



# राष्ट्रिय मानव अधिकार आयोग

National Human Rights Commission, Nepal

केन्द्रिय कार्यालय Central Office

हरिहर भवन, पुलचोक, ललितपुर, HariharBhawan, Pulchowk, Lalitpur, Nepal



## Eleven Years of the Comprehensive Peace Accord: A Brief Report on the Human Rights Situation

### Background

The ten years long armed conflict going since February 13, 1996 in Nepal formally ended with the Comprehensive Peace Accord between the Government of Nepal and the then CPN Maoists on 21 November, 2006. The violations and abuses of human rights like killing, beating, harming, torture, inhuman and degrading punishments, assault, enforced disappearance, abduction, threat, internally displacement, dispossession of property, the act of participating of children in military/militia activities, the act of involving persons in armed conflict occurred during the conflict period.

In the Comprehensive Peace Accord among the various systems raised to end the armed conflict, human rights issue is also mentioned. The act of monitoring the human rights issues mentioned in the Peace Accord was given to the NHRC.

Eleven years of the Comprehensive Peace Accord has completed today. In the Comprehensive Peace Accord among the various issues to manage the armed conflict the formation within 6 months of transitional justice mechanisms for providing justice to the victims of human rights violation and to end the transitional period was also mentioned. Though formation of those mechanisms was not on designated date, it was positive to form the Truth and Reconciliation Commission and the Commission on Investigation of the Enforced Disappeared Persons after 8 years. It is very miserable for the victims not to be able to seek truth and establish facts from the Commissions and the commissions' very slow pace. Though it is said that after receiving the complaints on the violation of human rights and already initiated investigation process, not publicizing even only one comprehensive investigation report to the date, it doesn't seem to be addressing effectively on dispensing transitional justice. So, to address this issue promptly is necessitated. The Government of Nepal as well as the political parties should necessarily be sensitive towards this.

### The Positive Aspects of the Comprehensive Peace Accord:

After the Comprehensive Peace Accord and the promulgation of the interim Constitution of Nepal 2063, integration of the combatants of Opposing Armed Forces, management of arms, completion of the Constituents Assembly election (twice) and the promulgation of the Constitution of Nepal (2072) are the successful incidents. But the issue of so-called child combatants has not been addressed as the Commission has time and again pointed out. In the prevailing Constitution of Nepal, various human rights issues of civil and political rights, economic, social and cultural Rights are mentioned under fundamental rights. In the constitution right of victim of crime is also mentioned. With the completion of the Local Level Election, formation of the people representatives' organizations is also completed recently. From the above acts, it can be expected that the peace process and the conflict period will formally be ended.



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## Human Rights issues in the Comprehensive Peace Accord and the Implementation Status:

### a) Right to life

The provision for respect and protection of right to life which is mentioned in the Comprehensive Peace Accord is also included in the prevailing constitution. Person's right to live with dignity is included as a fundamental right and no law which provides for capital punishment shall be made is also mentioned.

After the armed conflict, excessive use of force by the security forces against the movements of Madhesi, Tharu, indigenous people and through the inhuman and violent acts, violation of right to life of the citizens from the agitators is seen in Nepal. So, right to life as a fundamental right of people is not respected.

### b) Right to Individual Dignity and Personal Liberty

In the Comprehensive Peace Accord, issues like there shall not be imposing any torture or other cruel and inhuman behaviors, right to freedom and freedom of movement and freedom of opinion and expression are included so that the act of torture is significantly lessen but not fully avoided. Similarly, strikes, vandalism, creating obstacles in the highway by the political parties and their sister wings has had a serious effect on individuals' right to freedom of movement and right to profession and occupation.

### c) Economic, Social and Cultural Rights

Persons' rights relating to social security like employment, education, health, property as included in the Comprehensive Peace Accord are also mentioned in the prevailing Constitution of Nepal but the existing situation is such that no questions shall be raised in any court for the implementation till the promulgation of the laws. From this provision, citizens do not have access to use and implement these rights.

The opportunity of employment doesn't seem to be sufficient and satisfactory so that millions of youths go abroad for employment annually. The life of the migrant workers in the foreign land is high risk and dead bodies are coming from foreign land daily.

### d) Women's Right

In the Comprehensive Peace Accord there is a provision of the right to women and children. There is no proper documentation of the incidents of sexual violence against women during conflict and victims are not getting justice. The investigation and monitoring of the victims of grievous violation of women rights like sexual violence as well as rape by the Commission during conflict do not seem to have reparation as well as justice till now. Daily life of the women from the poor and marginalized community is miserable.

The mandatory provision of women candidate in the local level election completed recently shows women's lack of access to politics. Women's increasing participation in the politics can aspire the development of women's capability to leadership and awareness.

For the implementation of the United Nations resolution no. 1325 and 1820, Ministry of Peace and Reconstruction stated that an action plan was made and implemented. Programs like



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orientation, skill oriented trainings to the conflict affected women and children, awareness and capacity building program, the result cannot be seen as it was expected.

## e) Right to Children

It is necessary to make and implement a short term as well as a long term action plan for the rehabilitation including legal efforts, education, and employment to the discharged child soldiers. Among the 4008 child soldiers verified by United Nations Missions in Nepal, 1036 were integrated in Nepal Army and remaining 2972 discharged soldiers are continuously struggling for their rights. It is necessary to continuously monitor their situation and solve the problem.

There is no established mechanism to facilitate the daily life improving the physical and mental condition of orphans and street children keeping them in rehabilitation ensuring the right to education.

## f) Internal Displacement

During the conflict a large number of people were displaced from their place of habitual residence as well as the place of their profession and occupation. So, there was a situation that they didn't get freedom to run their profession/occupation smoothly, creating obstacles to live a dignified life and no opportunity to use their own property. After the Comprehensive Peace Accord, huge number of displaced people resettled in their home but a small number of them have not got their property returned and are not rehabilitated.

## g) Enforced Disappearance

In the Comprehensive Peace Accord both sides were committed to make public the people who were disappeared within 60 days. Despite that, their condition has not been made public till now. The condition of 842 disappeared persons registered in National Human Rights Commission is not still identified. The act to make the persons disappeared is not criminalized by law. The mentioned provision is obscure and the law creates obstacle for the recommendation after the investigation of the complaints from the Commission on Investigation of the Enforced Disappeared Persons.

## h) Transitional Justice

For providing justice, after formation of the Truth and Reconciliation Commission and the Commission on Investigation of the Enforced Disappeared Persons in 2071, we have received information that both of the commissions are collecting complaints and investigation of complaints is progressing. These commissions and NHRC are adopting a collaborative approach to cooperate with each other for capacity development to investigate cases and sharing information with but it is not very effective. Truth and Reconciliation Commission has 60 thousands complaints and the Commission on Investigation of the Enforced Disappeared Persons has 3 thousands complaints collected. Likewise, Truth and Reconciliation Commission has established provincial bureaus and those bureaus have taken forward the



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investigation process. It is notified that the Commission on Investigation of the Enforced Disappeared Persons has conducted preliminary investigations of the 3 thousands registered cases and taken forward the comprehensive act of investigation.

But these mechanisms were established later than expectation and two years tenure has elapsed and additional one year tenure will be finished on 9<sup>th</sup> of February. Truth and Reconciliation Commission and the Commission on Investigation of the Enforced Disappeared Persons Acts has given the responsibility to monitor the implementation status of the reports (recommendations) to the National Human Rights Commission submitted to the Government of Nepal after completion of the investigation. But till the date Commission has not received any information of reports submission to the Government of Nepal from the two commissions. Victims made during the conflict from both parties (state and the then rebellion force) and their families in the context of non-implementation of punishment to the perpetrators involved in the violation of human rights and the reparation to the victims have not realized that they have received justice.

The National Human Rights Commission is continuously investigating the complaints registered and monitoring the situation of human rights. In the process of the commission's regular work as well as while monitoring the implementation status of suggestions of Universal Period Review and others, issues and situations of human rights in the peace process is being monitored. The victims of the violations of human rights like killing, rape, torture, abduction, enforced disappearance, possession of property, internally displaced, beating, grievously hurt due to gun shot or impoverished explosive weapons, threat and illegal detention are not getting justice as well as reparation though long time has elapsed. The family of the dead and disappeared persons got some amount of interim relief and compensation but the offenders involved in the grievous violation of human rights are not punished legally so that impunity seems to be unending. Recently the commission has acquired the information that up to 10 millions cash as relief and compensation has been received by the families of dead persons.

During this period though the laws and the mechanisms of Transitional Justice have been developed and the function is initiated, the situation of mechanisms raising the issue of amendment of law for the well-functioning creates uncertainty to the victims getting justice.

## i) Impunity

Impunity is a huge challenge for the protection and use of human rights in Nepal. The offenders and the stated perpetrators by the court's verdict in the violation of human rights immune from punishment show the more victimization of the victims. Not easily able to register the First Information Report in criminal events, no prosecution, and lack of effective investigation leading no one found the accused in criminal cases strengthens impunity so that human rights protection becomes challenging.



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## Conclusion

Among the various aspects of the peace process management of arms and the integration of the rebellion force, formation of the transitional justice mechanism, election of the constitutional assembly and the enactment of the new constitution are almost completed. Various functions of the peace process have been completed as these acts show. After the enactment of the new constitution local level election has been completed as an implementation of the constitution and the House of Representatives and Provincial Assembly elections are going to be held in the near future. But the documentation of the facts and truth of the incidents of human rights violations during the conflict and punishment to the perpetrators involved in these grievous violations of human rights as well as comprehensive reparation programs to the victims is still remaining to be completed.

Similarly, the situation of persons forcefully disappeared are not publicize. The act to make the person disappeared is not criminalized by enacting a law. It seems that only if this act is completed then only the victims realize getting justice and the condition of impunity is lessened. There is the possibility of remaining challenges in the long term peace due to the lack of implementation of respectful and effective rehabilitation programs for the discharged and child soldiers.

The transitional justice mechanisms established to address the human rights violation and abuses during the conflict, recommendations of National Human Rights Commission, verdict of the Supreme Court and suggestions of the United Nations Office of the High Commissioner, and the recommendations of the United Nations Universal Period Review are not being implemented. In accordance with the international norms of human rights if victims are provided justice then only the Comprehensive Peace Accord can be implemented. So, all the stakeholders should draw their attention towards this.

## Suggestions and Recommendations:

The Commission presents the following suggestions and recommendations to the Government of Nepal in accordance with the present situation of human rights relating with the Peace Accord:

- To respect the persons' right to life with full respect and dignity.
- To ensure the use of persons' right to liberty and Economic, Social and Cultural rights.
- To rehabilitate the conflict victim women and children in the society conducting skill oriented training, awareness campaign and capacity development programs.
- Develop and implement result oriented action plan for rehabilitation including legal efforts, education, and employment to the discharged child soldiers.
- Manage those people who did not get their property returned and have not been rehabilitated, though a large number of people displaced from their place of habitual residence have resettled it is claimed that a few number of people did not get their property returned and not rehabilitated displaced during the conflict.





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- To make the transitional justice mechanisms strong as well as capable of publicizing the enforced disappeared persons immediately though their situation is still undisclosed.
- To ensure the situation of getting justice through the transitional justice mechanisms to the victims of violations of human rights like killing, rape, torture, abduction, forceful disappearance, possession of property, internally displaced, beating, grievously hurt as well as persons with disability due to gun shot or impoverished explosive weapons, threat and illegal detention are not getting justice as well as reparation though long time has elapsed.
- To end the condition of impunity by prosecuting the perpetrators of the grievous violations of human rights and stated offenders by the court's verdict.

Similarly, the Commission is time and again publicizing periodic monitoring reports within the 11<sup>th</sup> years period of Comprehensive Peace Accord and some of the issues of Comprehensive Peace Accord are yet remain to be addressed so the Commission requests the Government of Nepal as well as the concerning stakeholders to address those unaddressed issues.

**21<sup>st</sup> November, 2017**