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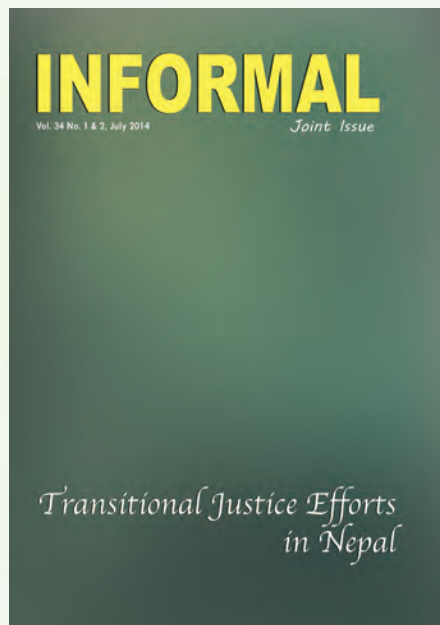
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- 4 Transitional Justice in
Post-Conflict Societies and Nepal's Efforts
- 12 Truth and Reconciliation: Transitional Justice
in Post-conflict Nepal
- 19 Human Rights Committee Review of Nepal
Report: Responses from Government and
NGOs on List of Issues
- 25 Debate on State Structure in Nepal:
Challenges and Opportunities
- 33 Transitional Justice Process in Nepal
- 36 A Strategy to End Dowry Practice:
Intertwining Property Rights, Dowry System
and Civic Responsibility Act
- 42 Communicating Rights Awareness through
Radio

Regular Columns

- Editorial/3
- View Point/28
- Book Review/50

TRC Act Short of Delivering Justice

The much awaited the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2071 (2014) regarding transitional justice coming into law was a welcome sign towards transitional justice process gaining momentum. For hundreds of people, the development is a glimmer of hope for rebuilding their life after seeing the perpetrators of the crimes against them getting tried, getting confession for their past crimes and getting a closure. However, Government enacted the TRC Act blatantly disregarding the January 2, 2014 Supreme Court ruling. The ruling had declared the Act as contravening the constitution and international standard and therefore needed to be voided. The endorsed Act provides for the establishment of two commissions, a TRC and a Commission on Enforced Disappearances but there is absence of victim-centered approach to transitional justice including the provisions of amnesty to the perpetrators being intact. The very victims whom the Act was to ensure a sense of justice have filed a petition against it. The UN Secretary General is also learnt to have stressed on the need for a credible Truth and Reconciliation Commission (TRC) in line with the international standards.

The government hurriedly tabled the Bill on TRC, but soon after it came into effect, an amendment regarding the choice of chief commissioner needed. The advisory committee formed to recommend the names of the TRC commissioners has also become controversial as some claim it as being an unconstitutional entity. The apparent lack of interest on part of the government, regardless of the parties or leaders at the helm, and prolonging of the transitional justice process will only intensify pain of the victims and the people will continue to dwell in the past hampering their efforts to rebuild their lives.

In a reply to show cause notice by the SC as why the government had issued the Act, the government stressed that it was on par with the international standards and none of the amendment asked for by the petitioners would be made. The rejection by the government to review the Act has now brought the chance of attracting the principle of universal jurisdiction. A UN report has called the principle of universal declaration as being a principle rooted in international law and codified in United Nations instruments and stands as a potentially important reserve tool in the international community's struggle against impunity.

HRC hearing of Nepal's second report on International Covenant on Civil and Political Rights 1966 was held in March. Though, it was only second report sent after acceding to it in 1991, nonetheless the government sending the report, due in 1997 is laudable. Civil Society Report on ICCPR and the following participation in the hearing in Geneva can be termed positive because it made possible for the international community to scrutinize the government in open arena and provide their recommendations. The report covers one of the most bloodied and painful part of Nepal's modern history in human rights sphere. The recommendations made by the HRC to Nepal do include formation of TJ mechanism in accordance with the January 2, 2014 Supreme Court writ of mandamus and ensure its effective and independent functioning in accordance with international law and standards, including by prohibiting amnesties for gross violations of international human rights law and serious violation of international humanitarian law and also ask for adopting the guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.

In the Concluding Observation, the Committee urges the state to ensure that all forms and manifestations of violence against women are defined and prohibited under domestic law with sanctions commensurate with the gravity of the offence in accordance with international standards. Violence against women, including the dowry-induced violence remains a serious problem in Nepal. Along with all the legal provisions against the perpetrators and awareness campaign, people in the society can play a crucial role in decreasing such incidents. Like, relatives and the neighbors generally are aware what's going on in a certain relationship. Socially, they tend to provide emotional support to the battered women or suggesting the victims to seek legal remedy at the most but some kind of law obliging them to report the crimes, not only asking the victims to take steps can inform the state agencies about the wrongs happening in their periphery.



Shobhakar Budhathoki*

Transitional Justice in Post-Conflict Societies and Nepal's Efforts

Background

Transitional Justice (TJ) is primarily known as the process of addressing serious crimes and grave human rights violations occurred during the conflict or controlled regime through prompt mechanisms established within the principles of due process and justice. It normally encompasses confession of past weaknesses or mistakes, prosecu-

reparation and justice that aims to build a just society and lasting peace in post-conflict societies by ensuring compensation and justice.

The activities relating to TJ are normally carried out by the countries that are going through the process of transformation from violent conflict or dictatorship towards a peaceful one aiming to establish a just peace and responsible governance. If the issues of

of past abuses and crimes. It means the TJ mechanism cannot just be replicated from any other country or situation. However, the process adopted by some countries to address the issues of post-conflict justice of similar nature can be beneficial to Nepal for the effective establishment and implementation of the strategy for TJ.

If the TJ mechanisms could be integrated with the nation building strategies, the process of ensuring justice to the victims can be effective. The structure of such mechanisms relating to TJ depends on the situation of specific country and nature of its past abuses. Also, such mechanisms should be competent enough to bring the perpetrators under the scrutiny of justice and ensure justice to the victim, and provides recommendation for compensation, as well as identify the issues of serious human rights violations, crime against humanity, nature of violation, targeted groups and investigating the reason of abuse and crime.

There is no such an absolute mechanism or template to establish TJ mechanisms. Various alternative processes can be initiated to

The TJ process is established based on the situation of specific country or society with consideration to level of past abuses and crimes. It means the TJ mechanism cannot just be replicated from any other country or situation. However, the process adopted by some countries to address the issues of post-conflict justice of similar nature can be beneficial to Nepal for the effective establishment and implementation of the strategy for TJ.

tion of perpetrators based on proper process, appropriate and acceptable compensation and reparation to the victims and amnesty process as necessary with the consent of victim without undermining their dignity. Therefore, the jurisdiction of TJ process could be incorporated as part of promoting reconciliation,

serious crimes and grave human rights violation related to the TJ are not addressed properly within the stipulated timeframe, there is a risk of escalation of conflict and instability in the society. The TJ process is established based on the situation of specific country or society with consideration to level

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address TJ issues depending upon the country's specific situation. It could be introduced based on the nature of conflict, state's political situation and favorability as it has been taken as a means of providing justice to the victim, punishing the accused and compensating the victim. The worldwide practice of TJ mechanism includes prosecution, formation of Truth and Reconciliation Commission (TRC), vetting, compensation and reparation. In Nepal, the concept of TRC and the inquiry of disappeared persons have been put forward. In the context of Nepal, it is principally and practically quite challenging to ensure compensation and reparation to a victim besides justice and prosecution of the perpetrators with the view of justice and reconciliation within the limitations of the Comprehensive Peace Agreement (CPA).

Expediency of Establishment of Commission in Nepal

The formation of the TRC for the purpose of finding out and documenting the violations of human rights and humanitarian laws and serious crimes, and making recommendation to competent agencies or government for criminal prosecution against the alleged perpetrators; reparation to the victims with the assurance of justice; and provide suggestions for institutional reform to stop repetition of such incidents in the future. These commissions are usually formed to ensure justice to the victims of conflict and initiate prosecution against the perpetrators of violation of human rights or humanitarian laws during the dictatorship or autocratic regime as the existing state's legal and justice mechanisms are overwhelmed with regular business or the pro-

cess in these mechanisms are overstretched and at times, the existing judicial mechanisms are unable to deliver prompt and impartial justice.

The CPA and Interim Constitution have envisioned formation of the TRC in Nepal with the aim of prompt justice to the victims of conflict and ensure reparation to them, and bringing the perpetrators into judicial process through establishing TJ mechanisms. During the decade-long armed conflict in Nepal, almost 15,000 people have lost their lives and more than 1,200 people are still missing, according to National Human Rights Commission and other credible human rights institutions. Hundreds of people are left physically disabled and thousands of people were displaced. Moreover, thousands of people were directly or indirectly affected by the conflict and victimized.

The TRC and Commission for Investigation of the Disappeared Persons (COIDP) to address the issues related to TJ seems in a little progress of being institutionalize despite many hitches and the legislation has been recently adopted by the Legislative-Parliament, and the Recommendation Committee for these commissions are announced. Although the Investigation of Disappeared Persons and Truth and Reconciliation Commission (IDPTRC) Act is seen as relatively progressive except amnesty provision. In the meantime, the human rights communities, victims and international communities suspect that the commission could be inclined towards granting amnesty while the government and political parties claim that the Act respects enough international human rights standards and feelings of victims. The Com-

mission which has been viewed with suspicion before its inception indicates that it will affect the whole TJ process, and eventually undermine the principles of justice.

In other countries, the TRC have been formed to address and resolve the issues of human rights violation especially in post-conflict situation or after the end of dictatorship or autocratic regime. The TRC formed in most of the countries are based on their national requirements and peculiarities, and different names however their mandate and long-term objective are normally similar. The similarities found in those mandate are the study and investigation of grave human rights violation occurred during the armed conflict; investigation and study of grievous crime and human rights violation occurred during the dictatorship or autocratic regime or the investigation of truth during the civil war; search for the disappeared and making their whereabouts public; criminal investigation of arbitrary arrest or extra-judicial killings or mass killings, torture, killing of unarmed people and finding the wrongs of human rights perpetrators and recommending the state for the prosecution while ensuring justice to the victims.

Similarly, it includes searching the locations of displaced people, and create a peaceful, harmonious, tolerant, and justice in the society following the investigation and study regarding the incidents of violation of human rights and humanitarian laws, and aims to create an environment so that everyone can live a dignified life in a society. It also includes the recommendation of reparation to the victims and institutional reform.

In this sense, it is the state's responsibility to provide a relief

and proper justice to the victims of conflict. At the same time it is the responsibility of political actors who have been the signatories of the CPA to materialize their commitments in practice. TJ mechanisms cannot be established or cannot be made effective in the absence of collective commitment and political willingness, and there is little chance of victims getting a sense of justice without collective efforts.

Foundations of Establishing TJ

It is the responsibility of state to prepare the TJ strategies, effectively and judiciously to address the incidents of human rights violations, abuses and serious

The traumas of the violent conflict are very poignant and painful, and it is impossible to heal through compensation. The victim's concern must be addressed so as to stop re-emergence of conflict in the society and to stop the possible transformation of victim's feelings of pain to revenge. There can be disagreement among the victims while adopting the technique or methods of addressing this issue. Therefore, the state must adopt proper techniques and carry out reasonable processes of TJ that is generally acceptable to all or at least acceptable to majority. Considering such situation, a consensus to establish TJ mechanisms and to bring the perpetrators into

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crimes occurred during a decade-long Maoist insurgency. The TJ process becomes a very much complicated especially in post-conflict countries. Country which is going through in transition from violence to peace after the conflict or arbitrary regime has a high probability of getting obstructions from those parties directly involved in a conflict. Primarily, if a situation arises where of the state and non-state political and military actors need to be held responsible, these actors may attempt to seek immunity by bringing the process in jeopardy which is against the basic norms of TJ process.

a judicial process with victim's content was reached between the political parties and Nepal Government through the CPA in November 2006. The failure of the state to implement the agreements has disappointed the victims and other concerned stakeholders despite their early excitement and optimism.

The incidents of grave human rights violation and serious crimes during the armed conflict by both the state and Maoists have been documented by NHRC and other human rights organizations. It is the state's responsibility to bring the accused of human rights

violations into the legal action with justifiable approach by addressing the concerns of conflict victims and their issues. Unfortunately, the government's inability to address the victims' trauma and concerns have compelled them to live with additional pain whereas the perpetrators are continuously acquitted. Neither the victims nor the perpetrators are fault for such situation. Rather the signatories-state (erstwhile the Seven-Party-Alliance of SPA) of CPA and the then Maoists are primarily responsible. In this regard, the victims should be provided compensation and reparation besides deliverance of justice, and legal action or amnesty to the perpetrators under the due process.

Nepal has relentlessly retained the seriousness of establishing TJ mechanisms during the entire peace process. Similarly, both sides have continuously committed to the people for its enforcement. The provisions of TJ have been included in the Article (5)(2)(3), (5)(2)(4) and (5)(2)(5) of the CPA. Similarly, the CPA incorporates the disclosure of detailed report of disappeared people within 60 days; formation of National Peace and Reconstruction Commission to provide relief to the conflict victims; to create harmony and reconciliation in the society by investigating truth of those involved in crimes against humanity through the formation of the TRC. Unfortunately, these provisions related to TJ are intentionally ignored by political actors.

Concerns of TJ Management

The management of TJ is a challenge in itself and has been getting complicated due to the short-sighted vision by the major

political actors and their leaders, as well as poor performance of the leadership. During the transitional period, the justice process for the conflict victim should be addressed with high priority. As a result of petition filed by the victims against the Ordinance for the formation of the TRC and COIDP in March 2013, the Supreme Court has clearly said that the Commission should respect the victim's sentiment. It has further faulted the focus on reconciliation instead on justice, not consulting with the victims and stakeholders, immunity to the perpetrators and protection rather than action against them. In response to the writ, SC ruled that the amnesty for the accused of serious human rights violation was not acceptable, the commission's freedom, fairness and trustworthiness must not be compromised, serious violations must be criminalized, victim and their family must be provided with adequate reparation and reconciliation must be promoted in the society. Unfortunately, most of these Supreme Court's recommendations are intentionally rejected in the Act.

The TJ mechanisms formed to ensure justice to the victims must be established and implemented from the perspective of justice. Also, the state must be open and flexible in the issue of reparation to the victim. Otherwise, it is impossible to expect peace and harmony in the society if perpetrators centric TJ mechanisms are formed.

Tenure of the Commission

The commission's tenure in the TRC Act is two years from its establishment. However, the tenure can be extended for up to one year if it cannot complete its job within the stipulated time-

frame. In the international level, tenure of such commission varies depending upon the complexity of national polity. For example, the commission formed in Uganda in 1974 was given just six months of tenure whereas the longest tenure was provided in Rwanda in 1999 known as National Unity and Reconciliation Commission. The commission of Rwanda was converted into permanent guild in 2002 however the final report has still not been submitted. In average, the tenure of such commissions is seen being 2 to 3 years.

appointments and other managerial processes were performed internationally while in Argentina the Commission comprised both Members of the Parliament and non-parliamentarians. Similarly in Bolivia, the commission was led by joint-secretary of Home Ministry and in Uganda it was led by a Justice of Supreme Court.

By numbers, Ecuador had the lowest number (four) commissioners appointed while the highest number of officials appointed was in Democratic Republic of Congo (21), Ivory Coast (28) and Germany (36) etc. The choice of num-

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Commission's Structure, Number and Procedure

The Act envisions the commission of having at least five members including one woman and one recommended by a three member-committee including NHRC representation chaired by former Chief Justice. While reviewing the formation of Truth and Reconciliation Commissions in over 40 countries, most of the countries including South Africa, have their own citizens as the commissioners. However, countries like Kenya, Syria Leone and Solomon Islands among others have appointed both national and foreign citizens as the commissioners. Similarly, in El Salvador, Burundi and Guatemala, the commissioners were appointed by the United Nations and in Rwanda, all the

ber in the commission depends of the nation's need, its geographical complexities and ethnic diversity. However, in average, there can be seven to nine members in such important commission. Meanwhile, most of the countries have some degree of female representation in the commission. For example, South Africa is considered successful in establishing the mechanism of such commissions that ensured the state's ethnic diversity and general demography. It had nine male and eight female commissioners out of total 17 with the inclusion of all ethnic representatives. Besides that, the commission realized the sensitivity of human rights violations by including human rights activists and legal practitioners as members of the commission.

Commission's Mandate and Jurisdiction

In the Act, the commission has been given mandate to investigate the case only if the complaint is lodged at commission by victim or victim's party and if the commission thinks that it is within their jurisdiction. The provisions and processes set on investigation process, binding obligation to cooperate with the commission, action for its contempt, protection of witness and other people and public hearing to regulate the commission can be commended. Similarly, the commission has been given an authority to have the case pending, reconciling, reporting for action, recommending for amnesty, reparation and also submitting the report encompassing institutional reforms. However, the important part is the vague definition of "Serious Human Rights Violation" which might affect the work of the commission by creating an intense situation.

Normally, two types of TRCs are being established in other countries. Both types of commissions are made responsible to carry out its functions with limited jurisdiction and comprehensive mandate. Especially, the commission formed with the aim of identifying the disappeared citizens or identifying the murderers of political prisoners has been found submitting the report with the recommendation of prosecution. The commission with broader jurisdiction has been found investigating the incident of disappearance, displacement besides investigation of other types of conflict victims along with serious human rights violations. Based on findings, these commissions have made recommendations to the government to initiate prosecution and

reparation besides compensation to the victim, as well as provided suggestions to make sure that such incidents would not occur in the future. For example, most of the countries including Argentina had limited the commission's jurisdiction to disappearance whereas the countries like South Africa, Peru and Timor-Leste had broadened their mandate.

Implementation of Report and Monitoring

In the Act, the commissions' restricted mandate that requires submission of the report and the implementation of its recommendations to the government, and implementation responsibility solely provided of the government and discretion of processing of case by the Attorney General or designated government attorney itself raises the question regarding the fair enforcement of the report. Also the monitoring responsibility about the status of the enforcement has been given to the National Human Rights Commission (NHRC) in which it provides mandate to draw the attention of respective ministry about the implementation and the ministry has been authorized to implement those provisions as soon as possible.

In other countries, almost all countries have submitted their report to the government with the inclusion of recommendations including prosecution, reparation, reconciliation, amnesty and institutional reform. But, the travesty is that the implementation of report is very poor in almost every country and no separate independent agency has been formed for monitoring the implementation of report. Normally, the agency which received the report must take re-

sponsibility to implement the report. In result, the implementation situation is not found encouraging in any of the country. Even in South Africa, where the TRC is taken as an exemplary success, the situation of implementation is not satisfactory. There has been some progress regarding reconciliation but not in the areas of prosecution. Similarly, it took years for the victims to receive compensation as reparation recommended by the commission. However, the South African Commission was very much successful for public hearing and dissemination of its activities. In Sierra Leon, the government gave a positive message by initiating the reparation prosecution and institutional reform process based on commission's recommendations. The parliament had passed the National Human Rights Commission Act and formed a special court for prosecution and a National Commission on Social Work for reparation.

Question Raised by Stakeholders

There are number of concerns raised by the stakeholders that could affect or jeopardize TJ process in Nepal, which could eventually have long-term affect in peace, stability and justice.

Commission's Structural Problem

A committee of former Chief Justice as chairperson, one NHRC representative and one member from among Human Rights activists, psychologists, legal practitioner, legal experts, conflict experts, sociologists, women activists or those involved in peace process, nominated by the government will recommend the members of the TRC which will include four members from led

by former Supreme Court Justice or chief judge of Appellate Court. However, there is a doubt on fairness of the appointment process given the culture of power sharing of main political actors. As the impartiality, expertise and skills are being judged on party line, there is a high possibility that the nominations would be influenced, may be not theoretically then practically. In the Act, there is a provision of five-member commission and it is very tough to form the commission with the assurance of inclusiveness and representativeness. In the initial stage, the commission might face obstruction from small political groups, women and dalits along with regional and ethnic groups to incorporate marginalized and ethnic groups. In this regard, the Act must be flexible regarding the number of the TRC members so as to include people from country's diversification. The background of the TRC and its communicating medium to the government being Ministry of Peace and Reconciliation will also render it a lower status to other constitutional bodies thus hampering its effectiveness.

Abuse of Reconciliation Concept

The provision of reconciliation where the victim and perpetrator lodge their application for reconciliation and victim is given a proper compensation with apology from the perpetrators to be administered by the commission is definitely going to be abused. On the one hand, this provision could create reconciliation made possible by the perpetrator through intimidation, threat and coercion, and on other hand it could create the situation that compels the victim to choose reconciliation with financial influence. If these issues regarding the reconciliation are not

properly addressed, it can further aggravate animosity and victims might be compelled to accept the alternatives of reconciliation. Similarly, if appointed officials are incompetent of imbibing sentiments of the victims, the provision of reconciliation could easily be abused and manipulated for the benefit of perpetrators.

Disadvantage of Amnesty

The commission can recommend to the Government of Nepal for the amnesty to those accused of grave human rights violation provided with adequate justification. However, the perpetrator can easily take advantage of this provision due to the current political practice, party-based consensus system, and the culture of misusing the transitional period. That's why the Act needs to be clearer on this issue.

Limitation of Time

The tenure of the commission must be specified based on serious human rights violation, its nature and complexities because it is difficult to have an effective investigation in a short period of time and hard to investigate the incident while providing justice to the victim. To commence the work in a stipulated timeframe, the commission needs adequate financial resources and qualified manpower. Therefore, timeframe needs to be reasonable and appropriate.

Problem in Witness Protection

The commission has to rely on the Nepal Police for the security of witness or their family members coming to the commission to record witness account despite the provision stated in the Act regarding the issue of their security. Due to limited resources of Nepal

Police, geographical complexities of the nation and illiteracy of society, the commission might not be properly aware of the security problem on time. Victims might never be able to record their statements due to the threat from the perpetrators. The commission is not going to be able to get important information until the civilians feel safe and confident of their access to justice.

Potential Unhealthy Competition and Non-cooperation between TJ Mechanisms and Other national instruments

In context of Nepal, the national organizations like NHRC has effectively probed many incidents of armed conflict, some of them are still under investigation and has also documented important information of the conflict. In such situation, it is very important that there should be a legal clarity with NHRC while forming Truth and Reconciliation Commission. Similarly, the process of formation of COIDP envisioned by Comprehensive Peace Agreement is also underway and in such situation if there is no clarity of information flow between the commissions, there is a possible failure of other commissions, except TRC. The proposed Act doesn't clarify the relationship between the commissions which may create an unhealthy competition. There will be a chance of competition despite coordination which may affect the effectiveness of each commission. The victim's will be deprived of justice. Therefore there must be a provision in a proposed Act creating an environment for the coordination among TRC, COIDP and NHRC. Such provision will reduce the duplication in work and

increases effectiveness in the process of justice to the victims.

Lack of Human and Financial Resources

It is the responsibility of the state to provide adequate human and financial resources to the commission and it is certain that the commission will be short of adequate human and financial resources. The Act has made commission free to appoint the staff and sought financial support from the government. However, there is a possibility that the commission might not be able to operate properly due to time limit, complexities in the process of recruitment and time consumed to manage the financial resources. Also, the commission has to manage the mandate and other administrative tools. This might create an awkward situation in acquiring the

mechanisms and national politics. The process of hearing is also going to be affected because some of the perpetrators are spending a retired life in the country and a few are even outside the country without accountability.

Possibility of Political Non-cooperation

There is a possibility of non-cooperation from political parties in this issue as the top leaders responsible for forming TRC continue, are still in the mainstream politics. The TRC process might face difficulties because of possibilities of the attempt to impunity through consensus. As a result, the cooperation from the political parties could be jeopardized. This can be seen as an example of in long delay in final enactment of laws regarding formation of TRC.

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qualified staffs and taking the donors into confidence to raise fund.

Potential Obstacle in Fair Hearings

Despite the country going through tremendous political change and transformation following the CPA, the perpetrators of serious human rights violation continue to hold positions in political, government and security agencies with impunity due to the lack of vetting. In this context, the hearing process is certain to be affected due to uninterrupted access of the perpetrators to government

Obstacle in Public Release of the Report

In Nepal, there is no practice of publication of the report submitted by previous commissions. There is a high possibility that the TRC report could meet the same fate, and could be dumped in the government's office just like the reports of Malik Commission and Rayamajhi Commission. This situation will violate the people's right to information and perpetrators will again keep on living a dignified life while the victims will remain continue their demand for jus-

tice. Observing the current trend, it is highly likely that the general public will not have access to the report. However, the TRC Act has a provision of submitting the commission's report to the parliament through government. There has to be a legal provision of easy public access of the report because public access of the report is an indicator of commission's success.

Uncertainty in Implementation of Commission Report and Problem in Monitoring

The government holds the responsibility of implementing the commission's report. The responsibility of monitoring has been given to the National Human Rights Commission. In the Act, there is a provision of implementing the recommendations of the commission by the government itself or communicating the recommendations to the Office of the Attorney General or Government of Nepal or Council of Ministers. However, the implementation of the recommendations could be affected until and unless the Office of the Attorney General, which is also a legal advisor to the government, is not a completely independent, and could face competency and resource for handling TJ related cases. There might be a possibility of leniency in prosecution process, especially while prosecuting the perpetrators holding senior positions in political entities or security agencies. Also the process of reparation might get affected due to the shortage of fund to be distributed as relief. The monitoring authority of the Commission's report has been given to the NHRC. However, the process of implementation of monitoring might automatically be affected due to lack of adequate resources, infra-

structure, manpower and capacity. In this scenario, NHRC's attempt to draw the attention of the government regarding the monitoring will make implementation ineffective. There must be a provision in the Act, which is binding for the government to implement the report. An independent and neutral body should be envisioned for monitoring the implementation of the Commission's report.

Integration of Criminal Justice and TJ

TJ-related activities have been operated in countries which are progressing towards transformation from violence to peace, and establishment of sustainable peace and good governance especially after the violent regimes and dictatorships. However, there is a possibility of risk of reemergence of conflict and unstable society, if the issues related to serious human rights violation and crimes are not addressed on time. There can be a difficult situation while providing justice if the internationally accepted principle of criminal justice contradicts the TJ mechanisms. So, while implementing the principles of criminal justice in TJ period, the process of investigation and prosecution automatically gets affected and the risk of obstruction in judicial process might be created at the end.

The mechanisms related to TJ facilitates the process to prepare the base so as to provide justice and relief to the victims through prosecution and other means apart from identifying reason of crime or violation, its nature, targeted groups and victims. Criminal justice is an important part while addressing human rights violations. If it could

be integrated with mechanisms related to TJ, it will facilitate to ensure justice to the victims. It is an important to adopt various types of methods by learning from international principles of TJ mechanisms based on past serious crimes, number of human rights violation and extent of serious crimes.

Conclusion

While adopting the TJ in practice by any country to address the past serious human rights violation or abuses and serious crimes, one can adequately learn from the past experience of the

on rebuilding social harmony, improving nation's service providers serving the people and ending impunity. Therefore a successful result can be expected from TJ process, if the obligations like transparencies, fairness, proper legal process, political will and participation of national organizations are honestly fulfilled by the state. .

It will be the insult to the victims of conflict, especially regarding the sensitive issue like TJ. If the efforts of the formation of TJ mechanisms are carried out by political actors with the intention of immunity, it will be disastrous

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specific country. Since every conflict is unique, the strategies of TJ mechanisms could move towards positive direction if the victim's needs and desires are fulfilled from the past experience; if inclusion of civil society and stakeholders is ensured; if the state's capacity and need is adopted within the guidelines of national demand and international responsibility, and if the mechanisms are developed based on the principle of cooperation It would be beneficial for Nepal if it could implement or integrate the four different components of TJ such as criminal prosecution, Truth and Reconciliation Commission, reparation and vetting together. If such mechanisms are used properly, it can play an important role

move for sustainable peace and justice in the country. The process related to the TJ itself is a long and hectic. Therefore, it must be implemented within the view of national context with developing appropriate strategies. This will help to create the foundation of sustainable peace and good governance, stop the future incidents of serious human rights violation, create social harmony and reconciliation, deliver justice to the victims, and ensure action against perpetrators and amnesty with proper legal procedure. It will also help to create an environment necessary to build a civilized nation that respects rule of law, human rights, transparency, responsiveness and accountability.

Truth and Reconciliation: Transitional Justice in Post-conflict Nepal

I. Introduction

Between 1996 and 2006, Nepal was devastated by the civil war between the Communist Party of Nepal (Maoist) [CPN-M] and the Nepalese Government. Over 13,000 Nepalese people, both combatants and civilians, were killed.¹ A further 1,350 individuals who 'disappeared' during the conflict remain unaccounted for.² Several hundred others were tortured at the hands of Nepalese security forces or Maoist insurgents³ and between 100,000 and 250,000 people were displaced.⁴ The so-called "People's War" of Nepal produced large scale violations of individuals' most fundamental civil and political rights at the hands of both the Maoist rebels and the Nepalese Security forces. In addition to widespread violations of international human rights law, thousands more people were indirectly affected by the conflict through, for example, displacement from their homes, large-scale disruptions to basic services such as health and education, and further economic hardships.

In this sense the war also violated the social, cultural and economic rights of many.⁵

Almost eight years after the formal end of the conflict, Nepal has yet to fully secure transitional justice. Transitional justice in this context refers to policies undertaken by a new regime to rectify or ameliorate injustices perpetrated by the previous regime.⁶ Common examples of transitional justice mechanisms include criminal prosecutions, truth commissions and victim reparation programmes. The Comprehensive Peace Agreement, which brought the armed conflict to a formal end and was signed by both parties, contained a number of proposed measures designed to implement transitional justice. Since signing the agreement however, none of the measures have been implemented in full.

The first section of this article provides a brief summary of the factors in Nepal which contributed to the armed insurgency in 1996, outlining the key human rights violations perpetrated dur-

ing this time. The second section of the article focuses on the latest transitional justice mechanism to be formulated by the Government of Nepal [GoN], the Truth and Reconciliation Commission [TRC] Act. This section considers the potential flaws and weaknesses within this proposed framework and gives recommendations as to how the TRC Act could be reformed and improved to allow for a framework which is orientated around the needs of victims and their families.

II. A Decade of Armed Conflict: Human Rights Violations and On-going Impunity

The causes of the decade-long civil war in Nepal are complex, and could be regarded as the outcome of a combination of political, economic, social and historical factors.⁷ Until relatively recently, and for much of its modern history, Nepal was an authoritarian state. Ultimate political power resided with the monarchy. Following the World War II however, and

* Fiona Duncan and Grace Watson form University of Glasgow, Atiqa Javed from University of Dundee

1. Informal Sector Service Centre (INSEC), *Conflict Victim Profile*

2. International Committee of the Red Cross, *Nepal: Red Cross releases documentary on conflict-related missing*, (8 August 2010)

3. Tafadzwa Pasipanodya, *A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal*, (2008) International Journal of Transitional Justice, Vol.2 378, at p.378

4. Amnesty International Report, *The State of the World's Human Rights*, (2007) p.196

5. UN Office of the High Commissioner for Human Rights [OHCHR], *Nepal Conflict Report*, (2012) p.36

6. Matt Murphy, *Transitional Justice*, (Oxford, 2012)

7. Sonali Deraniyagala, *The Political Economy of Civil Conflict in Nepal*, (2005) Oxford Development Studies, Vol. 33(1) 47

continuing throughout the latter half of the 20th Century, Nepal saw various struggles for democracy beginning to emerge, although all efforts were ultimately thwarted by the monarchy. 1961 saw the formulation by King Mahendra of the 'Panchayat' system of governance, under which political parties were declared illegal. The Panchayat system endured in Nepal for almost three decades.⁸

Outside of Nepal, the collapse of the Soviet Union and the end of the Cold War were bringing about global political change. This intensified the agitation for democracy in Nepal, thus in 1990, following a turbulent period of street protests and pro-democracy campaigns by the outlawed political parties, the corrupt Panchayat system was ended and a new Nepalese Constitution establishing both a multi-party system of parliamentary democracy and a constitutional monarchy was promulgated.⁹

Traditionally life in Nepal has been extremely socially hierarchical. Caste and other hierarchies shaped much of the country's social, economic and political life.¹⁰ Democratisation raised popular expectations of political freedom, greater equality and economic advancements; however the transition to democracy proved problematic. The establishment of democratic institutions was weak, with Nepal's Parliament experiencing a number of internal prob-

lems: parliamentary democracy was failing. The power to dismiss the national parliament was retained by the King, the monarchy's authority essentially unchallenged by the political reforms and the mode of rule unchanged.¹¹ Further, traditional elites maintained dominance in society by re-legitimising their influence through democratic institutions. Democracy gave access to political power to the professional middle classes, while left-wing parties and marginalised social groups remained excluded from the elite political process.¹² Nor did the advent of parliamentary democracy alleviate Nepal's economic and social problems. Although some statistical indicators from the early 1990s showed positive developments in the economy, the living conditions of most people remained poor.¹³ In 1991, 5% of the population owned 40% of Nepal's land. Indeed, there existed a fundamental inequality between the relative wealth of Kathmandu and the oppressed ethnic minorities living in extreme poverty in rural Nepal.¹⁴ Despite the high levels of poverty experienced by the majority of Nepalese, the monarchy maintained its wealth.¹⁵ During this period of economic and political transformation, violent civil conflict broke out in Nepal. The conflict began in February 1996 when the CPN-M launched an armed insurgency to abolish monarchic rule and to address the economic and social injustices

suffered by marginalised populations.¹⁶ The CPN-M was a party which emerged in response to the marginalisation of left-wing parties in democratic politics.¹⁷ The conflict originated in the rural regions of Nepal and was at first regarded as a minor problem of law and order. However violence later spread and escalated into an entrenched and brutal armed conflict that affected the entire country.¹⁸ Initially, the responsibility of combating the Maoists and suppressing the insurgency was charged to the regular police forces of Nepal. However the police force was neither trained nor equipped for counter-insurgency operations and proved unable to control the situation.¹⁹ In 2001 a national state of emergency was declared by the Government, and the Royal Nepalese Army [RNA] was deployed in order to combat the Maoists.

Human Rights Violations during the Conflict

*"The Maoists are called terrorists by the government, and that is what they do—create terror. But the security forces are supposed to provide security, and they are no different. People live in constant fear."*²⁰

Both Maoist forces and Nepalese Government forces (comprised of the police, the armed police, and the RNA) displayed a dismal human rights record throughout the conflict. Maoist forces abducted, tortured and

8. Drew Cottle and Angela Keys, *The Maoist Conflict in Nepal: a Himalayan Perdition?* (2007) Australian Journal of International Affairs Vol.61(2) 168, at p.169.

9. *Ibid.*

10. OHCHR, *Nepal Conflict Report*, (2012) p.14

11. Cottle and Keys (2007), *supra* n.8

12. Deraniyagala (2005), *supra* n.7

13. OHCHR, *Nepal Conflict Report*, (2012) p.15

14. Cottle and Keys (2007), *supra* n.8, pp.168-169

15. *Ibid.*, p.170

16. Pasipanodya (2008), *supra* n.3

17. Deraniyagala (2005), *supra* n.7

18. OHCHR, *Nepal Conflict Report*, (2012) p.15

19. *Ibid.*, p.39

20. Quotation from a human rights activist in Nepalgunj, Human Rights Watch Report, *Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War*, (October 2004) Vol.16(12), p.2

killed civilians whom they suspected of being informers or enemies. Children were recruited as soldiers and students were abducted for political indoctrination.²¹ At the same time Nepalese Government forces were responsible for a huge number of summary and extrajudicial executions, torture, arbitrary arrests and enforced disappearances.²² Essentially, both the Maoists and the Government forces committed numerous atrocities, functioning with absolute disregard for the rule of law.²³

Throughout the conflict the Maoists carried out a significant number of summary executions of civilians. The Maoists tended to execute their victims in public, often preceding the execution with various methods of torture. The Maoists also frequently abducted individuals, holding the victim for ransom in order to compel their relative to resign from the security forces. These atrocities would be carried out openly and publicly in order to achieve a deterrent effect on the population.²⁴

The Maoists were responsible for grave violations of human rights during the conflict. The Nepalese Government forces, however, displayed an equally poor human rights record. In addition to carrying out a high number of summary and extrajudicial executions themselves, the Government forces were responsible for a mass amount of enforced 'disappearances' throughout the 10-year conflict. While the Maoists deliberately

publicised their violent and inhumane acts and accordingly often admitted responsibility for killings, the Government rejected virtually all allegations of abuse by its forces. As such numerous atrocities were perpetrated by police and other state agents; all with almost complete impunity.²⁵

The Nepalese Government forces were implicated in thousands of summary executions and other unlawful killings of both suspected Maoist rebels and civilians. Human Rights Watch has documented that often Nepalese security forces disguised themselves as Maoist rebels when arriving in villages in an attempt to identify and subsequently execute Maoist sympathisers. Individuals would often be wrongly identified as Maoist sympathisers and killed as a result of having previously been forced by Maoist rebels to allow them to spend the night in their home.

²⁶ Following summary executions, the Nepalese security forces would issue a statement identifying the dead as a Maoist rebel and stating that they were killed during gunfire exchange. The Office of the High Commissioner for Human Rights (OHCHA) has noted however that frequently it would appear that only the Maoists sustained casualties in alleged "gunfire exchanges", and notes the improbability of only one side sustaining casualties.²⁷

In 2003 Nepal had the highest number of disappearances in the world.²⁸ Indeed, enforced

disappearances were one of the most widespread human rights violations committed during the conflict.²⁹ In such cases individuals would go missing, having been last seen in the custody of the Nepalese Government forces. Individuals would be detained by security forces during large-scale operations, targeted raids, at checkpoints or they would simply be taken from their place of work or study.³⁰ Conflict-related disappearances began in the late 1990s, with the number escalating following the declaration of a state of emergency in 2001.³¹

Various pieces of flawed Nepalese legislation were often used as a means of justifying detention, and as such contributed to the prevalence of disappearances.³² The outdated Public Security Act was widely used to detain individuals suspected of involvement with the Maoists. The Act allowed for individuals to be held in preventative detention for up to 90 days to "maintain the sovereignty, integrity or public tranquillity and order" of the country. This period could be extended to six months with the endorsement of the Home Ministry. A further extension of up to 12 months from the original date of issue could be obtained subject to the approval of an Advisory Board established under the Act.³³ The Anti-State Crimes and Penalties Act was a further piece of legislation used to justify arbitrary detention. In 2000–2001 it was used by police to prevent suspects' release

21. Human Rights Watch Report, *Clear Culpability: 'Disappearances' by Security Forces in Nepal*, (March 2005)

22. *Ibid.*

23. Human Rights Watch Report, (October 2004) *supra* n.20, p.3

24. Human Rights Watch Report, (March 2005) *supra* n.21

25. *Ibid.*

26. Human Rights Watch Report, (October 2004) *supra* n.20, p.27

27. OHCHR, *Nepal Conflict Report*, (2012) pp.101-102

28. Human Rights Watch Report, (October 2004) *supra* n.20, p.2

29. OHCHR, *Nepal Conflict Report*, (2012) p.109

30. Human Rights Watch Report, (March 2005) *supra* n.21

31. OHCHR, *Nepal Conflict Report*, (2012) p.110

32. Human Rights Watch Report, (March 2005) *supra* n.21

33. Amnesty International, *Nepal: A spiralling human rights crisis*, (April 2002), pp.33-34

on bail pending trial, in addition to being used regularly by police to arrest and charge members of Maoist organisations who would subsequently disappear having been held in police custody.³⁴ Most individuals detained during the conflict after 2001 however were detained under the Terrorism and Disruptive Activities (Control and Punishment) Ordinance promulgated at the time. The Ordinance allowed security forces to hold individuals in preventive detention for up to one year without charge or trial and reinstated their almost absolute immunity from prosecution.³⁵

While these pieces of Nepalese legislation accommodated a number of enforced disappearances, in many other cases the security forces simply disregarded the law. Often individuals would be held for long periods of time without access to a court, to lawyers or to their families, the government simply refusing to acknowledge they even existed.³⁶ Some detainees would file habeas corpus petitions in the Courts, although this was difficult due to the aforementioned lack of access to legal assistance during detention.³⁷ When court orders were obtained ordering the release of the detainee, often the police would either blatantly disregard the order, or re-arrest the individual immediately upon release.³⁸ Often individuals experienced torture during detention and in a staggeringly high number of reports the individuals were reported as never having returned, to this date remaining unaccounted for.

The CPA was intended to bring to an end the decade of widespread human rights violations in Nepal. The parties to the CPA vowed to end impunity and to safeguard the rights of families of the disappeared. Almost eight years after signing however, little has been done to secure transitional justice, and impunity is rife. Both the Government and the Maoists have shown a great deal of reluctance to strengthen accountability, and the RNA has failed to co-operate with police investigations.

Comprehensive Peace Agreement and On-going Impunity

Throughout the 10-year conflict, there were three ceasefires with attempts at peace dialogues between the Nepalese Government and the Maoists. The first two, in 2001 and 2003, were unsuccessful and the conflict resumed. The decade of armed conflict in Nepal came to a formal end however in November 2006 with the signing of the Comprehensive Peace Agreement [CPA]. The CPA declared the beginning of a new peaceful co-operation between the government and the Maoists, guaranteeing sovereignty, progressive political resolution, democratic reform of the state and social and economic transformation.³⁹ The CPA committed both parties to the establishment of an interim government, including representatives from the CPN- M and to Constituent Assembly elections by mid-June 2007.⁴⁰ The CPA further promised four transitional justice mechanisms: (i) the Truth and Reconciliation Commission to investigate serious violations of

human rights and crimes against humanity; (ii) the National Peace and Reconciliation Commission to provide assistance to conflict victims; (iii) a High-Level Inquiry Commission on Disappeared Citizens; and (iv) a High-Level State Restructuring Recommendation Commission.⁴¹

The CPA was intended to bring to an end the decade of widespread human rights violations in Nepal. The parties to the CPA vowed to end impunity and to safeguard the rights of families of the disappeared.⁴² Almost eight years after signing however, little has been done to secure transitional justice, and impunity is rife. Both the Government and the Maoists have shown a great deal of reluctance to strengthen accountability, and the RNA has failed to co-operate with police investigations.⁴³ The GoN has made no progress towards identifying and prosecuting the perpetrators of human rights violations committed during the armed conflict. Indeed, the failure to punish the perpetrators of these crimes has perpetuated an environment in which violations continue

34. *Ibid*, p.35

35. Human Rights Watch Report, (March 2005) *supra* n.21

36. Human Rights Watch Report, (October 2004) *supra* n.20, p.65

37. Amnesty International Report, (April 2002) *supra* n.33, p.34

38. *Ibid*.

39. Informal Sector Service Centre (Insec), *Human Rights Yearbook*, (2003) p.10

40. Amnesty International Report, *The State of the World's Human Rights*, (2007) p.194

41. Amnesty International, *Public Statement: Nepal at a Crossroads – Urgent Need for Delivery on Transitional Mechanisms for Truth, Justice, Inclusion and Security*, (20 November 2007)

42. Amnesty International Report, *Nepal: The Search for Justice*, (2013) p.6

43. Amnesty International Public Statement (20 November 2007) *supra* n.41

The Supreme Court suggested the ordinance should be aligned with domestic law and Nepalese obligations under international law, yet the GoN introduced an almost identical bill; simultaneously undermining the judiciary system and contravening the 2007 Interim Constitution which states Supreme Court rulings as binding.

to be committed with impunity.⁴⁴

It was hoped that the signing of the CPA in 2006 would pave the way to transitional justice mechanisms such as criminal prosecutions and truth commissions. The lack of progress that has been made in implementing the mechanisms set out in the CPA however means that little has been done to secure transitional justice in Nepal. In 2010, the Council of Ministers forwarded an ordinance seeking presidential approval for the establishment of a Commission of Inquiry on Disappearance and a Truth and Reconciliation Commission. While the CPA committed to establishing these transitional justice mechanisms, it has been suggested that the ordinance completely lacks the spirit of the CPA.⁴⁵ The following section of this article will focus on various provisions of the TRC Act and consider its potential weaknesses in securing transitional justice.

III. Truth and Reconciliation Commission

As noted previously, the implementation of transitional justice mechanisms has been patchy and, at times, stagnant. The TRC ordinance, initially formulated in 2013, was criticised as enabling political bargaining at the expense of rule of law, with the International Com-

mission of Jurists and a coalition of victims' groups submitting petitions to the Supreme Court.⁴⁶ The Supreme Court decided in the landmark case of *Madhav Kumar Basnet v Government of Nepal*⁴⁷ that the ordinance obstructed transitional justice, violated both the Nepalese Constitution and international human rights law, and contravened previous Supreme Court orders.⁴⁸ The Supreme Court suggested the ordinance should be aligned with domestic law and Nepalese obligations under international law, yet the GoN introduced an almost identical bill; simultaneously undermining the judiciary system and contravening the 2007 Interim Constitution which states Supreme Court rulings as binding.⁴⁹

In addition to being unconstitutional, the new Act has received various criticisms from both civil society and international human rights organisations. Firstly, the mechanisms in place politicise the Commission and do not minimise the risk of interference; Section 3 states:

"(3) A Recommendation Committee shall be constituted as follows to recommend for the appointment of the Chairperson and Members of the Commission:-

(a) Person designated by the Government of Nepal from

among the former chief justices -Chairperson

(b) Chairperson of the National Human Rights Commission or a member as designated by the Chairperson of the said Commission - Member"

The Recommendation Committee nominates a Chairperson and Members for the Act, but the Committee are chosen by the GoN. As such the TRC is not established as an independent body which inhibits its impartiality by leaving the process open to political manipulation. Additionally, Section 10 empowers the state to appoint a civil servant as secretary to the commission, while Section 6 (2) enables the GoN to remove a Chairperson for 'bad conduct' or 'lack of efficiency'. This not only gives the state power to interfere in an independent body, but additionally the vague wording could potentially allow for the GoN to exploit the Act for their own benefit. Furthermore, the GoN controls funding resources for the operation of the commission. These provisions do not align with international standards of impartiality and independence and accordingly contravene Supreme Court orders.

Another area of tension in the proposed Act is the inclusion of an amnesty clause for perpetrators of human rights abuses 'if deemed reasonable'.⁵⁰ This has been widely criticised by international human rights organisations for breaking international legal standards; neglecting the right to truth, justice and assurance of non-repetition.⁵¹ The inclusion of amnesty directly violates the UN impunity princi-

44. Amnesty International Report (2013), *supra* n.42 pp.5-6

45. Dipendra Prasad Pant and Nir Lama, *TJ Ordinance and Its Implications*, (2012) Informal Vol.32(2) 6, pp.6-7

46. International Commission of Jurists, *Justice denied: the 2014 commission on investigation of disappeared persons, truth and reconciliation act* (2014) p.3

47. Decision of 11/11/2067 (23 February 2011)

48. *ibid*

49. Amnesty International, *Nepal: Reject draft truth and reconciliation bill* (2014)

50. Bill on Commission on Investigation of Missing Persons, Truth and Reconciliation 2070 (2014), s26(1)

51. Human Rights Watch, *Nepal: Reject Draft Truth and Reconciliation Bill*, (April 2014)

ples of effective remedial action for victims of war crimes, genocide, crimes against humanity, and gross human rights violations.⁵²

While enabling amnesties for gross human rights violations, the Act does exclude rape from the application of amnesties.⁵³ However, the effectiveness of this exclusion is minimised by domestic law which places a 35-day limit in which rape must be reported.⁵⁴ Human rights organisations have pushed for the removal of Section 26 in its entirety in order to exclude the possibility of amnesty for crimes under international law.⁵⁵ Furthermore, with no distinct crimes for enforced disappearances, torture, or crimes against humanity under domestic law, there is inconsistency between domestic and international legislation. The lack of political will to improve domestic policy undermines the aforementioned decision of the Supreme Court which advised the enactment of such laws. The introduction of domestic laws dealing with enforced disappearances, torture and crimes against humanity would not only align domestic and international policy, but would also increase legitimacy of the Supreme Court and promote the rule of law.⁵⁶

The proposed Act also faces criticism over Section 22, which enables the commission to mediate cases without victims' consent.⁵⁷ Despite the OCHR ex-

pressing concerns over this, the Act continues to promote a top-down approach to transitional justice.⁵⁸ If victims' consent is not mandatory then the mechanisms for justice are prioritising victims' rights over victims' needs and moving away from a victim-centric model.⁵⁹ While the international community are encouraging prosecutions and the GoN keen to avoid them, victims' needs have been overlooked; 64% of respondents said that finding out the truth about those who were forcibly disappeared was their top priority, yet the human rights network are keen to end amnesty clauses, which could actively hinder fact-finding programs.⁶⁰ As well as anxiety caused by the unknown fate of a family member, it impacts individual lives in ways which are overlooked by international human rights networks; for example, the religious traditions carried out after death require human remains or absolute proof of death; a mechanism without an amnesty clause can inhibit this closure.⁶¹ This elite-led process also restricts access for the most disempowered in Nepalese society who seek tangible solutions in their daily lives – only 7% in the rural district of Bardiya prioritised justice and instead highlighted the need for truth and economic support.⁶² While the bill does include provisions for improving the lives of victims, placing truth secondary to prosecution through the insistence of no am-

nesty clause may restrict palpable progression. This prescriptive approach to accessing human rights further restricts victims in Nepal as many are unaware of the idea of rights and are seeking discernable truth. The insistence on a human rights perspective as opposed to a victim-centric process prioritises political over socioeconomic agency.⁶³ A locally-led process instead of implementing a top-down human rights framework would enable the greatest level of access for Nepalese families. The process of transitional justice should emerge from the needs of victims and not be executed through an external agenda since efforts to promote transitional justice remain elite-led and the rights community has failed in articulating the agendas of the disempowered.⁶⁴

IV. Conclusion

In conclusion, the gross human rights violations committed throughout the civil war have continued to impact many lives in Nepal. The introduction of the TRC Act aims to encourage the healing and progression of society. However, the proposed act is unconstitutional, does not commit to impartiality, and is impeded by restrictive or non-existent domestic policy. The Act has also received widespread criticism over the inclusion of an amnesty policy from international human rights organisations, placing pressure on

52. The United Nations, *Basic principles and guidelines to a remedy and reparation for victims of gross misconduct of international Human Rights law and serious violations of International Humanitarian Law* (2010) p.4

53. Bill on Commission on Investigation of Missing Persons, Truth and Reconciliation 2070 (2014), s26(2)

54. Human Rights Watch (2014), *supra* n.50

55. International Commission of Jurists (2014), *supra* n.46 p.3

56. *ibid*, p.5

57. Bill on Commission on Investigation of Missing Persons, Truth and Reconciliation 2070 (2014), s22

58. OHCHR (2013). *Comments on the Nepal 'Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance – 2069 (2013)'*

59. Simon Robins, *Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal* (2011) International Journal of Transitional Justice, Vol.5(1) 76

60. *ibid*, pp.89.

61. *ibid*

62. *ibid*, pp.90

63. Louise Arbour, 'Economic and social justice for societies in transition', NYU Journal of International law and politics, 40 2007-8.

64. Simon Robins, 'Transitional justice as an elite discourse: Human rights practice in post-conflict Nepal', Critical Asian Studies.

the commission to work within an absolute prosecution framework, rather than a truth framework. The Act fails to strike a balance between truth and retributive justice, and in doing so places rights above needs. This is further entrenched by the use of a human rights framework and discourse which restricts accessibility for victims and their families. A grass-roots development would grant the greatest access to truth, and allow tangible progression in society by tackling the needs of individuals instead of promoting a top-down framework which prioritises international human rights norms over the requirements of individuals.

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Human Rights Committee Review of Nepal Report: Responses from Government and NGOs on List of Issues

International Covenant on Civil and Political Rights 1966: Responses and conclusions of Government of Nepal and NGOs to the lists of Issues sent by the United Nation's Human Rights Committee regarding the second periodic report of Nepal

Background

In 1991, Nepal ratified the International Covenant on Civil and Political Rights 1966. As an obligation to being the state party, Government of Nepal must submit a periodic report to the United nation's Human Rights Committee regarding whether the people of Nepal are enjoying their civil and political rights or not. In 1994, Nepal had sent the preliminary report. In every five years, there is an obligation to send the report to the HRC however Nepal sent joint second, third and fourth report of the situation between 1995 and 2010 in 2012.

The facts and concerns which are not included in the report of Government was incorporated by the Human Rights Treaty Monitoring Coordination Committee (HRTMCC), according to the Articles of the ICCPR,

sent it to the committee on May 8, 2013 on behalf of 63 NGOs. Some other concerns of other organizations were also submitted separately to the HRC. Mainly, based on the second Government report and civil society report of the civil society, the HRC had sent a list of issues on January 27, 2014 regarding Nepal's second periodic review. In reply to the issues, GoN and NGOs submitted their answers to the HRC.

Based on the reply to the list of issues by the GoN, a detailed discussion session of 110th Human Rights Committee was held in Geneva from March 17 to 19, 2014 with issuing of concise comments.

The reply from Government and NGOs to the list of issues was sent by the HRC regarding the second periodic report.

In this article, we will try to discuss the list of issues sent to the government by Human Rights Committee and major parts of address from NGOs based on Nepal's second periodic review.

α. List of issues sent by the committee regarding constitution and legal basis for the implementation of ICCPR and legal base.

The reply to the HRC questions, based on National Human Rights Commission Act 2012, regarding the independence of NHRC including financial independence, ensuring the implementation of functioning of NHRC according to the Paris Principles and steps taken to ensure implementation of the NHRC recommendation, and amendment to the time limitation of six months to file a complaint at NHRC.

* The writer of this report, Program Manager, HR Advocacy Campaign Department, INSEC

TNGO commented that the government is slow in implementing the NHRC recommendations. Only 38 recommendations out of 386 were implemented. The report further stated that the posts of NHRC chairpersons and members have remained vacant since September 2013 and suggested that the vacancies should be filled and the NHRC recommendations should be implemented.

On this, the Government stated that the National Human Rights Commission is a constitutional body and that the Constitutional Council recommends its chairperson and members and that the President can appoint the commissioner for up to six years only after the parliamentary hearing. The Government further claimed that there is also a provision of removing the commissioner by 2/3rd majority in parliament and it has been provided with adequate resources. Further, it is reported in the government report that the statute of limitation of six months was terminated by the Supreme Court order and that the government was following the NHRC recommendations.

NGO commented that the government is slow in implementing the NHRC recommendations. Only 38 recommendations out of 386 were implemented. The report further stated that the posts of NHRC chairpersons and members have remained vacant since September 2013 and suggested that the vacancies should be filled and the NHRC recommendations should be implemented.

The HRC asked the Government to describe the interim order issued by the Supreme Court of Nepal ruling out the immediate implementation of the voiding of Truth and Reconciliation Commission and COIDP Ordinance

2012 and also asked to clarify the political intervention on grave human rights violation issues. Similarly, the HRC also expressed its concern regarding the establishment of vetting system to remove a person from the army and security agencies who were accused of serious human rights violation.

On this, the Government report has stated that after the interim order of the Supreme Court, the Ordinance on COIDP and TRC was not enforced, however, an action was adopted within the regular criminal legal system for the past abuses. The government clarified that the provision of taking action against the security personnel for serious human rights violation and humanitarian crimes has been included under the NHRC jurisdiction as per Article 132 (4) of the Interim Constitution 2007.

The civil society's reply was that the Ordinance on COIDP and TRC was not implemented after the ruling made by the Supreme Court. It further stressed on the need of the formation of separate COID and TRC on par with international criteria.

The HRC asked what steps were taken by the government to define war crimes, crime against humanity and genocide according to the National Law and limiting such crimes within the jurisdiction of criminal justice system and

further asked whether the government has any plans or program regarding the rehabilitation of the victims of human rights violation during the 10-year-long insurgency.

The Government said that the domestic legal system was capable of investigating and prosecuting the incidents on human rights violation and most of the human rights violation incidents of the past were being investigated under criminal legal system. In order to establish a mechanism to provide a justice to the victims and action against the perpetrators, the Ordinance on TRC and COIDP 2012 were presented to the President of Nepal. Stating that murder, abduction, enforced disappearance, serious injuries, physical and mental torture, rape and sexual abuses and crime against humanity included in ordinance as the serious human rights violation incident and the ordinance was ruled void by the Supreme Court.

On Gender Equality

The Government was asked to mention the role of male and female, their responsibility, traditional norms and steps taken to remove patriarchal attitude and also the steps taken to eradicate malpractices such as child marriage, dowry system, polygamy, torment in the name of witchcraft, Chaupadi, Jhuma, Deuki etc. The effect of positive discrimination measures adopted so as to increase women participation or representation in political and public life were also sought.

Government response in the report is that after the ratification of ICCPR, the pressure on and legal obligation of the nation has been built. Perusing such obligation, the Supreme Court, in many

of its decision, has given an important order to the government to amend law and the Constitution to eradicate malpractices, traditional norms and gender discrimination¹. Also the provision of inclusion has been included in the constitution so as to remove the social gender discrimination and imposing the policy of positive discrimination. The list of programs with national and international provision was also presented to the committee.²

NGO response on the issue was that malpractices prevailing in society such as child marriage, witchcraft accusation, Chaupadi, Jhuma and Deuki have not been eradicated. There is low representation of female in public sphere especially in policy making bodies, government, court, law implementing agencies and other local agencies.

The HRC wanted to know the steps taken to eradicate caste-based discrimination especially the discrimination against Dalit community and remedy for the effective implementation to end caste discrimination and untouchability. Also whether the National Dalit Commission (NDC) has been provided with adequate resources and is there any law enforced to monitor the NDC activities?

The Government response on the issue was that the Preamble of Interim Constitution of Nepal 2063 (2007), Chapters on fundamental right, and Policy and Directive Principles includes equality. The government has adopted various means of technique to eradicate the discrimination against

Dalit and changing their attitude by propagating the dalit rights through various media. For example, it has enacted Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011, run effective media campaign against untouchability, and adopted zero tolerance policy on caste discrimination³. The government has provided adequate resources to the NDC and is working on making it a constitutional body.

The civil society responded by saying that that even now dalits are viewed as “untouchables” in Nepal. Their rights like access to the public places including access to drinking water from the public tap are rampantly being violated and the inter-caste couple still face discrimination⁴. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011 has been enforced however its implementation is not effective.

The HRC posed a question on steps taken to create gender equality and regarding removing discrimination, mainly for transferring nationality the steps taken to remove the obstacle being faced by Madhesi community in obtaining citizenship certificate.

The report stated that the provisions in domestic law allow any Nepali citizen to acquire citi-

zenship certificate after reaching 16 years of age and Citizenship Act 2007 allows Nepali women to transfer nationality to her children. Nepali citizens can get the citizenship certificate from 75 districts of the country and that the Chief District Officers deploy mobile teams to include the principles of equality and non-discrimination if the need for so felt

Civil society report states that the Citizenship Act allows Nepali women to transfer the citizenships to her children however in practicality it is not enforced or implemented.

The HRC wanted to know the tools adopted for rehabilitation and compensation to the victims and action taken against perpetrators and proper investigation on violence against women and other sexual abuses and also the steps taken on terminating 35 days statutory limitation in rape case.

Government response mentioned in the report is that Nepal has already criminalized all kinds of violence against women and the court and officials implementing this law are taking this issue very seriously. The police authorities have been directed to take the case of violence against women very sensitively. The government also presented a list of solutions⁵

Government response on this issue, mentioned in the report, is that Nepal has already criminalized all kinds of violence against women and the court and officials implementing this law are taking this issue very seriously. The police authorities have been directed to take the case of violence against women very sensitively. The government also presented a list of solutions adopted to minimize or stop the violence against women.

1. List of issues in relation to the second periodic report of Nepal: Replies of Nepal to the list of issues, page 2 and 3
2. List of issues in relation to the second periodic report of Nepal: Replies of Nepal to the list of issues, page 6 and 7
3. List of issues in relation to the second periodic report of Nepal: Replies of Nepal to the list of issues, page 7
4. Civil Society Report on Implementation of the ICCPR (Replies to the List of Issues CCPR/C/NPL/Q/2), Page 8
5. List of issues in relation to the second periodic report of Nepal: Replies of Nepal to the list of issues, page 8 and 9

Government report mentioned that Interim Constitution has recognized the right to life as a fundamental right. The present law has a provision to charge state or non-state by criminalizing and protecting the right to a person's life. Any security personnel using extra-judicial power while in a post will be the prosecuted under the present law or will face departmental action. Nepali law has already recognized enforced disappearance as a crime and also abduction and illegal detention as crimes.

adopted to minimize or stop the violence against women. The domestic law has taken the case of rape as a serious issue of human rights violation. The law has a provision of maximum of 16 years of imprisonment along with compensation to the rape victim. The amendment of the statutory limitation of 35 days was presented to the parliament however due to the absence of parliament at that time the law could not be endorsed. Service Centers for the victims of domestic violence have been established in 15 districts; eight rehabilitation centers have been established for the victims of human trafficking and rehabilitation and Service Centers have been established in the capital and all other districts

NGO response on the issue was that there is inadequate legal provision against the perpetrators of rape, sexual violence and domestic violence, no effective mechanisms to investigate such violence and no amendment on 35 days statutory limitation. The report further stated that 12th amendment of General Code and Domestic Violence (Crime and Punishment) Act 2066 (2005) were not effective enough.

On Prohibition of Torture and Cruel Inhuman Behavior

The HRC wanted to know whether there is any investigation unit established to investigate the extra-judicial killings or the incidents of disappearance and whether torture was criminalized in Nepal according to the international standards.

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NGO response on this was that no special investigation unit has been established to investigate the extrajudicial killings and the acts of enforced disappearance. Separate commissions are planned based on the nature of the incident however the recommendations

by the commission are not being implemented and torture has not been taken as a criminal offence. Especially the women are continuously being victims of mental and physical torture in their own homes, offices and public places and the government is not taking the case of torture committed by non-state actors seriously. Being a state party to International Convention against Torture (CAT), Nepal should recommend for the amendment of the existing domestic laws.

The HRC wanted to know whether any training/education was provided to the officials implementing the law include human rights and use of force as a standard.

The training and education related to the human rights is being given to the security personnel institutionally. Nepal Police, Armed Police Force and Nepal Army have included the subjects of human rights and humanitarian law in their course of study. The security personnel have been given various trainings related to human rights.

Slavery and Its Eradication

Tools adopted by the state to compensate and reestablishing the victims of women trafficking, use of children in physical and sexual abuses, prevention of domestic labor, human organ trafficking and taking action against perpetrator and also the techniques adopted to eradicate Haliya, Kamaiya, Kam-lari and ill-practices.

Article 29 of the Interim Constitution of Nepal 2063 (2007) has safeguarded each individual against exploitation. No one can exploit anyone in the name of tra-

dition or practice. Human trafficking and Transportation (Control) Act 2064 (2007) and Human Trafficking (Control) Regulation 2065 (2008) have been enforced.

The Child Labor (Prohibition and Regulation) Act 2056 (2000) and the Children's Act 2048 (1992) restrict any type of slavery or enforced labor. Similarly in 2001, the government announced liberation of Haliya, Kamlari and Kamaiya. The report drew the attention of the HRC towards the provision in the domestic law of taking action against those who were having child labor or bonded labor.

Civil society response on the issue was that the constitution has restricted of using any individual in prostitution, slavery, domestic labor or in organ trafficking. But, child labor is rampant in public transport and eateries. Due to the lack of adequate information regarding the data of human trafficking, there is a problem on identifying the actual situation of human trafficking in the country. The Human Trafficking and Transportation (Control) Act and Human Trafficking and Transportation Regulation have been enforced however they are well implemented in practice.

On Individual's Rights to Freedom and Security, Treatment with Detainees, Fair Trial and Independent Judiciary

The HRC wanted to know the measures of solution adopted regarding the poor infrastructure of custody and prison, overcrowded prisons, poor health services and lack of privacy for legal counseling.

Response of the Government of Nepal on the issue is that

it is very serious and concerned about the poor infrastructure of prisons older than 50 years and poor health services provided to the inmates. It further said that the new buildings are being constructed to get rid of this problem. The government is committed to build new prison buildings in Nakkhu, Dhading, Bhimfedi, Pokhara, Dang, Chitwan and Myagdi with minimum services including health checkup. The NHRC has a mandate to monitor the prison conditions.

NGO response on the issue was that the prisons and custodies suffer from overcrowding, poor infrastructure and health services and a lack of private place for legal counseling adding that the existing Prison Act 2019 (1963) needs to be amended.

The HRC asked to describe the status of the Penal Code and Punishment Bill submitted at the and also the major amendments recommended by this law to ensure fair trial.

The government has responded to this by saying that the provisions as amendment of criminal justice system and criminalizing torture could not be enforced due to the dissolution of Legislature-Parliament delayed the enactment of the Penal Code and Punishment Bill. However, the Interim Constitution 2063 (2007) has ensured the individual's right of not to compel them to testify against

themselves.

The HRC inquiry on the steps taken to address the irregularities, corruption, political intervention in the court, implementing the court order, lack of resources and inadequate legal service to marginalized communities.

The Corruption Prevention Act 2059 (2002) is enforceable to the entire state which it is also applicable to the court. Nepal being a state party to the UN Convention against Corruption, it is enforceable to judicial and other legal officials of the court as well. The Constitutional Council and Judicial Council formed led by Chief Justice of Supreme Court have an authority to investigate the complaint of corruption against judges lodged at Appellate Court or District Court. The government has been providing legal services to the marginalized communities since 1970 and recently, the legal aid committee has been established in each district of the country to provide legal services to the marginalized communities.

Civil society response on the issue stated that it was hard to provide the evidence of financial corruption occurring in the court. The appointment of the CJ as the head of the state itself is an example of institutional corruption and by this appointment; the political parties have breached the basic norms of "Separation of Power".

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On Refugees and Asylum Seekers

Whether a refugee or an asylum seeker has the right against exile and whether there is any related law on the issue and whether there are the provisions of punishment for undocumented immigrants and barring the refugees without visa from leaving the country before clearing the due fine.

The right against the provision of exiling the refugees or asylum seekers is in practice. The present constitution and legal provisions allow the recognized refugees to use their rights and provisions of appeal for the legal remedy if their rights are violated. Nepal is not a state party of any international treaties regarding refugees and asylum seekers however it has been adopting the principle of non-refoulment. The Extradition Ordinance 2069 (2012) has been enforced in Nepal and it has provision barring extradition of a person facing risk of physical or mental harm in his/her own country.

Nepal does not have any law regarding the refugees however the Immigration Department has been regulating such issues. In Nepal, there are refugees and asylum seekers from Tibet and many other countries. They are being allowed to stage peaceful protest. The other issues are regulated under Immigration Act 2049 (1992).

The civil society response on the issue was that even the actual number of refugees and asylum seekers in the country are unknown due to the lack of law on refugees and asylum seekers in the country. The civil society team further demanded the promulgation of refugee law according to the international standards.

On Freedom of Speech, Right to Association and Religious Freedom

The HRC asked to clarify the physical attack and threats received by journalists and human rights activists from government and non-government agencies and the armed groups.

The government report clarified that the journalists and human rights activists are never being threatened, attacked or tortured and restricted in their job by the state. There is a provision of action against those involved in such incidents. The Tibetan refugees are being allowed to stage peaceful protest in the country however they are restricted from breaching the national law and illegal activities which might affect the friendship with the neighboring states and restriction of such activities are not the violation of human rights.

The civil society team commented that no separate law or mechanism has been established for the human rights defenders and such violations are rarely been addressed. According to the IN-SEC report, there were a total of 513 HRDs victimized in 2011 and 2012.

On Birth Registration

The government was asked to describe the steps taken to address the problems faced by women and poor people regarding low rate of birth registration.

The government response on the issue is that the process of birth registration began in Nepal in 1971 facilitating registration of the incidents of birth, marriage, death and divorce. The Birth, Death and Other Personal Events (Registration) Act, 2033 (1976) is

presently enforced in the country. To address the situation of low registration among poor and marginalized community, the government has been publicizing various awareness programs through media.

The civil society commented on the issue by saying that the lack of adequate human resources, absence of VDC secretaries at work and compulsion of father's name in child's birth registration have created problem for the orphans, children of rape victims or children of the displaced inter-caste marriage couples to register the birth of their child.

On Publishing and Casting Information Related to Legislature

The HRC asked government to clarify the steps taken to publication and dissemination of information related to review and its contents. It further asked government to inform about the involvement of NGOs, civil society and NHRC while preparing this report.

Nepali translations of IC-CPR and Its Optional Protocol, to which Nepal is a state party, have been uploaded in the website of Office of the Prime Minister and Council of Ministers. While preparing this report, intensive interactions were held among NGOs, civil society and media.

The civil society responded by saying that the Nepali translations of international treaties, to which Nepal is a state party, are uploaded in the website of the Prime Minister and Council of Ministers however access to these documents is difficult for the public.



Debate on State Structure in Nepal: Challenges and Opportunities

A state has the monopoly in power and taxation along with public allegiance and international recognition to government. If the state is autonomous of its internal influential pressure group and sovereign externally, then only the democracy can work for the wellbeing of the people. The structure of democracy, governance and civil society is based state management. In this context, the constitution will play a mediating role between state and society and also provides a collective vision for the common future.

The state restructuring committee of the Constituent Assembly (CA), in its preliminary draft, has proposed a parliamentary and mixed system. The committee comprising of 45 members has proposed for electoral system, executive, legislature and their jurisdiction and responsibilities, relationship among the organs of state, fundamental elements for the good governance, rule of law and separation of power. The committee which has received 57,200 recommendations from across the country has also included the comparative study of other countries

in its report. The same committee has also proposed for geographical situation, state system, local government and their election system. The committee had discussed with the senior leaders of various political parties prior to the submission of the report however it could not reach the consensus on issues of the structure of federal system, the relationship between the federal system and state government, their electoral system and entire political system. But the committee has unanimously proposed the nature of local government and local electoral system, good governance and formation of state service.

First Proposal: Executive Presidential System

The committee has prepared its preliminary report for

political system, structure of state and electoral system among others. Out of 39 members, 18 members of the committee had voted for this system. The characteristics of the proposal are:

1. President will be the head of the state and head of the government simultaneously in federal government system.
2. President will be elected on the basis of adult franchise. President will be responsible towards the parliament and the political party through which s/he is elected.
3. The tenure will be for five years and cannot be elected more than twice in the post
4. The poll candidate who gets majority of valid votes in presidential election in which the whole country will be counted

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* Associate Professor, Political Science, at Patan Campus, Tribhuvan University, Kathmandu.

View Point

“Comment on HRC Hearing and NGOs’ Participation”

The hearing of Nepal’s second periodic review report on ICCPR 1966 has been held in Geneva, Switzerland in a 110th meeting of United Nations Human Rights Committee from March 17 to 19. Government of Nepal submitted its first periodic review report to Human Rights Committee on 1994 after ratifying the Covenant in 1991. Nepal submitted its review report of the period of 1995-2010 in 2012 though there is a provision of submitting the report in every five years. The HRC had already recommended the government to implement the rights protected by the covenant. The recommendation directs the government to implement these provisions such as impunity, National Human Rights Commission, violence against women, caste discrimination, extra-judicial killings and arbitrary arrest as per the provision of the treaty. What effects will Nepal have after the discussion held in Geneva and the recommendations provided? Here are the viewpoints of Human Rights activists and conflict victims, compiled by our representative Ramesh Prasad Timalsina. Excerpts:

Bhawani Prasad Kharel,
President, National Human
Rights Foundation



In United Nation’s 110th review meeting, the civil and political rights of the country have been reviewed. The questions posed to the representatives of Nepal from the international community have pressurized Government of Nepal to fulfill its human rights commitments and its obligation towards human rights and I think it will be beneficial to Nepal.

BP Adhikari,
INHURED International

The government submitted its periodic review after a long time. At the same time the shadow report has been presented on



behalf of civil society of Nepal. The discussion has been held regarding this report on March 17, 18 and 19. They take the cases from civil society in serious manner. That is why the government representatives were grilled with many questions in a meeting. The UN sends recommendations to the government. It also monitors the situation and recommends government to follow it up via human rights view point and keeps on monitoring the issue. If the government is unable to fulfill its commitment, it can raise a question at an international platform for not fulfilling the obligations of treaties and conventions. The international community will give a tremendous pressure on the government. After expressing its commitment towards human rights at an international lev-

el, the government cannot brush it aside once it makes pledge at the international platform.

Professor Kapil Shrestha
Former National Human Rights
Commission Member



The Government of Nepal has not demonstrated its seriousness towards the issues of human rights and implementation. From the beginning, Nepal has been accused of hurrying in ratifying the United Nations and other international treaties but lacking the will on their implementation and adherence. The report presented by the Government of Nepal is bit a surficial. Nepal is a country having a high potentiality of gaining achievements. However,

in absence of willingness and honesty in politicians, administrators and law makers, Nepal has always been in an awkward position and been embarrassed in the international arena. This trend has not stopped. I am very worried as a human rights activist. Is it not a time to correct ourselves? It is not that our leaders, administrators and law makers don't know that. The only thing is that we are not serious about it. Nowadays, the other countries are taking these issues very seriously.

Shri Ram Adhikari,
Officer, National Human Rights Commission



The main job of National Human Rights Commission is to exert pressure on the state. Nepal, being a state party to ICCPR, is obliged to address the recommendations provided by Human Rights Committee. The provisions in the Covenant state that a state party has an obligation to submit its periodic report every four years and has a responsibility to implement these recommendations of the report. It is the state's responsibility to amend the law, establish Truth and Reconciliation Commission or enforce law, if necessary. It is not necessary for Nepal to wait for the recommendation from United Nations to prosecute the perpetrators of human rights violation. However, it is an additional pressure on the

government to receive the HRC recommendations from while the state is showing its insouciance towards violation.

Laxmi Pokhrel, ICTJ



The issues regarding the Civil and Political Rights have been discussed in the meeting and the HRC has given its recommendations in specific subjects. The Committee has spoken about the job needed to be done by Government of Nepal regarding transitional justice and the violence against women and also has asked the government to give feedback within a year whether it has fulfilled its responsibility and liability or not. As for being a state party to ICCPR, Government of Nepal is obliged to fulfill the recommendations issued by the HRC. If not, the state will be perceived in the international community as incapable of fulfilling its obligation.

Manjima Dhakal,
Daughter of Rajendra Dhakal an
Enforced Disappearance Victim



This is simply a business. May be it is right from their side to raise the issue to the serious international community. I don't think that the people who came back from Geneva can heal our wounds because they can't feel our pain. I want this business to end as soon as possible by creating a better human rights situation in the country. We want our pain to be addressed. The Universal Periodic Review has made the government aware and made them realize that the government has to face the questions from international community for failing to meet its obligation. However, I don't see the concerned authorities are serious and sensitive about this issue. If they were serious we would not have to go through this situation.

Suman Adhikari,
Son of Muktinath Adhikari,
killed by Maoists during the
armed conflict



We think the recommendations that came up after the discussion in the HRC will have a positive effect. Government cannot lie to international community like it does to us. The state does not have any moral power to lie after the discussion that was held in Geneva. The victims of serious human rights violation hope that the government would work to improve the situation of human rights in Nepal. We have a hope that our case will be addressed by the state in coming days.

The legislature recommends and approves the budget and also recommends for the appointment of ambassadors and chief justice/SC justices. Similarly, the legislature also recommends and approves agreements and treaties. While proposing the name of the running mate, the presidential candidate must propose the name different from own caste, region and gender.

as a single constituency will be elected.

5. If a candidate fails to get majority vote in an election, the second phase of election will be held between the two candidates getting maximum votes.
6. The second phase of election will be held within 15 days after the commencement of first phase of election.

The rights and duty of Executive President

1. To form the Council of Ministers on the basis of inclusive and proportional representation, division of work among the ministers and issues related to the diplomatic work including receiving the letter of credence from diplomatic representatives
2. Declaring state of emergency, declaring war and peace and mobilizing army
3. Presenting policy, planning, program and budget to legislature
4. Issuing ordinance
5. All the executive rights of the state will be vested upon the President which s/he will use with the support of the Council of Ministers

The legislature recommends and approves the budget and also recommends for the appointment of ambassadors and chief justice/SC justices. Similarly,

the legislature also recommends and approves agreements and treaties. While proposing the name of the running mate, the presidential candidate must propose the name different from own caste, region and gender.

Removal of president from the post

1. If the President dies
2. If s/he resigns in writing from the post.
3. If the proposal of removing the President made by one fourth of the members of the legislature is passed by two third of the majority
4. If the parliament passes the proposal of removing the President, carrying signatures of 10% voters of each territory, presented to the Election Commission.

The structure of Council of Ministers

1. Forming of Council of Ministers proportionate to the numbers of seat received by the parties representing the legislature maintained by the president.
2. Not more than 10% of total members from legislative body in Council of Ministers

Second Proposal: Parliamentary System

1. Constitutional president will be the head of the state and will be symbol of unity.

2. The members of federal legislature and state legislature can cast vote in presidential election.
3. The tenure of the president will be for five years.

Council of Ministers

1. The executive rights of the state will be vested on president and Council of Ministers. The President will appoint the majority leader of lower house as the Prime Minister of federal legislature. If any party cannot get clear majority, the leader getting support of two or more than two parties will be appointed as the prime minister.
2. If both processes cannot be performed, then the President will appoint the leader of the political party which has the highest number of seats as a Prime Minister but the prime minister appointed through this process must get a vote of confidence from lower house of the parliament within 30 days from the day of appointment.
3. If the Prime Minister could not get a vote of confidence from lower house of federal legislature within the stipulated time, the President will dissolve the parliament and call for another election to get fresh verdict of the people.
4. President will appoint one deputy prime minister and up to 25 ministers, state ministers or assistant ministers based on the principle of inclusion on the recommendation of the prime minister. Prime minister and ministers will be equally responsible towards the federal legislature.

Removal of Council of Ministers and Prime Minister from the post

1. The Prime Minister can be removed from the post if the vote of no confidence proposed by one fourth members of the lower house of federal legislature is passed by simple house majority.
2. Vote of no confidence cannot be motioned against the government until one year from its formation. If a political party could not get majority to form a government then two or more other political parties can form the government. But, the Prime Minister must prove a majority within three days and if s/he could not get the majority in parliament, the president can relieve Prime Minister from the post and call for the election within six months.

Third Proposal

1. One President as a head of the state and head of the government. Lower house of the federal legislature can choose the president from among themselves with two third of the votes but the presidential candidate must be a lower house member.
2. If a poll candidate could not get two third of the majority in first phase of the election then second phase will be conducted between two poll candidates receiving maximum votes.
3. The president will form the council of ministers including the representatives from political parties elected in lower house of federal legislature but the political party not getting at least 3% votes out of the total vote cast would not be in the council of ministers.

4. While forming the council of ministers, the number should not exceed a total of 15% of the members from lower house.

Presidential Government

- ✎ Executive power constitutionally independent of legislature and less accountable to the legislature for the actions as in the US, Mexico, Nigeria, Switzerland and Brazil.

Salient features of the Presidential System of Government

1. The chief executive (President) has a full authority of constitutional rights and is not titular.
2. He is neither dependent nor accountable to legislature.
3. Full separation of power among all three bodies of the state.
4. Executive cannot dissolve the legislature.
5. President is the representative elected by the people and his tenure is as stated in the constitution.

The president cannot be removed as in the parliamentary provision but only by 2/3rd majority of the parliament in a case of impeachment.

Merits of Presidential Governance System

1. This system is applicable to a country having different aspirations and cultures.
2. Legislative members are less bound by party's discipline.

3. Representative characteristics are maintained without being accounted.
4. Due to the fix term of the president and the provision of re-election, it has stability and strategic continuity.
5. The ministers can give more time to their departmental issues as they don't have to be responsible in legislature.
6. More chances of having stability because the government does not need to prove its majority time and again and legislature cannot be dissolved by normal majority.

Demerits

1. In this system, there is a higher risk of tyranny rather than in the parliamentary system.
2. Having various committees in legislature is another demerit of this system.
3. The system can be inflexible as the executive president has to follow constitutional provisions.
4. This is seemingly autocratic, unaccountable and risky because in this system president has been given some discretionary power despite the constitutional limitations.
5. There is no one above the President to control the national affairs.

Vote of no confidence cannot be motioned against the government until one year from its formation. If a political party could not get majority to form a government then two or more other political parties can form the government. But, the Prime Minister must prove a majority within three days and if s/he could not get the majority in parliament, the president can relieve Prime Minister from the post and call for the election within six months.

The actual executive right is vested upon the council of ministers while begin answerable to the legislature. The legislature is also answerable to the people. All the members of the council of ministers are appointed by the prime minister. The head of the state appoints all the ministers on the recommendation of the prime minister. The head of the state does not hold much right in practice.

Parliamentary Government

The governance using the actual rights by the council of ministers under the control of parliament is the parliamentary system. This system is popular among the countries like Nepal, India, and the UK.

Characteristics of this System

1. State's Supremacy of the State

In parliamentary system, despite having various constitutional rights, the head of the state does not use these rights in practice. Nepal, India, United Kingdom and Japan among others are examples of countries having this system.

2. Actual executive power lies with prime minister and council of ministers

The actual executive right is vested upon the council of ministers while begin answerable to the legislature. The legislature is also answerable to the people. All the members of the council of ministers are appointed by the prime minister. The head of the state appoints all the ministers on the recommendation of the prime minister. The head of the state does not hold much right in practice.

3. Responsibility of the Ministers

Prime minister and other members of the council of ministers are the part of legislature and are responsible towards legislature for each and every activity they carry out.

4. Membership of Parliament

It is necessary to hold membership of the parliament to be a member of Council of Ministers. If a person is not member, he needs to be a parliament member within a stipulated time i.e. six months. If not, he must forego the minister's post.

5. Led by Prime Minister

The main characteristic of parliamentary system is the Council of Ministers is led by prime minister. He is also a leader of parliament because he is the chief leader of the lower house. Prime minister has a power to give ministerial responsibilities and terminating the tenure of ministers.

Merits of Parliamentary System

1. Coordination between executive and legislature

Coordination between the executive and legislature helps to end obstruction and disagreement

2. Responsible Executive

In parliamentary system, executive is responsible towards legislature for its policies and programs. Legislature can bring a proposal of vote of no confidence against executive. The ministers are responsible to the parliament for every step.

3. Democratic Government

The executive cannot be au-

tocratic because in this system, the government is responsible to the parliament.

4. More Informative System

This system is more informative as it is based on party politics. Under this system, the political parties make the people aware of the political problems and motivate to understand and resolve the problems. It opens up an avenue for learning.

Demerits of Parliamentary System

1. It violates the principle of separation of power.
2. The opposition parties protests each and every activity of the government for the sake of opposing.
3. This system is also called the government of aristocrats. In another word, this kind of government is incompetent.
4. The prime minister can dissolve the parliament at any time if the condition is not favorable to him.

There is no consensus reached centrally among the parties regarding the political system. UCPN- Maoist is stressing on executive head elected by adult franchise. NC is firmly sticking to parliamentary system and UML is for a prime minister elected by adult franchise as head of the executive and also the constitutional head of the state. Similarly, Madhesi Janadhikar Forum is leaning towards Executive head of the state and Tarai Madhes Democratic Party towards parliamentary system.

Vice-president of UCPN-M, Baburam Bhattarai said that "the party is not in favor of adopting the old parliamentary system and other political parties won't

accept the people's democracy that we want. That is why we stress on adopting a system which is acceptable to all the parties" (The Himalayan Times, January 7, 2011). Small political parties are in favor of titular head of state and executive head elected by adult franchise. This shows that though the CA has a limited term, there exist many opinions on political system which lead the country towards different extremes.

Writer's Comment

1. President must be the head of the state
2. President must be constitutional so that the people from marginalized communities, women, Janajati, Madhesi and Dalits can get their identity and opportunity like in India and Israel
3. The tenure of the president must be five years and cannot be re-elected for the post.
4. The vice-presidential candidate should be from different caste, region or territory than that of the president.
5. There should be a provision of 2/3rd majority of both houses for impeachment.
6. 1/4th members of the parliament can propose for impeachment against the president.
7. Prime Minister must hold an actual executive power of the state.
8. Prime Minister must be elected by adult franchise while assuming the entire nation as one constituency.
9. The candidate getting the majority of votes in the election can be elected as a Prime Minister.
10. Tenure of the Prime Minister should be five years and can be re-elected only once

11. President should appoint ministers, state ministers and deputy prime minister on the recommendation from Prime Minister.
12. The appointed members of Council of Ministers should be out of the Legislature-Parliament.
13. Ministers are accountable to the Prime Ministers and their respective area of responsibility.
14. Prime Minister has the discretionary power to relieve any member of Council of Ministers from the post.
15. Prime Minister can also be impeached.
16. 2/3rd majority of both houses can remove Prime Minister.
17. 1/4th members of Legislature-Parliament can propose impeachment against Prime Minister.
18. Prime Minister can make political appointments and termination.

Federalism

State Restructuring Committee has proposed for 14 provinces for Federal Democratic Republic of Nepal. Among them, eight territories were named highlighting their identities. The provinces that were proposed based on language, religion and ethnicity are Limbuwan, Kirant, Sherpa, Tam-

saling, Newa, Tamuwān, Magarat, Jadan, Mithila-Bhojpura-Koch-Madhes and Lumbini-Abadh-Tharuwan. Others are proposed based on geography and natural resources.

The proposed provinces have a majority of 103 castes/ethnicities however there is no absolute majority of other communities except the Chhetri from Kaptad region which holds more than 50% out of total population. There are one million Limbu people in proposed Limbuwan province which is 27% of total population of the area.

There are differences in geography and population of proposed provinces too. For example, Jadan province covers a total of 15,000 square km whereas Newa state covers only 1,000 square km. Similarly, Mithila-Bhojpura-Koch-Madhes territory has six million people whereas Jadan has only 48,000. The state restructuring committee lays a condition to form a province based on caste or region, it must hold more than 1% population out of total population. But the Sherpa are the exception to this logic. Such issues have created controversy in the society regarding the structure of territory. The Madhesi parties have been demanding for Madhes as and one province which is very

The state restructuring committee lays a condition to form a province based on caste or region, it must hold more than 1% population out of total population. But the Sherpa are the exception to this logic. Such issues have created controversy in the society regarding the structure of territory. The Madhesi parties have been demanding for Madhes as and one province which is very big from administrative point of view. Jadan is small and the people will get more opportunity (like one governor, chief minister, secretariat etc.).

big from administrative point of view. Jadan is small and the people will get more opportunity (like one governor, chief minister, secretariat etc.). There is a possibility of discrimination in the Madhes as province. In federal structure, there are 18% Chhetris, 13% Brahmins, 14% Dalits and 4% Muslims that means identity of more than 50% of Janajati community has been disregarded. They are seemingly ready to form the committee for agitation.

Likewise, there can be a problem of representation in upper house if big province is made. If the provision is made for sending equal number of members to upper house, the bigger territories like Madhes will fail to compete. This might also create disparity regarding the distribution of financial benefit. NC has proposed seven provinces (Karnali, Gandaki, Lumbini, Rajdhani, Sagarmatha, Simraungadh and Shreejanga) which are mainly based on geographical and territorial resources. But, some NC central committee members are against the proposal. Similarly, the central committee of UML party has proposed the provinces based on capacity and identity.

To stop the future conflict, a serious study should be conducted on this issue by experts from various fields. Only ethnicity-based identity should not be emphasized. The availability of resources, business opportunity, security, minority, their relationship and capacity to develop the relationship between the state and society must be taken into consideration. Local government is the key to empowerment of the people and it must not be taken as a weakness in the issue of federalism.

Economic Aspect

While forming federalism in Nepal, the economic base must be taken into consideration. If we analyze the income of government during the financial year 2004/05, 81% of the income was generated in four districts i.e. Kathmandu 42%, Parsa 24%, Morang 8% and Rupendehi 7%. Among them Birgunj (Parsa), Biratnagar (Morang) and Bhairahawa (Rupandehi) are industrial areas in Tarai. The other districts generating more income are Lalitpur 2%, Chitwan 2%, Sindhupalchok, Jhapa, Dhanusha, Banke, Makwanpur and Kaski 1%. These districts include many industrial and urban bases. The 12 districts generate 94% income to the government and the remaining 63 districts generate only 6% of income. The future challenge is distributing the income to the districts having fewer resources for the development of the country. The state must be clear on implementing its economic policy while forming federalism.

Ethnic Aspect

The Nepalis are living with diversified identity though they are within one state. The conflict is indispensable until the focus is given to a single identity. The main question is how to create a balance between ethnic and national identities so that the scattered communities could co-exist in harmony.

The ethnic-political conflict sometimes leads to military army intervention. Sri Lanka is an example of this. Of the military interventions that occurred in the world between 1945 and 1980, more than 50% of the intervention was launched against ethnic conflict. Most of the internal conflicts were the result of ethnic tensions. In such situation, federalism can be a

solution because in this system, the rights and responsibility are distributed and there is a guarantee of power transfer. But the question is, can political limitation match the ethnic limitation? If not, what kind of institutional measures are necessary? How can minorities within an ethnic group feel secured? In the context of Nepal, there must be coordination between ethnicity-based organizations and resolution of civil problems so that it enriches the democracy. The base of democracy is demos not ethos.

Conclusion

The main problem of Nepal at present is how to ensure protection of and justice to the weakest. All communities must have access to resources, identity and representation. Only this can give a sense of change to the people leading to restoration of democratic peace in the country.

The political system adopted in center and territories must have uniformity. The kind of federal system (complete, partial, supportive or competitive) to be followed according to the people's desire must be clear but we are still confused. Federal system should get strong support through power delegation. The federalism must be favorable to the country and its people by empowering people and weak areas, maintaining unity among people, social solidarity, coordination, harmony and national integrity which could be utilized for equity, social justice and diversity.

Though it is said that the CA had completed 90% work regarding constitution drafting yet promulgation of the constitution is impossible until the issues like forms of government and federalism are resolved.

Transitional Justice Process in Nepal

Introduction

In a report “Transitional Justice Process in Nepal The State Of The Art And Questions And Scenarios For The Future In Nepal” author Carlos Fernandez Torne¹, focuses mainly on the prosecution, truth seeking commission and the status of the state’s commitment on various treaties that was ratified. He further argues that the truth seeking mechanism itself is very controversial especially while confronting the gross violation in the aftermath of an armed conflict or state repression under authoritarian rule. The report also deals and investigates whether truth seeking mechanisms are intended to substitute Nepal’s duty to prosecute serious violations committed during the armed conflict for the fulfillment of the victim’s right to know the truth. The chapters mainly focuses on issues like the victim’s right to know the truth, the status of truth commission, state’s commitment on the international treaties and conventions and also an overview of armed conflict including UN and NGOs reports.

Summary of the Report

Nepal has recently emerged from a decade-long armed conflict. The process of recovery is

not completed until the wound of the victims are healed. Nepal is in a very critical stage regarding the post-conflict issues as hundreds and thousands of victims and their families are awaiting justice. Right now the country is in a hot debate about the establishment of two truth-seeking mechanisms. The amnesty has always been an epicenter of discussion for the debate. Nepal has a duty to prosecute war crimes, crimes against humanity, and gross violation of human rights committed during the armed conflict where as in other hand, the truth seeking mechanism itself is in dilemma. The main aim of Truth and Reconciliation Commission (TRC) is to provide an opportunity to incorporate amnesty provision to remove consequences of criminal liability for those who committed violence during the conflict. But this is only essential to those countries whose internal conflict have ended through CPA without win or loss which is not applicable in context of Nepal. The concern is whether the commission can substitute the state’s duty to prosecute serious violation committed during the armed conflict or not. The question has been raised whether Nepal can fulfill its duty to prosecute the perpetrators of these serious crimes under inter-

national and domestic law or not.

The article mainly discusses and concentrates on analysis of international law applicable to Nepal and its obligations in the light of treaties that Nepal had ratified, the victim’s “right to know” about their loved ones based on international treaties and conventions and Nepal’s commitment in an international level to establish the truth seeking mechanism and its status. It is clear that the state does not hold an enforceable obligation to fulfill the victim’s right to know the fact however it has recognized this truth through the establishment of Truth and Reconciliation Commission (TRC).

Nepal has ratified all the four of the Geneva Conventions however it is not a signatory of any of the additional protocols relating to the protection of victims of non-international armed conflict. The historical Comprehensive Peace Agreement (CPA) was signed by the warring parties on November 21, 2006. Nepal’s laws allow for the prosecution of perpetrators of the war crimes as Nepal has incorporated the international treaty provision through Nepal Treaty Act 1990 and should be applicable as the Nepali law. Being a state party to international treaties like IC-CPR and CAT, it binds the coun-

* The writer of this report, Carlos Fernandez Torne has been doing PHD at University of Barcelona, Spain on Transitional Justice and Human Rights. He has been keenly following the transitional justice process in Nepal while working as a human rights officer in OHCHR-Nepal.

try to incorporate the international crimes in its legislation. However, Nepal has not incorporated these laws in its legislation. Pressure has been created to the government to ratify the Rome Statute or International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED). It also has a duty to prosecute enforced disappearance in light of its obligation under International Humanitarian Laws and International Human Rights Laws which the country is lagging behind. It is the crucial time for the country to prosecute the war crimes, crime against humanity and gross violation of human rights committed during the decade-long insurgency. Nepal has an obligation to address those atrocities as the country is facing tremendous international pressure.

The "Right to Know" about their loved ones is a fundamental right of any victim of the armed conflict. It is a very serious issue and if such issues were neglected and not addressed on time, consequences can be dire. Nepal being a state party to Geneva Convention, it is a duty of the state to search for, collect the injured ones and search for the conflict deads. It is the right of each and every victim to know the fate of their loved ones under the IHL. They state that each party to the conflict has an obligation to make all efforts to clarify the fate of those reported missing during the armed conflict. The HRC and regional human rights bodies including Inter-American Court and Inter-American Commission of Human Rights, as well as other international human rights studies and instruments of 'soft law' have recognized the rights of the families to know what happened to their

loved ones. If they are killed it is the state's duty to find the location of their remains. The HRC also confirmed the rights of the family to know the situation of their relatives. The victims can claim the existence of this right followed by resolution passed by international, regional and national bodies. All the resolutions and conventions have the ultimate motive which is to make the state accountable and responsible for the investigation of the reality. The writer also follows the leading expertise in TRC and author, Mark Freeman and Priscilla Hayner while dealing with the relation between the truth commission and amnesty based on the book "Unspeakable Truth: Transitional Justice and the challenge of truth Commission."

The main focus is Nepal's commitment to establish the truth seeking mechanism and its status. The government is trying to evade its duty using legislation that allows amnesty to the human rights perpetrators which has been a main concern to the international community. In order to stop the government of evading its obligation, the Supreme Court has already directed the government to amend the provision on withdrawal of the cases so that the state does not have any authority to withdraw cases related to serious crimes, including war crimes, crimes against humanity and serious human rights abuses.

Although, it is a prime duty of the government to follow and sort out these cases as soon as possible, it is yet to comply with its duty under the international law. The government's attempt to withdraw the conflict-related case is a violation of Nepal's duty to prosecute these crimes under in-

ternational law. The government has shown a sign of pardoning the perpetrators of conflict-related human rights violations as currently not even single perpetrator has been brought to a civilian court. If the government follows the path to pardon the conflict-related perpetrators it definitely constitutes a violation of the state's obligation to punish the perpetrators.

It is Nepal's duty to prosecute the perpetrators on the basis of domestic legislation and jurisprudence from the Supreme Court of Nepal and NGO reports. Especially, after the case of arrest of Nepal Army Colonel Kumar Lama in the UK, it is an urgent move required from the government to establish the transitional justice mechanism to address all the conflict related issues, but unfortunately the establishment of those mechanisms still remains uncertain. The only certainty that the country holds is by building pressure on the government and political parties by victim's family members and human rights defenders to establish the mechanism compatible with international laws and standards.

The reason behind forming Commission of Investigation of Disappeared is to look after the disappearance whereas TRC will look into the serious violations of human rights and IHL. The enacting of law on criminalizing disappearance has come through various phases. On April 20, 2007, the Ministry of Law, Justice and Parliamentary Affairs registered, with the interim Legislature-Parliament, a bill to amend the General Code by adding provision of criminalizing disappearances, abduction and hostage taking. However, the provision failed to comply with

international human rights instrument because it deviated from internationally recognized definition of disappearance and was inconsistent with the international standard. There was a high level of controversy on this bill. The number of petitions was submitted by the relatives of the victims during this period. In response to those petitions, the Supreme Court ruled to enact a law criminalizing enforced disappearance in line with international human rights instrument.

After the judgment by Supreme Court another bill regarding criminalizing enforced disappearance with a few of the concerns previously raised by the human rights organization was brought forward in 2008. The bill mentioned the retroactive application of Act occurred during the conflict and incorporated non-state actors in the definition though many other demands of the victims remained unattended. In 2009, the Ordinance on Disappearance was brought forward which was similar to the bill of 2008 however it lapsed at the end of May as it was not adopted within 60 days from the commencement of the session of Legislature-Parliament.

In 2009, again the bill on disappearance was brought forward reducing the punishment to seven years from 10 years and the commission was left to decide on the statute of limitation for filing complaints regarding conflict related disappearance. It was formed with three member-committee including CA chairperson, one member from NHRC and one member from the human rights organizations. Unfortunately, no consultation with victim's family was done despite the provisions

however OHCHR-Nepal organized a round of national consultation on the 2009 bill and submitted the victims' suggestions.

The bill has many flaws such as it is not in clear line with the international standard and human rights instruments, maximum penalty of seven years did not reflect the seriousness of offence made and it did not incorporate crimes against humanity or enforced disappearances.

After a series of amendment, the latest bill on TRC was brought forward in 2009 which incorporated hostage taking, disability causing, sexual violence and seizure of private and public properties as serious violation of human rights. It also included disappearance, abduction, and hostage taking as non-pardonable crimes, and it removed the reference to "inhuman crime" "torture, referring only to torture. The regional level consultation with victims has been intensively organized by OHCHR-Nepal with a high level interaction. The victims demanded that the bill should not give amnesty to the perpetrators of serious human rights violation or crime against humanity. In the previous drafts perpetrators of any violation could have been pardoned, the last bill does not have a provision of reconciliation process in all the non-pardonable crimes. The latest bill did not actually include the power of Council of Ministers to veto any recommendations for prosecution which did not exonerate the state from its obligation to prosecute under international law.

There were a total of 77 & 90 amendments made regarding the CoID and TRC respectively. Some of the issues were agreed

whereas others remained unresolved. The truth seeking mechanism established in Nepal intended to exonerate the state from its duty to prosecute through recommending amnesty to the perpetrators of serious crimes against humanity. There are some improvements in the draft legislation due to the pressure by human rights organizations and victim groups. The commission established under the last ordinance will be one of the few commissions that are authorized to recommend amnesty for serious crimes. It has not been practiced elsewhere. The main flaw of this ordinance is that the commission recommending pardon for a serious crime under international law which is clearly against the international law.

Concluding Note

Nepal, despite being a state party to all four Geneva Conventions and many other international treaties, has not fulfilled its duty as per its commitment. The process of truth seeking mechanism or transitional justice still remains stalled and government is showing its apathy to address these atrocities. The cases such as Nepal Army's Kumar Lama, Nanda Prasad and Ganga Maya, Dekendra Thapa and many others are still to be addressed and such cases also have reminded the government that it urgently needs to establish the transitional justice mechanisms. To maintain the social harmony and peace in the country, it is the critical time for the civil society and human rights activists to give a tremendous pressure to the government and political parties to establish these mechanisms as per the line with international law and standards.

Summarized by: Rajesh Mishra



Seema Pandey*

A Strategy to End Dowry Practice: Intertwining Property Rights, Dowry System and Civic Responsibility Act

Dowry system is not an uncommon or unheard issue globally given that all the religions and cultures around the world had practiced it at some point of their history. The dowry has a long history in Europe, South Asia and Africa, and other parts of world. Women's status as a dependent being was upheld in most of the societies, mostly viewed as a homemaker and care taker in the roles of wife, daughter, daughter-in-law and a mother. Dowry in literal sense meant to be a conditional gift to help husband undertake the responsibilities of marriage, intending to help set up a new family life of the bride and groom. In patrilocal societies, where brides join the household of their grooms, parents give resources to their daughters upon marriage¹. Dowry in form of money, estate, jewels or any transfers follow the bride into her new household and potentially contribute to the conjugal fund.

However, groom's family, rather than the bride, enjoys the rights over the payments.

Interestingly, in Europe the dowry system served to build the power and wealth of great families and plays a role in the politics of great alliances in the 19th and 20th century, for example in 1661, Bombay was given by King John IV of Portugal to Charles II of England for the marriage with Catherine as a dowry. Since ancient Rome, dowry has served as a pre-mortem inheritance to daughters².

The giving of a dowry seemingly disappeared in Europe in the 19th and 20th centuries. But the practice expanded in South Asia. The dowry paying societies are highly stratified and endogamous, i.e., most often men and women of equal status marry.³ In Hindu religion, according to the holy text "The Laws of Manu", one of the 10 paths to reach moksha or enlightenment is kanyadana, the

act of giving a virgin bride to the groom along with financial and/or other gifts that is known as dakhshina or dowry⁴.

Considering that women had no equal rights over parental property, dowry seemed as a thoughtful attempt to provide a pre-mortem inheritance for daughters so that she can enjoy a better status in the house of her in-laws, where she belongs after her marriage. While sons inherited parent's property, daughters were rendered some gifts and properties in the form of dowry. Somehow, dowry may also seem like a way to attract better quality groom or bride to choose the most potential candidates in the marriage market. There may be some more desirable characteristics in the marriage market, and in general those possessing the desirable traits, may call for higher price, or the other way. Brides may be willing to pay higher price for the deserving can-

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1. Botticini, M. and A. Siow (2003) "Why Dowries?", *American Economic Review*, 93 (4), 1385-98.
2. Hughes, D.O. (1985) "From bride-price to dowry in Mediterranean Europe" in *The marriage bargain: women and dowries in European history*, M. Kaplan (ed.), Havorth Press, New York, 13-58.
3. Jackson, G. and A. K. Romney (1973) "Historical inference from cross-cultural data: the case of dowry". *Ethos*, 1(4), 517-520.
4. T. Luitel. 2061. *Manusmriti*. Kathmandu: Pairavi Prakashan. English Version translated by W. Doniger and B.K. Smith (1991). *The Law of Manu*. Delhi: Penguin Book India Ltd.

didate, and similarly, if the bride is more desirable in the market, the bride's family may not need to pay a substantial amount of dowry to marry off their daughters. Thus, there are important characteristics or qualities of the bride and the groom that plays crucial role in determining the amount of marriage transaction that is paid either in cash or kind from one family to the other.

A rather thoughtful attempt of dowry started turning ugly determining the status of bride and her likability in her husband's family on the amount and property she brought at her wedding. Consequences are faced by brides due to unsatisfied dowry needs, and they often make headlines of the newspapers – suicide, mental and physical torture, bride-burning, wife battering, and so on. Dowry is quite a controversial issue. For men, it seems some kind of financial assistance for undertaking lifetime responsibility of someone else's daughter. For human right activists dowry is a practice spreading social evils and violence against women. Dowry is much a disaster largely in the Madhesh region of Nepal, it is practiced as an integral part of a wedding ceremony irrespective of caste, class, and religion.

In the following article, we discuss a strategy to end dowry practice, placing dowry and women's right to parental property at par, and the relation between them and ineffectiveness of women's inheritance right to curb down the dowry practice. Change in women's inheritance right, a grand step to ensure gender equality, has brought

new hopes for women in Nepal, however we discuss why inspite of securing women's inheritance right and banning dowry practice legally (subtly than strongly), the practice and violence related to it is remain widespread.

Women's Inheritance Right

After the promulgation of the Constitution of Kingdom of Nepal 1990, new dawn on the elimination of discriminatory legal provision against women's rights, including property right had begun. After a series of struggle led by women rights activists, 11th Amendment in General Code-2020 (1963) was introduced establishing women's right to parental property, however this right was assured only until the marriage, and when they marry, it was to be returned back to the family. This was declared unsatisfactory by women right activists, as it continued discrimination against women.

As Supreme Court was empowered to test the constitutionality of any legal provision that is inconsistent with the provision of Constitution of Kingdom of Nepal, 1990 under Article 88 (1), any citizen of Nepali citizen may file a writ petition before the Supreme Court on the ground of violation of his/her fundamental rights. A writ was filed against the amendment, that arguing that the amendment still contradicted the constitutional right of equal treatment of gender, and Nepal's commitment to other international conventions on human rights. The court declared the inequality on women's right to inheritance,

playing an important role for the elimination of discriminatory laws on women's property right⁵. Henceforth, women's right to parental property even after marriage was declared. However, the established right has been largely only on papers than in practice. The incapability of the law to proliferate in practice comes mainly from two reasons: women's access to knowledge of their rights and lack of empowerment of women to act on behalf of their rights.

Women's Access to Knowledge of Their Rights

Law itself cannot work miracles without having mechanisms to implement⁶ and make the knowledge about it accessible. Clear and concise methods of communication and awareness about the changed laws are essential to ensure the illiterate Nepali populations have access to the knowledge about their rights. Undoubtedly, the reformed law is not easily accessible or understandable, nor there have been any serious attempt to make them so. The language used is generally too legal and judicial in terms posing substantial difficulties in understanding it clearly. It sounds more like information targeted to the limited audiences of lawyers, not the population in general. It is disappointing to note that except for the human rights organizations, activists and lawyers, very few are indeed aware about the change in women's right to parental property. It was found that the state mechanisms and women rights organizations too have not been launching

5. Subedi, C. Nutan (2009) "Elimination of Gender Discriminatory Legal Provision by the Supreme Court of Nepal with Reference to Women's Right to Property" [Online] Available at: www.nepjol.info/index.php/TUJ/article/download/2615/2312

6. Many instances have shown that most of the cases reported to the police on dowry are settled in agreement with the victims and accused, see INSEC (2013), Dowry-Induced VAW in Rautahat District: Study Report (133-139), [Online] Available at:.

effective campaigns against the dowry system as per the sample of Rautahat district⁷.

Interestingly, according to law it is obligatory for its citizens to make themselves informed about the laws as one may not claim to have committed a crime without prior knowledge about the criminality of that action. It is ironic to find such obligation especially without building an environment to do so in a country with only 57.4% of literacy rate (total) and only 46.7% of female literacy⁸. It was found that in Madhesh, dowry incidents are not frequently reported to the police due to the lack of awareness.⁹

For the law to be realized in practice, a countrywide information campaign and mechanisms to monitor the implementation are crucial. Perhaps the Right to Information Act (2008) could play an important role after the election of the local bodies. Sensitization and facilitating access to information are the major responsibility laid down by the Right to Information Act (2008), which had high potentiality when realized in practice. At present, as for now the All-party-Mechanism not being the chosen representatives of people through a democratic process to undertake such responsibilities does not seem to be accountable.

Empowerment to Act on Behalf of Their Rights

Economic empowerment and independence is central to the overall project of women's empowerment. The root cause of women's

subordinated status comes from the deep-rooted and "imposed" mentality of women as a dependent being. The economic dependence plays a convincing role in subjugating females. It is reasonable to contend that economic empowerment and mental empowerment are closely intertwined.

Nepali society is compact, with traditional family values, norms and customs, and women of this generation have learnt to live as a liability, a concept that has been embedded in their deep instincts. It may sound over-ambitious to expect women to act for their property rights so quickly. In a society where claiming rights over women's own body is a challenge, claiming parental property right, must be frightening. Individuals' upbringing highly molds ones' personality, behavior and attitude, and the patriarchal society that we live in have produced women most with insecure mentality. While a son grew up with pride and security of possessing inheritance from their parents, free to imagine that regardless of succeeding in professional life or making a fortune, he would have a shelter of his parent's property, a girl was brought up invoking the idea of being a liability to be passed on to her husband, where she would toil to win hearts and establish her rights. Mind and attitude overwhelmed with insecurities cannot instantly become an agency to act for their rights. Mental empowerment is therefore essential to facilitate women start feeling equal as an inheritance right-holder instead as only a duty-bearer.

Laws against Dowry Practice

Nepal prohibits dowry practice. The Social Improvement Act 1976 section 5(2), allows dowry to be taken up to Rs 10,000 additional to the jewelry worn on the wedding day. Although it doesn't sound like a clear instruction of dowry being illegal, but an attempt to curb down the practice to a reasonable extent in line with the inherited customs and norms of Nepali society wherein exchanging gifts make central part of wedding ceremonies. However, inability to abandon the word "dowry" (instead introducing it as a possession) from the act may reflect ambiguity of the Act, communicating doubts on its legality or illegality¹⁰. It is crucial for law to be unambiguous to ensure that it doesn't create doubts on its intention.

Undoubtedly, at that particular time period 1976, the law rather imposed discrimination against women and clearly seem like a product of patriarchal mindset, mainly because women's right to parental property was not yet guaranteed by law, and the prohibition of dowry even more victimized women as they neither had right to inheritance, nor the minimal economic support as received in a form of dowry. It is considering that dowry system in a traditional way was to ensure women's economic security after marriage, not to forge that wives had control over them, rather has been contrary. In simpler terms the prohibition of dowry literally meant no right at all over parental property, neither in the form of right, nor as a gesture of dowry, a

7. Ibid

8. CIA World Fact Book, (2011) [Online] Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>

9. INSEC (2013), Dowry-Induced VAW in Rautahat District: Study Report (133-139).

10. A writ demanding removal of the term 'dowry' by replacing it with 'private property' has been filed by the advocates of the Consortium for women rights, see INSEC (2013), INSEC (2013), Dowry-Induced VAW in Rautahat District: Study Report (133-139).

distinguishable reason for the act to not become an effective tool to end dowry practice in Nepal.

Countering the Social Improvement Act 1976, section 5 (2), a new bill on Social Practice Reform Act-2014 in Parliament has been tabled¹¹. Differing the previous Act, the bill raises the amount of dowry that can be given by free will, and accepted, to Rs 100,000 or something of equivalent value, and suggests penalization of both, the giver and the taker. However, failure to rectify the use of the term 'dowry' may continue to cause deception. Nevertheless, in the present context, prohibition of dowry is legitimate as (unlike before) women's equal right to parental property is ensured.

The Act appears to be resigned to the reality of the social customs and practices of Nepali weddings. It can be seen as an attempt to set instruction and criteria on celebrating weddings or other ceremonies while stressing that dowry is prohibited. The bill treats everyone as equal, irrespective of class, income, and capacity to spend. It provides indicators to measure and control the giving and receiving, attempting to differentiate between the dowry and the gifts during the wedding ceremony. It carries an ambitious goal of avoiding manipulation of the law. However, the use of the term 'dowry' may prove hazardous. Furthermore, the bill could be seen also as an attempt to curb down the show-off biz that is getting hold on societies' way of celebrations of festivals and ceremonies. It is legitimate if seen as a strategy to maintain social harmony by bringing down the inequality that

is demonstrated through such ceremonies. It reminds of an example of the European society rules of residence, the housing designs and size cannot vary enormously in the residence areas, aiming to ensure that equality is demonstrated as an example to maintain social harmony.

Anti-Dowry Campaigns and Implementation of Women's Right to Parental Property

The Social Reform Act 1976 clearly did not guarantee abolishment of dowry in practice indeed, which could be attributed to the absence of women's inheritance right during that period of time. However, in present context when the inheritance right of women is ensured by the law, while prohibition of dowry through the new bill is on the table, it may surprise individuals and build skepticisms on the effectiveness of the idea of securing women's property rights to end dowry practice. This skepticism arises due to the prevalent cases of bride-burning, mental and physical tortures over dissatisfaction on the dowry often making the headlines of newspapers.

However, as argued before, neither implementation has been effective on the part of women's inheritance right (largely limited on papers), nor mechanisms has been developed to implement them and empower women to act on behalf of their rights. Strong mechanisms for monitoring, evaluation and institutional accountability for an effective implementation of the law is frail, and there is an absence of a joint strategy intertwining dowry practice and women inheritance right.

Although campaigns of civil society organization are effective to fight the dowry system, they are not sufficient and complete, a joint campaign is deemed necessary mainly a joint strategy intertwining dowry system and women's inheritance right consistently. Moreover, dependence only on the civil societies to raise anti-dowry and gender-awareness campaigns makes the attempt fragile. A more rigorous approach may be perceived necessary to build a sensitive and responsible society to end social malpractices. A Civic Responsibility Act, for instance, could be an effective tool to do so, by accounting individual citizens responsible for the inhumanity of the society by obliging them to undertake responsibility to respond and reject the social evils prohibited by law.

Civil Responsibility Act

A collective effort to fight social evils by formulation of an act like a Civic Responsibility Act could mark a beginning of building responsible society by balancing, individual rights and at the same time duties to undertake responsibilities. There are numerous examples around the globe enforcing civic responsibility, like in Europe and America, every citizen has a responsibility to call for help if unusual activities or violence incident is assumed to be taking place. In Europe for instance, it is your moral obligation to stop your vehicle at the sight of accident as the first person passing the site, if not, such may lead to certain penalization.

In the western world, civic responsibility dates to ancient

11. Spotlight News Magazine (2014) "Discussion on the bill proposed to reform social practices" [Online] Available at: <http://www.spotlightnepal.com/News/Article/Discussion-on-the-bill-proposed-to-reform>.

Rome whose citizens wanted to contribute to Roman society. In United States of America, it was officially sanctioned as an outline for democracy in 1787 by the ratification of the constitution of the United States. The Constitution declared, "We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States¹²."

In Hindu scriptures, responsibility of citizens was largely communicated through Dharma Shastra, duties of the ruler and the ruled. In the constitutions of Nepal (1990 and 2007), there is only one article, which softly invokes to the idea of civic responsibility, article (2), Preliminary Part (I), states that "it shall be the duty of every person to uphold this Constitution". It is vague but somehow suggests, apart from the rights, every person has a responsibility to uphold the constitution. However, the constitution of Nepal doesn't hold its citizens responsible. Rights are relatively well-described while duties are not.

It is needless to point out that for a civilized society, along with rights, delegations of responsibilities are equally important. Narrowing down to the dowry system, it is clear that it is inherited in the social practice and expands through societal validation. Thus, a way to forbid such action may come from the society itself. An act to build civic responsibility sense could oblige people to react and respond to the illegal social prac-

tices. An act of such could hold citizens responsible for not acting in a civilized manner for the cause of human welfare, by enforcing penalization for not responding to the malpractices taking place in their neighborhoods. To exemplify, for instance in the cases of giving-taking of dowry, or physical and mental torture, wife-battering, bride-burning, a cautious reaction from a neighbor or a relative could prevent such crimes and demotivate such actions through peer pressure. A real example occurred recently during the month of June in Nepalgunj, a woman was rescued by a neighbor from being burnt-alive by her husband. Similarly, in another case of bride-burning for dowry, during the month of April, although neighbors were aware about the continuous mental and physical torture faced by her (according to the survivor)¹³ before she was burnt alive, they didn't take any action, and insensitivity of the neighbors led the woman to a life time trauma.

Considering such examples, an act obliging individuals to respond to social malpractices, could prevent violence against women, and rectify societal evils. It may act as citizen policing, a pressure to its citizens to act appropriately in line with the law and for the welfare of human. It carries potential to eliminate malpractices in the society. The act as such could hold every citizen involved in such acts, a family member, relatives, a neighbor, police or anyone else responsible in the struggle to end of all forms of gender violence including social discriminations (racism, casteism etc.). Adhering to the fact that during incidents of most

gender-violence, victims in particular do not have a medium or an opportunity to seek for help, the spectators and those who are aware about the situations may thus play an important role. Imposing fear of bearing consequences for not acting humanely and responding to the crisis of the fellow citizens seems quite a legitimate way to go.

Nevertheless, some may argue that since the protection mechanisms for the victims themselves are frail, it is unfair to oblige society to take the burden of helping and protecting others. A careful attention must be paid to the context, however, doesn't mean that such an act couldn't be pursued with cautious attention, for example, maintaining some form of anonymity, and building some protection mechanism for the victims, the rescuers and the witnesses. It seems agreeable that by formulating some penalization for those who don't respond to the call of a victim in crisis or of the perceived threat to a possible victim could play an important role in molding societal perception and reaction to social malpractice. To exemplify, in the latter case discussed above, the neighbors who were aware about her domestic situation and did not take an action to protect her, only a call to a police informing about her situation could have saved her from being burnt alive with seven months baby in her womb.

Civil Responsibility Act will establish an obligation of the society to treat social issues as their personal matter that can play a significant role in the transformation of a society to a more civilized and sensitive one. Given an example of a case mentioned above, wherein a

12. Constitution of the United States (1787) [Online] Available at: <http://www.loc.gov/rr/program/bib/ourdocs/Constitution.html>

13. Based on my first-hand interview with the survivor at the Bir Hospital on 10-May-2014.

neighbour played an important role in saving a woman from a death-row, proving role of an individual in ending social malpractice and other forms of gender-violence.

It is possible to hear that Nepal may not be ready for any such Act, and literacy would automatically raise human sensitivity to undertake moral responsibility of human welfare. Literacy in itself cannot create responsible and sensitive citizens striving for human welfare. It largely depends on individuals' morality, integrity and ethics. Literacy alone may not play much significant role as it may not be guaranteed that granted by their university degrees individual act with higher level of morality and sensitivity to the social issues. All humans may not deem necessary to participate in social issues, however if enforced through law they are obliged to law and act morally for the welfare of its fellow citizens.

Additionally, hand in hand endorsement of the very concept of civil responsibility in the academic curriculum would be highly relevant. However, embracing the civic responsibility in constitution of Nepal would be central to mark the mindset of Nepali people as duty-bearers and not only the right-holders. It can be rightly said that importance of civic responsibility is utmost to the success of democracy. By engaging in civic responsibility, citizens ensure and uphold certain democratic values and duties, which include justice, freedom, equality, diversity, authority, participation, truth, patriotism, human rights, rule of law, tolerance, mutual assistance, self-restraint and human integrity¹⁴. Cultivation of civic sense of responsibility needs establishment

Dowry practice cannot be eradicated without strengthening the implication of the women's right over parental property, and the anti-dowry campaigns, which strive to end dowry without ensuring this right can be faulted of being influenced by the patriarchal mindset.

through the constitution of Nepal firstly by imparting a section on civic responsibility.

Conclusion

Dowry practice cannot be eradicated without strengthening the implication of the women's right over parental property, and the anti-dowry campaigns, which strives to end dowry without ensuring this right can be faulted of being influenced by the patriarchal mindset. Strengthening a mechanism to monitor women's equal property rights in practice, strengthening women's access to information and knowledge of women regarding their rights, and creating an environment for women for their rights are key aspects to stimulate an end to dowry practice in Nepal.

It is pointless to contend that women's property right has not yet brought the practice to an end. It is rather the non-implementation of property rights in practice that is the major cause of the expansion of the dowry system. Moreover, a collective effort from the society itself to end the social malpractice as such is essential, which has to be enforced through law. Civil Responsibility Act could work miracles to end social malpractices, considering that such practices expands from and in the society, a cure has to emerge within the society itself. An Act holding individuals responsible for their in-

differences to the violence against women or giving-taking of dowry could play a substantial role in curbing such practices.

A Civic Responsibility Act could hold neighbors, family members, relatives, police or local bodies and others for not acting sensitively and responsively to the malpractices they witnessed. In other words, a relative is held responsible for not complaining against the dowry-giver and the taker, a neighbor is obliged to call for help at incident of wife-beating, bride-burning, physical and mental torture etc. Since an individual may or may not perceive relevance to respond to the malpractices in society, a law is essential to be enforced to make citizens act in a moral, sensitive and civilized manner. Furthermore, endorsement of a section on citizens' responsibility, additional to the substantially elaborated 'rights' is a way to go. Embedding responsibility and duties in the citizens' conscience can be best of answers to end various forms of social discriminations including all forms of violence against women.

In conclusion, without an intertwined strategy to ensure that women's inheritance rights are implemented, along with the formulation of true sense of civic responsibility through enforcement of an Act, ending dowry system or any such social malpractices is unlikely to be accomplished.

14 Shelf, J. (na) [Online] Available at: <http://learningtogive.org/papers/paper11.html>



Kundan Aryal*

Communicating Rights Awareness through Radio

*You little box, held to me escaping
So that your valves should not
break
Carried from house to house to
ship from sail to train,
So that my enemies might go on
talking to me,
Near my bed, to my pain
The last thing at night, the first
thing in the morning,
Of their victories and of my cares,
Promise me not to go silent all of
a sudden.
- Bertolt Brecht*

German playwright and author Brecht wanted to see the radio as two-sided apparatus of communication rather than its then identity of one-sided apparatus for distribution, for mere sharing out. In the year 1926, he noted: change this apparatus over from distribution to communication. In the context of Nepal, *Manavadhikar Sikshya Karyakram* [Human Rights Education Program] is one of the pioneer programs that initiated a culture of two-way exchange of ideas on people's right through radio broadcasting in post-1990 period. The program,

launched on Radio Nepal in 1995, is the first radio program of its kinds, i.e., a program exclusively devoted to human rights and advocacy in the Nepali context. After the emergence of private radio stations in 1997, INSEC simultaneously began to run the program also on Radio Sagarmatha, South Asia's first community radio. Subsequently, with the proliferation of private radio stations, it started to air through different FM stations across the country.

Currently, MSK is being run on FM stations throughout the country every Saturday and Sunday morning respectively. The program is aired on 20 FM stations out of a total of 360 operating stations spread in various parts of the country, i.e., from 5.5 per cent stations. According to the Ministry of Information and Communications currently as many as 360 FM radio license holders operate their stations regularly (Issued licenses, 2014). Until the end of fiscal year 2013/14, it was also being run on Radio Nepal, the national broadcaster.

Listeners of MSK receive

knowledge and education on the issues related to human rights through this program. In addition, MSK has been providing infotainment to its listeners. Stakeholders anticipate creating discourse on human rights issues through the program.

Because of its unique characteristics, the MSK gained popularity especially among rural adolescents and youth within the couple of years of its inception. In the subsequent years, the program proved to be a very credible source of inspiration for them to organize rights campaign at the local level. Subsequently, the listeners clubs of MSK started to gain momentum throughout the country.

Over the years, MSK has been discussing the whole gamut of issues related to human rights. It has been covering both situational as well as thematic issues in the area of civil and political as well as economic, social and cultural rights.

The program proves to be instrumental for INSEC, Nepal's leading human rights organization, to disseminate human rights

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messages. MSK is also instrumental in creating awareness on human rights in general public. INSEC is regarded as surveillance of the state of human rights. Surveillance of the state of human rights in the country refers to the continuous collection and dissemination of information. There are expectations from MSK in order to strengthen INSEC's role of surveillance.

The flood gate of radio broadcasting in Nepal was not open prior to 1990. Kharel (2005: iii), in this regard, states that it was only three full decades after radio went public in many parts of the world that Nepal set up its first full-fledged broadcasting station in 1951. But, as he observes, Nepal's broadcasting history was confined to Radio Nepal's development for more than 40 years until the relevant laws and regulations were introduced in the 1990s, which eventually heralded an era of private radio broadcasts.

Gross describes the state of radio prior to 1910 in the United States with the following observations, "During these early stages radio grew virtually without government control" (1983:35). However, in Nepal radio came in 1951 with total state control. Liberalization in radio wave only started in post-1990 period with the restoration of democracy in 1990. Human Rights Education related Radio program is one of the activities of INSEC since the mid-1990s which covers the whole country.

Following the king's assumption of power in February 1, 2005, Radio Nepal's management authorities imposed harsh censorship over the program. At one point, the then coordinator of the program, Ms Prekshya Ojha, announced at a press conference that

INSEC was compelled to suspend the program for indefinite period. The next six months saw an interruption of the program which, however, was resumed after the restoration of *Loktantra* (Aryal, 2013 :). Currently, MSK is aired on 20 other local FM stations representing different geographic locations of the country.

The primary objectives of choosing the radio as the medium for disseminating human rights education by the human rights groups are: a) the message through the radio can reach remotest places of the country and b) the message can be comprehended by the huge number of illiterate mass (Manavdhikar Shikshya, 2000: 3-4).

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Independent radio came to Nepal in May 1997 when the first station was licensed (Paudel et al, 2007:5). Despite Radio Nepal with nationwide coverage, INSEC also moved to private FM station with the establishment of Sagarmatha Radio in Lalitpur.

Airing Human Rights Message

MSK has been produced by a separate department within the organization. It is produced at INSEC's own well-equipped studio in its central office. According to the INSEC publication (2011: 9), radio programs on human rights issues are produced and aired on different FM radio stations every week under HRE program. MSK was started with the notion that

using radio in order to tackle the voice of the leaders and other people who are not compatible with the democratic principles (Aryal, 2058 BS: 26).

INSEC has been using radio broadcasting service in order to take human rights education down to grassroots level. This enables it to spread knowledge among grassroots people and to sensitize the concerned authorities on human rights and peace building (INSEC, 2011:22). To achieve the objectives, radio programs focusing on human rights, democracy, peace and other crosscutting issues have been produced and broadcast on 20 other local FM radios on a weekly basis. According to INSEC (2011:22), a

large number of grassroots people, including women, children, youths, senior citizens, professionals, human rights activists and HRV victims along with people from indigenous and disadvantaged communities are being benefited from the programs every year.

INSEC Annual Report 2012 (2012: 30) states that a large number of grass-root level people, including women, children, youths, senior citizens, human rights activities and victims of human rights violation along with people from indigenous and disadvantaged community are among the beneficiaries of such programs.

Human Rights Education Program has been looking after

by Human Rights Education Department. Radio Program is one of the three components of the department. However, the Radio Program has been proved to be instrumental to achieve the goals of INSEC's other departments such as Human Rights Documentation and Dissemination Department, Human Rights Monitoring and Advocacy Department, and Peace and Democracy Department. Moreover, MSK has been used as a tool for public relations by INSEC.

To achieve the goal of protection and promotion of Human Rights for social justice in Nepal, INSEC has set one of the strategic objectives as follows: People, government, law enforcement and other concerned agencies are aware

munication that contributes to explain, defend and promote the organizational objectives in order to secure mutual understanding and goodwill.

The program comprises one main story in narration by the presenter followed by *INSEC Gatibidhi* [INSEC activities], *Manavadhikar Sarokar* [Concerns on Human Rights], *Manavadhikar Samanya Gyan* [General knowledge on human rights], and *Adhikar Express*. The lead matter, in most of the episodes, is presented in written copy or voicers format, narration without actualities or sound bites. However, combination of male and female voice in narration has made the program colorful. Though the whole program resembles maga-

consecutive weeks and the winner gets the prize.

Songs with human rights message are included in MSK. However, the proportion of narration, sound bite and songs needs to be maintained for due order to rid of the existing imbalance in this regard.

At times, lack of focus is another common tendency that creeps in MSK. The leading items, interview and songs, could be packaged in a more comprehensive and understandable manner if they were tied in a thread of single dominant angle. However, the clear angle has been absent in the program at times.

MSK has been covering a wide range of subject matters within the main theme of civil and political as well as economic, social and cultural rights. It has been covering current situational issues as well as thematic issues. INSEC report (2011: 22) indicates that the program contents include importance of ICC and present status of freed *Kamaiyas* in Mid and Far Western Regions. According to the report, disappeared people and government's duty to make public their whereabouts, human trafficking and impunity in Nepal were also included in the programs. Likewise, celebration of International Peace Day, food shortages in Mid and Far Western Regions, violence against children, right to religion and migrant workers' concerns were also the parts of radio programs. New Constitution and HR, civic education and Nepali society were among the other highlights of the programs. INSEC Annual Report 2012 (2012:30) states that issues like poverty and human rights, peace and human rights have also been covered.

In the year 2012, the pro-

People, government, law enforcement and other concerned agencies are aware of the issues and incidents of Human Rights violations and act accordingly. INSEC (2012: 6) is further committed to achieve strategic objectives such as people, their representatives, law enforcement agencies and other key stakeholders are educated, sensitized and trained and they take actions to protect and promote human rights in the country.

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MSK has been projecting INSEC's image as per its set objectives. It also has been serving INSEC as a platform to communicate the stakeholders of human rights. To some extent, it has been paving the way for two-way com-

zine format, there are rooms for using arts of radio for presenting the program in more effective way. Moreover, presentation style of MSK could be expected to be more conversational with the audience. The program, as per the situation, may include several sound bites with variety of sources or sounds, such as interviews, background sounds and songs.

The program comprises of leading narration with one relevant interview and *Manavadhikar Samanya Gyan* [Human Rights Quiz Contest]. There is a prize for the winner of *Manavadhikar Samanya Gyan*. One question plays for four

gram aired materials on civic awareness on security and justice, Rome Statute, rights of the indigenous people, rights of youth and youth concerns, rights of disappeared people and their status, Peace Day and youth concerns, right to food, poverty reduction, constitution making process (INSEC, 2012:30). Violence against women, rights of persons with disabilities, consumer's right, addressing ethnic and communal harmony in federalism, civic responsibilities for attaining Human Rights were also discussed in the MSK.

Two of the regular segments of MSK, *Manavadbikar Sarokar* [Human Rights Concerns] and *INSEC-Gatibidhi* [INSEC activities] are similar. The former carries news related to human rights outside INSEC whereas the latter is confined within INSEC. News about events, statements concerning human rights and similar matters from entire human rights community are incorporated in the segment *Manavadbikar Sarokar*. Thus, the segment has made it a common program for the entire human rights community of Nepal. Through *INSEC-gatibidhi*, the MSK has made significant contributions to creating a linkage within the INSEC movement. It is worthwhile mentioning here that, without being consistently uniform regarding content and presentation quality, the segment *Adhikar express* might find it difficult to ensure sustained interests of its loyal and also prospective/occasional listeners. According to Bishaljeet Palikhey, the segment has been suspended without prior notice due to some technical reasons.

A distinctly strong feature of MSK is that it has been presenting wider range of situational and

thematic issues related to human rights. It presents information, provides education and persuades the listeners to come forward to ask the authorities about their rights. Its infotainment is also notable for making people aware of their rights. It encourages listeners to be actively involved in making the authorities accountable to the people.

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Quest to Echo More Local Voices

In the course of Review of the Human Rights Education Radio Program in June 2014, five Focus Group Discussions were conducted at regional level in Dhangadhi, Nepalgunj, Pokhara, Biratnagar and Kathmandu. Participants of FGDs expressed their opinions on effectiveness and impact of MSK. They also provided suggestions for the improvement.

Intellectuals and activists from different walks of social life were present at the FGDs. Journalists working for newspapers, radio and television; legal professionals, school and university teachers, rights activists and members of listeners' clubs related to the MSK and INSEC officials were present during the discussions in the identified regions.

Responding to the question regarding the effectiveness of radio program on human rights, stakeholders comprising of intellectu-

als, rights activists and journalists state that awareness program through radio has proved to be effective. According to them, common people from rural level have access to such radio programs. The programs are proved to be an easy and reliable means to create awareness among common people. Their view is that since the newspapers and television are not easily accessible in remote parts of the coun-

try, radio is the prime medium for spreading information and awareness.

Since the reach and access to the radio is comparatively easy for most of people in the districts, radio programs related to awareness are effective in disseminating awareness in the general public. According to the stakeholders, people have been listening to radio program on their mobile phones too.

Since most of the rural people do not have easy access to newspapers, their option is to listen to FM radio for information and entertainment. The awareness programs that have been running through the radio broadcasting services have proved to be instrumental in creating awareness among the common people. They have been getting information about their conditions and rights and the programs have been helping them to find the solutions. Ac-

According to its stakeholders, MSK has been generated in creating and holding discourse on human rights at local level.

The stakeholders also state that the contents of human rights program on radio need to be diversified. They are of the opinion that the program should be within the reach and access of the common people. Regarding the question of the effectiveness of the Human Rights Radio program, they said they find it successful in creating positive impact.

People have got opportunity to be aware on human rights and in turn to make community aware on human rights issues. Listeners of MSK have been forming listener's clubs and such clubs have been spreading human rights

human rights issues from rural level should also be raised in the program. According to them, the program centralized in Kathmandu could not attract interest of the listeners' of different parts of the country. They want the issues concerning backward and marginalized communities to be incorporated in greater depth and details.

Another suggestion most stakeholders were concerned was the broadcasting time of the program. The stakeholders want the broadcasting time to be appropriate for a maximum number of people.

Some of the stakeholders suggest that MSK needs to be broadcast in evening slot too. They see the prospects of the program being utilized more. They estimate

the program, it has contributed to spreading awareness among the common people who have primary level of literary skills.

Moreover, there would be a higher level of impact if the time of broadcast were made more appropriate. Stakeholders suggest that the program be broadcast during the prime time, before or after the news bulletins. They want efforts to be made to determine whether or not it is reached to the larger general public.

FGDs discussion among the concerned people also reveals that not all the audiences of the INSEC's human rights radio program are regular listeners. Some of them suggest that it would be better if the program could be broadcast in different mother tongues of the country. They also recommended the program to cover the diverse range of subject matters, i.e., different areas of rights such as rights of the old age people and consumer's rights. In their view, program format and presentation style need to be changed in accordance with the changing context.

MSK has been proved to be instrumental in reducing violence against women, as it has been presenting the suggestions of experts and issues related to human rights and social justice.

Stakeholders suggest that MSK be involved in local issues and the contents need to be more widespread. According to them, the range of the subject matters needs to be expanded to a greater extent. The broadcasting time needs to be appropriate for the people residing in different parts of the country.

Responding to questions related to ways of enhancing the effectiveness of the program, they suggest that the program need to give special consideration to the

People have got opportunity to be aware on human rights and in turn to make community aware on human rights issues. Listeners of MSK have been forming listener's clubs and such clubs have been spreading human rights awareness in the society. Listeners have been making calls, inquiring after listening to the programs. Such programs have been proved to be an agency of change in society. Different movements and contemporary activities have been getting information through human rights program.

awareness in the society. Listeners have been making calls, inquiring after listening to the programs. Such programs have been proved to be an agency of change in society. Different movements and contemporary activities have been getting information through human rights program.

When suggestions for further improvement regarding the contents of the program are sought, the stakeholders state that the program was centralized in Kathmandu. They think that hu-

man rights issues from rural level should also be raised in the program.

Thus, various FM stations from different parts of the country need to be coordinated in order to run such programs. The general observation of the professional intellectuals and rights defenders is that the Human Rights Radio Program has proved to be useful more for literate people than for highly educated population. Though, it is difficult to indicate particular examples of definitive change having brought about by

variety in the issues, and also to invite and encourage people with different world views. They suggest that the program need to undertake regular surveys on listenership and the related issues. Their emphasis is also on the presentation of interviews on current issues, including the live programs occasionally. According to them, presentation on the monitoring of the government's duties regarding the human rights would enhance the quality and popularity of the program.

The stakeholders are of the opinion that MSK could be enhanced by appropriate interaction on human rights. They suggest incorporation of youth club activities in the program.

Station managers of different FM stations state that MSK is a unique program. The key informant interviewees opine that the program had proved to be effective in strengthening the radio stations' image as pro-people organizations. They state that such kind of rights and awareness-oriented programs should be encouraged by the stations as well as the general public. They express their willingness to provide support in generating local contents for MSK¹.

Navaraj Lamsal, Deputy Director of Program Department of Radio Nepal, stated that though MSK is not their own production, it is also the responsibility of Radio Nepal to produce and run such types of awareness programs. According to him, the contents of MSK are research-based and necessary to raise awareness on human rights. He opined that INSEC had been sharing Radio Nepal's responsibility in this regard.

Officials of FM stations that are running MSK suggest that local issues with actuality and bites need to be incorporated. They suggest that visibility of MSK need to be enhanced with INSEC's activities. According to them, there will be an opportunity to establish partnership with local FM stations in order to incorporate locally-generated materials in MSK. They suggest that FM stations could be requested to produce materials based on local issues on rotational

Station managers consider MSK as an effective means to spread human rights education. However, they indicate the lack of local contents in the program. On the issue of inadequate local contents, Ramesh Timilsina, the host and producer of the program reveals that he has been obtaining local news related to INSEC activities from INSECOnline. Apart from this, he has not been instructed to generate local material by his line manager, the manager of Hu-

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basis. They list that there are many issues related to human rights at local level, such as violence against women, caste-based discrimination, child marriage, education and other similar issues. They expect that MSK could generate discourse on human rights issues at local level.

There are a few suggestions for improvement of the program. One of the suggestions is concerned with the broadcast time that is appropriate for rural audience. To most of the station managers, the existing broadcast time is suitable for all. But they suggest that it would be appropriate to broadcast MSK twice a week, both in the evening and morning.

man Rights Education Program within INSEC.

Sushil Chaudhary, the manager of Human Rights Education Program within INSEC, states that though there has been standing instructions to incorporate the issues of education, health from the grass-root level linking INSEC's programs over there, the attempts were not well managed in comparison to INSEC's wider network. He says that INSEC's Human Rights Yearbook representatives have been assigned to send information and materials occasionally. However, according to him, the existing volume of resources is insufficient to run the program in desired manner, espe-

1. Interview with Navaraj Pathik, Devaraj Pokharel, Rajesh Aryal, Chhatra Saud, Tularam Jaisi, Narayan Koirala, Sushil Chaudhary, Ramesh Timilsina, Navaraj Lamsal and Visa Kafley.

cially in the case of locally-generated materials.

What the Survey Reveals

A total of 2088 respondents, among which 1292 were male and 796 were female, participated in the survey conducted by the faculty members of Central Department of Journalism and Mass Communication of Tribhuvan University in the course of reviewing the Human Rights Education Radio Program in 2014.

Out of 2088 respondents who listen to radio, 1211 (58 %) do not listen to MSK. As many as 877 (42 %) respondents do listen to the program.

Out of 2088 respondents 917 are not aware of MSK. As many as 542 others did not respond at all. Likewise, 10 respondents state that human rights are not their priority.

mention issues related to women and children. Twelve respondents mention that they remember the issues related to children, education and among other. Similar number of respondents remembers issues related to women, children and *Janajatis*. As many as 626 respondents did not respond to the question.

Out of 2088 respondents, 1065 did not respond to the question as to which segment of MSK they recall the most. As many as 383 (18%) respondents mostly recall *Mawalikaka*. Though over the years *Mawalikaka*, a serial with popular humor artist Manoj Gajurel has been replaced by another of his serial named *Adhikar Express*, a large number of audience still remember the one-time popular segment.

162 (8%) respondents reveal that they like the main text or

Out of 2088 respondents, 1997 (96%) respondents reveal that they do not communicate MSK at all. They showed that they do not send any suggestion to the program. Ninety-one respondents state that they communicate MSK.

Among them, 44 (2%) respondents say that they communicate through letters whereas 17 (1%) others state that they use emails to communicate regarding the contents of the program. As many as 14 (1%) respondents state that they make telephone calls to provide suggestions to MSK. As many as 9 (negligible) respondents reveal that they communicate via HRELIC-Nepal and 7 (negligible) others state that they use SMS to express their concern to MSK.

Out of 2088 respondents, 261 (13%) say that the educational aspect of the program is most effective whereas 234 (11%) respondents say that information aspect is most effective. As many as 231 (11%) respondents say that the presentation style is most effective. Likewise, 65 (3%) respondents term language and 42 (2%) respondent term entertainment aspects as being the most effective. As many as 1255 (60%) respondents replied that they do not know.

Challenges and opportunities

The major strength of MSK is its unique characteristics among the various radio programs in Nepal. In terms of contents it is different. It is Nepal's first radio program dedicated to human rights awareness and it is well known for the presentation of human rights perspective on different socio-political issues. Thus, the program is capable enough to cater to certain strata of radio audience who are interested to be updated on human

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On the query as to which three themes presented in MSK they remember the most over the last one year, 71 respondents mention women rights and other issues. As many as 66 respondents state that they remember the issues related to child rights and other human rights issues. Out of 2088 respondents, 58 mention issues related to women, children and others. Likewise, 51 respondents

leading narration most. As many as 64 (3%) respondents like human rights song the most. Subsequently, 141 (7%) respondents' choice was interview and *Manavadhikar Sarokar* and 41 (2%) respondents say that they like *Adhikar Express* the most. As many as 40 (2%) respondents state that they like *Manavadhikar Samanyagyan [Human Rights Quiz Contest]* most. However, 1247 (60 %) respondents replied that they cannot say.

rights issues.

However, the program needs to be more concentrated on the intellectual requirements of its audience. MSK has already identified its target audience. It needs to focus on its target audience; i.e., enthusiastic adolescents and youth, especially from rural community, who wish to be empowered with the help of human rights awareness efforts supported by INSEC. By enhancing interactivity with the target listeners, MSK would overcome its main weakness, i.e., communication gap with the target listeners.

MSK has an opportunity to be recognized as the leading program on human rights within the country since it has been regarded especially by the adolescents and youth as an effective forum with focus on defending human rights and social justice. There is an ample scope for MSK to make yet higher contributions to enabling voiceless people to find adequate medium to raise their voice. Thus, MSK could play the role of catalytic agent at grassroots level in support of INSEC's relentless efforts at giving a fresh impetus to human rights movement in Nepal.

In case of failing to address its target audience, MSK would lose its identity and voice in the flood of varied radio programs. It has a clear objective to spread awareness on human rights and to tell people about the rights and justice. Thus, MSK needs to pool its resources for taking a new approach to the program in terms of contents and style of presentation. It has already built a reputation for the successful program. Its next

task after all these years would be to go for yet greater depth and details in accordance with its objectives and rationale. The challenges and obstacles that could occur in the days ahead should be anticipated for addressing the same on time.

MSK needs to be taken in an integrated approach. It needs to be run with INSEC movement as an integral part. In line with this, the program needs to be developed as communication tool. It can be used more effectively with wider range of impact. In this backdrop, MSK needs to be modified and enhanced in order to widen human rights movement that has been conducted by INSEC. The program has to be run with a strategy that retains and expands the present sphere of its audience with improved materials.

INSEC itself is playing the role of surveillance in the field of human rights and social justice in the country. MSK contributes to a large measure to INSEC's role as a watchdog in the field of human rights. It is a pioneer in radio program on human rights issues. Re-orientation and redirection should steer the program for continued success in terms of infusion of new angling of contents, presentation and the overall impact.

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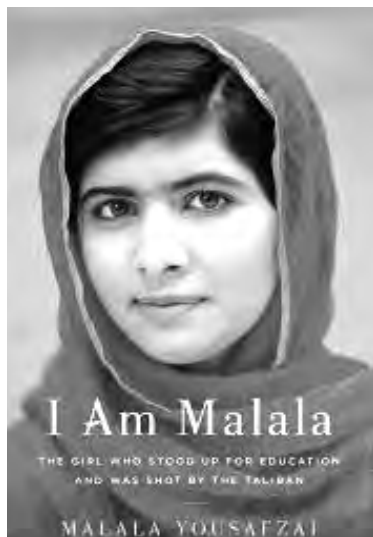
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I am Malala:

The Girl Who Stood UP for
Education and Was Shot by
Taliban

Author:

Malala Yousafzai and Christina
Lamb

Page: 276

Price: \$13.99

This is a book that should be read not only for its vivid drama but for its powerful message about the untapped power of girls. Coming from a middle class family, Malala has an illiterate mother and father was an owner of a school. Her parents fully supported her passion for studies. She was extraordinary and excelled in everything. She raised the voices of education for women, secularism of Pakistan and freedom for all. But her arguments became unacceptable to the Taliban, a militant Islamist group.

Education for Justice: I am Malala

The book 'I am Malala' authored by a young education right activist Malala Yousafzai and contributed by journalist Christina Lamb inspires people to do something for others. It is a book which encompasses a true story of a young right activist-Malala Yousafzai, a Pashtun girl from Pakistan's Swat Valley who was born of an illiterate mother and grew up in her father's school.

This is a book that should be read not only for its vivid drama but for its powerful message about the untapped power of girls. Coming from a middle class family, Malala has an illiterate mother and father was an owner of a school. Her parents fully supported her passion for studies. She was extraordinary and excelled in everything. She raised the voices of education for women, secularism of Pakistan and freedom for all. But her arguments became unacceptable to the Taliban, a militant Islamist group. The Taliban issued a threat against her saying that she was on their target and anything could happen to her anytime. Malala remained unfazed of their threats and stood by her conviction. The extremist group shot at her while she was returning home from school after sitting in exam. The following days were her and relatives and well-wishers ones' tolerance and hope. Before shooting her, one of the Taliban

cadres who had come with gun to fire her asked, "Who is Malala?" and Malala answered him. Her answer also became the title of this book- I am Malala.

Divided into five chapters this book begins with prologue which presents the general summary of the whole book. The first part of the book titled **Before the Taliban** begins with recalling of the earlier life of Malala and her struggle for education. Presenting the general background of her family, Malala has tried to convey that the home environment is the most important and primary instrument to achieve the goal. There are eight sections of the book under this part which include Malala's home environment to her education and role of school as well as community.

The second part entitled **The Valley of Death** deals with the entrance of the Taliban in Malala's place i.e. Swat Valley. After their entry in the town Mingora also the valley capital, their normal life came to an end including ban on watching television. The people who defied the Taliban diktat were severely punished and tortured in public places. Malala and her brother had a slide of reality when their father hid their television inside a cupboard. Movies especially Bollywood movies, that she enjoyed, became almost inaccessible following the Taliban warn-

ing. From such instructions, the Taliban proceeded to another level of brutality when they ordered the villagers not send to their daughters to school. The Taliban's terror activities were increasing day by day. Such cruel activities not only inspired her to advocate for girl's education but also motivated her to love peace, equal rights and dignity. And she stood up for girl's education and peace.

In the third part i.e. **Three Bullets Three Girls Malala** details the incident of shooting. The Taliban shot her while she was returning home from Khusal School. According to Malala, the Taliban who had come to shoot her had asked all the girls who Malala was and the girls remained silent. The man easily identified her and shot in her forehead. Two other bullets whizzed past her and hit two girls sitting near Malala. Malala has given the readers such a vivid description of the shooting that readers can fill the oozing of the blood stream from her head.

The fourth part i.e. **Between Life and Death** has explained the uncertainty of her life in the hospital. After the shooting, she was admitted to different hospitals in Pakistan and later was flown out to Britain for further treatment. Following the shooting, Malala was introduced to larger number of people of the world. The international community was eager to save her life. The United Arab Emirates sent an aircraft to bring her to Birmingham Hospital, UK.

The last part of the book entitled **A Second Life** encompasses the life of Malala which she got after treatment. According to her, the life which she is spending now is the second life and magically acquired.

Though Malala was shot and life attempt was made on her by the Taliban, she has not harbored any feeling of revenge. Instead, she continues to advocate for the girls' education across the world. According to her, even the daughters of Taliban should be treated equally for education.

The glossary presented at the last part of the book is helpful to get a grip of the Pustu and Urdu words used. Though it's the story of Malala, the readers feel as if a girl in remote part of Nepal facing

the armed conflict and sharing her story, though some differences in the context. The book has created an inspiration for readers to stand by their mission even in the difficult situation. After completion of the book, the readers will realize that empowering girls through education is her mission. Malala will only get justice when the mission will be completed. For Malala who was nearly killed by the fanatics, justice would be education for girls of the world.

Reviewed By Binod Gautam

Listen to the INSEC's Human Rights Education Programmes Aired Via the Following Radio/FM Stations EveryWeek



- Ilam FM, Ilam Bazar, 93 MHz, Saturday 7:30-8.00 am
- Saptakoshi FM, Itahari, Sunsari, 90 MHz, Saturday 8-8:30 am
- Radio Namobuddha, Dhulikhel, Kavre, 106.7 MHz, Saturday 7:30-8.00 am
- Hetauda FM, Hetauda, Makwanpur, 96.6 MHz, Saturday 7:30-8.00 am
- Nepal FM, Kalanki, Kathmandu, 91.8 MHz, Saturday 7:30-8.00 am
- Narayani FM, Birgunj-14, Parsa, 103.8 MHz, Saturday 7:30-8.00 am
- Radio Dhading, Nilkantha-5, Puchhar Bazar, 106 MHz, Saturday 7:30-8.00 am
- Radio Shailung, Charikot, Dolakha, 92.7 MHz, Saturday 7:30-8.00 am
- Radio Tanahu, Khairanitar, Tanahu, 97.2 MHz, Saturday 8-8:30 am
- Radio Didi Bahini, Kushma, Parbat, 95.2 MHz, Saturday 7:30-8.00 am
- Radio Taranga, Pokhara, Kaski, 107.6 MHz, Saturday 7:30-8.00 am
- Radio Madan Pokhara, Madanpokhara, Palpa, 106.9 MHz, Saturday 7:30-8.00 am
- Machhapuchhre FM, Gairapatan, Pokhara, Kaski, 91 MHz, Saturday 7:30-8.00 am
- Krishnasar FM, Nepalgunj, Banke, 94 MHz, Saturday 7:30-8.00 am
- Prakriti FM, Tulsipur, Dang, 93.4 MHz, Saturday 7:30-8.00 am
- Radio Bheri, Birendra Nagar, Surkhet, 98.6 MHz and 102.7 MHz, Saturday 7:30-8.00 am
- Radio Rolpa, Liwang, 93.8 MHz, Saturday 7:30-8.00 am
- Dhangadhi FM, Dhangadhi, Kailali, 90.5 MHz, Saturday 7:30-8.00 am
- Shuklaphanta FM, Mahendranagar, Kanchanpur, 99.4 MHz, Saturday 8-8:30 am
- Amargadhi FM, Amargadhi, Dadeldhura, 97.4 MHz, Saturday 8-8:30 am
- Shaileshwori FM, Silgadhi, Doti, 105.9, Saturday 7:30-8.00 am

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