

Three-Year of Comprehensive Peace Accord



National Human Rights Commission

Nepal

**Three-Year
Comprehensive Peace Accord (CPA)
Summuary Report 2006-2009**



National Human Rights Commission

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Preface

This report has been published on the occasion of the completion of three years period of the signing of Comprehensive Peace Accord (CPA) done between the Government of Nepal and Communist Party of Nepal (Maoist). The Accord intrusted the National Human Rights Commission for monitoring the level of respect for human rights by both the parties.

The monitoring reports of the Commission shows that both the parties are found less successful in order to comply with the provisions of the Accord. During this period as well both the parties were found involved in various cases of human rights violation such as extra judicial killing, torture, enforced disappearance of human persons, illegal detention, displacement, rights of the child and women, explosion of ammunition causing human death and injuries followed by violation of various economic and social rights. In order to respond the issues of violation of some of those rights the long awaited the Truth and Reconciliation Commission has yet to be formed.

The ineffective impletation of NHRC recommendations and inability to bring the perpetrators of crime and human rights violations to justice have contributed to incese the level of the impunity in the society. Likewise increased level of differences between the leaders of major political parties on the implementation of CPA has also been an obstacle on the impletation of the Accord.

I hope that all responsible parties and stakeholders would work hard to implement the Accord. This effort is expected to bring the peace process into logical colclusion by creating an environment which respects for rule of law and human rights in the country.

Kedar Nath Upadhyay
Chairperson

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Chapter 1

Introduction

1. Background

Comprehensive Peace Accord (CPA) is a crucial document with reference to the peaceful transition of the over a-decade long armed conflict in Nepal. The armed struggle, launched by the erstwhile CPN (Maoist)¹ on 2052 Falgun 1, formally ended with the signing of the CPA between the government of Nepal (GoN) and the Maoists on 2063 Mangsir 5. The CPA has made commitments to basic principles of human rights and the values of International humanitarian laws. It was also mentioned that the ceasefire would be converted to lasting peace by means of the CPA. The NHRC was also entrusted with the responsibility of monitoring the provision of human rights mentioned in the CPA. The NHRC has been carrying out its activities accordingly. The NHRC has prepared this brief report incorporating the situation of implementation of human rights provision of the CPA as well as the recommendations on implementation and improvement based on the findings of monitoring undertaken over the last three years.

2. Objectives

To paint a picture of the implementation situation, tendencies and practices regarding the humans rights provisions of the CPA, to inform the public and stakeholders about the challenges, about suggested future course of actions, and to draw the attention of the parties of agreement – GoN and the Maoists.

1. In this report, the term 'Maoists' refers to the erstwhile rebel party C.P.N. (Maoist) as well as Unified CPN (Maoist) after merger.

Another main objective of the report is to inform the public and stakeholders about the present challenges and suggested future course of actions as well as to draw the attention of the Maoists and the government.

3. Methods of Preparation

Reports registered with the NHRC or those acquired by it, research and monitoring undertaken by the NHRC, their analysis, information obtained from media and various organizations, and information received from other sources during the period are the sources of facts and information contained by the report. Teams appointed by the NHRC for gathering facts and information at various dates visited the field, observed and questioned individuals and agencies concerned, held discussions and received explanations. The report was prepared after examining and analyzing facts received by the stated means.

4. Limitations

The report spans Nov. 21, 2006 and end of Kartik 2066. The report is centered on the monitoring of human rights situation in light of the CPA. Hence, it does not incorporate all aspects of human rights. Incidents caused by the parties of the CPA – GoN and the Maoists – have only been included. Particularly, this report intends to show the situation of the CPA, in view of human rights. The report has been unable to incorporate the events in totality due to the lack of adequate resources and information and has been limited to the practices and situation of human rights, albeit to a small extent.

Chapter-2

Human Rights in Comprehensive Peace Accord and the situation of human rights

1. Human Rights in the CPA

The CPA 2006, which was able to formally end the decade-long armed conflict, includes important provisions such as political, economic and social transformation, management of arms and armies, ceasefire, ending the war, mitigating differences and formation of an implementation mechanism. The CPA has equally prioritized the respect of human rights, which supports the lasting existence of peace process. Article 7 of the CPA upholds human rights, fundamental rights and the respect for humanitarian laws, urging both sides to guarantee the rights of individuals to live, dignity, freedom and movement; and civil and political, economic, social, individual freedom rights and those rights of women and children. Articles 3, 5, 6 and 8 of the CPA also have some provisions of human rights. The provisions include establishing rights of citizens to education, health, residence, employment and food security as well as socio- economic security for landless, Kamaiya, Haliya, and the downtrodden known as Haruwa and Charuwa.

The CPA also includes commitments of both parties not to use arms against the other, ambush the other, murder and create violence, kidnap, arrest, hold hostage or disappear; as well as not to plant mines or be involved in destructive activities. The CPA has also got provisions of letting the other party know about mapping and storage of land mines used during the conflict within 30 days, **demeaning** within 60 days of the agreement, refraining from attending public functions by soldiers and fighters of both

armies donning camouflage or carrying weapons, preparing a record of government, public and private properties and returning them immediately, and allowing the people displaced by the conflict to return to their ancestral or earlier place of residence. The CPA also contains commitments to not collect tax, cash or kind against will; to make public the information of people held hostage and free them within 15 days, to make public the name, surname and address of the people killed or disappeared within 60 days and inform their families; to create a National Peace and Rehabilitation Commission in order to make the adverse conflict situation normal and do necessary work, and to constitute a High-level Truth and Reconciliation Commission to explore facts regarding serious violations of human rights and those persons involved in crime against humanity. Article 9 (4) of the CPA has given the responsibility of monitoring the implementation of the human rights related agreements to NHRC as well.

2. Human Rights situation after the CPA

The situation of the human rights has been improving after the CPA, compared to the period earlier. During the period, the basic rights of individuals to live and move freely have been guaranteed while rights against forced capturing and disappearance; and seizure of property have been eased. After a long wait, the people have used their voting rights during the much-awaited election to the Constituent Assembly (CA). The election has resulted in respectful representation of the socially back warded women, castes, indigenous nationalities, religion, class, community, Tarai and Madhes in the CA. Some legal mechanisms related to human rights have also been established following the CA elections. Adoption of Right to Information Act, 2007, Human Trafficking (and Control) Act, 2007 Anti-Domestic Violence Act, 2008 and inclusion of the Chapter on kidnapping and holding hostage in the 'Muluki Ain' (The Civil Code) by the legislature parliament are important achievements in the sectors of human rights law.

Similarly, the government adoption of ILO-169, related to the right of indigenous nationalities can be regarded as an important achievement. Ordinance against disappearance of individuals had also been floated. But it could not take the shape of law due to political disagreement. Many of those displaced during the armed conflict are found to have returned to their earlier settlement. The positive initiation of the NHRC as well as other organization proved effective in this regard. Some achievements have been made in returning property seized during the armed conflict. The government also provided loans and grants to the displaced to facilitate their return.

Positive initiatives have been taken by promulgating Financial Support and Relief Standards 2064, for providing relief to the conflict victims and their kin by Peace and Reconstruction Ministry of the GoN, Regulations Regarding Financial Support to Heir of the Killed 2065; and Conditions on the Scope of Local Peace and Committees 2065. Meanwhile, the ministry is also undertaking works to keep records of the conflicts victims. The government has constituted a High-level Revolutionary Land Reforms Commission to guarantee the economic right as provisioned by the CPA. The human rights situation, as mentioned by the CPA in the three year period has been stated below:

The government action of withdrawing charges instead of sorting out the cases of the rights violation and atrocities taken place during the armed conflict by establishing a Peace and Reconciliation Commission and Commission on Disappearance amounted not only to disregarding the CPA by the government but promoting a culture of impunity. The government action of withdrawing cases on murder, rape, kidnapping and other serious offences in large members promoted impunity. Case regarding the murder of CPN (UML) CA candidate was also withdrawn. No action was taken against the murderer of a Maoist cadre in Lamahi during the election. At a time when there are voices raising for

action against a state minister of the GoN, who assaulted physically a Chief District Officer, an official responsible for maintaining law and order, from a wide spectrum, there are reports that the Prime Minister has ordered not to take action against the minister. This has ridiculed the rule of law and fuelled the culture of impunity. These kinds of action are creating a situation in which only the powerless citizens are bound to be abide by the law. It is unfortunate from the view of human rights and the rule of law to continue to protect impunity. On the other hand, the politicization of crime and unnecessary political pressure have demoralized the law enforcement agencies.

The growing differences of opinion among the main political parties in the country is a challenge to the implementation of the CPA. The unlawful activities of the sister organizations of the main political parties, who are related to the CPA, created a barrier in normalization of the human rights situation in the period. These activities created hurdles in implementing some provisions.

1. Right to Life

Right to life is the most important right of humans. Despite improvements in the state of this right, compared to the conflict period, it was not totally honoured. Both the parties expressed their commitments to the basic human right to life. In practice, both the parties failed to follow this. Protectors of human rights were also killed during the period. District Education Officer of Saptari was killed following an assault by Young Communist League, sister organization of the Maoists, which is a party of the CPA. Complaints of 295 murders, committed from both sides, were registered during the first year of the CPA. The figure was 75 and the 40 for the second and the third years respectively. Most of these cases are related to armed conflict. During the period, 133 individuals were robbed of their rights to live. Similarly, 53 persons lost life in stray bomb explosions. Table No 1 shows this.

Table No 1

Violator	First Year	Second Year	Third Year	Total
Government	37	39	31	107
CPN (Maoist)	12	2	12	26
Bomb explosion	20	29	4	53
Total	69	70	47	186

2. Right to individual, dignity, freedom and movement

Better guarantee of individuals' right to dignity, freedom and movement was witnessed in the period, compared to the years of conflict. As mentioned by the CPA, rights to individual dignity, freedom and movement include protection against torture, and inhuman behavior, against abduction or unwarranted detention, freedom to movement, respect of secrecy as provisioned by law, and right of the displaced and their family members to live in their original settlement or a place of their choice. There were no reports of violation of freedom of belief and opinion, speech and publication. NHRC received information of obstructions in freedom of unarmed peaceful assembly. There were also reports of activities against individual dignity in the period. Two ministers of the GoN were involved in actions which violated individual dignity – incumbent Minister Matrika Prasad Yadav locked an official of his ministry in the toilet while State Minister for Agriculture, Karima Begam physically assaulted Parsa CDO Durga Prasad Bhandari. Maoist cadres violated the individual dignity of officials ranging from the Vice Chancellor of Tribhuvan University to Local Development Officer.

Torture or other inhuman or inhuman behavior/ assault

Inhuman or inhuman behavior and incidents of assault were found during this period as well. These activities were carried out by both parties of agreement. NHRC recorded cases of torture meted out by

security forces and thrashing, inhuman and dishonorable activities conducted by the Maoists. Information of thrashing of government officials and leaders of other political parties by local Maoist cadres was also received. Reports of 246 such incidents were received from various from various sources. These are mentioned in Table No 2.

Table No 2

Violator	First Year	Second Year	Third Year	Total
Government	54	69	71	198
CPN (Maoist)	11	32	5	48
Total	65	101	79	246

The table shows a year-on-year increase in the number of torture or inhuman behavior/thrashing following the signing of the CPA. Concerned stakeholders need to put an end to this.

Enforced Disappearance:

There has been a marked improvement in not forcefully disappearing individuals. According to information with NHRC, only two persons were disappeared by the Nepal Police. Their condition was later made public by District Police Office, Pyuthan following a Supreme Court (SC) order. There is no other report of disappearance by the government during the period. However, there has not been a satisfactory progress in finding the whereabouts of citizens forcefully disappeared during the armed conflict. The implementation aspect of the agreement that the whereabouts of those disappeared would be made public within 60 days remained nil. Despite the provision in the Interim Constitution of Nepal that a High-level Commission on the Disappeared will be constituted to probe into the cases of disappearance, it is yet to be materialized. The SC order of 2064 Bhadra 18 (June 1, 2007) to the government to that effect was not implemented. The NHRC, taking up the matter time and again, had attracted the attention of the GoN. But the GoN was not found to

have done enough to make the situation of the disappeared public. However, a bill including provision on making their situation public has recently been registered with the legislature parliament. This is a positive move. The delay has further aggravated the pains of the kin to have been waiting long for the whereabouts of their dear ones. The NHRC pointed out the army and police custodies across the country that decided to forcefully disappear individuals, but to no avail. The NHRC received 254 complaints in the last three years about individuals disappeared during the conflict, including two mentioned above, as shown in table No 3.

Table No 3

First Year	Second Year	Third Year	Total
186	34	34	254

Persons held abducted by the Maoists

Despite the commitments of both the parties to not forcefully hold persons abducted or disappear them, the Maoists held more persons hostage and disappeared them, compared to the government. During the period, the Maoists cadres also held and disappeared activists of their rival faction led by Matrika Prasad Yadav.

The NHRC had freed the rival faction cadres from the fourth division of the Maoist army in Arun Khola, Nawalparasi. According to the information required by NHRC, Maoist cadres held and disappeared 81 individuals during the period, which has been presented in Table No 4.

Table No 4

First Year	Second Year	Third Year	Total
21	37	23	81

Table No. 5 shows the distribution of 193 complaints registered with the NHRC, including the cases related to the period of armed struggle.

Table No 5

First Year	Second Year	Third Year	Total
132	37	24	193

The state of decreasing cases of disappearances by Maoists after the CPA is commendable. However, these actions need to be totally ended from the view point of human rights.

About illegal detention/ judicial administration

The NHRC received information of arbitrary or illegal detention and the lack of easy, quick and impartial justice delivery. It also registered such complaints considering that information regarding Right to Justice was received from no other source, complaints filed at NHRC are the sole source. On this basis, a total of 215 such cases occurred in the period – 65 in the first, 47 in the second and 103 in the third years. The cases include arbitrary or illegal detention, lack of action on time, rejection of case and denial to register complaint. Table No 6 mentions the complaints.

Table No 6

First Year	Second Year	Third Year	Total
65	47	103	215

The table shows that there has been no ground for the expectation that the cases of arbitrary or illegal detention would decrease in the years that follow the CPA. This matters needs to be paid attention to.

Internally Displaced

Many individuals and families, internally displaced during the armed conflict, have returned to their earlier residence. A majority of property captured during the conflict is found to have been

returned or eased the restriction on. There were no reports of people being displaced in the monitoring period. However, there were notable number of calls for the return of displaced persons and the held property. The meeting of the legislature parliament was disrupted a number of times seeking this action. Data shows the NHRC received 88 complaints of displacement caused as presented in Table No 7.

Table No 7

Violator	First Year	Second Year	Third Year	Total
Government	2	2	2	6
CPN (Maoist)	4	53	25	82
Total	6	55	27	88

Considering that complaints of displacement caused by government were also lodged in the NHRC, a positive initiation by the government is deemed necessary. The Maoists have a greater need of taking a positive initiation bearing more responsibility.

Right to Privacy

Both the sides have expressed their commitment to honor the right to privacy in the CPA. The NHRC received no information or complaint of violation of this right from either side.

3. Civil and political rights

The CPA has expressed commitment to Right to Freedom of Opinion and Expression, establishing organizations, peaceful assembly, voting and being elected, Right against Exploitation and Right to Information, under this broader category of rights. No complaint of violation of Right against Exploitation was received during the report period. The much awaited election of the Constituent Assembly honoured the citizens' right to vote and to be elected. The people, deprived of their basic political right to vote

and to be elected for long, got a chance to exercise their fundamental political right. However, in a number of places, dominant political parties were found to be barring other parties from exercising their rights. Three election candidates were murdered in Sarlahi, Banke and Surkhet districts. Prior to the election, political parties were, to some extent, deprived of holding peaceful assemblies, expressing opinion, moving freely, conducting their activities freely and voters of their rights to cast vote. This had a negative impact on citizens' rights to cast their votes in a fearless situation. Though days preceding the election saw incidents of terror, threats and assaults, the day of voting was, by and large, peaceful.

Twenty months have almost passed after the elections. Representatives that people choose through their right for writing a constitution guaranteeing fundamental human rights including those mentioned by the CPA are being accused of being unable to uphold citizens' expectations and feelings. Local Maoist cadres, in the involvement of a politburo member, declared Kirat and Tamsaling republican states, the task of sorting out Federal Democratic Republican States which the CA is authorized to do. The local Maoist leadership declared the capture of Dhankuta Municipality and also announced people's representatives to bear office. The central Maoist leadership, however, has said the move is against the party policy. In the stated situation, responsible political parties need to be thoughtful about safeguarding and honoring citizens' political rights. During the reporting period, 28 complaints of the violation of citizens' rights were received. Table No 8 states the complaints received by the NHRC.

Table No 8

Violator	First Year	Second Year	Third Year	Total
Government	3	8	17	28

4. Economic and Social Rights

The CPA has presented right to employment and livelihood, right to food, right to health, right of workers and right to property under economic and social rights. Besides, Article 18 of the Interim Constitution of Nepal 2006, has enshrined the rights essential for livelihood as a fundamental right. According to the provision, right to employment and social security are stated to be guaranteed for each citizen as provisioned by the law. It was not found to be effectively implemented. In the failure to create opportunities of employment within the country, thousands of Nepalese continued to go abroad as migrant workers during the period. Effective initiatives are deemed essential to lawfully address the right of citizen to food security. Despite the provision in the CPA and the Interim Constitution, food shortage prevailed particularly in the Far Western hills, entire Karnali Zone and mountainous and other districts of Nepal. Organizations including the World Food Programme are assisting in the food-deficit areas but the quality of the stuff was questioned in the third year of the period. As many as 400 persons lost life due to reasons, including the substandard food-stuff in Jajarkot and other districts in the year. An option needs to be looked for within the country. But the GoN has not been able to effectively work in this regard for long. Due to the failure to make Surkhet-Jumla highway, which is linked with the right of people of Karnali to development, fully operational, Kalikot, Jumla, Humla and Mugu districts of Karnali zone are facing an increasing scarcity of food, while the foodstuffs available there are too expensive for local people to buy. Apart from this, landless and poor workers across the country are demanding land for the guarantee of food sovereignty.

The CPA has expressed commitment to adopt policy for managing land as well as economic and social security for the landless, Kamaiya and the downtrodden known as Haliya, Haruwa, Charuwa. In order to implement this, the government has

constituted Revolutionary High-Level Land Reforms Commission. But the commission has not been able to work due to political disputes. This has given rise to the perception that the step is taken for the sake of politics, not to do targeted citizens a favour. Settling freed Kamaiyas and announcing the end to the practice of Haliya and Haruwa Charuwa have been accomplished in the period. On NHRC's recommendation, the government declared an end to the Haliya practice but the socio-economic condition of genuine landless, Kamaiya, Haliya, Haruwa Charuwa remains the same. Table No 9 mentions 158 complaints lodged in the NHRC regarding socio-economic rights during the period.

Table No 9

First Year	Second Year	Third Year	Total
80	32	46	158

Right to Health

Both the parties of the CPA have internalized the guarantee and honor of citizens' right to health. In order to make health service accessible for people, as envisaged by the CPA, the GoN made its decision to provide free health services at health and sub-health posts across the country in Asoj 2064. However, a lot needs to be done for its implementation. Despite the declaration, the health post continued to face the shortage of health workers, medicine and equipment during the period. In the first year of the report, there was a dearth of health workers and medicine in time of an outbreak of diarrhea in some hilly and Tarai districts. In the last year, about 400 people died of diarrhea due to the lack of medical practitioners and medicine in some Mid- and Far-Western districts, including Jajarkot. Some patients died on the way, while being taken to hospital, due to bandh, strike and blockade called, in a grave violation of citizens' fundamental rights.

Right to Education

The NHRC's monitoring found shortage of teachers in proportion to the number of students during the period. In the second year of the report, the unavailability of textbooks on time disturbed the teaching learning activities. Children were deprived of their Right to Education due to bandh, strike and traffic blockade. Political parties party to the CPA were found to be using children in protests and demonstrations of various kinds. The slogan of 'Schools: A Peace Zone' could not materialize in the period. During the last period of conflict, Maoist cadres staged vandalism and arson at District Education Office Dhankuta, the manager of education in the district. In August, Maoist cadres obstructed teaching learning activities at a school situated in Birauta of Pokhara.

Right to Property

The parties to the CPA have agreed not to seize the property of anyone except when mandated by the law. Accordingly, property held from individuals, organizations and that belonging to the government has, to a large extent, been returned. However, successful implementation remains to be seen. During the reporting period, Maoist cadres collected forced donations, held houses belonging to individuals and did not return all buildings and land held during the insurgency, as committed in the CPA. The NHRC also received reports of security forces not vacating the land used by them during the armed conflict for the safety of their camps. In Siraha, residents of Badarmala VDC staged an agitation citing that Nepali Army had not returned property. In October, the NHRC received information that local Maoist cadres seized houses belonging to six individuals in Sankhuwasabha. There are reports of Maoist cadres seizing and distributing among the local landless 147 bigaha 13 kattha land area in Sunsari's Chhitaha VDC. NHRC continued to receive reports of land seizure during the period. Table No 10 displays the 200 complaints NHRC received during the reporting period.

Table No 10

Violator	First Year	Second Year	Third Year	Total
Government	-	5	2	7
CPN (Maoist)	137	38	18	193
Total	137	43	20	200

5. Rights of Children:

The CPA contains commitments to ban all kinds of violent activities as well as all acts of sexual exploitation against women and children for the security of their rights. Besides, parties to the accord have also agreed not to recruit individuals under 18 years of age in any armed force and to provide necessary cooperation for their immediate discharge and rehabilitation. According to the pact, United Nations Mission in Nepal (UNMIN) initiated task to maintain and verify the child Maoist combatants during the period. During the third year-end of the period, Ministry of Peace and Reconstruction of the GoN initiated the task to bring the minors out of the camps and rehabilitate them, as per UNMIN records. Other conflict-hit children could not be effectively rehabilitated during the period. Children and mothers of newborn living in Maoists cantonments lack proper care and management. During the period, visiting UN special representative on children Radhika Kumaraswami expressed her concern that there was not expected improvement in the condition of conflict-hit children, and that they could not be rescued and sheltered according to the provisions of the CPA. In violation of the CPA, children were brought in large numbers by the Maoists to their Singhadurbar gherao programme on Kartik 26 and 27.

The NHRC continued to receive reports of violation of child rights during the period. The 133 complaints were as stated by the Table No 11.

Table No 11

First Year	Second Year	Third Year	Total
25	80	28	133

6. Rights of Women

The CPA contains commitments to provide necessary support to end all kinds of violence against women, including any kind of sexual exploitation and misbehavior. Besides, commitments have been made to restructure the state in order to make it inclusive, democratic and progressive also to address the problems facing women. Subsequently, the state has adopted the policy of ensuring 33% participation of women in all state organs. Accordingly, women were made candidates and elected to the CA. Similarly, work has started to take women in the civil service, Nepali Army, Nepal Police and Armed Police Force on the basis of the principle of proportional representation. In the Interim Constitution, promulgated during the period, the preamble has the provision of solving gender problems and distributing the citizenship after the mother. The constitution has, for the first time, included women's rights as fundamental rights. Under this are provisions against any kind of violence as a woman, and for women's right to reproduction and reproductive health; physical, mental and any kind of violent activity against women to be punishable and equal right to ancestral property. Under Right to Employment and Social Security are also social security and social justice rights for women as provisioned by law while under Right to Social Justice are right to be included in the state mechanism, according to the principle of proportional inclusiveness, for women deprived from the economic, social and educational point of view. With the objective of making violence against women punishable, Domestic Violence (Crime and Punishment) Act, 2009 has been readied, with implementation in progress. Besides, Act to Amend Some Nepal Acts 2009 and Human Trafficking (Control) Act, 2007 have been enforced to ensure gender equality.

During the period, Proposal No 1325 and 1820, drafted by the UN Security Council, came to particular focus. Proposal No 1325, which has provisions on women, peace and security, is centered on protection and promoting the rights of women fallen victim to internal and external armed conflict and their inclusion in conflict transformation and peace-building processes. Proposal No 1820 is centered on not giving amnesty to the guilty of rape and sexual violence as well as on ending impunity through the search for an elaborated system of peace, justice, truth and policy of national reconciliation.

However, incidents are taking place against the rights of women mentioned by the CPA. Incidents of domestic violence mostly figured in limelight during the period. Some women also died in domestic violence, without women protectors of human rights being spared. Despite the legal guarantee of reproductive rights, as provisioned by the CPA, pregnant women and children continued to die in villages across the country due to the lack of proper provisions for reproductive health, health workers and equipment.

Condemnable incidents such as thrashing on the charge of witchcraft, feeding human excreta, physical assault on not getting enough dowries and burning to death are in existence even today. Though the state succeeded in punishing some culprits by bringing them to book, most of them were left scot-free. Particularly for the lack of expected dowry, the husband, as well as other family members, perpetuated burning, thrashing, creating mental terror, demeaning, raping and applying acid on the woman's body. Kamalari practice, existing in Mid- and Far-Western Regions has caused much suffering among women and children there. In this situation, NHRC received complaints of violation of women's rights. Table 12 includes 143 complaints.

Table No 12

First Year	Second Year	Third Year	Total
32	50	61	143

7. Other provisions mentioned in the CPA

Besides the CPA provisions mentioned above, there are many other provisions linked directly or indirectly with human rights. Their condition during the reporting period has been briefed below. As mentioned under Political, Economic, Social Transformation and Conflict Management in the CPA, the Nepali citizens were able to exercise their right to vote and to be a candidate during the election to the Constituent Assembly.

Regarding one of the main CPA provisions of management of arms and armies, weapons of the Maoist army and some of those of the Nepali Army were stored under the verification and monitoring of UNMIN. Hopes for protection and promotion of human rights were expressed both at home and abroad following the action. The management of arms of both the parties helped improve the human rights situation as well. However, there were reports of the Maoist combatants coming out of the cantonments with arms under various pretexts. A Special Committee has been formed as per the commitment to monitor, integrate and rehabilitate Maoist combatants by the government under the committee. However, expected outcome has not been achieved in that regard.

Both the parties stuck to the cease-fire provision mentioned in the CPA of not attacking one another directly or indirectly. However, disagreements surfaced between the two sides regarding purchase and transport of weapons. The agreed provision of not taking new recruits by both sides has been further disputed at present. During the last period of the preparation of this report, the Defense Minister made public statements that the CPA needs to be revised. There are suspicions that the statement can create problems in restoring peace in the long run.

Informing another party about the mapping and storage of ambushes and mines planted targeting each other during the decade long armed conflict within 30 days and cooperating with other parties in diffusing and demeaning them within 60 days were not effectively implemented despite commitment. NHRC received at least 36 incidents of stray bomb explosions during the period, as shown by Table No 13.

Table No 13

First Year	Second Year	Third Year	Total
26	6	4	36

Despite the provision of not collecting cash and kind against the will or in violation of the law, as a part of ways to normalize the situation, such incidents took place sporadically. During the last days of the report preparation, information about the control of some buses belonging to Araniko Yatayat by Maoist cadres for not giving the donation asked by the party became public. Both the parties have agreed to free and make public information about people held by them within 15 days and to make public the real name, surname and address of those killed or disappeared within 60 days. Three years after the CPA, both the sides have not implemented their commitments. According to the data with NHRC, condition of 835 persons disappeared by both sides is yet to be made public. Related NHRC data has been presented in Tables No 14 and 15.

Table No 14

Individuals said to have been disappeared by the state

Region	No of those made public	NO of those still disappeared	Total
Eastern	153	77	230
Central	1051	205	1256

Western	131	53	184
Mid Western	241	245	486
Far Western	66	36	102
Total	1642	616	2258

Table No. 15

Number of persons disappeared after taking them under control of Maoist

Area	Number of persons made their condition public	Number of the persons whose condition is still unknown	Total
Eastern	292	69	361
Central	308	42	350
Western	35	31	66
Mid western	160	48	208
Far western	75	29	104
Total	870	219	1089

In the Comprehensive Peace Accord to generalization of mutual relationship and to create the environment for reconciliation it, especially, all the political parties need to take personal and collective responsibility including with civil society and with help of the organization, but the main political parties did not take part in resolving the problem with rising up above the political parties ambition for it is mentioned that in order to resolve the problem which are arose up because of struggle.

8. Positive efforts in relation to implement the Comprehensive Peace Accord

While looking from the perspective of Comprehensive Peace Accord, in this period it is seen that same positive efforts and attempts have been done in order to implement the commitments

reflected in the agreement. Despite of various challenges, the requirements are to be stepped forward further as per the Comprehensive Peace Accord from the government side which has the role to of lead the peace agreement to the logical conclusion. The historic Constituent Assembly election held on April 10, 2008 A.D. with peace as which can be taken as the greatest step and achievement of this period. Due to the involvement of different sector, society, women, madheshi, tribes, religion, gender, professionals in the Constituent Assembly election has accepted the nature of inclusiveness. In the history of Nepal, this Constituent Assembly is thought to be the greatest character of having in inclusive nature. The nation has been entered in the republican system through the Constituent Assembly on May 28, 2008 as authorized the election of President on July 19, 2008 and Vice President on July 21, 2008 and CA chairperson of the Constituent Assembly on July 24, Vice-Chairperson on November 28, 2008 can be mentioned as the positive steps held on the year. After the long wait, the nation got the elected government on August 15, 2008.

In this period, the Constituent Assembly completed the election of the chair of different committees including the chair of constitutional committee. Through the Constituent Assembly, the work of endorsing work schedule after passing the rule is resolved by the constituent assembly for drafting the Constitution and made public the information regarding the working schedule of the CA as which can be taken as positive steps. The statement issued by Maoist Chairman Pushpa Kamal Dahal “Prachanda” saying that the CA members on behalf of the party would not be in any post of their party combatants, dismissed of the parallel Government, and the declaration that half militant structure of YCL has been dismissed, can be taken as the achievement. Legislature-Parliament passed the 12th amendment in the Country’s Code, (*Muluki Ain*) 1963 criminalizing kidnapping and abducting persons filling the absence of the law in this regard. This legal provision has been promulgated to award stringent punishment to the culprits. The

decision of then Prime Minister Pushpa Kamal Dahal was positive to provide the state fund and help to the victim of armed conflict, rehabilitation the displaced and returning back the captured property to the rightful owners. To publicly informed the condition of the disappeared persons or for the reparation to the family, the draft of proposed law against the work of enforced disappearance, to have the discussion with the concern and to collect suggestion to draft law against enforced disappearance and the issued draft law on the kidnapping people through Ordinance are equal are equally positive attempts.

Important organ of the peace process the verification of Maoist combatants, the completed work on it, the forwarded process leading with forming of the political committee for managing them and the rehabilitation work began started for the unworthy fighters are in the Maoist container are the positive attempts. Moreover, Secretary General of United Nations Ban-Ki Moon and the Commissioner of the United Nations Human Rights Commission and their promise to help and support with reflecting, the special interest in peace, development and stability and establishment of disarmament centre in Asia Pacific area are significant attempts.

Chapter-3

Comprehensive Peace Accord and implication efforts

1. Need to establish mechanism for peace process

The need to establish the attempts has been mentioned in Comprehensive Peace Accord 2063, and Interim Constitution of Nepal, 2063 for conducting investigation on killing of the human rights in the period of armed conflict and the events against the human rights law and to provide justice to the victims after finding act of the fact and truths. In such mechanism, these are Commission on Truth and Reconciliation, Commission of Disappeared and Commission on National Peace and Rehabilitation. With the international experience also, forwarding peace process with establishing such attempts are essential. From such commissions, it is needed to find out the guilty with the investigation of many incidents, recommendation for the punishment or making recommendation for providing the fund, reparation to the victim as well.

Since these efforts are important role for finding out of the way with learning the lesson of the past mistakes and not to repeat such mistakes in the future and to establish the environment of peaceful and reconciliation in the society and for it and since such commission do the needed study and giving of the suggestion, so for the stability peace establishment the role of such commissions are important. The efforts are following for the establishment of different commissions till at present.

Truth and Reconciliation Commission

It has been mentioned in the Article 5.2.5 of the Comprehensive Peace Accord for the establishment, Commission on Truth and Reconciliation in order to investigate the killings and crime against humanity at the period of armed conflict and to create the environment of unity in the society. In that Article it is mentioned that the both parties are agreed in order to establish commission on Truth and Reconciliation for doing investigation on serious killing of the human right at the period of armed conflict and involvement in the crime against humanity and to create the peaceful environment in the society. In such way, there is a provision in the Article 33 (IV) of the Interim Constitution of Nepal, 2007 for setting up the high-level truth and reconciliation commission. The Government of Nepal had brought the draft bill of proposed Act on Truth and Reconciliation Commission for discussion as per the Comprehensive Peace Accord and Interim Constitution.

The Ministry of Peace and re Construction had organized the meeting in the several parts of nation and took the suggestion from the concerns stakeholders to draft law. National human right commission had discussed with the different organization working with human right and the involvement of the victims and had given the suggestion to the Nepal Government regarding the draft law. Most of the suggestions given by the commission are included in the draft law but some important suggestion is not included.

Commission on Disappearance

At the time of armed conflict, from the government side people were abducted and made disappeared and from the Maoist side

also people were abducted and made disappeared. It is mentioned in the Article 33 (IV) of the Interim Constitution of Nepal, 2007 to establish the high-level commission on disappeared in order to investigate the people who were captured and made disappeared to investigate and to publicly inform their whereabouts, to do the recommendation for providing the fund for the victim and giving back the loss to them to punish the guilty. In this Article, there is a provision of providing relief to the families of the victims who were made disappeared at the period of armed conflict as per the report of the investigation commission.

The Government of Nepal organized discussion with the organizations working in the human rights sector with drafting bill on Disappearance (Crime and Punishment) Act, 2009 in such draft law, the National Human Right Commission made discussion with victims family and the organization working in human rights sector and sent the suggestions to the Government of Nepal. All the suggestion of the commission are not included in the latest draft law but most of the suggestion are included.

Commission of National Peace and Rehabilitation

Though it is mentioned in the Article 5.2.4 Comprehensive Peace Accord that both parties are agreed to implement peace in the society with generalizing the situation of the armed conflict and providing the fund and rehabilitation the victim and displaced people and to form the national peace and rehabilitation commission and it is mentioned that are agreed to move forward the work related to this but there is no any effort in order to set up this commission.

Though the political parties expressed promises in order to formulate such efforts for the peace process but after three

years of peace accord, the progress is not satisfactory for formulating the efforts because no one commission is able to set up till at present. It is the human right of the victim to get the justice with having the investigation of the event of killing of the human right at the period of armed conflict.

There is the condition of the victims that they are in distress since it is not able to give the shape to the construction of making efforts and because of the delayed of giving the justice to the victims who are waiting to get the justice. There is all accepted principle of delayed justice is denied justice. National Human Right Commission and the organization working with the human right sector have been drawing the attention of the Government of Nepal and to the political parties in order to make efforts. This work did not get in the shape because of the lack of will power of the political parties.

Special monitoring committee for the implementation of the peace accord

Reinstated House of Representatives after the people's movement had formed the Special Monitoring Special Committee the people movement organized special follow up committee for implementation of the peace agreement for implementation follow up of the comprehensive peace accord . The committee had given the suggestions related to the condition of the implementation of the CPA, humanitarian organization to collect the description including with statistics based on facts related to all the concerns related to the agreement and to abide by the agreement on the basis of such agreement. And, the committee in the local ways as mentioned in the Comprehensive Peace Accord it concentrated the concerns in the subject to publicly informed of the condition, of the disappeared persons, to publicly informed of the condition of the imprisoned people, to nationalization of the

property of the Royal Family and using of the property of former King Birendra in the National Welfare with bringing the property under the Nepal Government in a trust, formulating of the commission including with the Truth and Reconciliation Commission, returning the seized property to the rightful owners.

National Human Rights Commission

This commission is entrusted to monitor the human rights as mentioned in the CPA as per Article 9 (4) of the peace agreement. Apart from this, the commission is regularly performing the works related to human rights including with the responsibilities needed to fulfill as per the existing law and monitoring the human rights as per the peace accord. The works performed by the commission as stated in chapter 4.

Ministry of Peace and Re-construction

The Government of Nepal has established the Ministry of Peace and Re-Construction with giving special priority to implement the Comprehensive Peace Accord. The main objective of this Ministry is to re-construct the physical construction destroyed at the period of the armed conflict, to establish peace by implementing the CPA which was signed with the former rebel and the government. With concentrating such matters, the Government of Nepal published in Nepal Gazette, Nepal Government (Work Division) Act, 2007 on May 7, 2007 and fixed the works to this Ministry the responsibility of Comprehensive Peace Accord including with the other agreement, understanding and the implementation, follow up and evaluation of the decision. Due to the reason, the Ministry is doing work related to financial help and relief by issuing Financial Assistant Standard, 2064 regarding to

provide the relief to the victim of conflict; Economic Assistant Directives, 2065 for the purpose of providing relief to the family members killed in during the conflict; and Relief Support Directives, 2065 in order to provide relief to the disappeared family members. The local peace committees are formed through this Ministry to change conflict into the sustainable peace. The Ministry has issued and implemented the local peace committees work area terms, 2065 to manage the work of peace committees.

United Nations Office of the High Commissioner for Human Rights-Nepal

The monitoring of Comprehensive Peace Accord was also performed by the UN Office of the High Commissioner for Human Rights (UNOHCHR) Nepal. This office is raising the voice actively and regularly as like as commission to implement of the Comprehensive Peace Accord and to give justice to the victims of the armed conflict, and end the state of impunity. As mentioned in the CPA it has been regularly monitoring human rights situation, making public the monitoring report and has been forwarding suggestions to the Government of Nepal and the Maoist as well. Apart from this, for the implementation of Comprehensive Peace Accord, it has been giving suggestions in relation to the formation of Truth and Reconciliation Commission and law making process in this regard.

United Nation's Mission to Nepal

United Nations Mission to Nepal (UNMIN) is working in Nepal with an objective to help the peace process of Nepal. This is the political mission of United Nations. This mission is working in Nepal as per the resolution No 1740 of United Nations Security Council since 23rd January 2007 to 23rd

January 2010. It has been empowered to monitor and manage the Nepali Army, and Maoist combatants and weapons as per the CPA, to help through the joint monitoring committee of the signing parties in order to implement the accord in relation to management of arms and army and military management; helping in the monitoring of cease-fire agreement and to help the Election Commission in order to hold Constituent Assembly election in a free and fair manner through providing technical assistant are the jurisdiction given.

This mission has completed the work of verification of Maoist combatants and the weapon verification/record keeping and storing the weapon of Nepali Army with equal to the Maoist combatants. Including this, it assisted to hold the Constituent Assembly election. Apart from this, as mentioned in the peace accord it has been drawing the attention of the both parties and requesting them to implement the provisions of the peace accord. This has been helping a little in order to forward the peace process in sustainability. Though, the Government of Nepal and some political parties involved in the government have raised questions regarding its work in the period of latest years of the report. Moreover, the government has expressed its concerned with the report related to Nepal of General Secretary Ban-Ki Moon which was submitted in the United Nations Security Council.

Role of Civil Society and the Organization related to human rights

There is a significant role of civil society and the organizations working in the human right sector in order to implement of the Comprehensive Peace Accord.

Expressing concerns in order to implement the letter and spirit of the CPA and to put pressure by the civil society, and to make public report over the monitoring of the implementation

of the peace accord have been done. And, it has been helping to register the complaints on behalf of the victims in the department concerned, express concern in relation to several events and put pressure to the authority concerned issuing press statements, providing training on the related subjects to the agreement parties, to prepare spot inquiry report, provide legal assistance to the victim and to their family providing medical service to the conflict victim, to help in relation to the implementation of the suggestions and the recommendations of National Human Rights Commission, UN Office of the Human Rights Commissioner to Nepal and UNMIN in relation to the implementation of the CPA through the pressure from civil society.

Chapter -4

Comprehensive Peace Accord and the role of National Human Right Commission

The National Human Right Commission is an independent and autonomous body established as per Paris Principle. It has been given the constitutional capacity by the Interim Constitution of Nepal, 2007. However, there is a situation to express concern over its independence and autonomy despite of recognizing its constitutional capacity as its independence and autonomy has been removed in the draft bill of the National Human Rights Commission prepared by Nepal Government and now presented in legislative-parliament. The government has neglected its recommendation made by the commission in this relation. There is equal need of source, means and human resources in the effective monitoring of the implementation of CPA. Its job could be measured truly on the basis of its work in the lack of resources and human resources. This is the reality even today it has been struggle for its autonomy, independence, resources, means and human resources. In such condition also, the commission has been playing its role in order to establish sustainable peace in the country. In this concern, the work of the commission has been mentioned below in a brief way.

There is a significant relation between human rights and peace. In the lack of peace, there could be only the imagination of security of human right, stability in the country and the words of development. Considering this fact, the commission is involved in the important work of establishment of peace since the period of its establishment. The work of monitoring of human rights and investigation in the conflict period has been

given since the beginning. Time to time, it has been calling the government and the then Maoist to settle the issues through dialogue by doing the cease-fire. Moreover, it has been making human right agreement; code of conduct of cease-fire including it was giving the concentration over the activities against the peace process it has drew the attention of the parties concerned.

The commission has organized a day round table discussion program with the combined guidance of United Nations Office of the High Commissioner for Human Rights and Asia Pacific Forum of Human Right Organization on January 18, 2003 in Kathmandu in order to establish the long term peace in the country and regarding to the condition of human right and conflict in Nepal. In the program the Office of the Prime Minister and Cabinet Secretary, National Security Council, Ministry of Home Affairs, then Nepali Army headquarters, the Nepal Police, the Responsible Officer of Armed Police Force, major political parties, the National Women Commission and the civil society members of India, Shrilanka, Bangladesh and Pakistan were participated. This program urged the both conflicting parties to maintain the sustainable peace in the country.

The commission drew attention to do the following works with making the peace as entrance to the cease-fire which were occurred in time to time in the conflict period for the peaceful exit of economic, social, cultural and political problems which were the base of harm and to show honest respect for human right and to build up human right culture.

- a) Immediately make public the description of the persons killed in different times.
- b) Not to involve the children in the armed conflict and to create the accessible environment for conducting the school and the health center.

- c) To respect the right of the people to go back of their own houses and to live the peaceful general life without any discrimination with accepting the commitments of the human right of the general people.
- d) Not to terrify the people with the forced donation and including kidnapping and abducting with any action and to help securing the physical construction created for social welfare.
- e) To make commitment for obeying the code of conduct for cease-fire to be made for other activities.

As a request of continued efforts for seeking the way of commission presented the draft of code of conduct for the cease fire for the both parties for their consideration and agreement related to international standard and acceptable theory of human right on February 11, 2003 and to increase minimum understanding between government and Maoist on cease-fire and to make the process of dialogue to make further clear, strong and trust worthy. In that agreement, definition of cease-fire, using of the armed forced, freedom of walk, other ways of condition generalization, including cease-fire monitoring, the clear rules were proposed on the subject of beginning of the agreement and amendment.

Both parties of the dialogue were agreed on formulating of the monitoring committee on May 13, 2003 in the coordination of the representative of the commission in order to monitoring the cease-fire which was done between both parties in the period of armed conflict. In this process, the commission has urged the both parties to do the cease-fire by the both parties with signing the code of conduct and to do re consider in their own obstinacy and to come in the table of dialogue for the welfare of the nation as soon as possible. Apart from this, it has done monitoring on the points related to human rights which are mentioned in the code of conduct. Before signing the CPA, the

commission has requested with protection of human rights and sending the recommendation for taking the minimum steps related to human rights and human law which are under the responsibility of the conflicting parties for sustainable peace and to sign in the human right agreements drafted by the commission.

The commission has published press statement after signing historic Comprehensive Peace Accord would be the corner stone for the protection and promotion of human rights and including with the end of the impunity, it has welcomed the CPA between Government of Nepal and the then Unified CPN (Maoist) on November 21, 2006 which is being prepared in the armed conflict period. This statement has been included in Schedule-1.

The commission has drew the attention of the concerned party through the press statement regarding to implementation of the CPA, and the facts obtained after monitoring the implementation of the provisions, it has drew the attention for the first time on January 21, 2007 through the press conference. But in that period, the office bearers of the commission were not appointed therefore it could not recommend the government. In that attention the following things were included.

1. Though it is said to help each other to make inactive and irradiation of the outline information of explosive tunnel within 30 days and 60 days but it is not seen the attention is reached in order to make inactive and eradication of the outline information of explosive tunnel. Nowadays, also the accidents are publicly coming where general people are killed or injured in the burst of the explosive tunnel. The commission calls to the Government of Nepal and the Maoist in order to inactive and eradication of the explosive tunnel immediately.

2. Though it is said that the armed person of the both parties would walk with weapon in the public programs but it is found in the monitoring of the commission that the Maoist combatants have been walking in the combat uniform. A student of Lahan, Siraha, was killed on January 19, 2007 by the bullet-fire of Maoist worker. The commission calls the Government of Nepal to punish the guilty, immediately as per the law and to Maoist in order to stop such kind of activities.
3. Though it is said to make publicly the condition of the captured and disappeared people and to release all within 15 days but still 646 are disappeared by the security force, and 181 captured and not released by the Maoist, 49 persons who were captured by the unknown group, are not publicly informed yet. Though it is said to inform the family within 60 still it is not informed about this matter to the victim family.
4. Though it is said to establish the high-level truth and reconciliation commission in order to investigate about the gross violation of human rights and those killed at the period of conflict and related to them who are involved in the crime of against humanity and to create the co-operative environment in the society. Due to the lack of progress in this regard, the government, the Maoists and the other political parties need to play the role in order to end the state of impunity. In this regard, the commission is ready to provide technical and other necessary assistant to the government and political parties.
5. Though it is said to rehabilitate the internally displaced person in their own place and giving the opportunity to use own property without any fear while in the period of conflict, but the positive environment is not made to send back the internally displaced persons in their own place and there who have gone back to their own place.

Hindrances have arisen to use own property, house and land by the displaced person, this fact is concern in order to create the appropriate environment and not to create any hindrances for the opportunity of using own property without any fear. The commission request to the government to formulate policy immediately for long term rehabilitation, reconstruction and socialization for the displaced people.

- 6 The commission calls to the government for personal freedom and living hood with bringing improvement of condition of good peace management.

In such manner, the commission has been performing monitoring the implementation of CPA and organized press conference once again on April 2, 2007 A.D. after the Comprehensive Peace Accord was signed between the Government of Nepal and CPN Maoist, the Maoist combatants come back out of the armed cantonment with the weapon against the Comprehensive Peace Accord demonstrating with weapon in Siraha, Saptari, Udayapur, Ilam and Nepalgunj and it found that Maoist workers were about to enter into parliament building with the weapon and such manner, it is found that a television security person of Nepali Army in the Daunne danda Nepal television repeater tower, Parashi District who had misbehaved the local person and beat him and destroyed some shops and it is found the lack of drinking water, fuel, medicine and medical treatment in the cantonment of CPN Maoist. The pregnant women's health in the cantonment is found weak and not sufficient medical treatment because of the lack of appropriate necessities in the cantonment, the armed person of Shaktikhor, Jutpani of Chitwan, have used local villagers home and school's toilet for sleeping. Where monitoring was completed in the cantonment, the children below 18 years are found in maximum number. It is found the school children in some cases capturing with fore

by the Maoist and recruited with attraction of attractive salary, and integration in Nepali Army.

It is found that some children were returned back to home through the attempt of their guardian and some were returned back to their homes through the Maoist. After the CPA, though it is decreasing the activities from the government side for abducting and disappeared the common people the NHRC has received the report of capturing and making disappear 2 people in Kanchanpur and Gulmi. In same way, the report has come to the commission that the Maoist has used the house of Harnamadi of Makawanpur as jail and kept 19 people as prisoners. It has drew the attention of the both parties as they were agreed to help each other in maintaining peace and security as mentioned in the agreement but it is not obeyed. Similarly, in order to materialize the rule of law into practice, there were need to make sufficient security and to punish those who breach law; with the necessary investigation truth and facts should be given to the family of the disappeared; bring them into legal action who have violated the human right in the period of armed conflict with the recommendation of the NHRC and the attention was given to Maoist also need to respect human right as per the CPA. The commission has been forwarding recommendations to the parties concerned and suggestion time to time in the report period for the implementation of the agreement. The commission has been drawing the attention of the parties concerned for the implementation of CPA issuing press release and press conference as well. The important press release and the information issued by the commission are enclosed in the schedules.

Apart from this, the commission also monitored and investigated in the subject included in the agreement. This is briefly explained below.

Monitoring

The commission has been monitoring the human rights mentioned including the Comprehensive Peace Accord. The monitoring was related for using the voting right by the people in the Constituent Assembly election and regarding the right to be candidate as the monitoring has been done in different 69 districts. The commission's monitoring was done pre election, in the election-day and post election as well. According to the fact received by different means in the process of monitoring in the first year of the report, 36 persons were killed by police, 1 person by the army and 12 persons were killed by the Maoist. In the same year, it is found that 20 persons were died with bomb explosion. In second year, it is found that 39 persons were killed by security forces, 2 persons by the CPN Maoist and 29 persons were killed in bomb explosion. In this way, in the third year, 29 persons killed by the security personnel 11 persons by the Maoist, and 4 persons were killed by the Maoist. Still, the commission has been investigating on such accidents.

Monitoring found that there is no guaranty of personal right with living in freedom, the criminal activities have been occurring where ransom is demanded after kidnapping of the children as the hindrances are arisen for the implementation of the Comprehensive Peace Accord including it affected the human rights condition of the country because of the fight between the sister organizations of different political parties in the monitoring process. During the monitoring commission has received the complaints of torture and beating. In this regard, only in first year 69, in second year 101, in third year 79 evens were recorded in the NHRC on torture and beating. Similarly, the complaints were continuously received regarding threatening. In relation to the child rights, in first year 31, in

second year 80 and in third year 28 incidents were received through the monitoring. Necessary recommendations and suggestion has been given for action and recommendation and suggestions to the authorities concerned.

Investigation

The National Human Right Commission had investigated the incidents which were committed against the Comprehensive Peace Accord. The main incidents which the commission had investigated are abducting and killing Journalist Birendra Shah working journalist in Bara District by the Maoist cadres, the incident against Umakant Hamal, *mahasamiti member* of Nepali Congress who was killed in Jumla, the incident of killing businessman Ramhari Shrestha after abducting him and the incident in which local Maoist cadres assaulted the team of General Secretary of CPN UML Ishwor Pokharal in Ramechhap district, the incident against Prachand Thaiba, a youth force cadre of Rupandehi district, who was killed by the Maoist and the incident of Krishna Bahadur Bhandari, a member of Maoist of Dhading district who was killed by youth force and the incident where Maoist workers were killed in Dang district during the Constitution Assembly election. The commission drew the attention of the both parties in relation to the investigation of Ram Hari Shrestha murder case as third division cantonment of CPN Maoist situated at Chitwan Shaktikhor did not allow to enter into the cantonment for investigation and the police chief of Chitwan District did not provide the demanded documents and information as well. Their action did not help the investigation process and also hindered the investigation process. During the period of investigation, the commission continued investigation on the said incidents where killing and human rights were violated as which were mentioned in CPA. On the basis of fact received by the investigation, the commission has been giving

recommendation and suggestion to the concerned parties for the necessary punishment.

Chapter-5

Analysis, Conclusion, Suggestion and Recommendation

On the basis of above mentioned facts, after the accomplishment of the Comprehensive Peace Accord formally ending the armed conflict, the human rights situation in the country has been improved. In this period, promulgation of same law accepting the norms and values of human rights and the beginning of the work, where the victims of the conflict got a small portion of assistant and relief can be taken as a positive step in relation to protect human rights. Using of the voting rights by the general people and exercising the opportunity to be the candidate and the representation of different sector, group, community, women, Madheshi, tribes, religion, gender and professional in the Constituent Assembly uphold the value of inclusiveness as which is an important matter with human rights perspective. After the election of the Constituent Assembly, the declaration of the Maoist Chairman Pushpa Kamal Dahal “Prachanda” on behalf of the party, stated that the Constituent Assembly members of his party would not be in any member of People’s Liberation of Army, dismissing of the parallel government and directed dismissing semi-armed structure of YCL. It has been taken the commitment to rehabilitate the displaced persons and to return back the seized property to the rightful owners has been taken as positive steps of obeying the Comprehensive Peace Accord. The draft law against Disappearance, draft law on the formation of Truth and Reconciliation commission and discussion with the concern and collecting of the suggestion can be taken as positive steps of implementation of the accord. The verification of Maoist combatants, an important process related with peace process,

setting up the committee for their management and beginning the work are the positive attempts in relation to the CPA.

Thought some few positive attempts have been made in relation to implement the CPA 2063 but its implementation part is not satisfactory. The right to life of people could not be protected in the full fledged manner since the first year to last year of the report by the both parties. Since the killing of total 133 persons including 107 persons by the government side and 26 persons by the Maoists shows that the both parties are not honest for their commitments. Though complaints were not received in relation to exercise the personal freedom and exercising freedom of speech and expression, the right to movement and the speech and publication but it is seems of breaching the personal dignity.

Due to the activities of boycotting President, Prime Minister and Ministers, showing the black flog and throwing stones upon them seems not respecting the personal dignity and freedom as well. In this regard, misbehaving the staffs by the cabinet ministers and not punishing the guilty promoted the culture of impunity. In this period, total 246 incidents of torture and beating up including the 198 incidents from government and 48 incidents from Maoist party recorded in the NHRC proved this fact.

Despite of the commitment to make public the information of the enforced disappeared people within 60 days of the commencement of the Comprehensive Peace Accord, the status of 835 disappeared persons is yet to make public by the both parties. Not only this, the implementation of CPA is not only the issue but the order of the NHRC and the Supreme Court to set up powerful Commission on Disappearance could not be implemented. This is not seemed a matter of happy for not setting up the commission despite of rumors for the setting

of the same. Even though, government has recently prepared a draft bill against the enforced disappearance and presented in the legislature-parliament, which can be mentioned as a positive step.

Another important part of Comprehensive Peace Accord, the problem of internally displaced people has been mentioned in the CPA but which could not be implemented effectively. In this period also, complaints have been registered in the commission accusing the Maoist, rose the doubt on successful implementation of the CPA. Serious attention is needed from the parties concerned.

Though the Constituent Assembly election respected the right of the people to vote and to be candidate, but because of fear and challenge before the election created the doubt for holding the election with independent, free and fair manner. The murder of the candidates and the workers of the parties show the suspicion over abiding the commitment mentioned in the CPA honestly. Observing the statistics in this period found that the rights violation has been increasing. While observing the complaints registered in the commission, at the beginning of the year only 3 complaints were registered but 17 complaints were registered in the later year. It shows the increasing number of hindrance in the civil and political right. On the other hand, while enjoying the economic and social rights also the problems are same. The registered 158 complaints have proved the same fact. In this period, approximately 400 people were died due to diarrhea and cholera in the lack of medical treatment. Especially, there was continued a food scarcity in Karnali Zone and in some districts of Far Western Region. Since the long term solution of food scarcity could not be the donors' help, the government since the previous days did not work in order to find out the permanent solution in this regard. The bonded labors including Kamaiya, Haruwa, Charuwa and

the landless could not be found well managed. Though the government has established the Revolutionary Land Reform Commission because of the political dispute it could not work and the victims could not feel that the commission has been established for them only.

The right to property which comes always with economic and social right could not be respected in this period. On the one hand, the Maoist did not stop activities of seizing property and on the other hand, the property seized by the security forces in the armed conflict period is yet to return. It seems that, the agreement is not completely implemented which is proved by such types of incidents and the complaints which are registered in the commission.

Though the positive attempts have been made regarding the protection of the rights of women and children as mentioned in the Comprehensive Peace Accord but in general the condition is not seems satisfactory. The work has begun to rehabilitate the children from the Maoist armed cantonment bringing them outside from the contentment but the work is yet to reach into conclusion. Though the parties of the agreement made public their commitment not to use the children in such politics but still children have been using in the procession, mass meeting, sit-in-protest and etc. The complaints regularly registered in the NHRC in relation to violation of children. Kidnapping and killing is being in continued as total 133 complaints have been registered in the commission as such activities were not stopped in this period too.

Though the declaration over the women's involvement in all government sectors by 33% is a positive policy but it could not be materialized in practice. However, women's participation in the Constituent Assembly can be taken admirable. The domestic violation against women is also found rampant

despite of the law against domestic violation came into force. Domestic violation against women has been found increased while observing the complaints registered in the NHRC. In first year of report period 32; in second and third year, this number increased up to 50 and 61 respectively. The signatory party of the accord should be serious in this regard.

Regarding to management of arms and army as which is the main provision of the CPA, the activities of Maoist PLA combatants came outside of the cantonments with weapons for so called different purpose in the period of the report violating the CPA. Due to the reason that the signatory parties of the agreement could not complete their work on time, the debate regarding the recruitment of soldiers cropped up. The tendency of interpreting the provisions of the Comprehensive Peace Accord by the signatory party with their self interest also created the problem implementing the CPA. Since the Article 10(4) of the CPA states that if found any controversy while interpreting the agreement, the both parties joint mechanism would finally interpret on the basis of the preamble, and the documents enclosed with the schedule but the joint mechanism could not form. Because of this reason, further difficulties have been creating for the implementation of the CPA.

The accomplishment of some outline work of the explosive tunnel kept by the Nepali Army in the armed conflict period but the work in relation to explosive tunnel or ambush and storage is not found satisfactory. This fact has been proved due to the explosion of around three dozen incidents. In some cases, problem seems because of the activities of local leader or worker against the central policy of the Maoist, a signatory party of the accord. Apart from the agreement, parties who have important role for the implementation of Comprehensive Peace Accord, including the other parties also did not take it seriously and the tendency of always leaving it as the

responsibility of the Government and Maoist, it did not have its successful implementation.

Now, the special concern and interest is over not formation of the Truth and Reconciliation Commission, Commission of National Peace and Rehabilitation and the Commission on Disappearance as mentioned in the Comprehensive Peace Accord and the Interim Constitution. Formations of these commissions are required for lasting the peace process. Moreover, there is a lack of effective coordination of National Human Rights Commission, Civil Society and organization working in this sector in order to implement the CPA by the government and Maoist effectively. Though National Human Rights Commission has been entitled as constitutional body formally at the latest time of the peace agreement but in this period the signatory parties of the CPA did not have necessary coordination with the NHRC and the government has taken away the phrase of 'autonomous and independence commission' from the proposed National Human Right Commission Bill. In this condition, difficulties have cropped up to do the work on terms related to human rights and in other human right cases mentioned in the CPA and there is possibility where the question could raise up for the authority of the NHRC.

The both parties could not use the experience of the NHRC since the past. The provisions of the CPA would be easily implemented if the both parties had accepted the works and the recommendation made by the commission from one side in order to change the CPA in sustainable peace.

From above mentioned analysis, we can draw conclusion that due to the lack of honest in abiding by the agreement by the both parties and the main political parties, the most of the provisions of the Comprehensive Peace Accord could not be

implemented therefore the Government of Nepal and political parties including Unified Communist Party of Maoist (U Maoist) to fulfill their responsibilities in time.

Suggestion and recommendation

1. Need to serious involvement to change the cease-fire into sustainable peace following the Comprehensive Peace Accord's letter and spirit by the both parties.
2. Need to implement the recommendations made by the NHRC and the other concern stakeholders in relation to the CPA.
3. Due to the present political misunderstanding there are difficulties for the implementation of CPA therefore the political parties need to move forward with maintaining understandings.
4. Since the both parties are interpreting the CPA differently for their own interest, any dispute mentioned in the agreement should be resolved by the joint mechanism representing the both parties.

Need to give priority for the implementation of agreed matters as per the CPA.

- The End -

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