power elite.

As with the Janajatis, the formal and informal discriminatory practices of the upper caste Hindus toward the lower caste 'untouchables' or Dalits are discussed in **Chapter 11**. The emphasis, in this case, is on the various forms of daily, even mundane - but heartrending - social exclusion and common discriminatory practices of the upper caste Hindus against the Dalits. However, positive steps initiated by the State to prevent prejudice and discrimination have also been included in the discussion.

**Chapters 12** highlights the increasingly precarious status of the senior citizens. As the traditional extended family structure crumbles and other forms of modernization encroach upon a stable, settled community, the elderly find themselves becoming isolated, estranged and even abused by those whom they hold dearest. In such a scenario, the importance of official and private measures to protect the rights of the elderly are considered, and specifically, the need for providing a safe 'home' away from home.

**Chapter 13** exposes the key problems faced by the persons with disability, as such people are shunned in all the various strata of the Nepalese society, including their own families. While the government has introduced legislation to protect the rights of the persons with disability, very little has been achieved in enabling the persons with disability to live a more comfortable, independent and dignified life.

**Chapter 14** is on governance and explores issues related to it, especially with regard to attempts to attain at rule- and rights-based governance by various elected government(s) since the restoration of the multiparty system. The activities of the Election Commission of Nepal and the Commission for the Investigation of the Abuse of Authority (CIAA) are emphasized, as these agencies have pivotal role to play in curbing corruption and fraud, especially in the context of the major political parties, governance and the bureaucracy in general. Furthermore, attention has been drawn to the domination of the traditional upper caste elite over the women, Janajatis, Dalits and other minority groups, who remain outside the mainstream of the national development.

**Chapter 15** presents conclusions, but no specific recommendations, with the assumption that those who wish to and are able will be challenged by this report to find creative and durable ways to protect and promote human rights in Nepal will do so.

It should be noted that every chapter includes references and discussions of the appropriate international human rights instruments, and whether or not Nepal's national legal provisions have complied with them or flouted them. However, while the Report unsparingly discloses the failures of the State to protect and promote human rights of the Nepalese people, it also emphasizes the positive initiatives taken by the State.

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# ACRONYMS

<b>AHRC</b>	Asian Human Rights Commission	<b>HMG</b>	His Majesty's Government
<b>AIDS</b>	Acquired Immune Deficiency Syndrome	<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>BS</b>	Bikram Sambat	<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	<b>IDD</b>	Iodine Deficiency Disorders
<b>CBO</b>	Community-Based Organization	<b>ILO</b>	International Labour Organization
<b>CDO</b>	Chief District Officer	<b>INSEC</b>	Informal Sector Service Centre
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women	<b>LSG</b>	Local Self-Governance Act
<b>CeLRRd</b>	Centre for Legal Research and Resource Development	<b>NC</b>	Nepali Congress
<b>CSW</b>	Commercial Sex Workers	<b>NGO</b>	Nongovernmental Organization
<b>CVICT</b>	Centre for Victim of Torture	<b>NHDR</b>	National Human Development Report
<b>CPN-M</b>	Communist Party of Nepal-Maoist	<b>NHRC</b>	National Human Rights Commission
<b>CPN-ML</b>	Communist Party of Nepal-Marxist & Leninist	<b>NPC</b>	National Planning Commission
<b>CPN-UML</b>	Communist Party of Nepal-United Marxist Leninist	<b>NSP</b>	Nepal Sadbhawana Party
<b>CRC</b>	Convention on the Rights of the Child	<b>RPP</b>	Rastriya Prajatantra Party
<b>CWIN</b>	Child Workers in Nepal	<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>DANIDA</b>	Danish Agency for International Development	<b>TADA</b>	Terrorist and Destructive Activities (Control and Punishment) Act
<b>DDC</b>	District Development Committee	<b>TCA</b>	Torture Compensation Act
<b>DFID</b>	Department for International Development	<b>UDHR</b>	Universal Declaration of Human Rights
<b>FY</b>	Fiscal Year	<b>UN</b>	United Nations
<b>FIR</b>	First Information Report	<b>UNAIDS</b>	United Nations Programme on HIV/AIDS
<b>GDP</b>	Gross Domestic Product	<b>UNDP</b>	United Nations Development Program
<b>HIV</b>	Human Immuno Deficiency Virus	<b>UNICEF</b>	United Nations Children's Fund
		<b>VDC</b>	Village Development Committee
		<b>WHO</b>	World Health Organization



# CHAPTER 1

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## Nepal: A Contemporary Brief

**“The worth of the state, in the long run, is the worth of the individuals composing it.”**

*- John Stuart Mill, Philosopher & Economist (1806-1873).*

# 1. Nepal: A Contemporary Brief

In the *Panchayat* system, political parties were banned and absolute monarchy prevailed from 1961 to 1990.

The Kingdom of Nepal has existed for the past 1,500 years. Modern Nepal emerged when the current Shah monarchy was established in 1768 after the unification of Nepal by King Prithivi Narayan Shah. Other dynasties or groups that once ruled Nepal include the Mahishpals, Gopals, Kirats, Lichhavis, Mallas and the Ranas. Even as its neighbors came under foreign domination, the Kingdom of Nepal was never ruled by any foreign power and maintained its independence throughout the centuries of Western colonial and imperial expansions in Asia and elsewhere. For over a century (1846-1950), Nepal suffered greatly under the dictatorship of the Rana family. The Rana prime ministers claimed to govern the nation in the name of the Shah kings, who were, in reality, mere figureheads. In 1951, the Rana rule collapsed and monarchical power was restored along with a parliamentary form of government. Not long after the death of King Tribhuvan, who was instrumental in the overthrow of the Rana regime, King Mahendra Bir Bikram Shah Dev established the partyless *Panchayat* system in 1961, when he decreed the end of nearly a decade of fractious multiparty system. In the *Panchayat* system, political parties were banned and absolute monarchy prevailed from 1961 to 1990. After the restoration of democracy in 1990, the then interim government promulgated a new Constitution of the Kingdom of Nepal, 1990 (B.S. 2047) (hereafter referred as the Constitution) that ended the *Panchayat* system and absolute monarchy. Currently, Nepal is a constitutional monarchy with a parliamentary form of government.

Nepal is a small, landlocked South Asian country bordered by China to the north and India to the east, west and south. Its population is just over 23 million. With a total area of 147,181 sq. km., the country can be divided into three geographic regions - i)

the high Himalayan mountains, ii) the central highlands and iii) the southern Terai. The majority of the people (47%) live in the Terai and the central highlands (46%), while a mere 7 percent live in the high Himalayas. Only 20 percent of the total land area is cultivable.

The majority of Nepalese are Hindus (80.6%), followed by Buddhists (10.74%), Muslims (4.20%) and Christians (0.45%). The various ethnic groups in Nepal have mostly evolved out of the three main population groups: i) Indo-Nepalese, ii) Tibeto-Nepalese and iii) Indigenous Nepalese. Apart from the Brahmins, Chhetris and Rajputs - who have been the traditional elites - there are approximately 23 *Dalit* ('untouchables') castes and 59 *Janajatis* (indigenous nationalities), although questions continue to be raised regarding the exact number of *Dalit* and *Janajati* groups. Nepali is the official language of the nation and the mother tongue of 50.31 percent of the total population. Maithali, Bhojpuri, Tharu, Tamang, Newari, Gurung, Magar, etc. are some of the other major mother tongues of the Nepalese people.

Nepal is one of the least developed countries of the world. Over 85 percent of the people live in the rural area and nearly 80 percent of its total population support themselves through agriculture. The contribution of agriculture in the national economy is 40 percent whereas industry and service contribute 22 and 38 percent respectively. The GDP per capita for the year 1999/2000 was around \$244. While the annual population growth rate is 2.4 percent, the average family size is 5.45 in Nepal. Infant mortality rate is 66 per 1,000 live births and the under-five mortality rate is 91 per 1,000 live births. Maternal mortality ratio is 540 per 100,000. Nearly 42 percent of average life expectancy is 59 years.<sup>1</sup>

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<sup>1</sup> HMG and UN Country Team, *Progress Report 2002 - Millennium Development Goals, Nepal and UNICEF*.

At present, the rate of Nepal is nearly 54 percent (population aged 6 years and above), but the adult male literacy rate is much higher (60.5%) than the adult female literacy rate (25.2%). Whereas, the literacy rate and participation of the Dalits, Janajatis and other minorities in the education sector is almost half the nation's rate. For example, only 30 percent of the children of Dalits, Janajatis and other disadvantaged groups attend school.<sup>2</sup>

Modern Nepal began to confront perhaps its most serious problem from 1996 when the Communist Party of Nepal-Maoists (CPN-M) initiated a "people's war," i.e., an armed struggle, to overthrow the existing political structure. Political analysts and development experts often feel that "the conflict in Nepal is basically a social, economic and cultural issue and is produced and sustained by failed development,"<sup>3</sup> as the armed conflict had led to "continued violence in more than 50 of the country's 75 districts. Insurrection continues in the form of torture, killings, bombings, extortion and intimidation against civilians and public officials."<sup>4</sup> A brief ceasefire was established while His Majesty's Government of Nepal (HMG) and the Maoists held three rounds of talks between August and November of 2001 to discuss the various issues and concerns of the Maoists, of which the three most important were: 1) a round-table

conference, 2) an interim government and 3) a constituent assembly. On November 21, the Maoists unilaterally withdrew from the 3<sup>rd</sup> round of talks, and two days later, they broke the ceasefire by attacking the police, army and the armed forces personnel.

On November 26, 2001, a state of emergency was declared. Extended twice, it lasted for nine months and was lifted on August 27, 2002. On May 22, 2002, Prime Minister Sher Bahadur Deuba dissolved the House of Representatives when his party, the Nepali Congress (NC), disagreed with him on the need to extend the state of emergency. On October 4, 2002, Mr. Deuba was relieved of his duties by His Majesty the King Gyanendra Bir Bikram Shah, invoking Article 127 of the Constitution. A few days later, His Majesty the King appointed Mr. Lokendra Bahadur Chand as the new prime minister. However, Prime Minister Chand too, resigned in late May 2003, and on 4 June 2003 His Majesty the King appointed Mr. Surya Bahadur Thapa of the Rastriya Prajatantra Party (RPP) as the new prime minister.

The new ceasefire declared on January 29, 2003, has, for the moment, brought to an end the seven-year-old conflict, but not before it claimed the lives of over 7,000 people.

Modern Nepal began to confront perhaps its most serious problem from 1996 when the Communist Party of Nepal-Maoists initiated a "people's war," i.e., an armed struggle, to overthrow the existing political structure.

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<sup>2</sup> The statistics used in this brief profile have been taken from various publications of His Majesty's Government Central Bureau of Statistics spanning the years 1996-2001 and other sources such as the UNDP publication *Nepal Human Development Report 2001: Poverty Reduction and Governance* (Kathmandu) and materials from the United Nations Children's Fund ([www.unicef.org](http://www.unicef.org)).

<sup>3</sup> Pandey, D.R. *Nepal's Failed Development: Reflections on the Mission and Maladies*. Kathmandu: Nepal South Asia Centre, 1999, cited by Mr. Arjun Karki, Ph.D., in his paper, "Violation of Human Rights: The Main Cause of Conflict," presented at the "Seminar on Human Rights," Kathmandu, 9 December 2002.

<sup>4</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.





## CHAPTER 2

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### Evolution of Human Rights in Nepal

**“We should reaffirm the Universal Declaration of Human Rights and get the public to understand, the individual to understand, that those rights are his. It is not something that is given to him by a government, like a subsidy that can be taken away. It is intrinsic, it is inherent, and [I hope] we can really use this fiftieth anniversary to get that message across.”**

*- Kofi Annan, U.N. Secretary General*

## 2. Evolution of Human Rights in Nepal

Human rights are the basic rights of the people universally and not dependent upon the whims of rulers.

Human rights are, quite simply, those rights that one has because one is a human being. Human rights are thus, universal, equal and inalienable. They are as old as the human society, for they derive from a person's need to realize his/her essential humanity. They are neither ephemeral nor alterable with time, place or circumstances. They are not the products of philosophical whims or political fashion. They have their origin on the basis of the human condition, and because of this origin, they are fundamental and inalienable. Thus, human rights are the basic rights of the people universally and not dependent upon the whims of rulers. It must not be forgotten that human beings are at the centre when one talks about human rights, and these rights are closely related to human development. However, development of human rights does not mean creating new rights; it simply means identification and recognition of rights that human beings possess at birth.

Identification and recognition of civil and political rights, known as first generation rights, date back to the 16<sup>th</sup> century, whereas economic, social and cultural rights, referred to as second generation rights, were developed during the 20<sup>th</sup> century. Now we have third generation rights, described as 'solidarity rights' that were identified after 1970s. Right to development, right to peace, right to environment are some of the 'solidarity rights.'

The central element in modern democracy is the recognition and protection of basic human rights and the maintenance of the rule of law. Moreover, as far as the operational definition of human rights is concerned, human rights are standard norms based on rights identified and recognized by the world community through various multilateral treaties, conventions and declarations. Without these rights, true democracy cannot be achieved. Human rights, in fact, can be regarded as the

soul of democracy.

International human rights instruments have, largely, captured many of the norms of customary international law. They provide legitimacy to the system of justice, which in turn offers the condition of legitimacy to the system of governance. These international human rights norms are brought to the domestic legal system through various ways and at various levels of recognition. For example, several civil and political rights and some social and cultural rights are included as fundamental rights in the Constitution, whereas economic rights are provided in the Constitution as the Directive Principles and Policies of the State.

The ratification of international human rights instruments creates obligations on State parties to behave in accordance with the ways described in the given instruments. Following the restoration of the multiparty system in 1990, Nepal also ratified a number of human rights instruments by which it must abide.

Although the existence and practice of despotism is still a problem in many parts of the world, the pressure created by human rights movements around the world has compelled many tyrannical and authoritarian rulers to submit themselves to change.

The concepts of justice and governance, however, have no universal definitions. They bear different connotations to different people in different societies at different times. It is therefore necessary to have a standard of values, especially of justice and governance, against which the law can be measured. Such a standard must necessarily be superior to the law itself, and would, therefore, constitute the highest rank in the legal hierarchy.

The United Nations Universal Declaration of Human Rights (UDHR) is the instrument that provides the standard to measure the laws of

each nation. Various other international treaties and conventions, which followed the Declaration, elaborate the principles set in the Declaration. Hence, each nation that has acceded to the Declaration is expected to give effect to the following important principles in practice:

- **The Principle of Universal Inherence:** Every human being has certain rights, capable of being enumerated and defined, which are not conferred on him/her by any ruler, nor earned or acquired by purchase, but which are inherent in him by virtue of his/her humanity.
- **The Principle of Inalienability:** The acts of any ruler or even his/her own act can deprive no human being of any of those rights.
- **The Rule of Law:** Where rights conflict with each other, the conflict must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.

## 2.1 International Human Rights Instruments

The Constitution provides clear guidelines about the status of the international instruments in Nepal. Article 126 of the Constitution states that “*the ratification of, accession to, acceptance of or approval of treaties or agreements to which the Kingdom of Nepal or His Majesty’s Government is to become a party shall be as determined by law.*” It further stipulates that treaties or agreements concerned with a) peace and friendship, b) defence and strategic alliance, c) boundaries of the Kingdom of Nepal, and d) natural resources, and the distribution of their uses should be ratified or acceded by a majority of two-thirds of the members present at a joint

sitting of both Houses of the Parliament. Other treaties and agreements are subject to ratification or accession through a simple majority of the members present in the meeting of the House of the Representatives.

After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with Article 126, it shall not be binding on His Majesty’s Government or the Kingdom of Nepal. The Treaty Act of 1990 (B.S. 2047) is special legislation that governs the substantive and procedural matters of the ratification and accession of treaties and convention. Section 9 of the Act explicitly states that any law of Nepal inconsistent with a treaty or convention acceded or ratified by Nepal shall not be applicable, and provision of such treaty or convention will prevail. Hence, the international instruments acceded or ratified by Nepal constitute part of the Nepalese legal system, and as such, the government is bound to give effect to them as a part of its international obligation.

## 2.2 Ratification/Accession of International Instruments<sup>5</sup>

During the partyless *Panchayat* rule, some innocuous international human rights instruments were ratified, but most of these conventions were of little significance to Nepal’s then internal situation. For example, the regime had ratified the International Convention on Racial Discrimination, but as race was not considered an issue in Nepal at that time, it was not perceived to be a challenge to the partyless *Panchayat* regime. Thus, the administration ratified only those treaties and conventions that had no immediate effect on its continuous suppression of individual liberty and freedoms, especially political freedom.

The Treaty Act of 1990 (B.S. 2047) is special legislation that governs the substantive and procedural matters of the ratification and accession of treaties and convention. Section 9 of the Act explicitly states that any law of Nepal inconsistent with a treaty or convention acceded or ratified by Nepal shall not be applicable, and provision of such treaty or convention will prevail.

<sup>5</sup> According to *Black’s Law Dictionary*, in international law, **Accession** is the “absolute or conditional acceptance by one or several nations of a treaty already concluded between other sovereignties.” To **Ratify** is “to approve and sanction; to make valid; to confirm; to give sanction to.” (*Black’s Law Dictionary*, abridged 5<sup>th</sup> Edition, West Publishing Co., St. Paul, Minnesota, USA, 1983.) According to *West’s Encyclopedia of American Law*, **Ratification** is “the confirmation or adoption of an act that has already been preformed.” (*West’s Encyclopedia of American Law*, Vol. I, West Publishing Co., USA, 1998.)

Although Nepal has ratified many international treaties and conventions, progress has been slow in incorporating international human rights laws within Nepal's legislation, as it is obliged to do.

The *Panchayat* regime did not ratify several major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Efforts to respect and protect rights guaranteed by various international human rights instruments gained momentum only after the restoration of the multiparty system in 1990.

[See Annex 1 for a list of international instruments ratified or acceded to by the government before 1990.]

After 1990, the Constitution of Nepal (1961) of the *Panchayat* era, which banned political parties, was repealed. To their credit, the elected governments of the post-1990 era accelerated both the accession and ratification of international treaties and conventions on human rights.

[See Annex 2 for a list of international human rights instruments acceded or ratified by the government after 1990.]

To date, Nepal has ratified 16 international treaties and conventions. By ratifying various international treaties and conventions without any reservation, Nepal has unconditionally agreed to respect human and other fundamental rights.

### 2.3 Domestication of International Instruments

“Domestication” of international instruments, broadly speaking is a process of giving effect to the international law in the national situation. Thus, it is one of the mechanisms to achieve enforcement of international conventions and treaties in the practical lives of people or nations. The objective is achieved by applying either of the following two modes:

- By incorporating the provisions of the international conventions and treaties into domestic statutes.
- By accepting international conventions and treaties as superior authority within the national legal framework.

As mentioned before, for securing domestic jurisdiction, the Constitution requires approval by the Parliament of such treaties and conventions. But despite such legal arrangements, it is often very difficult to enforce international treaties and conventions in domestic jurisdiction directly. In the absence of a comprehensive domestic legal structure, ensuring that the State machinery honestly abides by the provisions of international treaties and conventions is not an easy task. Thus, although Nepal has ratified many international treaties and conventions, progress has been slow in incorporating international human rights laws within Nepal's legislation, as it is obliged to do. In the span of over a decade, the government has incorporated very few international statutes within its legal system, but even these do not fully conform to the standards set forth in the treaties and conventions. This may be construed as an indication of the government's reluctance to rationalize the legal system.<sup>6</sup>

### 2.4 Major International Human Rights Instruments Yet to be Ratified/Acceded by Nepal

Nepal has yet to ratify a number of other important international human rights instruments that are immensely important for the consolidation of respect for human rights in the country. One significant example is the non-ratification of the Additional Protocol to Geneva Conventions (1977) that govern the laws of war and internal conflict. The non-ratification of these instruments remains a great obstacle to the implementation of humanitarian laws within Nepal, and it is not clear why Nepal

<sup>6</sup> Sharma, Dr. Bhogendra. “Country Report on Torture in Nepal.” Paper presented at the “Expert Seminar on the Prevention of Torture and Visiting System as an Effective Method of Preventing Torture.” Organized by Nepal Law Society, Kathmandu, September 8-9, 2000.

has failed to ratify them. Table 2.1 lists the major international human rights conventions yet to be ratified.

The prompt domestication and effective enforcement of international human rights instruments in Nepal remain a problem. As is clear from various press releases of the National Human Rights Commission (NHRC) and the series of Human Rights Yearbooks published by the Informal Service Sector (INSEC), the government officials themselves have been found to be frequently involved in acts that violate or disregard obligations established by human rights treaties and conventions as well as the provisions of human rights.<sup>7</sup>

As mentioned earlier, international instruments can be accommodated in Nepal either by incorporating the provisions of the conventions and treaties into domestic statutes or by accepting the international conventions and treaties as superior authority within the national legal framework. Since 1990, the Supreme Court of Nepal has made some efforts to internalize the provisions of international conventions in practice. The case of *Reena Bajracharya vs. Royal Nepal Airlines* is one of the most significant cases where the Supreme Court decided the issue of sex discrimination in light of the provisions of the International Convention on Elimination of All Forms of Discrimination against Women (CEDAW)<sup>8</sup>. However, the Supreme Court has not maintained a similar position with regard to the International Covenant on Economic, Social and Cultural Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other important international human rights instruments. As is evident from many Supreme Court judgments,

**Table 2.1: Major International Human Rights Conventions Yet to be Ratified by Nepal**

S.N. Instruments	Date of Entry into Force
UN Conventions:	
1. International Convention on Status of Refugees, 1951	1954
2. International Convention on Migrant Workers, 1990	2003
3. Rome Statute on International Criminal Court, 1998	2002
4. Convention on the Status of Stateless Persons, 1954	1960
5. Convention on the Re-education of Statelessness, 1954	1975
6. Optional Protocol to Geneva Conventions (Protocols I and II)	1977, 1978 & 1979
7. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1999,	2000
8. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000,	2002
9. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000	2002
10. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962,	1964
11. Convention on Nationality of Married Women, 1957,	1958
International Labour Organization (ILO) Conventions:	
1. C 105 Abolition of Forced Labour Convention	1957
2. C 87 Freedom of Association and Protection of the Rights to Organize Convention	1948
South Asian Association for Regional Cooperation (SAARC) Conventions:	
1. Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002	2002
2. Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002	2002

evidentiary value of confession made by suspects during police custody has also been accepted at times, if the accused has not been able to prove that the confession was obtained by torture. This is in stark contradiction to the spirit of ICCPR.

*[Annex 3 lists important laws enacted following the accession of international human rights instruments. It also points out the improvements, inconsistencies and weaknesses of some of these laws.]*

<sup>7</sup> The National Human Rights Commission has issued several statements concerning violation of human rights of persons, particularly of those in detention. For instance, on 6 April 2002, NHRC cautioned authorities who had been holding trial of persons under detention without authority. On 19 April 2002, following the visit of western Nepal by a team led by the Rt. Honorable Chairperson of the Commission, NHRC released information on the arrest and torture of innocent people. On 30 April 2002, NHRC expressed its grave concern when HMG placed bounty on the heads of some Maoist leaders who had been declared "terrorists." (HMG has recently revoked both the bounty and use of the term "terrorists" to describe the Maoists.)

<sup>8</sup> Writ No. 2812 (2057). See Supreme Court Judgments on Constitutional Issues (Part 1) by Narendra Pathak. Kathmandu: Pairavi Books and Stationery Center, 2001.

A number of laws that are inconsistent with or contradict the norms and values set by international human rights instruments are being enforced.

## 2.5 Inconsistencies and Contradictions

Despite the ratification of international human rights treaties and conventions, a number of laws that are inconsistent with the norms and values set by international human rights instruments are being enforced. For example:

- The Torture Compensation Act (TCA) 1996 (B.S. 2053) does not define torture or custodial death as a crime. Hence, officials involved in torture or custodial death are not personally subject to criminal liability under the prevailing laws. The Act simply obliges the government to pay compensation for torture. Additionally, a government attorney defends the perpetrator(s). As the Act fails to recognize torture as a criminal act, it is in stark contradiction to the obligations under the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT).<sup>9</sup> Moreover, the Act ignores the independent medical practitioner's role in medical check-up of torture victims since it exclusively assigns government medical officers and senior police officers to conduct the suspect's medical check-up, which can provide an opportunity for misuse of authority. More importantly, the Act deals with torture inflicted only after a person is taken into custody. The Act, therefore, is not only inconsistent with the CAT but is also ineffective in protecting detainees from torture during police custody. (See also Chapter 5 on "Torture in Nepal.")
- The State Cases Act 1992 (B.S. 2049) requires the police to notify the suspect giving reasons for his/her arrest. The power of interrogating the suspect lies implicitly with the police. The Act makes no reference to the right of the suspect to remain silent (a basic right to fair trial) even

though it has been recognized by the Constitution as one of the fundamental rights. The Act has, therefore, failed to domesticate the right to remain silent, which is recognized in explicit terms by the International Covenant on Civil and Political Rights (ICCPR) as an essential element of fair trial. (See also Chapter 6 on "Fair Trial.")

- The amendment in the section on anshabanda (partition) of the New Muluki Ain or the National Code, hereafter referred to as the Muluki Ain, unless otherwise noted, has repealed the provision that subjected daughters to attain 35 years of age and maintain unmarried status for obtaining *ansha* (one's share of inherited property). However, the amendment fails to bring about the desired change in the subordinated legal status of women prevailing for centuries. For the amendment continues to attach the daughters' rights to *ansha* to their marital status, because they must return their *ansha* if they get married, thus once again depriving them of their rights to enjoy equal status in matters of *ansha* with their brothers and parents. The amendment of the New Muluki Ain, therefore, contradicts the aims of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which obliges the State party to update or amend all discriminatory legal instruments.<sup>10</sup> (For further details, see Chapter 8 on "Rights of Women.")

Besides these contradictions and inconsistencies in certain Nepalese laws vis-à-vis international instruments, during the emergency a number of fundamental rights guaranteed under the Constitution were either suspended or weakened, except the right to *habeas corpus*. Furthermore, human rights workers and the public also criticized the amendment to Local Administration Act

<sup>9</sup> Article 4(1) of CAT, which obliges state party to define an act of torture as a crime against law.

<sup>10</sup> Article 2(f) of CEDAW.

### **Box 2.1: Formation of National Human Rights Commission**

After a long struggle of human rights NGOs, professional organizations and civil society, the National Human Rights Commission (NHRC) was established in 2000 (B.S. 2057) under the Human Rights Commission Act of 1997 (B.S. 2053). It is a landmark statute for promoting and protecting the human rights in Nepal.

The NHRC is an autonomous statutory body and its fundamental responsibility is to protect and promote human rights in Nepal. It has the authority to probe incidents of human rights violation or any attempt to violate human rights, or negligence or recklessness committed by any person, institution or organization relating to human rights. With regard to procedural matters, the Commission has powers similar to that of the court for the purpose of taking action on petitions, complaints and conducting fact-finding missions.

Thus, NHRC routinely conducts observation studies in various parts of the nation and prepares and distributes reports of its findings. It is active in raising awareness on rights violations and training and sensitization on human rights. Furthermore, it regularly presents recommendations and guidelines to the government as well as conducts public hearings so that the government will act to alleviate the suffering of the victims of human rights violations.

because it gave more discretionary power to the executive officials. Meanwhile, the State enacted more statutes leading to further deterioration of human rights situation in the country.

### **2.6 Human Rights Organisations**

A major benefit of the restoration of multiparty system was the blossoming of human rights organizations in Nepal, of which there were very few before 1990. Today, several organizations are active in the field of human rights and related areas. Some of them are the Amnesty International (Nepal chapter), Human Rights Organization of Nepal (HURON), Forum for Protection of Human Rights (FOPHUR), Informal Sector Service Centre (INSEC), Prisoners Assistance Mission (PAM), Child Workers in Nepal Concerned Centre (CWIN), Centre for Legal Research and Resource Development (CeLRRd) the Centre for Victims

of Torture (CVICT). As the names of the agencies indicate, each focuses on a specific area of human rights—child’s rights, women’s rights, legal aid, prison reform, etc. As a result, the level of awareness and activities on human rights issues have increased inducing positive changes in the Nepalese society.

There are no government institutions that are active in monitoring human rights violations. However, the government has shown some concern over human rights by establishing human rights cells in the Home Ministry, the Royal Nepal Army, the Armed Police and the civil Police. Furthermore, the government has also maintained focal points in the ministries for the purpose of treaty reporting, which is coordinated by the Ministry of Law, Justice and Parliamentary Affairs. This ministry is responsible for preparing the reports for submission to the UN Human Rights Commission.

A major benefit of the restoration of multiparty system was the blossoming of human rights organizations in Nepal, of which there were very few before 1990.

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## CHAPTER 3

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### Constitutional Guarantees

**“Let there be no doubt: There are some very basic standards of human behavior, violations of which are simply unacceptable. Fundamental human rights are a product of human nature — indeed human life — itself.”**

*- Kofi Annan, U.N. Secretary General*

### 3. Constitutional Guarantees

The right to equality, freedom to form unions and associations, rights regarding criminal justice, cultural and educational rights, right to religion, as well as the right against exploitation and right against exile are non-derogable rights, and, therefore, these rights cannot be suspended even during a state of emergency.

The Constitution states unequivocally that all citizens are equal and prohibits discrimination on the basis of sex, religion, caste and ethnicity and political ideology.<sup>11</sup> It further guarantees right to life and liberty, and ensures that the State will not make laws prescribing death penalty.<sup>12</sup> Other rights guaranteed to the citizens of Nepal include, among others, freedom of opinion and expression, the right to peaceful assembly without bearing arms, freedom to move throughout or any part of the Kingdom and reside in any part thereof, and the freedom to practice any profession and engage in any occupation, industry or trade. The right to equality, freedom to form unions and associations, rights regarding criminal justice, cultural and educational rights, right to religion, as well as the right against exploitation and right against exile are non-derogable rights, and, therefore, these rights cannot be suspended even during a state of emergency.

Many of these rights come into effect through legislation, and the State at times has been successful in the past in its attempts to enact laws to secure some of these rights. For example, the State has enacted laws like the State Cases Act, the Torture Compensation Act and the Legal Aid Act, which are indispensable for the effective enforcement of the fundamental rights of citizens. The existing property laws, despite being amended, are still gender discriminatory, and laws concerning preventive detention are vulnerable to arbitrary actions by the executive officials. The State has often failed to enact laws concerning the right to information and privacy; additionally, laws in relation to property, preventive detention, and prevention of exploitation—especially regarding women, indigenous nationalities, minorities and children—are far from satisfactory. Furthermore, where statutes do exist to ensure equality and prevent

discrimination, they have often been found to be lacking in proper implementation. However, with the impressive growth of human rights organizations and activists, and the establishment of the National Human Rights Commission (NHRC), there is sound basis to be optimistic that rights-based governance will increasingly prevail.

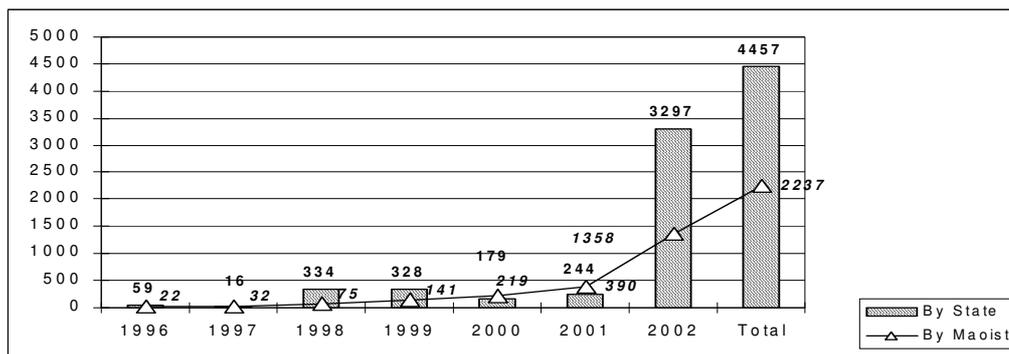
#### 3.1 Respect for Life and Liberty

A number of socio-economic and political changes have taken place since the restoration of the multiparty system in 1990, but the country still has a long way to go to make a significant accomplishment in its goal of poverty reduction. Poverty is almost synonymous with precarious existence and there are many reasons for the persistence of poverty in Nepal. One of them is the lack of transparency and accountability in the government; others include acute disparity in resource distribution and opportunities as well as lack of ownership of productive assets (capital and non-capital)—all of which have resulted in acute inequality between the rich and the poor. Additionally, power relations among various ethnic and caste groups have not been seriously addressed, even after the restoration of the multiparty system. Thus, the persistence of widespread, acute poverty, combined with tensions escalating among various social groups, have inevitably engendered crises in the nation, including the recent armed conflict, whose victims include Maoist cadres, members of the security forces, and, overwhelmingly, innocent civilians. In the course of the armed conflict, the State authorities are engaged in incidents of arbitrary arrests and detention, torture and other inhuman and degrading treatment, abductions and “*disappearances*” as well as extra-judicial killings. Likewise, the Maoists are also actively engaged in incidents of kidnapping and detention, torture and other

<sup>11</sup> Article 11.

<sup>12</sup> Article 12 (1).

**Graph 3.1: Number of People Killed During Insurgency (1996-2002)**



Source: INSEC

inhuman and degrading treatment, abductions and “disappearances”, use of people as human shields and killings. Such actions of the State and the Maoists have seriously jeopardized people’s human rights, especially their right to life and liberty. As Table 3.1 demonstrates, while the State was responsible for the arrest/abduction of a total of 264 people, those held by the Maoists numbered 934; but whereas 84 people disappeared in custody of the Maoists, the State has been responsible for the disappearance of 170 people. Finally, while the Maoists have released 850 people they had in custody; the State has released 94.

Furthermore, as the statistics in Graph 3.1 reveal, besides the right to personal liberty and security, the right to life was most seriously affected during the conflict. Killings increased alarmingly during the year 2002, when 3,297 people were killed by the State and 1,358 by the Maoists. Moreover, the figures demonstrate that the State carried out nearly

double the killings (4,457) than the Maoists (2,237), even as human rights groups and activists were in communication with the State during the conflict, and, to some extent, were able to exert some influence upon the State’s activities and policies regarding human rights conditions, whereas the Maoist rebels had remained generally out of the reach of human rights monitors.

The latest data available from various sources, e.g., NHRC’s monitoring of human rights situation, INSEC, Amnesty International, US State Department’s *Country Reports* on Nepal and the national media all point to the fact that the nation has been sinking into “a deepening human rights crisis.”<sup>13</sup> Briefly, various sources reported that:

- At the end of October 2002, the number of people killed in the conflict since November 2001 reached 4,336, which compares to approximately 2,700 people

The State carried out nearly double the killings (4,457) than the Maoists (2,237).

**Table 3.1: Number of Abductions/Arrests Connected with Insurgency (1996-2003)**

By State			By Maoists		
<b>NUMBER OF ABDUCTIONS/ARRESTS:</b>					
Male	Female	TOTAL	Male	Female	TOTAL
221	43	264	893	41	934
<b>RELEASED:</b>					
76	18	94	818	32	850
<b>DISAPPEARANCES:</b>					
145	25	170	75	9	84

Source: INSEC, 2003

<sup>13</sup>Amnesty International. *Nepal: A Deepening Human Rights Crisis*. London: Amnesty International, 19 December 2002.

### Box 3.1: Effects of Conflict on People's Life

"Because of the armed conflict, it often seems as if all of our rights have been taken away. Farming has stopped; freedom of movement, freedom to worship, and freedom to engage in commerce and economic activities have all been impacted. After sundown, when birds fly back to their roost, one becomes quite agitated, wondering: 'What is going on out there?' In fact, even the right to sleep peacefully has been destroyed."

Source: Participant, "Regional Seminar on the Situation of Human Rights at Grassroots Level," Dhangadhi.

Impunity in Nepal is "an entrenched political culture...and is the single most destructive factor affecting the human rights situation."

killed in the previous five years. According to the same sources, 4,050 of the 4,336 were "Maoists," and at least half of these killings may have been unlawful. Over 200 people have "disappeared" since the armed conflict began seven years ago. Meanwhile, nearly 800 people, considered to be "enemies of the revolution" were deliberately killed by the Maoists.<sup>14</sup>

- Security forces estimate that they have killed at least 1350 Maoists since 1996. Meanwhile, by mid-September of 2001, the Maoists were responsible for 206 police fatalities, more than double the number recorded in 2000.<sup>15</sup>
- One English daily reported that the year 2002 "saw the greatest number of casualties in Nepal as a result of the Maoist insurgency and suppression by the State."<sup>16</sup> Referring to data provided by INSEC, the daily stated that as of December 26, 2002, a total of 5,163 people were killed, with a total of 4,108 people killed by the State and 1,055 by the Maoists. Thus, over 7,000 Nepalese have been killed since 1996.<sup>17</sup>

The year 2002 also saw the deadliest attack launched by the Maoists against the security forces. At least 102 security personnel were killed on February 17, 2002, when the

insurgents attacked the security bases in Mangalsen and Sanfebagar airport in far western Nepal. It was the highest number of casualties ever suffered by State security forces since the seven-year armed conflict began.<sup>18</sup>

Statistics regarding torture, illegal arrest and custody, kidnapping, extortion, rape and other human rights violations by both the State and the Maoists are equally disheartening.

### Impunity and the Terrorist and Destructive Activities (Control and Punishment) (TADA) Act 2001 (B.S. 2058)

Impunity is a serious issue in Nepal. An international human rights organisation's report stated that impunity in Nepal is "an entrenched political culture...and is the single most destructive factor affecting the human rights situation."<sup>19</sup> After the imposition of Emergency in November 2001, the Terrorist and Destructive Activities (TADA) ordinance was promulgated which defined a number of acts as "terrorism." TADA's Section 20 "grants prosecution immunity to members of the security forces 'or any other person' for 'any act or work performed or attempted to be performed by him in good faith under the Act.'"<sup>20</sup> Thus, TADA aids and abets those who, under the guise of maintaining 'law and order' or 'security concerns,' continue to violate the human rights of the citizens of Nepal, and failure to act against those responsible for such violations only raises "major questions about the commitment to or concern for human rights."<sup>21</sup> Ordinances such as the TADA also contribute to the failure of the State to protect citizens' life and liberty guaranteed by the Constitution.

On 23 April 2002, the government issued a public notice announcing reward to anyone who would bring certain leaders of Maoists

<sup>14</sup> Ibid.

<sup>15</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

<sup>16</sup> *The Himalayan Times*, 2 January 2003.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Amnesty International. *Nepal: A Deepening Crisis*.

<sup>20</sup> *Nepali Times*, 20-26 December, 2002.

<sup>21</sup> Ibid.

group either dead or alive. Since there is no legal provision for capital punishment in Nepal and Nepal being a party to international treaties, such act was seen as an act of omission on the part of the government. In this regard, the National Human Rights Commission drew the attention of the government that such announcement violates the right to life, adversely affects the principle of rule of law, discourages national and international principles of human rights, violates the fundamental right guaranteed under the Article 4 of ICCPR and promotes violence.

### Concerns of the International Community

With regard to the deteriorating human rights situation in Nepal, certain observations recorded by the international community, especially the donor countries, are worth pointing out.

In 1999, a report of the Danish Agency for International Development (DANIDA) stated that while the government generally respected its citizen's human rights, it had not enforced all of the Constitution's provisions regarding basic human rights. The government rarely investigated allegations of police brutality or punished police officers who committed abuses.<sup>22</sup>

On 29 November 1999 the UN Special Rapporteur on Torture wrote to the government to seriously look into the "*situation of torture being widely used in police custody, during periods of incommunicado detention, to intimidate or punish political detainees and to extract confessions.*"<sup>23</sup>

The United States Department of State as far back as 1997 expressed great concern with regard to the state of arbitrary arrests and detention in Nepal. It noted that persons have

the right to legal representation and a court-appointed lawyer, but a private attorney is provided only on request. Consequently, those unaware of their rights may not have legal representation.<sup>24</sup>

These statements indicate clearly that the international community is quite critical of Nepal's commitment to abide by obligations under various international human rights instruments.

### Groups Most Affected by Human Rights Abuse

A study of groups whose human rights had been under attack found that the rights of agricultural workers and farmers had been most seriously violated, as Table 3.2. demonstrates. Next to the farmers, political workers constitute a severely affected group. In a nation that purports to honour freedom of opinion and expression, it is distressing to note that 105 journalists have had their human rights violated. Likewise, the Table indicates that in terms of age group, the adult population (15-45 years) is the most affected group of victims. Another startling figure is the number of victims below the age of 15, or the number of child victims, that constitutes a significant proportion of the total victims. But most disturbing is the fact that the number of girl victims is larger than that of the boys, once again reinforcing the extreme vulnerability of girls and women in our society.

Until January 2003, when the ceasefire was declared, each day, on average, 16 Nepalese were losing their lives in the armed conflict, and the overall situation demonstrated certain visible trends, such as:

- The security forces and the Maoist rebels were the major perpetrators in terms of the number of human rights violations

In a nation that purports to honour freedom of opinion and expression, it is distressing to note that 105 journalists have had their human rights violated.

<sup>22</sup> Danish Agency for International Development (DANIDA). Ministry of Foreign Affairs (MoF). Evaluation: Danish Support for Promotion of Human Rights and Democratization, Vol. 9. DANIDA/MoF, 1999. ([www.evaluation.dk](http://www.evaluation.dk))

<sup>23</sup> Amnesty International. United Nations Special Rapporteur on Torture Report. Extract on Nepal made available by electronic mail, 11 April 2000.

<sup>24</sup> Bureau of Democracy, Human Rights, and Labour. Nepal: Country Reports on Human Rights Practices for 1997. Washington, D.C.: U.S. Department of State, January 1998.

**Table 3.2: Groups Most Affected by Human Rights Abuse**

A. Five Most Affected Groups									
Type	Farmers	Political Workers	Students	Police	Ordinary People				
Male	2,239	1,244	683	686	373				
Female	826	85	243	-	163				
Total	3,065	1,329	926	686	536				
B. Most Affected Professionals									
Type	Business Professionals	Civil Servants	Journalists	Lawyers	Nurses				
Male	440	426	97	11	12				
Female	78	26	8	-	3				
Total	518	452	105	11	15				
C. Comparative Situation of Victims by Age Group									
Victims below 15 Years of Age			Victims of 15-45 Years of Age			Victims above 45 years of Age			
M	F	T	M	F	T	M	F	T	
242	268	510	7,459	1,275	8,734	786	120	888	

Source: INSEC Yearbook 2001.

The State showed great disrespect to the judicial institutions of the country, giving the appearance that it preferred to do away with the detainees rather than bring them to justice, as the insignificant number of cases brought to the judiciary indicates.

committed. However, as referred to earlier, violations by the Maoists had comparatively greater impact since their unlawful activities were normally beyond the reach of human rights monitors.

- The State's willingness to respect the Constitution and international human rights instruments appeared to be weakening. The increasing proportion of incidents of human rights violations demonstrated a lack of sincerity on the part of the government to respect human rights.
- The Maoists also demonstrated an unethical and heartless attitude by resorting to violence through kidnapping, killing, using people as human shields during armed encounters with the State's security forces, along with extortion and forced recruitment of the populace, including children. They were also flouting national laws and international human rights and humanitarian laws.
- Furthermore, the State showed great

disrespect to the judicial institutions of the country, giving the appearance that it preferred to do away with the detainees rather than bring them to justice, as the insignificant number of cases brought to the judiciary indicates.

- Moreover, the dead were usually declared "terrorists" by the security personnel without scrutiny of their identities and confirmation of their involvement in terrorist activities. Many dead bodies have been buried in unmarked graves, thereby not even fulfilling the minimum requirements stipulated by the laws. Reportedly, those arrested were also killed during detention.

These examples reveal a great setback in consolidating human rights in Nepal.

### 3.2 Freedom of Opinion and Expression

One of the most positive aspects of the restoration of the multiparty system is the emergence of pluralism and openness in the national media. For example, there has been a

phenomenal increase in the number of newspapers over the past decade - from 455 in 1990 to 1,620 in 2001.<sup>25</sup> This number includes publications that do not appear regularly, since the law does not provide for the cancellation of the registration of any paper that appears irregularly or has ceased to function. In the year 2001, of the 419 newspapers in publication, only 192 appeared regularly.<sup>26</sup> According to available statistics, Kathmandu district has the highest concentration of registered newspapers (735). While at least one newspaper is published in each of 47 districts, there are not any publications in 28 of the total 75 districts. Besides the increase in print media, Nepal also witnessed growth in broadcast media, especially privately owned FM radio stations and cable television stations. But media overall is urban-centred and elite-oriented. Community media is not well developed and investigative journalism is a recent phenomenon whose impact upon the reading public has yet to be gauged. Since much of the media is under the direct or indirect control of the government, corporate houses and, especially, political parties and organizations, it has to put up with the frequent accusation that it often represents

freedom of opinion and expression, and that the government may not censor any news item or reading material. The right to freedom of opinion and expression under Article 12(2) (a), the freedom of press and publication rights under Article 13(1)(2) and the right to information under Article 16 of the Constitution are the foundation of press freedom in Nepal. Thus, Article 16 of the Constitution states that every citizen shall have the right to demand and receive information on any matter of public importance, “*provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.*”

This is the first time that this right has been included in the Constitution. Article 16 requires legislation to make the right effective, concrete and real. However, it does not compel anybody to provide information on any matter about which secrecy is to be maintained by law. The Constitution simply guarantees the right to demand and receive information, but since it has not distinguished between “secret” and “public” (or “open”) information, the constitutional provision on the right to information has been somewhat vague and open to arbitrary

Besides the increase in print media, Nepal also witnessed growth in broadcast media, especially privately owned FM radio stations and cable television stations. But media overall is urban-centred and elite-oriented.

**Box 3.2: State of Emergency and Press Censorship**

“After the declaration of the state of emergency, the government imposed censorship and began an unprecedented wave of arrests... media professionals were held for short or long periods. Even more serious, journalists working for pro-Maoist publications were detained in secret and their families were afraid to ask for writs of habeas corpus...The army demanded to verify articles before they were published and imposed a news blackout on the conflict ... journalists were expelled from combat areas and publications began censoring themselves.... Several observers say that the Nepalese media only report a small part of what is really occurring in this conflict...most of the press merely publishes figures provided by the Ministry of Defence.”

*Source : Reporters Sans Frontiers. Nepal Annual Report 2002, Paris.*

the views of their masters. Despite the expansion, pluralism, freedom and openness now available to the media, the right to information remains one of the most contentious issues in Nepal.

**Legal Framework**

The Constitution specifies that all citizens have

interpretation. Therefore, unless the Parliament enacts a law in that regard, Article 16 cannot be meaningfully implemented. Although long overdue, Nepal has not yet enacted a law in pursuance of Article 16. However, a Bill in this regard is being considered by the government, and all matters, including the procedures regarding the right to information, should be determined by an Act of Parliament and suitable

<sup>25</sup> *The Press Council Annual Report 2000 - 2001. Kathmandu.*

<sup>26</sup> *Ibid.*

Even though many journalists and publications are reported to practice “self-censorship,” a significant majority of journalists and media persons have had their human rights violated both by the State and the Maoists.

rules made under the Act.

The Press and Publications Act also protects institutional independence of press. Though the press in Nepal is relatively independent, in actual practice, it functions under certain restraints. The Act prohibits the publication of any material deemed to be disrespectful toward the King and members of the royal family. Information that undermines security, peace, order and sovereignty of the nation or causes discord among people of different castes and ethnicity may also be prevented from being published. Furthermore, when appropriate, foreign publications may also be banned. Additionally, it must also be noted that the application of the Press and Publications Act is not uniform and governs only the private-sector media. The official media is governed by separate Acts, for example National News Agency Act, 1963 (B.S. 2019) and Gorkhapatra Corporation Act, 1963 (B.S. 2019). Similarly, the provisions of the Working Journalists Act do not apply to journalists working for the government media.

### **Two-Tiered Nepalese Media**

While both the government and the private sector are active and competing actors in the media stage, the government-owned press enjoys greater access and benefits in procuring advertisements and news. Thus, it is almost the sole recipient of government advertisements. Furthermore, the government-owned National News Agency is the only authorized agency in the country to collect and sell news information within and outside the country, indicating government’s reluctance to allow private media free and total access to publish and distribute information.

As far as the broadcasting media is concerned, television and radio are the major means of information. Both the State and private companies run television and radio stations. Nepal Television and Radio Nepal, both owned and controlled by the government, have wider

audiences than privately owned television and radio networks, leading some to contend that the government is still in a dominant position regarding the dissemination of information among the masses and thus unduly influencing their opinions. Additionally, government-controlled radio and television stations are allegedly used to promote the interests of the ruling party or the government ministries and departments. There is hardly any separation between public information of interest to the people and government propaganda. However, the increase in privately owned F.M. radio and television stations is beginning to ensure competition not only between the government and the private sector but also among the privately owned television and radio stations.

Meanwhile, the print media continue to deny the right of the consumers to know the outreach, extent and influence of their publications by withholding information on their circulation and sales, and the Press Council has not been able to introduce corrective measures.

### **State and Press Freedom**

Even though many journalists and publications are reported to practice “self-censorship,” a significant majority of journalists and media persons have had their human rights violated both by the State and the Maoists. During a NHRC conducted focus group discussion in Kavre district, media professionals pointed out that they “*have to operate within pressures from both the Maoists and the security forces.*”<sup>27</sup> They claimed that they were prevented from performing their duties because the State had often denied them entry into the Maoist-affected areas. Numerous media persons have been threatened with bodily harm, and arbitrarily arrested and detained, and, indeed, some in fact have been attacked, beaten and killed as well. To harass the media even further, the State has also filed court cases against select publications.

<sup>27</sup> Dahal, Ram Kumar et al.. *Local Perspectives on Human Rights in Post-1990 Nepal*. Kathmandu: NHRC, 2002

Since the imposition of the state of emergency, HMG arrested some 180 journalists and tortured 80. From 1999 to 2003, 11 journalists were murdered; nine were killed in 2059 (see Table 3.3).

Similarly, on June 6, 2001, police arrested Mr. Yubaraj Ghimire, the chief editor of *Kantipur* daily, along with Mr. Binod Gyawali and Kailash Sirohiya, director and managing-director respectively. They were charged with sedition after publishing a letter from Mr. Baburam Bhattarai, the Maoist leader, containing allegations regarding the royal massacre of June 1<sup>st</sup>. They were released after a week's detention.

Despite “credible evidence” that Krishna Sen, editor of *Janadesh*, a weekly paper alleged to

of Sen's arrest and deplored the fact that the police lacked “an effective system for identification of bodies subjected to autopsies.”<sup>29</sup>

### Maoists and Press Freedom

The Maoists abducted media people, attacked journalists, and, like the State, prevented media persons from visiting and/or gathering news in areas under their control without their prior approval, or imposed censorship upon news reports. In September 2002, *Kantipur* Publications reported that Maoists had attempted to extort several thousand dollars from this corporate body.<sup>30</sup> Maoists bombed the media building of the Gorkhapatra Corporation and have damaged and destroyed properties and assets belonging to various

The Maoists abducted media people, attacked journalists, and, like the State, prevented media persons from visiting and/or gathering news in areas under their control without their prior approval, or imposed censorship upon news reports.

**Table 3.3: Annual Statistics of Violation of Freedom of Press and Speech**

Description	1997/98 2054	1998/99 2055	1999/2000 2056	2000/01 2057	2001/02 2058	2002/03 2059
Murder	0	0	1	0	1	9
Disappearance	0	0	1	1	1	4
Kidnapping	0	0	1	0	1	1
Arrest/Detention	27	27	22	5	109	83
Ban/Confiscation	2	0	4	8	13	7
Scuffle/Misbehaviour	7	19	15	48	19	18
Threat	0	5	4	7	4	10
Administrative Action	0	0	0	1	5	0
Legal Action	0	10	5	0	27	19
TOTAL:	36	61	53	70	180	151

Source: *Status of Freedom of Press and Expression – Nepal Report 2003, CEHURDES*

be sympathetic to Maoist, was arrested on 20 May 2002, the authorities continued to deny that he was in their custody.<sup>28</sup> Amnesty International reported that Sen was beaten and subsequently died in police custody. Nepal government's inquiry committee concluded that it had no evidence to reach any firm conclusion as to whether the journalist was dead, imprisoned, or perhaps hiding somewhere else. The committee had found no police record

media outlets.<sup>31</sup> Furthermore, they have destroyed several telecommunication towers and facilities in rural areas, thus violating the people's right to information. According to journalist Lekhnath Shikaru, “It's impossible to go to the villages to gather news. The Maoists will search us. And, if the security personnel arrive soon after, the Maoists suspect us of being spies, and we can find ourselves in great danger.”<sup>32</sup> Such conditions

<sup>28</sup> Amnesty International. *Nepal: A Deepening Crisis*, 2002.

<sup>29</sup> *Ibid.*

<sup>30</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

<sup>31</sup> Center for Human Rights and Democratic Studies. *Status Report of Press Freedom*.

<sup>32</sup> Gautam, Toya. “Right to Information in Democracy.” Paper presented at the “Seminar on Human Rights,” Biratnagar, November 1, 2002.

A major hindrance to achieving the openness promoted by the Constitution is the continued existence of the pervasive culture of secrecy, especially within the official bureaucracy.

have prevented journalists from gathering and reporting news accurately, and the public has had its right to information violated.

### **Abuse of Press Freedom by the Media**

At times, the print media and journalists have been accused of defaming innocent people. In October 2002, the media faced the wrath of the people when *Janastha* published a nude photograph of actress Shrishka Karki, who subsequently committed suicide. The Press Council's chairperson Harihar Birahi acknowledged that editor Kishor Shrestha of *Janastha* had violated Ms. Karki's "right to privacy and instigated her death."<sup>33</sup> The paper's assistant editor resigned soon after, but the editor Mr. Shrestha himself was reported missing. According to Nepalese law, while the maximum punishment for defamation is Rs, 5,000 fine and two years' imprisonment, in the case of indecency, the maximum fine is Rs. 10,000, two years' prison term and compensation. In the light of such abuse of the freedom of the press by some members of the media, a number of them are willing to acknowledge that some positive restrictions on the press might be acceptable.

### **Secrecy**

When it comes to freedom of opinion and expression, the actual reality that media people confront daily is that there is a large gap between the constitutional guarantees and their genuine application. A major hindrance to achieving the openness promoted by the Constitution is the continued existence of the pervasive culture of secrecy, especially within the official bureaucracy. This culture, which has its origin in the belief that it is in the public's interest to keep the workings of the government secret, prohibits the disclosure of information obtained in the course of official duty, regardless of the nature of information or the effect its disclosure might have.

When an official policy of secrecy exists

alongside the openness advocated by the Constitution, State authorities become confused and find themselves caught between the present commitment to the Constitution for greater transparency in the government and the enduring demands of the orthodox culture of official secrecy. In most situations, the latter has been upheld. For example, the Civil Service Act 1992, Section 46, provides that except in the course of official duty, no employee shall disclose information concerning public business or any official matter with which he or she is acquainted without the approval of the head of the department. It does not identify the types of information that could be released on public interest grounds, but casts a blanket prohibition over all kinds of disclosure, and officers are liable to penalties for breaching this requirement. It is, therefore, not surprising to discover that the Right to Information has not been exercised by many, including journalists. Nevertheless, despite occasional attempts to curb the media by the concerned authorities, it is generally agreed that constitutional provisions have assisted the media in enhancing government transparency and to create a more informed civil society.

### **Right to Privacy**

The Constitution does not allow arbitrary interference with an individual's privacy. Article 22 of the Constitution states that "Except as provided by law the privacy of the person, house, property, document, correspondence or information of anyone is inviolable." Thus, individual privacy is a fundamental right of every Nepalese citizen. As with the freedom of opinion and expression, the right to privacy was curtailed during the period of emergency. The security forces arbitrarily searched homes, vehicles and places of business without a search warrant. People were either not given an adequate opportunity to explain their situation or their explanations were simply ignored. During the emergency, people's right to movement was also seriously hampered

<sup>33</sup> Thapa, Manjushree, "Putting the Media on Trial." *Nepali Times*, October 25-31, 2002.

**Box 3.3: Violation of Right to Peaceful Assembly**

The right to peaceful assembly was being impugned upon even before the declaration of the state of emergency. After the declaration both the state and Maoists have violated the right of the people by harassing and threatening the people in many districts, especially in those districts where the intensity of the conflict is high. Political workers constitute the second largest group of victims of human rights violation by the state and the Maoist. This poses a serious challenge for the democracy.

because travelers and their belongings and vehicles were frequently and repeatedly searched by the security personnel in many areas of the country. To date, the government has not enacted suitable legislation regarding the right to privacy.

The issue concerning the right to Privacy and the right to information are intimately linked therefore any attempt to legislate these rights should be done in tandem. Unfortunately, whilst legislation drafting work on Public Information Rights bill is progressing, the work on the right to privacy has not drawn the attention of the government or civil society.

**3.3 Right to Freedom of Association**

Article 20 of Universal Declaration of Human Rights and Article 22 of ICCPR call upon the State parties to guarantee the right to freedom of association. These rights have been guaranteed to a large extent by the Constitution. Thus Nepalese people have been able to exercise their freedom to form an association as is evident from the tremendous increase in the number of organisations operating at all levels. Reportedly, over 16,000 NGOs have been registered. The freedom to form political parties and organisations based on religion, language and ethnicity is one such right that has made the pluralistic system of governance possible.

There has been progress also in the area of the workers' right to organise. The ILO Convention

Concerning Freedom of Association and Protection of The Right to Organise states: *“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.”* While the Constitution guarantees the freedom to get organized by forming unions and associations, laws can be and have been enacted to impose reasonable restrictions on any act that may undermine the sovereignty and integrity of the Kingdom of Nepal; acts that may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities; and acts that may instigate violence or may be contrary to public morality. Despite the political transformation in 1990, the trade unions are still developing their administrative structures to organize workers, bargain collectively, and conduct workers education programs for workers. Division of trade unions along the party line at times appears to be a stumbling block for effective collective bargaining. Furthermore, while union participation in the formal labour sector is significant, it accounts for only a small portion of the total labour force because the government is the chief formal sector employer in Nepal. The informal sector is another important source of employment, but it is not organized.

In 1992 (B.S. 2048), the Parliament passed the Labour Act and the Trade Union Act, which, among other things, provides for collective bargaining. But the government in 2001 introduced the Public Utility Act, which has had a significant adverse impact upon the right of workers to bargain and go on strike. Collective bargaining agreements cover an estimated 20 percent of wage earners in the organized sector,<sup>34</sup> but a large segment of the labour force remains unable to use collective bargaining effectively due to inexperience and employers' reluctance to bargain. The problem is very serious with regard to the workers engaged in semi-formal and informal sectors

Division of trade unions along the party line at times appears to be a stumbling block for effective collective bargaining.

<sup>34</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights Practices for 1997*. Washington, D.C.: U.S. Department of State, January 1998.

as they lack an organised forum to protect their legitimate interests and other rights related to the workers. Lately, the force of globalisation has posed a serious threat to the

workers' right to associate and enter into collective bargaining. The private sector is already advocating for "liberal" labour laws in Nepal.

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# CHAPTER 4

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## Penal System

**“The character and mentality of the keepers may be of more importance in understanding prisons than the character and mentality of the kept”.**

*- Jessica Mitford, Author and Political Activist (1917-1996)*

## 4. Penal System

Nepal's penal system lays great emphasis on punishment, with minimum concern for reform and rehabilitation.

Nepal's penal system lays great emphasis on punishment, with minimum concern for reform and rehabilitation. After prisoners are locked up, their state of well-being appears to receive scant attention.<sup>35</sup> Even the Nepalese terms for prison, such as *karagar*, indicate a state of isolation and confinement. Another Nepalese word for prison is *khora*, meaning a cage, a shed, or a pen where animals are confined, reinforcing once again the traditional Nepalese attitude toward prisons and prisoners, which implies that prisoners are no better than animals. But in a liberal, democratic society, which Nepal aspires for, it is not too much to ask that those who have been confined for committing an offence against a person or the society be treated humanely and compassionately; that during the period of incarceration, prisoners be given an opportunity to feel that their term in prison should be used for education or acquiring information and skill that will positively transform their behaviour and assist them in becoming law-abiding citizens in the future.

Most of Nepal's main prisons were built during the Rana oligarchy (1847-1951). The first prison in Nepal, known as *sadar khora* (essentially a place to hold detainees and, sometimes, convicts), of Kathmandu dated back to 1914. Later, the Ranas added nineteen more prisons. The thirty-year *Panchayat* rule brought forty-four more, and since 1990, seven more have been constructed, some of them to replace the older ones.

The prison administration during the Rana regime was under the control of the incumbent general of the army.<sup>36</sup> After the regime's demise in 1951, the Ministry of Home Affairs took over prison administration. Later, the Valley

Commissioner was in-charge of the prison system within Kathmandu Valley and the Chief District Officer (CDO) in the districts. It is interesting to note that in foreign countries, the penal system falls under the judiciary or the ministry of law and justice. In principle, the prison department should not be kept under the jurisdiction of the Home Ministry.

After the restoration of the multiparty system, the Department of Prison Management was established to manage prison affairs and carry out reforms. And, while some progress has been made, much work remains to be done to ensure that Nepalese prisons change from an inhuman *khora* to a progressive institution of reform and rehabilitation.

### 4.1 Obligations under International Instruments

Legislation dealing with the rights of prisoners and institutional framework of prison management are required to be reviewed and updated in line with international instruments that provide various standards for the treatment of the offenders and prisoners.

Various international instruments, including the Universal Declaration of Human Rights, in general, proclaim that anyone charged with penal offence has the right to be presumed innocent until proven guilty, and that no one shall be subjected to arbitrary arrest, detention or exile. They further set the following standards:

- Upholding the human rights and fundamental freedoms of prisoners.<sup>37</sup>
- Wherever possible, granting of bail to accused persons rather than detaining them.<sup>38</sup>

<sup>35</sup> NASC. *Governance Assessment (Nepal) 1998*.

<sup>36</sup> Yubaraj Sangroula et al. *Analysis and Reforms of the Criminal Justice System in Nepal*. Kathmandu: CeLLRd, 1999.

<sup>37</sup> For details see, *United Nations Basic Principles for the Treatment of Prisoners*. General Assembly Resolution 45/111, December 14, 1990.

<sup>38</sup> For details see, *UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*. General Assembly Resolution 43/173, December 9, 1988.

- As far as possible, avoiding imprisonment of young persons.<sup>39</sup>
- Whenever possible, imposing non-custodial sentences.<sup>40</sup>

Nepalese prison laws, however, fail to meet the standards set by international conventions and treaties. Furthermore, although the international instruments and even the Prison Act 1963 stipulate separate detention of the convicted prisoners and those awaiting trial, the implementation of the said provision is often seriously violated. Except in Kathmandu, the convicted prisoners and detainees are mixed up and locked up in the same area of the prison<sup>41</sup>

#### 4.2 Physical Infrastructure

Although the Prison Act was enacted in 1963 and the Prison Regulations in 1964, there was no fundamental change in the rather inhuman conditions of the prisons. They were not only congested but also lacked even the most basic facilities necessary for human habitation.<sup>42</sup>

The overwhelming majority of prisoners in Nepal are confined in old and dilapidated buildings.<sup>43</sup> Walls and ceilings are crumbling; roofs leak and rooms are damp due to lack of ventilation and have cold mud floors; foul smelling toilets add further to the prisoners' misery. For instance, women prisoners in Jhapa are kept in a half-collapsed building while in

Morang the prisoners are housed in a building that has completely collapsed. In Nawalparasi prison, toilets, kitchen and living quarters are all interlinked.<sup>44</sup> Many prisons hold twice their official capacity.

*[See Annex 4 for details regarding location, official capacity and the actual number of inmates in Nepalese prisons.<sup>45</sup>]*

Even a cursory glance at Annex 4 reveals that some prisons are in fact beyond overcrowding. For example, Kathmandu's central jail has 238 inmates, although its official capacity is supposed to be 150; likewise, the Rupandehi prison in Bhairawa holds 186 prisoners, over three times its official capacity of 50. From just these two examples, one can imagine the general condition of inmates in Nepal's prisons.

Prisons in Biratnager, Bhairawa, Kathmandu, Kavre, Nepalgunj etc. are located in core urban areas, which not only lead to strained relations with neighbors but also prevent the possibility of expanding the prison facilities, leading to overcrowding. At the end of 1999, there were approximately 6000 inmates throughout Nepal, and the figure increased sharply with the escalation of the armed conflict and imposition of emergency. It is now estimated that there are more than 10,000 prisoners throughout the country.<sup>46</sup> It is not an exaggeration to state that to be incarcerated is to undergo a form of torture.

Nepalese prison laws, however, fail to meet the standards set by international conventions and treaties.

<sup>39</sup> For details see, *UN Standard Minimum Rules for the Treatment of Prisoners. Adopted by First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, Geneva, 1955 and approved by the Economic and Social Council Resolution 66, July 31, 1957 and Resolution 2076, May 13, 1997.*

<sup>40</sup> For details see, *UN Standard Minimum Rules for Non-Custodial Measures. General Assembly Resolution 45/110. December 14, 1990.*

<sup>41</sup> In Kathmandu district, detainees awaiting trial are housed in Sadar Khor. However, as the trial process in Nepal is quite lengthy and Kathmandu has a large number of criminal cases compared to other districts in Nepal, the Khor is often extremely crowded. Consequently, detainees awaiting trial for a long time are often shifted to the central jail.

<sup>42</sup> Center for Victim of Torture (CVICT) and Penal Reform International (PRI). *Penal Reforms in Nepal: An Observation Report of Round- Table Meeting. Kathmandu: CVICT/PRI, 2000.*

<sup>43</sup> NHRC. *Annual Report of the National Human Rights Commission 2000-2001. Kathmandu: NHRC.*

<sup>44</sup> Center for Victims of Torture (CVICT). *Nepal's Penal System: An Agenda for Change. Kathmandu: CVICT, 2001.*

<sup>45</sup> Source: Prison Department, HMG. The figures given in the table were effective for 2000. The number of inmates subsequently increased significantly in the wake of the Maoist insurgency.

<sup>46</sup> The exact figure of prisoners is not available because authorities consider it to be confidential.

The procedures that precede and surround criminal trials are arduous and cause unnecessary delays. Court procedures are complex, even incomprehensible to many people.

### 4.3 Legal Framework

The Constitution guarantees the right to criminal justice. It also guarantees that every prisoner has the right to counsel. It states: “Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the period except on the order of such authority.” Furthermore, it also stipulates that no person can be detained without order of a judicially competent authority, and legal counsel shall be provided to those who request it and ensures that there is no punishment without violation of law. Additionally, there is also prohibition for double jeopardy as well as the right not to incriminate oneself.

In Nepal, those charged with a criminal offence have the right to have adequate time and facilities for the preparation of their defence, to defend themselves in person or through legal assistance of their own choosing, or, to receive free legal counsel, if they do not have sufficient means to pay for legal assistance. Moreover, persons arrested and held in custody in a police station or other premises shall be entitled, if they request, to consult a lawyer privately. It will be assumed that all aspects of the right to counsel can apply before trial and in the situation of detention following arrest in the interrogation centres. Exclusion of lawyers per se or a failure to consider each request on its merits would be a breach of Article 14 of the Constitution.

*[See Annex 5 for a list of international instruments concerning penal system and prevention of torture.]*

Many legal provisions are needed to meet the constitutional requirement related to the prisoner’s right to have access to justice. At present, there are some laws that address many aspects of prisoners’ various rights including basic needs. However, these laws are not

adequate for current conditions. In addition to the constitutional provisions, the following laws are directly or indirectly concerned with the rights of prisoners:

- The Police Act 1955 (B.S. 2012)
- The Civil Rights Act 1955 (B.S. 2012)
- The Prison Act 1963 (B.S. 2019)
- The Children Act 1992 (B.S. 2048)
- The State Cases Act 1992 (B.S. 2049)
- The Torture Compensation Act 1996 (B.S. 2053)
- The Human Rights Commission Act 1997 (B.S. 2053)
- The National Code 1963 (B.S. 2020)
- The Prison Rules 1964 (B.S. 2020)
- The Legal Aid Act 1997 (B.S. 2054)
- The Treaty Act 1990 (B.S. 2047)

### 4.4 Prisoners’ Rights and Legal Procedures

The Children Act, the Torture Compensation Act, the Civil Rights Act and the Human Rights Commission Act have the most explicit provisions regarding the rights of prisoners and remedies available to them for violations. Similarly, the Prison Act 1963 and the Prison Rules provide various rights and facilities of the prisoners and deal with various aspects of prison management. For example, the basic needs of the prisoners have been determined by the Prison Act and Rules. Other laws provide rights and liberties of the prisoners indirectly.

The procedures that precede and surround criminal trials are arduous and cause unnecessary delays. Court procedures are complex, even incomprehensible to many people. Bail procedures, too, appear contradictory, since there is an absence of coherent principles regarding granting of bail. Thus, the public perception is that it is either ‘too little bail’ or ‘too much bail.’ Law relating to bail is based on traditional concepts and is not in accordance with the broad principles and wider philosophy of justice and fair play in the society. The sureties that are demanded when granting bail are not realistic. To further complicate matters, agencies of the criminal justice system often do not cooperate with each

other or coordinate their activities. In fact, there is a sense of rivalry among them and ensuing competition results in the unfortunate trend of passing the buck instead of accepting departmental responsibility.

As stated above, the Prison Act was enacted in 1963; amendments were made in 1989 and again in 1992. But it still remains an outdated piece of legislation and is punitive in nature. The Act makes no provisions for reforms and rehabilitation of prisoners. Its prime objective is the “*Maintenance of the Peace and Order*,” and the Act’s Preamble neither refers to the need of protecting the fundamental rights and interests of prisoners nor of transforming jails into reform centres. In addition, several provisions of the Act contravene international human rights instruments. For example, the Act regulates the right of the prisoner concerning his/her meeting or communication with family, friends and relatives. In some jails, communication in the inmate’s mother tongue is strictly prohibited because the prison staff must understand all communication.<sup>47</sup> Ignoring the right to privacy, prison authorities scrutinize or read all correspondence to and from the prisoners.<sup>48</sup>

The Prison Act remains an obsolete piece of legislation also because, among other things:

- It does not allow prisoners to maintain contact with the outside world.
- There is no provision for handling prisoners’ complaint against torture, cruel, inhuman or degrading treatment.
- Since there is no budget allocated for transporting prisoners from jails to the courts, poor prisoners are deprived from participating in the judicial process, and often most prisoners are not even informed of the proceedings of their cases. Thus, most of the judgments in the Appellate and District courts are made in the

**Box 4.1: Killing with Impunity**

Two unarmed prisoners, who were not trying to escape, were shot dead during a disturbance in Nepalgunj prison in January 2001. The legislation gives no recourse for action to be taken against security personnel in cases such as this.

*Source: CVICT. Nepal’s Penal System: An Agenda for Change.*

absence of the prisoners. The judicial system, therefore, has been accessible only to those with money.

- Prisoners are allowed to participate in the funeral of their immediate family members (father, mother, wife or husband, son or daughter) only if there is no one except the prisoner available to perform the rites—and if the jail is within six miles of the funeral site.
- Prisoners who are caught when or after attempting to escape have their sentence increased by one and a half times of the term of the imprisonment remaining at the time of their escape.
- The jailer shall have the right to punish and investigate certain crimes—and the order may not be appealed.
- Any weapon can be used to prevent prisoners from escaping. If prisoners use any weapon or stick to prevent being caught, or resort to verbal abuse, or if they die as a result of a weapon being used against them, the person using the weapon shall not be subject to punishment.
- There are no provisions to assist the released prisoners.

Furthermore, prisoners being taken to courts or hospitals are handcuffed and shackled. These practices seem to prevail not due to lack of resources or lack of awareness, but to intimidate and humiliate them.

Its (Prison Act) prime objective is the “*Maintenance of the Peace and Order*,” and the Act’s Preamble neither refers to the need of protecting the fundamental rights and interests of prisoners nor of transforming jails into reform centres.

<sup>47</sup> CVICT. *Nepal’s Penal System: An Agenda for Change*,

<sup>48</sup> Sangroula et al. *Analysis and Reform of the Criminal Justice System in Nepal*.

In addition, a study carried out among the prisoners in Terathum, Ilam and Jhapa appeared to reinforce the impression that the prison staff are not lax in executing the outmoded policies of the Act.<sup>49</sup> Some of the grievances reported were:

- Conversation with family members in private is not allowed, including telephone conversation.
- Contact with lawyers is difficult to initiate, and when a lawyer is available, private consultation is not possible. significant reasons.
- The prison authorities do not assist the inmates in being present during occasions of birth or death in the family.
- All correspondence is screened, read, and some of them is confiscated for no

Additionally, visits by members of the NHRC to various prisons nationwide have revealed similar conditions and practices. Moreover, it

should be noted that the constitutional provision providing prisoner’s access to a lawyer can be problematic to the authorities. The investigating authorities may fear a compromise in the “effectiveness” of their inquiries if substantial delay occurs in contacting and awaiting the attendance of the preferred lawyer. For the police, one of the crucial periods in an interrogation is the time at, or soon after, the arrival of the suspect at the holding centre, when he or she will be most vulnerable. By delaying the commencement of interrogation, the optimum conditions for interrogation by the authorities may well be lost. Given the prisoner’s need for prompt legal advice and the police officers’ desire to conduct interrogations expeditiously and without unnecessary hindrance, the service which prisoners currently are given in this regard is less than adequate.

That the government appears either unable or unwilling to improve the prison conditions as evident from the fact that there are insufficient prison personnel to manage the numbers of

#### Box 4.2: Women in Prison and Custodial Care

There are no separate prisons for women in Nepal. Women sentenced for imprisonment are normally kept in separate cells from those women waiting trial, but not always. Besides suffering from physical and psychological trauma, women prisoners often become victims of abuse and exploitation by the warders and male prisoners. Women inmates are permitted to keep their small children with them. According to the government, there were 61 minors living with their parents in prisons.<sup>50</sup>

Although Section 8 of the Prison Act requires that the government provide education and maintenance to the children of inmates, it is not strictly followed. Consequently, such children lack adequate food, education and other developmental opportunities.

Available data shows that there are 519 women prisoners in the prisons of Nepal. Among them 301 are convicts and 218 under-trial prisoners. Most of the women

are in prison for the charge of murder, 133 convicted for murder and 105 accused of murder. Trafficking is another major reason why women are imprisoned (35 convicts and 43 under-trials). Furthermore, as many as 41 women are serving prison terms on charges of drug trafficking (18 convicts and 23 under-trials) and 8 for robbery.<sup>51</sup> The remaining 113 convicts and 41 under-trials women are there for various other charges.

As per the Prison Act, both males and females are given the same facilities in terms of food, clothing and other expenses. But this provision does not take into consideration the female inmate’s reproductive health needs or her specific nutritional requirements during pregnancy. Moreover, even general health care is lacking and visits by medical professionals — male or female — are rare. Additionally, women prisoners are not trained in income-generation skills, and there are no government rehabilitation centres where freed women prisoners can seek shelter if their families refuse to accept them, for the family too can withdraw its emotional and financial support

because of the ‘shame’ brought upon brought the family.

Since women seldom work outside the home to earn cash income, women prisoners are solely dependent on government allowance to meet their other needs. Thus, lacking any income-earning skills, and in the absence of any rehabilitation program and support of family members, some of the released women prisoners find themselves drifting into degrading and dangerous activities such as prostitution. Lack of financial and family support also prevents them from seeking legal recourse.

The National Code prescribes that the case of under-trial women should be given priority, but in reality, this is not the case, and those under trial find themselves languishing in prison for years without being tried.

Women in police custody are more vulnerable to a variety of abuses because many of them are not aware of their legal rights while in custody and custodial care in the police station lacks strict supervision.

<sup>49</sup> CVICT. *Nepal’s Penal System: An Agenda for Change*.

<sup>50</sup> HMG Prisons Management Department, 2000.

<sup>51</sup> *Ibid.*

prisoners, and the existing personnel are neither informed of the prisoners' rights nor are trained in handling prisoners with due respect to their rights. Just as the detainees and convicted prisoners are held in the same area, contrary to the provision of the Prison Act, so also no special provisions are made for the accommodation and other needs of the prisoners who are elderly, with mental disability, pregnant, and those with dependent children.

Furthermore, despite strong recommendations from the NHRC the task of reforming the prisons does not seem to be a priority on the list of the government's agenda, as evident from the size of the budget set aside for prison administration. Thus, the budget allocated for prisons in Fiscal Year (FY) 1995/96 was 0.001 percent of the total budget. Similarly, in FY 2001/2002, it was again 0.001 percent of the total budget. The total budget for prisons in FY 2001/2002 was Rs. 13,95,65,000, and of this amount, 40 percent was spent on regular expenditures like salary and allowance and the remaining 60 percent of the total budget was utilized for food, clothing, medicines and various other required items. There was no money in the budget set aside for staff training or rehabilitation of prisoners. The paucity of the budget is obviously directly linked with the abominable conditions of the prisons. It also suggests that the authorities responsible appear not very concerned about ameliorating prison conditions. It is, therefore, not surprising that relation between the prisoners and the administrative staff and prison guards are perpetually strained.

#### 4.5 Positive Initiatives

After 1990, the government constituted several commissions for suggesting recommendations on prison reform. One of the major initiatives taken by the government was the establishment of the Prison Management Department, an institution for coordinating administration and planning of prisons. After consultation and collaboration with the civil

society, prisoners and related institutions, this institution has introduced the concept of training prison administrators and formulated policies to protect and promote the prisoners' human rights. This has produced the following positive results:

- Prisoners now have access to the world beyond the prison walls, and their access to radio and television has increased.
- Government has come to realize, albeit slowly, in principle that prisons must be places of reform and positive transformation, not centres for humiliation and punishment. Thus, social organizations are now able to carry out welfare activities inside prisons.
- Besides, to ensure that the government does not fall back upon its outmoded, regressive practices, prisons are being visited and monitored increasingly by institutions such as the Parliament's Human Rights Committee, the National Human Rights Commission and the Supreme Court.

While these are welcome developments, it must be noted that although the government has constituted several commissions to study the conditions of prisons and recommend suitable interventions, very few of the commissions' recommendations have been implemented. Therefore, for the foreseeable future, the condition of the Nepalese detainees and prisoners remains bleak—unless alternatives to imprisonment are explored and implemented in the immediate future. For example, community service and open prisons have been successful in countries like Zimbabwe, Venezuela and Sri Lanka, and the government should also seriously consider experimenting with such alternatives to imprisonment in Nepal.

*[See Annex 6 regarding suggested policy recommendations in matters of penal reform was proposed during a round-table meeting held on penal reform in Nepal.<sup>52</sup>]*

Although the government has constituted several commissions to study the conditions of prisons and recommend suitable interventions, very few of the commissions' recommendations have been implemented.

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<sup>52</sup> CVICT. *Penal Reform in Nepal: Plan for Action and Report. A Round-Table Meeting held in Kathmandu on March 18-19, 2000.*





## CHAPTER 5

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### Torture

**“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”**

*- Article 4, Section 1, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

## 5. Torture

Nepal was found not to have followed the reporting guidelines when it submitted its first country report to the Committee, which then requested further information.

The Constitution prohibits the practice of torture. In Article 14, Section 4, it states, “*No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by the law.*” Unfortunately, torture is a common phenomenon in Nepal. It is inflicted as a form of punishment as well as a means to extract confession by the State authorities. According to one report, “*Torture often occurred while detainees were held incommunicado and unable to contact family members, doctors, or lawyers.*”<sup>53</sup> It is perhaps the most unacceptable criminal act that takes place in isolated confinement. Torture destroys a person physically, mentally, psychologically and socially, and its consequences are far reaching, because the victims, their families and the society all suffer.

### 5.1 Obligations under International Instruments

The UN Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT) of 1984 defines torture as: “*Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official*

*capacity.*”

Besides the CAT, which Nepal has ratified, several other international human rights instruments also recognize torture as a heinous crime against humanity.

By ratifying the CAT, Nepal is obliged to submit progress reports periodically to the UN Committee against Torture, constituted under article 17 of the CAT. Nepal’s first report, which was due in 1992, was submitted in 1993. Its second periodical report was due in 1996, but so far has not been submitted. Nepal was found not to have followed the reporting guidelines when it submitted its first country report to the Committee, which then requested further information. The Committee also recommended that certain additional information be included in the report within 12 months of such recommendation. However, Nepal has failed to respect, observe and implement the Committee’s views and recommendations. Furthermore, the Committee showed its concern over the definition of torture in the draft bill of the Torture Compensation Act, which the House of Representatives was formulating even as the Committee was examining Nepal’s first report. The Committee found the definition of torture in the Act to be quite narrow and inconsistent with that of the CAT.<sup>54</sup> In addition, it was also quite distressed over impunity offered by the government to perpetrators. The Committee further recommended that educational programs should be adopted for State authorities, such as the police, army and forestry officers, to readily understand and execute their obligations.

Besides the Committee against Torture, the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR)

<sup>53</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

<sup>54</sup> Line 146, A/49/44/paras.138-147, 12 June 1994.

also recommended that Nepal take all necessary measures to prevent torture and degrading treatment, and illegal or arbitrary detention,<sup>55</sup> and that all such cases be systematically investigated in order to bring the culprits under the jurisdiction of court for committing crimes of torture, and that the victims be compensated.<sup>56</sup> It should be recalled that Parliament enacted the Torture Compensation Act in 1996 (B.S. 2053) for the purpose of providing compensation to the victims of torture.

## 5.2 Use of Torture in Nepal

Despite constitutional prohibition, torture is widely practiced in Nepal, as Table 5.1 reveals. The data show that except for a slight decrease in the years 1999 and 2000, the number of people arrested and tortured by the State authorities has increased overall. What is quite alarming

arrested/tortured, it is noted that while in the year 2000 the least number of people (1035) were tortured/arrested, in the year 2002 the largest number of people (3430) were arrested/tortured.

A national survey was conducted two years ago by CVICT among 95 percent of prisoners throughout all Nepalese prisons.<sup>57</sup> During the survey, 70 percent of the surveyed prisoners reported that torture had always been practiced and that it occurred most often in police custody, leading to the conclusion that of the people arrested by the State authorities, nearly 70 percent are likely to be tortured (See also Table 5.2). The National Human Rights Commission itself received 23 petitions on torture in 2001. But it must be noted that it is very difficult to pinpoint the exact number of torture victims because many incidents of torture go unreported due to fear of reprisal.

Despite constitutional prohibition, torture is widely practiced in Nepal

**Table 5.1: People Arrested/Tortured by State Authorities**

Year	Male	Female	Unidentified*	Juveniles	Total
1996*	295	22	72	3	392
1997	877	68	623	N.A.	1,568
1998	1,665	417	583	N.A.	2,665
1999	1,037	102	-	N.A.	1,139
2000	934	101	-	N.A.	1,035
2001	2,017	178	-	N.A.	2,195
2002	2,893	252	285	N.A.	3,430

N.A.: Not available

\* 1996 data includes torture cases only, whereas other years include data on arrest and torture.

▪ Because of mass arrests, the gender of many of those arrested could not be confirmed, and are thus categorized as "Unidentified" in the annual data of 1996, 1997, 1998 and 2002.

Source: INSEC. Human Rights Yearbooks (1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003).

to note is that while only 68 women were arrested/tortured in the year 1997, a year later, in 1998, their number increased to an amazing 417. It decreased to 101 in the year 2000, but by the year 2002, 252 women were found arrested/tortured by the State authorities. When examining the total number of people

In Nepal, torture takes place in police custody, forestry office, army camps, prisons and office of the CDO. Among these, torture occurs most frequently in police custody as is evident from Table 5.2. The army comes next, especially in the years 1999 and 2002, when it is reported to have tortured 101 and 201 people respectively.

<sup>55</sup> Recommendation Number 16, CCPR/C/97/Add. 42, 10 November 1994.

<sup>56</sup> Ibid.

<sup>57</sup> Ommeren, Mark Van et al. *Addressing Human Rights Violations: A Public Mental Health Perspective on Helping Torture Survivors in Nepal*. Kathmandu: CVICT, 2001.

**Table 5.2: Categories of Perpetrators as Reported by the Torture Survivors**

Perpetrator	1998	1999	2000	2001	2002
Police	260	247	714	335	678
Army	-	101	26	5	201
Maoist	-	32	23	37	180
Prison Guard	5	7	2	3	31
Forest Guard	1	8	55	20	9
Others*	14	12	61	12	192
Total	277	407	881	412	1291

\* 2002 figures under "Others" include the number of victims who were tortured by more than one party – Police, Army and Maoists.

Source: CVICT. Annual Reports (1998, 1999, 2000, 2001, 2002).

Beginning as far back as 1993, a gradual rise in the number of deaths in detention has been noted.

As for the Maoists, while their numbers are quite low (32, 23, 37 in the years 1999, 2000, 2001 respectively) compared to the numbers of the State authorities, the victims of torture by Maoists increased to an overwhelming 180 in the year 2002. Moreover, when the total number of victims of torture is taken into account, numbers increase significantly as the years progress. Thus, while 277 people were reported to be tortured in 1998, the number jumps to 881 two years later (B.S. 2000), decreasing nearly 50 percent a year later to 412. The year 2002 saw the largest number of people reportedly tortured (1,291). When in custody of the office of the forestry or, paradoxically, in prison, people were least likely to be tortured.

### 5.3 Methods of Torture

Some of the most widely used forms of torture in Nepal are beating on soles of feet (known

#### Box 5.1: Amnesty Report on Torture

Amnesty International has documented several cases of torture, including rape, in custody. In early November 2002, it submitted 57 such reports to the heads of the security forces urging them to investigate the cases and inform it on the outcome. Among them were the cases of two unmarried Muslim cousins who had been arrested by army personnel from Chisapani army camp, Banke district, on 3 April 2002.

Source: Amnesty International. *Nepal: A Deepening Crisis*.

as *falanga*), random beating, electric shocks, being hooded or blindfolded, rolling a weighted stick along the prisoner's thighs causing muscle damage (*belana*), burning with cigarette and forcing the detainee to assume awkward and painful postures (e.g., 'chicken' posture). Animals, insects, even needles are also commonly applied as tools of torture.

Other forms of torture specifically applied to destroy the victim psychologically include threats, deprivation of food and drink, blindfolding, forcing to consume excreta, forcing the upper-caste detainees to remove their 'sacred thread,' long-term isolation, confinement in a dark room and inflicting loud noise.

### 5.4 Use of Torture by the State

The State authorities have been involved in unlawful killing of people, either by shooting them or beating to death in custody. Since the armed conflict began in 1996, the State authorities have detained more than 1,500 people. In fact, beginning as far back as 1993, a gradual rise in the number of deaths in detention has been noted. While in 1994, 15 people died and 2 were reported tortured in detention, in 1996, nearly 20 people died in detention and 4 cases of torture were reported. In 1997, 25 persons died in detention, but torture in detention reportedly decreased slightly compared to the previous year.<sup>58</sup> More than 70 percent of the prisoners in Nepal claim to be innocent and report having confessed only after being tortured.<sup>59</sup>

### 5.5 Use of Torture by Maoists

During the conflict, the Maoists were responsible for several incidents of physical and psychological assaults. They regularly targeted "political leaders, local elites, and suspected informers," and their method of torture and death included "the severing of

<sup>58</sup> Department for International Development (DFID). *A Preliminary Study on Law, Justice and Human Rights*. Kathmandu: DFID, 1999.

<sup>59</sup> CVICT. *Reports of Prison Visits*. Kathmandu: CVICT, 2000.

limbs.”<sup>60</sup> Since the Convention Against Torture (CAT) limits the definition of torture covering the severe physical and psychological suffering inflicted by public officials or those working in official capacities, debate continues on whether or not the atrocities, including the infliction of severe physical and psychological suffering, committed by the Maoists can be defined as torture.

fundamentals are lacking. For example, the Manual does not mention that it is necessary to inform persons apprehended about their rights during a criminal process. Besides the police, there are other law enforcement agencies directly or indirectly involved in torture, who require training as well, but it is not certain whether they will have access to the Manual. Meanwhile, recently, the army

### Box 5.2: Maoists’ Brutality

“On 29 March 2002, 15 to 20 Maoists came to Dhan Bahadur’s house at about 10:00 o’clock at night and demanded 13,000 (thirteen thousand) Rupees from the 28-year-old school teacher. When he failed to provide the amount, they tied his hands and kicked him in front of his brothers (whose hands were also tied) and sister. He was beaten

so severely with wooden sticks and iron rods that both of his legs were broken. He became unconscious, so he did not know how long they beat him afterward. When he gained consciousness, he found himself lying on the floor and his dog was licking the blood trickling from his mouth.”

Source: INSEC. Yearbook 2001.

The National Human Rights Commission, for example, received 357 complaints from the victims of the Maoist oppression. Additionally, a study commissioned by the National Human Rights Commission reported that 75 percent of the victims had been tortured both physically and psychologically; that, in 67 percent of the cases, the police were the perpetrators, and in 30 percent the Maoists. About 59 percent of the victims were allegedly tortured for being involved in Maoist activities, whereas the Maoists tortured 27 percent of the victims for their alleged involvement in anti-Maoist activities. Seven percent of the victims were tortured by both the Maoists and the police. The study also stated that 66 people were disabled by torture in Rukum, 58 in Rolpa, 57 people in Jajarkot and 48 in Salyan, indicating that the use of torture was perhaps more prevalent in the Maoist-affected districts.<sup>61</sup>

### 5.6 Training and Raising Awareness

With the aim of training the police on human rights issues, the National Police Academy published a Human Rights Training Manual. While this is certainly a positive step, certain

also established a human rights cell. Other governmental and nongovernmental agencies, such as the Judges’ Society, Office of the Attorney General and the Nepal Bar Association, have also developed Criminal Procedural Guidelines.

### 5.7 Investigation of Torture

The CAT requires that states shall ensure that “competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of

A study commissioned by the National Human Rights Commission reported that 75 percent of the victims had been tortured both physically and psychologically.

### Box 5.3: Complaints and Determination of Compensation Rules, 2001 (B.S. 2057)

On the basis of the power vested under the clause 23 of NHRC Act, 1990 (B.S. 2057), the NHRC has introduced a Complaints, Actions and Determination of Compensation Rules, 2001 to effectively execute the Act. Among others, the rules fix the amount of compensation for various kinds of human rights violations, including torture. In the case of torture, the Commission can impose compensation up to Rs. 100,000.00 on the perpetrator(s) depending upon the nature of torture, effect of the torture on the victim, cost of treatment, etc. In the event of the death of the victim, cost of treatment, etc. In the event of the death of the victim, the compensation amount can be set within the range of Rs. 100,000.00 to Rs. 300,000.00 depending upon a number of factors. Most importantly, the Commission can instruct, the government to make the government officer, who is responsible for the torture, fully or partly responsible for the act, by recovering the amount of compensation from his/her entitlements.

<sup>60</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

<sup>61</sup> NHRC. “Study on Torture and Disability Due to Insurgency.”

*torture has been committed in any territory under its jurisdiction.*” However, the Nepalese laws related to torture or the penitentiary system do not provide precise provisions for competent and impartial investigation of the cases of torture. Except for a few cases of custodial deaths, there are very few examples where the government has formed a committee to investigate cases of torture. When a committee has investigated a case of custodial death or torture, its recommendations have never been made public and the concerned authorities have invariably ignored them.

### 5.8 Torture Compensation Act 1996 (B.S. 2053)

The government of Nepal enacted the Torture Compensation Act (TCA) in 1996 (B.S. 2053) for providing compensation to the victims of torture. Some of the major provisions of the Act are:

- If there is enough ground to suspect that a detainee is being subjected to torture, the family members and his/her legal counsel can file an application with the district court to have medical and psychological examination of the detainee, and the court must issue an order to police within three days.
- Torture victim can file a case for compensation within 35 days of his/her release from the custody/prison in the respective district court and is entitled to receive a maximum of one hundred thousand rupees as compensation.
- Authorities when bringing in and releasing a detainee must maintain detailed documents of physical and psychological status of the detainee and must send a copy to the respective district court.
- Court can recommend to the respective office or agency to take departmental action against the perpetrator(s) of torture.

- In case of death from torture, the victim’s next of kin is entitled to receive compensation.
- It only deals with the incident occurred only after a person is taken into custody. This limits the jurisdiction.

### 5.9 Inconsistencies in the Torture Compensation Act

The government, under pressure from the civil society, especially the human rights community in Nepal, enacted the TCA, but it did not include the recommendations made by the CAT. As a result, the Act is not consistent with the CAT in many respects, as discussed below:

- As Nepal’s TCA does not define torture as a criminal offence, which is the basic condition under the CAT, it is inconsistent with the definition provided by the CAT.
- The Act is applicable only with regard to the incident of torture inflicted when a person is taken into custody. This is a narrow definition of torture.
- There is no provision for the rehabilitation of the victims of torture in the TCA, as required by the CAT.
- Although the protection of witnesses and victims is crucial in torture cases, the TCA does not have the provisions to do so.
- The TCA provides that any public official accused of torture who requests legal representation is entitled to be represented by government attorney, which is inconsistent with the CAT.
- The TCA makes the government accountable rather than the perpetrator(s) for the payment of victim’s compensation. However, in the case of extra-judicial killing, the National Human Rights Commission has requested the government to make the perpetrator

As Nepal’s TCA does not define torture as a criminal offence, which is the basic condition under the CAT, it is inconsistent with the definition provided by the CAT.

individually liable to compensate the victim.

- There should be no sanction for the perpetrator. When an official is found guilty of torture, the court can recommend departmental actions against the perpetrator. But if the departmental action is merely a transfer of the official, it cannot be considered effective punishment.
- The TCA does not initiate an impartial and independent investigation of cases of torture, even though required by the CAT. In Nepal, there is no official institution or agency specifically authorized to initiate an impartial investigation of torture.

### 5.10 Judicial Trend

It is always the judiciary that can provide justice to the victims of human rights violation. Therefore, until the judiciary plays a pro-active role, it is unlikely that the rights of the people will be adequately protected. In a country like Nepal where the majority of human rights instruments are new, there is an urgent need to develop sound human rights jurisprudence. The courts in Nepal so far have not always been pro-active on the subject of torture. For instance, the provision of the TCA which provides for legal defence of perpetrators by the public prosecutors, was challenged in the Supreme Court on the basis of the CAT, but the court dismissed the petition.<sup>62</sup>

Different courts have different views and interpretations on torture even though the issues may be similar, but the situation has improved when the court has started to scrutinize both the physical and psychological records as required by the TCA. For example, in the Chitwan district court, the police or investigating officers are required to present the doctor's medical report prepared while the detainee was in cus-

tody. But when in the year 2001, a victim's wife lodged an application in the district court of Morang seeking the court's order for the physical and psychological check-up of her husband, who was tortured in prison, the court decided not to issue the order, stating that the provision in the Torture Compensation Act applies to those who are detained in police custody as detainees, but it cannot apply to prisoners.

### 5.11 Positive Initiatives

The National Human Rights Commission has been playing prominent role in persuading the government to fulfil its reporting obligations under the CAT Convention. The Commission has already provided training to the concerned officials, involving theoretical and practical aspects of the reporting mechanism. A committee has been formed under the auspices of the Ministry of Home Affairs for this purpose as well.

The HRC Act empowers the Commission to receive complaints and award compensation on torture incidents as an alternative remedy available to the victims of torture. The Commission has recommended the HMG to compensate the victims acting on several complaints filed in the office.

The number of court cases seeking compensation against torture is increasing. It is a positive sign of sensitization among the victims of torture. However, the number of cases filed in the courts is not satisfactory compared to the incidents of torture occurred every year.

Most of the incidents of torture are reported as inflicted in the custody during the interrogation phase in cases of criminal offences. There have been several efforts even within the police department for the reduction of these incidents through the issuance of Police Manuals, reforms in investigation techniques, and the establishment of Human Right Cell.

The HRC Act empowers the Commission to receive complaints and award compensation on torture incidents as an alternative remedy available to the victims of torture.

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<sup>62</sup> *Rabindra Bhattarai vs. Cabinet Secretariat*. "A Compilation of the Decisions Relating to Human Rights." Supreme Court. Kathmandu, 2002.





## CHAPTER 6

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### Fair Trial

**“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.....”**

*- Article 14 of UN ICCPR*

## 6. Fair Trial

One of the remarkable achievements of the multiparty system in Nepal has been the establishment of an independent judiciary.

The judiciary is the beacon that illuminates the reach of democratic values of a State. It is the firmest pillar of the government, a protector of the Constitution and a watchdog of the people's fundamental rights and basic liberties.

One of the remarkable achievements of the multiparty system in Nepal has been the establishment of an independent judiciary.<sup>63</sup> The Constitution has granted the judiciary the power of judicial review, thereby checking any attempt on the part of the executive and the legislative branches to go beyond the limits of the Constitution. Since it is free from the executive and the legislature, it is required to be an independent, accountable and responsible organ.<sup>64</sup>

The judiciary of Nepal has responsibility to uphold the most fundamental human rights of Nepalese people, i.e. the right to justice. It has law-enforcing capacity and its decisions are binding to the government. However, the government has often challenged this by not following court verdicts. It decides cases and issues appropriate orders against the wrongdoers based not only on the Constitution and the law but also by applying the recognized principles of justice. Most of the human rights have been recognized as fundamental rights under the Constitution, and violation of these rights can be remedied by the Supreme Court under its extra ordinary jurisdiction.

The right to fair trial is a basic human right and is associated with a fair and independent criminal justice system. "Fair Trial" has different connotations at different places, different times and different purposes. In one formulation, "Fair Trial" is equated with due process - that trial is fair if it satisfies substantive and procedural requirements. According to Isgani

A. Cruz, a former associate justice of the Supreme Court of the Philippines, "*Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to his/her life, liberty or property. The inquiry in this regard is not whether or not the law is being enforced in accordance with the prescribed manner but whether or not, to begin with, it is a proper exercise of legislative power.*" In other words, the justice that guarantees procedural due process is the one "*which hears before it condemns,*" which proceeds upon inquiry and renders judgment only after trial. According to Justice Cruz, in order to collectively establish the foundation of fair trial, there must be, among other things, an impartial court or tribunal; the defendant must be given an opportunity to be heard; and judgment must be rendered upon lawful hearing. Furthermore, in administrative proceedings, the following additional elements of procedural due process must be guaranteed without exception:

- The right to hearing, which includes the right to present one's case and submit evidence in support thereof.
- The tribunal or decision-making body must consider the evidence presented.
- The decision must have something to support itself.
- Reasoned decisions.
- The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
- The tribunal or body or any of its judges must act on its own or his/her own

<sup>63</sup> Nepal Human Development Report 1998.

<sup>64</sup> Shrestha, K. "Our Judiciary in Limbo," *Essays on Constitutional Law*. Kathmandu, 1991.

independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

- The tribunal or body, in all controversial questions, renders its decision in such a manner that the parties to the proceedings can know the various issues involved, and the reason for the decision rendered.

## 6.1 International Legal Framework

International human rights instruments require the following minimum standards to be fully observed in order to ensure procedural due process:

- Any person under investigation for the commission of an offence shall have the right to be informed of his/her right to remain silent and to have competent and independent counsel preferably of his/her own choice. If the person cannot afford the services of counsel, he/she must be provided with one.
- No person shall be subjected to arbitrary arrest and detention. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.
- No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.
- In all criminal prosecutions, the accused shall be presumed innocent until proven guilty. The suspect shall enjoy the right to be informed of the nature and cause of the arrest or accusation against him/her. The suspect shall enjoy the right to have a speedy, impartial and public trial by an independent tribunal.

## 6.2 National Legal Framework

There are three tiers of courts: a District Court

in each of the 75 districts, Appellate Courts in 16 different centres and the Supreme Court in the capital. Judges are appointed by the King on the recommendation of the Judicial Council chaired by the Chief Justice. In addition to the regular courts there are some special tribunals for the deposition of specific cases. For example, the Special Court is constituted with jurisdiction to hear cases related to crimes against the State and crimes related to corruption. The Labour Court hears cases related to industrial relations and the Revenue Tribunals hear cases related to revenue matters. The Administrative Court deals with the cases of the government personnel.

As has already been noted, the Constitution stipulates an independent judiciary, and provisions listed below constitute the minimum standards regarding the Fundamental rights to criminal justice:

- No person shall be deprived of his/her personal liberty save in accordance with law, and no law shall be made which provides for capital punishment.
- No person shall be punished for an act which was not punishable by law when the act was committed.
- No person shall be punished more than once for the same offence in a court of law.
- No person accused of any offence shall be compelled to be a witness against himself or herself.
- No person shall be subjected to punishment greater than that prescribed by the law in force at the time of commission of the offence.
- No person who is detained during investigation, or for any other reason, shall be subjected to physical and mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be justly compensated in a manner as determined by law.

No person who is detained during investigation, or for any other reason, shall be subjected to physical and mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be justly compensated in a manner as determined by law.

- No person who is arrested shall be detained in custody without being informed, as soon as possible, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his/her choice.
- The person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours of his/her arrest, excluding the time required to travel from the place of arrest to a competent judicial authority.

According to an estimate, 35 percent of criminal cases are still tried by quasi-judicial authorities such the Chief District Officer (CDO), the Forest Officer, the Conservation Park Warden, the Customs Officer, etc.

**Box 6.1: Supreme Court in Favour of Quasi- Judicial Bodies**

In B.S. 2056 the Supreme Court quashed the writ petition filed by Krishna Prasad Siwakot arguing that quasi-judicial bodies have judicial power and are independent because their decisions can be challenged in the court and that the Constitution also acknowledges the role of quasi-judicial bodies. The petition was filed challenging the judicial power of the quasi-judicial bodies.

**6.3 Role of Non-Judicial Bodies in Fair Trial**

According to an estimate, 35 percent of criminal cases are still tried by quasi-judicial authorities such the Chief District Officer (CDO), the Forest Officer, the Conservation Park Warden, the Customs Officer, etc.<sup>65</sup>

The CDO, the highest ranking administrative officer in each of the country's 75 districts, has extensive judicial powers under various Acts, even though she/he may possess no basic knowledge and skill of law and justice to conduct trial of criminal offence that directly affect the defendant's liberty. Moreover, the trials are generally carried out in the absence of legal counsels. Formal motions of trial seldom take place. Subordinates are usually involved in preparing orders and verdicts, as dictated by the CDO. Due to the prevalence of a number of statutes - many of them enacted during the

*Panchayat* regime - empowering various executive institutions to conduct criminal cases, the criminal justice system of Nepal is subjected to extreme conditions of departmentalization. Many of these institutions not only investigate the offence, but also possess power to prosecute and adjudicate them, and in the pretence of honest duty to the government, usually conduct criminal trial with disregard to the constitutional guarantees for fairness of proceedings. Furthermore, since many statutes also provide for punishment with terms of imprisonment, that personal liberty is obviously at stake. Thus, a trial in an executive officer's chambers is nothing but a mockery of fair trial and justice and poses a serious threat to human rights. Moreover, almost without exception, detainees are refused access to legal counsels within 24 hours of arrest, as required by law.<sup>66</sup>

**6.4 Fair Trial Legislation and Violation of Human Rights**

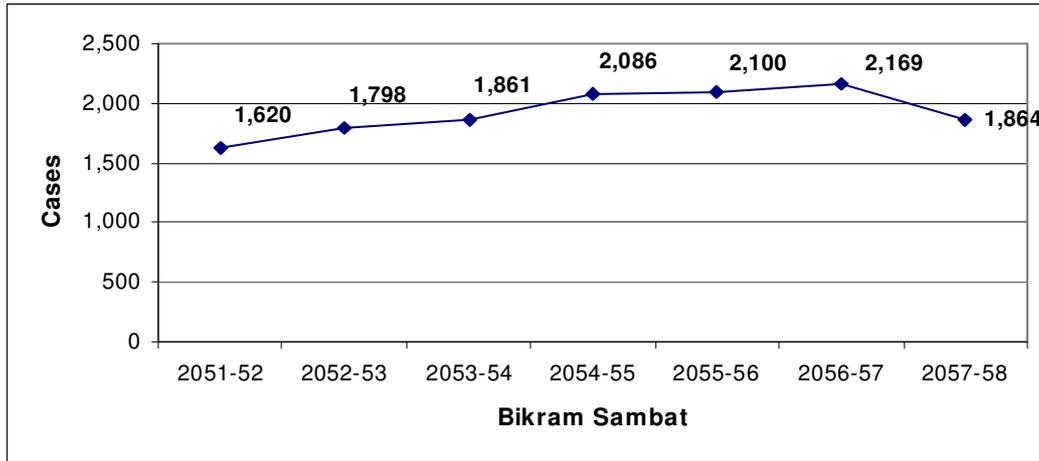
A number of laws that are derogative to the personal liberty and dignity of human being are being enforced. For instance:

- **The Public Security Act 1990 (B.S. 2046):** Enacted during the *Panchayat* rule, this Act allows the authorities to detain a person who allegedly threatens domestic security and tranquillity, amicable relations with other states, and relations between citizens of different classes or religions. Persons detained under this law are considered to be in preventive detention, and such detention may extend for a period of 6 months. The Act permits such detention without specifying any criminal charge. In 1991, an amendment was made to the Act which permitted the authorities to extend an additional six-month period of detention by simply submitting a written notice to the Home Ministry. This draconian Act still prevails.

<sup>65</sup> Annual Report 2057-58 [2000] of the Attorney General of the Kingdom of Nepal. Kathmandu.

<sup>66</sup> Yubaraj Sangroula et al. Analysis and Reforms of Criminal Justice in Nepal. Kathmandu: CeLRRd, 1999.

**Graph 6.1: Frequency of the Use of Public Offence Act**



Source: CeLLRd

- **The Public Offence and Punishment Act 1970 (B.S. 2027):** This is another statute that provides space to authorities to carry out arbitrary arrest and detention. This Act covers such crimes as disturbing the peace, vandalism, rioting and fighting. In the past, it was often used by the CDO to suppress political activists and leaders. After 1990, the ruling party has used it against its own political opponents. The Graph 6.1, spanning seven Bikram Sambat (B.S.) years 2051/52-2057/58 (1994-2001), indicate the frequency of the use of this Act: <sup>67</sup>

Ironically, these draconian laws have been consistently increased and intensified following the re-establishment of the multiparty system. Human rights monitors have expressed concern that these Acts vest too much discretionary power in the CDO, who is generally loyal to the executive branch of the government and as such the officer is overwhelmingly influenced by the ruling party.

- **The Terrorist and Destructive Activities (Control and Punishment) (TADA) Act 2001 (B.S. 2058):** This law was introduced as an ordinance three days after the declaration of state of emergency (6 November 2001). Subsequently adopted

by the Parliament, the Act gives power to the security personnel for detaining a person without judicial remand for a period of 90 days.

- **The Police Act 1955 (B.S. 2012):** It places the power to investigate, prosecute and adjudicate the offences solely in the hands of the Special Police Tribunal. Under this Act the final appeal against the decision of the Tribunal lies upon the Tribunal itself instead of the regular court of law. This Act not only subjects suspects or accused to unfair trial, but also diminishes the scope of Article 86 of the Constitution, which defines the status and the authority of the Supreme Court. Moreover, the procedures relating to the establishment of the so-called special court are not governed by the Special Court Act, which is the law to govern such matters. Such so-called tribunals and quasi-judicial institutions, like the Police Special Tribunal, are sometimes so powerful that they can impose a sentence of life imprisonment, and thus underestimate the principle of fair trial
- **Customs Act 1962 (B.S. 2019) :** This Act also gives power to the same authority i.e.

So-called tribunals and quasi-judicial institutions, like the Police Special Tribunal, are sometimes so powerful that they can impose a sentence of life imprisonment, and thus underestimate the principle of fair trial.

<sup>67</sup> CeLRRd. Study on Trial Court System of Nepal. Kathmandu: CeLRRd, 2002.

No free and fair justice is possible in a system where the same institution has the right to investigate, prosecute, as well as adjudicate the alleged offence.

Customs Officer to investigate, prosecute and adjudicate the offence. The Act empowers the Customs Officer to award a higher degree of punishment with fines. Granting such powers to an administrative officer is against the principle of fair trial because the accused seldom gets opportunity of fair hearing.

No free and fair justice is possible in a system where the same institution has the right to investigate, prosecute, as well as adjudicate the alleged offence. Such laws, therefore, must be amended appropriately to eliminate provisions affecting the norms and standards of free and fair criminal justice system. Courts of law must be the only institutions with the power to undertake jurisdictions of all kinds of crimes as fundamental rules as envisaged by the Constitution.

In fact, the very existence and enforcement of

prisoners have access to lawyers during trial (See Table 6.1). The rest face trial without representation of lawyers. Many of them had not been able to consult a lawyer within 24 hours of their arrest, and many also had no knowledge of the right to have legal assistance.<sup>68</sup> Indeed, a UN Human Rights Commission’s Working Group observed that “while the presence of counsel during custody is possible, it is not compulsory” and noted instances where detainees had not received assistance from counsel for almost a year after their arrests.<sup>69</sup>

As already noted, the Constitution has guaranteed citizens the right to legal counsel of their choice if they are accused of an offence. Furthermore, the constitutional provision confirms the principle recognized by international law. Unfortunately, the right to be represented by a legal counsel is either largely violated or under-utilized in Nepal, as

**Table 6.1: Presence of Lawyers During Trial**

Particulars	Number	Percent
Total Respondents	321	100
Had lawyers during trial	181	56
Had no lawyers during trial	140	44
Lawyers hired	133 (out of 181)	73
Legal aid obtained	48 (out of 181)	27

Source: CeLRRd. *Analysis and Reforms of Criminal Justice System in Nepal, 2000.*

these statutes are also an indication that even elected governments, who profess to adhere to democratic principles of governance, appear to remain insensitive toward the protection and promotion of human rights.

[See Annex 7 for a list of various statutes that vitiate fair and impartial trial.]

### 6.5 Legal Representation in Trial

According to a study, only 56 percent of the

Table 6.1 discloses.

Poverty and ignorance are two major reasons why the accused do not have lawyers during trial, and insensitivity of trial court judges to rights of detainees is perhaps an even more significant reason why the accused are not legally represented.

### 6.6 Additional Circumstances

Additional circumstances that preclude fair and impartial trial in Nepal include:

<sup>68</sup> Sangroula et al. *Analysis and Reforms of Criminal Justice System in Nepal.*

<sup>69</sup> Report of the Working Group on Arbitrary Group. Addendum General E/CN.4/1997/4Add.2, November 26, 1996.

### Box 6.2: In the Dock

“A survey conducted by the Nepal Law Society has come up with findings that show low public faith in the country’s judiciary. The report, unveiled on Tuesday, carries the title “Public opinion of justice and the performance of judiciary in Nepal”. The survey covers more than 5,000 respondents spread over 31 districts and represents a cross-section of society – the general public, industrialists, judges, lawyers, academicians and court officials. In fact, it hardly needs a survey to say that most people do not believe our courts and legal practitioners, generally speaking, have been able to uphold the high ideals of judiciary in the discharge of their functions. However, some of the figures thrown up by the survey are revealing.

Impartiality, one of the hallmarks of any judicial system worth the name, has taken a beating in the public eye. Accordingly, most people think that not many judges are

impartial while only about 17 per cent think most of them are impartial. The percentage of people who think that either all judges are impartial or no judges are impartial at all fall between 3 and 4. Lack of impartiality is often attributable to another evil besetting the Nepalese body politic – corruption. That is why only 8 per cent believe that it is possible to get work done in courts without bribes and 40 per cent have accused court officials of demanding bribes.

It is often said that justice delayed is justice denied. If we believe in this dictum and add those who have complained about delayed justice in the survey (i.e. three-fourths of the population), there will be little left to speak well of our judiciary. Besides, nearly half of the respondents say fighting a legal battle is a costly affair. It is then logical to conclude that given mass poverty and high legal costs, many aggrieved citizens never enter the premises of a law court. This

reality has awfully undermined and compromised the concept of equality before law, a fundamental feature of democracy.

That our judiciary is full of ills does not mean that other institutions such as the executive branch are any better. But what is of greater concern is that the courts are the last resort. They are considered the upholders of public morality. If they fail to work properly, where will the people go? The legal difficulty in taking action against judges is widely perceived to be one of the major reasons for unchecked corruption in the judiciary. In this connection, the general suspicion of an unholy alliance between them and the lawyers has made the problem even more complex. If we are to have any chance of rectifying the situation, massive reforms are needed — constitutional, legal, procedural, administrative, and so on — to make lawyers, judges and court officials mend their ways.”

Source: *The Himalayan Times*, 4 April 2003

- Since Nepal’s judicial system does not have a separate criminal court, excessive civil caseload in the trial courts effectively overshadows criminal trials. Since the civil cases take a larger slice of the judicial time, they impose a longer waiting period for criminal trials. (The existing civil caseload takes 72 percent of the judicial time and resource at all the levels of courts.)<sup>70</sup>
- Many prisoners are forced to face trial judgments. Since many defendants are ignorant of their right to appeal, only 34 percent (10,431 out of 30,605 cases at the district court level) of the defendants invoked their right to appeal against the judgments of the Trial Courts.<sup>71</sup> Moreover, a segment of the defendants also avoids appealing against the trial courts’ judgments only because the sentence imposed by the trial courts is less than the time they spent in custody. In all these circumstances, the defendants’ right to fair trial is jeopardized. In a number of cases, the judgment is not timely, and it is not easy for accused persons to prepare for trial or appeals and follow the judicial process. Obviously, many prisoners neither have information of the situation of their cases nor do they have lawyers to represent them.<sup>72</sup>
- Excessive overload of cases impairs the possibility of a fair trial. The average caseload of a trial judge is 661 per annum.<sup>73</sup> Under the present trial system, each criminal case takes several non-consecutive sessions for completion. It means that a judge has to perform multifold actions in each case. It is, therefore, unreasonable to expect a judge to discharge such a huge burden of caseload. The *Ten-Year Annual Reports*

<sup>70</sup> The analysis is based on the Annual Report of the Supreme Court from Fiscal Year 2047 to 2057. For details, see *Trial Court System in Nepal: With Special Reference to Women’s Accessibility to Criminal Justice System*, CeLRRd, 2000.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Annual Report of the Supreme Court, Fiscal Year 2056-57. Kathmandu.*

On the basis of present conviction rates, one is compelled to conclude that government attorneys' offices are not suitably active and efficient in filtering out unfounded cases.

of the Supreme Court from 2047 to 2057 (1990-2000) shows that the increment in the number of judges over the period is negligible, whereas the caseload has increased enormously. The situation compels one to infer that the State lacks the sensitivity to address the increasingly large volume of the caseload and is evading its obligation to guarantee fair, impartial and speedy justice.

- Government attorneys lack effective filtering and funnelling mechanism. Investigation of crime in Nepal begins with the arrest of suspects, which generally takes place immediately after the First Information Report (FIR) is lodged. The Attorney General's Office, which is a prosecuting agency in Nepal, is supposed to filter cases once the investigation is completed and has the final authority to decide whether or not to prosecute any given case. This power, however, is hardly ever exercised. In fact,

investigated by the police, on an average, only 5 percent of the cases are filtered, indicating an extremely high level of random prosecution.<sup>75</sup> Thus, there is a great potential for human rights violation. Additionally, the prosecution rarely requires investigators to collect additional evidence. It seems that the prosecution accepts case files from the police *in toto*, which once again suggests that government attorneys are not concerned with the filtering process, preventing a large number of cases from reaching conviction.

On the basis of present conviction rates, one is compelled to conclude that government attorneys' offices are not suitably active and efficient in filtering out unfounded cases. Based on the ratio of the failure of prosecution, one can also conclude that a large number of cases are prosecuted without evidential foundation, leading to unnecessary deprivation of liberty of people.

Furthermore, inadequate fund for the judiciary

**Table 6.2: Rate of Case Filtration**

Fiscal Year (B.S.)	Total FIRs	Cases Investigated by Police	Cases Filtered by HMG Attorney	Percent
2051-52	9,111	6,098	364	5.97
2052-53	9,421	6,155	282	4.58
2053-54	9,456	5,641	291	5.16
2054-55	10,562	6,137	283	4.61
2055-56	10,504	6,028	268	4.45
2056-57	10,640	6,228	234	3.76

Source: CeLRRd. *Trial Court System in Nepal 2002*.

the trend is of random prosecution, leading to an unbelievable ratio of failure at trial court. Figures in Table 6.2, from the years B.S. 2051-57 (1994-2000), demonstrate the remarkably low rate of filtering of cases at the prosecution stage:<sup>74</sup>

At the stage of prosecution, of the total cases

to function effectively has been a major hurdle in ensuring fair and impartial trial. An independent and competent judiciary is the backbone of a democratic society and plays a crucial role in safeguarding human rights. Deprivation of the judiciary in terms of financial resources not only results in a lack of fair, impartial and competent justice, but also

<sup>74</sup> CeLRRd. *Trial Court System in Nepal: With Special Reference to Women's Accessibility to Criminal Justice*. Kathmandu: CeLRRd, 2002.

<sup>75</sup> *Ibid.*

**Table 6.3: Expenditure on Various Organs of the State<sup>76</sup>**

Fiscal Year (B.S)	Judiciary (%)	Legislature (%)	Executive (%)
2052-53	0.38	0.14	99.48
2054-55	0.40	0.20	99.40
2057-58	0.39	0.16	99.45
2058-59	0.47	0.20	99.33

Source: CeLRRd. *Trial Court System in Nepal, 2002.*

impairs the process of consolidating democracy. Figures in Table 6.3, covering the years 2052-59 B.S. (1995-2002), amply illustrate that the judiciary in Nepal is subjected to severe financial constraints.

For example, the judicial sector's share of national expenditure is less than 0.50 percent of the total. The increment of the judicial budget over the past decade has been less than 0.10 percent. An overwhelmingly large part of this budget is spent on regular expenditure items such as salary and allowances. Development of the judiciary has not been a priority in the national budget. It is, therefore, important to ask: How can an impoverished judiciary deliver competent and independent justice as envisaged by the Constitution?

### 6.7 Positive Initiatives

There have been some efforts to address the aforementioned issues with some institutional reform and legal reforms as well. Concerning legal reforms, there are some new legal provisions which have attempted to address some of the issues having direct bearing with fair trials. The Income Tax Act of 2058 gives power of

adjudication to the court, which is one of the major amendments to the previous Act. Similarly, the Forest Act 2049, Section 65 has provided the Forest officer with the power to adjudicate only the cases where the punishment is up to one year and fines up to ten thousand rupees. Offences above the limit would be tried only by the competent court. The Legal Aid Act 2054 and the implementation of this Act is another major effort for ensuring the right to legal counsel of the accused. However this Act has been implemented only in limited districts of the country.

There are some institutional reforms aimed at ensuring right to fair trial. Development of professionalism in police department with the establishment of a Criminal Investigation Division to look into the investigation of cases is one of the major steps. Similarly, the Police Headquarter has developed a manual for the investigating officers with a complete checklist, which are required to be followed in criminal cases. Furthermore, the Public Prosecutors have been given certain powers for securing fair trial so that the accused can be interrogated only before the Prosecutor.

There are some institutional reforms aimed at ensuring right to fair trial. Development of professionalism in police department with the establishment of a Criminal Investigation Division to look into the investigation of cases is one of the major steps.

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<sup>76</sup> *Ibid.*



## CHAPTER 7

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### Basic Needs and Human Rights

**“What freedom has our subsistence farmer? He scratches a bare living from the soil provided the rains do not fail; his children work at his side without schooling, medical care, or even good feeding. Certainly he has freedom to vote, and to speak as he wishes. But these freedoms are much less real to him than his freedom to be exploited. Only as his poverty is reduced will his existing political freedom become properly meaningful and his right to human dignity become a fact of human dignity.”**

- Julius Nyerere as quoted in *Personal Freedom and the Law in Tanzania*

## 7. Basic Needs and Human Rights

A nation gains prosperity, respect and loyalty of its citizens only when its people are confident that they and their children have adequate food, proper shelter, quality education and sound health – the basic requirements to live a life of dignity and fulfilment.

Fulfilment of basic needs is one of the key indicators of realisation of human rights. Therefore, if a nation is to progress, it must ensure that the basic needs of its people are met. But if the people are struggling daily to put their body and soul together, and if their children are deprived of food, shelter, education and health care, then the nation too will remain impoverished and undeveloped. A nation gains prosperity, respect and loyalty of its citizens only when its people are confident that they and their children have adequate food, proper shelter, quality education and sound health—the basic requirements to live a life of dignity and fulfilment.

The Constitution states that the State shall create conditions for the economic progress of the majority of the people, who are dependent upon agriculture, by raising agricultural productivity and by launching land reform programs. It envisages the concept of basic needs under the Directive Principles and Policies of the State, thus making fulfilment of various economic and social rights non-binding responsibility of the State.

### 7.1 International Instruments

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Nepal in 1991, calls for State parties to progressively achieve an adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions. It also calls for the highest attainable standard of health, compulsory and free primary education to all and progressive free secondary level education as right to education, thus leading to full development of the human personality and the sense of its dignity. Furthermore, it has declared that the “right to work” is the right to earn one’s own living and the right to freely choose or accept

work; the right to enjoyment of just, healthy and favourable work conditions; equal opportunity for everyone to work and limitation of working hours and periodic holidays and the right to decent remuneration. In addition, it specifically declares that women and men should receive equal pay for equal work, and that women’s work conditions should not be inferior to that of men.

Moreover, Nepal is a State party to various International Labour Organization (ILO) conventions, including Equal Remuneration Convention (No. 100), Minimum Wage Fixing (No. 131), Weekly Rest (Industry) (No. 141) and Worst Forms of Child Labour (No. 182). Likewise, Nepal is signatory to the Convention on the Rights of Child. But the implementation of provisions of these conventions in Nepal remains far from satisfactory.

### 7.2 Right to Health

Good health is an important condition for one’s well-being and for the ability to contribute to the his/her personal development and to the society as a whole. The terminology ‘Right to Health’ may sound like the right to be healthy or resemble a claim to everything required to maintain or attain complete health. In fact, it encompasses right to health care services and the right to a number of underlying preconditions for health, such as safe drinking water and adequate sanitation. The preconditions also include occupational health and environmental health.<sup>77</sup> As one of the signatories to the ICESCR, the government is expected to respect, protect and fulfil the following obligations to ensure the citizens’ right to health:

- to respect equal access to available health services and to refrain from acts, which can adversely affect the health of people;

<sup>77</sup> Toebes, Brigit. “The Right to Health” in *Economic, Social and Cultural Rights - A Textbook* edited by A. Eide, C. Krause and A. Rosas. London: Martinus Nijhoff Publishers, 2001.

- to take legislative and other measures to provide equal access to health services provided by third parties and to protect people from health infringements by third parties;
- to adopt a national health policy with sufficient budget allocation and to provide the necessary health services or create conditions under which individuals have adequate and sufficient access to health services, safe drinking water and proper sanitation.

The Constitution, under the Directive Principles and Policies of the State,<sup>78</sup> requires the State to develop health sector to raise life standard of the people. However, it is not much progressive in comparison to the Constitution of South Africa<sup>79</sup> which has guaranteed right to emergency medical treatment. Although the government on its own and with the direct or indirect support of NGOs has made significant achievements in fulfilling its duties towards

percent in 1999/2000. The country's total public sector health expenditure amounted to about US\$ 2 per person per annum in 1999/2000. An overwhelming majority, 82 percent of the rural households do not have a toilet. Nepal's infant mortality rate is 66 per 1,000 live births, mostly because 90 percent of all the births take place at home in the absence of trained medical personnel. Additionally, 20 percent of the children suffer from severe malnutrition and 48 percent suffer from moderate malnutrition, and stunted growth is one of the consequences.

There are only 5 doctors for every 100,000 people.<sup>80</sup> Most of the hospitals in the rural areas are understaffed and very few doctors are available. Hospitals without doctors are common, as most of the doctors do not want to leave urban area, especially Kathmandu, where opportunities are in abundance and life is comfortable. On the other hand, doctors who have completed their studies on government scholarships flagrantly breach with impunity their contract requiring them to serve rural

Whilst rural and district hospitals have acute shortage of doctors, the capital city Kathmandu is abound with them.

**Box 7.1: Impact of Conflict on Public Health**

Right to health of the people living in the area hard hit by conflict is seriously affected. The health posts are without any medical staff and essential medicines, which were already in short supply, are no longer available either because security personnel have blocked their supply or Maoists have looted the stock. The incidents have occurred in which security forces closing down or destroying pharmacies on the suspicion that the medicines

are being supplied to the Maoists. Due to the security related problem, vaccination and immunization programmes to protect children from polio, measles, diphtheria, tuberculosis, whooping cough, etc. have been seriously affected. The blockade of medicine supply includes essential medicines like antibiotics, ointments for cuts and injuries, and bandages.

right to health, much work is still needed to ensure access to basic health care services to the Nepalese people by creating basic conditions necessary for protecting and enhancing the health of the citizens. Between the years 1976-1996, the average life expectancy in Nepal increased by over 13 years to 55 years (today it is 59), but it is still one of the lowest in the world, primarily because of limited access to health services and insufficient food intake. Public expenditure in the health sector has increased from 3.2 percent in 1993/94 to 5.7

areas. The government has not been able to enforce the contractual requirements. It is not surprising that whilst rural and district hospitals have acute shortage of doctors, the capital city Kathmandu is abound with them.

While the proportion of population with access to sanitation facilities in Nepal is the lowest in South Asia, the situation is slightly better with regard to drinking water. One recent survey estimates that 80 percent of the households in Nepal have access to piped or tube-well

<sup>78</sup> Article 26, Section 1, 7, 9 and 10.

<sup>79</sup> Article 27, Section 3 of The Constitution of South Africa.

<sup>80</sup> UNDP. *Nepal Human Development Report (NHDR) 2001. Kathmandu: UNDP, 2002.*

According to a UNICEF study on the status of children and women in Nepal, 47 percent of children below five age suffer from general malnutrition, weight-for-age, and nearly 63 percent of children of the age group suffer from chronic malnutrition, low-height-for-age, causing stunting.

water.<sup>81</sup> However, the quality of drinking water supplied is questionable, even in the cities. Very high levels of *E.coli* contamination have been reported in the water supply of various parts of Kathmandu Valley, and as a result, the Valley's population suffers from very high levels of water-borne diseases, such as diarrhoea. A 2001 survey conducted during a two-week period preceding the interview day found one-fifth of the children below five years afflicted by diarrhoea. The incidence of diarrhoea is higher in areas of endemic poverty and among children of illiterate or less educated mothers.<sup>82</sup>

Malnutrition is a major problem contributing to high rates of disease and death as well as slow physical and mental development of children. The presences of diseases, especially diarrhoeal and parasitic episodes, are other factors that affect the well being of the child.

According to a UNICEF study on the status of children and women in Nepal, 47 percent of children below five age suffer from general malnutrition, weight-for-age, and nearly 63 percent of children of the age group suffer from chronic malnutrition, low-height-for-age, causing stunting. The problem of wasting, weight-for-height, due to acute malnutrition, is not so acute as only 5.5 percent of children are reported to fall under this category. The prevalence of malnutrition among children varies from region to region; for example, children in the Mid-Western region are the worst sufferers of chronic malnutrition whereas general malnutrition is more prevalent in the Mountains and the Terai than in the Hills. Also, urban and rural variation is quite significant in that urban area have low rates of general, acute, and chronic malnutrition.

The 1995 National Multiple Indicator Survey study showed no nutritional disparities between boys and girls in the age bracket of 6 to 36 months, however girls tend to suffer more than boys, as they grow older. A study

conducted in eight ethnic groups revealed that stunting of girls was four percent higher than that of boys. The effect of malnourishment is severe on girls as it affects their physical build and capacity to work making them illness-prone and unable to cope with the relatively heavy workload they have to shoulder. In the long run, it affects their maternal health as well as the health of the children borne from them.

Despite notable achievements, Vitamin A deficiency and Iodine deficiency-related health problems on children remains a concern. Night blindness is more common in rural (0.9 percent) than in urban areas (0.3 percent) and more prevalent in the Terai (1.6 percent) than in the Hills (0.5 percent) and the Mountains (0.4 percent).

The available data suggest that only 63<sup>83</sup> percent of households consume iodised salt, a simple preventive measure for reduction of Cretinism and other Iodine Deficiency Disorders (IDD). As such, IDD remains a serious problem in Nepal. The distribution-related problems have restricted the access to iodised salt in the remote areas contributing to low mental capacity, deafness, or blindness in children. The average rate of goitre prevalence in Nepal is 40 percent. Anaemia in children due to iron deficiency has been acknowledged as a widespread problem in Nepal that affects not only children but also women. WHO has reported that 78 percent of the children suffer from anaemia.

The UNDP Nepal Human Development Report (NHDR) of 2001 also notes that people's access to health facilities has improved over the past decade, primarily because sub-health posts were established in the Village Development Committees (VDCs). A survey conducted in 1996 noted that 60 percent of the households were within an hour's walk from a health facility. However, one NPC/UNICEF study of 1998 found that only 8 percent of the people were

<sup>81</sup> HMG/Central Bureau of Statistics. Kathmandu, 2001.

<sup>82</sup> Ministry of Health, New ERA, and ORC Macro. Nepal Demographic and Health Survey, 2001. Kathmandu: MoH/New ERA/ORCO Macro, 2001.

<sup>83</sup> UNICEF. At a glance: Nepal, [http://www.unicef.org/infobycountry/nepal\\_statistics.html](http://www.unicef.org/infobycountry/nepal_statistics.html), 23 July 2003

### Box 7.2: Health of Children

Diarrhoea, measles and tuberculosis are the most serious health risks faced by the Nepalese children. Over 33 percent of childhood death is caused by diarrhoea. Poor hygiene and sanitation, improper disposal of human and animal waste contaminated drinking water and malnutrition are other major factors that assist in the spread of diseases. Additionally, between 30,000 and 40,000 children below the age of five die annually from pneumonia.

*Source: Nepal Human Development Report, 1998*

Other diseases that seriously affect Nepalese children include meningitis, Japanese encephalitis, parasitic worm infection and leprosy. Available data from the Department of Health indicate that 76 percent of the children are immunized against tuberculosis, 71 percent against measles, 66 percent against polio and 65 percent against DPT.

satisfied with the services received at the health facilities and the service was often inadequate and lacking in support facilities; medical supplies were in short supply if not unavailable and health personnel were often absent.<sup>84</sup>

The state of health of the Nepalese people in general is, therefore, not encouraging, and the picture is gloomier when one considers the geographical and urban/rural differences. Thus, those living in the rural areas, hills, mountains and western regions of Nepal have even less access to health and sanitation facilities than the average Nepalese.<sup>85</sup>

#### Private Health Care

In the past decades, private health care service has grown rapidly. While it has eased the pressure on the public health care system, private health care facilities are out of reach for the majority due to the very high cost of service. Furthermore, these facilities are not being monitored to ensure that they comply with the minimum standards required for delivery of health services, and they are not accountable for negligence. In addition, the absence of public health insurance scheme has not helped the public to increase their access to private health care services.

The private health service sector can become an important source of revenue, if properly taxed, in the form of tax on profit and tax on the

income of shareholders for investment in augmenting the level of expenditure on primary health care services in the rural health posts to improve the right to access to health services of the majority.

#### Challenge of HIV/AIDS

While Nepal's major health issues remain infant and maternal mortality, malnutrition, and killer diseases such as diarrhoea, measles and tuberculosis, in recent years, Nepal has had to come to terms with the scourge of HIV/AIDS as well, as it has begun to affect the lives of many Nepalese people. According to WHO/UNAIDS Global Report, there are nearly 60,000 Nepalese living with HIV/AIDS. Those living in urban areas are most likely to be infected, and the most vulnerable groups include commercial sex workers (CSW), intravenous drug users (IDU) and young migrants. Young people are becoming increasingly infected, and girls are at particular risk. A 2001/2001 survey in Kathmandu Valley found that HIV prevalence is 68 percent among the male IDUs and 15 percent among the female IDUs; 17-20 percent of the CSWs are also infected, and it is estimated that nearly 14 persons are contracting it daily.<sup>86</sup> The government data indicate that the most vulnerable are those in the 14 - 50 age group. But what is rather alarming is that in the 14-19 age group, nearly twice the number of girls (150) than boys (87) are reported to be living with HIV/AIDS. Likewise, in the 20-29 age group, 370 females compared to 112 males are reported

The private health service sector can become an important source of revenue, if properly taxed, in the form of tax on profit and tax on the income of shareholders for investment in augmenting the level of expenditure on primary health care services in the rural health posts to improve the right to access to health services of the majority.

<sup>84</sup> NHDR 2001.

<sup>85</sup> *Ibid.*

<sup>86</sup> *The Himalayan Times. December 1, 2002.*

Unavailability of HIV testing facilities in all the hospitals and health centres has exposed people to the grave risk of HIV virus transmission through blood transmission.

**Box 7.3: Rights of the People with HIV/AIDS**

Nepal does not restrict entry or residence of against people with HIV/AIDS, but people with HIV/AIDS do face medical and social discrimination. The following case reported by PANOS, *South Asia* illustrates the magnitude of social discrimination faced by the people with HIV/AIDS:

“When Ram (name changed), a 25-year-old Kathmandu resident, was told he had AIDS, he discovered to his great distress that when one is afflicted with a life-threatening disease, one is shunned not just by doctors and hospitals but even one’s own family members. He told an interviewer:

‘I meet my older brother occasionally, but we don’t really sit down and talk. Now I have stopped going there. The other day, I went to my oldest sister’s home, but she said that the next

day, there was going to be a religious ceremony and that it was not permitted for a member of her own family to be present at her home. I felt terribly hurt when she said that. I understood what she was really saying. She didn’t want me at her home.’”

There are reported cases of refusal to offer treatment by health care professionals not to mention the health care system is not equipped to provide the necessary services to the people with HIV/AIDS. Their right to life is not respected due to the state’s inability to provide poor health care system and provide the treatment at an affordable cost.

Nepal is a party to numerous international human rights instruments that requires removal of all forms of discrimination against the people with HIV/AIDS.

to have HIV/AIDS.<sup>87</sup> Besides, unavailability of HIV testing facilities in all the hospitals and health centres has exposed people to the grave risk of HIV virus transmission through blood transmission.

**Positive Initiatives**

The National Planning Commission’s Tenth Plan 2002-2007 notes encouraging improvements in the health sector: a decrease in infant mortality from 107 per 1,000 live births to 72 and maternal mortality ratio down from 580 per 100,000 live births to 540 during 1997 and 2002. Quite significant is the increase in figure of those who use family planning devices, from only 3 percent in 1976 to nearly 40 percent in 2001.<sup>88</sup> Progress has also been noted in providing vaccination and controlling the spread of tuberculosis, leprosy, malaria and *kalazar*.

In order to make essential health care accessible to all, especially the poor, the backward communities and those living in the rural and remote areas, the Tenth Plan has envisaged the decentralization of the health sector seeking involvement of NGOs as well

as the private sector in the establishment and management of health care services. Thus, in order to increase efficiency and quality, local government organizations will collaborate and coordinate with the private sector and NGOs. Eventually, health services will be handed over to the relevant local bodies. However, such transfer of responsibility under decentralization will work only if the government is able to create conducive macro-level policy environment and guarantee adequate funding and training.

Furthermore, the government is committed to developing alternative and supplementary health care services, such as *Ayurvede*, homeopathy, *Yunani* system, natural therapy and to increase the access and use of locally available medicinal herbs.

Overall, the status of the health of the Nepalese people remains unsatisfactory. Poor management, limited resources, paucity of necessary drugs and trained manpower, difficult terrain and, perhaps most importantly lack of awareness or understanding of health-related issues and practices have obstructed the efforts of the government to deliver basic health care to its citizens. But the involvement

<sup>87</sup> National AIDS and STD Control Centre, Kathmandu. Telephone interview conducted by Kamala Parajuli on December 30, 2002.

<sup>88</sup> HMG/National Planning Commission (NPC). Tenth Plan Draft Report. Kathmandu: HMG/NPC, March 2003.

of appropriate government organizations, both at the central and local levels, and their partnership with NGOs and the private sector offer hope that in the near future, the state of health of the Nepalese people will improve significantly.

### 7.3 Right to Education

Education has been regarded in all societies and throughout human history both as an end in itself and as a means for advancement of the individuals and the society as a whole. Its recognition as one of the human rights is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of the human beings.

As one of the signatories to the ICESCR, the government is obliged to fulfill the following provisions stated in Articles 13 and 14 of the CESCER with regard to right to education:

- Primary education shall be compulsory and available free to all.
- Secondary education and technical and vocational education shall be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education.
- Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.
- Fundamental education shall be intensified for those persons who have not received or completed the whole period of their primary education.
- Systems of schools shall be established and the material condition of teaching

staff shall be continuously improved.

- The liberty of parents or guardians to choose for their children schools other than those established by the public authorities, which conform to minimum educational standards, shall be respected. In addition, Article 13 recognizes the liberty of parents or guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Right to education is not regarded as one of the fundamental rights under the Constitution. However, the State is responsible to develop educational standard of the people under the Directive Principles and Policies of the State. Furthermore, as a party to international convention, the State has obligations to fulfil the right to education in a progressive manner, starting from universal primary education.

Over the past five decades, the government has been striving to make education available to all, especially to the most disadvantaged such as school-age children, women and the poor through formal and non-formal means. INGOs and NGOs are also playing a major role in advancing children's right to education. According to Central Bureau of Statistics 2002, the overall literacy rate of Nepal is almost 54 percent, but there are significant disparities when geographical regions and ethnic compositions are taken into account. In urban areas, literacy is 67 percent, compared to 37 in the rural parts. It is lowest in the Mountain region (28%), followed by Terai (33%). The Mid-Hills region have the highest rate at 45 percent. However, nearly 63 percent of the students either drop out or repeat the 1<sup>st</sup> grade. In terms of population, while nearly 62 percent of the Brahmins are literate, only 15 percent of the Chepangs, an indigenous people, are literate.<sup>89</sup> Also, only 25 percent of the Dalits are literate.<sup>90</sup> Likewise, the literacy rate for girls

Right to education is not regarded as the fundamental right under the Constitution. However, the State is responsible to develop educational standard of the people under the Directive Principles and Policies of the State.

<sup>89</sup> New ERA. *Nepal Social Demography and Expressions*. Kathmandu: New ERA Books, 1998. Cited by Mr. Arjun Karki, Ph.D., in his paper "Violation of Human Rights: The Main Cause of Conflict."

The government's withdrawal of free secondary education policy is a step in the wrong direction.

is 39 percent, for boys it is 61 percent.<sup>91</sup>

In the formal school education sector, significant progress has been made in terms of enhancing access to education to fulfill the right of every child to be educated. Primary education in the public schools has been declared free (though parents have to pay fees charged by the school to meet the shortfall in the school budget) and secondary education was also free until recently. The government's withdrawal of free secondary education policy is a step in the wrong direction. At present, government expenditure on education amounts to 13 percent of the national budget. But the education system in Nepal still faces a whole range of problems. Only about 75 percent of the children belonging to primary school age group are enrolled. A large number of children have no opportunity for primary education. The gross enrollment rate is increasing indicating large numbers of underage and/or overage children in the classrooms. Gender disparities in access and

primary school age children are expected to complete their primary education within a period of 5 to 13 years.<sup>92</sup>

The major causes for high drop-out rates and repetition are opportunity costs of education, income poverty, physical distance, perceived irrelevance of education, social prejudices along the lines of caste and ethnicity, under-aged children, irregular school operation and neglect of mother-tongue in school. Many families cannot afford even the most basic school supplies.<sup>93</sup>

Untrained teachers, overcrowding of classrooms, high teacher-pupil ratio, inadequate provision of essential teaching-learning materials and resources, low level of motivation among teachers, and teacher absenteeism continue to hinder improvements in the quality of teaching and learning in schools. In addition, the curriculum content

#### Box 7.4: Impact of Conflict on Children's Education

Thousands of schools in the rural areas are either closed or run by very few teachers. The Maoists have burned down a number of schools. As per the Department of Education estimates, some 3,000 teachers have been displaced from the schools in various districts. Teachers have been brutally murdered, amputated, beaten and threatened by the Maoists. Security forces have also beaten and threatened teachers on alleged charges of being Maoists or Maoist sympathizers. Whilst statistics enumerating the number of students missing classes in the public schools are not available, it is estimated that some 100,000 students in the public schools are affected directly or indirectly by the conflict.

The private schools have also faced the wrath

of the Maoists. One association of private schools has estimated that more than 700 private schools have been closed affecting several thousand students. Schools run on charity have also not been spared.

In 2002 (B.S. 2058), the government significantly reduced the number of the examination centers for the School Leaving Certificate (SLC) examination due to security concerns. In some districts, only one centre was available and armed police and soldiers guarded most of these centers. Students appearing there had to face great difficulty.

Politicization of education, students and student unions has seriously affected children's right to education.

performance are significant. Only 10 percent of the children entering Grade 1 will complete Grade 5 without repeating any grade and only 44 percent of the students enrolled in Grade 1 manage to reach Grade 5. Also, only about 37 percent of the

and teaching methods are not sufficiently related to the economic and social environment awaiting the student outside the school. All these factors contribute to violation of the right of children to receive quality education. The

<sup>90</sup> Nepal South Asia Centre. *Nepal Human Development Report 1998, 2nd edition*. Kathmandu: Nepal South Asia Centre, 1999.

<sup>91</sup> Child Workers in Nepal Concerned Center (CWIN) *Facts about Girls in Nepal*. Kathmandu: CWIN, 2002.

<sup>92</sup> HDR, 1998.

<sup>93</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

poor success rate of public school students in School Leaving Examination remains one major indicator of the problems faced by education in the public schools.

Lately, frequent forced closures of the schools, and closures resulting from strikes and Bandhs have become another factor affecting the quality of education. In B.S. 2059, schools were open only for 120 days. The political parties as well as their sister organizations should realize that their actions violate the basic right to education of 9.4 million children of Nepal.

### **Private School Education**

In the last two decades, private schools, colleges and universities have grown all over the country. While they have played a significant role in providing better education to the children of the elites and the middle class, the overwhelming majority of the Nepalese cannot afford them because they are too expensive. Indeed, the educational system of Nepal has been one of the main targets of the Maoists who have repeatedly forced the closure of schools. Ostensibly protesting the high fees demanded by private schools, the Maoists were reported to have extorted money from private - and public - institutions. Educational institutions were attacked and bombed, property and assets destroyed, teachers were kidnapped and even killed for failing to submit to their demands.

Recently, the Private and Boarding School Association of Nepal (PABSON) had issued an eleven-point code of conduct to operate private schools in a smooth and transparent manner. This self-imposed code of conduct states that schools will no longer charge readmission or registration fees to students who have already been admitted; that there will be no extra charge for building the school's infrastructure; and that schools will reduce their monthly fees between 10-25 percent.<sup>94</sup> Time will tell whether these promises will be fulfilled.

It is clear that the issue of access to quality education needs serious attention of the policy makers and political leaders, the Ministry of Education and civil society. Furthermore, the political parties and their affiliated student wings should seriously consider whether the dismantling of private school system is the solution to the problem the education. They should ask themselves whether the quality of the nation's educational system is best achieved by raising the standard of the institutions of lower quality or by lowering the quality of educational institutions that are perceived to possess higher standards. This is not to say that the private schools in Nepal should not be regulated. They have to be regulated to ensure that they are indeed delivering quality education, have necessary minimum physical infrastructure and health and safety standards, and that they come under purview of the taxation system. The government should also ensure that they abide by the national and international labour laws and demonstrate their social commitment to the nation's poor, even as they strive to provide equality in education in Nepal.

### **Positive Initiatives**

The government has significantly increased the number of primary and secondary schools though the secondary schools tend to concentrate in urban areas. Until recently, education up to secondary level at public schools was free - the parents did not have to pay the tuition but were being charged non-tuition related costs by the school administration due to inadequate financing by the State.

The government in its Tenth Plan has several policies and programs to narrow the yawning gap between the private and the public schools, and thereby improve the overall quality of education in Nepal. To realize this goal, local bodies and communities will be

The political parties and their affiliated student wings should seriously consider whether the dismantling of private school system is the solution to the problem the education.

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<sup>94</sup> *The Himalayan Times*, December 22, 2002.

The Constitution does not explicitly recognise the right to work as one of the fundamental rights of the people. But there are provisions in the Constitution under which the State has responsibility to take steps towards development of employment opportunities.

**Box 7.5: Education for All Goal – A Challenge to the State**

Nepal was a party to the “World Education Forum 2000.” One of its goals is to provide “Education for All by the year 2015”. Nepal, too, has committed itself to fulfilling the goal of ensuring that by 2015 all children, especially girls, will have access to free and quality primary education in Nepal. By the Ninth Plan (1997-2002), Nepal was expected to reach literacy rate of 70 percent, but at the beginning of the Tenth Plan, Nepal’s literacy rate remains approximately 54 percent.

empowered to formulate educational policy and manage educational institutions. According to the plan, emphasis will be given to formal and non-formal technical and vocational education to produce skilled workers and professionals that will contribute toward the development of the nation and, consequently, alleviation of poverty. Women and those of poor socio-economic standing will be particularly targeted to receive such training, since it will increase their opportunity to become employed and raise their quality of life. Furthermore, the Tenth Plan endorses compulsory training for primary school teachers as well as provision for granting scholarships to qualified poor and brighter students. Meanwhile, the government will continue to encourage participation of the private sector in education.

The Tenth Plan notes that the government was able to achieve some of its targets in the education sector set in its Ninth Plan. For example, the enrolment of students in lower secondary and secondary education almost met its target, as did the number of individuals who received long- and short-term technical and vocational training. The scholarships provided by the Women’s Education Program resulted in an increase in the enrolment of girl students. Additionally, more schools started offering special education to its students and the Teacher Training Program also yielded satisfactory results.<sup>95</sup>

## 7.4 Right to Work

The right to work means, first of all, the right to participate in the productive and servicing activities of human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living. The right to work thus ensures that nobody is excluded from the economic sphere. The type of work a person does depends on access to resources, education and training. Work can be enjoyed as a wage-employed person or as a self-employed person. A crucial feature of work is that it allows persons to earn their living.<sup>96</sup> Article 23 of the UDHR guarantees everyone “*the right to work, to free employment, to just and favourable conditions of work and to protection against unemployment.*” Article 6(1) of the ICESCR states that “*right to work, which includes the right of everyone to the opportunity to gain his living by work.*” In the next Article [6(2)] it also says: “*the full realization of this right shall include technical and vocational guidance and training programmes.*” Likewise, the ILO Convention No. 122 requires each member state to ensure that “*there is work for all who are available for and seeking work.*”

The Constitution does not explicitly recognise the right to work as one of the fundamental rights of the people. But there are provisions in the Constitution under which the State has responsibility to take steps towards

**Box 7.6: Caste System and Right to Work**

Even today, in certain parts of Nepal, caste can play a defining role when choosing one’s profession. Those born into ‘occupational’ castes, such as that of sweepers, leather and metal workers, are considered to be of ‘untouchable’ castes. They can face stiff resistance if they wish to change their profession. It should not be forgotten that untouchability is illegal in Nepal and freedom to choose one’s profession is guaranteed to all.

<sup>95</sup> National Planning Commission. *Tenth Plan, Kathmandu: NPC, 2002.*

<sup>96</sup> University of Minnesota. *Circle of Rights ESCR Activism: A Training Resource, USA.*

development of employment opportunities.<sup>97</sup>

In Nepal, a large portion of work force (80%) is engaged in agriculture. The size of the labour force is estimated to be 11.7 million.<sup>98</sup> However, a “large proportion of work force was self-employed, including unpaid family workers.”<sup>99</sup> Furthermore, of the total economically active labour force, 4.9 percent remain fully unemployed; and of the total labour force in employment, a large segment, i.e., 47 percent, is in a state of underemployment, mostly engaged in agriculture.<sup>100</sup>

The problem of the self-employed in agriculture is that they work for only three months in the agriculture sector and are without work for the rest of the year due to the seasonal nature of the work in agriculture sector. Consequently, they are forced to move around, either within the country or into India or beyond to look for

jobs. Wages in the unorganized service sector and agriculture often are as much as 50 percent lower. In June 1998, the government announced an employment plan, which would provide training to 120,000 people and create 140,000 jobs immediately. It further promised to employ at least 200 people from each electoral constituency. But this ambitious plan never materialized.<sup>101</sup>

The Maoist insurgency added to internal and external migration of the Nepalese population searching for work. Developmental activities have come to a standstill. Thus, as many as 60,000 people from various mid-western and far western districts of Nepal have reportedly left their villages, seeking safe havens from the armed conflict or are in search of jobs.

In the formal sector, including the civil service, there is wide disparity in remuneration,

#### **Box 7.7: The Kamaiya System (Bonded Labour)**

Forced labour system has existed in Nepal for hundreds of years. During the 18<sup>th</sup> and 19<sup>th</sup> centuries, the Shah and Rana rulers of Nepal “introduced and institutionalized” various kinds of forced labour systems in Nepal whereby the people had to provide free and compulsory labour such as portage and field work to the government officials and landlords.<sup>102</sup>

Although slavery was officially abolished in 1925 (B.S. 1982) in Nepal, the system of *Kamaiya* (bonded labour) continued to flourish until very recently, especially in the far western districts of Nepal. *Kamaiyas* are overwhelmingly the Tharu people of Terai and are primarily agricultural workers. Besides adult *Kamaiya* workers and their children also work for the landlords, looking after cattle, livestock, sweeping, cleaning, running errands, etc. They received

minimum food, shelter and clothes, but the greatest burden of the *Kamaiyas* was the debt they owed to their landlords, which the children incurred. Thus they too worked to pay off the debts, and in the process, perpetuated this cycle of slavery. A study conducted by INSEC in 1998 disclosed that there were 26,000 men, 15,000 women and 5000 children working under the *Kamaiya* system. According to Mr. Dilip Chaudhary of BASE, “over 100, 000 men, women and children were in *Kamaiya* bonded labour across the western districts.”<sup>103</sup>

The government made a landmark decision on 17 July 2000 to outlaw this pernicious system. It also announced that it would rehabilitate the *Kamaiyas* and pay off their debts, freeing them from ancestral bondage.

More important, the government declared that

no one will be permitted to employ a person as a *Kamaiya* anymore. While the government also stated that necessary arrangements would be made for *Kamaiyas* to earn their livelihood,<sup>104</sup> it has been reported that *Kamaiyas* lack food and shelter and are not receiving any assistance promised by the government. Mr. Dilip Chaudhary reported that after the government announced that the *Kamaiyas* were free, “Landlords threw thousands of *Kamaiyas* off the land and out of their home...they had no work and no food. Many *Kamaiyas* children died from hunger and disease.”<sup>105</sup> Likewise, the Committee of the Economic and Social Council also expressed its dismay that although the system of *Kamaiya* was abolished, the emancipated *Kamaiyas* are facing many problems, including lack of housing, land, work, and education for their children.<sup>106</sup>

<sup>97</sup> Article 26, Section 1, 6, 7 and 10.

<sup>98</sup> NHDR 1998.

<sup>99</sup> *Ibid.*

<sup>100</sup> National Planning Commission. *Ninth Plan. Kathmandu: NPC, 1998.*

<sup>101</sup> Mr. Rohit Kumar Nepal, Ph.D., in his critique of “Violation of Human Rights: The Main Cause of Conflict,” by Arjun Karki, Ph.D.

<sup>102</sup> Karki, Arjun Kumar. “The Main Cause of Conflict.” 2002.

<sup>103</sup> *The Kathmandu Post, December 5, 2002.*

<sup>104</sup> *Gorkhapatra, July 18, 2000.*

<sup>105</sup> *The Kathmandu Post, December 5, 2002.*

<sup>106</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. E/C 12/1/Add. 66 (Concluding Observations/Comments). September 24, 2001.*

In a study conducted in Nepal's five development regions, almost half of the respondents stated that they had no idea about the minimum wage or other legal provisions governing their working conditions, and those who were aware said such regulations had not been effectively implemented.

especially between the high-ranking officers and the low-level clerical workers. In 1999, the government increased the salaries of its employees. Unfortunately, the lower ranks received a raise of merely 16 percent while for the highest ranks and "special class" there was 91 percent increment. Discrimination also exists in employee benefits such as medical allowance, increasing the dichotomy between the rich and the poor.<sup>107</sup> But, because there are many more applicants than positions available in the civil service, very few people are lucky to be employed as civil servants, which almost guarantees that one will work for the better part of one's life. Thus, there are frequent allegations that nepotism and graft play important roles in securing jobs.

In a study conducted in Nepal's five development regions, almost half of the respondents stated that they had no idea about the minimum wage or other legal provisions governing their working conditions, and those who were aware said such regulations had not been effectively implemented. Many labourers said that if they were to complain about their working conditions or demand proper wages as fixed by the government, they would lose their jobs. Almost all respondents in all the five regions admitted the prevalence of wage discrimination as men generally earn more money than women from the same job.<sup>108</sup>

#### **Positive Initiatives**

The Government has taken several policy measures to ensure right to work and right in work. In 1999, the government introduced a minimum wage of Rs. 65 per day for eight hours of work in the agricultural sector, and that stipulated that there should be no wage discrimination between men and women for the same work. In April 2000, a legislation was passed to raise the minimum monthly wage for unskilled labour to approximately Rs. 1,450; for

semi-skilled labour, the minimum was Rs. 1,500; for skilled labour Rs. 1,610; and for highly skilled labour Rs. 1,800. The minimum monthly wage for children aged between 14-16 was fixed at Rs. 1,144. The Labour Act calls for a 48-hour week, one day off every week and limits overtime to 20 hours per week.<sup>109</sup>

In addition, it has launched several employment generation programmes, including employable skills development programmes, and micro credit and savings schemes for self employment.

#### **7.5 Right to Adequate Food**

Access to adequate food is essential for existence of human beings, thus the right to food is closely interconnected to the right to life. The Committee on Economic Social and Cultural Rights on the Right to Adequate Food explains: "that the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement." It further clarifies that the right should not be interpreted narrowly in terms of minimum calorie requirements, proteins and other specific nutrients. Whilst the explanations note that the right to food has to be realised progressively, it clearly states that the State is responsible to take the necessary action to mitigate and alleviate hunger, even in times of natural or other disasters. The Committee noting that the meaning of "adequacy" is largely influenced by prevailing social, economic, cultural, climatic, ecological and other conditions that are unique to a country, set the following as the core content of the right to adequate food:

- The availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse

<sup>107</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights Practices for 1997*. Washington, D.C.: U.S. Department of State, January 1998.

<sup>108</sup> Dahal et al. *Local Perspectives*.

<sup>109</sup> Bureau of Democracy, Human Rights, and Labour. *Nepal: Country Reports on Human Rights and Practices 2001*. Washington, D.C.: U.S. Department of State, March 2002.

substances, and acceptable within a given culture; and

- The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

As a signatory to the ICESCR, the obligations of the government under Article 11(2) of the Convention to keep the people of Nepal free from hunger are as follows:

- To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;
- Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supply in relation to need.

Likewise, CRC Article 27(3) requires the government, in “accordance with national conditions and within their means take appropriate measures to assist parents and others responsible for the child to implement this right (securing the conditions of living necessary for the child’s development) and in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”.

The Constitution does not guarantee the right to food, although it does refer to the State’s policy to provide social security and eliminate poverty.<sup>110</sup>

In a period of two decades, from 1960 to 1980, Nepal became a net food importer from a food exporting country. Of the 75 districts, 45

districts are food-scarce areas, and the situation has gradually worsened. The problem is much more serious for people living in the hill and mountain regions. The Terai region faces an unpleasant paradox: on the one hand, some districts produce surplus food but lack of proper infrastructure prohibits transfer of the surplus to the deficit areas. On the other hand, the price of food grains in Terai is much higher than in the border towns of India. Thus, the problem of food security in Nepal appears to be production as well as distribution. Chronic undernourishment has thus been affecting the growth and well-being of the people, especially children, and hunger and malnutrition exist because of insufficient access to adequate food.

Food insecurity has been a serious problem in the districts in the far western and mid-western regions, which have been hit hard by the conflict between the State and the Maoists. Supply of food to these areas has been obstructed by the Maoists and by the security personnel. The former has looted food grains forcing closure of a number of food depots and the food for work programme. Moreover, Maoist cadres have extorted or looted food grains from the villages. The security forces have blocked and controlled the supply of food by setting an arbitrary quota on the quantity of grains for consumption per person. As a result, food prices in the areas have skyrocketed. Concerned government agencies have not been able to alleviate the hardship faced by the people by ensuring supply of food to the people. This is a serious violation of the right to food as well as the right to life, for food is closely linked with human survival.

### **Poverty and Food Security**

As already noted, 42 percent of the Nepalese population live below the poverty line, of whom 24.9 percent are poor and 17.1 percent are estimated to be ultra-poor<sup>114</sup> [See Table 7.1 ]. The incidence of poverty is higher in the

In a period of two decades, from 1960 to 1980, Nepal became a net food importer from a food exporting country.

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<sup>110</sup> Article 26(1) outlines a directive principle for equal distribution of the economic resource for balanced development in various geographical regions of the country.

**Box 7.8: Some Statistics Regarding Food Security in Nepal**

- In 1997, the World Food Programme (WFP) reported that 35 percent of the population consume less than the minimum 2250 calories daily caloric intake.
- One recent study conducted in 20 districts of various ecological zones found that of the 63 percent of the population owning farmland, including 25 percent leased landholders, only 1.3 percent produced food sufficient for the entire year, half of them producing sufficiently for only 3 months.<sup>111</sup>
- The richest 20 percent have a share of 44.8 percent of the nation's income, while the poorest 20 percent must be content with only 7.6 percent. This means-with the exception of a few landlords, industrialists, businessmen, politicians, bureaucrats and technocrats-the majority of the people in Nepal are poor.<sup>112</sup>
- According to the international poverty measure, 38 percent of Nepalese people earn less than US\$1 a day, resulting in increasing hunger, disease, illiteracy and unemployment.<sup>113</sup>

The incidence of poverty is higher in the rural areas (44 percent) compared to the urban regions (23 percent). Poverty is much higher in the middle and far western Hill and Mountain regions.

rural areas (44 percent) compared to the urban regions (23 percent). Poverty is much higher in the middle and far western Hill and Mountain regions. Moreover, the poverty level among women, occupational castes and many ethnic minorities is well below that of the 'average' Nepalese, especially men.<sup>115</sup> The low rate of income growth, skewed income distribution and, particularly, the deteriorating terms of trade in the agricultural sector vis-à-vis other sectors has intensified poverty.<sup>116</sup>

Furthermore, Table 7.2 reinforces the fact that half of the population (almost 51 percent) feel

that their food consumption is less than adequate (insufficient food or income for family expenses). Similarly, 47 percent of the households manage to obtain just adequate food (i.e., sufficient food and income or family expenses), while only around 2 percent report that they have enough, if not plentiful, food (surplus food and income for family expenses). Strikingly, 63 percent of the people from the mountain region suffer from acute poverty due to lack of access to fertile land, seeds, irrigation, etc. Only 3 percent of the people from this region report having adequate food.

**Table 7.1: Population Below the Poverty Line**

Region-wise Description	Population below the poverty line in %		
	Total	Poor	Ultra-Poor
A. According to geographic region			
1. Mountain	56	29.3	26.7
2. Hill	41	21.3	19.7
3. Terai	42	28.7	13.3
B. Urban and rural area			
1. Urban area	23	13.2	9.8
2. Rural area	44	26.4	17.6
National Average	42	24.9	17.1

Source: Ninth Plan (1997-2002).

<sup>111</sup> INSEC. *Situation of Basic Human Rights (A Baseline Survey Report Among Selected Communities of Nepal)*. Kathmandu: INSEC, 2003.

<sup>112</sup> NGO Working Group on ICESCR/Rural Reconstruction Nepal (RRN). *Nepal Report on International Covenant on Economic, Social and Cultural Rights*. Kathmandu: RRN, July 2001.

<sup>113</sup> The World Bank. *World Development Indicators 2001*. Washington, D.C.: World Bank, 2001.

<sup>114</sup> National Planning Commission. *The Ninth Plan*. Kathmandu: NPC, 1998.

<sup>115</sup> NHDR 2001.

<sup>116</sup> NHDR 1998.

## Constraints on Ensuring Food Security

Skewed land distribution among agriculture households; land fragmentation and dispersed land; improper and inadequate use of fertilizers; poor or antiquated agricultural methods; deterioration or absence of roads; limited outreach of irrigation system, coupled with population growth have been some of the persistent problems that have impeded the people's access to adequate food. Additionally, because of a lack of growth strategy and failure to emphasize sectoral growth, resource mobilization and program selection declined in general, and grain production suffered in particular. Similarly, the pricing policy has discouraged agricultural export, but encouraged the importation of fancy consumer goods. The situation was made worse because the implementation of various strategies regarding food production, distribution,

access, export and import were not transparent. According to the Agriculture Perspective Plan 1995, ineffective policies were the greatest deficiencies in Nepal's agricultural development plan. Agricultural production has remained below its potential, and therefore, failed to satisfy the demand. Moreover, poor investment in irrigation has prevented higher agricultural yield, and the discontinuation of government subsidies for fertilizers and small irrigation systems has also affected the poor.<sup>117</sup> The policy of withdrawing subsidy in fertilizers and irrigation is directly against the rights of people to adequate food and standard of living.

Moreover, the share of agriculture in public investment has declined and a large number of existing projects and programs in agriculture have not been streamlined in accordance with the Agricultural Perspective Plan's objectives. Inadequate or crumbling infrastructures, such

The policy of withdrawing subsidy in fertilizers and irrigation is directly against the rights of people to adequate food and standard of living.

**Table 7.2: Food Consumption by Ecological Zone and Region**

Region	Less than adequate %	Justade quate %	More than adequate %	Total %
A. Ecological Zone	54.23	43.54	2.23	100
1. Mountain	63.16	33.55	3.29	100
2. Hill	54.67	43.11	2.22	100
3. Terai	44.86	53.96	1.18	100
B. Development Region	51.30	46.94	1.76	100
1. Eastern	49.13	49.7	1.16	100
2. Central	49.83	47.42	2.75	100
3. Western	54.82	44.32	0.86	100
4. Mid-western	46.86	51.29	1.85	100
5. Far Western	55.84	41.96	2.19	100
C. Urban	32.20	65.75	2.06	100
1. Kathmandu	11.39	85.86	2.75	100
2. Other	53.01	45.63	1.36	100
D. Rural	52.01	46.17	1.82	100
1. Western Hill/Mountain	58.7	39.93	1.37	100
2. Eastern Hill/Mountain	59.51	37.01	3.48	100
3. Western Terai	42.76	55.61	1.64	100
4. Eastern Terai	44.2	54.83	0.97	100

Source: Nepal Living Standard Report 1996.

<sup>117</sup> NHDR 2001.

In late 1999, the government closed down 41 of the 77 depots of Nepal Food Cooperation under pressure from an international lending institution.

as bad roads, and use of primitive agricultural tools and practices have further handicapped Nepal's agricultural development.

In late 1999, the government closed down 41 of the 77 depots of Nepal Food Cooperation under pressure from an international lending institution. Almost half a dozen of the closed depots were located in remote mountainous area not accessible by roads. As a result, of the closure, people in these areas now have to

and that tenants, therefore, have not obtained security of tenure, and a great number of peasants do not yet possess any land.<sup>119</sup> This observation is especially important in light of the fact that just over 85 percent of the Nepalese people are rural-based, and nearly 80 percent are engaged in agriculture.

While every elected government after 1990 has placed land reform on top of its list, no major land reform has been attempted since 1964,

#### Box 7.9: Food Scarcity in Karnali Zone

The official solution to the perennial problem of food shortage continues to be food transportation at a huge cost to the national treasury in the form of transport subsidy. For example, ever since 1975, when the Karnali Zone was first affected by drought, the government has spent millions of rupees transporting food by planes and helicopters to this area, rather than improving the agriculture productivity of the arable land. While the government should be lauded for bringing food to drought-stricken areas, as it supports the principle of right to adequate food, it should be noted that

there is a need to explore more economical and sustainable solutions to the problem. Besides, it has been reported that a significant portion of the food transported to the Karnali Zone is used in producing local wine!

It appears that the State has not recognized food security and land reform as a serious problem requiring effective policy intervention. Even the Tenth Plan does not seem to have adequately highlighted this issue and is silent on the subject of land or agrarian reform.

walk for days to the nearest location to obtain the food.

#### Positive Initiatives

The government has contended that not only is it trying to improve and increase food production by refining the irrigation system but, additionally, it has been striving to provide seeds and fertilizers to farmers and is also subsidizing fertilizers. Furthermore, food deficit areas are supplied with extra food from the internal sources. There is also the food-for-work program, and food has been made available from external sources, including the World Food Programme.<sup>118</sup> But the Committee on Economic, Social and Cultural Rights noted with concern that land and agrarian reforms have still not been addressed properly,

when the late King Mahendra introduced significant changes in landownership and ceilings on landholding.<sup>120</sup> Planned development was introduced in Nepal in 1956, but development has affected "only 20 to 25 percent of the people," which means that the significant majority of the Nepalese people have yet to be positively affected by nearly 50 years of "development."<sup>121</sup>

#### 7.6 Right to Adequate Housing

The State is expected to recognize the right to housing, as stated in the ICESCR Article 11, by endeavoring by all appropriate means to ensure that everyone has access to affordable and acceptable housing by undertaking a series of measures which indicate policy and legislative

<sup>118</sup> *Initial Report on Implementation of the International Covenant on Economic, Social and Cultural Rights. Addendum. Nepal. October 1999. See also HRI/CORE/1, Add.42.*

<sup>119</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal, 24/09/2001. E/C.12/1 Add.66. (Concluding Observation/Comments).*

<sup>120</sup> Karki, Arjun. *NHRC Regional Seminar Paper: "Main Cause of Conflict."* 2002.

<sup>121</sup> Koirala, Pradip, "Garibsanga Bisheshor-Karyanwayan Pakshya." *The Himalaya Times, 11 February 2000. Cited by Dr. Arjun Karki in "Violation of Human Rights Main Cause of Conflict."*

recognition of each of the constituent aspects of the right to housing, and by protecting and improving houses and neighborhoods rather than damage or destroy them.

In addition, the Covenant prohibits discrimination of any kind as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, in the exercise of the rights stated in the Covenant. This provision requires the state to address several institutional, legal and cultural barriers to access of women to property, such as land and housing. It also requires the state to ensure the refugees and internally displaced persons to have free and fair exercise of their “*right to return to [their] home and place of habitual place of residence,*”

Right to adequate housing is derived from the right to an adequate standard of living, as stated in Article 11(1) of the Covenant on Economic, Social and Cultural Rights. People’s ability to enjoy all economic, social and cultural rights is dependent upon it. As such, it comes within the purview of socio-economic justice as well.

Nepal has no legislation providing the right to adequate housing. The Directive Principles and Policies of the State stipulated in the Constitution, Article 26 (1), visualize the concept of housing and employment policies, but the principles are non-binding. In its 1996 report to the Committee on Elimination of Racial

Discrimination, the government stated that it had provided legislative provisions to raise the living standard of the Nepalese people by developing infrastructure, including housing. As one of its activities in the Eighth Plan, the government undertook to arrange settlement of landless people and provide them basic services. The Plan aimed to re-house some 25,000 families. However, the government has been silent on whether or not it has been able to provide housing for them. Even if it was successful in accommodating 25,000 families, the number is insignificant compared to the estimated half of the population living in temporary type of houses.

The national housing survey conducted in 1991 reported that about half (50.5%) of the total houses in Nepal are of the temporary type and 41.2 % are semi-permanent; the rest belong to the permanent category. The report assumed that about 7% of the dwellings were more than 50 years old. Similarly, in rural areas, out of the total dwelling units about 34% were more than 10 years old, whereas 46% of the dwelling units in the urban areas found to be older than 10 years.

There is an acute absence of culturally appropriate low-cost safe housing policy for rural and urban areas. A large number of people in urban areas live in rented rooms and houses. In the absence of a regulatory mechanism, they are exposed to various tenancy related hassles with the landlord and neighbours. At times,

A large number of people in urban areas live in rented rooms and houses. In the absence of a regulatory mechanism, they are exposed to various tenancy related hassles with the landlord and neighbours.

#### **Box 7.10: Meaning of the Right to Housing**

“In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense, which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus “*the inherent dignity of the human person*” from which the rights in the Covenant are derived requires the term “housing”

to be interpreted taking account a variety of other considerations. Most importantly, the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “*Adequate shelter means ...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost.*”

Source: *General Comment of the Committee on ESCR on The Right to Adequate Housing*

Housing is one of the basic rights of people, and when looked at from local and international perspectives, the inescapable conclusion is that a very large number of Nepalese people are deprived of this right.

they are required to pay unreasonable rents or accept unfair terms of tenancy without any legal basis. This has severely affected a large size of the urban population (24.46% as per the 1991 survey). Furthermore, there is no law governing minimum safety and sanitation standards for rented homes.

Affordable housing finance from either the formal or the informal sector is not available. The average people are willing to build their own homes by borrowing money from the formal lending institutions, but are unable to do so. Among the significant number of the population suffering from physical and financial problems to own a shelter, the underprivileged class are the worst affected, including the landless and agricultural labourers, the recently liberated Kamaiyas (bonded labourers), Halis, Gothalos, internally displaced people, the Dalits, dependants, destitute women, street children, aged, etc. One study indicates that the problem of housing for the poor people is most acute in the urban areas and particularly for the labourers and workers.<sup>122</sup> To cite a single case, the study revealed that five daily-wage workers shared one rented room no larger than 10 feet x 11 feet for Rs. 500 per month in Kathmandu, but such warren-like living is not limited to Kathmandu alone.

The problem of squatting in public land, especially along the riverbanks in Kathmandu valley, is on the rise in the urban areas. The 1991 study reported 8.61% of the total population are squatting on public land and they fall under the poorest of all household tenure bracket. They are forced to squatting due to the lack of other options. The future of

these people is always uncertain, for the government can evict them from the area at any time. There have been quite a few cases of the eviction of settlers.

Housing is one of the basic rights of people, and when looked at from local and international perspectives, the inescapable conclusion is that a very large number of Nepalese people are deprived of this right.

## 7.7 Justiciability

As far as fundamental rights such as right to life, liberty, freedom of opinion and expression are concerned, they carry the provision of constitutional remedy in case of violation. But the issues concerning right to health, right to education, right to food, right to work and the right to housing are stated in the Constitution as Directive Principles and Policies of the State, therefore the enforceability of these rights is a contentious issue. The argument given for treatment of these rights as non-justiciable rights is that they are not rights, but human aspirations, which have to be progressively realized. However, the states obligations to its people can be made justiciable as is evident from the experience of other countries and some of the decisions of the Supreme Court related to environmental health<sup>123</sup>. Indian courts have made basic needs rights justiciable by linking them with the right to life, which is one of the fundamental rights of the people. The court in Nepal also entertained a writ petition related to the right to food, but later on, it was repealed on some other grounds.<sup>124</sup> Obviously, Nepal can learn a lot from the progress made by its close neighbors in making the basic needs-related rights justiciable.

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<sup>122</sup> *Nepal Administrative Staff College (NASC). Governance Assessment (Nepal)1998. Kathmandu: NASC.*

<sup>123</sup> *Surya Dhungel vs. Godavari Marble Industry, Surendra Bhandari v. Shree Distillery, Prakash Mani Sharma v. Cabinet Secretariat. Supreme Court Judgment on Constitutional Issues, 1990-2000 (Pages 175 & 206).*

<sup>124</sup> *Madhav Basnet vs. Prime Minister Girija P. Koirala et al. Supreme Court Judgment on Constitutional Issues, 1990-2000.*



## CHAPTER 8

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### Rights of Women

**“I recognize no rights but human rights - I know nothing of men’s rights and women’s rights ...”**

*- Angelina Grimké, Anti-Slavery and Women’s Rights Activist (1805-1879)*

## 8. Rights of Women

According to the Constitution of Nepal, all citizens of Nepal are equal under the law, regardless of sex, caste and ethnicity. Nevertheless, in actual practice, illiteracy, poverty, deep-rooted socio-cultural values and traditions, especially caste prejudices, and political factors have all often combined to prevent women from exercising their human rights. While human rights are common to men and women, there is a large area in the human rights of women that are either not recognized or neglected.

Human rights instruments are usually interpreted as applicable to formal equality, having intent to regulate the public sphere, whereas discrimination and violations against women occur in the private and intimate domain, especially within the family. Although the State does not directly violate women's rights in the private sphere, it appears to be

### Box 8.1: Exclusion of Women

“Discrimination between males and females starts in the family. Females are not included in the decision-making process, and the opportunities and benefits available in the society are monopolized by males. Women's participation in socio-cultural and political activities depends upon the attitudes of their husbands/fathers/parents/male relatives.”

*Source: Human Rights Situation from the Local Perspectives, Dahal et al.*

supporting or condoning an exploitative family structure through various discriminatory laws and practices. At worst, it simply remains indifferent to the plight of women's human rights. Therefore, it is of utmost importance that women's human rights be guaranteed not just in the public sphere but also in the private domain, and must, therefore, include autonomy regarding the family, reproductive rights and

sufficient economic resources to sustain women and their families.

### 8.1 International Instruments

In 1979, the UN adopted the Convention on Elimination of All Forms of Discrimination against Women (CEDAW),<sup>125</sup> the first historical international document that aims to address all forms of direct and indirect discrimination embedded both in the private and public spheres of women's lives, and obliges State parties to take all necessary measures to eliminate such discrimination. It also addresses the gender insensitivity of the Universal Declaration of Human Rights (UDHR). Thus, CEDAW is considered to be the international Bill of Rights for women, and it defines discrimination to be “*any distinction, exclusion, or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field.*”

Nepal has ratified CEDAW without any reservation, but it has had difficulty in meeting its obligations,<sup>126</sup> because Nepalese women are subjected not only to de facto discrimination, but also to dozens of discriminatory legal provisions. It is contended that currently there are more than 100 legal provisions in 54 different laws, including the Constitution, that discriminate against women.<sup>127</sup> Furthermore, since many of these laws distinguish between married and unmarried women, enjoyment of certain legal rights depends upon a woman's marital status, even though such division has no genuine foundation and is inconsistent with or contradictory to CEDAW, among other international instruments. The gender equality in laws is, therefore, something yet to be achieved in Nepal.

<sup>125</sup> CEDAW was adopted by the General Assembly Resolution 34/180 on 18 December 1979 and entered into force on 3rd September 1981. See also [www.untreaty.un.org](http://www.untreaty.un.org).

<sup>126</sup> For a comprehensive study see, Yubaraj Sangroula, and Geeta Pathak. *Gender and Laws: Nepalese Perspective*. Kathmandu: Pairavi Publication, 2002.

<sup>127</sup> *The Himalayan Times*, November 25, 2002.

It is contended that currently there are more than 100 legal provisions in 54 different laws, including the Constitution, that discriminate against women.

## 8.2 Violence Against Women

Violence against women and girls is a very serious problem throughout Nepal. Nepalese women face varying forms of oppression and violence, depending upon their community, class, caste or ethnicity. They are victims of verbal and physical abuse. Denial of adequate food may on occasion be deliberate (as a form of punishment for some perceived offence against the husband or an elder member of the family). In most traditional homes, women eat only after the men, the elderly and after children have been fed. Women are also subject to sexual exploitation, forced child marriage, forced repeated pregnancies to have a son, untouchability and isolation during menstruation, and, recently, incidents have been reported of violent abuse - and even death - when their families are unable to fulfil dowry demands. On rare occasions, women have been killed because they failed to bear sons, for allegedly having extra-marital relation, or denying sexual demands. Thus, broadly speaking, Nepalese women face oppression, discrimination and violence at every level of society. To illustrate:

- On the economic front, for performing exactly the same job, such as a bricklayer, while a man is paid Rs. 100 per day, a woman makes only Rs. 75 per day.<sup>128</sup>
- Women constitute 95 percent of the agricultural workforce, yet it is usually men who are selected to receive education and training in this field.<sup>129</sup>
- Since the Nepalese society prizes son over daughter, the son receives all the benefits, and the daughter finds herself struggling to acquire comparable education and other opportunities. Indeed, even within her own family, she is seen as someone on 'loan' because she will one day get

married and become a member of another family.

- The Constitution guarantees equal rights to all citizens, but the Citizenship Chapter of the Constitution and subsequent Act discriminate against Nepalese women by not recognising maternal descent for natural citizenship rights for their children and accord unequal treatment on the citizenship right of the foreign spouses of male and female Nepalese citizen.

Thus, under the guise of "*traditional cultural practices*," women everyday are forced to suffer pain, humiliation, and even death. And men who exult in such practices are expressing their conviction in the most forceful manner that women are men's personal property, like sheep or cattle, to be used and abused, to be bought and sold, and to be discarded at whim.

### Forms of Violence

Psychological depression and trauma are the most common experiences of abused women. A study revealed that in 77 percent of the cases, the perpetrator of violence against women and girls was reported to be a family member, and that economic problems and alcohol abuse were the main causes of violence, both within and outside the home.<sup>130</sup> The responses given also indicate that the patriarchal structure of society is a major cause of domestic violence. For example, the women respondents in every district stated that as far as they were concerned, the most common form of violence against women in Nepal is polygamy. It must be emphasized here that under the Nepalese law, the prohibition of polygamy is not absolute.

A woman, of course, does not have the luxury to have a "*co-husband*" if her husband were to suffer from the above-mentioned maladies.

Under the Nepalese law, the prohibition of polygamy is not absolute.

<sup>128</sup> Cited in "Women's Economic, Social and Cultural Rights," a paper presented by Ms. Indira Joshi at the "Regional Seminar on the Human Rights Situation at Grassroots Level," Dhangadhi, October 25, 2002.

<sup>129</sup> *Ibid.*

<sup>130</sup> SAATHI. *A Situational Analysis of Violence against Women and Girls in Nepal*. Kathmandu: SATHI, 1997.

It is interesting to note that while women are punished for alleged practicing of witchcraft, men who are witchdoctors command fear and respect, once again illustrating the entrenched patriarchal nature of the Nepalese society.

### Box 8.2: Sanctioning of Polygamy

In Nepal, a man can remarry, if:

- The Government Medical Board certifies that the wife cannot bear a child.
- If she is infected with an incurable sexually transmitted disease.
- If she is permanently mad.
- If she becomes completely blind.
- If she is paralyzed and unable to walk.

Source: 11<sup>th</sup> Amendment of Muluki Ain

Furthermore, in case of bigamy, the first wife and her children must share their property with the second wife and her children. The recent 11th Amendment of the Muluki Ain has not addressed this issue, which significantly impacts on the share of property of the first wife and her children.

A large majority of the women (73%) did not report incidents of violence due to their financial dependency upon others and 49 percent remained silent in the interest of their children and family harmony. The study also disclosed that while psychological violence was most prevalent in urban areas of the Kathmandu Valley, physical violence was most frequent in hill areas, and cultural forms of violence were most common in the mid-western Terai.

Furthermore, in the urban areas, 86 percent of the women and girls reported telephone harassment and verbal abuse as the most common forms of psychological violence, 57 percent of those interviewed in the Kathmandu area reported receiving abusive letters, 42 percent reported sexual harassment in the work place and 33 percent in public places. In western Nepal, traditional practices such as *badi*, where in the daughter becomes a commercial sex worker to support the family, is still prevalent according to 49 percent of the respondents. Several respondents (38%) in

Banke district also acknowledged that they were aware of dowry-related violence against women, and in Nuwakot in the central hills, 25 percent reported that they knew of women who had committed suicide because they could no longer bear further “*mental torture*.” Medical practitioners themselves have reported that the types of injuries suffered by abused women include broken limbs, burns, rape, even death.

Also, in recent years there has been an alarming rise in the number of rural women accused of being a *boksi* (witch). For example, in Dolpa district, 20 women were punished for their alleged practicing of witchcraft to impair cultivation.<sup>131</sup> In Ramechhap, a woman was forced to consume human excreta.<sup>132</sup> In Makwanpur, an adult woman, accused of being a witch, died while receiving treatment from a witchdoctor.<sup>133</sup> Likewise, sixty-year old Harkamati was severely tortured by men who accused her of witchcraft.<sup>134</sup> It is interesting to note that while women are punished for alleged practicing of witchcraft, men who are witchdoctors command fear and respect, once again illustrating the entrenched patriarchal nature of the Nepalese society.

### 8.3 Trafficking

As far back as 1963, the Muluki Ain defined the crime of trafficking in human beings as “*an act of taking any person or persons, by fraud or enticement, out of the territory of the country with the intention of their sale.*” It is a serious crime punishable with terms of 10 to 20 years of imprisonment. Later, the Human Trafficking (Control) Act 1987 (B.S. 2043) became the primary law in Nepal relating to crimes of trafficking in human beings. It was enacted to combat the growing practice of trafficking in women and girls for sexual exploitation.<sup>135</sup> Among other things, it considers selling of a human being for any

<sup>131</sup> *Gorkhapatra*, 26 December 2001 (11/9/2057).

<sup>132</sup> *Nepal Samacharpatra*, 19 December 2001 (4/9/2057).

<sup>133</sup> *Gorkhapatra*, 16 Decemeber 2001 (1/9/2057).

<sup>134</sup> *Nepal Samacharpatra*, 8 May 2000 (26/1/2057).

<sup>135</sup> *Bureau of Democracy, Human Rights, and Labour. Nepal: Country Reports on Human Rights and Practices 2001. Washington, D.C.: U.S. Department of State, March 2002 notes that “trafficking of boys has been reported in rare instances.”*

purpose and taking any person to a foreign territory with the intention of selling them to be crimes of trafficking in human beings. Punishment ranges from 5 to 20 years of imprisonment. Despite these legal provisions, trafficking of women and girls remains one of the most severe forms of violence against women in Nepal today. It is estimated that between 5,000 and 7,000 Nepalese girls are trafficked every year, primarily to the brothels of India. Each girl is sold for Nepalese rupees 25,000 to 50,000.<sup>136</sup> Furthermore, 50 percent of the victims are lured into India through promise of good jobs and marriage, 40 percent are sold by one of the family members, and 10 percent are kidnapped. Of the hundreds of women who return after having worked in the Indian brothels, nearly 50 percent are found to be HIV-positive.<sup>137</sup>

The government made a commitment to address the problem of violence against women, including trafficking, by reviewing legislation and strengthening law enforcement agencies, but these commitments have not been kept. For instance, it has not removed or amended laws inconsistent with their international obligations. It recognizes that the problem exists but has not acted as required to prevent the victimization of more girls and women. Its shortcomings are visible from the following facts:

- Little attempt has been made so far to regulate movement across the Nepal-India border to prevent the trafficking of Nepalese girls.
- Nepal-India extradition treaty lists 16 kinds of offences, except trafficking.<sup>138</sup> the government has not formulated any plans or policies to encourage India to develop strategies to protect Nepalese girls and women from being sold to the Indian brothels, and it still remains indifferent

to setting up a system of extraditing the traffickers for judicial action.

- There are no “*in camera*” hearings, no victim/witness protection programs or compensation for victims of trafficking.
- Corruption is pervasive, and there are allegations that those in power have encouraged trafficking and even benefited from it.

Regrettably, some people in Nepal and elsewhere believe that Nepalese girls and women volunteer to prostitute themselves to escape their impoverished lives, even though there are frequent media reports that indicate that almost all such women were first promised good jobs, and only later were tricked or forced into prostitution.

The aforementioned Human Trafficking (Control) Act provides for stringent punishments for crimes related to trafficking. It has a special provision in the Act to shift the burden of proof of the act onto the defendant. The accused persons, therefore, have to discharge this evidentiary obligation to prove their innocence.

[See Table 8.1 on Crimes Against Women, per First Information Reports in Section 8.5.]

#### 8.4 Rape

The most violent physical act that can be committed upon a woman is rape. It destroys her physically, mentally and spiritually - and she is scarred for the rest of her life. The Muluki Ain defines rape as sexual intercourse with a woman other than one’s wife, and without the free consent of the woman. Sexual intercourse with a girl below the age of 16 is considered rape, irrespective of her free consent. Consent obtained through intimidation, fraud, or use of

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<sup>136</sup> *The Himalayan Times*, November 25, 2002.

<sup>137</sup> *Bureau of Democracy, Human Rights, and Labour. Nepal: Country Reports on Human Rights and Practices 2001. Washington, D.C.: U.S. Department of State, March 2002.*

<sup>138</sup> *The Himalayan Times*, November 25, 2002.

**Box 8.3: Rape and the Amendment of Muluki Ain**

The 11<sup>th</sup> Amendment of the Muluki Ain provides for 10-15 years' imprisonment in case a victim is under the age of 10, imprisonment of 7-10 years if the victim is between 10-16 years, and imprisonment of 5-7 years if the victim is above 16 years. For gang rape or the rape of pregnant or woman with disability, the punishment is an additional 5 years' imprisonment. The amendment now not only provides *in camera* proceeding for rape cases, but also requires that the victim's statement should be taken by female police officers.

However, recently, in the landmark case of *Meera Dhungana vs. HMG*<sup>140</sup>, the Supreme Court recognized marital rape as an offence of rape and held that consent is a necessary part of sexual relations between a husband and wife. But the recent 11<sup>th</sup> Amendment of the Muluki Ain has not incorporated the Supreme Court's decision.

force is not considered to be free consent. If convicted, the rapist must compensate the victim with half of his *ansha*, his share of family property.

The Muluki Ain also states that any woman who is a victim of rape and kills her attacker within an hour of the attack is exempted from the charge of murder, but if she kills him after an hour, she shall be liable to a term of imprisonment not exceeding 10 years.

Until recently, there was no concept of marital rape in Nepal. A husband maintained sexual control over his wife. However, recently, in the landmark case of *Meera Dhungana vs. HMG*<sup>139</sup>, the Supreme Court recognized marital rape as an offence of rape and held that consent is a necessary part of sexual relations between a husband and wife. But the recent 11<sup>th</sup> Amendment of the Muluki Ain has not incorporated the Supreme Court's decision. And some in the legal profession — and elsewhere — are of the opinion that the legal definition of rape in Nepal still remains very narrow and incomplete.

While statistics on rape, attempted rape, trafficking, polygamy, child marriage and other forms of oppression against women are available, the failure to report such offences of

sexual nature is a serious issue in Nepal, because women fear that by reporting such offences, they will be shunned in their community and bring shame upon the family.

[See also Annex 8 for details of those sections of the Muluki Ain that may be used to redress violence against women and girls.]

### 8.5 Women and the Judiciary

The legal system of Nepal is still largely discriminatory against women. While a series of discriminatory laws have been repealed, women are not effectively protected to the same extent as men. Consequently, violence against women is endemic in Nepalese society. As a result, the offences of rape, attempted rape, trafficking, abortion, polygamy and child marriage constitute a major portion of the criminal caseload of the trial courts.

A research study carried out in 2001 indicates that women's access to justice is severely restricted by various factors, but that gender bias was one of the major restrictions.<sup>140</sup> Table 8.1 is a review of the annual reports of the police, Attorney General and the judiciary, as recorded under the First Information Report (FIR), spanning B.S. 2051-2058 (1994-2001), and shows the patterns of certain major crimes against women in the criminal justice system.

Thus, as the Table demonstrates, over the seven years, a decreasing trend can be seen in the number of FIRs lodged for the crimes of polygamy and child marriage. This should be an evidence of improvement in the situation of women in Nepal. Unfortunately, indications are such that the reverse may be true. For instance, the findings of one recent survey carried out in 14 districts of Nepal show that polygamy and child marriage continue.<sup>141</sup> In fact, the fall in FIRs filed for polygamy and child marriage is actually a cause for concern because

<sup>139</sup> Writ No. 55 of the year 2058 BS (2001-2002)

<sup>140</sup> CeLRRd. Research Report of Trial Court System in Nepal: With Special Reference to Women's Accessibility to Criminal Justice System 2002.

<sup>141</sup> CeLRRd. Baseline Survey 2001. Kathmandu: CeLRRd.

indications are that these crimes are not the priorities for investigators. It may also suggest that communities are reluctant to report them because of the lack of faith in the justice system or indifference to these practices.

The stigma that is attached to victims of rape and trafficking undoubtedly contributes to the low number of FIRs filed. The reticence of the civil society, its lack of faith, if not fear, of those in power, and perhaps a growing awareness that nothing will be done despite official complaints might explain the declining number of FIRs regarding trafficking. Furthermore, injuries sustained by the victims of violence are often seen as "domestic issues" by the police, and therefore not recorded, even though such records are important evidence of assault. Thus, the investigating agency must also bear some responsibility for failing to acknowledge the importance of accurate record-keeping of reported assaults.

For all crimes against women, there have been some fluctuations in the numbers of FIRs lodged. However, on the whole, the levels remain constant even though crimes against women continue to occur with increasing frequency. The investigating agency's commitment to their eradication has, therefore, been found wanting, and the effectiveness of a filtering system at this stage has proven to be ineffective.

The success rate of prosecution in cases where

**Box 8.4: Muluki Ain on Child Marriage and Age for Marriage**

According to the 11th Amendment of the Muluki Ain, the punishment for child marriage is 3 years' imprisonment and a fine of Rs. 10,000. It also provides for equality in age for marriage too. Thus, men and women have to be 20 years old to marry without parental consent, and 18 years in age to marry with the parents' consent.

women are victims is very low. Table 8.2 presents a grim scenario of prosecution failure during the Year 2055/56 (1998/99). In fact, the high percentage of prosecution failure is largely responsible for blocking the accessibility of women to criminal justice.

These data show that in the majority of the cases, the prosecution fails at the trial stage, suggesting that prosecutions are not founded on adequate proof. The number of unfounded cases proceeding to the trial stage must necessarily place a great strain on the courts. The use of an effective filtering device in both the investigation and prosecution stages could reduce the number of failed cases, and could, perhaps, increase the quality of work done by the courts.

While failure to promptly report offences such as rape and trafficking is a serious issue, the main reason why women do not report such incidents is that they fear being doubly victimized due to the inefficiency and insensitivity of the system. Furthermore, and

The reticence of the civil society, its lack of faith, if not fear, of those in power, and perhaps a growing awareness that nothing will be done despite official complaints might explain the declining number of FIRs regarding trafficking.

**Table 8.1: Crimes Against Women, per First Information Report (1994-2001)**

Crime	051-52	052-53	053-54	054-55	055-56	056-57	057-58	Total
Rape	132	125	112	147	141	186	122	965
Attempted Rape	30	27	34	34	18	33	35	211
Trafficking	150	133	117	130	110	120	92	852
Abortion	89	76	74	101	81	89	55	565
Polygamy	173	155	101	135	96	96	75	831
Child Marriage	11	7	5	3	1	5	1	33
Total	585	523	443	550	447	529	380	3,457

Source: CeLRRd. *Research Report of Trial Court System in Nepal: With Special Reference to Women's Accessibility to Criminal Justice System, 2002.*

**Table 8.2: Prosecution Failure Rate (1998/99)**

Items	Rape	Attempted Rape	Trafficking	Abortion	Polygamy and Child Marriage
Total FIRs	141	18	110	81	97
Acted on	141	14	102	76	88
Received	148	23	118	28	98
Prosecuted	148	23	118	28	98
Total Backlog	Backlog: 192	Backlog: 34	Backlog: 192	Backlog: 34	Backlog: 130
New Cases Disposed of by the Court <sup>142</sup>	Disposed:119	Disposed:34	Disposed: 99	Disposed:32	Disposed:98
Conviction	44	12	38	9	58
Partly Convicted	24	4	30	6	25
Acquittal	50	18	31	17	15
Backlog	192	34	192	34	130

Source: CeLRRd. *Research Report of Trial Court System in Nepal: With Special Reference to Women's Accessibility to Criminal Justice System, 2002.*

Despite the fact that victims could provide precise identification of the alleged offenders in all the cases, the prosecution depended on partial evidence in 59 percent of the cases, which led to a complete failure to prosecute in 41 percent of the cases.

as has been mentioned before, reporting sexual crimes to the police is a cultural and social taboo. The victims, and their families, become afraid of public humiliation and social stigma. These socio-cultural factors, unfortunately, obstruct prompt investigation by the police and minimize the possibility of seeking and obtaining justice.

As revealed by a survey of cases in Kathmandu, Sindhupalchok and Nuwakot, only 16 percent of the incidents of rape and trafficking are reported to the police within a day of the occurrence of the incident,<sup>143</sup> and very few victims actually succeed in establishing a case against the accused in the court, due to a combination of factors stated below:

- Reporting of crimes after three days is common in over 72 percent of the incidents, indicating that criminal proceedings may be vulnerable to inaccuracies, especially in relation to crime of rape, because after three days, results of medical examination become meaningless.

In a survey of 71 victims of crimes, the study also revealed the following:

- 54 percent of the 71 respondents reported that the police had mentally harassed the during their investigation.
- 37 percent of the respondents reported that the police did not promptly register the first information report regarding their case after an allegation of crime had been committed.
- 21 percent of the respondents reported that the police did not arrest the alleged offenders.
- 83 percent of the victims were given death threats and physical assault threats if they chose to appear in court. However, the prosecutors remained indifferent to such threats.

Despite the fact that victims could provide precise identification of the alleged offenders in all the cases, the prosecution depended on partial evidence in 59 percent of the cases, which led to a complete failure to prosecute in

<sup>142</sup> The conviction rate was obtained only from the total figure. It was not possible to identify which cases were new ones and which were backlog. Hence, the rate of conviction given here has been based on the total figure received by the court from the prosecutors.

<sup>143</sup> CeLRRd. *Condemned to Exploitation. Kathmandu: CeLRRd, 2000.*

41 percent of the cases. This failure resulted apparently because often the concerned authorities themselves are corrupt and favour the offenders.<sup>144</sup>

Moreover, a study conducted among the justices of different courts disclosed the following.<sup>145</sup>

- 70 percent of the judges do not accept that women have the right to their own body.
- While 58 percent said that it is not cruel to slap one’s spouse once or twice, 52 percent maintain that women should tolerate such violent act to preserve the honor of the family.

In the light of such examples and statistics, it is quite fair to conclude that women will probably not receive fair hearing in the Nepalese justice system anytime soon. Until recently, one of the factors allowing unfair justice to continue has been the open and unmanaged nature of the trial. Indeed, criminal trials of rape and trafficking provide “*free entertainment*” to people attending courts. Also, taking into account the patriarchal nature of the Nepalese society, the questions of defence lawyers during cross-examination not only tend to border on sexual harassment but also lower the dignity of the victim. Indeed, they are often left totally shattered at the end

of the trial, feeling that they have been victimized twice - first by the perpetrator(s), and the second time by the condescending and an insensitive patriarchal court system. However, the recent 11<sup>th</sup> amendment of the Muluki Ain not only provides in camera proceeding for rape case, but also requires that the victim’s statement should be taken by female police officers.

### 8.6 Women in Politics

Despite the Constitutional provision for women’s participation in the political arena, the proportion of women’s representation in Parliament is very limited. In order to break down the male monopoly in politics, the Constitution has granted affirmative action, though not adequate. Thus, there must be at least three women members in the sixty-member National Assembly [the Upper House of Parliament], and at least five percent of the total number of candidates contesting an election to the House of Representatives from any organization or party must be women candidates.

Additionally, to improve the rather bleak picture of women’s participation at the local level, the government introduced the Local Self-Governance 1999 (B.S. 2055) Act that has provisions to reserve one seat for women in each district municipality and village development committee. The Act also compels

70 percent of the judges do not accept that women have the right to their own body.

**Table 8.3: Women’s Participation in Local Political Bodies**

Local Bodies	Total Representatives	Women Representatives	Share of Women in %
District Councils	10,000	150	1.5
District Development Committees	1,117	75	6.7
Municipalities	4,146	806	19.5
Village Development Committees	50,857	3,913	7.7
Village Councils	183,865	3,913	2.1
Ward Committees	176, 031	35,208	20.0

Source: Election Commission of Nepal, 1999.

<sup>144</sup> *Ibid.*

<sup>145</sup> *The Himalayan Times, November 25, 2002.*

**Table 8.4: Women Members in Central Committees of Four Prominent Political Parties**

Name of the Party	Members in the Central Committee	Women Members	Share of Women in %
Nepali Congress	31	3	9.67
Comunist Party of Nepal-UML	34	3	8.82
Rastriya Prajatantra Party	40	3	7.50
Nepal Sadbhawana Party	31	2	6.45

Source: HMG. Second and Third Periodic Reports (Combined). Presented to CEDAW Committee, January, 2002.

all political parties to generate and support female candidates, and as a result, around 44,000 women were involved in local governance.

Despite many weaknesses (for example, the provision does not apply above the ward level), the Act has expanded the roles and sharpened the competencies of local government bodies. Table 8.3 presents the status of women's participation in local politics.

Except for ward committees and municipalities (20% and 19.5% respectively), women's presence is almost negligible in the more powerful district councils (1.5%) and the village councils (2.1%). Furthermore, no woman is a District Development Committee chairperson and there are no women mayors.

Despite such discouraging statistics, it should be noted that women's participation in the political field has increased, although this is not because the society has changed its traditional attitude towards women, but because of the mandatory provisions provided by the Constitution. Although the attitude of the government and the political parties remains prejudiced against women. Figures in

Table 8.4 show the severe exclusion of women in the decision-making role of the four major political parties.

Thus, even though women members make up less than 10 percent of Nepali Congress (NC) Central Committee, it is still the highest figure among political parties in Nepal, whereas Nepal Sadbhawana Party (NSP) has the distinction of having the lowest percentage of women members in its Central Committee (6.45%). But in reality, the number of women members in the Central Committee of the two parties is almost equal. For there are only three women out of 31 Central Committee members in the NC, and the NSP has two women out of 31 Central Committee members. Moreover, a review of the candidature fielded by the ten major political parties reveals that of the total 2,049 candidates, 1,906 were men (94.2 percent), and only 143 women (6.98 percent).

### 8.7 Women in Civil Service

As observed from the data above, given that women's membership even in the major political parties is less than 10 percent, it is not surprising, to discover that women's participation in the civil service is also very poor. The participation of women in policy-making bodies such as the National Planning Commission has been negligible as well. Therefore it is not surprising that women's participation in civil service is negligible. In 2001, for the first time in Nepal, a female lawyer was finally appointed to the Supreme Court. Table 8.5 illustrates the dismal state of women's share of representation in the civil service.

Despite such discouraging statistics, it should be noted that women's participation in the political field has increased, although this is not because the society has changed its traditional attitude towards women, but because of the mandatory provisions provided by the Constitution.

#### Box 8.5: Prism of Social Value

*"Nepalese society being patriarchal, people still don't see women politicians as their leaders, no matter how capable they are. They tend to see them through the prism of social roles as sister, wife, and daughter-in-law, etc."*

Source: Roshan Karki (RPP member), quoted in *The Kathmandu Sunday Post*, January 5, 2003.

**Table 8.5: Representation of Women in the Civil Service**

Description	Total Number of Civil Employees	Number of Women	Share of Women in %
Strength of Civil Service	93,716	8008	8.55
Gazetted-Level Employees	9,517	487	5.12
Non-Gazetted Level Employees	84,199	7,521	8.93
Special and First Class Officers	647	26	4.02
Officers in Class Two	2,356	113	5.04
Officers in Class Three	6,514	348	5.34

Source: Ministry of Women, Children and Social Welfare, 2002.

The table shows the following trends:

- The proportion of women employees declines as one moves up the administrative hierarchy - of the total 647 Special and First Class Officers, only 26 are women (4.02%).
- As in the political parties, there is less than 10 percent overall participation of women in the civil service - another example of gender bias against women. It also explains why there is a lack of sensitivity in enforcing the provisions of the Constitution and international human rights instruments concerning gender equality.

The participation and representation of women in other areas of the State is equally dismal, as evidenced by the following few examples:

- In the judiciary, of the total number of judges, less than 2 percent are women (including the sole woman Supreme Court judge).
- No woman heads any of the committees in the House of Representatives.
- There are five universities in Nepal, but no women occupy the positions of Vice Chancellor, Rector, Registrar, or Controller or Chairperson of the Public Service Commission.
- There has been only one female

ambassador in the nation's diplomatic history.

- A large number of women in the police force are engaged in subordinate roles such as women's custody cell management and, especially, traffic control because of the belief that women are more tolerant, which once again reinforces the stereotyping of gender roles in the Nepalese society.
- The Military Act of 1960 (B.S. 2016) forbids women to serve as combatants in the army.

### 8.8 Right to Health

The right to health and reproductive choice is one of the major new developments in the field of human rights. Increasingly, governments throughout the world are being forced to accept that the population issue requires the empowerment of women through education and economic opportunity. As has already been noted, certain traditional and cultural practices such as inducing abortion to prevent the birth of a baby girl, miscarriage due to heavy workload and being allowed to eat only after the men and elders (which often means not having enough to eat) adversely affect women's health and safety. One of the most common health risks that Nepalese women face the society's preference for a son, forcing women to give birth to several children or undergo repeated abortions.

The proportion of women employees declines as one moves up the administrative hierarchy - of the total 647 Special and First Class Officers, only 26 are women (4.02%).

### Box 8.6: Changing but not Adequately

Commenting upon the difference between pre- and post-1990 years, almost all the women respondents stated that in the post-1990 days, “Women have the opportunity to speak and exchange views with their husbands; to participate in public forums, institutions, and political parties, and also get elected in different tiers of local government bodies, particularly the VDCs...but they also pointed out that women still are not often encouraged to participate in socio-cultural and political activities, and when they do, their ‘character’ is questioned and, worse, the male members of their families criticize them.”

Source: *Human Rights Situation from the Local Perspectives*, Dahal et al.

According to the United Nations Fund for Population Activities, illegal, unsafe and induced abortion is responsible for 50 percent of the maternal deaths in Nepal.

One recent survey conducted by the Centre for Research on Environment Health and Population Activities revealed that four months after abortion had been legalized by the government, only 22 percent of the respondents were aware of it; and while 91 percent of women respondents living outside of the Kathmandu Valley agreed that abortion had to be legalized, they had no idea it had already been done so.<sup>146</sup> Illegal abortion in Nepal often takes place in unhygienic conditions, and is often performed by quacks, endangering the lives of women. According to the United Nations Fund for Population Activities, illegal, unsafe and induced abortion is responsible for 50 percent of the maternal deaths in Nepal. However, the 1<sup>th</sup> Amendment of the Muluki Ain has taken some positive steps in this regard. For example, it provides that in case pregnancy poses danger to the life of the pregnant woman or to her physical or mental health, or if it leads to the birth of a child with any disability, she has the right to have an abortion at anytime upon the advice of a medical practitioner. It also provides that women have the right to terminate pregnancy by the 12th week, and in case of rape or incest, by the 18th week.

### 8.9 Women’s Health and National Legal Framework

There are certain laws that appear to respect women’s right to reproductive health. Thus

the Civil Service Regulations 1993 (B.S. 2050) grants a woman civil servant maternity leave with full pay for 60 days before and after child delivery, but it is granted for only two babies during her service. The Labour Regulations of 1993 (B.S. 2050) similarly grants 52 days of maternity leave with full pay for only two babies. But even these laws are not totally free of discriminatory traits. A woman worker is not entitled to take leave in the event of miscarriage or other pregnancy-related health matters. Furthermore, these provisions also act to control the reproductive rights of women by limiting the maternity leave they may be granted to two pregnancies. Besides, many women have little or no choice in planning their families. Therefore, if a woman’s husband decides that he wishes to have more than two children, it puts the woman at risk of unemployment, directly affecting her economic interest and independence. Such provisions are yet another example of the attempts of the patriarchal society to control the liberty and identity of women.

Furthermore, the vast majority of women workers — whether in private households or factories and industries — receive no maternity leave or any medical benefit whatsoever. In fact, in private households, it is not unusual for the servant — male or female — to receive no salary; she (or he) is expected to be grateful just to receive minimum food, shelter and clothing. Should a woman worker face any major medical problem, such as a potentially fatal disease or unwanted pregnancy, she is simply let go to fend for herself.

Additionally, in the recent decades, unprotected sexual behaviour by men has become a major source of the spread of sexually transmitted diseases (STDs) in Nepal that directly impugns the right to life of thousands of women. UNAIDS pointed out that 90 percent of the women [in Nepal] who are HIV-positive do not belong to the highrisk groups. In other words, their husbands who either visit commercial sex workers, or are migrant labourers, or are injecting drugs infected them.

<sup>146</sup> *The Himalayan Times*, November 22, 2002.

[See also Annex 9: CEDAW Committee's Concerns and Recommendations regarding the Status of Nepalese Women.]

### 8.10 Positive Initiatives

The formation of the National Women's Commission is an indication that the government is serious in its efforts to alleviate the violence, oppression and prejudice faced by a significant number of Nepalese women. As has been noted before, any political party contesting general elections must have at least 5 percent women candidates, and in the sixty-member National Assembly, at least three must be women. Additionally, the Local Self-Governance Act reserves at least one seat for women in each ward of the Village Development Committees and municipalities.

Nepal's maternal mortality rate is highest in the South Asian region. In the Tenth Plan, the government is aiming to reduce maternal mortality from 540 to 400 per 100,000. To help achieve this goal, nutrition program, family planning and mother-child welfare program, safe motherhood/fertility health program, and fertility health of youth program have been given top priority.

The Ministry of Health has also constituted a separate section to deal with issues of reproductive health. The objective is to reduce total fertility, raise consciousness on contraception and improve women's overall reproductive health. Furthermore, the first phase of the "Safe Motherhood Program" is currently being implemented in 10 out of the 75 districts with the aim to strengthen community-based maternal health services at the grassroots level and promote a referral system.

The government has endorsed the National Plan of Action on Gender Equality and Women's Empowerment prepared by the Ministry of Women, Children and Social Welfare. The Plan includes an agenda for increasing the number of women in the constitutional bodies, judicial

service, public enterprises and the civil service. In line with the objectives, the Plan has suggested an increase of 20 percent in the number of women MPs in both the houses, to be achieved by the adoption of a reservation exclusively for women. As per provisions of the Plan, the Women's Police Cell has been established in 16 districts so far.<sup>147</sup> A Legal Aid Cell, based in Kathmandu, has also been established to help victims in matters of legal redress.

The government is in the process of introducing legislation to protect women from

#### **Box 8.7: Shorter Life Span of Nepalese Women**

*"While the global trend is that women live longer than men, women in Nepal, on the average, have a life span which is shorter by about two years compared to men's and this pattern has held for the last 45 years."*

*Source: National Human Development Report, 1998.*

domestic violence. In April 2002 (Chaitra 2058), the House of Representatives passed the Domestic Violence (Crime and Punishment) Bill 2058. At present, the matter is under consideration by the National Assembly, which is not functioning due to the political crisis resulting from the absence of an elected government.

One of the most significant programs launched by the government (Ministry of Local Development) was the Production Credit for Rural Women (PCRW), which is a component of the Small Farmers Development Program, Micro-Credit Project for Women (MCPW) and the Four Regional Grameen Banks. The objective of the PCRW is to improve the economic and social status of rural women. It promotes the self-reliance of women's groups wherein access to credit is provided, which in turn strengthens the organizational capacity of women so that they will be enabled to develop their own institutions. Women are thus encouraged to participate in their communities and participate in activities beyond their

The government has endorsed the National Plan of Action on Gender Equality and Women's Empowerment prepared by the Ministry of Women, Children and Social Welfare.

<sup>147</sup> *Ibid.*

The National Human Rights Commission of Nepal has recently appointed the National Rapporteur on Trafficking in Women and Children to work with it in its mission to address human rights violations resulting from criminal activities of human trafficking in the country.

**Box 8.8: Positive Changes Brought by the 11<sup>th</sup> Amendment of the Muluki Ain**

Recently, the 11<sup>th</sup> Amendment of the Muluki Ain has brought about many positive changes in order to realize women’s human rights. Some of these provisions are as follows:

- Daughters have been granted equal inheritance right to ancestral/family property. However, she must return her share of inheritance after marriage, thus diminishing her hard-won right.
- Full right to widow in inheritance: It has removed the provision that a widow must attain the age of 30 to live separately before taking her share of property. A widow is entitled to use her share as she wishes even if she remarries.
- Right of wife in husband’s property: the Amendment removes the condition that women must attain age 35 and complete 15 years of marriage before they can live separately and take their share from their husbands.
- The daughter has the same right to food, clothing, appropriate education and health as the son.
- To address the problems that may arise in the execution of the judgment relating to partition, and to make such execution effective, it provides for imprisonment of up to five years or a fine of up to five thousand or both to the party who denies giving the details of property.
- Inheritance rights of a divorced woman: In the existing law, a woman is denied the right to property from both her parents and from her in-laws in case of divorce. The Ac has provided that partition of the property must be made between the husband and wife at the time of divorce. Likewise, if a divorced woman wants to have yearly or monthly expenditures instead of taking her share, the court must set such expenditure on the basis of the husband’s property and his level of earnings. A woman can have such expenditure until she is remarried.
- A married woman may adopt a son under some conditions: The Amendment changes the provision that women whose husbands are still living or who have living sons of their own or of co-wives are precluded from adopting a child. It provides that a wife who has separated from her husband after taking her share of property may adopt a child, if she does not have a son.
- Equal right to divorce in case of sexual intercourse with a third person outside wedlock.
- Equal right of inheritance to unmarried daughters as sons by reforming the existing discrimination in the matter of priority for getting the intestate property.

homes. Additionally, MCPW is also involved in institutional strengthening of NGOs as local credit agents and financial intermediaries. Results have been impressive. Women have become credit clients and savings have been generated, thus increasing household incomes.

The National Human Rights Commission of

Nepal has recently appointed the National Rapporteur on Trafficking in Women and Children to work with it in its mission to address human rights violations resulting from criminal activities of human trafficking in the country. The Rapporteur is working as a focal point at the Commission for activities involving women, children and gender relations.

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## CHAPTER 9

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### Rights of Children

**“Mankind owes to the child the best it has to give.”**

*-UN Convention on the Rights of the Child*

## 9. Rights of Children

The UN Convention on the Rights of the Child (CRC) declares that children (below the age of 18) have the right to adequate food, clean water, health care and education; that children should be under the care of their family or those who will take best care of them; and that they are to be protected from all forms of exploitation, including physical, mental and sexual abuse.

Children should be cherished. They are the citizens of tomorrow who will contribute and participate in the development of the nation. Thus, they should be guaranteed survival, development, protection and right to participation in their community and the nation. Nepal's population is just over 23 million of which children under 16 years comprise 41 percent of the total population, and while the proportion of child population between 0-14 years is increasing, the proportion of economically active population (15-59 years) is decreasing.<sup>148</sup>

The majority of the children live in villages, and most of them are uneducated, deprived of health care, leisure, and mental and physical development. Because of widespread poverty, most of the children are also malnourished, rendering them vulnerable to diseases. The statistics related to children in the year 2002 are as follows:

- Infant mortality (under 1) is 66 per thousand live births and under-five child mortality stands at 75 per thousand live births.
- Diarrhoea kills 27,000 children every year.
- About 90 percent of the children were immunized against polio and almost 90 percent children received Vitamin A supplement.
- Food shortages and famine in 45 out of the 75 districts in Nepal were responsible for the decline in children's health.
- Nearly 47 percent of the Nepalese children suffer from malnutrition.
- 40 percent of marriages involve children

below 15 years, indicating that child marriage is common, especially in the rural areas where people adhere to traditional practices.

- For more than a decade, about 100,000 Bhutanese refugees have languished in refugee camps in eastern Nepal. Among them 43,000 are children, and most of them suffer from various problems, including sexual abuse.

### 9.1 International Instruments Regarding Children

The UN' Convention on the Rights of the Child (CRC) declares that children (below the age of 18) have the right to adequate food, clean water, health care and education; that children should be under the care of their family or those who will take best care of them; and that they are to be protected from all forms of exploitation, including physical, mental and sexual abuse. The International Labour Organization (ILO) Convention No. 138 (1973) on the Minimum Age, to which Nepal is a party, has designated age 15 for employment, although developing countries may initially set the minimum age at 14. However, one compulsory exception to this general rule is that for any employment that is likely to jeopardize the "health, safety or morals" of young people, the minimum age must be no less than 18.<sup>149</sup> On June 1999 the International Labour Conference unanimously adopted the Worst Forms of Child Labour Convention (182) and Recommendation (190) urging immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. In addition to the CRC, Nepal had signed two optional protocols:

- Optional Protocol to the Convention on the Rights of Children on the Sale of

<sup>148</sup> Central Bureau of Statistics. *Population Census 2001*. Kathmandu: CBS.

<sup>149</sup> International Labour Standards Summaries of the ILO's Fundamental Human Rights Conventions. (See: <http://www.ilo.org/public/english/region/ampro/portofspain/standards/conventions.htm>.)

Children, Child Prostitution and Child Pornography and,

- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

After ratifying the Convention on the Rights of the Child in 1990, Nepal has taken the following initiatives to domesticate the CRC:

- Enactment of the Children's Act 1992 (B.S. 2048) and Children's Rules 1995 (B.S. 2051).
- Formation of a Task Force in 1997 to boost children's development.
- Formation of a Central Level Child Welfare Committee and District Child Welfare Committees in all 75 districts. (Pilot projects have been launched in 10 districts.)
- Juvenile benches were established in all 75 districts.

Nepal has also participated in many conventions sponsored by the South Asian Association for Regional Cooperation (SAARC) with the object of protecting and promoting child rights. For example, the Third Ministerial Conference of the Children of South Asia held in 1996 in Rawalpindi, Pakistan, called for the elimination of child labour from the region by the year 2010. Likewise, during the 11<sup>th</sup> SAARC Summit held at Kathmandu in

January 2002, two Conventions on Women and Children were signed. They are:

- Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution.
- SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

## 9.2 National Legal Framework

The Constitution states: *"No minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work; ... the State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education."*

Regarding children, the Muluki Ain stipulates that minors under the age of eight are not responsible for any crimes they might commit, and crime committed by minors between the age of 12 and 16 is punishable by law to the extent of half the punishment meted out to adults convicted of the same crime.

The Children's Act 1992 makes provisions for, among other things, equal rights of children born in and out of wedlock, and of natural and adopted children, as also for the establishment of homes for abandoned, orphaned and handicapped children. It prohibits discrimination between sons and daughters on

*"No minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work; ... the State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education."*

### Box 9.1: Inconsistencies in the Definitions of a Child

The Children's Act of Nepal, enacted in 1992 (B.S. 2048), defines a person below 16 years of age as a child in Nepal. However, there are several laws, which define a child differently. The Election Law, for instance, defines a person as a child who is below 18 years. It thus prevents persons under 18 years of age from participating in elections, whereas many other laws consider 16 years as the age of puberty. In matters of criminal liability, the Children's Act, against the best interest of child, has lowered down the age to 12 years. Several other Sections of Muluki Ain take 16 years as an age of puberty for various

legal transactions. The Contract Act allows a person aged 16 years and above to enter into contractual obligations. The Labour Act defines a person aged below 14 years a child. Thus, the laws of Nepal apparently create a State of confusion in relation to the definition of a child in terms of age. The provision that makes 12 years as the minimum age for criminal liability is one of the most serious failures of the Act. (See also Annex 3: "Important Laws Enacted Following Accession of International Human Rights Instruments," S. N. 7 'Children's Act.')

Child labour is not a new phenomenon in Nepal. It has a long tradition that reinforces the inherent inequality in the Nepalese society, especially the exploitation of the lower castes/ classes by the superior ones, particularly as domestic servants.

matters of their proper upbringing and education, and forbids ‘offering’ of girls to deities. According to the Act, children under 10 years are not criminally liable, and those between 10 to 14 years of age can be imprisoned up to six months depending upon the nature of the crime, but children aged 14-16 are, classed as minors, and as such are liable to half the adult fine and half the adult jail sentences.

Likewise, the Child Labour (Elimination and Regulation) Act 1999 (B.S. 2056) prohibits the employment of children under the age of 14 and prevents children from being employed in work that is likely to be harmful or hazardous. Furthermore, no child can be employed against his/her will.

Despite the Nepalese government’s commitment to uphold and promote the rights of children at the international, regional and national levels, the implementation of these provisions is inadequate. According to the Social Justice Committee of the National Assembly, among several important concerns, the major issues confronting the child are:

- No clear legal provision for controlling sexual exploitation of the children.
- Failure to provide “Education for All.”
- Lack of proper care and education for children who are in jail with their guardians.
- Weak government machinery for the protection and promotion of the rights of the child.
- Absence of a clear demarcation or precondition to be abided by orphanages.

In the year 2002, Child Workers in Nepal Concerned Center (CWIN) recorded a total of 4,506 incidents related to the exploitation of

children, sexual exploitation of children, child trafficking, forced prostitution, child labour exploitation, child death, missing children, children in armed conflict and children in conflict with the law.<sup>150</sup>

### 9.3 Child Labour

Forms of child labour in Nepal include:

- Children working with or under the immediate supervision of their families in agriculture and domestic jobs with parents.
- Children without family, who provide services as workers or apprentices.
- Children with family but working as domestic helpers outside their homes.
- Vagrant children who have been abandoned, orphaned, neglected, thrown out or lost or have run away from their families and will do any work to stay alive.

Child labour is not a new phenomenon in Nepal. It has a long tradition that reinforces the inherent inequality in the Nepalese society, especially the exploitation of the lower castes/ classes by the superior ones, particularly as domestic servants. Often the children of servants are also roped in to assist their parents in the household work, either by the parents of the children themselves or the masters of the household. A glaring example of the total subjugation of an entire people — the indigenous Tharus of western Terai — was the *Kamaiya* system and bonded labour in which, until not too long ago, 5000 children were trapped.<sup>151</sup> Not only did the *Kamaiya* children provide free labour to their masters, but also ended up inheriting the debt incurred by their parents and grandparents.

The Central Bureau of Statistics (CBS) conducted a nationwide Nepal Labour Force Survey (NLFS) in 1998/99. According to the

<sup>150</sup> CWIN. *National Report on the State of the Rights of the Child in Nepal-2003*.

<sup>151</sup> *Gorkhapatra*, July 18, 2000.

**Table 9.1: Rates of Current Economic Activity among Children Aged 5 to 14, by Sex, Locality and Age**

Age	Total			Urban			Rural		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total number of children aged 5 to 14 years:									
Total	4,860	2,480	2,380	540	282	258	4,320	2,198	2,123
5-9	2,437	1,233	1,204	261	137	124	2,175	1,095	1,080
10-14	2,423	1,247	1,176	278	145	134	2,145	1,103	1,042
Children economically active:									
Total	1,987	914	1,073	103	49	54	1,884	865	1,019
5-9	510	226	285	19	9	10	491	217	274
10-14	1,476	688	788	84	40	44	1,393	648	745
Percentage currently active:									
All	40.9	36.8	45.1	19.0	17.3	21.0	43.6	39.3	48.0

Source: CBS. Report on the Nepal Labour Force Survey 1998/99.

**Table 9.2: Labour Force Participation Rates for Children Aged 5 to 9 and 10 to 14 - Based on School Attendance and by Sex and Locality**

Age Group	Total			Urban			Rural		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Number of children attending school:									
Total	3,454	1,975	1,479	472	255	217	2,982	1,720	1,262
5-9	1,653	919	735	225	122	103	1,428	796	632
10-14	1,800	1,056	744	247	133	114	1,554	923	630
Percentage of children currently at school:									
Total	71.1	79.6	62.1	87.4	90.5	84.0	69.0	78.2	59.5
5-9	67.8	74.5	61.0	86.1	89.2	82.7	65.6	72.7	58.5
10-14	74.3	84.7	63.3	88.6	91.7	85.2	72.4	83.7	60.5
Percentage of those at school who are currently active:									
Total	36.6	35.2	38.5	15.8	15.1	16.7	39.9	38.1	42.2
5-9	19.1	17.9	20.7	6.5	6.1	6.9	21.1	19.7	22.9
10-14	52.6	50.2	56.1	24.3	23.3	25.5	57.1	54.0	61.6
Percentage of those not at school who are currently active:									
Total	51.4	43.4	55.9	41.4	38.2	43.5	51.9	43.7	56.5
5-9	24.7	19.5	28.3	12.7	9.0	15.2	25.3	20.0	28.9
10-14	85.0	82.7	86.0	74.3	74.3	74.3	85.6	83.3	86.6

Source: CBS. Report on the Nepal Labour Force Survey 1998/99.

report, some economic activities of children (aged 5-14) were unreported, which probably occurred in the urban rather than the rural areas. If the children were attending school and were not engaged in economic activities outside

school hours, they were classified as economically inactive. This survey disclosed that children aged 5-9 and children aged 10-14 made up 21 percent and 61 percent of the labour force respectively (See Tables 9.1 and 9.2.).

Nepalese children continue to be victims of random as well as premeditated violence perpetrated by individuals who employ them, the State, and during the armed conflict, also by the Maoists or others operating under the Maoist label.

The NLFS report noted that around 2 million children aged 5-14 perform a total of 44 million hours of work per week, representing 22 hours of work per week on average for every working child. Boys and girls undertake about the same amount of work. The majority of children (1.7 million) are engaged in agricultural activities. It is estimated that some of the 36,000 children aged 5-14 are possibly facing “*at-risk*” working conditions in the manufacturing and construction industries, and children of age group 5-14 are also carrying out various non-economic activities at home such as cooking, cleaning, minor repairs, shopping, carrying loads, minding other children, etc.

Most recent statistics suggest that the total number of working children between 5 and 14 years is 2.6 million, of which the economically active children are 1.7 million. Furthermore, 127,000 children are engaged in the worst forms of child labour, with 85 cases of exploitation of child labourers recorded by CWIN alone.<sup>152</sup>

Besides working in agriculture, manufacture, industry and private homes, Nepalese children also earn money by begging, even prostitution. (See Table 9.3.)

In addition, child labour persists due to the under-developed economy (GDP growth around 3% in 2000-2001), widespread poverty (42% in absolute poverty), disproportionate land distribution pattern (6% of the population owns 46% of the cultivable land),<sup>153</sup> uneven distribution of population (as mountain and hill areas become degraded because of population pressures, people migrate to the Kathmandu Valley and the southern Terai belt, reinforcing the population pressure in these regions in that process) as well as inadequate educational, health and communication facilities in rural areas.

#### 9.4 Violence Against Children

Nepalese children continue to be victims of random as well as premeditated violence perpetrated by individuals who employ them, the State, and during the armed conflict, also by the Maoists or others operating under the Maoist label. In the early 1990s, more than 15 children died in a random police firing. In December 2000, two innocent school children were killed by police firing in a riot between the police and students, which erupted over an Indian film star’s alleged remarks against the Nepalese people.<sup>154</sup> And, according to a recent newspaper report, during the seven-year conflict, at least 110 children were killed, 62 by the State and 48 by the Maoists.<sup>155</sup>

Both the State and the Maoists in various parts of the country have committed gross violations of human rights, especially after the declaration of the state of emergency and the promulgation of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. Children as young as 12 years old have been shot by security personnel. Bombs and landmines placed by the Maoists in public places and roads have also killed or maimed children. Almost 500 children under the age of 15 have had their rights violated in 2001.<sup>156</sup> Additionally, Olara Otunnu, the UN Special Representative for Children and Armed Conflict, stated that Nepal’s Maoists have also been included in a list of opposition groups that used children as soldiers, porters and sex slaves.<sup>157</sup> Furthermore, hundreds of children below 18 were allegedly abducted by the Maoists to engage them in different activities during the conflict.

Street children in Nepal also are targets of abuse and violence. The estimated number of children living in the streets of Nepal is about

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<sup>152</sup> CIWIN. *State of the Rights of the Child 2003*

<sup>153</sup> NHDR 2001.

<sup>154</sup> *Report on the State of the Rights of the Child 2001*.

<sup>155</sup> Gorkhapatra, November 24, 2002.

<sup>156</sup> INSEC. *Human Rights Yearbook 2002*. Kathmandu: INSEC.

<sup>157</sup> *Nepali Times*, 20-26 December, 2002.

5000. Although this number is not very high, the trend of migration towards cities is on the rise, and the armed conflict has further increased the number of children seeking refuge on the streets of urban centres. Street children are exposed to crime, alcohol, substance abuse and sexual exploitation, including unsafe sex.<sup>158</sup>

In the year 2002, 91 cases of child sex abuse were recorded. Of the estimated 440 commercial sex workers in Kathmandu, 30 percent were children. In the same year, 137 cases of trafficking were recorded; among them 49 were children. Rescue, repatriation and rehabilitation work is going on. Out of the 2,219 women and children rescued from India, 677 were Nepalese. Also during the year 2002, CWIN recorded 54 cases of domestic violence and abandonment of children, and in 2003, 79 incidents of violence on children were documented, including murder of 11 children due to family feuds.<sup>159</sup>

## 9.5 Juvenile Justice System

International human rights instruments consider children who come into conflict with the law as victims of social hardship, neglect, violence and deprivation. Thus, they require special attention, treatment and health care. A number of studies reveal that the segment of children who face criminal justice (arrest, detention, investigation, prosecution, adjudication and imprisonment) are more prone to developing criminal behavior and reverting to criminal activities.

International law on juvenile justice prohibits detention or imprisonment of juveniles with adults and has established specific rules concerning juveniles in detention. Thus, children awaiting trial are presumed innocent and should be treated accordingly. Only in exceptional cases should juveniles be detained, and in such cases, the highest priority should

be given to expedite cases of juveniles in preventive detention. Additionally, juveniles awaiting trial have the right to legal counsel and to apply for legal aid.

The UN Rules for the Protection of Juveniles Deprived of their Liberty have also established specific standards regarding the management of juvenile facilities and qualifications of personnel working in juvenile justice systems. Moreover, juvenile detainees must also be provided with education, training, medical care, and allowed to contact family members and the community.

Juvenile law was framed in Nepal more than a decade ago, but there is a big gap between rhetoric and practice. As noted before, the Social Justice Committee has criticized the lack of effective implementation of the Acts related to children.<sup>160</sup> Although a juvenile bench has been established in every district court, and all district administration offices are entitled to establish child welfare committees, these provisions are “hardly functioning”.<sup>161</sup>

After the Committee on the Rights of the Child received Nepal’s initial report [on children’s rights] in 1995 (it was due in 1992), it too expressed concern over the “gap between the existing legislation and its practical implementation.”<sup>162</sup> For example, the Social Justice Committee’s most recent report recommended that arrangements be made for the immediate establishment of children’s court, but Nepal does not have a separate system of criminal justice for juveniles.<sup>163</sup> However, the Children’s Act does provide for the establishment of “juvenile benches,” and they have been set up in 10 of Nepal’s 75 districts.

For juvenile offenders, probation, fine, bail, or discharge under the supervision of a person named by the court can be used as an alternative to prison, and some of these

Although a juvenile bench has been established in every district court, and all district administration offices are entitled to establish child welfare committees, these provisions are “hardly functioning”.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> INSEC. *Human Rights Yearbook 2002.*

<sup>161</sup> *Ibid.*

<sup>162</sup> CRC/C/15/Add. 57, 7 June 1996.

<sup>163</sup> INSEC. *Human Rights Yearbook 2002.*

Nepal's Children's Act provides that a child found guilty of an offence and punished with imprisonment shall be kept in a juvenile reform home, but until such a home is established, the government may temporarily use juvenile welfare homes, orphanages or centres established and operated by other persons or agencies.

methods — bail, fine and warning — have been utilized. Community service, engaging the community and pre- and post-imprisonment measures are still very novel ideas in Nepal's juvenile system. But in the remote rural areas, it has been found that the traditional methods of conflict resolution continue to be applied. In view of the nature and interest of the juvenile offender, it is necessary to implement legislation that recognizes and encourages these alternative methods of punishment and rehabilitation.

Nepal's Children's Act provides that a child found guilty of an offence and punished with imprisonment shall be kept in a juvenile reform home, but until such a home is established, the government may temporarily use juvenile welfare homes, orphanages or centres established and operated by other persons or agencies.<sup>164</sup> The Act does provide for the creation of welfare homes in which children can be placed, but because of "lack of budget," these have not yet been established.<sup>165</sup>

### 9.6 Children in Detention

Since the police are authorized to arrest, investigate and proceed with charges against persons in criminal cases, they are the ones with whom children, who have allegedly committed an offence, first come into contact. It is widely reported that the police abuse this authority, resulting in a pattern of arbitrary arrest and detention. After arresting the accused, the police generally detain them. The determination of the age of the [child] detainee always comes later, and it should be re-emphasized, that contrary to international instruments, the children are often placed with adult detainees and tried as adults in ordinary courts.

Legislation requires the police to bring those arrested before the court or the CDO office within 24 hours of arrest, but it is hardly applied

in practice. In many cases, the police fabricate the date of arrest. They keep children as long as they want and prepare arrest papers that show that the arrest took place no more than 24 hours ago.

It has been found that the majority of child arrests were for petty crimes such as stealing small amounts of money, as well as drug and public offences. Police make random arrests, especially of street kids, and place them in custody for some days or weeks and just charge them with public offence, a charge that puts many detainees at risk since a defence lawyer is not required to defend the detainees charged with public offence, even though the law requires that a child's case should not be heard unless represented by a lawyer. If a child cannot afford a lawyer, the court itself has to provide one, but this is seldom done. In interviews with 400 detainees in police custody, more than 80 percent of those interviewed claimed that their date of arrest was falsified, and that they were not taken to the court or the CDO office within 24 hours, as specified by law.

The dependents of adult offenders are one of the largest categories of children deprived of their liberty in Nepal — and ones most at risk. Under Nepal's Prison Act 1963 (B.S. 2019), when a female inmate gives birth to a child, or has a child who is below two years old, the mother may keep her child until he/she reaches two years of age. When both parents are in prison, and there is no other family member to look after the child, the child is taken to a children's welfare home, and the child has the right to visit his/her parents in prison.

If children aged between 10-14 commit an offence punishable by prison terms, the punishment will be limited to a maximum period of six months. If they are between 14-16 years of age, punishment will be half that of an adult convicted of the same crime.

<sup>164</sup> Section 42, Children's Act, 1991.

<sup>165</sup> National Report on Follow-up to the World Summit for Children, Nepal, 2001. (See also [www.unicef.org](http://www.unicef.org).)

While the Children's Act states that only children below the age of 10 are exempt from criminal responsibility, in 1997 children as young as nine were reported to have been imprisoned.<sup>166</sup> Furthermore, it was reported that in Rukum district, a 13-year-old boy was arrested and accused of being a Maoist. Before his trial date was scheduled, he was held for six months with 54 adults in a cell designed for only 15 persons.<sup>167</sup>

In 1998 there were approximately 100 children considered as delinquents or accused of public offences who were incarcerated with adults.<sup>168</sup> In 2001, there were 27 juveniles in the prisons of Nepal.<sup>169</sup> However, as of November 2002, the government adopted a new policy whereby the children of imprisoned parents were removed from the jails and transferred to child protection centre under the Nepal Children's Organisation.

The figures mentioned above appear to be inconsistent, therefore, do not give a clear picture of the problem. According to Advocacy Forum, a Kathmandu-based NGO, a great number of the juveniles in custody are detained illegally with their date of birth falsified. In Nepal, since most children are born at home, and many parents lack awareness of the importance of obtaining a birth certificate, births are seldom registered.<sup>170</sup> As a result, in most cases, juveniles report that the investigating officers falsified their date of birth. In fact, the Committee on the Rights of the Child has recommended that Nepal carry out programs for birth registration and take further steps to ensure the birth registration of children, including establishment of mobile registration offices and registration units at schools.<sup>171</sup> Nepal has yet to do so.

## 9.7 Positive Initiatives

For the development of children, the government and nongovernmental bodies have carried out various programs. Besides the government bodies and international agencies, nearly 240 NGOs have been currently registered throughout the country to work in the field of child development. Several hundred community-based organizations, educational institutions and the media are also engaged, and some progress has been made. For example,

- Bonded labour (Kamaiya), which greatly affected children, has been declared illegal.
- Juvenile benches have been established in a few districts.
- Day care centres have been opened in some places for the children of workers.
- Informal education programs have been expanded.
- Since 1995, international agencies, in partnership with the NGOs and local bodies, have been implementing the International Program on the Elimination of Child Labour (IPEC) in 29 districts of Nepal. Its activities have affected 13,500 children and 6,160 families.<sup>172</sup>
- The Tenth Plan (B.S. 2002-2007) lays emphasis on child development and child rights. It has stated various policies and strategies for the protection of children, extension of education to children and child health and nutrition programs.

But in the end, to bring any significant change

A great number of the juveniles in custody are detained illegally with their date of birth falsified.

<sup>166</sup> U.S. Dept. of State. *Country Reports 1997*.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> INSEC. *Yearbook 2001*.

<sup>170</sup> CRC/ C/3/Add.34.

<sup>171</sup> CRC/C/15/Add.57, Para 31.

<sup>172</sup> ILO. *ILO-Nepal Partnership 35th Anniversary. Kathmandu, 2001*.

in the extremely exploitative child labour conditions in Nepal, there has to be a change in the attitude and practice of the Nepalese people themselves. As an article on child domestic servants noted, members of the urban middle class, who employ children in their homes, are the very same professionals “*who dominate public discussion, define social*

*problems, formulate policy and implement decisions.*”<sup>173</sup> If these people advocate the elimination of child labour in public forum and mercilessly exploit child labour at their homes, farms, industries and factories, things are only likely to get worse. In other words, it is time to practice what has been preached.

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<sup>173</sup> Matthew, T. “*Liberation of the Child Domestic.*” *HIMAL South Asia*, November 2002, Kathmandu.



## CHAPTER 10

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### Rights of the *Janajatis*

**“Discrimination on the basis of race is illegal, immoral, and unconstitutional, inherently wrong, and destructive of democratic society.”**

*- William J. Bennett with Terry Eastland in “Counting by Race”*

## 10. Rights of the Janajatis

It is interesting to note that there exists a certain degree of ambiguity regarding the status of the Janjatis and the status of indigenous people. While the government has formally recognised the Janjatis this has not been the case with indigenous people. The ambiguity arises when some indigenous people are included in the list of Janjatis, but all Janjatis are not indigenous people.

The first formal enforcement of caste principles and conduct on the basis of *Manusmriti* Code of Hindus in Nepal started as far back as the 14<sup>th</sup> century during the reign of King Jayaisthiti Malla (1382-1395). The second attempt, was made by Jung Bahadur, the first Rana prime minister of Nepal by introducing the Muluki Ain in 1854 that effectively reclassified the population of Nepal into a four-fold Hindu caste hierarchy. This social structure included the Janajatis, even though they had never been a part of the Hindu caste system. As the four main castes were further sub-divided according to their high, low or 'untouchable' caste status, Nepalese society was defined as made up of *Char Varna Chhatisjat*, i.e. four *Varna* ('varna' literally means color) and 36 *Jat* ('jat' means caste); some of them were *Tagadhari* (thread-wearing higher caste), *Matawali* (liquor-drinking lower, but not 'untouchable' caste), and varieties of other low or 'untouchable' castes and sub-castes from whom high caste persons could or could not accept food and/or water.

The old Muluki Ain of 1854 did not end discrimination among people, but, instead, legalized punishment according to one's caste status. Consequently, it sustained discrimination, prejudice, inequality and injustice among the people.

### 10.1 Identifying the Janajatis

According to the International Labour Organization (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries, "*peoples in independent countries are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the*

*establishment of present boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions.*" In Nepal, the term has been used to refer to those ethnic groups who first settled in different parts of the country.<sup>174</sup> Although the Nepalese government has not recognised the concept of indigenous people (*Aadibasi*), it recognised the existence of 61 Janajati (nationalities) in 1999 as per the recommendation made by a task force on the establishment of a Foundation for Indigenous Nationalities in 1996. Later, National Foundation for the Development of the Indigenous Nationalities Act 2002 (B.S. 2058) recognised existence of 59 Janajati groups in Nepal (See Table 10.1. for the list of the groups).

Janajatis are those ethnic groups who have their own territorial areas, mother tongue, religions and cultures, but, as mentioned above, do not fall within the Hindu four-tiered *Varna* and associated caste hierarchy. It is interesting to note that there exists a certain degree of ambiguity regarding the status of the Janjatis and the status of indigenous people. While the government has formally recognised the Janjatis this has not been the case with indigenous people. The ambiguity arises when some indigenous people are included in the list of Janjatis, but all Janjatis are not indigenous people. However, the Nepalese scholars in this field claim that in the case of Nepal almost all Janajatis (nationalities) are indigenous, and are therefore generally referred to as Janajatis.

Furthermore, according to *Rastriya Janajati Utthan Pratisthan Sthapana Garne Sambandhi Pratibedan* (Report of National Foundation for the Development of Indigenous Nationalities, 1996) Janajatis are those who possess the following characteristics:<sup>175</sup>

<sup>174</sup> Gurung, Harka, Malla K.Sunder, Krishna Bhattachan, and Om Gurung, *Janajati Bikasko Jukti (Ideas for Nationalities' Development)*. Kathmandu: Janajati Bikash Kendra, 2000.

<sup>175</sup> See Raj, Prakash A.. *Who is a Janajati? Anatomy of a controversy in The People's Review-A Political and Business Weekly, 11-18 March 1999 for counter arguments.*

- Those who have a common cultural identity that is separate from other caste and ethnic groups. For instance, the Sherpas, Rais and Gurungs have their own distinct cultural identity, but at the same time, they share certain common cultural patterns among them.
- Who have their own language, religion, custom and cultural tradition.
- Who have a traditional social structure based on equality.
- Who inhabit the traditional geographical terrain.
- Who have written or have yet to write their own history.
- Who have the sense of a ‘we feeling.’
- The community that lacks a decisive role in modern Nepalese politics and exercise of power.
- Who are the indigenous people of Nepal.
- Those who proudly call themselves Janajatis.
- Those who do not fall under the traditional four-fold Hindu *varna* classification.

## 10.2 National Legal Framework

Over the years, the government has introduced various constitutional provisions to eliminate

Over the years, the government has introduced various constitutional provisions to eliminate discrimination and promote equality among all the citizens of Nepal, especially the Janajatis and other low caste population of Nepal.

**Table 10.1: Indigenous Nationalities of Nepal**

### A. MOUNTAIN:

1. Bara Gaunle	7. Lhomi (Shingsawa)	13. Thakali
2. Bhutia	8. Lhopa	14. Thudam
3. Byansi	9. Marphali Thakali	15. Tingaunle Thakali
4. Chhairotan	10. Mugali	16. Topkegola
5. Dolpo	11. Siyar	17. Sherpa
6. Larke	12. Tangbe	18. Walung

### B. HILL:

1. Bankaria	9. Hayu	17. Newar
2. Baramo	10. Hyolmo	18. Pahari
3. Bhujel/Gharti	11. Jirel	19. Rai
4. Chepang	12. Kushbadia	20. Sunuwar
5. Chhantyal	13. Kusunda	21. Surel
6. Dura	14. Lepcha	22. Tamang
7. Fri	15. Limbu	23. Thami
8. Gurung	16. Magar	24. Yakkha

### C. INNER TERAI:

1. Bote	4. Kumal	7. Raute
2. Danuwar	5. Majhi	
3. Darai	6. Raji	

### D. TERAI:

1. Dhanuk (Rajbanshi)	5. Kisan	9. Tajpuria
2. Dhimal	6. Meche	10. Tharu
3. Gangai	7. Rajbanshi (Koch)	
4. Jhangad	8. Satar/Santhal	

*National Foundation for the Development of the Indigenous Nationalities Act 2002 (B.S. 2058)*

The social structure developed under the Hindu religion for the smooth functioning of society eventually undermined the Janajatis because the domination of Hindu culture and tradition had a negative effect on them.

discrimination and promote equality among all the citizens of Nepal, especially the Janajatis and other low caste population of Nepal. The 1961 Constitution of the Kingdom of Nepal clearly states that all citizens have equal rights and no citizen shall be discriminated on the basis of his/her religion, race, sex, caste, tribe or ideological conviction. The New Muluki Ain was for the implementation of “*equal offence, equal punishment*,” and abolished punishment based upon one’s caste. It also declared untouchability to be illegal. The present Constitution (1990) reiterates that all citizens are equal before the law and that “*No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.*” It further states, “*No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place; or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.*” It is also worth noting that the Verbal Abuse Act 1959 (B.S. 2016) provides for punishing those who disrespectfully address people and humiliate them on the basis of their caste.

### 10.3 International Instruments

The UN Minority Rights Declarations (MRD), adopted by the General Assembly in 1992, calls upon states to ensure that, among other rights, minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination; that minorities have the right to practice their culture and social life; that they have the right to establish and maintain their associations; that states should take appropriate measures so that persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue; that states should encourage knowledge of the history, tradition, language and culture of the minorities existing within their territory; that it is the duty of the states to protect the identity of the minorities, and, furthermore, national policies and programs shall be planned and

implemented with due regard for the legitimate interests of persons belonging to minorities.

Likewise, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (UNDEIRD) proclaims, “*Discrimination between human beings on the ground of race, colour or ethnic origins is an offence to human dignity and shall be condemned... that all states shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists.*” In addition, it proposes that all propaganda and organizations based on ideas or theories of the superiority of one race or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned, and that all states shall prosecute and/or outlaw organizations which promote or incite racial discrimination based on race, colour or ethnic origin. However, neither the government nor the people in general have shown much inclination toward implementing or practicing in their daily lives many of the provisions of not only the international human rights instruments but even the nation’s own laws prohibiting discrimination based on one’s ethnicity, race, religion, etc., as the next section illustrates.

### 10.4 State of the Rights of the Janajatis

The social structure developed under the Hindu religion for the smooth functioning of society eventually undermined the Janajatis because the domination of Hindu culture and tradition had a negative effect on them. For example, many of them abandoned their own cultures and traditions in favor of Hindu customs and practices. Furthermore, the State simply usurped the collective and customary rights of the nationalities over land and natural resources. Only after the restoration of the multiparty system have the Janajatis come forward raising various issues directly related to their group/ ethnic identity, existence and human rights. Some of their central concerns - and government policies and societal practices

that violate their human rights - are discussed below.

### Hindu State and Dominance

The old constitution (A.D. 1961) had declared Nepal as a Hindu State based on "*Hindu Religion, Hindu Culture*", though the country had been a mosaic of many religions and many cultures for nearly two centuries. The socio-political and cultural realities of Nepal have been dramatically altered since 1961. The overwhelming majority of the Nepalese people today accept and rejoice over the fact that the nation is a multi-ethnic and multi-religious democratic State. In this context, one of the major concerns of the Janajatis today is the declaration of Nepal as a Hindu State also by the Constitution of 1990, ignoring the fact that in contemporary Nepal, many Nepalese no longer accept the national Hindu identity,

**Box 10.1: Registration of Shiva Sena Party (Nepal): An Inconsistent Act of the State**

While a number of ethnically named political parties have been banned, the Shiva Sena Party (Nepal), a Hindu religion based group, was registered in 1999; which contravenes Article 113, Section 3 of the Constitution which states that "*The Election Commission shall not register any political organisation or party if any Nepalese citizen is discriminated against in becoming a member on the basis of religion, cast, tribe, language, or sex or if the name, objectives, insignia or flag is of such a nature that it is religious or communal or tends to fragment the country.*"

as they belong to several different religious groups such as Buddhist, Islam, Christianity, Kirat, Bon, etc. Yet, most of the public holidays are overwhelmingly given on Hindu festivals. Majority of the national heroes and symbols hail from the elite class and are Hindu males. Indigenous names of rivers, mountains, lakes, gods/goddesses and festivals have been annexed or transformed by the dominant Hindu culture. For example, originally Sagarmatha was

called as Chhomolungma/Jhomolungma. Likewise, the loss of group identity is another serious issue. Family names in Hindu culture also identify one's caste and status within its rigid society, but it is not surprising that, in order to escape racial/ethnic and caste discrimination, many Janajatis have either abandoned their family names or have simply appropriated Hindu names or so called high caste family names. Thus, indigenous names such as Pemba Sherpa, Angwang Lama or Som Maya Chepang become Ganesh, Krishna and Parvati. Similarly, many Limbus began cremating the dead, as Hindus do, instead of burying them, as was their traditional custom. Rich Limbu families have also started employing a Brahmin priest to conduct Hindu ceremonies at their homes as well.<sup>176</sup> Another study stated that the indigenous peoples of Nepal were forced to follow the Hindu culture when they were banned from eating beef.<sup>177</sup>

Moreover, media controlled or influenced by the government often do not disseminate information regarding various non-Hindu religions and associated matters. Thus, it appears that the Royal Nepal Academy, Radio Nepal, Nepal T.V. and other State (and some private) agencies are emphasizing, promoting and celebrating predominantly Hindu customs and practices neglecting festivities, holidays, customs and practices of non-Hindu peoples.

### Right to Self-Determination

Janajatis of Nepal generally fully respect the present sovereignty and territorial integrity of Nepal and rule out secession. While the Nepal Communist Party (Maoist) has made it clear that Janajatis and other historically disenfranchised groups have the right to self-determination and has incorporated such rights into its party platform, there is a strong concern that call for self-determination could give impetus to a possible disintegration of the nation. Thus, the definition of the right to self-determination in the Nepalese context today

The overwhelming majority of the Nepalese people today accept and rejoice over the fact that the nation is a multi-ethnic and multi-religious democratic State.

<sup>176</sup> Upreti, B.P. *Limbuwan Today: Process and Problem*. "Nepalese Studies," Kathmandu, 1976.

<sup>177</sup> Holmberg, David H. *Order in Paradox: Myth, Ritual and Exchange among Nepal's Tamang*. Delhi: Motilal Banarsidas Publishers, 1996.

**Box 10.2: Domination of Brahmins and Chhetris in Civil Service**

According to the Nepal Human Development Report of 1998, in 1854 A.D. 98 percent of the top civil service positions were held primarily by Brahmins and Chhetris, and that this percentage figure has come down to only 92 percent in 1998. Thus, it took 144 years to drop 6 percent and 24 years to fall one percent.

requires further clarification.

**Language and Educational Rights**

Until a few years ago most of the languages of the Janajatis had not been accepted in the school curriculum and Sanskrit was compulsory in most grades, but it has significantly changed for Sanskrit is now taught as an optional subject.

Nepal is very rich and diverse in languages — linguists have identified more than 125 languages and dialects. The Constitution has made a distinction between the “*nation’s language*” (*Rastra Bhasha*) and “*national languages*” (*Rastriya Bhashaharu*), and declares Nepali language, the “*nation’s language*,” as the only official language. Until a few years ago most of the languages of the Janajatis had not been accepted in the school curriculum and Sanskrit was compulsory in most grades, but it has significantly changed for Sanskrit is now taught as an optional subject. Such practice grossly violates the provision of equal treatment in respect to other languages. While the government has gradually introduced school curriculum in different languages, implementation of the curriculum in the schools remains a problem due to lack of teachers trained in teaching in other languages. Another gross inequality lies in the area of State investment in education. For instance, the government spends Rs. 32.1 million annually for 690 students at Mahendra Sanskrit University, which means that the State is spending Rs.45,000 for each student of Sanskrit, whereas it spends only Rs. 25,000 on students studying science, management, medicine, education and the humanities.<sup>178</sup> Even more strangely, the Sanskrit University of Nepal, established in Dang, which is primarily inhabited by the indigenous Tharu people, has more faculty members than

students. Besides, comparable investments have not been made to promote other languages, which have been recognised as national languages.

On the basis of interpretation of Article 6 of the Constitution, the Supreme Court of Nepal has also made a ruling that the local bodies, such as the District Development Committee and the Village Development Committee, must use Nepali language as the only official language.<sup>179</sup> The government policy that all official transactions must be made in Nepali language is regarded as unfair by Janajatis. Therefore, although Nepal is a multi-ethnic nation, the philosophy of one language - “Nepali” - poses a serious threat to the existence of other languages. For example, the languages of the *Duras* and the *Hayus* are already extinct.

**Under-Representation in Politics and Decision-Making Process**

Janajatis are under-represented in the civil service and security forces and suffer from disproportionate representation in the legislative bodies and political appointments. Compared to its population size, the Brahmin-Chhetri group, whose combined population is around 30 percent of the total population of Nepal, holds 3 times more positions than other groups in decision making bodies, including the executive, the judiciary and the legislative bodies; in political parties, mass media and the civil society. In areas such as the Palace Secretariat, the police and the army, the constitutional bodies and the courts, the percentage of the minorities is insignificant. Moreover, the elite Brahmin-Chhetri castes, along with the elite Newar people (who make up 5.6 % of the total population and continue to struggle against cultural discrimination from other groups) also enjoy better access to resources. Jointly these communities were holding more than 81.7 percent of the

<sup>178</sup> Malla, Kamal P. “Bahunbad: Myth or Reality ?” *Himal*, May/June 1992, Lalitpur.

<sup>179</sup> Supreme court’s Decision in the case *Lal Bahadur Thapa Vs Ministri of Local Development on constutiravel Dispute* (Page 523).

**Table 10.2: Integrated National Index of Governance, 1999**

Institutions	Bahun-Chhetri (Khas)	Indigenous (Mongol/ Kirat)	Madhesi*	Dali	Newar*	Others	Total
Courts	181	4	18	0	32	0	235
Constitutional bodies	14	2	3	0	6	0	25
Cabinet	20	4	5	0	3	0	32
Parliament	159	36	46	4	20	0	265
Public Administration	190	3	9	0	43	0	245
Political parties leadership	97	25	26	0	18	0	166
DDC chair/vice chair, mayor/ deputy mayor of municipality	106	23	31	0	30	0	190
Industry/ commerce leadership	7	0	15	0	20	0	42
Educational leadership	75	2	7	1	11	1	97
Culture: academic & professional leadership	85	6	0	0	22	0	113
Science/Technology	36	2	6	0	18	0	62
Civil society leadership	41	1	4	0	8	0	54
Total	1,011	108	170	5	231	1	1,526
Percentage	66.25	7.08	11.14	0.33	15.14	0.07	100
Population %	31.60	22.20	30.90	8.70	5.60	.10	100
Difference %	+34.65	-15.1	-19.76	-8.37	+9.54	-0.03	

\* 9 percent of the Madhesis are indigenous peoples and Newar is also an indigenous community.

Source: Neupane, Govinda, *Nepalko Jatiya Prashna (The Question of Nationalities)*. Kathmandu: Centre for Development Studies, 2000.

leadership positions in important areas of the judiciary, executive, legislative, and public administration in 1999. As Table 10.2 demonstrates, in the field of educational leadership, of the total 97 positions available, 75 are held by Brahmin-Chhetris and only 2 by the Janajatis. Of the 245 positions available in Public Administration, 190 are held by Brahmin-Chhetris and a mere 3 by the indigenous peoples. Only 2 Janajatis hold positions in Science/Technology, of the total 62 available, and there are no indigenous peoples in position of leadership in the Industry/Commerce sector, where 42 are available. Furthermore, as Table 10.3 also indicates, there are absolutely no minorities of any sort represented in the Election Commission and in the ranks of Major or above in the Nepal military.

In brief, the figures in the tables above lend credence to the perception that racial, ethnic

and caste-based prejudice and discrimination are quite prevalent in Nepal today and the so called lower caste people continue to lack opportunities to improve their status.

### Right to Natural Resources

Janajatis have economic, cultural as well as spiritual relationship with land, forest, hill, mountain, pasture, river, water, etc. This centuries-old relationship is breaking up because of official policies alienating them from their natural resources for over 200 years. A case in point is the eviction of 5,000 people from Bardiya valley to extend the Royal Bardia National Park. Many of the people evicted did not receive any compensation. There are still many Janajatis such as the Tharus, Bankariyas and Rautes who still live only in the forest. Meanwhile, Hill migrants have appropriated Tharu lands and made them their *Kamaiyas* - bonded labourers; they have also taken over

**Table 10.3: Distribution of Dominant Castes (Brahmin-Chhetri) and Minorities in Key Positions**

Positions	Percentage of Dominant Castes Brahmin-Chhetri	Percentage of Minorities	Total Number of Positions 100%
<b>A. JUSTICES:</b>			
1. Supreme Court	88.8	11.2	18
2. Appellate Court	69.1	30.9	107
3. District court	89.0	11.0	110
<b>B. MINISTERS:</b>			
1. Minister	68.4	31.6	19
2. State Minister	62.5	37.5	8
3. Assistant Minister	40.0	60.0	32
<b>C. PARLIAMENT:</b>			
1. House of Representative (Lower House)	60.4	39.6	205
2. National Assembly (Upper House)	58.3	41.7	60
<b>D. CONSTITUTIONAL BODIES:</b>			
1. Public Service Commission	50.0	50.0	6
2. Election Commission	100.0	0.0	3
3. Commission for Investigation of Abuse of Authority	60.0	40.0	5
5. National Planning Commission	50.0	50.0	6
6. Auditor General	100.0	0.0	1
<b>E. HMG ADMINISTRATION:</b>			
1. Secretary and Joint Secretary at the Royal Palace	71.4	28.6	28
2. Secretary or Equivalent in HMG	74.3	25.7	39
3. Major and above ranks in Military	100.0	0.0	7
4. Inspector General of Police (IGP) and AIGP in Police	75.0	25.0	4
5. Chief District Officer	86.1	13.9	72*
<b>F. LOCAL BODIES:</b>			
1. President of District Development Committee (DDC)	66.6	33.4	75
2. Mayor and Deputy Mayor of Municipalities	49.1	50.9	116
<b>G. MAIN POLITICAL PARTIES (CENTRAL COMMITTEE MEMBERS):</b>			
1. Nepali Congress	70.9	29.1	31
2. Nepal Communist Party (Unified Marxist-Leninist)	87.5	12.5	32
3. Nepal Communist Party (Marxist-Leninist)	50.0	50.0	36
4. Rastriya Prajatantra Party (Thapa)	44.1	55.9	34
5. Rastriya Prajatantra Party (Chand)	43.7	56.3	32

\* The caste/ethnicity of three Chief District Administrators was unidentified and hence they are excluded.  
Source: Adapted from 1999 data provided by Govinda Neupane.

Chepangs are the forest dwellers of Chitwan, Makawanpur and Dhading districts, but because they do not possess land registration certificate, they are ineligible to receive citizen certificate.

the grazing lands of the Tharus and are cultivating crops instead. The Chepangs are the forest dwellers of Chitwan, Makawanpur

and Dhading districts, but because they do not possess land registration certificate, they are ineligible to receive citizen certificate. The

### Box 10.3: Janajati Women

Comparatively speaking, Janajati women are in a better position than their Hindu counterparts. Janajati women are more or less equal to men, and in certain communities, they are as powerful as the men, if not more so. In the Gurung and Thakali communities, women have the right of ownership of land and home. Unlike Brahmin-Chhetri communities, divorce, widow marriage, remarriage and love marriage are accepted and respected in most of the Janajati communities. Moreover, many Janajatis have a matrilineal family structure. However, inequality among men and women does exist, and it is more pronounced among those who

have internalised Hindu values. Furthermore, patriarchal laws and codes imposed by the State throughout Nepal have also contributed to widen the gap between males and females among the Janajatis, since they have to obey the laws of the land, which take precedence over the community traditions. Additionally, there are fewer employment opportunities available for the Janajatis. Therefore, many male members migrate within Nepal and beyond to earn income to support their families. Consequently, there are many female heads of households, which further increases their burden.

Satars of Jhapa face a similar problem. Janajatis have also protested over the fact that they are often harassed by uncooperative government officers when they apply for their citizenship papers.

Furthermore, as noted above, the State has arrogated the traditional customary laws and collective rights on land, forest, water, pasture and other resources collectively owned by the indigenous community. For instance, during the land reform movement in 1968, Limbus lost their traditional autonomy over the *kipat* system (communal landownership). The suspension of these customary laws and rights not only violated the rights of the Janajatis but has also been hastening the rapid demise of traditional knowledge systems, customs and practices, to the detriment of the nation's development.

### 10.5 Positive Initiatives

In the Ninth Plan did the National Planning Commission first give consideration to the Janajatis and formulated appropriate programs for their betterment. And in response to the demands of the *Janajati Mahasangh* (Nepal Federation of Nationalities), the government has taken the following steps to bring all ethnic groups of the country into the national mainstream in the context of the democratisation process of Nepal:

- Radio Nepal broadcasts news in Gurung, Tamang, Magar, Tharu, Limbu, Rai, Awadhi and Bhojpuri languages.

- Education in mother tongue of each ethnic group has theoretically been approved. Textbooks have been either published or are in the process of being published in Limbu, Tamang, Abadhi, Tharu, Rai, Magar, Newari and Maithili languages.
- The National Committee for the Development of Nationalities (*Rashtriya Janajati Bikas Samiti/ Janajati Uttathan Pratisthan*) has been established for the advancement of the Janajatis.
- Population figures of the Janajatis after the census of 1991 have been made available. Until 1990 the government seldom provided information on Janajatis.

In addition, in the current Tenth Plan, the government has included the following under its Targeted Program for Janajatis.

- Providing access to suitable agricultural technologies and products.
- Forming distinct Janajati groups after identifying them.
- Food for work program and providing proper training by forming women's groups from ultra-poor Janajatis.
- Assisting Janajatis in setting up appropriate small rural industries.

The suspension of these customary laws and rights not only violated the rights of the Janajatis but has also been hastening the rapid demise of traditional knowledge systems, customs and practices, to the detriment of the nation's development.

All the major political parties have formally accepted - through their manifestoes - that Nepal is a multi-lingual, multi-ethnic, multi-cultural and multi-religious nation.

- At least 25 percent of the total participants in various rural training programs will be Janajatis.
- Scholarship for the poor and bright Janajati children.
- Finding out why Janajati children drop out of school and adopting the measures to check it.
- Conducting special health camps for Janajatis.
- Housing arrangement for homeless Janajatis.
- Grants to be awarded to poor Janajatis for micro-irrigation.
- Arrangement of leasehold forest within community forests for Janajati forest users.
- Providing financial assistance to poor Janajatis through NGOs for poverty alleviation programs and mobilizing Janajatis to conduct such programs.
- Loan assistance to Janajatis seeking jobs abroad.
- Arrangement of special grants to Janajatis.
- Expanding the scheme of providing pre-primary and primary level education in different mother tongues.

It should also be noted that all the major political parties have formally accepted - through their manifestoes - that Nepal is a multi-lingual, multi-ethnic, multi-cultural and multi-religious nation. They have emphasized the development of national languages, cultures, religions and traditions, as well as education and health of the Janajatis and have also affirmed the need to eliminate existing prejudice, discrimination, intolerance and injustice in all its forms in the Nepalese society. CPN-Maoist and Jana Mukti Morcha have even proposed that Nepal should become a secular State.

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# CHAPTER 11

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## Rights of the Dalits

**“The fundamental principle of Buddhism is equality... Buddhism was called the religion of Shudras. There was only one man who raised his voice against separatism and untouchability and that was Lord Buddha.”**

*-Dr. Babasaheb Ambedkar, Activist against caste system and untouchability*

## 11. Rights of the Dalits

Although Nepal is a nation made up of diverse peoples, religions, cultures and traditions, it is still primarily guided and dominated by a multitude of formal and informal Hindu customs, traditions and practices, the most pervasive - and unjust - being caste discrimination.

Nepal, over the centuries, has developed a rigid, hierarchical society based on “high” and “low,” “touchable” and “untouchable” and “pure” and “impure” castes, and Dalits occupy the bottom of Hindu caste hierarchy.

### 11.1 Defining Dalits

There is no official definition of the Dalits, and it is not easy to identify in Nepal which group belongs to the Dalit group and which does not. However, the word Dalit literally means, “a person absorbed in a swamp”. Etymologically, the word Dalit is rooted in the Sanskrit verb

“dal,” which means “disintegrate,” “divide” and “tread.” As an adjective, Dalit means “broken,” “oppressed,” or “crushed.”<sup>180</sup> Thus, Dalit refers to all those who are oppressed.

Unlike other ethnic groups, they are scattered throughout the country, and because it has been difficult to differentiate between a Dalit and a non-Dalit, the exact number of Dalits can only be guessed. According to the national census of 2001, the Dalit population is around 3,030,067, with 1,500,367 males and 1,529,700 females. Boxes 11.1 and 11.2 below list the Dalit caste groups as identified by the *Upechhit, Utpidit ra Dalit Barga Utthan Samiti* (Ignored, Oppressed and Dalit Groups’ Upliftment Development Committee), which was formed in 1996 under the Ministry of Local Development.

The above-referenced lists suggest confusion reigns regarding who exactly is a Dalit. This

Nepal, over the centuries, has developed a rigid, hierarchical society based on “high” and “low,” “touchable” and “untouchable” and “pure” and “impure” castes, and Dalits occupy the bottom of Hindu caste hierarchy.

#### Box 11.1: The 23 Dalit Caste Groups According to the *Upechhit, Utpidit ra Dalit Barga Utthan Bikash Samiti*

1. Lohar
2. Sunar
3. Kami
4. Damai
5. Sharki
6. Badi
7. Gaine
8. Kasai
9. Kusule
10. Kuche
11. Chyame
12. Chamar
13. Pode
14. Dhobi
15. Paswan (Dushad)
16. Tatma
17. Dum
18. Batar
19. Khatwe
20. Mushhar
21. Santhal
22. Satar
23. Halkhor.<sup>181</sup>

Source: *Upechhit, Utpidit ra Dalit Barga Utthan Bikash Samiti*.

#### Box 11.2: The 28 Dalit Caste Groups Identified by the Parliament (19<sup>th</sup> March 2002)

1. Lohar
2. Sunar
3. Kami
4. Damai
5. Badi
6. Gaine
7. Kasai
8. Kusule
9. Kuche
10. Chyame
11. Pode
12. Chamar
13. Dhobi
14. Paswan(Dushad)
15. Tatma
16. Dom
17. Batar
18. Khatwe
19. Mushhar
20. Santhal
21. Satar/Halkhor
22. Badimar
23. Khadar
24. Chunara
25. Parki
26. Gothi
27. Dhaier
28. Jhangar.<sup>182</sup>

<sup>180</sup> Kisan, Yam Bahadur. *Nepalma Dalitko Jatiya Mukti Andolan (Dalit Revolutionary Movement in Nepal)*. Jana Utthan Pratisthan: Kathmandu, 2002.

<sup>181</sup> This list seems to be confusing in the sense that some groups who are not untouchables (e.g. Kuche) are included, whereas other groups who are untouchables are not included (e.g. Khatik, Pasi and Bhangi). The list is insensitive to regional variation as well. For example, Lohar exist only in Terai, who are treated under the Vaisya (merchant) category and from whom all caste members of the Terai accept water. In the hill region, Lohar are known as Kami or Vishwakarma and are considered untouchables. Thus, there is a clear repetition of the same group in the list. The group Sunar (gold or silversmith) in the list is not a separate caste group but the group falls within the Kami category. Likewise Santhal and Satar are not different but belong to the same caste group living in the eastern Terai, particularly Jhapa and Morang districts.

<sup>182</sup> It is still not clear whether groups such as the Badimar (should be Chidimar of Banke district), Kadara, Gothi and Dahierm should be included in this list (Dahal et al, 2002). Likewise, the groups such as Kuche (it should be Koche, a ‘water-acceptable’ group of Jhapa district) and Jhangar (this group does not accept water from untouchables) are listed in both the Dalit as well as in the Janajati categories.

issue is further complicated by some scholars who have consulted the old Muluki Ain of 1854 and have classified certain cultural groups such as *Sudi*, *Kalwar* and *Teli* of the Terai as ‘untouchables’ as well - but from whom higher castes will accept water (*paani chalne jat*).<sup>183</sup> On the other hand, *Dhanuk* and *Kanu* are not considered as untouchables. Moreover, some of these Dalit groups are also listed as Janajatis

(See also footnotes below). Table 11.1 categorizes Dalits in Nepal under three broad regional groups.

(Note: The 2001 Census Report is silent on Newar Dalits, and all Newar Dalits are included as Newars because they claim they belong to the Newar ethnic group. Thus, Newars Dalits excluded from the list of Dalits with their exact identity still under discussion.)

**Table 11.1: Disaggregated Dalit Population by Sex**

S.N.	Caste	Total Dalits		All Total	Percentage
		Male	Female		
A.	HILL AND MOUNTAIN DALIT	852,287	908,378	1,760,665	58.11%
1.	Kami	432,937	463,017	895,954	29.57%
2.	Damai	188,329	201,976	390,305	12.98%
3.	Sarki	153,681	165,308	318,989	10.53%
4.	Badi	2,152	2,290	4,442	0.15%
5.	Gaine	2,857	3,030	5,887	0.19%
6.	Sunar	72,331	72,757	145,088	4.79%
7.	Chunar	NA	NA	NA	NA
B.	TERAI DALIT	563,017	532,984	1,096,001	36.17%
1.	Bantar	18,139	17,700	35,839	1.18%
2.	Chamar	138,878	130,783	269,661	8.90%
3.	Chidimar	6,516	5,780	12,296	0.41%
4.	Santal/Satar	21,515	21,183	42,698	1.41%
5.	Doom	4,631	4,300	8,931	0.29%
6.	Dushad/Paswan	82,173	76,352	158,525	5.23%
7.	Dhobi	38,350	35,063	73,413	2.42%
8.	Halkhor	1,848	1,773	3,621	0.12%
9.	Jhangar	20,892	20,872	41,764	1.38%
10.	Khatwe	38,643	36,329	74,972	2.47%
11.	Lohar	42,270	40,367	82,637	2.73%
12.	Mushar	88,041	84,393	172,434	5.69%
13.	Satar	21,515	21,183	42,698	1.41%
14.	Tatma	39,606	36,906	76,512	2.53%
C.	NEWAR DALIT	NA	NA	NA	NA
1.	Chyame	NA	NA	NA	NA
2.	Kasai	NA	NA	NA	NA
3.	Kuche	NA	NA	NA	NA
4.	Kusule	NA	NA	NA	NA
5.	Pode	NA	NA	NA	NA
D.	UNIDENTIFIED DALIT	85,063	88,338	173,401	5.72%
TOTAL DALIT POPULATION		1,500,367	1,529,700	3,030,067	100%

NA= Not available

Source: National Census 2001 (CBS)

<sup>183</sup> Bhattarai, H.P. *Identities in the Making: Cultural Pluralism and Politics of Imagined Communities in the Lowlands of Nepal*. (M.Phil. Thesis). University of Bergen, Norway, 2000.

## 11.2 International Instruments and National Legal Framework

As in the case of Janajatis, the situation of Dalits also comes under the purview of the UN Minority Rights Declarations (MRD) as well as the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (UNDERD), among other international human rights instruments. Thus, as has been already elaborated in the preceding chapter on Janajatis, MRD stipulates that states should encourage knowledge of the history, tradition, language and culture of the minorities existing within their territory; that it is the duty of the states to protect the identity of the minorities; and, furthermore, national policies and programs shall be planned and implemented with due regard for the legitimate interests of persons belonging to the minority groups. Likewise, the Article 2 of UNDERD requires the states to condemn discrimination between human beings on the grounds of race, colour or ethnic origins in all its form and to take effective measures to revise governmental and other public policies, and rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists.

In Nepal, as has been mentioned before, the old Muluki Ain of 1854 imposed the rigid caste system and segregated the society. But the New Muluki Ain (1963) was instrumental in attempting to bring about significant changes in the social sector. It called for the end of inequality among people and caste groups and abolished the prohibition on inter-caste marriage. The system of “equal offence, equal punishment” was implemented and the provision of punishment based on caste ranks was abolished. The present Constitution not only bans discrimination on grounds of religion, race, sex, caste, etc., but further states “no person shall, on the basis of caste, be discriminated against as an untouchable, be denied access to any public place or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.” Additionally, it states

The present Constitution not only bans discrimination on grounds of religion, race, sex, caste, etc., but further states “no person shall, on the basis of caste, be discriminated against as an untouchable, be denied access to any public place or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.”

“special provision may be made by law for the protection and advancement of the interests of women, children, the aged or those who belong to a class which is economically, socially and educationally backward.” However, once again, as in the case of the Janajatis, the government as well as the habits and customs of the general population of Nepal have been slow to observe and implement the provisions of the international instruments as well as the nation’s laws prohibiting prejudice, discrimination and intolerance.

## 11.3 Violations of Dalits’ Rights

Some of the major violations of the rights of the Dalits are presented below:

### Untouchability

Dalits are forbidden to share the same water sources (taps and wells) as upper caste Hindus; they cannot enter the kitchen of high caste groups or share meals together sitting next to each other; they are often prohibited from entering public places - especially temples and religious areas - and participating in religious festivals or even public gatherings.

When a high caste person touches a Dalit, he/she has to be “purified” only after “holy” water or “gold water” (*sunpani*) is sprinkled over him/her. Dalits who patronize a teashop or a hotel or eat in a high-caste house may be forced to wash the utensils that they use. Comparatively, the incidence of untouchability and caste-based discrimination is higher in the far-western region than in other regions of the country. For instance, the people of far western region believe that it is inauspicious for a Dalit

### Box 11.3: Dalits Divided by Their Own Caste System

It is ironic that the Dalits also have a hierarchical caste system, which discriminates and treats one Dalit group as superior to other Dalit group(s). Therefore, if they are to succeed in their struggle against caste discrimination, the Dalits themselves must end caste discrimination that exists in their community - with or without the support of the state.

Source: Human Rights Situation from the Local Perspectives, Dahal et al.

to enter the cowshed (cow being sacred to Hindus), because it will bring misfortune upon the high caste person. Indeed, they are even forbidden to practice certain Hindu rituals that Brahmins and Chhetris enjoy. Such prohibition has led many of the Dalits to convert to Christianity. Undoubtedly, caste-based untouchability is the grossest violation of the Dalits' human rights.

### **Socio-Cultural Rights**

Traditionally, the high caste people do not want to see a Dalit the first thing in the morning. They also believe that it is inauspicious to see a Dalit when someone is leaving his/her house or village to begin a journey.

Dalits are addressed with disrespectful words such as *Tan* (an informal or disrespectful form of 'you') that is usually reserved for use with servants or those one need not respect, whereas high caste people or those that demand respect are addressed with words such as *Hajur* or *Tapain* (higher form of 'you'). Furthermore, high castes also attempt to impose a so-called "social boycott" against the Dalits. What this means is that Dalits, again, are not allowed to enter homes of the high castes; inter-caste marriage is not accepted; and they will refuse to perform certain duties that are supposed to be the exclusive caste-based occupations of the Dalits, e.g., the disposal of carcasses.

Dalit children are not encouraged to get education. In general, teachers tend to neglect Dalit students, and scholarships provided to Dalit students are inadequate. Dalit children must put up with discrimination and untouchability even where free food is provided in some schools because high caste students and staff do not want to eat and drink together with them. Moreover, many high caste communities refuse to accept a Dalit teacher.

Dalits are forbidden to practice certain Hindu rituals that Brahmins and Chhetris enjoy. Such

prohibition has led many of the Dalits to convert to Christianity. Undoubtedly, caste-based untouchability is the grossest violation of the Dalits' human rights.

### **Economic Rights**

Dalits since time immemorial have worked as blacksmiths, goldsmiths, tailors, shoemakers and street cleaners. But because such professions are considered to be 'dirty,' Dalits are not respected for doing their work, no matter how well they perform their services. Since the majority of the Dalits are poor and illiterate, they are forced to work in the households of the high caste people or village landlords, often with little or no wages. The children of Dalit servants are also put to work as cattle herders, or they help their parents clean and cook. In return, they receive only minimum food and clothing. Dalits are also engaged in ploughing the land of upper caste people who adhere to the Hindu belief that a Brahmin should not shoulder the plough. Unfortunately, even though Dalits work hard for others and contribute to their well-being, they themselves remain perpetually hungry and poor.

### **Land Rights**

In general, Dalits are the poorest community in Nepal. Economically, they are marginalized; most of them are indebted to village landlords. In fact, most of the Terai and Hill Dalit groups are landless, or, at the most, possess a thatched-roofed house but no land to cultivate. One of the ironies is that although the Terai is considered the granary of Nepal, the percentage of landless people is found to be highest in the Terai region. In other words, the issue of the landless is more serious among the Terai Dalits than the Hill Dalits, and it has been observed that a Terai Dalit is synonymous to landlessness.<sup>184</sup> Furthermore, 78 percent of the Dalits are in extremely difficult situation because they lack adequate land, housing, food, health, education and employment. In

Though Dalits work hard for others and contribute to their well-being, they themselves remain perpetually hungry and poor.

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<sup>184</sup> Dilli R. Dahal, et al. *National Dalit Strategy Report: A Situational Analysis and Strategy Report on Dalits*. Kathmandu: National Planning Commission/ActionAid Nepal/Save the Children, USA: Kathmandu, 2002.

fact, a report concluded that Dalits do not even hold 1 percent of the country's agricultural land.<sup>185</sup>

### **Under-Representation in Politics and Decision-Making Process**

The key positions, in both State affairs and political parties, have been occupied by the high caste people. As with the Janajatis, the Dalits too are not usually encouraged to apply for positions in the government service. Unlike for women, there are no quotas set aside for including Dalits in the government bodies. Furthermore, political parties have exploited the Dalits for their own purpose. During elections, the Dalits are just vote banks. Political parties or leaders never encourage Dalits to become candidates, and although Dalits make up nearly 13.33 percent<sup>186</sup> of the total population of Nepal, their representation in various public, private, and governmental institutions is insignificant. It should be noted, however, that the National Dalit Commission has questioned the accuracy of this percentage figure (13.33%), for it claims that the actual Dalit population is much larger than reported.

#### **Box 11.4: Unrealized Hope**

A Dalit person in the far western region stated that in the last five elections, Dalits had voted for nearly every political party in turn, hoping that at least one would support and promote their concerns, but that hope was never realized.

*Source: Human Rights Situation from the Local Perspectives, Dahal et al.*

#### **11.4 Positive Initiatives**

Although the issues of the Dalits began to receive attention after the fall of the partyless *Panchayat* system in 1990, their problems - and programs to alleviate them - were formally addressed for the first time only in the Ninth Plan. These included provision for the formation of "Independent Downtrodden and Oppressed Community Council" with the objectives of coordinating policies and supervising programs targeting the Dalits. The major emphasis was put upon providing access to education, health, sanitation, training and capacity enhancement, and employment. As such:

– The *Upechhit, Utpidit ra Dalit Barga*

#### **Box 11.5: Status of Dalit Women**

Dalit women face the worst conditions and oppression in the Nepalese society. Unlike the Janajati communities where women, comparatively speaking, are less oppressed and exploited, and some of whom lead active professional lives as traders and businesswomen, Dalit women face the dual burden of being subordinate to their men at home and caste discrimination and exploitation outside the home.

Dalit women are not allowed to draw water from public water taps and wells used by the high caste people; they are forbidden from entering temples and participating in religious festivities.

Inter-caste marriage between an upper caste boy and a Dalit girl is socially disapproved, and is totally unacceptable. If a Dalit girl marries an inter-caste boy, she is most likely to face mental and physical abuse in the upper caste home; the family might even

attempt to force the high caste husband to abandon his Dalit wife.

Since Dalit women have no economic power in the family, they end up working as labourers, but barely earn enough to feed themselves or their families. And, because of untouchability, Dalit women have difficulty finding jobs in certain profitable enterprises such as teashops, hotels and restaurants.

Government figures show that the literacy rate of the Dalit community is 16 percent, and the literacy rate of Dalit women on average is only 7 percent, perhaps the lowest of the Nepalese population.

Most of the Dalit women suffer from gynaecological problems like prolapsed uterus. They do not know much about birth control and spacing and become pregnant every year. As Dalits do not have easy access

to clean drinking water in most places, they are compelled to drink polluted water and thus suffer from various gastrointestinal diseases. Consequently, both the mortality and fertility rates are high.

Poverty, ignorance and societal discrimination have forced many Dalit women and young girls to become commercial sex workers. For instance, women of the Badi, a Dalit group in western Nepal, have traditionally worked as sex workers to support their family. As a matter of fact, the Badi are described informally as forming a "prostitute" caste. Not surprisingly, many Dalit girls are lured by pimps and trafficked to Indian brothels.

As the Dalit women are acutely aware that they are members of a despised and openly discriminated caste, they seldom seek recourse to redress the wrongs inflicted upon them for they do not trust that the existing legal and political system will indeed deliver the justice.

<sup>185</sup> Jana Utthan Pratisthan. *Dalit in Nepal and Alternatives Report*. Kathmandu, 2001.

<sup>186</sup> Central Bureau of Statistics. *National Census Report 2001*.

*Utthan Samiti* (Committee for the Upliftment of the Ignored, Oppressed and Dalit Groups') was established in 2054 B.S (1997) under the chairmanship of the Minister of Local Development for the overall improvement of the socio-economic conditions of the Dalits. The Committee has been represented in several ministries of the government, the National Planning Commission and Dalit NGOs. It has developed policies and programs to improve the lives of the Dalits and has launched activities related to income generation, employment promotion and skill development.

- The government formed the National Dalit Commission in 2001 (B.S. 2058) to promote and protect the rights and welfare of the Dalits. It was given the mandate to propose activities, duties and responsibilities, and authority to carry them out.
- The government has introduced special programs for the Dalits, specifically for targeting poverty alleviation.

Furthermore, the Tenth Plan has the following under its Targeted Program for Dalits:

- Providing access to suitable agriculture technologies and products.
- Forming distinct Dalit groups after identifying them.
- Food for work program.
- Conducting proper training by forming

women's groups from ultra-poor Dalits.

- Assisting Dalits in setting up appropriate small rural industries.
- Reservation of at least 25 percent of the total participants' seats, in various rural trainings for Dalits.
- Provision of Scholarship for poor and bright Dalit children.
- Finding out why Dalit children drop out school and adopting the measures to check it.
- Providing vocational training.
- Provision of health, sanitation and awareness programs and conducting special health camps.
- Provision of housing arrangement for homeless Dalits.
- Provision of grants to poor Dalits for micro-irrigation.
- Arrangement of leasehold forest within community forests for Dalit forest users.
- Providing financial assistance to Dalits through NGOs for poverty alleviation programs and mobilizing them for such programs.
- Provision of loan assistance to Dalits seeking jobs abroad.
- Arrangement of special grants to Dalits.

The government formed the National Dalit Commission in 2001 (B.S. 2058) to promote and protect the rights and welfare of the Dalits.

**Box 11.6: Demands of Dalits**

The Dalits have put forward the following demands to prevent continuity of violations of their rights (as per the conversation with Dalit leaders Mr. Chhabilal and Mr. Man Bahadur B.K.):

- Amendment in the present Constitution with strong provisions to end all types of discrimination.
- Effective implementation of the existing legal provisions to root out untouchability in order to end open prejudice, discrimination, intolerance and injustice.
- Dalit ownership of land and resources.
- Reservations in government bureaucracy, police and military as well as representation in policymaking bodies at the national level.

Additionally, the government policies and strategies to empower the Dalits include redesigning school curriculum to raise awareness on the evils of unsociability, monitoring programs conducted by INGOs and NGOs and conducting various activities by all the concerned ministries. These are welcome steps toward respecting the constitutional provisions requiring the legislature to formulate laws to provide ample opportunities to improve the overall situation of the Dalits. But it remains to be seen how - and if - these policies and programs will be implemented.

Long entrenched traditions and customs of the

society cannot be expected to change overnight by simply legislating new laws. What is required is positive behavioural changes and attitudes of the people, and that will take some time. The speed of positive transformation will largely depend upon the commitment of the leaders, policy makers, bureaucracy and the people at large. If the State fails to make determined efforts soon to eliminate untouchability and other forms of naked discrimination and prejudice, it may have to face serious conflicts in many forms in the future, of which the seven-year-old Maoist insurgency is only one example.

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## CHAPTER 12

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### Rights of the Senior Citizen

**“Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse; Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.”**

*- Article 17 and 18 of UN Principles For Older Persons*

## 12. Rights of the Senior Citizens

The UN Principles for Older Persons call upon governments to act in all areas, but especially ensure that older people have access to food, water, shelter, clothing, health care, work and other income-generating opportunities, education and training.

Ageing is a natural process and unavoidable part of life. In a country like Nepal where life expectancy is 59 and 58 years for the male and the female respectively,<sup>187</sup> it is somewhat difficult to pinpoint exactly at which age a Nepalese citizen becomes a senior or an elderly person. The government has initiated a bill that considers a person to be a senior citizen if he or she is over the age of 65. According to the Muluki Ain, when considering certain legal matters, a person over the age of 75 is considered to be a “*senior*.” Nepal’s Supreme Court judges and members of constitutional bodies have to retire at age 65. Civil servants, however, are retired at age 58.

### 12.1 International Instruments

The United Nations declared 1999 to be observed as the International Year of the Older Persons. Its theme was “*Towards a society for all ages*.” According to the UN, one becomes an “*older person*” at the age of 60.

The UN Principles for Older Persons call upon governments to act in all areas, but especially ensure that older people have access to food, water, shelter, clothing, health care, work and other income-generating opportunities, education and training. Furthermore, they should be able to live in “*dignity and security, be free of physical or mental exploitation*.”

### 12.2 Senior Citizens in the Nepalese Society

It is estimated that just over 5 percent of the Nepalese population is over 65.<sup>188</sup> Traditionally, it is the responsibility of the grown-up children to look after their elderly parents. It is an important value of Nepalese society to respect the elderly for their contributions, wisdom and experience. As the traditional extended family

is slowly disintegrating, the old age people are becoming highly vulnerable. For example, in the villages of Mustang and Manang, elderly folks are often left to fend for themselves as sons, daughters and able-bodied villagers depart for urban areas, or abroad, to study or work.<sup>189</sup> The armed conflict has further aggravated the plight of the elderly people, especially in the rural areas, rendering many defenceless and homeless as their young sons and daughters flee the villages for safety in urban areas, if not India. Elderly people also leave home because of conflict within the family, often arising from generation gap in an extended family. Thus, the younger members of the family may no longer believe in or give importance to caste discrimination or untouchability practiced by the elders. They may no longer believe in gods and religious rituals, creating constant tension in the family. Consequently, the elders begin to feel that they are not being properly cared for or given due respect.

Loneliness, and physical and mental health of the old age people are some of the major issues — physical (bruises, fractures, lacerations, burns, etc), psychological (threats, insults, harassment, withholding affection etc.), financial (misuse of vulnerable adults, income, etc.) and medical (withholding medications)<sup>190</sup>.

#### Box 12.1: Possession of Wealth and Old Age Insurance !

Most of the elderly respondents stated that the right to property is of particular importance to them and that they have registered movable and immovable property in their own names. They were of the opinion as long as they held the property, their family and relatives would take proper care of them.

Source: *Human Rights Situation from the Local Perspectives*, Dahal et al.

<sup>187</sup> CBS. *Statistical Pocket Book of Nepal 2002*. Kathmandu: CBS.

<sup>188</sup> *Ibid*.

<sup>189</sup> Mr. Bhav Sagar Subedi, *Participant*, “Seminar on Human Rights,” Pokhara, October 6, 2002.

<sup>190</sup> As quoted by Dr. N.P. Upadhyay in his article “Psychology of Old Age,” *Spotlight*, Vol. 22, No. 16, Oct 11 - Oct 17 2002

### **Box 12.2: Feeling of Humiliation**

Most of the elderly believe that they have been humiliated by their sons, grandchildren and relatives, and particularly by son's wives. They consider their old age as a burden to the family members and would not like to live a long life, particularly when they have to be looked after by their sons and relatives.

*Source: Human Rights Situation from the Local Perspectives, Dahal et al.*

Many elderly people in Nepal are seen to be facing such tortures. Elderly women are facing more problems than their male counterparts because of lack of access to income, severe health problem due to poor reproductive health at a younger age and gender discrimination in labour.

In the absence of social security system, elderly people who are not able to secure an adequate standard of living through work and have no social safety net are another most vulnerable group of people in Nepal. Besides, Nepal being an agri-based country, the elderly people who have no pension become more vulnerable because of their financial dependency on the children and relatives.

### **12.3 Shelter for Senior Citizens**

The *Bridhashram* (home for the elderly), established by the government in 1976 near the Pashupatinath temple, is the oldest and the largest home for the elderly with capacity to accommodate approximately 205 people. Generally, those who have children are not admitted and recommendations from the VDC and the Women, Children and Social Welfare Ministry are required for acceptance. And, as demand for shelter exceeds availability, there is a long waiting list. Other homes have been established privately throughout the nation, and there are now nearly 32 organizations that are concentrating on the welfare of elderly people, of which two are devoted exclusively to sheltering elderly women. However, due to lack of funds, personnel, or other requisite resources, most of these homes are not managed very well. Therefore, they are unable

to provide satisfactory care and services to their residents.

Traditionally, the elderly Nepalese prefer to live among their own family members. But they feel they have control over their lives only as long as they have adequate assets in their own names and have not transferred them legally over to their sons or relatives. For the thought of spending one's remaining days among strangers in a strange 'home' doesn't appeal to most seniors, most of them will avoid seeking refuge in a shelter home at all costs, unless they are totally lacking in food and shelter or are severely mistreated in their own home.

### **12.4 Positive Initiatives**

The Directive Principles and Policy of the State in the Constitution states that the State shall pursue education, health and social security policies to protect the aged. In this direction some encouraging beginnings have been made in arranging the social security of elderly people, who received official attention for the first time only in the Ninth Plan. Proposals to improve the welfare of the elderly included gathering detailed records of elderly people every two years, establishing a separate ward in hospitals, constructing a home in each of the five development regions, offering discount to elderly people in the transportation sector and providing a monthly stipend. Thus, as per the Ministry of Local Development, seniors over the age of 75 receive Rs. 150 per month, and Rs. 60 per month is granted to the impoverished widows. But these allowances have not often been disbursed on a regular basis. The government has also established the Senior Citizen Care Service Program in 15 districts. It has the authority to provide a one-time annual grant of a total of Rs. 4,000 annually in two instalments of Rs. 2,000 per year to the most destitute and helpless elderly people. As for the government retirees, they receive a monthly taxable pension not less than 50 percent of their salary at retirement.

The National Planning Commission has

In the absence of social security system, elderly people who are not able to secure an adequate standard of living through work and have no social safety net are another most vulnerable group of people in Nepal.

prepared a 'Senior Citizens National Plan of Action, 2059 (2002)' which provides for some financial aid to the elderly people, health care, participation in programs as well as enactment of laws related to elderly people's' educational and recreational activities and protection and promotion of the rights of the elderly people. This five-year National Plan of Action will be implemented from 2002 to 2007. A Senior Citizen's Bill has similar proposals, but is yet to be enacted by Parliament.

In the absence of proper research on the issues affecting elderly people, knowledge about their economic and social status as well as the essential support services needed by them remain unknown, and, therefore, formulation of appropriate policies and programmes to address them have not been possible. In the present situation, it seems that while the Nepalese society claims to respect and take care of the old, the real situation is the opposite: it forgets them once they grow old.

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## CHAPTER 13

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### Rights of the People with Disability

**“Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.”**

*- Article 8, UN Declaration on the Rights of Disabled Persons*

## 13. Rights of the People with Disability

People with disability in Nepal often face not only legal and official discrimination, but even more damaging, social and psychological hurdles within their family and community.

The real magnitude of disability prevalent in Nepal is not clear due to the absence of reliable data on the prevalence of disability. The available survey data on the prevalence of disability varies from 1.63 percent to 5.04 percent and the majority (90%) of the persons with disability live in rural areas.<sup>191</sup> The World Health Organization estimates 10 percent (an average figure for developing countries), whereas one recent study on the situation of disability conducted by the UNICEF/NPC found that less than two percent are “severely” disabled.

The main factors that contribute to disability are poverty, lack of adequate health care facilities, and lack of services for early identification and prevention. In Nepal, the following five kinds of disability have been recognised:

1. Deafness
2. Blindness
3. Mental Retardation
4. Physical Handicap and
5. Mental Illness

The people with disability in Nepal often face not only legal and official discrimination, but even more damaging, social and psychological hurdles within their family and community. For instance, many Nepalese still hold the traditional view that disability is a result of sins committed in one’s past life. The UNICEF/NPC study reported that 28.4 percent of people associate disability of their family member with their fate. Sayings such as “*the deaf are crooks*” and “*one cripple can outsmart a hundred ordinary rascals*” sum up the traditional society’s prejudice toward the people with disability. Persons with disability

rely almost exclusively upon their own family for support and sustenance. However, sometimes persons with disability may be neglected or hidden from others by their family.

### 13.1 International Instruments and National Legal Framework

The Universal Declaration of Human Rights calls for equal treatment. Likewise, the UN Declaration on the Rights of the Disabled Persons, 1975, which has been recognised by Nepal in 1981, is a specific international instrument protecting and promoting the rights of the people with disability. In order to provide governments adequate time to implement plans and policies regarding the people with disability, the UN designated the years 1983-1992 as the “*Decade of the Disabled Persons.*” It stipulated that governments provide a framework “*for promoting participation, training and employment of the people with disability within all government ministries and on all levels of national policy-making in order to equalize opportunities for persons with disabilities.*”<sup>192</sup>

The Constitution (Article 11) requires that special laws should be made for the protection and advancement of the physically and mentally disabled. In addition, Article 26 (9) calls upon the State to introduce and implement policies in the area of education, health and social security for people with disabilities.

These declarations and constitutional provision on disability have prompted the government to introduce its own Act, the Disabled Persons (Protection and Welfare) Act 1982 (B.S. 2039), and policies regarding its population with disability. According to the

<sup>191</sup> Upadhyaya, Ganesh Prasad. *Policy Programs and Activities to Protect and Promote the Rights and Dignity of Persons with Disabilities in Nepal. Paper presented at Expert Group Meeting and Seminar at the International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities, Bangkok, 2-4 June 2003.*

<sup>192</sup> <http://www.un.org/esa/socdev/enable/disunddp.html>.

Act, persons with physical disabilities are those who are incapable of carrying out independently activities of daily life due to birth defect, accident, illness and disease. Those who are blind, visually impaired, mentally retarded, deaf, hearing impaired, and suffering from mental disability may also qualify as persons with disability

Some of the main provisions of the Act are:

- The government can ask industries having more than 25 workers to employ at least 5 percent people with disability, and assign them to proper jobs on the basis of their physical ability and work experience.
- Persons with disability shall not be discriminated when they are seeking employment in the public or government sector, unless their specific disability prevents them from carrying out their duties.
- Persons with disability shall have full access to all social, cultural, educational organizations, clubs, societies and functions of such bodies.
- Persons with disability shall have all the rights granted to a normal citizen; they shall have the right to work and earn a living and enjoy political, economic and social rights.
- Educational and training centres shall not charge any fee to those persons with disability seeking to enhance their knowledge and skills.
- Special education will be made available to the blind and the deaf, and those with mental disability.
- Those who deliberately cause disability to persons in order to profit from them, or for any other reason, shall be punished.

**Box 13.1: False Promises to People with Disability**

“Many development laws in Nepal, including the Disabled Persons (Protection and Welfare) Act, have remained only on paper. The law made in 1982 by the legislature of the time for the welfare and protection of persons with disability promised to deliver many things, but in actual practice has served very little purpose during these 18 years.”

*Source: A Situation Analysis of Disability in Nepal, UNICEF/NPC*

- Concessions in taxes on the equipment for the people with disability, and tax exemption for the organisations in the field of rehabilitation of the people with disabilities.

The absence of monitoring of the status of implementation of the above provisions and policies and programmes targeted to assist the persons with disability has been a major hurdle towards making the State accountable to its obligations and promises. On the part of the state two major hurdles are the absence of long-term strategy and adequate financing.

**13.2 Situation of the Persons with Disability**

The UNICEF/NPC study also showed that 69.3 percent of the persons with disability, who live with their families, noted that furniture and facilities used by the persons with disability require certain modifications. In addition, the designs of public utilities and buildings as well as private households in Nepal do not take into account the special needs of the persons with disability.

Moreover, the persons with disability are seen as a financial burden to the family and nearly 30 percent of the persons with disability do not receive any kind of treatment. Disabled children’s situation is quite bad. For example, only 1 percent (estimated) of the deaf children have access to education.<sup>193</sup> Most importantly, the majority of the persons with disability find

The absence of monitoring of the status of implementation of the above provisions and policies and programmes targeted to assist the persons with disability has been a major hurdle towards making the State accountable to its obligations and promises.

<sup>193</sup> Devkota, N.K.. *Nepal Country Paper presented at Expert Group Meeting and Seminar at the International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities, Bangkok, 2-4 June 2003.*

The majority of the persons with disability find it hard to live with self-respect in their community.

it hard to live with self-respect in their community. Interestingly, 82.9 percent of the persons with disability have been found aware of their rights though they have not been able to take advantage of them.

The government living allowance of NRs.100 (approximately USD 1.5) per month provided to the poor and helpless persons with disability is too little to be meaningful. Furthermore, the distribution of this allowance has been problematic, especially due to the conflict.

While laws guaranteeing educational, health, political, economic and social rights and freedoms of the persons with disability exist, the government has not been perceived to be actively pursuing their enforcement. Persons with disability are of the opinion that by granting such rights, the government merely hopes to pacify them, rather than making genuine efforts to make their lives more self-reliant and meaningful.

In 1996 a National Plan of Action for the Disabled was formulated and was to be implemented in three phases starting from 1996. But a study carried out to determine if the Plan of Action had achieved any of its aims indicated that its policies and proposals have not been satisfactorily implemented.<sup>194</sup> For example, the proposal to provide interest-free loan to the persons with disability to help them become self-reliant has not been implemented. Likewise, the Ninth Plan's objective to provide basic education to at least 70 percent of the children with disability has also not been met. The study makes it clear that the government is struggling to provide even basic education and means of livelihood to persons with disability and is unable to enforce the provisions of the 1982 Disabled Persons Protection and Welfare Act.

All the concerned parties should note that the population of the people with disability has

### **Box 13.2: Poor Women with Disability Face Triple Discrimination**

Poor women are more vulnerable to disability due to too many pregnancies, inadequate post-natal health and medical care, and poor nutrition. As elsewhere in the Asia Region, disabled women in Nepal face the major problem of triple discrimination not only because of their disabilities, but also because they are female and poor. They are treated as an inferior class of people often isolated and marginalized. Rural Nepalese women with disability face more serious problems than their urban counterparts due to inadequate or lack of access to information, health care facility and rehabilitation services in rural areas.

increased within the past seven years because of the armed conflict.

### **13.3 Government Initiatives**

The government has made some progress in its attempt to ease the pain and prejudice that the persons with disability face in their lives. A notable work has been in the sphere of special education. In the last decade there has been considerable increase in government expenditure from 5 million rupees to 30 million rupees in special education programme to make education accessible to the people having special learning needs. Wheel chairs, crutches and other devices of assistance have also been distributed to enable persons with disability to lead a more comfortable and independent life. More than 3,750 poor and helpless persons with disabilities have started receiving government living allowance of NRs 100.00 per moth. Likewise, it has started community-based rehabilitation services in collaboration with self-help organisations, and the program is in operation in 35 districts.<sup>195</sup> Other initiatives include preventive health service through expanded programme on immunisation, nutrition, safe motherhood, etc.; raising public awareness on disability, employable skill development training programme; and weekly TV news using sign language to enhance

<sup>194</sup> HMG/Ministry of Finance (MoF). *Economic Survey, Fiscal Year 2001/2002*. MoF: Kathmandu, July 2002.

<sup>195</sup> Upadhyaya, Ganesh Prasad. *Policy Programs and Activities to Protect and Promote the Rights and Dignity of Persons with Disabilities in Nepal*. Paper presented at Expert Group Meeting and Seminar at the International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities on 2-4 June 2003, Bangkok.

accessibility and communication. A lot of work needs to be undertaken by the government authorities. While the lack of resources may be one constraining factor, inadequate will and commitment on the part

of government appear to be the major hurdles for effective enforcement of the law and implementation of the policies and programmes to address the plight of the persons with disability.

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# CHAPTER 14

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## Governance

**“Genuine politics — even politics worthy of the name — the only politics I am willing to devote myself to — is simply a matter of serving those around us: serving the community and serving those who will come after us. Its deepest roots are moral because it is a responsibility expressed through action, to and for the whole.”**

*- Vaclav Havel, Czech Writer and Statesman*

## 14. Governance

The most cherished hope of the Nepalese in the post-*Panchayat* system of governance was for the establishment of a rights-based government, respectful of the people's wishes and aspirations for the emergence of a free, open and lawful society.

The collapse of totalitarianism in the late 1980s resulted in a global movement to establish open and democratic societies worldwide, and Nepal was no exception. The process of democratising the entire society was initiated by the elected government(s), civil society and concerned citizens. Activities to revitalize the nation often included privatising state-owned enterprises, instituting free market policies, reviewing and recommending the elimination of entrenched discriminatory laws and advocating human rights to ensure that the State and its rulers no longer wielded absolute power to the detriment of the well-being of the nation and its people. Thus, the most cherished hope of the Nepalese in the post-*Panchayat* system of governance was for the establishment of a rights-based government, respectful of the people's wishes and aspirations for the emergence of a free, open and lawful society.

### 14.1 National Legal Framework and International Instruments

Nepal is committed to prohibit any form of discrimination on any ground such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.<sup>196</sup> The Constitution guarantees the basic human rights of every citizen of Nepal, consolidates adult franchise, parliamentary system and multiparty democracy based on liberty and

equality. Furthermore, since 1991, Nepal, under the International Covenant on Civil and Political Rights, has acknowledged that “every citizen shall have the right and the opportunity to take part, without any distinction, in the exercise of public affairs directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, facilitating the free expression of the will of the electors.”

### 14.2 Abuses and Violations

The democratic polity is expected to promote and secure the human rights of all the citizens without any discrimination. The separation of powers among the three organs of government and the rule of law protect and promote citizens from the abuses by the State of

“Governance refers to the process whereby elements in society wield power and authority, and influence and enact policies and decisions concerning public life, and economic and social development. Governance is a broader notion than government, whose principal elements include the constitution, legislature, executive and judiciary. Governance involves interaction between these formal institutions and those of civil society. Governance has no automatic normative connotation. However, the typical criteria for assessing governance in a particular context might include the degree of legitimacy, representativeness, popular accountability and efficiency with which public affairs are conducted.”

- The Governance Working Group of the International Institute of Administrative Sciences 1996

their civil and political rights. Participatory democracy and increased role of the civil society deepen and broaden political participation, citizen's rights to expression and accountability. “The functioning of free and independent media helps citizens to enjoy freedom of expression, thought, opinion and views,”<sup>197</sup> and holding open, free and fair elections, in most cases, contributes toward the exercise of non-discrimination and the citizen's right to political participation in every layer of governance and decision-making process.<sup>198</sup>

<sup>196</sup> “International Covenant on Civil and Political Rights” in *Nepal Rajpatra*, part 41, 1991.

<sup>197</sup> United Nations Development Program (UNDP). *Human Development Report 2000*. New York: Oxford University Press, New York.

<sup>198</sup> *Ibid.*

Unfortunately, the State has failed to fully respect, protect and promote the human rights of its citizens. Failure of the existing political system to integrate and bring the minorities into mainstream politics has resulted in the increasing fragmentation of the Nepalese society, as witnessed in the emergence of identity politics, ethno-politics, language politics, gender politics, and regional politics - all of which have coalesced to aggravate the politics of alienation. Moreover, growing disparities in various layers of the society (civil, political, economic, social and cultural), along with the mismanagement of limited resources, which contribute to increasing poverty, have alienated people, such as the lower-castes and the Janajatis, who feel that, throughout the long history of the nation-state, they have been discriminated and disenfranchised and continue to confront prejudice and intolerance from the upper-castes and socio-economic elites. (See also chapters 10 and 11 on “Janajatis” and “Dalits” respectively.)

Thus, the elected government(s) of the post-partyless *Panchayat* decade have, in one way or the other, been unable to establish rule- as well as rights-based governance in Nepal, i.e., governance guided by human rights which focus on human dignity, in achieving fairness in opportunities and equal treatment for all, and in strengthening the ability of local communities to access resources and services. Thus:

- Based on political ideology, the interim government in 1990 withdrew 243 charges, including those against senior political activists; cases involving robbery, drug trafficking and hardwood timber smuggling were also dropped.
- The first four governments since 1990 encouraged the process of criminalisation of politics and politicisation of crime by withdrawing 563 criminal cases on vague

political grounds. Thus, the Nepali Congress (NC) during (1991 and 1994) and the Communist Party of Nepal- Unified Marxist-Leninist (CPN-UML) governments during its nine-month rule in 1994-95 both withdrew 99 and 210 cases of all charges respectively. The coalition government of the Nepali Congress, Rastriya Prajatantra Party (RPP) and Nepal Sadbhavana Party (NSP) withdrew 10 cases.<sup>199</sup>

Instead of combating criminal activities, the political leadership in fact encouraged the influence of money, muscle and mafia in politics. As a result, people started doubting the sincerity of political leadership in protecting and promoting the rights of the people, which “*undoubtedly weakened their legitimate and democratic authority... decreased the reputation of law-making and law enforcement agencies ... failed to make the executive accountable and strengthen the authority and capacity of the democratic state.*”<sup>200</sup> Thus, almost every post-1990 government began to mimic the partyless *Panchayat*-style governance, e.g. by violating the citizens rights over public resources; and the ruling politicians not only became involved in every kind of scandal and corruption, but were also accused of utilizing the public treasury for their personal benefit and self-aggrandizement. The elected parliamentarians had in most cases “*fallen in temptation to acquire material affluence. Corruption prevailed from party to parliament.*”<sup>201</sup>

A study conducted on “Good Governance” by Pro Public, a Kathmandu-based civil society, in 1999 covering over 30 years of governance (1966-1999) revealed that most of the governments and political personalities were involved in major scandals, including smuggling wood, snake skins, hides and leather; selling radioactive milk from Chernobyl; providing luxury car (especially the

Instead of combating criminal activities, the political leadership in fact encouraged the influence of money, muscle and the mafia in politics.

199 Dahal, Dev Raj. *Challenges to Good Governance in Nepal*. Stockholm: International IDEA, 2 October 1997.

200 Ibid.

201 *Good Governance*, Vol. 1, No. 4, September 1999. (A quarterly bulletin of Pro Public).

The politicization of State activities (including the bureaucracy and law enforcement agencies) and the non-political sectors (educational, academic and health) have further contributed to the erosion of fundamental human rights of the citizens.

Mitsubishi “Pajero” model) to Parliament members; and even attempts to rape and murder.<sup>202</sup>

Moreover, the post-1990 democratic governments violated the human rights of citizens by failing to take strong remedial action against culprits and by not empowering the Commission for the Investigation of Abuse of Authority (CIAA). However, because of public and international pressure, Parliament recently inopdwed on Act making the CIAA more powerful. Thus, since 2000, the CIAA has made commendable progress in investigating corrupt politicians and civil servants. However, the government has also failed to coordinate its activities with the various agencies concerned with the investigation, prevention and prosecution of the misuse of authority, unearth corruption and economic irregularities, enforce public morality and encourage transparency in politics. In addition, the politicization of State activities (including the bureaucracy and law enforcement agencies) and the non-political sectors (educational, academic and health) have further contributed to the erosion of fundamental human rights of the citizens. The inability to prevent the illegal accumulation of public wealth, particularly by those in power has also seriously challenged the citizens’

right to get a better return from their tax money. It is hoped that the recent strengthening of the CIAA will reverse these negative activities.

The increasing degree of corruption at the political and administrative levels has raised serious issues regarding the violation of human rights of the Nepalese citizens. On one hand, the political system has completely failed to increase government expenditure on basic and public utility services, such as education, health, transport and communication. On the other hand, a large amount of money is misused by those in power. Even to get their routine work done on time, such as registering their applications or moving their files from one appropriate official to another, people find it necessary to bribe public authorities in most of the offices.

The government has also been openly criticized by the international community for not being able to check the serious leakage of public resources. The Auditor General of Nepal every year catalogues the extreme misuse and misappropriation of government funds, but action is rarely taken against the alleged wrongdoers. Consequently, while a few Nepalese are becoming unimaginably rich, the majority still suffers from poor health, inadequate educational opportunities and crumbling infrastructure. Corruption, graft and mismanagement of the nation’s resources by the elected leaders, powerful politicians and civil servants all have had a profoundly adverse effect on the State’s growth and development, and in the process, people’s economic and social rights have been seriously violated.

**Box 14.1: Corruption – A Threat to Democracy**

Indulgence of elected ministers and civil servants in corrupt practices and their inability to avoid conflict of interest while executing their duties are threats to democracy. The magnitude of the problem is so great that the anti-democracy forces have started using it openly to argue, wrongly though, that the pluralistic system of governance is not suitable for Nepal. Only recently, the Commission for the Investigation of Abuse of Authority (CIAA) has been strengthened, but still a lot more work is needed to enable it to function effectively and justly.

Civil society that is expected to monitor the functioning of the state by and large remains politicised and unable to maintain the neutrality and professionalism essential for systematic monitoring of the effectiveness of functioning of the government.

**14.3 Election Commission of Nepal**

The constitutionally independent body, the Election Commission of Nepal (ECN), under Article 104 of the Constitution and other existing electoral laws, is entrusted “to conduct, supervise, direct and control the election to the parliament and other local self-governing

<sup>202</sup> *Ibid.*

*institutions of village, town and district level.”*

In order to respect the democratic rights of the citizens, opposition parties and minorities, the Election Tribunal, specified by law and formed under Article 106, is to hear petitions concerning elections filed by citizens whose rights were allegedly violated by the concerned authorities. The Election Commission (EC) has full authority in matters of elections and is the final court of arbitration, and no regular court can intervene in matters of elections. The EC, meanwhile, in order to ensure free and fair elections, has undertaken a number of electoral reforms, including the introduction of Voters Identity Card System, and determining the Code of Conduct (COC) for candidates, political parties and the government.

In spite of these constitutional and legal provisions and reforms, the human rights and fundamental freedoms of the Nepalese citizens concerning elections - i.e., the right to vote, to become a candidate, the right to participate freely in the entire process of electioneering and right against discrimination - are severely violated. Despite EC's vigorous efforts, with the last three parliamentary (1991, 1994 and 1999) and two local elections, the government has not been able to fully democratise the electoral processes. Likewise, the leaders and candidates of the political parties fell short of upholding democratic norms. In these elections, activities contrary to the process of free and fair election included:

- Electoral rigging.
- 'Booth capture' by the larger parties.
- Bribery, extortion, vote buying, and unauthorized proxy voting and underage voting.
- Depriving smaller parties in elections/voting.
- Use of power, force and violence by the government or larger parties.
- Monopoly of governmental resources by

#### **Box 14.2: Will of the People**

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

*Source: Universal Declaration of Human Rights*

ruling party.

- Non-identification of voters by the electoral and security authorities.
- General negligence shown by electoral authorities as well as the government and political parties in the observance of the election Code of Conduct.

Such activities have seriously threatened the rule- and rights-based electoral process in Nepal. Impartiality and fairness of the elections were further impaired by the direct intervention of the central and local government bodies during elections and the misuse of entire governmental resources (including manipulating the media and the Home Ministry) to influence the outcome of elections. Especially reprehensible has been the deployment by the ruling party of local security and police and administrative officials to defeat the opponents. Incumbent prime minister(s) have flown in helicopters to campaign during elections-at the cost of national treasury. Finally, every opposition party appears determined to oust the ruling party by any means available and grab power and reward itself and its supporters.

#### **14.4 Participation in the Political Process**

With the restoration of the multiparty system, the ban on political parties and organizations was lifted. Under the current constitutional provision, to contest elections the political parties have to be formally accepted and registered by the EC. But any party that bars a Nepalese citizen on the basis of religion, caste, tribe, language or sex will not be registered. Furthermore, no party or organization will be

Impartiality and fairness of the elections were further impaired by the direct intervention of the central and local government bodies during elections and the misuse of entire governmental resources (including manipulating the media and the Home Ministry) to influence the outcome of elections.

The Constitution (which was drafted by males only), disregards the fact that women make up half of the Nepalese population. The present constitutional provision to guarantee women's participation in politics is highly inadequate.

**Box 14.3: Ascendancy of Tradition, Women and Electoral Rights**

Asserting the ascendancy of their community's tradition and culture over the guarantees provided by the nation's Constitution, men of Mahottari district in the Terai prohibited women to participate in the electoral process because the women had to leave their homes to vote. This was one of the blatant forms of violations of women's rights, yet no political party or State authority made even a token gesture of protest.

formally recognized whose name, objectives, insignia or flag, and alliance with any particular religion and community indicate that its existence may contribute towards the disintegration of the nation. Accordingly, in the 1991 parliamentary polls, out of the total 47 political parties that had applied for registration, the EC rejected three for the reasons mentioned above. Additionally, in the course of examining the selection of party candidates in the parliamentary and local elections, and membership in various party committees, particularly the central committee, it was noted that political parties have failed to create ethnic, linguistic, socio-cultural, religious, gender and regional balance. Political power continues to be monopolized by the small groups of political elites who belong to the dominant Brahmin-Chhetri castes, aggravating the process of alienation and fanning the flames of resentment.

The Constitution (which was drafted by males only), disregards the fact that women make up half of the Nepalese population. The present constitutional provision to guarantee women's participation in politics is highly inadequate. The Constitution requires that women comprise at least five percent of each party's candidates for the House of Representatives, but in previous parliamentary and local elections, even the large, mainstream political parties did not attempt to exceed the Constitutional requirement. Women who were

selected received candidacy in weak constituencies where the probability of their defeat was higher. Thus:

- In 1991, only 72 women out of 1,345 party candidates and eight independents contested the parliamentary elections, which came to a total of six percent women candidates.
- Out of eleven Nepali Congress women candidates, five were elected.
- Out of eight CPN-UML women candidates, two were elected.
- Rastriya Prajatantra Party (Chand group) fielded nine women candidates; two were elected while the remaining seven lost their deposits for not securing minimum number of votes as per election law.
- All the eight RPP (Thapa group) women candidates and 23 others from various political parties failed to win and lost their deposits.<sup>203</sup>

In the 1994 mid-term polls, the number of women candidates in NC, CPN-UML and RPP was 11, 11 and 12 respectively. Out of the total 86 women candidates, 12 were independents. The scenario did not improve significantly during the 1999 parliamentary polls either. Thus, of NC's total 205 candidates, fourteen were women, of whom five women won. Out of the total 195 CPN-UML candidates 12 were women out of which 6 were elected. As for RPP, it too had fourteen women candidates out of its total 197 candidates, and only one won.<sup>204</sup> None of the women candidates of the other parties won. Overall, women's representation in the major parties currently still fluctuates between 5-7 percent (See Table 14.1).

The fact that women remain under represented in the central committees of the political parties

<sup>203</sup> Election Commission of Nepal (ECN). *Election Results of the Members of House of Representatives*. Kathmandu:ECN, 1991.

<sup>204</sup> *Ibid.*

is perhaps one important reason why the majority of women candidates have not succeeded at the polls. According to the *Second and Third Periodic Reports* (combined) presented to the CEDAW in January 2002 by the government, of the 31 central committee members in the NC, only three are women (9.67%); of the 34 central committee members in the CPN-UML only three are women (8.82%); of the forty committee members in the RPP only three are women (7.5%) the NSP has two central committee women members (6.45%) out of a total 31. Thus, overall, approximately only six to nine percent of the women hold decision and/or policy-making positions in the four major political parties. (See also Table 8.4, Chapter 8 on “Rights of Women.”)

As such, in the 1999 parliamentary elections, Nepal Women’s Association, a sister organization of the NC, protested that proper gender balance had not been maintained by the party in declaring the list of official candidates, which was less than the ten percent pledge made by the then Prime Minister.<sup>205</sup>

Like the women, the Dalits, Janajatis and other minorities also remain underrepresented in the previous elections. Most of the political parties in the 1999 parliamentary elections failed to nominate Dalits as their candidates. Therefore, the Nepal Dalit Sangh, another sister

**Box 14.4: Composition of The Upper House (National Assembly)**

When the concept of bicameralism was adopted in the 1990 Constitution, the Dalits, Janajatis, women and minorities expected that they would be better represented at all levels of the government and that their right to participate in the political process would be promoted. But the trend of the past 12 years shows that the Upper House has been the predominant reserve of high caste groups at the expense of Dalits, Janajatis, women and other minorities. Thus, in 1998, of the existing 56 members in the 60-member National Assembly, 30 were Brahmins, 7 Chhetris and 8 Newars. Only 8 members belonged to other caste groups, including 2 from so-called ‘untouchable’ castes.<sup>206</sup>

Women are ensured representation, albeit non-proportional, at the Upper House because the Constitution has provided for the reservation of three seats for them.

organization of the NC, expressed its dissatisfaction over the fact NC has failed to select even a single Dalit candidate. The Dalits, too, have demanded that they should constitute five percent of the candidates in all the political parties contesting elections, but since this demand has been ignored. The Sangh has appealed to the Dalits, indigenous nationalities and other minority communities to vote for only those candidates who advocate the interests of these oppressed groups.

Most of the political parties in the 1999 parliamentary elections failed to nominate Dalits as their candidates.

**Table 14.1: 1999 Parliamentary Election**

S.N.	Political Party	Female Candidates	Successful Female Candidates	Male Candidates	Total	% of female candidates
1.	NC	14	5	191	205	6.83
2.	CPN UML	12	6	183	195	6.15
3.	CPN-ML	11	0	187	198	5.56
4.	RPP	14	1	183	197	7.11
5.	NSP	5	0	63	68	7.35
6.	Others	87	0	1,099	1,186	7.34
	Total	143	12	1,906	2,049	6.98

Source: Election Commission of Nepal.

<sup>205</sup> Dahal, Ram K. “Candidate Selection in the 1999 Parliamentary Election in Nepal.” NCCS Occasional Paper, Kathmandu, December 2000.

<sup>206</sup> Dahal, Dev Raj. *The Nepalese Political Elite*. Kathmandu: Centre for Good Governance and Development, 1998.

The level of understanding of and the status of human rights has improved perceptibly in the recent years.

In addition, the people in some of the districts of the far western region (e.g. Baitadi and Darchula) and most of the Himalayan districts continue to remain neglected by the central government in respect to the allocation of governmental resources. The villages of western Terai remain impoverished, compared to their Indian counterparts across the border. In uneven general, a majority of the Madhesi people of the Terai are dissatisfied with their limited role in the political and social spheres.

#### 14.5 Decentralized Governance in Nepal

Even though the central government has resisted decentralization, the enactment of the Local Self-Governance Act is a landmark event in the administrative history of Nepal that brought important changes in the roles, positions, powers and functions of local self-governing bodies, especially in encouraging local people's participation in the political process. The current Act is comparatively better and more democratic than the earlier ones. A number of positive initiatives have been taken by the post-1990 governments to promote decentralization and strengthen local democracy. These include the intention of the government to create the local government service centre and to implement the fiscal decentralization scheme as recommended by the Fiscal Commission Report and the transfer of primary schools and sub-health posts to the local community. These initiatives are expected to encourage the people to participate in the local governance process. These initiatives, however, are not adequate in themselves, as they have to be effectively supported with sufficient financial, material and human resources. Moreover, the Local Self-Governing (LSG) bodies still have not been properly empowered; they lack adequate resources as well as training in accountability and transparency. Even more important is the fact that the dissolution of the local elected bodies and failure to set the dates for election of these bodies have created further confusion

in this regard.

Meanwhile, the National Association of VDCs in Nepal and the Municipal Association of Nepal have pointed out the weakness of the LSG Act and have recommended appropriate amendments in most of the provisions, some of which are related to the development of prerequisites and mechanisms that can enable VDCs to apply judicial powers, and suggest that the central authority should not have the power to dissolve local bodies and that at least 15 percent of the budget should be granted to local governing units.<sup>207</sup>

#### 14.6 Positive Initiatives

There is no doubt that the restoration of the multiparty system of governance has brought about certain discernible improvements in the status of human rights, especially in the area of civil and political rights, in Nepal. The enactment of new laws to respect and promote provisions of international human rights instruments is encouraging. Additionally, the establishment of a number of institutions in that context—National Human Rights Commission, the National Women's Commission, the National Dalit Commission and the National Foundation for the Development of the Indigenous Nationalities marks a significant step toward in that direction. A number of NGOs, political parties, civil society organizations and local governing bodies like the DDCs, municipalities and VDCs have conducted various types of human rights advocacy programs in different sections of society, especially targeting children, women, seniors, Dalits, Janajatis and other minority groups. As a result, the level of understanding of and the status of human rights has improved perceptibly in the recent years.

In spite of technical problems the introduction of voter identity cards, has undoubtedly reduced the irregularities and rigging in elections to some extent.

<sup>207</sup> "Autonomy of the VDC in the Light of Local Self-Governance Act, 1999." A seminar organized by DASU/ DANIDA and NAVIN in Jawalakhel in 2001.

The recent amendment of the CIAA Act to make its work effective is a significant milestone in the history of governance in Nepal. The amendment has made the CIAA powerful and efficient in checking widespread corruption. Consequently, some commendable progress in investigating corrupt politicians and civil servants have been made.

The enactment of the Local Self-Governance

Act has brought significant changes in promoting people's participation in the political process and in improving development planning at the community level. A number of positive initiatives, including transfer of primary schools and sub-health posts management to the local community, have been taken with a promise to support the local bodies with sufficient financial, material and human resources necessary for effective management.

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# CHAPTER 15

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## Conclusion

**“Impunity in Nepal is an entrenched political culture dating back to the period before the introduction of multiparty democracy in 1990.”**

*- Amnesty International, Nepal: A Deepening Human Rights Crisis,  
December 2002*

## 15. Conclusion

Efforts towards the achievement of rights-based governance have also been hampered by entrenched traditional discriminatory practices as well as by indifference, sometimes resistance, on the part of concerned government bodies, political parties and official authorities.

Since the restoration of the multiparty system, the government of Nepal has demonstrated an overall encouraging attitude towards the respect and promotion of human rights by accepting human rights as one of the foundations of the Constitution. It has ratified over a dozen major international human rights instruments, formed the National Human Rights Commission, and established commissions or councils for women, Janajatis and Dalits. In the Tenth-Plan, the government has initiated a National Human Rights Plan of Action. Other encouraging indicators include the enactment of the Torture Compensation Act, the State Cases Act, the Legal Aid Act, the Children's Act and the more recent 11<sup>th</sup> Amendment of the Muluki Ain for gender equality. These developments build up a structural mechanism for the enforcement and protection of human rights in Nepal. However, numerous domestic statutes still exist that contravene both the international human rights law and the Constitution of Nepal. Although a number of new statutes have been enacted, they are not aligned with the provisions contained in international human rights treaties and conventions. Those that have been ratified are poorly implemented, or merely ignored. Prompt initiatives should be considered and taken to ensure the effective integration of human rights in Nepal's domestic legislation.

Certain draconian laws, some of them going back to the partyless *Panchayat* era still remain in operation. This was the case particularly during the nine-month state of emergency when enforcement was vigorous curtailing dramatically the fundamental rights such as the right to peaceful assembly, the right to freedom of opinion and expression, the right to fair trial, etc. Such laws and enforcement applications could be deemed regressive in the context of human rights in Nepal.

The initial years of the 3rd millennium remained

alarming and disappointing for Nepal in the sphere of the overall human rights situation in the country: a marked increase in the incidents of serious violation of human rights from both the State and the Maoists was in evidence. The security situation deteriorated to the lowest. The trend of citizens' killing escalated incredibly higher in 2001 and 2002 causing gross violation of right to life.

The Nepalese people in general have come to realise that the State has not been successful to satisfactorily guarantee the fundamental and inalienable rights they possess as citizens of Nepal. Similarly, the people — especially women, Janajatis, Dalits and other religious groups and linguistic nationalities — are aware of the fact that discrimination, prejudice, *untouchability* and other forms of intolerant and unfair socio-cultural practices persist in Nepalese society, despite the Constitution's guarantee that all citizens are equal by law, and that no citizen shall be discriminated on the basis of sex, ethnicity and caste.

Efforts towards the achievement of rights-based governance have also been hampered by entrenched traditional discriminatory practices as well as by indifference, sometimes resistance, on the part of concerned government bodies, political parties and official authorities. Indeed, while laws, within their own limitation, exist at all levels to guarantee equality and freedom, they are often ignored or weakly applied, rendering them ineffective. It is therefore crucial to recognize that beliefs and laws that promote discrimination, prejudice and social exclusion pose serious obstacles to the achievement of good governance. Where beliefs are concerned, the need for human rights awareness and understanding should be considered as the long-term process to effective transformation. Only then will the people of Nepal — men or women, high caste or low, a Janajati or Dalit, young or old, — be assured of the protection of their human rights

and feel free.

## Impunity

Violation of law by the State authorities and by the non-state parties is common in Nepal. The trend has intensified since the start of conflict between the State and the Maoists in 1996. Arbitrary arrest, detention, torture, disappearance of ordinary citizens and journalists have been widely practiced. The reported death of journalist Krishna Sen in police custody and the illegal arrest and detention in army camps of two Muslim girls by the Army in Nepalgunj Army Camp are two such incidents. The army, police and the State bureaucracy ignore the instructions of the NHRC to investigate and report on the human rights violation complaints filed in the Commission against the alleged perpetrators.

There are a number of incidents in which the bureaucracy or the police has blatantly ignored the Supreme Court orders and got away with it. People who should be punished for their disrespect to human rights norms are often awarded, promoted or transferred instead of making them accountable for their action. The mindset that one can get away with such act is very strong and widespread among the authorities. The Asian Human Rights Commission (AHRC) reports that such mindset is not only nurtured indirectly by political parties, but is also effectively protected by them. Moreover, the practice of State taking the sole responsibility for punitive compensation on the violation of human rights by its staff without taking any punitive action on the staff concerned does not discourage officials from violating the rights of the citizens. The case in point is NHRC's decision of May 2001 (Jestha 2058) requiring a CDO and Head of District Police to share 2.5 percent and 2.5 percent respectively of the total compensation amount, which was not followed by the State. The State paid the entire sum to the victim. In this regard, NHRC has drawn the government's

attention that such practice encourages impunity.

The Damocles Network and Reporters Without Borders have placed Nepal on "*The Impunity Black List*" which includes twenty-one countries, where impunity is commonplace. The organisations based their rating on the events that took place since declaring a state of emergency on 26 November 2001. Likewise, AHRC writes that in Nepal, "*Violation of Human Rights Becomes Government Culture.*"<sup>208</sup> The Commission also notes that atrocities and brutalities during the democracy movement were heinous, but the subsequent government did not take any action to punish the human rights violators therefore impunity in the violation of human rights has been a part of the culture of Nepalese Government since the restoration of multiparty system. Criminalization of politics by certain political parties has further aggravated the situation. Amnesty International states in its Annual Report 2002: "*Impunity in Nepal is an entrenched political culture dating back to the period before the introduction of multiparty democracy in 1990.*"

An exploratory study on the subject<sup>209</sup> reports that the majority of people who are denied justice by not redressing the crimes committed against them belong to the poor and the disadvantaged groups, who are often illiterate and unaware of their rights. The study found that even those who are aware find the social practices standing in their way to redressal.

The reasons for widespread impunity can be broadly categorised into political context, discussed in the chapter dealing with the issue of governance, and the absence of as well as lack of strict implementation of legislative provisions, discussed throughout this report. Another important context is the social setting of Nepalese society which promotes and sustains quite a few wrong social norms, such as the practice of appeasement and soliciting

Violation of law by the State authorities and by the non-state parties is common in Nepal.

<sup>208</sup> <http://www/ahrc.net/hrsolid/mainfile.php/2000vol10n601/154/>

<sup>209</sup> Bhattarai, Binod, et al. *Impunity in Nepal - An Exploratory Study*, Kathmandu, 1999.

favours by means of gifts and personal relations that directly contribute to incompetence in the State machinery and malpractice.<sup>210</sup>

Widespread impunity is the main reason for

the deteriorating human rights situation in Nepal. Until and unless adequate measures are taken to remedy the situation, improvement in the overall human rights situation in the country will remain an untenable goal.

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<sup>210</sup> *Ibid.*

# ANNEXES

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## International Instruments Ratified or Acceded Before 1990

### I.A : United Nations Conventions

S.N.	Instruments	Date of Ratification or Accession
1.	Slavery Convention, 1953	7 January 1963 (A) <sup>211</sup>
2.	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery, 1956	7 Jan. 1963 (A)
3.	Convention on the Prevention and the Punishment of Genocide, 1948	17 Jan. 1969 (A)
4.	Convention on the Elimination of All Forms of Racial Discrimination, 1965	30 Jan. 1971 (A)
5.	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	12 July 1977 (A)
6.	Convention on the Political Rights of Women, 1952	26 April 1966 (A)
7.	International Convention Against Apartheid in Sports, 1985	1 March 1989 ® <sup>212</sup>

### I.B : International Labour Organization (ILO) Conventions

S.N.	Instruments	Date of Ratification or Accession
1.	C 14 Weekly Rest (Industry) Convention, 1921	10 December 1986 ®
2.	C 100 Equal Remuneration Convention, 1951	10 June 1976®
3.	C 111 Discrimination (Employment and Occupation) Convention, 1958	19 September 1974®
4.	C 131 Minimum Wage Fixing Convention, 1970	19 September 1974 ®

**Source:** Office of the United Nations High Commissioner of Human Rights, *Status of Ratification of the Principal International Human Rights Treaties*. See also *UN Treaty Series* at <http://www.untreaty.un.org>.

<sup>211</sup> 'A' stands for Acceded.

<sup>212</sup> ® stands for Ratified.

## International Human Rights Instruments Acceded or Ratified After 1990

### 2.A : UN Conventions

S.N.	Instruments	Date of Accession (a) or Ratification (R)
1.	International Covenant on Economic, Social and Cultural Rights, 1966	May 14, 1991 (A)
2.	International Covenant on Civil and Political Rights, 1966	May 14, 1991 (A)
3.	Optional Protocol on Civil and Political Rights, 1966	May 14, 1991 (A)
4.	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.	April 22, 1991 (R)
5.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.	May 14, 1991 (R)
6.	Convention on the Rights of the Child, 1989	September 14, 1990
7.	Convention on the Suppression of Immoral Trafficking and Protocol, 1949.	December 25, 1995 (A)
8.	Second Optional Protocol to the International Convention on Civil and Political Rights/Aiming at the Abolition of Death Penalty, 1989	June 4, 1998 (A)
9.	Optional Protocol to CEDAW, 1990.	January 31, 2001 <sup>213</sup>

### 2.B : ILO Conventions<sup>214</sup>

S.N.	Instruments	Date of Accession (a) or Ratification (R)
1.	C 98 Right to Organize and Bargaining Convention, 1949	November 11, 1996 ®
2.	C 138 Minimum Age Convention, 1973	May 30, 1997 ®
3.	C 105 Forced Labour Convention, 1930	January 3, 2002 ®
4.	C 144 Tripartite Consultation (International Labour Standards) Convention, 1976	21 March 1995 ®
5.	C 182 Worst Form of Child Labour, 1999	January 3, 2002 ®

**Source:** Office of the United Nations High Commissioner of Human Rights, Status of Ratification of the Principal International Human Rights Treaties. See also UN Treaty Series at [www.untreaty.un.org](http://www.untreaty.un.org).

<sup>213</sup> HMG Cabinet on 31st January 2001 decided to ratify the CEDAW Optional Protocol and has already proceeded for the deposit of intention to the United Nations Secretariat.

<sup>214</sup> Source: ILOLEX Database of International Labour Standards of International Labour Organization at [www.ilo.org](http://www.ilo.org)

### Important Laws Enacted Following Accession of International Human Rights Instruments and Improvements, Inconsistencies and Weaknesses of Some of These Laws

S.N.	Statutes	Legislated or Amended
1.	<b>The State Cases Act, 2049</b>	<b>Legislated</b>
<p><b>Important Improvements Made:</b></p> <ul style="list-style-type: none"> <li>- State Cases Act 2017 is repealed.</li> <li>- Section 15 (2) stipulates submission of detainees before the judicial authority for remand provided that the investigation is not completed within 24 hours. No detention at police custody is allowed beyond 24 hours without a mandate of the judicial authority.</li> <li>- This sub-section also stipulates that the police must submit concrete causes and grounds for extension of remand.</li> <li>- Section 15 (3) provides that a person detained by the police can request to the court for medical check-up.</li> <li>- Section 15 (4) requires satisfaction on reasonable grounds for extension of remand, which should not exceed 25 days in any case.</li> </ul> <p><b>Inconsistency:</b></p> <p>For the purpose of avoiding vulnerability of torture, the Act requires police to record suspect's deposition in the presence of the Government Attorney. The power of interrogating suspects, however, implicitly lies with the police. The Act refers nothing to the right of suspects to remain silent, which has been recognized by the Constitution as one of the fundamental rights.</p>		
2.	<b>The Vehicle and Transportation Act, 2049</b>	<b>Legislated</b>
<p><b>Important Improvements Made:</b></p> <ul style="list-style-type: none"> <li>- Repealed the Transportation Act 2020, and National Transportation Act, 2026.</li> <li>- State Cases Act 2049 is made applicable for investigation and prosecution of crimes under this Act.</li> </ul> <p><b>Inconsistency:</b></p> <p>This Act like State Cases Act fails to provide for bail for suspects during police custody.<sup>215</sup> Thus, the protection of suspect's liberty is apparently at stake under this Act. Traffic accident is not necessarily a culpable crime to be punishable with terms of imprisonment. However, a person charged for committing wrong under this Act is necessarily detained before being produced before the judicial authority. The Act therefore fails to satisfy the international standard that obliges the State party to refrain from imposing unnecessary detention.<sup>216</sup></p>		
3.	<b>The Printing and Publication Act, 2048.</b>	<b>Legislated</b>
<p>Printing and Publication Act has been enacted to secure right to expression. It has provision for arbitrary cancellation of the registration of the newspapers and journals.</p>		
4.	<b>The Torture Compensation Act, 2053.</b>	<b>Legislated</b>
<p><b>Important Improvements Made:</b></p> <ul style="list-style-type: none"> <li>- Section 3 (1) prohibits acts of torture during investigation, interrogation and trial, or during any other types of detention.</li> <li>- Section 3 (2) requires medical check-up of suspect by the government medical officer or the senior police officer while taking into and releasing out of custody for detention. The medical check-up by senior police officer takes place when the government medical officer is not available.</li> <li>- Section 6 (1) provides for compensation up to Rs. 100,000 for the victim provided that the infliction of torture is proved. Under this section, the district court, which is the court of first instance, is entrusted with power to take cognisance of the cases pertaining to the compensation against torture.</li> </ul>		

<sup>215</sup> The Act deals with traffic accidents. Drivers who commit the offence of manslaughter or cause injuries, are indiscriminately detained till they are produced in the court with charge sheet. The merit of the accident is not considered at all. The lack of protection for bail privilege unnecessarily amounts to deprivation of personal liberty.

<sup>216</sup> An Article of ICCPR

S.N.	Statutes	Legislated or Amended
	<p>- Pursuant to Section 7, the District Court may subject the concerned institution to departmental action against the person involved in the act of torture.</p> <p><b>Inconsistency:</b></p> <p>The Torture Compensation Act does not define torture or custodial death as a crime against law. Hence, the officials involved in the torture or custodial death are not personally subjected to criminal liability under the prevailing laws. The Act simply obliges the government to pay compensation for torture. Perpetrators are therefore privileged to have unrestricted impunity for their criminal acts against detainees during their custody. For the Act fails to recognize torture as a criminal act, it exists in stark contradiction with the obligations under the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. The Act obviously fails to materialize Nepal's commitment to eliminate the torture and other cruel, inhuman or degrading treatment or punishment.</p> <p>Moreover, the Act ignores the independent medical practitioners' role for medical check-up of torture victims. As the Act exclusively assigns the government medical officers and the senior police officers to conduct the suspects' medical check-up, it obviously opens up a room for misuse of authority to make a hoax of the reality and hide the incidents of torture. The Act in this connection is not only inconsistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, but is also meaningless to protect detainees from torture during the police custody.</p> <p>The Act therefore obviously promotes circumstances congenial for providing impunity to the perpetrators of acts of torture. Due to this circumstance, the trial courts are helpless to protect suspects from torture through motion for remand. By invoking the right to obtain medical check-up during the remand motion suspects rather may put themselves in danger of reprisal from police personnel while they are being returned to custody. This circumstance in fact indicates the complete lack of State's commitment to end the situation of torture.</p>	
5.	<b>The Human Rights Commission Act, 2053.</b>	<b>Legislated</b>
	<p><b>Important Provisions:</b></p> <ul style="list-style-type: none"> <li>- Section 11 (1) ensures that the commission, in relation to procedural matters, can have a similar power to that of the court for the purpose of taking action on petitions, complaints and conducting fact-finding missions.</li> <li>- Section 9(1) obliges the Commission to protect and promote human rights. To attain this goal, in accordance with section 9(2), the Commission, among other things, shall perform the following actions: <ul style="list-style-type: none"> <li>- Investigation of petitions or complaints filed by victims or anybody else, or to investigate information received by the Commission concerning violation of human rights, or any attempt to violate human rights, or negligence or recklessness committed by any person, institutions or organizations relating to human rights.</li> <li>- Investigation through its own mechanism or any institution of the government or through any person, the incidents of human rights violation, or attempt thereto, or negligence or recklessness of any person, institutions or organizations resulting in violation of human rights.</li> <li>- Study of international conventions and treaties on human rights, and making recommendations to the government for effective enforcement and compliance thereof.</li> </ul> </li> <li>- Section 13(1) empowers the Commission to address any institution or authority for necessary action against culprits of human rights violation.</li> <li>- Section 13(2) further empowers the Commission to dictate through its decision about the compensation, if necessary, to be paid to the victim.</li> </ul> <p>The Act is a landmark statute for promoting the prospect of the enforcement of international human rights instruments in Nepal. Importantly, the Act provides for the establishment of the National Human Rights Commission with authority to probe incidents of human rights violation.</p> <p><b>Weaknesses:</b></p> <p>However, the power of the Commission is severely subjected to constraints, as it lacks power to execute its verdicts or decisions. The Commission's role is being subjected to drawing recommendations only, and its effectiveness to punish the perpetrators of human rights remains largely diminished or stagnating. As such, the Commission is restricted from playing a crucial role to punish the perpetrators of human rights violations. The government's apparent reluctance to enable the Commission's pro-active role for punishing perpetrators raises suspicion towards its positive attitude for consolidation of the international human rights laws in Nepal.</p>	
6.	<b>The Muluki Ain</b>	<b>Amended</b>
	<p><b>Important Improvements:</b></p> <ul style="list-style-type: none"> <li>- The amendment in the Section on <i>Anshabanda</i> has enabled daughters to have the birthright to <i>ansha</i> in ancestral property.</li> <li>- The amendment in the Section on Husband and Wife has enabled the divorced woman to obtain a share of property from her husband, provided the husband has taken initiative for the divorce.</li> <li>- Several other discriminatory provisions of Muluki Ain have been repealed.</li> </ul>	

S.N.	Statutes	Legislated or Amended
<p><b>Inconsistency:</b></p> <p>The amendment in the Section on <i>Anshabanda</i> of the New Muluki Ain has repealed the provision, which subjected the daughter to attain 35 years of age and maintain unmarried condition for obtaining <i>ansha</i> in the ancestral property. However, the proposed amendment still fails to bring about the desired change in the subordinated legal status of women that has been prevailing for many centuries. The amendment as in the past attaches daughters' rights to their marital status. As such, daughters are continuously deprived of their rights to enjoy equal status in matters of <i>ansha</i> with their brothers and parents. The right to <i>ansha</i> is apparently subjected to the marital condition, and, as such, daughters are denied under the proposed amendment on equal status with the sons. The proposed amendment therefore fails to recognize the independent personality and legal status of women in Nepal. Thus, the said amendment of the New Muluki Ain apparently contradicts the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which obliges the State party to end all the discriminatory legal instruments.<sup>217</sup></p>		
7.	<b>The Children's Act, 2048</b>	<b>Legislated</b>
<p><b>Important Provisions:</b></p> <ul style="list-style-type: none"> <li>- Section 7 prohibits children being subjected to torture or cruel treatment. However, the act of scolding and minor beatings by father, mother, member of family, guardian, or teacher for the interests of the child is not considered a violation of the provision of law, and, as such, it is not considered violation of the child right.</li> <li>- Section 11(1) exempts a child below 10 years from criminal liability.</li> <li>- Section 11(2) subjects children, aged 10 to 14 years, to scolding or imprisonment not exceeding six months for acts constituting criminal offence.</li> <li>- Under section 11(3), children aged above 14 years are sentenced for criminal acts with punishment, which is half of that of adult offenders.</li> <li>- Section 55(4) obliges the State to have a child bench for trying the offence committed by the child.</li> </ul> <p><b>Inconsistency:</b></p> <p>Although the Children's Act was enacted for giving effect to the Convention on the Rights of the Child, it largely failed to attain the goal. The Act declined to endorse many important aspects of the convention.</p> <p>The proviso of the section 7 of the Act explicitly permits infliction of torture on children by relatives and schoolteachers. This provision is apparently inconsistent with the Convention on the Rights of the Child.</p> <p>The definition of the child is one of such areas, where the Act largely fails to progressively deal with the best interests of the child. The Act seriously fails in offering a uniform definition of the term 'child,' and opens up a scope for capricious treatment of the child for various purposes. The Act defines a person below 16 years of age as a child in Nepal. However, there are several laws which define a child differently. The Election law, for instance, defines a person as a child who is below 18 years and prevents persons under 18 years of age from participating in elections, whereas many other laws take 16 years as the age of puberty. In matters of criminal liability, the Children's Act, apparently against the best interest of child, has lowered down the age to 12 years. The Section on Marriage of the Muluki Ain fixes 18 and 16 years as the age of puberty respectively for boys and girls for the purpose of marriage. Several other Sections of the Muluki Ain take 16 years as an age of puberty for various legal transactions. The Contract Act allows a person aged 16 years and above to enter into contractual obligations. The Labour Act defines a person aged below 14 years a child. Thus, laws of Nepal create a state of confusion in defining a child in terms of age. The Children's Act fails to recognize this aspect of the problem, and therefore fails to protect the best interest of the children. The provision that makes 12 years as the minimum age for criminal liability is one of the most serious failures of the Act to domesticate the Convention on Rights of Child.</p> <p>Although, the Children's Act prohibits ill treatment and abuse of children, it declines to provide an effective remedy. The judicial process for the remedy to ill treatment or abuse is made totally obsolete and impractical, as the procedure for judicial remedy for ill treatment or abuse of the children has been subjected to lengthy civil proceeding. The State has therefore declined to undertake responsibility of protecting the best interest of children. By refraining to define abuse of the child as a criminal offence, the Kingdom of Nepal has also declined to recognize the vulnerability of children. Failure in securing a juvenile justice system, with adequate diversion scheme, is another apparent weakness of the Act. As mentioned earlier, it has made 12 years as the minimum age for criminal liability, which is too low for the purpose. A child offender of the age between 14 and 16 years can be sentenced with half of the punishment of that fixed for the adult offenders. The rehabilitation of the children for his/her best interest has not been a prime focus of the Act. The welfare, reform and development of the child are therefore largely ignored by the Act.</p>		
8.	<b>The Legal Aid Act, 2054</b>	<b>Legislated</b>
<p><b>Important Provisions:</b></p> <ul style="list-style-type: none"> <li>- The Act is envisaged to develop a system of free legal aid to help the economically and socially handicapped people obtain free legal assistance to be paid by the State.</li> </ul> <p><b>Inconsistency:</b></p> <p>The Act has failed to recognize the right to legal aid in absolute terms as it empowers the government to legislate regulations restricting access to legal aid in certain types of crimes, such as trafficking, drug, etc. [The Supreme Court has already declared the provision of limiting the legal aid as illegal act (<i>ultra virus</i>)]<sup>218</sup></p> <p>The regulations enacted by the government have declined to provide legal aid to offenders of such crime. The spirit of the Act exists against the concept of fair trial, and as such, contradicts the provisions of ICCPR securing the fair trial.</p>		

<sup>217</sup> Article of CEDAW.

<sup>218</sup> *Lila Mani Poudyal v Cabinet Secretary and others, Writ No. 3553 of 2056 B.S.*

Prisons and Inmates in Nepal<sup>219</sup>

## Category A Prisons

S.N.	Prison	Capacity	Inmates
1.	Central Jail (includes Bhadragole Jail)	1,500	1,124
2.	Parsa Jail	1,500	538

## Category B Prisons

1.	Jhapa	200	216
2.	Morang	250	294
3.	Mahotari	135	182
4.	Banke	200	139
5.	Palpa	175	171
6.	Sadarkhor	150	238
7.	Nakhu	150	157
8.	Rupendhei	60	186

## Category C Prisons

1.	Bardia	100	89
2.	Saptarai	125	98
3.	Salyan	20	71
4.	Sarlahi	100	79
5.	Kapilvastu	100	63
6.	Siraha	150	124
7.	Chitwan	155	124
8.	Kaski	60	135
9.	Kailali	70	111
10.	Kanchanpur	75	104
11.	Rautahat	200	52

## Category D Prisons

1.	Ilam	55	100
2.	Taplejung	25	14
3.	Panchathar	25	20
4.	Bhojpur	40	56
5.	Dhankuta	77	31
6.	Terathum	70	24
7.	Sankuwasabha	25	41
8.	Khotang	31	41
9.	Solukhumbu	25	27
10.	Udayapur	50	66
11.	Okhaldunga	30	32
12.	Dolakha	38	52
13.	Sindhuli	25	51
14.	Ramechhap	50	23
15.	Makwanpur	35	75

<sup>219</sup> The data given in the table were effective for 2000. The number of inmates subsequently has increased significantly in the wake of Maoist insurgency.

S.N.	Prison	Capacity	Inmates
16.	Rasuwa	15	5
17.	Dhading	25	32
18.	Nuwakot	50	26
19.	Kavre	61	51
20.	Sindhupalchok	80	62
21.	Manang	6	2
22.	Tanahu	25	29
23.	Lamjung	25	16
24.	Gorkha	30	33
25.	Syangja	35	37
26.	Nawalparasi	35	38
27.	Gulmi	25	33
28.	Parbat	25	14
29.	Baglung	25	33
30.	Mustang	10	8
31.	Myagdi	25	37
32.	Argakhanchi	25	-
33.	Ghorai	45	51
34.	Tulsipur	100	112
35.	Rukum	15	67
36.	Pyuthan	25	27
37.	Rolpa	50	87
38.	Surkhet	25	38
39.	Dailekh	16	22
40.	Jajarkot	10	42
41.	Mugu	25	1
42.	Jumla	60	16
43.	Dolpa	20	5
44.	Humla	20	3
45.	Kalikot	25	17
46.	Bajura	25	9
47.	Accham	50	22
48.	Bajhang	25	13
49.	Baitadi	25	30
50.	Darchula	40	19
51.	Dadeldhura	25	24
52.	Doti	120	40

Source: Prison Department, HMG.

### International Instruments Concerning Penal System and Prevention of Torture

S.N.	Instruments	Came into Force in
1.	Standard Minimum Rules for the Treatment of Prisoners	1955
2.	Declaration against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1975
3.	Code of Conducts for Law Enforcement Officials	1979
4.	Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	1982
5.	UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	1985
6.	Basic Principles on the Independence of the Judiciary	1985
7.	Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)	1985
8.	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	1988
9.	United Nations Rules for the Protection of Juveniles Deprived of Their Liberty	1990
10.	Basic Principles of the Treatment of Prisoners	1990
11.	Basic Principles of the Role of Lawyers	1990
12.	Guidelines on the Roles of Prosecutors	1990
13.	UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	1990
14.	UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)	1990

## Suggested Policy Recommendations Proposed during a Round-Table Meeting on Penal Reform in Nepal

S.N.	Problems	Possible Solution	Strategies
1.	There is an absence of an autonomous and competent body, fully authorized to formulate policies related to prison system.	Increase the capacity of the prison management department and authorize it to formulate policies, and to perform monitoring and evaluation of the prison administration effectively.	a. Utilize existing resources more efficiently. b. Allocate extra resources to enhance capacity of the prison management department.
2.	The prison system is guided by principle of punishment and not of reformation and rehabilitation.	Make the prison administrators aware of the principles, objectives and international standards of punishment and imprisonment.	Circulate orders to all prison administrators on the ways of reforming prisoners, explaining the principles, objectives and international standards of punishment and imprisonment.
3.	There is lack of coordination within the prison management system.	Promote coordination within the prison management system.	Make decision making process more transparent; create an environment for regular interactions between various levels of the prison administration; process requests and orders efficiently.
4.	There is a lack of a clear national standard on prison system.	Formulate, publish and distribute a clear national standard on prison system including the management of prisons, and the reforms needed.	Conduct a study for formulating a national standard on prison system, keeping in view the country's social, economic and geographical situation of the prison system. (The study should adopt a highly consultative methodology. The findings of the study, including specific and comprehensive recommendations should be published and widely distributed.)
5.	Prison inspection system is not regular, effective and timely.	Make the prison inspection system regular, effective, timely and of problem-solving nature.	Activate and mobilize the agencies responsible for prison inspection. Encourage participation of civil society in prison inspection.
6.	Plans, programs and activities of the Prison Management Department are not transparent and accessible.	Publicize the plans, programs and activities of the Prison Management Department.	Publish and distribute regularly the reports of plans, programs and activities of the Prison Management Department.
7.	There is shortage of sufficient, competent, trained personnel in prisons.	a. Make sufficient number of personnel available for prisons. b. Specially, post female officials in prisons for women. c. For prison personnel, ensure: <ul style="list-style-type: none"> <li>- Short duration management training</li> <li>- Pre-service training</li> <li>- Regular in-service training</li> <li>- National and international exposure tours.</li> <li>- Development and introduction of curriculum for prison officials.</li> </ul>	a. Provide for specialization of service. Stop the practice of frequent inter-departmental and inter-ministerial transfers. b. Create separate post for female personnel. c. Training & development of personnel.

S.N.	Problems	Possible Solution	Strategies
8.	Mentally ill, dependent children of prisoners, juvenile delinquents and drug abusers are kept with other prisoners.	Mentally ill, dependent children of prisoners, juvenile delinquents and drug abusers should be kept separately from other prisoners	<ul style="list-style-type: none"> <li>a. Separate them in prisons which have enough space.</li> <li>b. As far as possible, mentally ill prisoners should be transferred to a place where treatments are available.</li> <li>c. Make it compulsory for medical doctors working in government hospitals to provide regular services to the prisoners.</li> <li>d. At least, one mental health centre or mental health service unit should be established in the regional hospitals.</li> <li>e. Children's reform homes and rehabilitation centres for drug abusers should be established separately.</li> </ul>
9.	The current system and practices of reducing or pardoning sentences is not perceived to be fair by the prisoners.	The system of reducing or pardoning sentences should be made objective; record keeping should be made transparent; and should incorporate the provision of regular review.	<ul style="list-style-type: none"> <li>a. Establish a clear system of record keeping.</li> <li>b. The criteria for reducing or pardoning sentences, should include: involvement of prisoners in skill- development/income-generation activities (private or public), participation in educational activities, engagement in constructive activities, with provisions for reporting of medical doctor on mental illness or chronic illness.</li> <li>c. Constitute a committee, coordinated by prison management department consisting of people with expertise in law and human rights to review the recommendation of the jailer for reducing or pardoning sentences of prisoners.</li> </ul>
10.	<ul style="list-style-type: none"> <li>a. The physical condition, cleanliness of kitchen, sanitation and personnel hygiene in most prisons are poor.</li> <li>b. The fallow land in and outside the security wall of the prison is not properly utilized.</li> </ul>	<ul style="list-style-type: none"> <li>a. Physical condition should be improved and prisons should be made a more hygienic place to live in.</li> <li>b. The land in and outside the security wall can be utilized for the benefit of the prisoners.</li> </ul>	<ul style="list-style-type: none"> <li>a. Make kitchen, bedroom, and toilet, water taps and wells clean and ensure good ventilation.</li> <li>b. As far as possible, develop kitchen garden inside the prison compound.</li> <li>c. Organize training on hygienic and health camps.</li> <li>d. Allocate a room where prisoners can consult with their lawyers privately.</li> <li>e. Incorporate the guidelines provided by the national standard on prisons system (when formulated), especially if a new prison is being built or an old one renovated.</li> <li>f. The land inside the security wall should be used for recreation or gardening and the land outside the security wall should be used for vegetable garden or sports, like volleyball, basketball and table tennis.</li> </ul>

S.N.	Problems	Possible Solution	Strategies
11.	<p>The term <i>karagar</i> or <i>khori</i> used to refer to prisons leaves a negative impression on society. The existing prison laws and regulations are very old.</p> <p>The basic minimum facilities are lacking in many prisons:</p> <ol style="list-style-type: none"> <li>Regular legal counseling is lacking.</li> <li>Nutrition level, especially for infants and lactating mothers, is below the acceptable level.</li> <li>There is a lack of income generating opportunities.</li> <li>There is a shortage of clean drinking water.</li> <li>Prisoners do not get bedding material as soon as they enter prison.</li> <li>There are restrictions on visits by relatives and friends, and use of telephone facilities.</li> <li>Programs aimed at reintegrating prisoners into society just before their release are lacking.</li> <li>Orientation programs for the prisoners on prison life and prisoners' rights are lacking.</li> <li>Detailed record keeping of prisoners is lacking.</li> <li>In several prisons, there is a ban on certain national newspapers published legally.</li> <li>There is no effective system to record and process the complaints of prisoners.</li> <li>In several prisons, torture is still used.</li> </ol>	<p>Change the term to "<i>Sudhar Griha</i>" (Reform Home) from <i>Karagar</i> to refer to prison. Prison laws and regulations should be amended.</p> <ol style="list-style-type: none"> <li>Provisions should be made for regular legal counseling.</li> <li>The nutrition level should be increased.</li> <li>Every prison should organize income generation activities ensuring that the products made can be sold at the local market.</li> <li>Drinking water should be clean and sufficiently available.</li> <li>Bedding materials should be made available to prisoners as soon as they enter prison.</li> <li>There should be provisions for regular meeting with visitors, and telephone contacts.</li> <li>Programs aimed at smooth reintegration of prisoners after release should be started before release.</li> <li>There should be provisions for orientation programs for prisoners on prison life and prisoners' rights.</li> <li>There should be an updated and detailed record-keeping of every prisoner, which should include prisoners' date of birth, condition of family and details of development in/ her court case.</li> <li>Ban on newspapers should be lifted.</li> <li>There should be provision for keeping the record of complaints made by prisoners, as well as the action taken on the complaints.</li> <li>Torture should be prohibited.</li> </ol>	<ol style="list-style-type: none"> <li>Draft amendments for prison laws.</li> <li>Organize workshops and consultative meetings to discuss the draft amendments.</li> <li>Recommend the final draft to be enacted as a law.</li> <li>Activate the existing paid lawyers and increase their salary.</li> <li>The Legal Aid Program of Nepal Bar Association should be expanded and made more effective.</li> <li>The Legal Aid Act should be enforced.</li> <li>The existing legal aid schemes of NGOs for prisoners should be expanded and made more effective.</li> <li>Prison regulations should be amended and resources increased.</li> <li>Involvement of NGOs in nutrition programs should be encouraged.</li> <li>Where income- generating activities exist, improve them.</li> <li>Provide skill development training regularly.</li> <li>Identify prospects of successful marketing of products.</li> <li>Coordinate with the district level drinking water authorities for providing sufficient and clean drinking water.</li> <li>Provide bedding materials.</li> <li>Allow prisoners to receive telephone calls.</li> <li>Provide a secure and private place for meeting with family members and lawyers.</li> <li>Make legal provisions for: <ul style="list-style-type: none"> <li>- Making a list and posting it where every prisoner can read it. Publish a booklet.</li> </ul> </li> <li>Systematize record keeping.</li> <li>Distribute a circular.</li> <li>Maintain record.</li> </ol>
12.	<ol style="list-style-type: none"> <li>There is a lack of support from NGOs, local bodies and other institutions.</li> <li>There is a lack of effort on the part of jailers to involve the media in publishing prison-related issues.</li> <li>There is a lack of locally constituted committees to help prisoners.</li> </ol>	<ol style="list-style-type: none"> <li>Records should be maintained on NGOs that have provided or could provide support to the prisoners.</li> <li>The Jailer should involve the Media in publicizing the issues of prisons as much as possible.</li> <li>Prison support committees should be constituted and activated. Such committees should publish annual reports of their activities.</li> </ol>	<ol style="list-style-type: none"> <li>Distribute a circular.</li> <li>Follow up to ensure that necessary actions have been taken.</li> </ol>

Source: CVICT, *Penal Reform in Nepal, Round Table Meeting. Plan for Action and Report. 18-19, March 2000, Kathmandu.*

## Statutes Vitiating Fair and Impartial Trial

S.N.	Statute	Punishment (Maximum)	Legislated (L), Amended (A), Exists in Condition as before 1990 (E)	Provisions Inserted for Rationalization of Statute
1.	The Immigration Act, 2049	Five years' imprisonment or 50,000 rupees fine, or both	L	<ul style="list-style-type: none"> <li>- Repealed the Act Concerning Foreigners, 2015.</li> <li>- Section 8(1) of this Act provides that an official designated by the Director General investigates any offence under this Act.</li> <li>- Section 8 (2) grants the investigating officer the power to arrest, search, acquire and seize goods related to offence and to prepare documents concerning offence exactly as granted to police by other laws.</li> <li>- This same section also grants power to the investigating officer for detaining the suspect in custody or to release him/her with or without bail.</li> <li>- The same section provides that the suspect unable to furnish bond would be subjected to detention.</li> <li>- Section 10 (1) provides for the pecuniary sentence up to Rs. 50,000 and 5 years of imprisonment for any person found guilty of the crime under Section 5 of the Act.</li> </ul> <p>[As per the Act, the Immigration Department solely carries out the investigation, prosecution and the adjudication. The Director General can appoint the investigating officer, and subsequently hears the case. He/she has power to impose a term of imprisonment up to 5 years. The right to legal assistance is strictly denied. Since, the officials of the same institution arrest, interrogate, prosecute and conduct the trial, the possibility of fair trial is quite slim.]</p>
2.	The Forest Act, 2049	Five years' imprisonment, or fine, or both	L	<ul style="list-style-type: none"> <li>- Repealed Forest Act 2018 and Forest Conservation Act 2024.</li> <li>- Section 59(1) grants power to the Forest Officer or the Police to arrest a person without warrant provided that there is a likelihood the detainee might flee.</li> <li>- Section 65(1) designates the District Forest Officer as the investigating officer for offences incurring Rs 10,000 as fine and term of one year's imprisonment, or both.</li> <li>- Section 60 (1) provides that crimes under the Act are investigated and prosecuted by an officer of Second Class level.</li> <li>- Section 60 (2) requires for consultation with Government Attorney for prosecution.</li> </ul> <p>[The Forest Office is solely responsible for investigation, prosecution and trial of the offence. The Act requires consultation with the Government Attorney to determine the applicable provision of law. However, the provision is inadequate to ensure a fair trial. The access of suspects or accused to legal assistance is meaningless and the possibility of inflicting torture and unfair treatment is very high.]</p>

S.N.	Statute	Punishment (Maximum)	Legislated (L), Amended (A), Exists in Condition as before 1990 (E)	Provisions Inserted for Rationalization of Statute
3.	The Revenues Distortion (Investigation and Control) Act, 2052		E	- According to the Act, the Director General investigates the offence, or an officer designated by the DG or an officer designated by HMG. - The Director General tries the case. [The situation is similar to that for laws mentioned before.]
4.	The Prohibition of Investment in Foreign Countries Act, 2021		E	- No investigating authority is designated in this Act. In such a situation, as per the general practice, the head of the institution may take the responsibility of investigation. - The authority to conduct trial of the offence is also not designated. In such a case pursuant to section 7 of the Judicial Administration Act, the District Court is supposed to take up adjudication of the offence. However, the government appoints an officer who is responsible for both the investigation and the adjudication.
5.	The Medicine Act, 2035	Life imprisonment for offences which have the possibility of harming life. Ten years' imprisonment and fine for the possibility of causing bodily harm. Five years' imprisonment or fine, or both for other situations	E	- Medical inspector carries out investigation. - Govt. Attorney prosecutes. - Courts adjudicate. [Since a person having no legal background and training is involved in the investigation, there is a great possibility to violate the rights of the accused. Considering the degree of severity of the penalty envisaged by the Act, the risk of a person being sentenced without a fair trial remains.]
6.	The Nepal Standard (Symbol) Act, 2037	One year imprisonment or fine, or both	E	- Investigation is conducted by the inspector - The CDO tries the case. [The circumstance for violation of fair trial is obvious, as the CDO generally does not have the needed judicial background or training.]
7.	The Immovable Property Acquisition Act	Six months' imprisonment or fine, or both	E	The Investigator is not identified.
8.	The Necessary Commodity Control (Power) Act, 2017	Five years' imprisonment or fine, or both	E	- (Included in schedule 1 of the State Cases Act, 2049). The investigation is done by the Police. - The CDO is entitled to try the case.
9.	The Begging Prohibition Act, 2018	Three months' imprisonment or fine, or both	E	Investigator is not prescribed by the Act.
10.	The Gambling Act, 2020	One year imprisonment or fine	E	Investigator is not prescribed by the Act.
11.	The Corporation Act, 2021	One year of imprisonment or fine, or both	E	- Corporation itself is designated as the investigator. - The concerned department, which is not identified, adjudicates. It means that the government can designate any department as the concerned department.
12.	The Standard Measurement Act, 2024	One year imprisonment or fine, or both	E	- The Inspector investigates. - The District Court tries the case.
13.	The Insurance Act, 2025	Two years' imprisonment or fine, or both	E	Investigator is not prescribed by the Act.

S.N.	Statute	Punishment (Maximum)	Legislated (L), Amended (A), Exists in Condition as before 1990 (E)	Provisions Inserted for Rationalization of Statute
14.	The Lottery Act	Six months' imprisonment or fine, or both	E	Investigator is not prescribed by the Act.
15.	The Marriage Registration Act, 2028	Three months' imprisonment or fine, or both	E	Investigator is not prescribed by the Act.
16.	The Donation Act, 2030	Two years' imprisonment or fine, or both	E	- Investigator is not prescribed by the Act. - The District Court tries the case.
17.	The Land Acquisition Act, 2034	One month's imprisonment or fine, or both	E	- Investigator is not prescribed by the Act. - The CDO tries the case.
18.	The Smallpox Control Act, 2020	Three months' imprisonment or fine, or both	E	- The local officer is designated as investigator - The CDO tries the case.
19.	The Epidemic Diseases Act, 2020	One month's imprisonment or fine, or both.	E	- Investigator is not prescribed by the Act. - The CDO tries the cases.
20.	The Nepal Medical Council Act, 2045	Three years' imprisonment or fine, or both	E	- Any officer authorized by HMG. - The District Court tries the case.
21.	The Ayurvedic Medical Council Act, 2045	Six months' imprisonment or fine, or both	E	Investigator is not prescribed by the Act.
22.	The Things to Substitute Breast Feeding Act, 2049	Four months' imprisonment or fine, or both	E	- An Inspector investigates. - The District Court tries the case.
23.	The Nepal Nursing Council Act, 2052	Six months' imprisonment or fine, or both	E	Pursuant to the Act, any person specified by HMG does the investigation.
24.	The Nepal Health Workers Council Act, 2053	As specified by the Rules	E	Any person specified by HMG does the investigation.
25.	The Land Measurement Act, 2019	Six months' imprisonment or fine, or both	E	An Officer as specified by Rules/Land Revenue Officer does the investigation.
26.	The Act Relating to Contracted Land Possessed by the Tenant, 2021	Three months' imprisonment or fine, or both	E	- Investigator is not designated by the Act. - Trial conducted at court specified by the Rules.
27.	The Act Relating to the Land, 2021	Fine/Confiscation of the land	E	Any person specified by HMG does the investigation.
28.	The Food Act, 2023	Three years' imprisonment or fine, or both	E	- Investigator is not designated. - CDO tries the case.
29.	The Feeding Matters Act, 2033	Two years' imprisonment or fine, or both	E	- The Investigation is done by Inspector. - The CDO tries the case.
30.	The National Park and Wildlife Conservation Act, 2029	Fifteen years' imprisonment or fine, or both	E	- The Officer as specified by the Rules conducts the investigation. - The Warden of the Park adjudicates the case. [Trials in the Park Warden's office is hopeless. Persons are incarcerated simply at the personal whim of the Warden, who is generally a clerical staff ( <i>Subba</i> ) without legal background. Thus, the rights guaranteed for fair trial are meaningless for this institution.]

S.N.	Statute	Punishment (Maximum)	Legislated (L), Amended (A), Exists in Condition as before 1990 (E)	Provisions Inserted for Rationalization of Statute
30.	The National Park and Wildlife Conservation Act, 2029	Fifteen years' imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- The Officer as specified by the Rules conducts the investigation.</li> <li>- The Warden of the Park adjudicates the case.</li> </ul> <p>[Trials in the Park Warden's office is hopeless. Persons are incarcerated simply at the personal whim of the Warden, who is generally a clerical staff (<i>Subba</i>) without legal background. Thus, the rights guaranteed for fair trial are meaningless for this institution.]</p>
31.	The Land and Water Basin Conversation Act, 2039	One year of imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- The Water Basin Conservation Officer investigates.</li> <li>- Since no institution is designated to try the cases, the District Court may conduct trial.</li> </ul>
32.	The Water Resources Act, 2049	Ten years' imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- No investigator is designated.</li> <li>- Since no institution is designated to try the cases, the District Court may conduct trial.</li> </ul>
33.	The Electricity Act, 2049	Ten years' imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- No investigator is designated.</li> <li>- Since no institution is designated to try the cases, the District Court may conduct trial.</li> </ul>
34.	The Forest Act, 2049	Five years' imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- The District Forest Officer (DFO) conducts the investigation.</li> <li>- The District Court tries the case.</li> <li>- Crime punishable by ten thousand rupees fine or one year's imprisonment is investigated and adjudicated by the DFO.</li> </ul>
35.	The Import Export (Control) Act, 2013	One year of imprisonment or fine, or both		The Customs Officer investigates, prosecutes and adjudicates the case.
36.	The Hotel Management and Liquor Sales and Distribution (Control) Act, 2023	Three months' imprisonment or fine, or both		- The Officer specified by the Rules investigates.- Since no institution is designated to try cases, the District Court may conduct trial.
37.	The Nepal Mines Act, 2023	One year of imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- No investigator is designated.</li> <li>- No institution is designated to try cases; the District Court may conduct trial</li> </ul>
38.	The Act on Black Marketing and Some Other Social Crimes and Punishment, 2032	Life imprisonment, or 10 years' imprisonment for the possibility of harming life. For possibly causing bodily harm, 10 years of imprisonment. For other situations, maximum five years of imprisonment, fine or both	E	<ul style="list-style-type: none"> <li>- The Officer specified by the Rules takes up investigation.</li> <li>- No institution is designated to try cases; the District Court may conduct trial.</li> </ul>
39.	The Statistics Act, 2015	Five months' imprisonment or fine, or both	E	<ul style="list-style-type: none"> <li>- The CDO investigates the offence.</li> <li>- The District Court tries the case.</li> </ul>
40.	The Town Development Act, 2045	One year imprisonment or fine, or both	E	The Town Development Committee investigates.
41.	The Necessary Services Operation Act, 2014	One year of imprisonment or fine, or both	E	Investigator is not designated.

S.N.	Statute	Punishment (Maximum)	Legislated (L), Amended (A), Exists in Condition as before 1990 (E)	Provisions Inserted for Rationalization of Statute
42.	The Tele-communication Act, 2049	Three years' imprisonment or fine, or both	E	Investigator is not designated.
43.	The Postal Act, 2019	Three years' imprisonment or fine, or both	E	- The Regional Director investigates. - The District Court tries the case.
44.	The Press and Publication Act, 2048	One year of imprisonment or fine, or both	E	The Local officer investigates.
45.	The National Broadcasting Act	One year of imprisonment or fine, or both	E	- HMG investigates. - The Officer as specified by the Rules adjudicates.
46.	The Civil Aviation Act, 2015	Life imprisonment or fine, or both	E	- Investigator is not designated. - The District Court tries the case.
47.	The Railway Act, 2015	One year of imprisonment or fine, or both	E	The Local Zonal officer investigates the case.
49.	The Public Road Act, 2031	One year of imprisonment or fine, or both	E	The Department of Road investigates and adjudicates.
50.	The Customs Act, 2019	Two years' imprisonment or fine, or both	E	The Customs Officer investigates and adjudicates.
51.	The Water Tax Act, 2023	Three months' imprisonment or fine, or both	E	- The Officer specified by the Rules investigates and adjudicates.
52.	The Income Tax Act, 2031	Two years' imprisonment or fine, or both	E	- The Tax Officer investigates and the CDO and the Director General adjudicate.
53.	The Consumer Protection Act, 2054	Fourteen years' imprisonment or fine, or both	L	- The Inspecting officer investigates the offences.
54.	The Nepal Special Service Act, 2041	Ten years' imprisonment or fine, or both	E	- Investigating officer is not designated. - The court to try the offence under this Act is constituted by HMG. - The Appeal of the said court goes to the Supreme Court, and the hearing takes place <i>in camera</i> .
55.	The Police Act, 2012	Life imprisonment or fine, or both	E	- Investigating officer is not designated. However, in practice, the Police Department conducts the offences. - The Special Courts of the Police, composed of representatives of the Police, are established to try such cases. A tribunal constituted by HMG hears the final appeal. - No appeal at any level of court of law is allowed. [Only military courts are exempted from the judicial control of the Supreme Court. However, against the provision of the Constitution, the Police Special Tribunals are frequently constituted which exercise the power to sentence offenders to life imprisonment.]
56.	The Election Crimes and Punishment Act, 2047	Two years of imprisonment or fine, or both	L	- Investigating officer is not designated. - A Special Court is established as per the recommendation of the Election Commission.

### Sections of the Muluki Ain That May be Applied to Redress Violence Against Women and Girls

S.N.	Section	Matters Dealt with
1.	Court Procedure	<ul style="list-style-type: none"> <li>- This section is concerned with procedural matters. It can be used to guide procedure in the circumstances stated below.</li> <li>- Investigation, prosecution and adjudication of crimes that are not prescribed by any specific Acts. (Murder, Rape, Incest, Polygamy, Child Marriage, etc.) Some procedures relating to investigation, prosecution and adjudication of these crimes are also laid down by the State Cases Act, 2049 Hence, there are often overlaps in matters of procedure.</li> <li>- Procedures relating to the submission of claims in the courts on civil and contract matters. (Maintenance, infringement of property, debt, partition of property, etc.)</li> <li>- Procedures relating to claims for compensation, punishment for physical assaults (<i>Kutpit</i>) or harm to property (<i>Lutpit</i>).</li> <li>- Jurisdictions of Courts.</li> <li>- Procedures concerning appeal in matters mentioned above.</li> </ul>
2.	Execution of Judgement and Punishment	This section deals with the execution of court judgements, including punishment.
3.	Injury (Kutpit & Lutpit)	<ul style="list-style-type: none"> <li>- This section deals with the following matters:</li> <li>- Wrongs and penalties concerning trespass on the body and property.</li> <li>- Punishment for physical assaults on the body and harm done to property.</li> <li>- Limitations concerning the lodging of complaints in such matters.</li> <li>- Specific procedures applicable to these matters.</li> </ul>
4.	Murder	<p>This section deals with the following:</p> <ul style="list-style-type: none"> <li>- Classification of crimes of the killing of human beings, like murder, homicide, etc.</li> <li>- Punishment for various types of killings.</li> <li>- Specific procedures of investigation, prosecution and adjudication of the crimes of killings.</li> <li>- Crimes of accomplicity and liability for it.</li> </ul>
5.	Rape	<p>This section deals with the following matters:</p> <ul style="list-style-type: none"> <li>- Classification of crimes of rape, like statutory rape and conventional rape.</li> <li>- Punishment for crimes of rape.</li> <li>- Specific procedures of investigation, prosecution and adjudication of the crimes of rape.</li> <li>- Crimes of accomplicity and the liability for it.</li> <li>- Punishment prescribed for paedophilia.</li> </ul> <p>[For the purpose of punishment, there has been a classification of victims based on their age. The lesser the age of the victim, the higher the degree of punishment will be. This section differentiates between women who are prostitutes and other women for the purpose of punishment. The rape of prostitute is punishable by half of that prescribed for the rape of an ordinary adult woman. ]</p>
6.	Incest	<p>This section deals with the following:</p> <ul style="list-style-type: none"> <li>- Definition of incest and various degrees of the crime.</li> <li>- Types of incest and punishment.</li> <li>- Specific procedures applicable to the crime of incest.</li> </ul> <p>[This section provides that the character of women will be a basis of punishment. If a woman involved in incest has previously had extra-martial sexual relations with another man, the punishment for a man involved in sexual intercourse with her will be reduced by half.]</p>

S.N.	Section	Matters Dealt with
7.	Marriage	<p>This section deals with the following:</p> <ul style="list-style-type: none"> <li>- Marriageable age of men and women.</li> <li>- Avoidable and void marriage.</li> <li>- Prohibition of child marriage and polygamy.</li> <li>- Punishment for illegal marriage.</li> <li>- Some specific procedures for investigation, prosecution and adjudication of punishable marriage.</li> <li>- Complicity in illegal marriage and punishment thereof.</li> </ul> <p>[This section establishes the marriageable age as 16 years for girls and 18 years for boys provided that the marriage has the consent of the parents.]</p>
8.	Husband and Wife	<p>This section deals with the following matters:</p> <ul style="list-style-type: none"> <li>- Conditions or criteria permitting the divorce of wives and husbands.</li> <li>- Crime of polygamy and its punishment.</li> <li>- Some procedures applicable to divorce and polygamy.</li> <li>- Conditions by which bigamy is permissible.</li> </ul>

CEDAW Committee's Concerns and Recommendations regarding the Status of Nepalese Women<sup>220</sup>

Concerns	Recommendations
<ul style="list-style-type: none"> <li>- Lack of sufficient action to reflect the provisions of the Convention in domestic laws, or to amend prevailing discriminatory laws</li> <li>- Negative interpretation of discriminatory laws by the Supreme Court and the Court's view that if any laws do not conform with culture and tradition, the society will be disrupted</li> </ul>	<ul style="list-style-type: none"> <li>- Inclusion of a definition of discrimination in compliance with article 1 of the Convention in the relevant laws</li> <li>- Urgent amendment of discriminatory laws on property and inheritance, laws on marriage, nationality and birth registration, the Bonus Act, and discriminatory criminal laws</li> </ul>
<ul style="list-style-type: none"> <li>- Very low literacy rate amongst women, especially in the rural and remote areas</li> <li>- Persistence of both a quantitative and qualitative gender gap at all levels of education</li> <li>- The scope in the Basic Primary Education Program, covering only a small number of girls and women</li> <li>- Systematic bar on illiterate women against vocational training because of the minimum educational requirements for entry into vocational centres</li> <li>- Gender stereotyping and entrenchment of male superiority in school textbooks and curricula</li> </ul>	<ul style="list-style-type: none"> <li>- Introduction and implementation of policies and programs for free and compulsory education for all girls at the primary level</li> <li>- Vocational and skill development training for income generation, especially for marginalized rural women</li> <li>- Facilitation of women's access to non-traditional and non-stereotypical education</li> <li>- Concrete measures to increase the number of women in higher education, in particular, in non-traditional fields</li> <li>- Review of school curricula and textbooks in order to eliminate gender stereotypes</li> <li>- Effective measures, including incentives, to ensure that parents comply with the obligation of compulsory education</li> <li>- Massive social awareness campaigns to encourage women's education</li> </ul>
<ul style="list-style-type: none"> <li>- The need to ensure greater gender sensitivity, knowledge and training in gender-related issues among groups charged with implementation of policies and programs to achieve equality for women</li> <li>- Insufficient reliable statistical data desegregated by sex and insufficient information relating to the implementation of a number of articles in the Convention in the report to the Committee</li> </ul>	<ul style="list-style-type: none"> <li>- Launching gender sensitization and advocacy programs aimed at the civil service and opinion leaders, political decision-makers, health professionals and law enforcement officials to ensure that a clear understanding of the obligations under the Convention is achieved</li> <li>- Inclusion of statistical data desegregated by sex and information regarding all articles of the Convention in the next report</li> <li>- Prioritization of prevention of unwanted pregnancy through family planning services and sex education (In these efforts, the Committee has suggested that the government take account of general recommendation 24 on article 12, "Women and health".)</li> </ul>
<ul style="list-style-type: none"> <li>- High incidence of prostitution and increase in trafficking in women and girls, in particular for the purpose of prostitution</li> <li>- Movement of girl children across the border for the purpose of child marriage</li> </ul>	<ul style="list-style-type: none"> <li>- Effective steps to review the existing legislative provisions on prostitution and trafficking in women and their compatibility with the Convention, and to ensure their full implementation and compliance</li> <li>- Initiation of regional and bilateral cooperation, taking into account sub-regional, regional and international agreements and standards on this issue</li> <li>- Review of criminal code, to punish persons who procure women for prostitution or for trafficking, to establish repatriation and rehabilitation programs, and to support services for victims of trafficking</li> </ul>

<sup>220</sup> Source: Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Nepal. 01/07/99. CEDAW/C/1999/L.2/Add.5. (Concluding Observations and Comments) <http://www.hri.ca/fortherecord1999/documentation/tbodies/cedaw-c-1999-l2-add5.html>.

Concerns	Recommendations
<ul style="list-style-type: none"> <li>- Low representation of women in the National Legislature, despite the guarantee in the Constitution that political parties should reserve for women at least 5 percent of places on the electoral lists of candidates for election to the House of Representatives, and that at least three seats should be reserved for women in the National Assembly</li> <li>- Low participation of women in government administration</li> </ul>	<ul style="list-style-type: none"> <li>- Steps to ensure greater participation by women at all levels of decision-making, including the introduction of temporary special measures in accordance with article 4.1 of the Convention</li> </ul>
<ul style="list-style-type: none"> <li>- Prevalence of traditional customs and practices detrimental to women and girls, such as child marriage, dowry, polygamy, <i>deuki</i> (a tradition of dedicating girls to a God or Goddess, which persists, despite the prohibition of the practice by the Children's Act), <i>badi</i> (the ethnic practice of forcing young girls to become prostitutes) and discriminatory practices that derive from the caste system</li> </ul>	<ul style="list-style-type: none"> <li>- The initiation of policies and programs to eliminate discriminatory cultural attitudes towards women and girls, which should be done by the government, in coordination with civil society, including women's groups and nongovernmental organizations (Implementation of an extensive public awareness campaign in order to increase the understanding of gender issues and human rights of women amongst the people of Nepal was recommended.)</li> </ul>
<ul style="list-style-type: none"> <li>- Concentration of women in low-skill jobs</li> <li>- Gender disparity in wages</li> <li>- The unequal income distribution caused by the concentration of the vast majority of women in unpaid family work</li> </ul>	<ul style="list-style-type: none"> <li>- Adoption of labour legislation prohibiting wage discrimination</li> <li>- Introduction of special measures to encourage women to participate in all sectors of employment</li> <li>- Development of special credit facilities for women to enable them to establish small enterprises</li> </ul>
<ul style="list-style-type: none"> <li>- Little information in the report to the Committee on the situation of women in the rural areas, where the majority of the population lives and where majority of women are engaged in the agricultural sector</li> </ul>	<ul style="list-style-type: none"> <li>- Inclusion in the next report to the Committee of more information and data on the situation of rural women, as well as minority women, in particular with respect to their access to public services</li> </ul>