

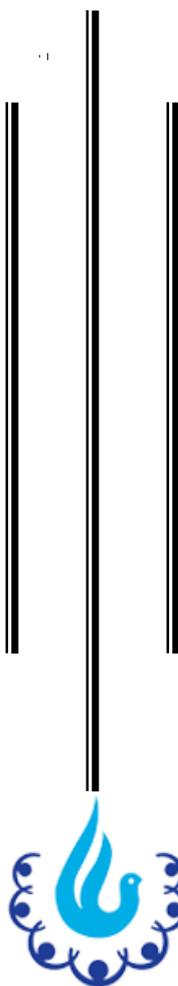
*NEPAL*

**International Covenant on Civil and Political Rights  
(ICCPR)**

**SHADOW REPORT**

*Second, third & fourth periodic reports of the government of Nepal  
on measures taken to give effect to ICCPR*

May 2013



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**Reporting Format**

*The Report is 68 pages in length: Part 1 refers to forward, table of content, executive summary and other technical components relating to the preparation of the report itself; Part 2 provides constitutional, legal & institutional provisions and Part 3 substantive violation: articlewise shadow perspective. A list of abbreviations is enclosed at beginning of the report and the*

*Note: Previously, CEHURDES, HURPEC, PAN & HRWF were also actively affiliated with ICCPR committee.*

# Part I

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## TECHNICAL COMPONENTS

### Foreword

Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR on 14 May 1991, and the Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty on 4 March 1998, without any reservation. Nepal submitted the Initial Report under the ICCPR in 1994. Nepal has submitted a combined report consisting of the second, third and fourth periodic reports, covering the period from 1995 to 2010.

Writing alternative reports is one of the primary activities of the HRTMCC and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC). Five leading human rights organizations namely INHURED International, INSEC, CVICT, CWIN and FOPHUR submitted a common NGO parallel report to the ICCPR Committee in 1994 as a part of the shadow reporting initiative. Since then till 2010, no formal report had been communicated to the concerned UN treaty monitoring body under ICCPR.

Nepal ratified the Convention on Civil and Political Rights (ICCPR) in May 1991 along with other major international instruments. The ICCPR includes two major Optional Protocols which had also been acceded without reservation opening a corridor for individual complaints and total abolition of death penalty. Nepal submitted an initial report in 1994, two years later than the due date. With the recent development of the submission of the state report, HRTMCC believes that this shadow report will serve as a valuable source for the Independent Experts who analyses the implementation of the ICCPR in Nepal's context. With this report, we believe that it is possible to see the situation as objectively as possible and to take a critical look at the government action to prevent the violation of civil and political rights in the country.

### Preparation of the Report

The report is based on the UN Human Rights Committee' Guidelines and other available formats. Since the reporting period largely marred by high intensity internal armed conflict in the country, the report provides a review of Nepal's implementation of the ICCPR and focuses on the issues of critical importance namely the right to life, freedom of expression, freedom from torture and enforced disappearance. The fact that a subject is not addressed in a greater length in the report does not entail that the issue is not of relevance to the implementation of the ICCPR or the general human rights situation.

### Cooperation with Stakeholders

This report is prepared in consultation with the members of the committee on ICCPR under the banner of HRTMCC. Several rounds of formal and informal interactions/dialogues have been held among experts of the human rights and legal community across the country. Similarly, series of regional consultations have been held to seek input from different stakeholders, including the convening of a national consultation. A three-member writing committee composed of experts from the ICCPR Committee led by Dr. Gopal Krishna Siwakoti, Shobha Gautam and Roshan Pokharel was entrusted to draft the report. Similarly, three members of HRTMCC comprised of advocate-trio Samjah Shrestha, B.P. Adhikari and Nirmal Kumar Upreti have immensely contributed to coordinate the consultations and fine-tune the report.

Credit goes to all members of the HRTMCC Committees, Secretariat team, INSEC regional coordinators and staff, organizational and individual experts, civil society institutions, human rights community, media and legal professionals without whose active involvement, the report would not have taken such a comprehensive shape. The seasoned insightful guidance from Subodh Raj Pyakurel and Bijay Raj Gautam from HRTMCC secretariat to enrich the quality of the report is highly appreciated.

## TABLE OF CONTENTS

<b>Part I</b>		
<b>TECHNICAL COMPONENTS</b>		<b>2</b>
Foreword		2
Executive Summary		6
Emblematic Incidences of Violation		8
Token of Appreciation		10
<b>Part II</b>		
<b>CONSTITUTIONAL, LEGAL &amp; INSTITUTIONAL PROVISIONS</b>		<b>11</b>
Introduction		11
Institutional Mechanisms		11
Legislative Pieces to be annulled		14
Need of Fresh Pieces of Legislations		14
<b>Part III</b>		
<b>SUBSTANTIVE VIOLATION: ARTICLEWISE SHADOW PERSPECTIVE</b>		<b>22</b>
Article-1	Right to Self-determination	22
Article-2	Equal Protection of Rights	22
Article-3	Right to Equality	24
Article-4	Non-derogation of Rights during Public Emergency	26
Article-5	Safeguard Clauses	27
Article-6	Right to Life	27
Article-7	Right against Torture	29
Article-8	Rights against Slavery, Servitude and Forced Labor	32
Article-9	Liberty and Security of Person	33
Article-10	Treatment of Prisoners	35
Article-11	Right to Freedom from Imprisonment for Inability to Fulfill Contractual Obligation	36
Article-12	Freedom of Movement	37
Article-13	Non-expulsion of Aliens	38
Article-14	Fair Trial	39
Article-15	Prohibition of <i>Ex post facto</i> Laws	41
Article-16	Right to be recognized as Person under Law	42
Article-17	Freedom from Arbitrary Interference with Privacy, Family and Home	43
Article-18	Right to Freedom of Thought, Conscience and Religion	44
Article-19	Right to Hold and Express Opinions without Interference	46
Article-20	Prohibition of Propaganda for War	48
Article-21	Right to Peaceful Assembly	48
Article-22	Freedom of Associations and Trade Unions	50
Article-23	Protection of Family	51
Article-24	Rights of the Child	52
Article-25	Right to Political Participation	54
Article-26	Right to Equality before Law	55
Article-27	Right of Minorities to enjoy their Own Culture, Religion, etc	56
<b>REFERENCES</b>		<b>58</b>

## LIST OF ABBREVIATIONS AND ACRONYMS

APF	Armed Police Force
CA	Constituent Assembly
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBOs	Community-Based Organizations
CBS	Central Bureau of Statistics
CDO	Chief District Officer
CDR	Call Details Record
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CLA	Civil Liberties Act
CPA	Comprehensive Peace Accord
CPN (M)	Communist Party of Nepal (Maoist)
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DOPM	Department of Prison Management
EC	Election Commission
GBV	Gender-based Violence
GoN	Government of Nepal
HMG	His Majesty's Government
HoR	House of Representatives
HR	Human Rights
HRCs	Human Rights Cells
HRPC	Human Rights Promotion Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IHRICON	Institute for Human Rights Communication-Nepal
ILO	International Labor Organization
INGOs	International Non-Governmental Organizations
INHURED	International Institute for Human Rights, Environment & Development
INSEC	Informal Sector Service Centre
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transexual and Intersex
MDGs	Millennium Development Goals
MOFA	Ministry of Foreign Affairs
MOHA	Ministry of Home Affairs
MOHP	Ministry of Health and Population
MOIC	Ministry of Information and Communication
MOLJ	Ministry of Law and Justice
MOPR	Ministry of Peace and Reconstruction

MOWCSW	Ministry of Women, Children and Social Welfare
NDA	Nepal Defense Army
NDC	National <i>Dalit</i> Commission
NFDIN	National Foundation for Development of Indigenous Nationalities
NGOs	Non-Governmental Organizations
NHRAP	National Human Rights Action Plan
NHRC	National Human Rights Commission
NIC	National Information Commission
NPA	National Plan of Action
NTV	Nepal Television
NWC	National Women Commission
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
OPMCM	Office of Prime Minister and Council of Ministers
PIL	Public Interest litigation
PLA	People's Liberation Army
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
SMS	Short Message Service
SoE	State of Emergency
SPA	Seven Party Alliance
TADO	Terrorist and Disruptive Activities Ordinance
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VDC	Village Development Committee

## Executive Summary

Against the tense political, economic and social backdrop in Nepal blended with deeply ingrained structural violence, an armed conflict broke out between the then Communist Party of Nepal (Maoist) and government security forces in 1996. Within ten years, the conflict cost the lives of more than 13,000 people, creating thousands of orphans and displaced persons. Nepal holds a dismal record for the number of people who have enforcedly disappeared or been executed without trial. Every day, numerous human rights activists, journalists and members of political parties had been threatened and robbed of their freedom by the warring parties. After the conclusion of the Comprehensive Peace Agreement (CPA), there have been significant changes in terms of the pattern of human rights violation though the magnitude of the human rights crisis has been lowered.

The low-intensity conflict continued till 2000 with the incidences of maiming, extortion, extra-judicial killings, torture, beating, confiscation of land and property, displacement and disappearance. The security force was responsible in using excessive use of force in the name of curbing the violence and maintaining law and order which resulted in massive violation of civil and political rights. The reporting period witnessed armed insurgents continued to commit kidnappings, torture and killings. The security force took retaliatory measures (extrajudicial executions, torture, arbitrary arrests and detention). In response to the rise in insurgent attacks, the government increased the powers of the security forces to arrest and detain suspects and to deal with the insurgents.

Security operations in the context of the conflict were not subject to proper control. There appeared to be no independent investigation of alleged 'encounter' killings. There had not been hardly any cases of any security personnel being charged, let alone prosecuted, in relation to excesses committed in the context of the insurgency. The Maoists guerrillas had been responsible for a series of outrages. They ruthlessly eliminated supporters of the then ruling and rival parties during the reporting period.

Throughout the reporting period especially between 1996 till 2006, both the government and the rebel forces resorted to human rights abuses and had been accused of wide-ranging violent activities. It is estimated that more than 13,000 people have died in the brutal conflict and that some 200,000 (UNHCR Report May-06) people have been internally displaced. The conflict raged between government forces and Maoist rebels, putting many civilians in the middle of the violence. Those most often caught between the two opposing sides were the most vulnerable: the "untouchables", the rural poor, women, children, and the indigenous communities. In the western parts of the country, which are the most contested areas and the most saturated with rebel forces, civilians were often threatened by both sides. Maoist rebels forced the villagers to provide them with shelter and refusal to do so often leads to violent reprisals. But, if the villagers protected the rebels, either willfully or by force, they became vulnerable to violence by the Government security force. Using extortion and coercion, the Maoists imposed an authoritarian control throughout large parts of rural Nepal. State forces engaged in well documented, systematic violations from extra-judicial executions to illegal detentions, "disappearances" and torture.

Abuses of civil and political rights have been documented since the beginning of the conflict, yet with the deposed King's seizure of power and his subsequent declaration of a state of emergency, a

human rights catastrophe loomed because of the heightened militarization and lack of democratic institutions. Under the state of emergency, a large number of fundamental rights, all of which are protected by the ICCPR, had been suspended.

These included:

- Freedom of expression and opinion
- Freedom of assembly
- Freedom to form unions and associations
- Press and publication rights
- Right against preventive detention
- Right to information
- Right to privacy

The state of emergency further eroded any institutional safeguards that had once protected against human rights abuses, which means that the Articles outlined in the ICCPR were not upheld. The judiciary often became reluctant to take a definitive stance to uphold human rights because they too had been threatened with violence and intimidation by both sides. Since the state of emergency, the NHRC's ability to effectively monitor human rights abuses was limited by obstruction by security forces and the restrictions on freedom of expression.

Another casualty of the state of emergency and subsequent loss of freedom was the Human Rights Accord, which would have committed both the Maoists and the government to clear human rights standards and human rights monitoring. The Accord was created by the NHRC and was promoted by both the international and human rights community. The Accord would have set a standard for future peace negotiations, but with the takeover of power by the King, a greater rift was formed between the two sides and the Accord was subsequently declined by both the sides.

The violation of human rights during the conflict has been acute and widespread. During the reporting period, Nepal continued to backtrack on commitments to hold perpetrators of human rights abuses accountable before the law. Political parties in government actively subverted justice by demanding the withdrawal of criminal charges in hundreds of cases, including for serious human rights violations committed during the armed conflict. Torture and other ill-treatment in police custody remained widespread. Exploitation of Nepalese migrant workers both at home and abroad, including forced labor, continued. Ethnic, religious and gender discrimination and violence against women, girls and children went largely unchallenged.

## **Emblematic Incidences of Violation**

**The Right to Life:** As statistics have shown more than 13,000 people have been killed in a period of decade. The number of civilian killed during the insurgency both by the state and rebels was really dreadful. The loss of sensitivity to the killing and toleration of violence increased as a culture. The respect to the life and dignity was seriously jeopardized by the insurgency even in the post conflict situation. The use of small weapons in the post conflict situation became a serious problem. Crime is politicized and the politics is criminalized.

**The Right to Arbitrary Arrest and Detention:** The security forces were engaged in indiscriminate arrest and detention of persons, and were fully exempted from any liability to the violation of rights guaranteed by the constitution and the ICCPR. A large number of people were arrested and detained illegally by the army and police without surrendering to the judicial authority. Similarly, the then rebels abducted civilians and forced them to work at their labor camps. They too killed number of peoples with full impunity.

**The Right to Fair Trial:** Detainees were locked up without trial. The preventive detention was used under the Public Security Act to avoid the judicial scrutiny of the detention. Only a rare number of cases were brought to the courts. The person released by the court were rearrested and locked up without any charge. The distrust of the security forces and government to the judiciary was unbelievably wider. The independence of the court was virtually challenged.

**Freedom from Torture:** Torture in the police custody was phenomenal. In the wake of insurgency, the army stepped up in arresting and detaining persons, and torture in their custody was phenomenal.

**Freedom of Expression:** The freedom of expression was massively violated both by the state and the rebels. A huge number of media personnel were under constant threat and many were arrested and even killed without trial.

**Freedom of Peaceful Assembly:** During the SoE the freedom of peaceful assembly was prohibited. Even after the withdrawal of the SoE, violation of the right went abated. The government put ban on torch rally and declared a number of places in the capital city as prohibited zones resulting in arrest of hundreds of political leaders and excessive use of force.

**The Freedom of Movement:** The movement of people was grossly obstructed by the security forces. It was put under strict and unlimited scrutiny of the the Unified Command. Security forces had put blocks and check points in countless of places in the highways and roads. Travelers had been roughly treated and manhandled often. In the check points, the travelers had to wait hours for clearance. They had to walk out of the vehicles with their belongings and approach the security personnel to get themselves and belongings checked. Manhandling of the travelers in such circumstances was common and any protest might result in serious consequences.

**The Right to Transitional Justice:** Article 5 of Nepal’s CPA provided for the creation of a Truth and Reconciliation Commission to investigate alleged human rights violations and crimes against humanity committed during the armed conflict. However, drafting of a bill to create the Commission had yet to be completed during the reporting period. The government continued to make interim payments to families of “conflict victims”, but failed to fulfill victims’ rights to truth and justice.

In sum, after the restoration of democracy in 1990, progressive provisions were made in the constitution which guaranteed the fundamental human rights for all citizens. However, there was no provision for proportionate representation to ensure the political participation of excluded groups. Even after the reinstatement of multiparty democratic political system, the governance of Nepal was characterized by lack of accountability and transparency, rampant corruption and the politics of patronage in which human rights were the hardest-hit. The magnitude of the violation of civil and political rights became unpredictably precarious during the armed conflict from 1996 till 2006 (which falls under the state’s ICCPR reporting period). The situation has hardly changed in the post conflict situation. The anarchy and chaos and the failure of the government to deal with it has tremendously affected the lives of people. In absence of the firm law and order, the crimes of kidnapping, extortion and murder have unbelievably increased. The criminalization of politics is one of the serious issues in the post conflict situation. The misuse of youths by the political parties by forming violent groups has also become a serious challenge. The government is making a mockery of the suffering of the victims and their families by promoting rather than prosecuting those against whom there are evidence of serious abuses. Nepal's constitutional crisis and high level of political uncertainty is causing the constraints for the proper safeguards of civil and political rights.

## Token of Appreciation

- During the reporting period, the government authorities showed willingness to cooperate with the international community. Nepal has acceded to all major human rights treaties and had, under the Nepal Treaty Act of 1990, stipulated that provisions in international treaties to which Nepal is a party will supersede Nepalese law where there is divergence. During the reporting period, representatives of two UN Human Rights Commission mechanisms visited Nepal. The government also accepted the services of the International Committee of the Red Cross (ICRC). Since August 1998, ICRC delegates had made several visits to prisons and police stations. After the fighting flared up in November 2001, the security forces often denied the ICRC access to places of detention. However, on 24 January 2002, permission was granted to resume prison visits.
- The Government extended invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in 2000 as a goodwill gesture to its openness to the international community on human rights. In her report to the UN Commission on Human Rights in April 2001 of her visit to Nepal in February 2000, recommended that "the international community should support and assist the Government with the resources required, including funding and expertise" to "continue the process of democratization, and to renew its efforts to strengthen democratic institutions and protect the fundamental principles this development depends upon". In her report, the Special Rapporteur also stressed the "urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses".
- The government in cooperation with representatives of civil society has drawn up Nepal's first National Human Rights Action Plan (NHRAP). The first of its type in the South Asia region, the Action Plan is intended to give equal attention to civil, political, cultural, economic and social rights. Although it was initially due to be put into operation in 2002, it was officially adopted in 2004. However, the applicability of the NHRAP became a distant reality in the then complex political scenario.
- The Government welcomed the visits of the Chairman of the UN Working Group on Arbitrary Detention, and the Working Group on Involuntary Disappearance in 2004 to Nepal in 1996 and 2004 respectively. However, both the visits warrant noted of serious caution with regards to the deteriorating human rights situation. Few of the recommendations made after the visits had been fully implemented. There is therefore a strong need for the international community to assist the government of Nepal in its efforts to implement the recommendations made by the experts after their visits.
- On 10 April 2005, the Government signed an agreement with the OHCHR concerning the establishment of an office in Nepal. On 20 April 2005 the Commission on Human Rights adopted resolution 2005/78, welcoming the signing of the Agreement. This report is submitted by the High Commissioner pursuant to the Commission's resolution. The Representative of the High Commissioner arrived in Nepal on 7 May 2005 to head the new office and an initial team of 10 human rights officers together with support staff.
- The CPA signed between the Seven Party Alliance (SPA) and CPN (Maoist) in November 2006 was a result of long and often difficult negotiations between the parties in conflict. The signing officially signaled the end of the 10-year long internal armed conflict. Through this agreement, the SPA and Maoists committed themselves to a peace process that would not only end the conflict but also lay out a road map safeguarding and promoting human rights as well as holding elections to a CA that would restructure Nepal along a more democratic and inclusive lines.
- The holding of the election of the Constituent Assembly (CA) in April 2008 is a major breakthrough towards ensuring inclusive representation in the course of drafting a new constitution by the representatives who were elected by the electorates through parallel voting system—a mixture of first past the post system and the proportional system.

## Part II

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### CONSTITUTIONAL, LEGAL & INSTITUTIONAL PROVISIONS

#### Introduction

After the substantive political change in 1990 Nepal started to ratify and access international human rights treaties in the greatest flow. Prior to that change government was quite reluctant for recognizing fundamental human rights of individual. Recognizing the individual rights of people, Nepal accede ICCPR and its First Optional Protocol on 14<sup>th</sup> May 1991 without any reservation and declaration. Under the First Optional Protocol, a state party recognizes the competency of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. Similarly, Nepal has acceded Second Optional Protocol of the ICCPR, aiming at the abolition of the death penalty on 4<sup>th</sup> March 1998 without any reservation and declaration.

Part 3 (Articles 12-32) of the Interim Constitution, 2007 has specific provisions on safeguarding fundamental rights. Earlier, the Constitution of the Kingdom of Nepal-1990, which was replaced by the Interim Constitution, also had categorical provisions on safeguarding fundamental rights (Articles 11-23). A great majority of laws in the country are related to ICCPR but their implementation part is below the satisfactory level (Please see below “*the general reflection of the status of the legal provisions in relation to the ICCPR*”)

#### Institutional Mechanisms

##### National Human Rights Commission

The National Human Rights Commission was established on May 26, 2000 under the Human Rights Commission Act of 1997. The Commission was elevated to a constitutional body by the Interim Constitution of Nepal -2007. The Commission is constitutes with the Chairperson and four members. They would be appointed by the President of Nepal for six years term at the recommendation of the Constitutional Council and upon the confirmation by the parliamentary committee hearing.

The large number of NHRC recommendations is not implemented and victims are waiting for justice for years. As part of implementation, compensation is paid to victims and their kin in a number of cases. Very few recommendations are implemented towards the prosecution and departmental action against perpetrators. Out of total cases handled and recommended for action, 55 percent have been partially implemented; 28 percent fully implemented and 17 percent rejected. This trend would erode the value of the NHRC and public confidence in it could decline. The recent amendment in the Act relating to the NHRC has resulted in lack of independence of the watchdog body since several components of the Paris Principles have been compromised, including financial autonomy. Also frequent changes of government and an ongoing political stalemate have weakened

the ability of NHRC to pursue human rights monitoring especially the war-time crimes. The government acted on the NHRC's recommendations mostly concerning compensation but other recommendations for prosecuting the Maoists and state security forces accused of gross human rights violations had been ignored so far.

The staff management is an unresolved issue since the inception of NHRC. The problem seriously emerged after NHRC was made a constitutional body. The government intends NHRC to follow staff recruitment procedure as equal to civil staff of government. The NHRC perceives that such a procedure would not comply with the Paris Principles for the operational independence of NHRIs. At the moment, there is absence of credible law for the recruitment as recruitment process initiated under prevailing NHRC rules were stopped by the Supreme Court ruling. Staff turnover is increased and therefore NHRC has been working with only 33 percentages of human resources which clearly indicates serious impediment to NHRC's endeavors to dedicate in fulfilling its mandates. In order to respond this challenge urgently, the NHRC has drafted a Bill for an Ordinance on the Conditions of Services of NHRC Staff and submitted to the government for enactment.

In 2012, the OHCHR has published the report on the human rights violations in Nepal but the government of Nepal instead of welcoming it questioned the validity of the report and the legitimacy of the UN agency to publish it without the consent of the government of Nepal. The officials of the NHRC also publicly expressed its dissatisfaction on the report under the pretext that the OHCHR didn't consult with them prior to making it public.

NHRC is an important institution that deserves and requires as much support as possible. That being said, certain conditions within NHRC need to improve. Based on NHRC's recommendations, the government has distributed more than \$12 million in reparations to more than 1,000 victims (and/or their families) of torture - the exact number is still being calculated - enforced disappearances and execution. It took on average of at least two years per file claimed due to "complications". The compensation awarded was some \$4,000 for executions, \$1,500 for enforced disappearances and \$350 for torture, depending on circumstances.

Similarly, the NHRC-CSO relationship is also quite weak in contrary to the provisions of the Paris Principles, which recognize that relationships with civil society can help NHRIs to protect their independence and pluralism. This can also enhance their effectiveness by deepening their public legitimacy, ensuring that they reflect public concerns and priorities, and giving them access to expertise and valuable social networks.

In addition to NHRC, there are/were other human rights institutions/committees which work/worked for the protection and promotion of human rights.

**Human Rights Committee in Parliament:** Amongst the number of committees in the parliament, the Foreign Relations and Human Rights Committee, has been a significant mechanism on human rights issues. The work of HRC was to formulate policy guidelines and provide directives to the government on human rights issues.

**Human Rights Promotion Centre (HRPC):** The then HMG had set up a HRPC under the aegis of the office of the Prime Minister and Council of Ministers in 2003. The main objectives of the Centre were to inform general public about the works undertaken by HMG/N regarding human rights promotion and to coordinate and facilitate between various entities relating to the fulfillment of commitment of various international human rights instruments to which Nepal is a party.

**Human Rights Cells (HRCs):** The government has, apart from the aforesaid institutional mechanisms set up for the effective protection and promotion of the rights of people, formed several human rights cells within the government branches. They include:

- **HRC at the Ministry of Home Affairs (MOHA):** The human rights cell, set up in the Ministry in 2003, was headed by the joint secretary. The Cell monitors any reported cases of HR violations by Nepal police, Armed Police, National Investigation Department and other government organs. It also coordinated with other HR cells established within the security agencies in order to protect human rights and to share information with them.
- **HRC at the Royal Nepalese Army (Now Nepal Army):** The Royal Nepalese Army had set up HRC at its headquarters on July 8, 2002. The cell mainly investigated the reported cases of human rights violations by army personnel. The cell also imparted trainings to army officers on human rights, humanitarian laws and the law of war.
- **HRC at the Police Headquarters:** The HRC was established in Nepal Police Headquarters on January 16, 2003. The functions of the Cell were mainly to provide trainings to police personnel on human rights issues, to investigate complaints related to human rights violations by police personnel and to create awareness among police staff about human rights. It also coordinated with other agencies including ICRC and NHRC on human rights issues.

In accordance with the eight point declarations and 25 years long-term planning through the then parliament for the development and empowerment of Dalit, women and other backward community and class, National Dalit Commission (NDC) and National Women Commission (NWC) were established in January 6, 2010 and March 7, 2002 respectively. Similarly, an independent Foundation dedicated to furthering the social, economic and cultural development of Nepal's indigenous Nationalities was acutely required. To fulfill the need for the social, economic and cultural development of Indigenous nationalities and to give them equal participation in mainstream development process, National Foundation for Development of Indigenous Nationalities (NFDIN) was formed in 2003.

Despite the establishment of the NHRC, NWC, NDC, NFDIN and other institutions, the government has generally failed to implement the recommendations of these commissions. Neither the budgetary and human resource support is sufficient.

## **Legislative Pieces to be annulled**

*Despite a couple of amendments and reviews, many laws are still incompatible with the spirit of the ICCPR. Considering the state obligation under Article 2 of the Covenant, some legal provisions of Nepal had/have to be amended and/or annulled.*

- The Terrorist and Disruptive Activities (Control and Punishment) Act 2002 was highly criticized in national and international level which was used as a tool to violate liberty and freedom of people, however, the Government claimed that particular Act was best tool to protect liberty of people. Because of large criticism by civil society and international community, the Act had been scrapped.
- There were many flaws in laws considering to fair trial rights. The right to be heard by the competent court was violated in most of acts. Investigation process and system has been traditional and based on confession, which has resulted in torture. Thus, according to Article 14 of the ICCPR, the entire criminal justice system should have been reviewed and reformed.
- Many provisions of Country Code 1963, that were discriminatory, ignore equality, and promoted injustice, have to be amended and annulled making compatible with the ICCPR provisions.
- The State Cases Act 1992 empower police to interrogate the suspect, the Act makes no reference to the right of suspect to remain silent as constitutionally guaranteed rights. Such provision which is contrary with constitution and ICCPR should be annulled.
- The Prison Act 2007 has no clear and substantive provisions for reforms and rehabilitation of prisoners. Facilities inside prison are like degrading treatment, which violates the dignity of prisoner. Thus, the Prison Act should be amended incorporating and ensuring certain rights guaranteed by Standard Minimum Rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners.
- The Torture Compensation Act 1996 is not comprehensive and practical. It has flaws on defining torture, criminalizing torture; punishment to perpetrators and offenders, rehabilitation of victims and proper compensation. Thus; thus Act has to be amended making strong legal tool to prohibit torture and protect victim.
- Since the Constitution recognizes free legal aid as a constitutional right, the limitation of annual income of 40,000 in Legal Aid Act 1997 does not stand with constitutional provision, thus; the this Act has to be amended accordingly.
- The provisions, which empower security personnel for any act beyond legal principles and offer impunity on the name of positional power of Police Act, Armed Police Act and Army Act should be amended and annulled making the provisions compatible with the ICCPR provisions.

## **Need of Fresh Pieces of Legislations**

As the state party of any international convention it is obliged to take adequate legal, judicial and administrative measures for guaranteeing right set forth in the particular convention or covenant. GoN has to enact fresh pieces of legislation to address newly encountered problems on the path of guaranteeing ICCPR provisions as well as making amendment to existing laws.

Different sections of people have been making demands for the enactment of new laws recognizing their particular rights. Dalit community has been lobbying for legal instruments to prohibit discrimination defining such discrimination as criminal offence. Other groups of people are demanding to enact law-guaranteeing equality regardless of sexual orientation. Gay, Lesbians, bisexual and transgender are fighting to assert their rights. Women activists are also in forefront for equality rights and freedom from violence. Similarly, there are many pressure groups and communities demanding different laws recognizing their rights or prohibiting particular Act or limiting power of security personnel for any procedural issues.

*The following is the general reflection of the status of the legal provisions in relation to the ICCPR.*

Articles	ICCPR Provisions	Nepalese Legal Measures	Areas of Improvement	Reference
1	Right of Self Determination	The Local Self-Governance Act, 1999 empowers local bodies for dispute settlement and for the realization of right of self determination. The Preamble and Articles 2,138,139,140 of the Interim Constitution 2007 has embodied the spirit of right of self-determination.	There is no any explicit law guaranteeing the right of self- determination. New law is required to address the right of self-determination explicitly.	Adoption of federalism, recognition of different ethnic and linguistic group for resource management, substantial political participation through proportional manner is largely discussed in this regard.
2	Equal Protection of Rights	The Civil Rights Act, 1955 and Article 13 of Constitution have provisions of equality. The state shall not discriminate among the citizens on the grounds of religion, race, sex, caste, tribe, origin, language and ideological conviction. For the first time, Article 14 has guaranteed right against untouchability. Legal instrument to establish the National Human Rights Commission, Independent National Dalit Commission and National Commission on Women are quite significant. Social Welfare Act, 1992, Children's Act 1992 and Labor Act 1991 are some of the positive efforts for equal protection of rights. The Treaty Act 1990, Section 9 is a vital legal measure for the domestication of internationally guaranteed rights in Nepal.	Despite constitutional provision and legal setup, people are deprived from the equal protection of rights. Rights of Badi community, sexual minority group, person belonging to Dalit community, and different ethic and linguistic group are not effectively protected as compared to other majority population. For the enjoyment of rights guaranteed under ICCPR as well as the Constitution, the Government is obliged to adopt adequate legal measures protecting and promoting the rights of those deprived and marginalized communities.	Restructuring the system of governance and legal structure to protect rights of different groups and to promote their substantial participation in governance are major agendas of present political discussion.

3	Right to Equality	Ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Article 13 and 20 of Interim Constitution, special protection or positive discrimination provisions under Constitution and many laws guarantee right to equality. The Labor Act 1991 and the Constitution itself recognize equal remuneration for men and women for the same work. The Immigration Act 1996 and 11th amendment of the Country Code 1964 are major legal measures taken by the Government.	Domestic violence, Sexual Assault, sexual harassment on public place and working place and, dowry related violence against women are still rampant. The Citizenship Act, 2007 is still reluctant to accept women as an individual identity. New effective laws and institutional setup are necessary for promoting gender equality.	About 33% reservation for women in every sphere of governance is as the first demand for promoting equality among men and women. Adoption of law on domestic violence is highly discussed.
4	Non-derogation of Rights during the State of Emergency	Article 143 has provision for non-derogation of certain rights, which are fundamental even during the period of state of emergency.	Under the previous constitution 1990 Article 115, the state of emergency was declared on 26 November 2001, 27 May, 2002 and 1 February, 2005. Despite having same provisions of Interim Constitution 2007, government used state of emergency as a tool not to be obliged with international instruments. The necessity of derogation was not tailored narrowly.	
5	Safeguard Clauses	The Interim Constitution of 2007 and other Nepalese legislations make no provisions imposing any restriction upon on derogation of any of the fundamental rights recognized in the respective constitution or legislation on the pretext that the covenant doesn't recognize such rights or that it recognizes them to a lesser extent.	Interpretation of the ICCPR provisions as per convenience of state giving an excuse of ground reality and cultural relativity should be eliminated.	

6	Right to Life	Article 12 (1) of Interim Constitution has provision guaranteeing right of every person to live with dignity and no law shall be made with provides for capital punishment.	Right to life was violated largely violated during the conflict as well as after peace agreement between CPN Maoist and Government however Constitution of 1990 and Interim Constitution 2007 has guaranteed right to dignified life as fundamental right of individual. Disappearance, extrajudicial killing, torture till the death were heavily practiced. Nepal has to develop legal measures protecting right to life through any form of risk. Ratification of ICC is important in this regard.	Law against abduction is under consideration of Interim Parliament and making individual perpetrator and offender responsible for violation of right to life is a major demand of civil society.
7	Freedom from Torture	Ratification of the Torture Convention-1984 without any reservation, Article 26 of the Interim Constitution- 2007, Children's Act-1992, Torture Compensation Act- 1996, and Human Rights Commission Act, 1997 are major legal measure prohibiting torture.	Legal measures have to be taken criminalizing torture with severe punishment and individual liability of compensation to victim. Torture Compensation Act should be amended defining torture making compatible with Article 1 of CAT and individual liability for practicing torture.	Illegal dentition is inflicting torture and during the state of emergency torture was rampant. It was hard to file application by torture victim for remedy with just compensation and rehabilitation.
8	Prohibition of Slavery	Article 19 of the Interim Constitution, Human Trade and Trafficking (Control) Act 2007, the Kamaiya Labor (Prohibition) Act 2002, and Child Labor Prohibition Act 2000 are important legal measures regarding effective realization of the Article 8 of the ICCPR.	Proper implementation of Acts has been lacking. Bonded labors were released but they do have no means of livelihood. Government has to adopt supplementary laws for making environment to enjoy the provision of adopted laws and Article 8 of the ICCPR.	Landless, ex-bonded laborers and many other groups of people are fighting for legal and institutional protection for enjoyment of prohibition of slavery.
9	Liberty and Security of Person	Article 12, 24, 25, and 32 of Interim Constitution 2007, section 12 of Civil Rights Act, 1955	Law implementation authorities are not sensitive regarding liberty and security of person. Thus; Legal measure should be adopted making aware and responsible to law enforcement officials for encroachment of liberty.	

10	Treatment of Persons Deprived of their Liberty	Nepal has ratified Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 without any reservation. Similarly, it has adopted the Prison Act 2007, and Human Rights Commission Act 1997 with provision of protecting rights of persons deprived of their liberty.	The Prison Act has to be amended incorporating the provision of Standard Minimum Rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners. Legal measure should be set up for regular monitoring and observation.	Open prison and community service has been recognized as a form of punishment but it lacks legal and institutional set up for proper implementation.
11	Freedom from Imprisonment for Inability to Fulfill Contractual Obligation		No 42 of the chapter on sentence of the Country Code 1964 has such provision, which needs to be reformed by an appropriate measure.	
12	Freedom of Movement	Article 12 of Interim Constitution and section 6 of Civil Rights Act, 1955 recognizes the freedom of movement and choice of residence.	Because of high voltage conflict and other disruptive activities, many people are compelled to move from their origin of living. Internally displaced people are having measurable life. Government has to make adequate laws addressing that indirect effect on violation on freedom of movement and choice of residence.	Many people originally from Hills are displaced from Eastern and Central Tarai. They are deprived from the choice of domicile.
13	Non-expulsion of Non- National	The Immigration Act 1992, Article 3 of Convention against Torture, and article 24 of the Interim Constitution 2007 has provision regarding to Non-expulsion.	Immigration Act 1992 and Extradition Act 1971 have to be amended and Refugee Conventions should be ratified. Refugee laws should be adopted and Article 3 of the CAT should be implemented properly.	The civil society has been raising voice to ratify Refugee Convention 1951 and 1967 to address the issues of asylum-seekers and refugees from various countries.
14	Right to Fair Trial ( right to equality before the Courts and Tribunals)	Judicial Administration Act 1991, Civil Rights Act 1955, Section 30 of chapter of Court Procedure of the Country Code 1964, Article 24 and 107 of Interim Constitution 2007 have some substantive provisions regarding to Right to fair trial.	Proper implementation of such provisions is totally lacking, many laws have provisions to investigate and deliver decision with out proper procedure. Similarly, independency and competency of Court or Tribunals are always questioned in many laws. Like; Forest Act, Police Act, Immigration Act, Revenue Act, etc.	Criminal law experts are demanding to reform entire criminal justice system to guarantee fair trial rights and prohibition on torture during criminal proceeding. New Criminal code is drafted.

15	Prohibition of Ex-Post Facto Laws	Article 24 of Interim Constitution 2007, section 11 of Civil Rights Act 1955 and most of other laws respect the provisions of prohibition of ex-post facto laws.	The practice of false allegation for political interest should be ended.	Making new laws to punish culprit of the 2nd People's Movement (April Uprising) 2006 was questioned in this regard. But many jurists believe that this principle only applies on criminal laws but not to human rights violation, crime against humanity and war crime.
16	Right to be recognition as a Person under the Law	Article 12 and 13 of Interim Constitution, CAT and section 9 of Treaty Act 1992, and Civil Rights Act 1955 significant in this regard.	Proper implementation of legal provision is necessary.	
17	Right to Privacy (Freedom from Arbitrary interference with privacy, family and home)	Article 28 of Interim Constitution, Civil Rights Act 1955, Postal Act 1962, Tele Communication Act 1962 and different provisions of Country Code 1964 are legal measures to protect right to privacy.	Despite constitutional guarantee, privacy of people has been encroached very frequently. To address new means of privacy encroachment and insensitive working pattern by investigation authority, it should be regulated by adopting new legal measure.	During the period of emergency, the state security force faced heavy criticism for failing to uphold the right to privacy.
18	Freedom of Thought, Conscience and Religion	Article 12 and 23 of Interim Constitution and Section 5, 6 and 7 of Civil Rights Act 1955 are significant protecting freedom of thought, conscience and religion.	Pursuant to article 18 of the covenant, Nepalese legislation imposes some restriction on the exercise of right to thought, conscience and religion, imperative from the viewpoint of Public safety, order, health, morals or the fundamental rights and freedom of others. This limitation should be interpreted and applied by narrowly tailored.	Nepal has been declared as a secular state through the parliamentary decision in 2006.
19	Freedom of Opinion and Expression	Articles 12, 13 and 16 of the Constitution the Kingdom of Nepal-1990 and Articles 12, 15 and 27 of Interim Constitution 2007, section 6 of Civil Rights Act 1955, Press and Publication Act 1991, and Right to Information Act 2007 guarantee freedom of opinion and expression.	Restriction on FM radio, newspapers and arrest and detention of journalists because of writing any news was rampant in different past times. Limitation was imposed on freedom of opinion and expression for political interest of individual or group of people. Loophole of existing legal measures should be removed amending those legal provisions or adopting new legal measures.	FM radios were banned for broadcasting news bulletin during the SoE.

20	Prohibition of War Propaganda	Article 12 (a) 1 prohibits the practice which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities, or on any act of defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behavior or morality.	This constitutional provision has two edges. Concrete legal measure should be in place distinguishing between freedom of expression and expression jeopardizing harmonious relation.	
21	Freedom of Assembly	Article 12 of the Interim Constitution 2007 and Section 6 of the Civil Liberty Act 1955 is relevant in this regard.	The scope of reasonable restrictions should be clearly defined and enact laws addressing the ambiguity of the relevant provisions.	Often, restriction was imposed limiting freedom of assembly in Nepal during the high voltage internal armed conflict.
22	Freedom of Association and tread Union	Article 12 and 141 Interim Constitution 2007, Trade Union Act 1992, The Association Registration Act 1977, The Labor Act 1992 and section 6 of Civil Rights Act 1955 guarantee the freedom of association.	The scope of reasonable restrictions should be defined clearly and make laws addressing confusion. The limitation acceptable to the extent which is necessary democratic society.	
23	Protection of Family	Different Chapters of the Civil Code 1963, Marriage Registration Act 1971, The Births, Death and Other Personal Events (registration) Act 1976 and CEDAW and Treaty Act 1990 Section 9 are legal measures which guarantee the protection of family life.	Still some legal provisions are not complete with the spirit of Article 23 of ICCPR. Many laws are required to be amended and some new laws are necessary for proper realization of article 23.	Male and female don't enjoy equal role and right for forming family. The Supreme Court has declared many legal provisions which are incompatible with international standards regarding to Article 23 of ICCPR.
24	Rights of Child	CRC and Treaty Act 1990 section 9, Article 8, 22 of Interim Constitution 2007, different sections including 2,3,4,5,6 of Act Relating to Children 1992, The Births, Death and Other Personal Events (Registration) Act 1976, Child Labor (Prohibition and Regularization) Act 2000, section 14 of Civil Rights Act 1955 and Labor Act 1992 guarantee the rights of child.	New laws and concrete policies are required addressing to child marriage, child labor in household, street children, right to education of children and guaranteeing the participation rights. Concrete juvenile justice and infrastructure should be develop for protecting right of children during criminal proceeding.	Thousands of children are in street, schools are regularly being shutdown, juvenile are forced to live together with adult criminals in prison and custody.

25	Rights to Political Participation	Article 43(20, 63(7) of Interim Constitution 2007, Local Body Election Procedure Act 1992, Civil Service Act 1993, The Local Self Governance Act 1999, and Public Service Commission Act 1991 recognize the right and opportunity of every citizen to take part in public affair directly or through his /her representative.	Because of economic condition, social construction, social stigma, access to information and other many reasons, a large section of population is out of access to political participation and representation to public affairs. Necessary legal measures should be taken to uplift those groups of people guaranteeing political and public affair participation.	2007 record shows that only Brahmins, Chhetris and Newars representing 28% of total population held about 70 % of seat of the parliament and about 95% post of judiciary.
26	Right to Equality before the law	Article 13 of Interim Constitution 2007, Section 3 of Civil Rights Act 1955, Legal Aid Act 1997, 11th Amendment of Country Code 1964, The immigrating Act, Act relating to Land 1964 and The Prison Act 2007 have provision of equality before law	However, many laws recognize the equality before laws, still there is some laws which fails to recognize equality between male and female and are not perfect with the aspiration of article 26 of ICCPR. Legal and institutional measures should be taken to make environment to believe every individual as they are equal under legal provision.	Enjoyment opportunity of the rights by the people living in different economic and social conditions, gap between poor and rich, illiterate large population, and deprivation from many facilities is major social problem in Nepal.
27	Rights of Minorities to Enjoy their own Culture, Religion, etc.	Article 3, 4, 17, and 23 of Interim Constitution 2007, Section 7 of Civil Rights Act 1955, The indigenous Communities Upliftment National Academy Act 2002, and The self Governance Act 1999 have related provision with article 27 of ICCPR.	Laws are required to protect language, culture and religion of minority for creating multi-linguistic, multi- ethnic and multi-cultural society. Law should reflect that different minorities groups are also the citizen of the country.	To protect language, religion and culture, many minorities and ethnic groups are demanding restructuring of the nation by recognizing different languages, religions, and identity of people.

## PART III

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### SUBSTANTIVE VIOLATION: ARTICLEWISE SHADOW PERSPECTIVE

#### *Article-1: The Right to Self-determination*

##### **State Report**

- The popular movements and uprising of 1990 and 2006 which abolished the concept of absolute monarchy by establishing a constitutional monarchy and abolished the 240 years old traditional feudal monarchy, the formation of the CA, and the exercise to frame the new constitution through peoples' popular representative body have been referred as the exercise of the right to self-determination respectively.
- The primary essence of the State report on the right to self-determination has been narrowly defined and has been grossly misperceived. On the face value, it is pre-emptily overstated as a right to autonomy which in the state's version, may even lead to a secessionist project.
- The state report lacks the proper, concrete and elaborated interpretation and enforcement of the ILO Convention 169 on the question of right to self-determination which could be misleading and confusing to the general public.

##### **Shadow Report**

- The logic of self-determining individual follows that if groups of individuals decide to choose certain political parties or identities, it is their fundamental right in a democracy is missing. Accordingly, the doctrine that autonomy entails protection against external threats but not the right to dominate members or other groups is not considered. The core problem around group differentiated rights which is for protection against external threats that will undermine self-governance and not for dominating or encroaching others' right to self-govern is not covered.
- People have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual wellbeing and the lands they occupy or otherwise use. They also have the right to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they have the right to participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly. Most Nepalese' aspirations will be fulfilled by the multi-cultural citizenship that will emerge from the genuine practice of the right to self-determination and autonomy.

##### **Recommendations**

- The state should initiate a greater public discourse in defining and recognizing the right to self-determination as it has been a long-standing contentious issue in the country.
- The state should instantly begin the model of federalism through state restructuring and representation characters to ensure the universally accepted and practiced right to self-determination in the changed political transition.

#### *Article-2: Right to Non-Discrimination and Effective Remedies*

##### **State Report**

- The state report is confined in enlisting several constitutional and legal provisions which safeguard equal protection of rights and empowerment or advancement of women, indigenous

nationalities, children and the aged. The report also refers to the right to equal protection before the law as an absolute and unrestrained right. The Protection and Welfare of Persons with Disability Act, 1983 and Regulation, 1994 are major legal measures to implement the CRPD to which Nepal is a state party has been cited, together with constitutional safeguards to non-nationals.

- Although the report elaborates about the special protection policy concerning indigenous population, children, senior citizens and the people with disabilities and also refers to ratification of the related international treaties, constitutional safeguard mechanism and enactment of relevant laws, it is silent on the specific strategies on time-bound action plan and resource mobilization towards equal protection of the rights of the marginalized section of the society.

### **Shadow Report**

- The bitter reality is that various forms of discrimination are still in practice. Similarly, a number of important grounds on which the Covenant prohibits discrimination - color, political opinion and social origin, for example - have been omitted from the Constitution, even though it has been adopted after the promulgation of the Covenant.
- Women continue to face violence in various forms; rape, sexual assault, and domestic violence have remained serious concerns. Also, without the assistance of male family members, the citizenship law makes it difficult for women to secure legal proof of citizenship – a sure way to deny them rights to marital property, inheritance, or land. The current law continues to deny citizenship to children born to non-Nepali fathers, effectively leaving them stateless. No effective legal or practical measures are adopted to combat all forms of violence against women as a result of which the act of domestic violence, sexual assault or rape still exist.
- Despite the caste based discrimination being punishable by law, instances of society giving it continuity are reported frequently. Nepal retains its centuries-old caste-based discrimination and the practice of "untouchability". Dalits, the discriminated people under this system, suffer from restriction on the use public amenities, deprivation of economic opportunities, and general neglect by the state and society. There has been no stop in discrimination, dislike and suppression against Dalits by so-called upper castes. Government officials generally ignore, and at times ill-treat, Dalits seeking services from the government. Treated like second-class citizens, services are generally delayed. They are also abused by addressing them with disrespectful words. Dalits who are able to get a wage-earning job suffer from unfair wage system. They get much less than their non-Dalit counterparts. Dalit women, on the other hand, get lesser wage than Dalit men. Lack of modern technology skills and financial resources prevent them from getting employed in new industries or trade in the market. Dalits who change from traditional occupation to wage labor do not therefore necessarily improve their economic conditions.
- The people with disabilities are treated worst as an object of pity. Many people with disabilities are being hidden as the matter of social prestigious by families is still practiced largely. The notion that people with disabilities have equal rights and duty as any other individual is largely absent from the popular mindset. In accordance with a latest study conducted by New Era, 70.1 percent of the persons with disabilities have stigma and difficulties to live in the community with self-respect. Having a disabled person posed problems in most (90.5%) of the households. The difficulties they faced were mostly related to the inability of the disabled persons to work and taking care of the disabled persons, like teaching new task or having to leave the disabled persons alone. Moreover, still a large

number of the disabled persons have not got any kind of treatment. This could be due to lack of knowledge and awareness that impairment can be treated. It could also be because the family does not have the resources, or because the health facilities do not function properly and staff does not know about disability.

- The practice of discrimination against indigenous population and senior citizens is persistent. There is need for extensive discussions to ensure the rights of this section of the society while drafting the new constitution. It would be equally important to take inspiration from international human rights law and other relevant international standards. The most important aspect is the need for a continuous effort to make constitutional provisions for an appropriate mechanism so that such groups are empowered to enjoy the rights in practice as mentioned in the constitution. The new Constitution could in addition to establishing certain rights, also provide for a special body in charge of overseeing its implementation in this regard. Categorically, a commitment to indigenous people's rights must go beyond the constitution and into laws, policies and appropriately funded government programs to ensure their implementation. A lasting, balanced and constructive relationship between the state and indigenous peoples can only emerge if ways are found to resolve differences through partnership and cooperation.

#### **Related Case**

*A physically challenged lady Kabita (name changed) was born to a village in Western Nepal. Due to her disability her family did not take care so with the help of a person she shifted to the Women Helpless Centre and resided there for 9 months. Then she left the Centre and stayed in a rented room and started looking for job. During her job search, her landlord took her to an unknown room and left her with an unknown man. That man knotted her legs and hands, raped her and left. Kabita made a complaint to the police and the police caught the man but, immediately after his arrest, he escaped from the police and became a missing person on the list of the police and Kabita was compelled to wait for justice for years. She resided at a hostel of the Women Disabled Association. It seems that directly been affected is Kabita and indirectly affected is all disabled women. Being a disabled woman, Kabita is not able to demand/expect good behavior from her own family. She is raped but not able to get justice [criminal is outside of Justice System].*

#### **Recommendations**

- Nepal's equality legislation should include all state functions and the State should consider introducing more preventive measures in dealing with underlying inequalities i.e. equality proofing of practices.
- A greater autonomy, power and funding for the Women Commission, Dalit Commission and NFIDN should be substantially increased to allow them to deal with anti-discrimination cases in a speedy manner.
- The State as a matter of urgency should review and enhance remedies protecting the victims of domestic violence, indigenous population, Madheshis, Muslims, backward communities, the disabled and the senior citizens.

#### **Article-3: Equality between Men and Women**

##### **State Report**

- The state report refers to the Article 13 of the Constitution, which has provided the right to equality as a fundamental right. The rhetoric that all citizens are equal before law and entitled to have equal protection of law has also been cited, including the provision of non-discrimination between or against any citizen on any ground and equality between men and women in terms of remuneration and social security for the same work.
- The report elaborates the provisions and principles of non-discrimination but fails to illustrate the incidences of the violation of the right to equality, identification of the perpetrators, kinds of victims and the constitutional, legal and administrative remedies taken so far.

## Shadow Report

- Despite promulgation of the Caste-based Discrimination and Untouchability (Offense and Punishment) Act, Dalits continue to face social and economic exclusion. Gender discrimination continues, particularly among women from marginalized castes and ethnicities. Dalit girls and poor girls from rural areas face discrimination in accessing education and health care, are more likely to be married as children, and experienced higher rates of child malnutrition.
- Nepali women remain underrepresented in both public and political life except in the dissolved Constituent Assembly. Hindrance to women's engagement in politics results from limited prospects for political participation and understanding of democracy, limited experience in the political arena, lack of family and societal support, inadequate access to financial means and radical campaigns against participation of women in politics, public and professional life. The increase in religious conservatism restricts women's leadership roles along with their mobility while further perpetuating patriarchy. For these reasons, there seems to be limited experience and low political commitment amongst women. At the institutional level the disaggregated data and gender focused research undertaken are insufficient.
- The violation of the rights of the female migrant workers from the point of departure and especially in most of the destination countries and specifically in the Gulf countries is a common phenomenon. Grievances are rarely heard and the mechanisms for remedies are extremely poor. Many do not know the language of the country and do not know their rights. Women migrant workers lack mobility because they may be confined by employers to their work or living sites, prohibited from using telephones or banned from joining groups or cultural associations. They often lack knowledge of their embassies or of services available, due to their dependence on employers or spouses for such information. For example, it is very difficult for women migrant domestic workers who are scarcely ever out of sight of their employers to even register with their embassies or file complaints. As such, women may have no outside contacts and no means of making a complaint, and they may suffer violence and abuse for long periods of time before the situation is exposed. In addition, the withholding of passports by employers or the fear of reprisal if the women migrant worker is engaged in sectors that are linked to criminal networks prevent them from making a report. Undocumented women migrant workers are particularly vulnerable to exploitation and abuse because of their irregular immigration status, which exacerbates their exclusion and the risk of exploitation. They may be exploited as forced labor, and their access to minimum labor rights may be limited by fear of denouncement. They may also face harassment by the police. If they are apprehended, they are usually prosecuted for violations of immigration laws and placed in detention centers, where they are vulnerable to sexual abuse, and then deported. In such an adversarial scenario, the government of Nepal is doing very little to address the misery of the female migrant workers.

### Related Case

*Seti is a 43-year-old woman who lives in the western part of Nepal. Her husband — who worked as an agent for foreign companies seeking employees — passed away, and she was neglected and abused by the family, society and the state authority. Seti entered a prolonged period of mental disorder. She traveled to Kathmandu, stayed at the Pashupatinath temple, and then began living out on the streets. Seti lived in the street for three months. She had no knowledge of herself or her family. People called her Boulahi, meaning "insane woman," and Seti faced an overwhelming amount of cruel behavior from even the most respected people who saw her. Seti was rescued from the street in October 2010 with the support of an NGO called Koshish and was taken to a private rehabilitation center. For more than one month, Seti still suffered from her mental disarray. The concerned state authorities were indifference in protecting her.*

## **Recommendations**

- The current status of the National Women's Commission should be reviewed and alleviated with more authority for investigation and action against non-compliance with equality provisions of the constitution and the laws.
- Multiple discriminations faced by minority ethnic, Dalit, the disabled and rural women, should be adequately dealt with by the concerned state authorities, NHRIs and especially by Women Commission.

### *Article-4: Derogation in States of Emergency*

#### **State Report**

- The state report simply provides informative accounts of the SoE declared twice during the reporting period, including the issuance of the TADO along with the proclamation of the state of emergency.
- Surprisingly, no incidences of atrocities and the non-compliance with the non-derogable rights as enshrined in the constitution and under this Article have been mentioned despite documentation by the NHRC, OHCHR and local rights groups. The validity of the SoE such as the fulfillment of a number of requirements set by the treaty law, such as qualifications of severity, temporariness, proclamation and notification, legality, proportionality, consistency with other obligations under international law, non-discrimination, and lastly, non-derogability of certain rights recognized in this article are not taken into consideration.

#### **Shadow Report**

- In 2001 SoE, there have been incidences of massive human rights violation including arbitrary arrest, extra-judicial killings, torture and enforced disappearances. During 2005 SoE, in combination with the King's dismissal of the government, subsequent imposition of emergency rule and suspension of many civil rights--including freedom of expression, assembly, and privacy--was a setback for human rights in Nepal. During this 3-month period, censors were deployed to major newspapers, and many political leaders were kept under house arrest. The King's government restricted the media from publishing interviews, articles, or news items against the spirit of the royal proclamation of February 1, 2005 or in support of terrorist or destructive activities.
- Enactment of TADO in 2002, which was renewed in 2004, was Nepal's reaction to a global apprehension of terrorism since the events of 11 September 2001, and localized in Nepal through continued State conflict with the CPN-Maoists. The TADO had been widely used for illegal arrest, detention, disappearance, torture and extra-judicial killing affecting the innocent civilians the most. The new provision allowed the authority to detain a person for up to 12 months on the basis of suspicion without charge or trial.
- Both the high contracting parties demonstrated indifference to the compliance with the application of the humanitarian law during the high intensity conflict. Though there had been occasional talks and symbolic respect in isolated instances, in totality there had been a gross disrespect to the essence of the humanitarian law by both the sides. The practice of barbaric killings, maiming, mutilation, cruel, degrading treatment or punishment, targeting civilian population, hostage taking etc became the routine of day.

### **Related Cases**

- *On 20 February 2002, during the first state of Emergency and three days after Maoists attacked Mangalsen, the District Headquarters of Achham District, a group of Maoists shot at an army helicopter trying to land at the remote Suntharali airport strip in Kalikot District. At the time, a group of labourers were doing construction work at the airfield. On 24 February, Nepal Army personnel arrived at the place the labourers were staying. Two representatives attempted to present the workers' identity cards to the Army, but they were allegedly shot and killed. According to reports, Nepal Army soldiers then took all 35 labourers out of their huts and shot them dead.*
- *Between November 2001 and August 2002, when the state of emergency was uplifted 180 Nepali journalists were arrested, tortured and some of them were killed. Intimidation by the security forces and administration became routine throughout the country. In some places like Jumla the Chief District Officer ordered reporter to stop reporting. In other places like Shankhuwasabha journalists were sent to jail just because they earlier had raised the issue of corruption in public services. And in many places journalists were asked to accompany the security forces and helped them identify the Maoists. "I will kill you right here and get the news that one terrorist was shot dead by the security force published in your newspaper tomorrow," had been the standard threat by the security forces. Many journalists received such threats.*

### **Recommendations**

- A law and policy guidelines governing the conditions of a state of emergency, including reasons and proportionality should be enacted to prevent the gross misuse of the SoE.
- The perpetrators of the atrocities in the form of excessive use of force towards violating the non-derogable rights should be brought to justice
- The state should guarantee that the military personnel involved in crimes relating to civilians must be tried in the civil court.

### *Article-5: Limited Right of Derogation*

#### **State Report**

- No provision in the Constitution or any law of Nepal allows restriction upon or derogation from fundamental human rights in the pretext that the ICCPR does not recognize such rights or that it recognizes them to a lesser extent. The fundamental rights and freedoms guaranteed by the Constitution and other statutes fully respect the letters and spirit of the ICCPR.

#### **Shadow Report**

- The general tendency on the interpretation of the ICCPR provisions as per convenience of state giving an excuse of ground reality and cultural relativity prevails.

### **Recommendations**

No specific recommendation is made.

### *Article-6: The Right to Life*

#### **State Report**

- The state report cites various provisions enshrined in the CPA and the Interim Constitution to affirm the explicitly recognized the right to life with dignity and liberty, and the right against death penalty, including the provision in the Local Administration Act, 1971 which prohibits disproportionate use of force by the security agency in order to prevent casualties and death of persons.

- Also, the state report mentions about the proposed Bills on the Commission on Truth and Reconciliation the Commission on the Involuntary Disappearance. Surprisingly, no accounts of systematic, gross and widespread violation of the right to life, including enforced disappearances have been reflected in the report.

### **Shadow Report**

- The inconvenient truth is that Nepal witnessed a massive attack on the right to life especially during the internal armed conflict in which more than 13,000 people lost their lives. The right to life was further encroached during the SoE declared twice first in 2001 and in 2005. The suspension of Article 23 of the Constitution during the state of emergency denied people access to judicial remedy (apart from habeas corpus) is of particularly grave concern. It prevented judicial scrutiny of the measures taken by the government, which was contrary to the provisions of Article 2 (3) of the ICCPR.
- Given that both the constitutions exercised during the reporting period, don't explicitly guarantee the right to life, the declaration of the SoE and the suspension of fundamental rights were interpreted by army and police personnel to include a suspension of the right to life. The army and police in some districts were given the authority to "shoot on sight" any curfew violators. This appears to give official sanction to the security forces to commit extrajudicial executions. Providing such powers was in direct violation to Article 6 of the ICCPR, which guarantees the right to life and prohibits arbitrary deprivation of life.
- Extrajudicial executions and disappearances were common features during the reporting period. Several unlawful killings occurred throughout the conflict in multiple contexts: for example, during Maoist attacks on security force posts and bases, government buildings, national banks and public service installations; in chance encounters and during ambushes. The People's Liberation Army (PLA) and political cadres abducted ill treated/tortured and killed suspected spies and informants. Unlawful killings were also perpetrated against enemy combatants and civilians who were in detention or otherwise under the control of the adversary, for example in execution-style killings. Interestingly, the transitional justice related bills mentioned above remained pending in the absence of a parliamentary approval.

### Related Cases

- On 17 August 2003 during a ceasefire, Nepal Army personnel pretending to be Maoists asked some villagers for directions to the house where Maoists were holding a meeting in Doramba VDC, Ramechhap District. When they arrived, the Nepal Army surrounded the house in which Maoist members were gathered. When the occupants realized that they were surrounded, a few fled the scene, one of whom was shot dead by the Nepal Army on the spot. Nineteen people (reportedly 17 Maoists and two civilians), including five women, were allegedly taken under control and, with hands tied, forced to walk to nearby Dandakateri hill. They were lined up and summarily executed from close range with rifle shots to their heads and chests. Their bodies were allegedly tossed over a slope close to the execution site.
- On 6 June 2005, in Madi, Chitwan District, Maoists detonated explosives under a crowded public bus on which soldiers were also travelling – killing 39 persons, including three army personnel. Seventy-two persons, including four army personnel, were injured. The CPN (Maoist) accepted responsibility for the incident and claimed that this attack on civilians did not reflect party policy. OHCHR conducted an extensive investigation into the killings,<sup>1</sup> in the course of which the CPN (Maoist) told OHCHR that four or five cadres were being held accountable for the attack, but OHCHR did not receive clear evidence that anyone specifically was penalised.
- Jalandhar Bastola of Sindhuli (originally Solukhumbu) district was arrested in Kathmandu during or before September/October 2003 and illegally detained and severely tortured by Army personnel at the Bhairabnath Battalion barracks in Maharajgunj. Jalandhar Bastola's current whereabouts have not been clarified. The Nepal Army Task Force writes in its 2006 report that according to police records, Jalandhar Bastola died on 15 August 2004 when a pressure cooker bomb he was planting in the Thumka area of Bidur Municipality, Nuwakot district suddenly exploded. OHCHR investigations indicate that the information contained in the RNA Task Force report regarding the death of Jalandhar Bastola is not accurate. Multiple sources affirm that Jalandhar Bastola was not one of the two people killed in the 15 August 2004 explosion in Nuwakot. Therefore, the clarification contained in the RNA Task Force report is not considered to be sufficient by OHCHR, and the whereabouts of Jalandhar Bastola remain unknown. Information published since June 2006 which confirms OHCHR's investigations into the ongoing disappearance of Jalandhar Bastola is available in public reports and statements issued by multiple organizations.

### Recommendations

- The state should ensure that the regular criminal justice system must prevail to the investigation, identification and, if appropriate, the punishment of those responsible for the death of civilians during the internal armed conflict.
- An independent Truth and Reconciliation Commission and the Commission on the Involuntary Disappearance should be established founded on the principles of international benchmarks.

### *Article-7: Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment*

#### State Report

- The state report talks about Nepal's ratification to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), provisions in the CPA and the Interim Constitution which provides that any person deprived of freedom in accordance with law shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
- The report fails to illustrate the recorded incidences of the non-compliance with the provision so of the CPA resulting in abduction and torture.
- The report also fails to mention that the officials involved in torture or custodial death are not personally subject to criminal liability under the prevailing laws and on the contrast to the criminal justice system, a government attorney defends the perpetrators.

## Shadow Report

- As the Act fails to recognize torture as a criminal act, it is in stark contradiction to the obligations accruing from the CAT and ICCPR. 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 may 33 Article 4(1) of the CAT obliges the states parties to define an act of torture as a crime against law provide an opportunity for the misuse of powers. More importantly, the Act deals with torture inflicted only after a person is taken into custody. Thus, the Act is not only inconsistent with the international human rights standards, but it is completely ineffective in protecting detainees from torture during their stay in police custody.
- Torture apparently was used to intimidate or punish detainees and to extract information and/or confessions, and that torture often took place while detainees were held incommunicado and unable to contact family, doctors, or lawyers. The Government has failed to conduct thorough and independent investigations of reports of police brutality and has refused to take significant disciplinary action against officers involved. Police often are unwilling to investigate and to discipline fellow officers, and persons are afraid to bring cases against police for fear of reprisals. This in itself has perpetuated acts of torture.
- The draft Anti-Torture Bill which criminalizes all forms of torture remained pending at the Parliament for endorsement since 2010. There were no formal minimum standards established regarding treatment of detainees. Furthermore, there is a strong need for legislative and regulatory safeguards against torture which includes reviewing and adopting interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest. Similarly, for juvenile detention and particularly the facility for special needs, geriatrics and psychiatric patients, need to do extensive work to strengthen their procedural guidelines and regulations in order to strengthen the protective measures that safeguard the rights and dignity of individuals residing under State care in the institutions.
- Alleged cases show that the motive of the Security Forces in perpetrating acts of torture appears primarily to have been to extract information about the Maoists from anyone who might have had something to reveal. The methods were consistent across the country and throughout the conflict. Reports indicate that the techniques generally were allegedly intended to inflict pain in increasing measure or over a prolonged period until the victim divulged whatever information they were believed to have.
- Maoists inflicted torture and ill treatment as a punishment. Whether through the "People's Court" or simply by decisions of local commanders, Maoists regularly, and often violently, punished persons deemed to have "misbehaved" according to the Maoist code, or those targeted because of their active or symbolic opposition to the Maoist movement. The most notable group of victims was those that the Maoists suspected of being spies or 'informants.

### Related Cases

- *Khadga Bahadur Gharti Magar was arrested without warrant from his home in Kusunti, Lalitpur on the night of 22 September 2003 and taken to the Bhairabnath Battalion barracks in Maharajgunj by Army personnel. There, he was reportedly severely tortured and endured mistreatment over a period of six months. Mr. Gharti Magar died in Army custody at Birendra Military Hospital, Chhauni on 1 March 2004 while being treated for a medical condition apparently unrelated to his torture and ill-treatment. With regard to Khadga Bahadur Gharti Magar, the Nepal Army Task Force writes in its 2006 report that he was arrested from his home in Kusunti, Lalitpur on the night of 23 September 2003, that he became ill while in the custody of the Bhairabnath Battalion in Maharajgunj, and that he died in Birendra Hospital in Chhauni on 1 March 2004. The Nepal Army Task Force further writes that according to the post-mortem and a report by the Department of Forensic Medicine, Kathmandu Autopsy Centre, the cause of death was hypertensive heart disease.*
- *According to OHCHR's investigation, the incident indicates that Hira Bahadur Rokka of Nuwakot district was disappeared on two distinct occasions. In relations to the second instance, information shows he was arrested on 6 December 2003 in Kathmandu, illegally detained and severely tortured by army personnel at the Bhairabnath Battalion barracks in Maharajgunj. Hira Bahadur Rokka's whereabouts had not been clarified. The Royal Nepal Army Task Force writes in its 2006 report that it received information that "Hira Bahadur Rokaya" of Nuwakot was released from the District Police Office, Nuwakot on 5 July 2003, and that the Nepal Police had been in contact with the WGEID regarding the release. OHCHR investigations indicate that the information contained in the RNA Task Force report is not relevant to the 6 December 2003 disappearance of Mr. Hira Bahadur Rokka, of Nuwakot district, which remains unresolved. The clarification contained in the 2006 RNA Task Force report is not deemed sufficient by OHCHR. The whereabouts of Hira Bahadur Rokka remain unknown. Information published since June 2006, which corroborates OHCHR's investigations into the ongoing disappearance of Mr. Rokka, is available in public reports and statements issued by multiple organizations.*
- *The victim (name not disclosed) had worked as a teacher for 11 years and had served as Secretary of the Village Development Corporation (VDC) for 28 years. In February 2002 the victim was asked for a donation of 25,000 rupees by four armed members of the People's Liberation Army who came to his house. The victim refused to give the donation and the demand was increased to 50,000 rupees, which was again refused. Later, the victim was abducted from his home and brought to the VDC office. Inside there were some 27 armed members of CPN (Maoist) who asked again for a donation. The victim responded that he had no money; they increased the amount to 100,000 rupees. When the victim still refused he was beaten. Two logs were placed above and below his thighs when he was in a sitting position and the logs were stepped on and rolled down his legs. He was made to stand and sit repeatedly and was beaten with a rifle butt on the back of his head and on his back. He lost consciousness. The CPN (Maoist) shaved four parts of the victim's head in front of the villagers, smeared him in black, and forced him to wear shoes around his neck and walk around four VDCs. After two months of recovery, the victim fled to the District Headquarters. His eldest son was abducted and held for nine days and was allegedly beaten in captivity. The CPN (Maoist) proceeded to record the amount of gold, silver and other belongings in the family house. Shortly after the elder son's release, the victim's youngest son, age 14 at the time, was abducted. He was kept for one night while the Maoists demanded that he either bring his father, give over his father's property, or be killed. The son agreed to bring his father and was released. When the father received the message from his son, he believed he would be killed if he returned and so sent a reply message to give over his property. In December 2002 some 45 CPN (Maoist), including three Area Commanders, took over the victim's house. The family was displaced and lived in the District Headquarters following the incident. The victim was given compensation of 23,000 NRs from the Government.*

### Recommendations

- The Government should ratify the OP to CAT and immediately enact a new legislation in order to criminalize the act of torture.
- The Nepalese Government has the duty to investigate and prosecute those responsible for acts of torture and cruel, inhuman or degrading treatment or punishment whenever there are reasonable grounds to believe that such offences have taken place.
- All detainees, while being processed for detention, shall be informed of their right to file a torture complaint and the procedure for filing complaints.
- The burden of proof shall be on the detaining officials to demonstrate that the death or injury of the detainee was not caused as a result of torture or other cruel, inhuman or degrading treatment or punishment.

- The use of force should be human rights proofed and they public officials should receive regular and up-to-date training on their human rights obligations with a view to prevent the incidences of torture.
- Free and informed consent to medical treatment should be a central tenet to mental health treatment.

*Article-8: Freedom from Slavery, Servitude and Forced Labor*

**State Report**

- The state report refers to the constitutional, legal and administrative measures regarding the prohibition of bonded labor system, counter-trafficking measures and the prohibition of children's worst form of labor. But it fails to disclose various forms of bondage prevalent in the country in various sectors.
- The report refers to the Civil Code's provision on Trafficking in Persons which provides that slavery, servitude and bonded labor shall be treated as a serious criminal offence, and a person that practices such acts is liable to the punishment of imprisonment for a term of three to ten years, and also to pay such compensation to the victim as determined by the court. However, the incidences of never-ending and unabated internal and cross-border trafficking-in-person and the absence of bi-lateral agreement to combat the problem are missing in the report.
- The report also highlights on the launching of the Bonded Labor Livelihood Programme since 1995 and the distribution of plots of land and funds to 21, 639 freed bonded labors so far along with the introduction of a minimum wage system in order to regulate the labor field. The report, however, declines to mention that the slavery-like practices exist in several parts of the country in different forms.

**Shadow Report**

- The current constitution prohibits slavery, serfdom, forced labor, or trafficking in human beings in any form; however, forced labor and trafficking in persons remain acute. The Department of Labor enforces laws against forced labor in the small formal sector, but remains unable to enforce the law outside that sector. The residue of bonded labor system and other forms of servitude still persist, including haliya, haruwa, *balighare* (fixed but nominal compensation in kind) and charuwa systems. Trafficking-in persons (both internal and cross-border) for sexual exploitation and other worst form of labor especially in India is an unabated phenomenon. Unsafe and irregular contractual labor migration in the Gulf countries and Malaysia has often resulted in exploitative labor, bondage and engagement in dirty, difficult and dangerous work. Although the Government in 2004 announced a program to free about 83,400 bonded laborers by paying off approximately \$330,000 (22,500,000 rupees) in debt, by providing laborers with unspecified alternative employment, and by distributing land to the laborers., their sustainable livelihood is still in jeopardy.
- The Labor Act specifically prohibits forced or bonded child labor, but enforcement of this law has been inadequate. The law prohibits forced or bonded labor by children, but it exists in many sectors, including carpet industry, entertainment sector, stone quarrying and brick kilns.

**Related Case**

*Siba Chaudhary was given as a household slave in the Mid-western Nepal in return for access to land for her family. The (landlady's) sister's husband tried to abuse her sexually, several times. He used to come to her room. She would cry, so he never succeeded. Siba was usually fed with leftovers, and was beaten and verbally abused by some of the women she worked for. (BBC News, Western Nepal, 3/2/07)*

## Recommendations

- The Government should set up an independent inquiry, as a matter of urgency, to examine the prevalent practice of slavery and serfdom particularly in agriculture sector.
- Stringent punishment should be in force to bring the perpetrators of human trafficking in accordance with the Human Trafficking and Transportation Control Act (2007) and Regulation (2008) and the protection for victims of trafficking should be central to any intervention.
- The Government should move towards the ratification of the UN Protocol 2000 on Trafficking and Transnational Organized Crimes and should initiate bi-lateral agreements with the destination countries of migration in compliance with the provisions of the Protocol.
- All separated, abused, neglected and rescued women, girls and children should be placed on a proper national register and should receive equitable treatment in care and should be formally rehabilitated and reintegrated with human rights standards.

## Article-9: *Liberty and Security of the Person*

### State Report

- The state report mentions that Article 24 of the Constitution has safeguarded the right relating to justice as a fundamental right and accordingly, the fact that a person arrested has the right to be informed of the reasons for arrest, to consult, and to be defended by, a legal practitioner, to be produced before the case trying authority within 24 hours of such arrest, excluding the time necessary for the journey, and not to be detained in custody without order of such authority is largely confined to paper work only.
- The report mentions about the CRA, 1955 which is supposed to protect this right in the similar fashion. Importantly, any one whose right to liberty and security as guaranteed by the CRA, 1955 is infringed has an enforceable right to compensation, however, the report hides the fact that compensation to the victims is a rare phenomenon. In addition, the Chapter on Court Proceedings of the General Code has various provisions relevant to the protection of this right.
- The report also talks about the State Cases Act, which has a provision to provide that a police may search a suspected person or place, and has to follow certain procedures (information on the reason of arrest, warrant, women police to arrest women suspects, producing the arrested person before judicial authority within 24 hours etc.) The reporting of the series of flaws in the procedure which took place during the 10 year-long conflicts is also missing in the report.

### Shadow Report

- The Criminal Procedure Code provides the general procedure with regard to arrest and the legality of detention in which the arresting officer has the obligation to present the arrested person to the Court within 24 hours. However, with so called “*logistical problems such as transport, court infrastructure and human resources*”, the time limit is not always respected. Police often holds prisoners longer. The SC on occasion has ordered the release of detainees held longer than 24 hours without a court appearance. Detainees do not have the legal right to receive visits by family members, and they are permitted access to lawyers only after the authorities file charges. In practice the police grant access to prisoners on a basis that varies from prison to prison. Persons have a right to legal representation and a court appointed lawyer, but government lawyers or access to private attorneys is provided only on request. Consequently, those unaware of their rights may not have legal representation. There is a system of bail, but bonds are too expensive for most citizens.

- There is no limit to the length of pre-trial detention and this has led to detainees remaining under remand at times for over four years. The timeframe within which a detainee should be brought for trial is determined by the pace with which the prosecutors are able to prepare for prosecution. This has greatly undermined the rights of detainees to a speedy trial as guaranteed by the Constitution and has also led to the congestion currently being experienced in prisons.
- Insecurity such as death threats, food insecurity; absence of security organs along with dehumanized way of killings, maiming, physical beatings, torture, intimidation and forced displacement were some of the key features of atrocities committed during the reporting period. Hindrance in children's education and disturbances in schools as well as forced recruitment were also other significant primary push factors. Additionally, extortion by the Maoists, to some extent by security forces and the activities of the security forces/Maoists in disguise also resulted in insecurity of civilians during conflict period. Confiscation of land and house, and killing of livestock, harassments such as demand for food and shelter, regular searches, aggravation to the family members of either sides caused constant trouble in the villages. Similarly, lack of access to health services, particularly emergency support system and loss of existing jobs and unavailability of other employment opportunities along with forced conscription contributed to gross encroachment on liberty and security of civilians.
- The counter-insurgency operation spearheaded by the security forces further caused tension, insecurity and threat to the civilian life provoking dislodgement and fleeing the place of origin. Although certainly underreported, many villagers had been displaced by food blockades, torture and killings by security forces. Civilians were killed on suspicion of providing food, shelter or financial assistance to the Maoists, and often tortured by the army and police. The atrocities committed by security forces were partly hidden by the government-imposed state of emergency from November 2001 to August 2002, and again the post February 1 scenario which hindered independent reporting excess caused by the security forces.
- Pursuant to Section 68 of the Military Act, 2007, the military courts are prohibited to exercise jurisdiction over military personnel who have committed a crime against civilian persons. However, in several instances, particularly during the state of emergencies in 2001 and 2005, the jurisdiction of the Military Courts, have been illegally expanded to try the accused military personnel in the involvement of crime committed to the civilians—which otherwise is the jurisdiction of the civil courts. Categorically, military personnel are immune from prosecution in civilian courts for conflict-era violations, an interpretation of law not shared by the human rights community and inconsistent with the SC decisions.

#### **Related Cases**

- *Tej Bahadur Bhandari was made disappeared in Lamjung District by police when on his way to meet with a local government official in December 2001. His wife and son Ram Bhandari met with authorities and petitioned the NHRC but could not register the case with police, who refused to cooperate. Ram Bhandari lodged the case twice at the Supreme Court. The first attempt was squashed and the results of the second are pending. In the absence of functioning local mechanisms, Swiss INGO TRIAL assisted Ram to file the case at the UN HRC in December 2010.*
- *Devisara BK and Amrita BK and a girl Chandrakala BK were shut dead by Army Personnel on 10 March 2010 in Bardiya National Park. The Army [Security personnel] fired on them by suspecting of illegal hunting of wildlife animals, in fact, they were in the jungle to collect the bark of kaulo [a kind of tree for their livelihood because of their poorness. So village became shocked because the threen villagers lost their lives just because of the error or misjudgment of security personnel. Directly been affected are deceased people including the victims' family and their dependents/children. Indirectly, this incident affected all low income people who are struggling for hand to mouth by farming to survive. The incident shows that it is an infringement of human rights, such as right to life guaranteed under Article 12 of Interim Constitution, 2007. This is an ample evidence of the excessive use of power by security personnel.*

## **Recommendations**

- Detention for immigration purposes should be used as a last resort and should be subject to judicial oversight.
- Persons arrested by the police should have a formal legal right to have a lawyer present during questioning.
- The police and other law enforcement agencies should be properly trained so that they would act in compliance with human rights-friendly behavior towards the persons in detention.

### *Article-10: The Rights of Prisoners*

#### **State Report**

- The explanation in the state report concerning the constitutional provision and various acts, regulations, court verdicts, and other institutional reforms are just gimmicks in the reform towards the treatment of prisoners.
- The fact that the treatment of prisoners in the country is of sub-standard is honestly reflected in the state report which says “The GoN is also concerned with several challenges and problems in this regard. Lack of timely reform and review of laws, weak physical infrastructures of prisons, inadequacy in basic services and facilities to prisoners, limited availability of skill developing and income-generating provisions, inadequacy in the provisions of care and protection of dependent children of prisoners, slow pace of development of means of making behavioral change of prisoners as an alternative to the sentence of imprisonment.”

#### **Shadow Report**

- Prisons are disastrous and the inmates are encountering difficult situations although the Prison Act provides that the State party endeavors to treat prisoners in a human way. The prison population has grown immensely without any extension of the infrastructure and capacity of the prisons.
- The condition of detention falls well below international standards. There is a problem of severe overcrowding in both judicial and police custody. Inadequate sanitation is provided and the quality of life is poor. Prisoners routinely suffer treatment that breaches Article 10 (if not Article 7) of the ICCPR.
- The Government still has not implemented a provision in the 1992 Children's Act calling for the establishment of a juvenile home and an independent juvenile court. Consequently, children are sometimes incarcerated with adults--either with an incarcerated parent, or as criminal offenders. The Department of Prisons states that there are no cases of children in jail or custody for offenses they have committed; many non-criminal dependent children, however, are incarcerated along with their parents.
- Due to the inadequacy of medical facilities, the authorities sometimes place the mentally ill in jails under inhumane conditions. The independent, transparent and impartial reporting system is not found to be working properly.
- The Prisons Act makes no provisions for reforms and rehabilitation of the prisoners and it does not allow prisoners to maintain contacts with the outside world. There is no provision for handling prisoners' complaints against torture, cruel, inhuman or degrading treatment. Due to the defective provisions in the Act, court proceedings are not accessible to the prisoners. The jailer has the right to punish and investigate certain crimes and the order may not be appealed.

### **Related Cases**

- *Roland Walder, 62, is a Swiss citizen. He left his motherland 25 years ago. He spent 5 years in Columbia and 15 years in Nepal. He was arrested in Kathmandu on the charge of handling fake currency. He was in jail for 5 years. Nobody of his family members had known about his condition. He was totally out of contact with his family for 25 years. At last stage he managed to inform his condition to his family. His brother got the information and came to Nepal. His wife denied coming to Nepal because she felt that Nepal is not good country. But he tried to pursue the inmate's wife that he was his only brother, many family members had already died and he must go to Nepal. So, on 3rd week of January, 2004, the inmate's brother came to Nepal to meet him. When they saw each other they could not recognize each other. After 25 years, he met his brother in prison and came to know that 5 members of his family had died within these years, including his parents. When he got the information of his family he was heart-broken and could not stop his tear. The prison authority did not bother to establish contact/communication with the inmate's family in these long and tedious years. (Prison Fellowship Nepal)*
- *In the District Jail of Kaski in the western part of the country, there have been around 400 prisoners residing where the capacity of the jail is for 60 persons only. This has caused serious problem resulting in cramped accommodation, little space for entertainment as well as serious compromise on health and hygiene of the inmates.*

### **Recommendations**

- All detainees should be formally notified of their right to challenge their detention, their right to inform a person of their choice of their detention, the right to have access to a lawyer and the right to have access to medical care.
- All persons detained following refusal to land, asylum seekers detained for a number of reasons and person's detained pending deportation should be formally notified of their right to challenge their detention, their right to inform a person of their choice of their detention, the right to have access to a lawyer and the right to have access to medical care.
- The current poor physical conditions in many of our prisons must be addressed as a matter of urgency. In particular, the Government should make a firm commitment to provide in-cell sanitation to all prisoners by a fixed date.
- Urgent steps must be taken to address the incidences of serious concerns about the levels of violence in the prisons.
- The outstanding call for the significant increase in prison capacity; proposals to continue the practice of detaining children in adult prisons should be dealt with top priority.

### ***Article-11: Freedom from Imprisonment for Inability to Fulfill Contractual Obligation***

#### **State Report**

- The state report mentions about the non-existence of legislations in force which make no provision for imprisonment of any persons on the ground of inability to fulfill a contractual obligation.
- The report further clarifies that Nepalese legal system has no provision for imprisonment in cases of contractual obligations and the GoN believes that imprisonment could not be a civil remedy.

#### **Shadow Report**

No 42 of the chapter on sentence of the Country Code 1964 has such provision, which needs to be reformed by an appropriate measure.

#### **Recommendations**

- The Government should enact a law of contempt to ensure that an individual for failing to fulfill a contractual obligation or who is unable to pay a civil debt will not be imprisoned or put in bondage.

- The government should investigate the cases of abduction and imprisonment by private entities and bring the perpetrators to justice.

**Related Case**

*Hajari Ram Mahar, 75, lives in Nagarjun, Baitadi, a district in far-west Nepal, with his wife and their family. Sixty years old, he is a Haliya, a bonded farm laborer, tied to the land of his “masters”. His first owner was Raghu Singh Pant, from whom he borrowed NRs 7,000. But as this debt was sold on to others, and as he has borrowed more over the years, he still owes money to his present master. Too old to work, the debt fell a few years ago onto his eldest son, Raghu Ram Mahar, who automatically became a Haliya because his father was, and who became a slave to Hajari’s last owner. But quarrels between different owners caused even more problems for both Raghu and his father and they were very badly treated.*

**Article-12: Freedom of Movement**

**State Report**

- As mentioned in the state report, the constitutional, legal and other measures concerning the right to freedom of movement generally meet the essence of the Article with some exception.
- The fact that the state report unveils “from 1996 to 2006, owing to the insurgency and imposition of the state of emergency, the right to movement of people was somehow circumscribed and with the conclusion of the CPA and promulgation of the Constitution, the situation has returned to normalcy, and people enjoy full freedom of movement” is unrealistic in terms of the gravity of the systematic curtailment of the provisions of this particular Article.

**Shadow Report**

- The right to freedom of movement was circumscribed beyond ‘somehow’; it was severe, disproportionate and unreasonable in many instances. During the reporting period, series of violent and undisciplined strikes/closures (Bandhs) in which the damage is caused to the private and public properties and sometimes the life of the people were witnessed. The state is not reasonably stern for the unforgivable crimes committed during Bandhs. Imposing violent Bandhs interferes the rights of others is something that is not tolerable and such cohesive imposition of the state has often failed to control the activities of the miscreants in the name of Bandhs.
- Freedom of movement has also been curtailed during the state of emergency in 2001 and 2005. In 2005, many human rights defenders, media persons and civil society activists were under area detention imposed by the king's direct rule. In such scenario, the state failed to apply the state of emergency with proportionality and reasonability. Since 1 February, in an apparent effort to reduce human rights monitoring and reporting, the authorities prevented a number of human rights defenders from leaving Kathmandu. Their names were reportedly on a list of those whose travel had been restricted, which had been compiled by the security forces.

**Related Case**

*On March 10, 2005, former Speaker of the House of Representatives Daman Nath Dhungana was stopped at the airport by security personnel stating that Dhungana had no permission to travel outside Kathmandu. However, Dhungana had filed a writ petition at the Supreme Court regarding the restriction of his travel without prior notice after news reports published the list of those prohibited from traveling outside the Kathmandu Valley in various newspapers. The prohibition of the freedom of movement without prior notice is against the basic principles of human rights. The prohibition on the freedom of movement of civil society leaders was a deliberate attempt by the new regime to discourage them to carry out their legitimate activities. Such undemocratic actions ultimately created further obstacles for free and fair investigation and monitoring of human rights abuses, and prevented representation in international forums such as the UN meetings.*

## **Recommendations**

- The implementation of the Immigration Act should be closely monitored to ensure that certain groups such as asylum-seekers are not disproportionately and negatively impacted, particularly where such impact will have a negative effect on the most vulnerable population.
- A fair, transparent and inclusive system for refugee status determination should be put in place to deal with grievances for asylum seekers.
- The often-arbitrary enforcement of the authority by the local administration should be effectively checked to prevent unnecessary and disproportionate restriction on the freedom of movement.

## *Article-13: Procedural Rights of Migrants*

### **State Report**

- The fact unveiled in the state report that the GoN has no policy of expulsion of any person to his or her country of origin except in 'exceptional circumstances' is problematic.
- According to the state report, expulsion is made if there is a substantial ground to believe that the non-expulsion of a person will pose a danger to national security. Although the report highlights the provision of the Immigration Act, 1992 which regulates and controls the entry of foreigners into, and their stay in, and departure from Nepal, has been problematic in the case of asylum-seekers. The mandatory provision that in order to enter into Nepal, a foreigner should hold a valid passport and visa and failing to do so, Section 9 of the Act permits expulsion of foreigners.

### **Shadow Report**

- The bitter fact is that Nepal does not have any specific legislation and policy on dealing with refugees and asylum and these issues are being dealt under the immigration laws. As the preamble of Nepal Immigration Act 1992 states that the main objectives of this legislation is to regulate and control the entry of the foreigners into Nepal, their stay and their departure and to manage the arrival and departure of the citizens of Nepal. As we can see that this piece of legislation has nothing to do with the 'refugees' and 'asylum seekers'.
- There are no any rules, regulation and guidelines on how to use Section 14 of the Immigration Act therefore government authorities uses their discretion. It is clear that within the national legal framework there is no room for asylum what has done till date is a decision of government of Nepal on the humanitarian ground. Due to the lack of clear and specific legal framework Nepal government's treatment to the refugees and asylum seekers is always based on its discretion. As Tibetan and Bhutanese refugees who entered into Nepal in certain times considered as refugees but others who came individually are considered as 'illegal immigrants'.
- There are no any rules, regulation and guidelines on how to use Section 14 of the Immigration Act therefore government uses its discretion. It is clear that within the national legal framework there is no room for asylum what has done till date is a decision of government of Nepal on the humanitarian ground. Due to the lack of clear and specific legal framework Nepal government's treatment to the refugees and asylum seekers is always based on its discretion. As Tibetan and Bhutanese refugees who entered into Nepal in certain times considered as refugees but others who came individually are considered as 'illegal immigrants'.

**Related Case**

*In March 2008, the authorities arrested four Pakistanis, whom UNHCR had recognized as refugees, for overstaying their visas. In April, a court sentenced them to 10 years in prison under country's Immigration Act. Under the Act, authorities could imprison violators who could not pay their fines, sentencing them to one day in prison for every 25 rupees (\$0.40) unpaid. UNHCR hired an attorney for the refugees. The Supreme Court ordered their sentences reduced as the Government had used the wrong section of the law in calculating them, but did not order their release. One of the four refugees paid his fine and left for resettlement. The others remained in detention.*

**Recommendations**

- The State should introduce an independent appeals procedure to review all immigration related decisions.
- Provisions to allow for summary removal in the immigration, which is incompatible with the State's obligations under the ICCPR should be removed.
- Whatsoever written elsewhere in Nepalese law, the Nepalese government shall not expel, return ("refouler") or extradite a person to another state when there are substantial grounds for believing that he/ she would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.
- The government should consider ratifying the 1951 Refugee Convention and enact a domestic legislation for consistent and harmonize dealing with the refugee situation.

*Article-14: The Right to Fair and Equal Treatment before the Law***State Report**

- The state report merely focuses on structural, institutional, procedural and the number game aspects of the fair trial but fails to expose the constraints encountered in the course of securing fair trial.
- Along with various mechanisms, the report also talks about local bodies which are empowered by the Local Self-Governance Act, 1999 to settle disputes through arbitration but declines to demonstrate the fact that there are no local self-governments for the last nearly 10 consecutive years. The problems associated to lack of appropriate training, capacity building of the concerned public officials, corruption, delayed justice, expensive and tedious court procedure are not mentioned in the report.

**Shadow Report**

- Investigations, like pre-trial detentions, do not have time limits and are to a large extent responsible for the long period of pre-trial detentions. There is no law which can compel the police to investigate a matter within a specific period for the reason that investigations, as it is argued, have a lot of factors beyond the control of the investigators. Many of the prolonged investigations are the result of poor institutional capacity on the part of the police.
- Legal aid is mandatory for all serious criminal cases triable in the Court. It is discretionary in all other cases. The Legal `Aid Program does not have the numbers and capacity to assist indigents who need services of counsel during interviews or interrogations. Practice has shown that the investigators communicate with suspects in a language understood by both parties. However, the provision of interpreters is normally restricted to court proceedings.
- The protections of a fair trial to be extended throughout the appeals process are absent both in the law or practice. For instance, the law requires judges to have the final text of their decisions prepared within 7 days of the judgment much more likely that more than three months elapse before a judgment is produced. The defendant is kept detained for this entire period. Judges

argue that this is the result of heavy caseloads. Further delays result from the difficulty of filing an appeal. The usual practice is for the appeal to be filed at the prison office rather than the court. The law provides that the prison office should forward this application on to the Court within three days. However, the remote nature of some districts can make this process very difficult. This is especially true when a general strike is called. The result is that prisoners can remain in a legal limbo whilst their appeal application is in transit.

- In any event the appeal court system is heavily backlogged. This means that the system is slow and appellants face substantial delays during which they remain imprisoned. In addition, the court system is inefficient and this increases the extent of delays. Courts do not produce trial transcripts. There is no stenographer in court and the clerk is generally occupied with other matters. Therefore the only documents produced are the final judgment of the lower court and whatever is included in the case file (usually the charge sheet, signed statements from witnesses, a signed confession, and any evidence collected during the police investigation while the defendant was in jail). This can make it extremely difficult for a Court of Appeal to conduct any form of meaningful review of a conviction; they are not able, for instance, to assess the approach, which the judge took to a hearing.
- Written confessions play a central role in the judicial process. A recent report issued by the Special Rapporteur on Torture noted that though some judges have taken it upon themselves to inquire into the voluntary nature of confessions or have detainees show their torsos to check for signs of abuse, but regrettably this is not systematic. Often the police officers against whom such allegations would be made are present in the courtroom, so defendants will decline to say they were tortured for fear of reprisals.
- The Terrorist and Disruptive Activities (Control and Punishment) Act was highly criticized in national and international level which was used as a tool to violate liberty and freedom of people, however, the Government claimed that particular Act was best tool to protect liberty of people. Because of large criticism by civil society and international community, the Act has been scrapped.
- There are number of laws including the Forest Act, Customs Act, and Local Administration Act in which the officers are empowered to investigate, prosecute and adjudicate the offence. Such laws also empower them to impose a higher degree of punishment with fines. Granting such powers to the administrative officers is contrary to the principles of fair trial because the accused in such proceedings seldom gets opportunities of fair hearing. No free and fair trial is possible in a system where the same institution has the power to investigate, prosecute as well as adjudicate the alleged offence. Such laws therefore, need to be amended to eliminate provisions affecting the norms and standards of free and fair criminal justice system.

### **Related Cases**

- *Student Sanjiv Kumar Karna was picnicking with a group of friends on 8 October 2003 in Janakpur, Dhanusha District, Southern Nepal, when he and 10 others were reportedly beaten and arrested by a group of 25-30 army and police personnel. While being transported to police detention, Sanjiv Kumar Karna and his friends were again severely beaten before being interrogated. Six were subsequently released, but Sanjiv Karna and four friends - Durgesh Kumar Labh, Pramod Narayan Mandal, Shailendra Yadav and Jitendra Jha - have not been heard from since. Sanjiv Kumar Karna's arrest is believed to be linked to his interest in student politics and his former membership in the All Nepal National Independent Student Union- Revolutionary (ANNISU-R), which is aligned with the Communist Party of Nepal-Maoist (CPN-M). He resigned from the ANNISU-R in 1998 and his families say that he had no involvement with the CPN-M.*
- *On 10 June 2002, a large group of police officers, some in uniform and the others in civilian clothes, conducted a search and arrest operation in Jammunitole village, Kohalpur VDC, Banke District, in response to a suspected Maoist arson attack on a nearby forestry ranger station about a month before. Amongst the group of suspects arrested was a 14-year old civilian, Narda (or Nanda) Ram Gharti. All the detainees, both adults and minors, were taken to Kohalpur police station, and then to Chisapani Barracks, where they were allegedly severely beaten while being questioned about the arson attack. After 11 days, most of the detainees were taken back to the Kohalpur police station, but by that time, Narda reportedly had swelling all over the his body. Although he was later taken to Nepalgunj Zonal Hospital for treatment, he reportedly died from his injuries on 8 July 2002.*

### **Recommendations**

- The authorities should adopt a be clear and transparent guidelines for the prosecutions, with the delegated authority of the Attorney General, to make his decision as to what circumstances he “thinks proper” for a person to be tried before the Court.
- The State Cases Act 1992 and the Civil Code are amended to alter the basis upon which suspects can be remanded in custody. In our opinion the primary justification for any remand must be one of the three elements: to prevent flight, prevent interference with evidence or prevent the recurrence of crime.
- The SoE provisions found in Article 143 of the Interim Constitution can be read in a manner contrary to Nepal’s international obligations. The fact that Article 9 of the ICCPR is not open to derogation in this respect. This concern should be addressed when a new constitution is adopted.

### **Article-15: Protection against Retrospective Criminal Sanctions**

#### **State Report**

- The state report refers to the Article 24 (4) of the Constitution which provides that no person shall be punished for an act which was not punishable by law when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by laws in force at the time of the commission of the offense, thus, enactment of ex post facto laws is prohibited. It is the established practice of Nepal to enact a criminal law giving prospective effect, and normally criminal laws are not enacted giving retroactive effect.
- Interestingly, the state report gloriously illustrates the fact that in criminal matters, a criminal law favorable to the offenders is applicable retroactively even where the offender has issued an enforceable sentence to immediately enjoy such reduction or decriminalization. Again the report offers another illustration about a criminal law enacted after the commission of a criminal offence, which shall be applied if the law in question is more favorable than the previous one—also known as a beneficiary law.

#### **Shadow Report**

- International standards and national laws have accepted that the already defined crimes and crimes under international laws can be prosecuted through law with retrospective effect.

Retrospective provision and right to legal remedy for serious crimes under international law and impunity fall within the concept of the rule of law. This is not limited to pointing out to those incidents that occurred during the armed conflict. This is a strong mechanism for preventing any such possible incidents in the future. For instance, the state and the then insurgent group, the Maoists, have agreed to form a Truth and Reconciliation Commission (TRC) in order to address the incidents that occurred from February 1996 to November 2006.

- Statutory limitation is not applicable to serious crimes under international law, regardless of when they occurred. Such crimes in which statutory limitation is not applicable, action with a law having retrospective effect can be formulated. International law has established that statutory limitation is not applicable to war crimes and crimes against humanity.
- It will not be against established jurisprudence and standard of international law if Nepal incorporated a provision to prosecute and punish through a law with retrospective effect by preparing a list of certain crimes. Every person shall have the right to seek legal remedy against impunity or offence of genocide, war crimes and crimes against humanity.

### **Related Case**

No case example provided.

### **Recommendations**

- A constitutional provision should be made not to exempt the war crimes, crimes against humanity and other serious breach of human rights as enshrined in the Rome Statute on the International Criminal Court.
- The ongoing cases of criminal acts those were committed during the decade-long internal armed conflict should be handled by the regular criminal justice system and the broader issue of transitional justice should be addressed by the long-cherished Truth and Reconciliation Commission.

### *Article-16: Recognition of the Person before the Law*

#### **State Report**

- The state report refers to the Constitution under Articles 12 (1) and 13 (1) (2) and (3) together protect the right of every person to be recognized everywhere as a person before law.
- It also reflects that fact that all children born in the territory of Nepal are required to be registered with the concerned registrar's office under the Births, Deaths, and Other Personal Events Registration Act.

#### **Shadow Report**

- Despite the policies and the government's plans of action, birth registration had not had enough priority. A total of 37% of the population nationally (620,595 people) were registered towards the end of the reporting period.
- Birth registration after 70 days or more costs Rs 50/-. Although the government has not waived the cost for late registration, Plan Nepal has negotiated with the local development officers in its working communities to waive the fees when it organized birth registration camps.
- Many of the Tibetans who lived in the country do not have legal resident status. Many who arrived after 1990 and their Nepal-born children are without legal status and had no documentation. Even those with acknowledged refugee status have no legal rights beyond the

ability to remain in the country, and the Nepal-born children of Tibetans with legal status often lack documentation. Tibetan refugees have no entitlement to higher education, business ownership or licenses, bank accounts, or to conduct legal transactions, including documentation of births, marriages, and deaths, although bribery often made these possible. While Nepal-based Tibetans with registration cards are eligible to apply for travel documents to leave the country, the legal process is arduous, expensive, opaque, and poorly publicized. Many mandate refugees coming from the countries other than Bhutan and China-Tibet are also encountering similar problem in terms of their recognition.

### **Related Case**

No case example provided.

### **Recommendations**

- The State should recognize the rights of transgendered persons in all aspects of the law.
- The state should ensure the compulsory and free birth registration of all children, including refugees and stateless children.

### *Article-17: The Right to Privacy*

#### **State Report**

- As mentioned in the state report, the Interim Constitution ensures everyone the right to respect for private and family life, home and private communications. It further guarantees on paper that residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life or property, or under the express authorization of an order of the Court.
- The fact that the law also allows police to conduct searches and seizures without a warrant if there is probable cause that a crime has been committed, in which case a search may be conducted as long as two or more persons of “good character” are present is missing in the report.
- Although the law prohibits arbitrary interference with privacy, family, home, and correspondence, and the government in “normal circumstances” generally respected these prohibitions in practice, If a police officer has reasonable cause to believe that a suspect may possess material evidence, the officer must submit a written request to another office to conduct a search, and there must be another official present who is at least at the rank of assistant sub-inspector. During the reporting period, security personnel under the “Unified Command” frequently conducted vehicle and body searches at roadblocks in many areas.

#### **Shadow Report**

- During the reporting period, security personnel under the “Unified Command” frequently conducted vehicle and body searches at roadblocks in many areas with no respect to the existing law. Thousands of people became victim of midnight knocks, arbitrary interference at home and family during the armed conflict. Some persons who had resettled to escape Maoist extortion, recruitment, or retaliation could not return home.
- With the growing use of technical gadgets, modern-day work style and environment has been largely changed with efficiency, better performance and fast communications. Despite this, there are several cases of the misuse of the gadgets. The right to privacy is being violated by a responsible body of state, the police administration, with the misuse of the call details record (CDR) and SMS records. Police have allegedly collected thousands of such CDR and SMS records which are not essentially linked to the crime. With the gathering of the CDR and SMS records, the chances of breaching one's right to privacy was very high.

## Recommendations

- The state should ensure that the complaints relating to infringements of bodily and territorial privacy are dealt with in an appropriate manner. If a police officer has reasonable cause to believe that a suspect may possess material evidence, the officer must submit a written request to another office to conduct a search, and there must be another official present who is at least at the rank of assistant sub-inspector.
- Freedom of the press and individuals' right to privacy, both enshrined in the constitution, need to be harmonized and the media community should maintain their professional ethics, emphasizing the dignity and the fundamental right to privacy of individuals (particularly women and minors).
- The state must review and enhance proper safeguards relating to the management and operation of the data collected from the voters during the current biometric voter registration system.

### Related Case

*The Nepali government is set to introduce a national ID card. In 2011, the National ID Card Center was established under the Home Ministry, which is funded by Asian Development Bank (ADB). The Election Commission database, which contains fingerprint information as well as photographs and unique identification numbers, will be transferred to the National ID Card Centre to enable it to issue the cards. At present, the draft legislation awaits approval from the Cabinet. After that, it has to be submitted to the House for approval before the government can start issuing the National ID cards. However, it is unclear when the Cabinet will approve the draft legislation and forward it to the House.*

*Human rights organizations have cautiously raised the issue of the significant privacy concerns around issuing the National ID card. As government officials have said, they will use it for a variety of purposes. In addition, there are concerns that this information will be abused and/or misused by government officials, as it will enable government to become more illiberal and selectively target citizens who oppose the government or its officials. In countries like Nepal, there is a huge black market; even government officials have sold passports. This situation raises the possibility that black market operators will make fraudulent cards, trade in ID cards, and release and process confidential information.*

## Article-18: Freedom of Thought, Conscience and Religion

### State Report

- In 2006, the reinstated House of Representatives, by adopting a resolution, declared Nepal as a state of secularism. The Constitution provides that Nepal is a sovereign, secular, inclusive and fully democratic state. Article 23 of the Constitution protects the right to religion as a fundamental right. Accordingly, every person has the right to profess, practice and protect his or her own religion as handed down to him or her from ancient times having due regard to the existing social and cultural practices; and every religious denomination has the right to maintain its independent existence and operate and protect its religious sites and trusts in accordance with law.
- Although the law prohibits arbitrary interference with privacy, family, home, and correspondence, and the government in 'normal circumstances' generally respected these prohibitions in practice, at the same time, the provision for allowing police to conduct searches and seizures without a warrant if there is probable cause that a crime has been committed has been deliberately unstated in the report.

### Shadow Report

- There have been incidences of curtailing freedom of thought, conscience and religion. The Constitution explicitly prohibits the act of proselytizing, which bears a lot of contention due to prevalent grey area of interpretation of this provision. The citing of the Article 18 of the Constitution protects the right to religion as a fundamental right and the provision for every

person has the right to profess, practice and protect his or her own religion as handed down to him or her from ancient times having due regard to the existing social and cultural practices is an age-old rhetoric.

- Thousands of people became victim of midnight knocks, arbitrary interference at home and family during the armed conflict. Some persons who were displaced to escape extortion, recruitment, or retaliation could not return home. Those most affected by this situation were journalists and others in the media. The state news media and ten privately owned media were put under direct military control. Dozens of news media had been closed in the districts. The authorities banned any negative reporting about the regime for six months. Dozens of journalists were pursued by the security forces, and foreign news media correspondents were prevented from working freely.
- Those who continued to pursue democracy, human rights and freedom of expression faced a real threat of imprisonment. With this came the risk of assault, abduction, torture and even custodial death. While such possibilities did sound dramatic, with the complete removal of the limited safeguards that was in place prior to the King's latest actions in February 2005, the rights and freedoms only got worse.
- Police and other local official frequently harassed Tibetan asylum-seekers and refugees engaged in daily legitimate activities. Police reportedly conducted random checks of identity documents of Tibetans, including monks. These identity checks sometimes included threats of deportation or detention, followed by requests for bribes.
- Many religious groups generally coexisted peacefully and respected places of worship, although there were reports of societal abuses and discrimination based on religious affiliation, belief or practice. Those who converted to a different religious group occasionally faced violence and were ostracized socially, but generally did not fear admitting their affiliations in public. For example, the prohibition on entering temples prevents the Dalits from participating in the religious activities inside the temples. They have to be content with worshipping outside the temple building. Dalit women who enter the temple are humiliated by the temple priests as well as by higher-caste people.

#### **Related Cases**

- *In April 2011, a report was filed at the Lamjung District Police Office naming the perpetrators in the killing of Muktinath Adhikari. Muktinath Adhikari was a secondary-school Sanskrit teacher. He was asked to give up teaching Sanskrit in the school as well as to give "donation" to support the Maoist ideology. As he denied to do both, he was tied to a tree and shot dead by the Maoists in 2002. The photos of his body were publicized widely as evidence of Maoist attacks on civilians. PBI accompanied human rights lawyers and the victim's wife and son to the Lamjung District Police Office in order to file this information. The following day, in an affront to justice, one of the accused perpetrators, a Maoist cadre, was appointed coordinator of the District Peace Committee in Lamjung.*
- *Isolated cases of Hindu extremism increased during the reporting period, particularly after the 2006 parliamentary declaration of the country as a secular state, replacing what had previously been a Hindu Kingdom. Attacks on Christians by Hindu extremist groups in Nepal have included the bombing of a Christian orphanage in April 2007 and the murder of a Catholic priest in July 2008. Similarly, the Nepal Defense Army (NDA), a Hindu extremist group, targeted religious minorities who have accused Christians of threatening Hindu culture through religious conversion. Nepal Christian Society leaders have received threats from the Unified National Liberation Front, an armed group demanding money for protection from religious communities. Such threats, however, may be opportunistic and motivated by financial gain rather than being solely based on religious grounds.*

## Recommendations

- The perpetrators of the gross violation of the freedom of thought, conscience and religion should not be let Scott-free and must be brought to justice.
- The state should take appropriate measures to ensure the right to practice every religion without any discrimination; hold owns conscience without the fear of intimidation and, the expression of the individual's free will without the fear of repercussion.

## Article-19: Freedom of Expression

### State Report

- The state report mentions that the Constitution has guaranteed the right to information, in addition to freedom of expression, as a fundamental right. The state report quotes that "every citizen has the right to demand and receive information on any matter of public importance. However, this provision is not deemed to compel any person to provide information on any matter of which privacy is to be maintained by law".
- Accordingly, the state report refers to the Article 15 of the Constitution, which has ensured the right relating to publication, broadcasting and press as a fundamental right. Censorship of publication, broadcasting or printing of any news item or audio-visual material, including electronic one, is prohibited although the right is subject to such reasonable restriction. The elements of reasonability of the restriction as stated in the state report are vague and not explicit.
- Although article 19 (3) of the Covenant acknowledges that some curtailment of freedom of expression might be necessary on occasion, acceptable restrictions are very narrowly defined. On the other hand, the exceptions to the prohibition on censorship of news items, articles or other reading material detailed in article 15 (1) of the Constitution appear to be much wider in their application. Furthermore, the reference to registration in article 15 (3) of the Constitution implies that publication of newspapers and periodicals is not permitted without prior registration, which in itself is a form of censorship.
- The report states that every religious denomination has the right to maintain its independent existence and operate and protect its religious sites and trusts in accordance with law which is like playing the same old record of gramophone!

### Shadow Report

- As part of the SoE, censorship was imposed (including the posting of army personnel in media premises and prepublication vetting of news articles), private radio stations were banned outright from broadcasting any news, and other media outlets were banned from reporting critically on government activities or the insurgency. In addition, a number of prominent editors were arrested and detained during the crackdown. Dozens of journalists were arrested, detained, and subjected to threats or interrogation in the months following, while media outlets suffered raids and other extralegal action. A restrictive press ordinance gave the government the power to revoke journalists' press accreditation and to impose high fines for publishing banned items; permanently barred private radio stations from broadcasting news; criminalized criticism of the royal family; and restricted media cross-ownership. During the reporting period, the Supreme Court refused to block the media ordinance despite the petitions asking that it be suspended.
- During the armed conflict and also during the *madhesh* movement, the ability to express their conscience and operate freely of human rights defenders to carry out their legitimate activities had been undermined by the government and non-governmental entities, especially after the declaration of the SoE. Members of CPN (Maoist) threatened local human rights defenders

and media personnel especially in remote areas of the country. Police and army pressurized human rights organizations to refrain from investigating complaints of human rights violations. A number of lawyers representing people charged in connection with Maoist activities or in torture compensation cases reportedly received threats. Journalists, especially those based in more remote districts, had been put under pressure by police, army and Maoists not to report abuses. Some journalists were tortured and even killed by the Maoists.

- Apart from the additional restrictions imposed during and after the crackdown, the ability of the Nepali press to operate freely, particularly in rural areas, remained seriously constrained by both government forces and the Maoists. Journalists suspected of pro-Maoist leanings or who produce material critical of the government are regularly arrested and detained by police and security forces, and a number have reportedly been subjected to harassment, torture, and occasionally subjected to death. Reporters trying to cover events such as anti-government demonstrations have also been victims of beatings or other harassment by the police. Media professionals are also under constant pressure from the Maoists; reporters were regularly abducted and threatened and often expelled from rebel-held areas.
- The government owned and still does several of the major English-language and vernacular dailies; influential Radio Nepal, and NTV, Nepal's main television station. Private radio stations, which flourished prior to the 2005 coup, came under severe strain, as had the privately owned print press. Although the internet was generally unrestricted, after the February coup access to both the internet and other forms of communication (including telephone lines) were shut down across the country, and access to satellite television and foreign broadcasts was restricted or censored. Under government instructions, privately run internet service providers blocked access to the Maoists' website since February 2004. In an already difficult economic environment, the viability of media outlets was threatened by the decision to cut official advertising from all private media outlets. Meanwhile, as a result of the blanket censorship and news bans, more than 2,000 journalists were estimated to have lost their jobs. In contrast, pro-palace journalists were rewarded by government handouts.

#### **Related Case**

*The government is reluctant to expedite the case of Dekendra Thapa, a journalist killed on 11 August 2004 by CPN-Maoist after abducting on 26 June 2004. Many times, the district police office did not file the case. On 12 December 2012 too, Dekendra's wife Laxmi Thapa filed a writ petition in the Surkhet Appellate Court, seeking an order of mandamus for prompt investigation into murder case. The writ was filed against the District Police Office, Dailekh and District Public Prosecutor's Office, Dailekh. Widow Laxmi rues that the killers of her husband were still walking scot free in Dailekh until the end of the reporting period.*

#### **Recommendations**

- The State needs to review its legislation governing freedom of information, access to abortion information and defamation to ensure that it is compatible with its obligations under Article 19.
- The state should ensure that no new restrictions on freedom of expression should be in place in the new constitution, which is incompatible with the State's obligations under Article 19.

## *Article-20: The Prohibition of Propaganda for War and Incitement to Hatred*

### **State Report**

- The state report mentions about constitutional provisions along with adherence to the principles of the UN Charter, non-alignment, *the Panchsheel*, international law and the value of world peace to prohibit of propaganda for war. The essence of the report is directed towards the prohibition of the war of international nature.
- The report is silent about the decade-long internal war that claimed the lives of thousands together with incidences of other heinous crimes. Incidences of non-compliance with the rules of engagement founded on the international humanitarian law became established trends during the ‘people's war’.

### **Shadow Report**

- Various intensities of militarization and armed conflicts are witnessed in different phases of Nepal's history. Although direct military coup de ta is a rare phenomenon, the use of force is embraced in many instances in the name of disciplined ruling-a practice of militarization. Militarized apparatus are also beyond the realm of the formal conventional security agencies. This has challenged the notion that the state alone mobilizes troops to wage war against its population to maintain law and order and security. Non-state actors are also equally, if not more responsible in the use of arms and violent activities and even terrorizing population and glorifying the war and honoring the fighter as heroes and martyrs.
- The declaration of the ‘peoples war’ by the then CPN (Maoist) in 1996 was the first step in the creeping militarization of the society. The excesses committed both by the Maoists and the security forces in this context are traumatic. Torture, extortions, rapes, arbitrary arrests, killings, displacement, destruction and disappearances featured the bloody landscape of violence. The Maoists deliberately undertook actions to spread terror as much as possible by targeting the civilian population to bring them into submission with heinous criminal activities defying the motives and essence of the ideals behind the war. The state security forces retaliated the acts brutally through glorification of combating terrorism.

### **Related Cases**

No case example provided.

### **Recommendations**

- The State should amend the existing Act to make it more effective in addressing incitement to hatred.
- The State should encourage national media outlets to promote diversity and intercultural strategies.
- Appropriate laws should be enacted to effectively curb hate speeches during elections and other public and private forums.

## *Article-21: The Right to Peaceful Assembly*

### **State Report**

- The state report boasts about the Constitutional provision to ensure the freedom to assemble peacefully and without arms. It also mentions about reasonable restrictions as may be imposed by law for the protection of the sovereignty, integrity or public peace and order of the country.

- The report fails to report the incidents of non-compliance occurred in different occasions during the reporting period. The severity of restriction during the SoE has been deliberately unreported. Similarly, the incidences of the curtailment of this right especially during the high intensity conflict are also missing in the report.

### Shadow Report

- During the internal armed conflict and SoE, the right to peaceful assembly was severely curtailed in several instances across the country. This was severer in the high intensity conflict zones and the rural and remote communities.
- Political parties faced threats and intimidation to openly organize mass meetings. Their campaign to disseminate their manifesto during the CA elections in 2008—mostly in far-flung areas was severely constrained.
- During the SoE in 2005, besides suspending several rights enshrined in the Covenant, political party leaders, party workers, civil society members and human rights defenders who opposed the royal move were harassed, arrested and even imprisoned.
- After the April 2006 ceasefire announced by the government and the Maoists, incidents of human rights violations by the government declined substantially while incidents of violations by the Maoists continued relatively unabated. Even after the signing of the CPA with the government in November 2006, Maoists' extortion, abduction, and intimidation remained largely unchecked. Security agencies too were responsible in violating several provisions of the CPA. Although activities by other political parties increased significantly in the rural parts, political party representatives, police, NGO workers, and journalists reported continuous threats and intimidation by Maoist-affiliated Young Communist League (YCL), Maoist-affiliated All Nepal National Free Students Union (ANNFSU), UML-affiliated Youth Force (YF), and Nepali Congress-affiliated Tarun Dal cadres. During the January-February 2007 uprising in the Terai, reports of government security forces using excessive force to quell demonstrations were common.

#### Related Case

*Interventions by the APF and the NP in the context of crowd control have resulted in at least 27 deaths and many injuries, either through the use of firearms or severe beatings, since the signing of the CPA. According to OHCHR's statistics, 26 people were killed in the Central (12) and Eastern Region (14) in 2007, as a result of police (NP and/or APF) using firearms or beatings in the context of demonstrations or protests. At the end of December 2006, a man was shot dead by police during looting and protests in Nepalgunj. Nineteen killings occurred during the Madheshi Andolan. In ten of these cases it was impossible to determine whether NP or APF personnel were responsible because of the nature of the police operation. At least four of the victims killed by police in connection with protests were under the age of 18. In most of these cases, circumstances of the killings documented by OHCHR suggested that the individuals died as a result of excessive use of force. During the Madheshi movement, OHCHR directly observed both NP and APF firing directly into crowds or beating demonstrators severely without provocation. A 16-year-old youth was one of four people who died when NP and APF fired live ammunition directly into a crowd on 22 January. One of those who died in the context of the protests in the Central Region was a rickshaw driver severely beaten in Birgunj. In particular, OHCHR has raised continuing concerns about the use of curfew orders to justify the use of force whatever the circumstances. On a number of occasions, police have acknowledged using deadly force against demonstrators on the grounds that the use of such force was justified in order to enforce a curfew order. This was the case during the Madheshi Andolan and also in the case of the recent killing by the APF of a Limbuwan activist in October 2007. An APF official told OHCHR that the curfew order in effect gave them blanket authority to fire on the crowd. During a meeting with the Representative of OHCHR on 23 November, however, the Inspector General of the APF denied that this was APF policy. Nepal Police interviewed by OHCHR after another incident in June in the Eastern Region, during which a youth was shot dead, said that it was the first time they had been deployed for crowd control and claimed they had received no specific instructions or training on how to proceed.*

## **Recommendations**

- The power delegated to the local administration for the operation of the Public Security Act should be independently reviewed to assess its compatibility with Nepal's international human rights obligations under the ICCPR.
- The unnecessary designation of multiple sites as "no demonstration zones" should be removed for peaceful demonstrations.
- The activities of the extra-constitutional forces especially the party-affiliated youth groups involved in 'maintaining' law and order must be banned.

## *Article-22: The Freedom of Associations*

### **State Report**

- As correctly mentioned in the state report, Article 12(3) (d) of the Constitution ensures the right to freedom of associations with reasonable restrictions as may be imposed by law for the protection of the sovereignty and integrity of Nepal, of harmonious relations between peoples of various castes, tribes, religions or communities, and of public morality, and for the prevention of violent activities.
- The fact that NGOs, CSOs and trade unions had been generally perceived as hostile element by the royal regime in 2005 and the incidences of the severe curtailment of the freedom of association and legitimate activities of political parties during the apex era of the despotic royal rule is missing in the report.

### **Shadow Report**

- According to the Code of Conduct promulgated in 2005 during the royal regime, activities which were construed as 'political' by the Social Welfare Council could cause an organization to lose its legal status. This was a great paradox in a democratic society not to utter about politics where the state has ratified the ICCPR and related Protocols without reservation and the Constitution guarantees political rights to all citizens as fundamental civil liberties.
- During the conflict, the government solicited the mediation of human rights NGOs to pursue dialogue with the insurgents while the royal regime issued a Code of Conduct as an early warning to the NGOs to stay away from politics and maintaining acquaintance with the rebels. This was a double jeopardy and the blatant mockery of the rule of law. Such act contributed to obstruct democratic institutions of civilian society through the introduction of despotic measures. While there were already enough legal means to regulate their activities, the attempt to introduce new draconian restrictions on this sector was guided by an ulterior motif to suppress the civil society, which was rapidly rising against the authoritarian regime.
- There had/have been some constraints imposed on the trade unions which go beyond international practice. Workers in 16 essential services were prohibited from striking. These sectors included public transportation, banking, security, and health care, among others. The law's definition of essential services did not conform to international standards. Members of the armed forces, police, and government officials at the under secretary level or higher were also prohibited from taking part in union activities. In the private sector, employees in managerial positions were not permitted to join unions. However, the definition of what constitutes a managerial position has been vague.

## **Related Case**

No case example provided.

## **Recommendations**

- Any new legislation governing civil society organizations should be liberal towards them and their role should be recognized as key agents of change in the field of rights, freedom, justice, charity and development.
- The rights of trade unions should be respected in accordance with the international standards, including relevant ILO provisions.

## *Article-23: The Rights of the Family*

### **State Report**

- The report contains an elaborated description of constitutional, legal and other measures governing marriage and family, including the legal age for marriage for both men and women and the Supreme Court verdict on marital rape. It also talks about in a greater length about free and full consent of the intending spouses, punishment to the violator of this provision, and the specific provisions of the Registration Act, 1972, and the Births, Deaths, and Other Personal Events.
- The state report mentions about the favorable verdict of the Supreme Court for sexual minorities, but fails to narrate the socio-cultural, legal and other major constraints associated with the sexual minorities (LGBTI).

### **Shadow Report**

- For women, land and property inheritance has been patrilineal, the residence pattern patrifocal, and early marriage in many instances the rule rather than an exception. Culturally, marriage is seen as the best socially acceptable option for women for gaining access to property and land. Therefore, once women are out of marriage, such as divorce or widowhood, they become more vulnerable to poverty.
- Once women marry, legal provisions deny them inheritance rights to parental property. Women in both cultural groups lag far behind men in access to property, credit, and modern avenues of education, skills development, technology, and knowledge. Grounds for divorce are also narrower for women than for men. Thus, both legal distinctions and practices demonstrate that women are still in an inferior position so far as marriage and the family are concerned.
- For most high-caste Hindu groups' dowry and bride-wealth is an important factor in marriages and an indication of the status of the families involved. Nevertheless, for most Tibeto-Burman-speaking groups a ritual and often-substantial payment is made by the groom to the bride's family.
- Being a conservative and narrow-minded society, people still fear inter-caste marriage because deep rooted tradition and culture of our society does not allow such a step. Family members and society think inter-caste marriage destroys culture, religion and status but they don't think about their sons and daughters' interest, feelings, love and pleasure. In 2010, the government announced providing cash incentives to encourage inter-caste marriage but in remote areas, many couples are compelled to leave society as a result of inter-caste marriage. Couples are even killed because of inter-caste marriage.

### Related Case

On 31 December 2003, Manoj Khanga, a Dalit living in Sanjitpur, Saptari district, Nepal married Parbati Raut, an upper caste girl belonging to the same village. Though the couple was married of their own free will, the girl's family lodged a complaint at the Rajbiraj Police Station claiming the marriage was illegal. The police arrested the couple on the basis of this complaint but subsequently released them on 23 January 2004. Manoj Khanga and Parbati Raut went to his parent's house on 27 January 2004. On the same night, the Parbati Raut's relatives, accompanied by other members of the came to the Kanga's house and kidnapped the sleeping husband and wife. They also threatened to kill Manoj Khanga in front of his family members. The relatives of the girl and the villagers who accompanied them also warned the Dalit families in the village that they should leave the area. As the Dalit families (12 families comprising of about 80 people) did not leave the village; on the night of 30 January 2004 they were they were attacked by over 200 upper caste people led by Asharphi Raut, the father of Parbati Raut and 14 other relatives and neighbors. The families were beaten severely, their belongings were destroyed and cash, valuables as well as cattle worth around Rs. 15 million were looted. The Dalit families were also driven out of the village. It is reported that during the attack, Mr. Satyadev Khanga, Manoj Khanga's uncle, lost his finger and another uncle Mr. Jagadev Khanga was locked up in a toilet by Mr. Pitamber Yadav, an upper caste villager for five days.

### Recommendations

- The Constitutional and legal provisions on the family should protect all forms of family and not just the family based on marriage.
- Same-sex couples should not be discriminated against in relation to their intimate relationships. The right to marry should be extended and no difference in treatment should exist between opposite-sex and same-sex couples.
- The State should develop and protect the family unity for all migrants, asylum-seekers and refugees legally staying and working in the country.
- The Prison Act should be reviewed its policies for compatibility with Article 23 of the ICCPR and the recent district court order of Saptari on the prisoners' reproductive rights to family.

### *Article-24: The Rights of the Child*

#### State Report

- The report mentions that the country is the party to the Convention on the Rights of the Child (CRC) and its two OPs and various laws and policies are in operation to safeguard the rights of the child.
- It also mentions about the CPA that has committed to protect the rights of the child and prohibit the recruitment of a child below 18 in any armed forces, including the prohibition of recruitment of citizens below 18 years in Nepal Army and police forces.
- However, the report fails to illustrate the grim reality that at least one-third of the rebel fighters in the country during the reporting period were children.
- The report refers to the Constitution which recognizes right of every child to nurture, basic health and social security, the right of helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street children to special facilities from the State and the right of minors against their employment, engagement or use in a factory, mine or similar other hazardous work. But interestingly, the report fails to disclose the fact that a huge section of children are still engaged in the worst form of labor both within the beyond border.

#### Shadow Report

- In general terms the Nepali criminal justice system has set a low age of majority and of criminal responsibility. The age verification procedures are not clear. According to UNICEF only 35% of rural and 42% of urban children have their births registered. This means that a

great number of juvenile litigants' age is likely to be disputed and may rely on age verification tests. The laws and regulations in Nepal do not set out a written duty for the judge to question the age of a suspect. In most age verification tests are not conducted to any standard international procedure. There is also a lack of doctors adequately trained in internationally recognized methods of age determination.

- During the conflict, an estimated 6,000 to 9,000 Maoist cadres were believed to have been children. Not all were cantoned after the conflict, however, making a precise count impossible. UNMIN had reported that over 3000 child recruits remained in the cantonment sites. Later, the government including the Maoists said it will not use or enlist children age 18 or below in any military force and that all child soldiers will be properly rehabilitated. Without proper rehabilitation and reintegration, many child combatants found their way into violent groups such as the Young Communist League (YCL), the youth wing of the CPN-M.
- Rape of girls by the security forces has been documented. While the police or security forces took children into custody they verbally abused children. There have also been some incidences of sexual abuse of girls within the rebel camps. On one side, they were targeted by the security forces who alleged that their activities were supportive of the rebels, and on the other side, they were forced to join the rebels.
- Trafficking in women and child labor remained serious problems. Nepal is mainly a source country for men, women, and children who are subjected to forced labor and sex trafficking. While Nepal is primarily a source country for destinations like India and the Middle East, internal trafficking is also a prominent issue. Lack of prosecution and police complicity in trafficking cases remain major problems.

#### **Related Cases**

- *On 14 January 2000, around 60 villagers, including a number of women and children, who had been instructed by Maoists to attend, gathered for a cultural Programme at a school in Dungal village, Dankhu VDC, Achham District. After a 14-person police patrol team approached, a Maoist lookout reportedly fired a warning shot whereupon all but two of the Maoist cadres fled the venue. Villagers also ran from the school and took shelter in nearby houses and teashops. Police allegedly opened fire indiscriminately in the direction of the houses and shops. At least two civilians hiding in a teashop were killed by police rifle shots and others were shot while running for a place to hide. In the incident, seven civilians including two minors were reportedly killed. Two Maoists were arrested. Altogether, 11 civilians were allegedly injured.*
- *On 3 September 2004, three schoolgirls, Hira Ram Rai aged 15, Jina Rai aged 16 and Indra Kala Rai aged 16, were allegedly summarily executed by Security Forces who followed the three from their school in Basikhora village, Bhojpur District. The Security Forces allegedly shot them in the nearby a forest and buried them there. The unarmed victims had been members of a local CPN (Maoist) cultural group. A Government radio station later announced that the three had been killed in an encounter in a different district.*
- *On 20 November 2004, Muga Dharalala and Dhiraj Dhara, both aged five, were playing with a socket bomb that Maoists left on the window of a classroom of Bhairab Primary School, Jumla District. The Maoist cadre who brought the bomb was playing football outside. The bomb exploded and killed the two children on the spot.*

#### **Recommendations**

- The State should amend the Constitution to ensure that the best interests of the child are protected in all circumstances.
- The State must radically increase funding and support for child protection in the country.
- The state must initiate effective reintegration program for the demobilized child soldiers.
- The state must take initiative to ensure the rescue, safe return and reintegration of the trafficked children.

- Based on the provision of the Child Act, the state must establish independent juvenile courts in all districts and also at the national level.

### *Article-25: The Right to Participate in Public Affairs*

#### **State Report**

- The state report mentions about citizens' right and opportunity without any distinctions and unreasonable restrictions to participate in the conduct of public affairs, to vote and to be elected at genuine periodic elections, and to have access, on general terms of equality, to public service in the country. However, the stark reality of the denial of citizens' right by not holding the general election for almost a decade both at the national and local self-government level has been missing in the report.
- The report also mentions about the process of the framing a new constitution through their representative body, the CA and explains about adherence to universal and equal suffrage, secret ballots, and genuine elections along with inclusive and federal character of representation, including the provision of local-self governance authority for decentralization and devolution of authority to promote public participation in the system of governance but fails to mention that the incidences of irregularities in the elections and the deprivation of grassroots democracy in the absence of the local elected body for years.

#### **Shadow Report**

- In the absence of a parliament and deprivation to participate in the genuine and periodic elections since 1999 till 2008, not only their basic right to vote and the right to be elected were violated for years, but their right to participate in the government was also remained in jeopardy.
- In the absence of a local self-government for the last 10 consecutive years, citizens were deprived of their basic rights and services. The municipality election called under the king's direct rule in 2005 was boycotted by the political parties and a large majority of the voters and civil society observers.
- Political inclusion has not been viewed as the key factor in combating poverty through people's direct and active participation in country's decision-making processes. Various population groups have been discriminated against-primarily based on caste, ethnicity and gender-remained at the margins of political mainstream. Proper space for the participation in decision-making processes for these excluded groups was not created even through major political changes.
- Since 1 February 2005 (the day of the royal coup), leading political figures from democratic parties, student leaders, civil society movements and media personnel were arrested and their activities outlawed in the King's attempt to suppress all opponents to his new regime. All criticism of and activities against the absolute monarch had been deemed an illegal offense. This essentially meant that any activity that challenged the outlawing of democracy in Nepal was considered a criminal offense, and thus, those who participated in it were liable to punishment.
- The then rebels also hindered political activity in the countryside during the decade-long internal armed conflict resulting in obstacle for political freedom, conscience and tolerance. In many instances, Maoists prevented other political parties from functioning freely outside district capitals. The intimidation and violence by other armed groups have also led to obstacles

to normal political activity and ensuring political tolerance, respecting pluralism and conducting activities without intimidation and violence.

- A large section of the society, particularly the indigenous groups and women, was treated as passive recipients of political initiatives rather than active citizens who could determine their own future. This has resulted in uneven access of these groups to mainstream politics, compelling them to continue living in marginalized and excluded setting.

### **Related Cases**

No case example provided.

### **Recommendations**

- Special measures should be introduced to increase minorities' participation in the public life and political affairs.
- In particular, the State should fund a Programme to encourage and support voting among Dalits, excluded communities and people with disabilities.
- The State should review its current provision to ensure the inclusion of all traditionally excluded section of the society in the political arena and public offices with a view to removing all forms of unreasonable and irrational discrimination.
- People with disabilities should not be discriminated against in regard to voting and the State should remove all barriers to participation.

### *Article-26: The Right to Equality before Law*

#### **State Report**

- The report refers to the Constitutional provision that has guaranteed the right to equality and non-discrimination and instrumentally and the country is obliged to create equality among people without discrimination on any basis according to international human rights instruments, the bitter fact that the legal system still maintains inequalities among people on various grounds is not spelt out in the report.
- Also, the fact that constitutionally, women's individual identity is denied for acquiring citizenship of Nepal thus, as per the constitution and Citizenship Act 2020, a child cannot get citizenship on the basis of his or her mother's identity. His or her father's identity must be presented and he must be a Nepalese citizen. Such blatant incidences of discrimination are not illustrated in the report.

#### **Shadow Report**

- Women had been deprived from parental property before the 11th amendment on the Muluki Ain in 2058. Though the amendment provided daughter inherent right to property, she should return it to natal family after her marriage. In the same way Army Act 1959 banned the recruitment of women into Nepal Army for decades but now the door to recruitment has open for women as well.
- According to the CEDAW NGO shadow report; there were several direct discriminatory laws that challenge the spirit of the Constitution. Legal discrimination against women persisted with respect to criminal punishment, property, citizenship rights, marriage, divorce, transaction, tenancy abortion, rape and other family laws.

- The Supreme Court has also denied the right to equality in some cases. Even sons of a Nepalese mother were not provided citizenship according to her identity by the GoN, which was against the right to equality guaranteed under article 11 of the constitution and various international instruments to which Nepal is a party. Despite of this protection, the SC gave its verdict stating that the provision of article 11 of the previous constitution did not imply on the matter of citizenship as it is a specific matter and the law requires the father not the mother of a child to be a Nepali that is an essential requirement for acquiring citizenship of Nepal. However, the court has also given positive decision regarding right to equality in many cases too.
- Nepal retains its centuries-old caste system. Dalits, the discriminated people under this system, suffer from restriction on the use public amenities, deprivation of economic opportunities, and general neglect by the state and society. The sexual minorities and people living with disabilities are also often deprived of the right to equality right before the law.

### **Related Case**

No case example provided.

### **Recommendations**

- The constitutional and legal provisions putting restrictions on citizenship, inheritance and other rights should be reviewed and amended.
- The existing discriminatory and inconsistent practices against asylum-seekers and refugees must be brought to a halt.
- The Government should introduce legislation to recognize the change of gender for transgendered persons.

### *Article-27: Minority Rights*

#### **State Report**

- The report refers to Article 3 of the Constitution that stipulates that having common aspiration of multiethnic, multilingual, multi religious, multicultural characteristics and having committed and united by a bond of allegiance to national independence, integrity and national interest. The report further states that it implies that every ethnic group, culture, language, and territorial or regional identity commands equality in treatment and advantage. Nevertheless, the report fails to unveil the fact that the language, culture, tradition, identity has not been well protected and conserved by the state.
- The report boasts about the adoption of a national culture policy with main objective to protect tangible and intangible culture and promote cultural and religious harmonization and co-existence, founded on the notion of national unity and secularism. Details of the ratification of the treaties such as the Convention for the Safeguard of Intangible Cultural Heritage, 2003 and the promulgation of the Nepal Academy Act, 2007, Nepal Fine Arts Academy Act, 2007 and Nepal Music and Dance Academy Act, 2007 have been cited as some legal measures to ensure protection, promotion and overall development of various disciplines of culture and cultural heritages of the multi-ethnic, multi-lingual, multi-religious and multi-cultural country. However, the report fails to disclose the fact that the nation is Bering an unprecedented scale of ethnic rift, tension and intolerance.

#### **Shadow Report**

- Languages other than Nepali now are fighting not only for their recognition but also for their existence. For years, one official language policy has left linguistic minorities excluded. In education (with some exception in primary schools), administration, judicial proceedings and information other languages have no reach at all. Such language policy can have long term

implications, but its immediate effects are already evident in the society in the form of surging discontent against the non-inclusive approach. So far such undermining of linguistic minorities has led to exclusion of a considerable section of the population in every respect of national life, which in turn has led to growing frictions and animosities among citizens.

- In spite of the constitutional and legal provisions regarding the equal rights of every citizen irrespective of religion, language, race, sex, caste, tribe or ideological conviction, the government has made very little efforts to remove the root causes of religious and other forms of discrimination, and violations perpetrated against minorities. The orthodoxies of majority religions are not liberal enough to extend equal rights to the “other” who may be outside the religious/sectarian fold. This situation re-emphasizes the need to elevate the national-judicial and legal norms and constitutional jurisprudence in Nepal on equal protection and group rights issues to the standards of regional and international human rights law relating to minorities, that include the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and other similar instruments.
- Nepal is yet to make any separate constitutional and legal provisions regarding the establishment of national institutions to implement and monitor the principles and other rights relevant to minorities, address violations of minority rights and provide the necessary redress. Although NHRC, NDA and NFDIN have been established to work for the above-mentioned causes but they (excepting the NHRC) have not been given autonomous mandate to work for the rights of nationalities and socially and economically excluded groups including sexual minorities due to limited powers and functions, and have proved ineffective in protecting minority rights.
- The constitutional and legal guarantees to protect the rights of minorities remain all too often unfulfilled. A majority of the constitutional and legislative provisions of the country are guided by the norms and values of mainstream religion and majoritarian groups; therefore the legal provisions have not properly addressed the ideals of minorities. The constitutional and legislative provisions have also not properly differentiated the notion of indiscriminate and equality regarding the protection and promotion of various concerns of minorities and the legislature of the state is yet to make a headway to express its commitment and loyalty to effective remedy and compensation for violations of their rights.

### **Recommendations**

- In public policy initiatives concerning the representatives from the minority communities, the state should ensure their effective representation.
- The state should establish a research-based and scientific method to identify and recognize the formal indigenous nationalities.
- The state should devise and provide significant funding for a national policy strategy to protect minority languages.
- The state should initiate proactive measures towards equal protection of religions and cultures in the country.

*The End*

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