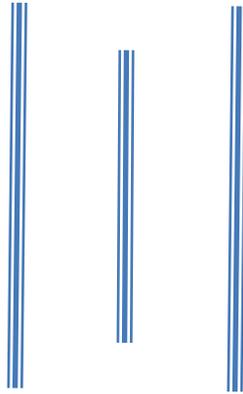
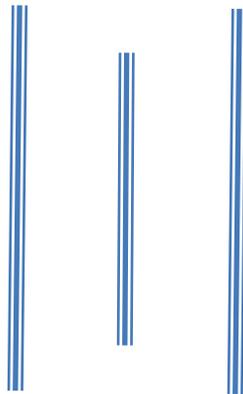


Ten Years of Comprehensive Peace Agreement: Human Rights Situation

A Brief Report



November 20, 2016



National Human Rights Commission
Harihar Bhawan, Lalitpur



1. Background

The decade long armed conflict launched since 13th February 1996 between Nepal Government and the then CPN (Maoists) formally ended with the signing of Comprehensive Peace Accord (CPA) on November 21, 2006. During the armed conflict, the country witnessed the incidents of serious violations of human rights such as killing, incapacitated, torture and inhuman and degradable behavior, assault, enforced disappearance, sexual abuse, abduction, intimidation, enforced displacement, confiscation of properties and damage, use of children in armed conflict as child scolders, and forceful involvement of persons in armed conflict against their will.

In this regard, there are various provisions arranged in the CPA with regard to the conflict management together with the provision related to human rights which has been set forth with significance. Similarly, the National Human Rights Commission (NHRC) has been entrusted upon with responsibilities to conduct monitoring on the provisions enshrined in the CPA with regard to the human rights situation in the country.

In the context of ten years of the CPA, therefore, the Commission has prepared this brief report based on the truth discovered upon investigation on the complaints registered at the Commission.

2. Positive Outcome of the CPA

Following the formal end of armed conflict, there were positive indications in the field of the protection and promotion of human rights. The provisions paved ways for the general citizens to become the state head. The erstwhile rebellion party streamlined itself in the political mainstream. Army integration and arms management of the then CPN (Maoist) took its course. Meanwhile, the Constitution of Nepal was promulgated on 20th September 2015 through the Constituent Assembly (CA). The Constitution has broadened the provision of fundamental rights of the people and it is commendable that the state has internalized the proportional inclusive principle and thus the provisions of inclusive state, federalism, secularism and republic have become the core values of the Constitution.

At the present scenario, women's leadership has been established with the leadership of State Head and Chief of Judiciary. Attributed to proportional representation, therefore, 32.5% women were successful to be elected in the first election and 30 of them were successful to be elected in the second election respectively. People enjoyed the right to dignified life, freedom, equality and freedom of movement. The transitional justice mechanisms including the Peace and Reconstruction Ministry, Truth and Reconciliation Commission (TRC) and The Commission of Investigation on Enforced Disappeared Persons (CIEDP) have been set up.

In bygone days, the issues of human rights were mainly focused on civil and political rights but now the issues as such are gaining priority in the field of economic and social and cultural rights. Rights including food sovereignty, consumers' rights and victims of crimes have been recognized as the fundamental rights. Subsequently, there have been positive initiatives with regard to the protection of human rights of marginalized communities including Dalit, Madhesi, Tharu, Muslim, Indigenous community, bonded laborers, tillers, Kamalari (enslaved laborers), Harwa Charuwa, sexual and gender minorities.

Landmines have been diffused. The commitment to rehabilitate the displaced citizens and to return the home and properties confiscated during the conflict period have been significantly implemented. Similarly, there has been a decline in the enforced donation collection. The reconstruction work of the government building damaged due to the armed conflict has been advanced. The recruitment of child soldiers below the age of 18 has been prevented now. Most conflicts victims have received interim relief. This has left positive impact on the protection and promotion of human rights in the country. The general civilizes have been able to feel that they have now eventually got rid of the horrific environment.

3. Arrangement and Implementation of Human Rights Provisions laid out in the CPA

Following is the status of the arrangement and implementation of human rights provisions enshrined in the CPA.

a. Right to Life

Commitment has been expressed via the CPA for the respect and protection of basic right to life of a person with dignity and not to promulgate any law that paves ways for the death sentence. Therefore, as per this commitment, the inherent right to live with dignity of a person has been recognized as the fundamental right in the Constitution of Nepal and there shall not be any law to punish a person by providing death sentence. However, the right to life of a person could not be respected even after the armed conflict as per the expectation. Specially, the right to life of a person has been violated due to excessive force used by the security force and the violent activities of the protestors during the agitation launched by marginalized community including the Madhesi, Indigenous People and Tharu communities. The truth about the killing of person by the government and the then CPN (Maoist) in various incidents has been found. 154 people have been killed including, 126 by the state party 28 by the then CPN (Maoist) respectively as per the record of the Commission. Apart from this, people have been killed by various armed groups actively emerged after the CPA was signed. Peace and Reconstruction Ministry has provided relief to the families of 59 people killed after the peace process had begun.

b. Personal Dignity and Right to Freedom

Provisions with regard to Right against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, right to personal freedom and right to freedom of movement have been included in the CPA. Though there has been a decline in inflicting torture on persons, the practice as such hasn't been totally stopped. The record maintained at the Commission shows that 246 incidents of torture and assault have been registered during this period. 198 incidents of torture from the side of state and 48 from the side of the then CPN (Maoist) have been allegedly reported. Though it has been mentioned in the Constitution that torture is a punishable act, the anti-torture Bill registered in parliament has not been endorsed as yet.

Similarly, people's right to enjoy their human rights has been left with severe impact on the rights including the right to freedom of movement, to engage in occupation and business and employment due to banda and strikes, padlocking of the factories and industries organized from

time to time by various political parties and their party wings. The agitation organized by various political parties and their party wings by placing various demands is almost day to day affair and such a trend of organizing banda and strikes still continues as their demands are not meted out by the government in time. Owing to this, severe impact is left on the enjoyment of person's not only right to security and freedom but also on Economic, Social and Cultural rights.

c. Economic, Social and Cultural Rights

The CPA is inclusive of the provisions arranged for the right to employment, right to food, right to education, right to health, right to property and right to social security. Despite the fact that there has been significant political change following the establishment of democracy after the armed conflict, the general citizens of remote parts and the improvised section of citizens of the country haven't been able to have access to basic economic, social and cultural right such as the right to food, shelter, clothing, health, education and employment as expected. Educational institutions were declared as the zones of peace, but it hasn't been implemented yet in practical term. Though there have been initiatives to do away with the exploitation on the marginalized communities such as squatters, tillers, Harwa, Charuwa and Kamalari, their access to economic and social rights is not paved in satisfactory manner. 50 million youths are compelled to go to foreign land seeking employment. The situation is such that many of these youths have lost their life while most of them are forced to work in hazardous working condition by keeping their life at horrible risk. The government is also giving priority to jobs in foreign land rather than creating avenues for employment by establishing resources such as industries and factories in own country.

The scientific land reform program also could not tap momentum as per the commitment expressed via the CPA. As a result, the enjoyment of Economic and Social Rights could not be eased. The communities belonging to freed bonded laborers, squatters, tillers, Harwa, Charuwa and landless citizens are still in agitation due to their longstanding problems remaining unaddressed with adequate solutions. At the same time, the effective implementation of land utility policy has remained a far cry. The victims of natural disasters including flood, landslide and growing land erosion have been forced to lead the life of squatters because their problems are not addressed well in time. Despite the fact that various commissions are set up from time to time to solve the problems of squatters, the problem still persists.

The compensation for confiscated and damaged properties during the armed conflict hasn't been provided, while the activity of property seizure still continues. No substantial initiative is spearheaded to resolve the issues of the security personnel who lost their jobs during the armed conflict. Likewise, no adequate relief is provided to those who were amputated during the armed conflict.

d. Women's rights and Child rights

The provision for the protection of women's rights and rights of child has been arranged in the CPA. Contrarily, the situation is such that there were incidents of gender violence during and even after the armed conflict. Most of these incidents have not been even documented. Although the commitments had been expressed through the CPA to address the problems related to women, Dalit, Indigenous People, Janajatis, Madheshi, oppressed, neglected, minorities and the backward by putting an end to the discrimination based on class, caste, language, sex, culture, religion, and

region and to restructure the state on the basis of inclusiveness, democracy and progression by ending present centralized and unitary structure of the state, the problem goes unheeded due to the lack of consensus built among the major politic parties. The signatory parties also haven't been able to become inclusive in practical term. Legislature parliament, however, has more representation of women as compared to those of other state bodies. The state needs to give continuity to this in the forthcoming elections as well.

Government of Nepal has developed the action plan for the implementation of the UN Resolution No 1325 and 1820. This includes the interaction and orientation program, skill oriented training for the victims of conflict including women and children, awareness programs, capacity development programs and the activities that would extend support to the national action plan as laid out by the Peace and Reconstruction Ministry.

Though the children used as child soldiers by the then CPN (Maoists) during the armed conflict are discharged from the cantonment now, they are leading miserable life due to the lack of adequate reparation compensated to them. The relief provided by Nepal Government hasn't been adequate enough to meet their necessities. No step is taken to create the opportunities of education, health, employment and training for the combatants discharged from the cantonment and to use their capacity. At this backdrop, 4009 combatants discharged from the cantonment have been agitating for a long time. The effort inculcated from the side of the government is inadequate to resolve the problem of the discharged combatants on the long term basis. Though there were 4000 women combatants in the army of the then CPN (Maoist), only 104 women soldiers were managed, which shows deliberate apathy for women empowerment and thus the state needs to work out for women empowerment in this regard.

e. Internal Displacement:

A huge number of people were forced to flee their homes of habitual residence during the armed conflict. Most of them have returned to their homes but they haven't been provided with adequate compensation by the state. The state is failed to treat the victims in equal manner in the context of compensation and relief. The property confiscated from some people in various districts haven't been returned to the rightful owners yet. The information has been allegedly made public about the transfer of property against the will of the land owners.

f. Enforced Disappearance

Though the commitment was expressed to publicize the status of the disappeared persons within 60 days by the conflicting parties, their whereabouts has not been made public even after ten years. The status of the whereabouts of 842 disappeared persons of the armed conflict period from among the complaints received at the National Human Rights Commission is not yet made public. Although the families of 1530 disappeared persons have been provided with the relief by Nepal Government, they have been traumatized for a long time due to the unavailability of the information about the whereabouts of their beloved ones.

The suggestions of the Commission, Supreme Court order and suggestions of the OCHR with regard to publicizing the condition of the disappeared persons, criminalizing the act of enforced disappearance and legal action against the accused haven't been implemented yet.

g. Transitional Justice

Despite the fact that the commitment was expressed to create an environment for justice delivery and the provision of reparation to the victims of human rights violations after finding the truth, the victims of the incidents of killing, incapacitated, enforced disappearance, abduction, torture and assault, sexual violence, property confiscation and enforced displacement haven't been able to receive justice and compensation for a long time.

The Act on the CIEDP and the TRC was passed subsequently setting up these two mechanisms and it is learned that, as of today, complaints on 53016 have been registered at the TRC while 2941 complaints on have been registered at the COID. During the time of enactment of this Act, the NHRC, the OHCHR including conflict victims had advised to step up for the amendment in this Act as these mechanisms were inconsistent with international standard. Following this, though Nepal Government was said to have been engaged in revamping this Act, the Commission hasn't received it as yet.

Having the firmed stance for the reformation in the draft bill, the Commission came up with the appeal for reformation after inculcating considerable effort, the draft bill didn't turn out to be human rights and victims friendly. Specially section 26 of the Act has the arrangement of the provision that amnesty can be granted even in the incident of serious violation of human rights. Similarly section 22 of the Act doesn't require compulsory involvement of the victims during reconciliation. This deliberately show that the Act is inconsistent with the international standard. Similarly, the accused of the incidents of torture and rape easily receive immunity as because the enforced disappearance and torture haven't been criminalized and also the time limitation for lodging complaints still remains without reformation in the existing law.

Though the law is promulgated on the transitional justice during this period subsequently setting up the mechanisms, the victims have not yet been confident enough on justice delivery due to the prevalent state of impunity in the country. Upon investigating the incident of killing and enforced disappearance, the Commission has discovered the evidences that there have serious violation of human rights.

The incidents of disappearance of five youths during the armed conflict is an example. The investigation upon exhumation of dead bodies of five youths shows that the security force was involved in killing of these five youths after they were disappeared. The truth, therefore, was unveiled that evidently there was the incident of serious violation of human rights. Similarly Nanda Prasad Adhikari and Gangamaya Adhikari, whose son Krishna Prasad Adhikari of Gorkha district was killed by the then CPN (Maoist) during the armed conflict period met his death while staging fast unto death on 22 September, 2014 after 333 days of his fasting. Though their case is under consideration in District Court of Chitwan district, Gangamaya Adhikari is still agitating as the accused involved in the incident have gone scot-free. Though the information had floated about the performance of last rite of the dead body of late Nanda Prasad Adhiakari with full respect, the much awaited final rites hasn't been performed yet.

h. Impunity

Impunity has remained a big challenge before the protection of human rights in Nepal. The state of impunity takes it to its height when the persons involved in the serious violation of human

rights and humanitarian law or crime are not brought to legal justice, no investigation is executed, no prosecution and justice is delivered or in other words, justice is denied directly or obliquely. Impunity appears to be deep rooted because the case with regard to the incidents of criminal offense get rejected, effective investigation is not conducted, cases under consideration or investigation are withdrawn and those who have been proved guilty by the court are not brought to legal justice.

Similarly, impunity has gone institutionalized because the NHRC recommendations to the Government of Nepal to take legal action against those involved in the incidents of human rights violation of conflict period have not been implemented. Instead, such accused officials are harnessed with the opportunity of appointment, promotion and their capacity development. Both the conflicting parties have expressed their commitment to withdraw the cases of political issue. On the contrary, the cases of criminal offenses of the serious nature are also found withdrawn.

i. Land mines

It has been found at least 53 people have lost their life due the explosion of unclaimed explosives. Among the killed, there are children also. Though the landmines of 53 places and 341 Improvised Explosive Devices (IED) Fields of conflict period have been destroyed, the arms and explosives are still found in various parts of the country and general citizens have been decapacitated due to the explosion. Though the commitment is expressed to identify the land mines planted by the security force and demine them as per the CPA, yet the then CPN (Maoist) side hasn't outlined the boundary and defused the explosives as per the agreement.

j. Ceasefire

Both the conflicting parties declared the end of war through the peace agreement by agreeing upon confining the Nepal Army to their respective barrack and the Maoists combatants to temporary cantonment. However, though the arms management was formally accomplished, the arms used in the armed conflict period were found in various parts of the country and used in the incidents of criminal activities as per the media monitoring. Though one faction of the party was in favor of peace agreement, various groups alienated from such party are arguing over the need of armed conflict and are still involved in the activities including alleged bomb explosion in educational institutions, banda, strikes and extortion. Consequently, further challenges have emerged before peace and security and the protection of human rights.

4. Analysis and Conclusion:

The decade long armed conflict formally ended via the CPA- 2006 signed between Nepal government and the then CPN (Maoists). As a result, the human rights situation has improved in the country. Now, the country is heading towards peace after the accomplishment of significant tasks including arms management, management of Maoists combatants and the promulgation of the Constitution through the Constituent Assembly as per the commitment. Though the commitment is expressed in the CPA to fulfill various issues of human rights, there are many challenges lying before the implementation side. Person's basic right to live with dignity has not been protected due to the lack of full implementation of the CPA.

Commitment to pursue a political system that fully complies with the universally accepted fundamental human rights, competitive multiparty democratic system, sovereignty inherent in the people and the supremacy of the people, constitutional check and balance, rule of law, social justice and equality, independent judiciary, periodic elections, monitoring by civil society, complete press freedom, people's right to information, transparency and accountability in the activities of political parties, people's participation and the concepts of impartial, competent, and fair administration in practice hasn't been implemented.

Persons' right to freedom of movement, freedom to engage in profession and occupation and freedom of employment provisioned through the Universal Declaration of Human Rights, International Covenant on the Civil and Political Rights and the Constitution of Nepal have been adversely impacted due to the agitation, band and strikes organized by the political parties and their party wings. This has affected very essential humanitarian service including right to health and right to education. While on the other hand, though the agreement and consensus are built with regard to meeting the demands raised by various castes, communities and classes, the government's dejected notion to comply with the agreement has caused the repercussion of such agitation. There has been an emergence of serious problems in the enjoyment of fundamental human rights due to the obliviousness to address the demands in time, excessive force used by the security force in controlling the demonstration and the violent activities of the demonstrators. The situation is such that the UN Resolution No. 1325 and 1820 haven't been implemented effectively with regard to ensuring the meaningful participation of women in peace process in the context of the denial of justice and repression to the conflict affected women.

A major challenge to the CPA is that the status concerning the whereabouts of the victims of enforced disappearance of armed conflict period hasn't been publicized yet. Another serious problem is that the families of the victims killed during the armed conflict haven't been able to experience justice delivery. The reports documented on the incident of serious violation of human rights including the alleged sexual violence and torture are piling up which is yet another challenge for the full implementation of the CPA.

Envisaged through the CPA to uplift the life standard of the general citizens, the implementation of economic, social and cultural rights still remains in a dismal state. The deprivation of the basic economic and cultural being the root cause of the conflict, the state ought to pay special attention towards the protection of basic rights including right to food, shelter, health education and employment.

Mechanisms established to address the incidents of violation of human rights of conflict period are not competent for justice delivery, because they not instituted as per the suggestions provided by the Commission, Supreme Court order and the suggestions provided by the OHCHR. It is deemed necessary that Nepal Government and political parties be responsible to make those mechanisms competent and consistent with international standard by immediately amending the stipulated law as per the suggestions of the Commission. It is also necessary to immediately revamp the law to resolve the problem of existing time limitation with regard to the legal action against those involved in serious violation of human rights, reconciliation with the consensus of the victims, enforced disappearance and criminalization of torture. The actual implementation of the CPA can be imagined only when it is ensured that the right to know the truth of the conflict victims is protected and the repercussion of such incidents is evaded in future though the

reconciliation and institutional improvement by providing justice and reparation upon the accomplishment of the transitional justice.

Concerns related appropriate management of the arms used during the armed conflict, long term rehabilitation of the child soldiers are indispensable part of the CPA and vital concerns of human rights and thus the State needs to address them in time.

5. Recommendations and Suggestions

Following recommendations and suggestions are set forth on the basis of the truth analysis.

a. To Nepal Government

- i. To ensure the political, economic and social rights by protecting the person's right to life with dignity for the establishment of sustainable peace in the country.
- ii. To amend the Act on "Commission of Investigation on Enforced Disappeared Persons" and "Truth and Reconciliation Commission," 2071 as these mechanisms are not inclusive of the NHRC recommendations, Supreme Court Order, suggestions of OHCHR. Revamp and amend these mechanisms to make them consistent with the international standard upon necessary consultation with the victims and stakeholders.
- iii. To protect the human rights of women victims of armed conflict with special priority by ensuring their meaningful participation in peace process.
- iv. To formulate the short term and long term plan of education and employment including rehabilitation of child soldiers and implement accordingly.
- v. To develop and implement special program for the rehabilitation and reparation of the physically and mentally disabled persons caused due to the cause of armed conflict.
- vi. To adopt the inclusive principle in restructuring Nepal Army through the training on human rights and value of democracy.
- vii. To take legal action against the person involved in the serious violations of human rights committed during and after the armed conflict on the basis of the accountability to end the prevalent state of impunity.
- viii. To immediately resolve the problem with regard to returning the property confiscated during the armed conflict to the rightful owners and make the compensation available to the victims of displacement in the scenario when the problem as such is not fully addressed.

b. To Political Parties

- i. To open the door for the delivery of transitional justice in real sense through all party consensus in order to implement the provisions of human rights and transitional justice as per the commitment expressed in the CPA and to give an end to pervasive impunity.
- ii. To ensure to make the protest program and demonstration and other activities peaceful as per the democratic norms.
