

A STUDY OF
THE DOMESTICATION STATUS OF
INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS IN NEPAL

National Human Rights Commission
May 2007

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Report No: 32/82/2064

Publication date August 2007

Layout:

Bhakta Mani Sitoula

Published by:

National Human Rights Commission,
Hariharbhawan, Lalitpur

Supported by:

Capacity Development of National Human Rights Commission
(NEP/00/010)
Harihar Bhawan, Lalitpur

Print by:

FOREWORDS

Article 132 (2) of the Interim Constitution of Nepal, 2007 and Section 9 (2) of the Human Rights Commission Act, 1997 have explicitly mandated the National Human Rights Commission (NHRC) to review implementation status of the International Human Rights Treaties to which Nepal is a party and make recommendation to the Government of Nepal to take necessary actions for effective implementation of human rights enshrined in such treaties.

Nepal ratified the International Covenant on Civil and Political Rights 1966 (ICCPR) in 14 May 1991. As a state party, Nepal has international obligation to respect, protect and fulfill all human rights enunciated in the ICCPR. It shall take executive, legislative, judicial and other measures for effective implementation of the ICCPR.

This research report, entitled "**A STUDY OF THE DOMESTICATION STATUS OF ICCPR IN NEPAL**", has aimed to review measures undertaken by Nepal government to ensure effective implementation of each of the articles of the ICCPR. It has primarily focused on domestic constitutional/legal settings, institutional arrangements, policies and judicial decisions that are essential for promotion and protection of human rights under the ICCPR. Number of recommendations has been made to take necessary actions to ensure effective implementation of the provisions of the ICCPR in Nepal.

I hope that this report will certainly contribute to sensitize concerned parties to undertake necessary measures to ensure effective implementation of Nepal's human rights obligations under the ICCPR.

On behalf of the Office of the NHRC, special thanks go to Advocate Bhimarjun Acharya who worked for the NHRC as a National Legal Consultant to prepare this report. Mr. Shankar Nath Adhikari, Mr. Om Prakash Aryal and Mr. Mahesh Poudel of the NHRC Legislative Assistance Division, Mr Kosh Raj Neupane of the NHRC Regional Office, Dhanagadhi, Mr. Dipak Jung Dhoj Karki of the NHRC Planning, Internal Monitoring and Evaluation Unit and Ms. Rabina Shrestha of CDNHRC deserve thanks for their sincere technical contribution and support to complete this research work.

Special thanks go to Mr. Tek Tamrakar, National Program Manger of CDNHRC and the whole CDNHRC team for its financial and other supports to prepare and publish the report. Last but not least, thank is also due to Mr. Bikram Tuladhar for undertaking the entire editing work of this study.

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Padma Mathema
Officiating Secretary

ACRONYMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
CDNHRC	Capacity Development of National Human Rights Commission
CDO	Chief District Officer
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women 1979
CERD	International Convention on the Elimination of All Forms of Racial Discrimination 1965
CPN-Maoist	Communist Party of Nepal - Maoist
CRC	Convention on the Rights of the Child, 1989
CWIN	Child Workers in Nepal Concern Center
DDC	District Development Committee
GON	Government of Nepal
HMG	His Majesty's Government
HRC Act	Human Rights Commission Act
HRPC	Human Rights Promotion Centre
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICRC	International Committee of the Red Cross
INDC	Independent National Dalit Commission
LAD	Legal Assistance Division
LSGA	Local Self-Governance Act
MOHA	Ministry of Home Affairs
MOWCSW	Ministry of Women, Children and Social Welfare
NCCPPHR	National Coordination Committee for Protection and Promotion of Human Rights
NCDN	National Committee for the Development of Nationalities of Nepal
NGO	Non Government Organization
NHRC	National Human Rights Commission
NWC	National Women's Commission
TRCA	Torture Related Compensation Act, 1996
UN	United Nations
VDC	Village Development Committee

LIST OF SOME CURRENT NEPALI LAWS RELATED TO ICCPR

- The Interim Constitution of Nepal, 2007
- The Country Code, 1963
- The Commission for the Investigation of Abuse of Authority Act, 1991
- The Immigration Act, 1992
- The Immovable Property Requisition Act, 1956
- The International Center for Integrated Mountaineering Development Act, 1983
- The Disabled Protection and Welfare Act, 1982
- The Indigenous Communities Upliftment National Academy Act, 2002
- The Breast Feeding Substituting Substance (Sale, Distribution, Control) Act, 1992
- The *Ayurvedic* Medical Council Act, 1988
- The Iodized Salt (Production, Sale and Distribution) Act, 1999
- The Essential Commodities Control (Powers) Act, 1961
- The Essential Commodities Protection Act, 1955
- The Essential Services Operation Act, 1957
- The Higher Secondary Education Act, 1990
- The Consumer Protection Act, 1998
- The Drugs Act, 1978
- The Act Relating to Bonded Labor (Prohibition), 1992
- The Employee Provident Fund Act, 1962
- The Legal Aid Act, 1997
- The Prison Act, 1964
- The Black Marketing and Some Other Social Offenses and Punishment Act, 1975
- The Act Repealing Some Criminal Cases and Remitting Punishment, 1963
- Some Public (Offenses and Punishment) Act, 1969
- The Food Act, 1966
- The Mines and Minerals Act, 1985
- The Libel and Slander Act, 1959
- The Civil Aviation Act, 1959
- The Donation Act, 1973
- The Motion Pictures (Production, Demonstration and Distribution) Act, 1969
- The Press and Publication Act, 1991
- The Scholarship Act, 1964
- The Land Acquisition Act, 1977

- The Births, Deaths and Other Personal Events (Registration) Act, 1976
- The Trafficking In-Person (Control) Act, 1986
- The Pesticides Act, 1991
- The Gambling Act, 1963
- The Enquiry Commission Act, 1969
- The Espionage Act, 1962
- The Trade Union Act, 1992
- The Civil Liberties Act, 1955
- The Civil Service Act, 1993
- The Nepal Standards (Certification Marks) Act, 1980
- The Nepal Citizenship Act, 1964
- The Nepal Treaties Act, 1990
- The Nepali Language Publication Corporation Act, 1964
- The Judicial Service Commission Act, 1991
- The Administration of Justice Act, 1991
- The Judicial Council Act, 1991
- The House of Representatives Members Election Act, 1991
- The Police Act, 1955
- The Press Council Act, 1991
- The Solid Waste (Management and Resource Mobilization) Act, 1987
- The Environment Protection Act, 1997
- The Child Labor (Prohibition and Regularization) Act, 2000
- The Act Relating to Children, 1992
- The Marriage Registration Act, 1971
- The Explosive Substance Act, 1961
- The Foreign Employment Act, 1985
- The Prevention of Corruption Act, 2002
- The Human Rights Commission Act, 1997
- The Human Organs Transplantation (Regularization and Prohibition) Act, 1999
- The Torture Related Compensation Act, 1996
- The Act Relating to Political Parties, 2002
- The Crimes against State and Punishment Act, 1989
- The Passport Act, 1967
- The Public Service Commission (Procedures) Act, 1991

- The Education Act, 1971
- The Extradition Act, 1988
- The Act Relating to Assembly or Organization, 1949
- The Social Welfare Act, 1992
- The State Cases Act, 1992
- The Supreme Court Act, 1991
- The Armed Police Act, 2001
- The Social Behavior Reform Act, 1976
- The Public Security Act, 1989
- The Military Act, 2006
- The Association Registration Act, 1977
- The Summary Procedures Act, 1972
- The Local Bodies Election Procedure Act, 1992
- The Local Self-governance Act, 1999
- The Labor Act, 1992
- The Working Journalists Act, 1995
- The Arms and Ammunitions Act, 1963

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CHAPTER ONE : ABOUT THE STUDY

1.1 Background

Domestication of international instruments, broadly speaking, is a process of giving effect to the provisions enumerated in the instruments to which the state is a party at the national arena. This is also a part of fulfilling obligations accruing from such instruments.¹

There are at least two modes of giving effect to the international instruments at the national level:

- By incorporating the provisions of the instruments into domestic statutes, and
- By accepting such instruments as higher authority within the national legal framework.

The former mode of domestication is based on the dualistic prism of the international law jurisprudence, while the latter mode of domestication is based on monistic prism. In monist countries, where the Constitution provides the same or higher status to international law, there is no need for a separate domestic legislation. Italy, Netherlands, Belgium, USA, France, Mexico etc belong to this category of countries. For instance, the US Constitution provides: "...all treaties made, or which shall be made under the authority of the US, shall be the Supreme law of the land. And the Justices in every state shall be bound thereby, anything in the Constitution or law of any state to the contrary notwithstanding". Similarly, the United Kingdom, Canada, Australia, New Zealand, India and most of the British Commonwealth countries fall in the former category.

The problems arising from potentially conflicting rules of international and municipal laws have been unduly magnified by doctrinal disputes. Two schools – the monist and the dualist-hold diametrically opposed view on this issue. According to the monist school, international law is either superior or inferior to municipal law. In most cases, the school of monist sees the supremacy of international law over municipal law whereas the dualists see international and municipal laws as separate entities having self-contained legal systems. Contacts between them are possible but it requires express or tacit incorporation of the rules of the one legal system by the other.

According to English law, international law is part of the law of the land. Similarly, in many good written constitutions, the generally recognized rules of international law are given priority over conflicting rules of municipal law. This argument does not, however, bear being pressed too hard.

The automatic reception of international law in the form of any of these systems of municipal law means international law as recognized and practiced by each of the countries concerned. Moreover, little doubt exists that if any United Kingdom statute

¹ Also see the study report on "Harmonization of Nepalese Laws with International Human Rights Instruments to which Nepal is a party- 2004" carried out by Bhimarjun Acharya for HMG/UNDP Strengthening the Rule of Law Program (NEP/00/011)

is to run counter to international law, British courts would, in the first place, do their best to harmonize it with their own views of the United Kingdom's international obligations. If however, such a construction proved impossible, they would be bound to give full effect to the statute.

Similarly, in the United States' Constitution, treaties approved by the senate are put on a par with the laws of the United States. This means no more than that they override conflicting state law and prior federal legislation. Yet such treaties themselves may be, like rules of international customary law, nullified by subsequent federal legislation.

In Nepal, there has been dominance of both monistic and dualistic schools of thoughts. On the one hand, the Nepal Treaties Act 1990 explicitly provides a guarantee for the enforcement of the Convention or treaty to which Nepal is a party. Section 9 of the Act provides that "in case any provision of a treaty to which the Kingdom of Nepal has become a party following its ratification, accession, acceptance or approval by the Parliament, contradicts with the provisions of current laws, the latter shall be held invalid to the extent of such contradiction for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as law of Nepal". The Act also provides provisions for domesticating the provisions of international instruments into national situation. On the other hand, Article 1 of the Constitution stipulates the supremacy of the Constitution and it declares that all other laws inconsistent with it are void to the extent of such inconsistency.

In this situation, this study has been carried out as a part of policy research to assess as to how far the provisions of ICCPR have been incorporated into the national situation through various measures. Thus, the study is primarily focused on the review of existing measures i.e. law, policy, program and institution adopted by the country to comply with the obligations of ICCPR. In addition, the study has also overviewed some of the related judicial pronouncements. Alongside the analysis of the relevant provisions of laws, policies and programs, the study has also overviewed some of the key obligations of states parties, which have to be complied and observed under their international obligations in the area of human rights.

1.2 Purpose of the study

The basic purpose of the study was to provide fundamental information on the domestication status of ICCPR in Nepal.

1.3 Objectives of the study

The overall objective of the study was to assess the basic legal, administrative (program and policy), judicial and institutional measures undertaken by the state for implementing ICCPR. To this end, the study had mainly focused on the following specific activities:

- Reviewing various legal, institutional, judicial and policy provisions, which are directly related to ICCPR;
- Reviewing the standards and compatibility of domestic measures with the standards of ICCPR; and
- Making recommendations for fulfilling the basic standards of ICCPR.

1.4 Areas not covered by the study

Due to the research design, limitations of time/resource and the study being a part of policy research, it had only conducted a general review of selected measures undertaken by the state to assess its compliance with the standards of ICCPR. The study does not review the implementation status and impact of ICCPR in practice.

1.5 Methodology

Analytical and descriptive research methods were applied according to the nature of the study. The texts of national and international instruments and their related provisions had been a primary source of literature in the study. Other literatures such as books, reports and commentaries were also consulted as deemed necessary.

1.6 Limitations

In general, the primary limitation of the study was time. The lack of literatures, in particular, in the area of policies and programs was another major constraint faced during the study. In spite of many constraints and limitations, the study is expected to be a pioneer piece of work in this area.

1.7 Organization

The study has been organized into five Chapters.

Chapter 1 deals with the general introduction and approaches of the study. It also describes why the study is needed and what the major objectives of the study are.

Chapter 2 provides an overview of Nepal's commitment to international human rights instruments including ICCPR. Under this Chapter, Nepal's reporting obligations under international human rights instruments including ICCPR, to which it is a party, have been briefly discussed.

Chapter 3 reviews the rights enunciated in ICCPR and specific measures undertaken by Nepal to implement them.

Chapter 4 observes the status/compatibility of measures adopted by GON.

Chapter 5 provides the conclusion and recommendations of the study.

CHAPTER TWO : NEPAL'S COMMITMENT TO INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND OBLIGATIONS UNDER ICCPR

2.1 Overview

Nepal is an independent, sovereign and democratic country. The supreme power of the country is vested in the people. The Interim Constitution of Nepal, 2007 through article 2 has vested the sovereignty of Nepal in the Nepalese people. Article 2 stipulates that: "The sovereignty and state authority of Nepal shall be vested in the Nepalese people."

State power is exercised solely on the basis of the Constitution and such laws which are in accordance with the Constitution. The universally recognized principles and norms of international law ratified by Nepal are inseparable part of the Nepalese legal system. The people can exercise their supreme power through election.

The guarantee of the basic human rights to every citizen of Nepal is one of the basic features of the Nepalese political system. Moreover, as a sovereign state, Nepal has right to enter into relations with other states, conclude treaties, exchange diplomatic and consular representatives, and participate in the activities of international organizations. Nepal is a member of the United Nations and its specialized agencies, Non-aligned Movement, Group of 77 and various international as well as regional organizations like SAARC.

As an active member of UN, Nepal has been playing a dynamic role in formulating international legal documents governing such legal principles and prescriptions as the sovereign equality of states, the non-use of threat of force, territorial sovereignty, the peaceful settlement of disputes, non-intervention and non-interference in internal affairs of states, respect for human rights and fundamental freedoms, equality of rights, and the right of people to determine their own destiny, cooperation and friendly relations among states, and *pacta sunt servanda* under international law. Nepal supports and has consistently advocated for the immediate granting of the right to self-determination to the peoples who are still under the domain of colonialism.

Nepal has been a party to almost all major international human rights instruments. It is the first country in the South Asian Region to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at Abolition of the Death Penalty. Being a State Party to various international human rights instruments, it has, at least, in paper shown a full commitment towards its international obligations for the protection and promotion of human rights.

To date, Nepal has become a party to 19 major international human rights instruments. The list of international human rights instruments Nepal has ratified/signed/acceded is the result of Nepal's commitment to international human rights instruments.

The main Conventions and Covenants related to human rights to which Nepal is a party are: Slavery Convention 1926; Protocol Amending the Slavery Convention 1953; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and

Institutions and Practices Similar to Slavery 1956; Convention on the Political Rights of Women 1952; Convention on the Prevention and Punishment of the Crime of Genocide 1948; International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965; International Convention on the Suppression and Punishment of the Crime of Apartheid 1973; International Convention against Apartheid in Sports 1985; Convention on the Rights of the Child (CRC) 1989; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979; International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966; International Covenant on Civil and Political Rights (ICCPR) 1966; Optional Protocol to the International Covenant on Civil and Political Rights 1966; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984; Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949; and Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at Abolition of the Death Penalty 1989; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000; and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000.

In compliance with its reporting obligations, Nepal has submitted its periodic reports on the status and progresses made in respect of various UN human rights conventions, notably Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture (CAT), Convention against Racial Discrimination (CERD), Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR).

2.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights, which was opened for signature on December 19, 1966, and entered into force on March 23, 1976, incorporates almost all those civil and political rights proclaimed in the Universal Declaration of Human Rights 1948, including the right to non-discrimination but excluding the right to own property and the right to asylum. The Covenant also designates several rights that are not listed in the Universal Declaration of Human Rights 1948 such as the right of all peoples to self-determination and the right of ethnic, religious, and linguistic minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language. To the extent that the Universal Declaration and the Covenant overlap, the latter is understood to explicate and to help interpret the former.

In addition, the Covenant calls for the establishment of a Human Rights Committee comprising persons serving in their individual expert capacities to study reports submitted by states parties on measures they have adopted to give effect to the rights recognized in the Covenant. The Committee may, in the case of states parties that have expressly recognized its competence, also respond to allegations made by one State Party against other with regard to the failure to fulfill the obligations under the Covenant. If the committee is unable to resolve the problem, the matter is referred to an ad hoc conciliation commission which eventually reports its findings on all questions of fact as well as its views on the possibilities of an amicable solution. States parties that become party to the Covenant's First Optional Protocol further recognize the competence of the Human Rights Committee to consider and act upon

communications from individuals claiming to be victims of Covenant violations. Other treaty-based organs within the UN system that are empowered to consider grievances from individuals in quasi-judicial manner are the Committee on the Elimination of Racial Discrimination and the Committee on Torture, under the 1965 race discrimination and the 1984 torture conventions, respectively.

Also noteworthy is the Covenant's Second Optional Protocol which is aimed at abolishing the death penalty worldwide. Adopted in 1989 and entered into force in 1991, it has been favorably received in most of the countries of Western Europe and many countries in the Americas, though not in the United States.

Nepal has been a party to the Convention since 1991. The Covenant has provisions for reporting obligation, reporting guidelines and the implementation of obligations. It has guaranteed some crucial civil and political rights to the individuals.

2.2.1 Reporting Obligation

The Covenant requires the states parties to submit reports in accordance with article 40 of the Covenant within one year of its entry into force and, thereafter, whenever the Committee so requests. However, the general comment of the 30th session reveals that until now only the first part of this provision, calling for initial reports, has become regularly operative. The Committee notes in its annual reports that only a small number of states have submitted their reports on time. Most of the reports have been submitted with delays ranging from a few months to several years, and some States parties are still in default despite repeated reminders and other actions by the committee. Nevertheless, the fact that most states parties have, even if somewhat late, engaged in a constructive dialogue with the Committee suggests that the States parties normally ought to be able to fulfill the reporting obligation within the time limit prescribed by article 40 (1) and that it would be in their own interest to do so in the future. States should pay immediate attention to the reporting obligation under the Covenant upon its ratification since the proper preparation of report which covers so many civil and political rights necessarily does require time.²

2.2.1.1 State Obligations under the Covenant

The states, being the parties to the Covenant, are mainly obliged:

- To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- To ensure that the competent authorities shall enforce such remedies when granted;
- To take necessary steps, in accordance with its Constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant;
- To respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction

² See, General Comment No. 1

of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

- To ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant;
- To abolish the capital punishment;

2.2.2 Reporting guidelines

Article 2 of the Covenant requires States parties to adopt such legislative or other measures and provide such remedies as may be necessary to implement the Covenant. As said earlier, Article 40 requires States parties to submit reports to the committee on the measures adopted by them, on the progress made in the enjoyment of the rights recognized in the Covenant and the factors and difficulties, if any, affecting the implementation of the Covenant.

The committee considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant but also the practices and decisions of courts and other organs of the State Party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligation under the Covenant.

It is the practice of the committee, in accordance with Rule 68 of its Provisional Rules of procedure, to examine reports in the presence of representatives of the reporting State. All States whose reports have been examined have cooperated with the Committee in this way but the level, experience and the number of representatives have varied. The committee wishes to state that, if it is to be able to perform its functions under article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is desirable that the States representative should have such status and experience (and preferably be in such number) as to respond to questions put, and the comments made, in the committee over the whole range of matters covered by the Covenant.³

2.2.3 Implementation at the national level

Article 2 of the Covenant generally leaves it to the States parties concerned to choose the method of implementation in their territories within the framework set out in this article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities such as positive obligation undertaken by States parties, but in principle this undertaking relates to all rights set forth in the Covenant.

In this connection, it is very important that individuals should know the rights recognized under the Covenant (and the Optional Protocol, as the case may be) and all administrative and judicial authorities should be also aware of the obligations which the State Party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize

³ See, General Comment No. 2

the authorities concerned with its contents as part of their training. It is also desirable to give publicity to the State Party's cooperation with the committee.⁴

⁴ See, General Comment No. 3

CHAPTER THREE : RIGHTS ENUNCIATED IN THE COVENANT AND SPECIAL MEASURES UNDERTAKEN TO IMPLEMENT THEM BY GOVERNMENT OF NEPAL

3.1 Overview

States parties, in particular, the states which have followed the dualistic prism are obliged to undertake necessary measures to implement the provisions of the Covenant at national situation. They are, in particular, required to take measures such as constitutional, legislative, administrative, institutional and others as are deemed necessary. With a view to accelerate compliance with ICCPR, Government of Nepal (GON)\the state has enacted many legal and constitutional measures including the fundamental rights of the people included in the newly promulgated Interim Constitution. The Country Code 1963, the Act Relating to Children 1992, the Organizations Registration Act 1978, the Civil Liberties Act 1954, the Local Self-Governance Act 1999, the Torture Related Compensation Act 1996, the Legal Aid Act 1998, the Nepal Treaties Act 1990, the Prisons Act 1962 and Prisons Rules 1963, the Human Rights Commission Act 1997, the Kamaiya Labour (Prohibition) Act 2002, are a few to name as the major legislations which are one way or other related to ICCPR.

GON\the state has also taken several institutional steps to translate the basic rights enumerated in the ICCPR into practice. GON has established regular Courts, Human Rights Committees and different Human Rights Cells in Ministry of Home Affairs, Nepali Army (the then Royal Nepal Army) and Police Head Quarters. Establishment of National Human Rights Commission, National Women Commission and National Dalits Commission are the major breakthroughs in this regard.

GON\the state has also taken several policies and programs to implement, *inter alia*, the ICCPR. The National Human Rights Action Plan and human rights policies enshrined in the Tenth Five Year Plan are the major steps in this regard.

Responding to the problems, the state constituted a high-level judicial review commission on discriminatory laws in the chairmanship of the secretary of the Judicial Council. The commission has submitted its report along with a draft bill to reform discriminatory laws.

Many discriminatory provisions of laws are being increasingly reviewed. Initiatives in this regard have been taken place at five levels: Government, Parliament, Judiciary, Political Parties and Civil Society Organizations.

3.2 Rights enunciated in the Covenant and special measures undertaken to implement them by GON

The major rights enunciated in the ICCPR and special measures undertaken to implement them by GON are discussed as follows:

3.2.1 Right of self-determination (Article 1)

The Covenant recognizes that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations

arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 'The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.' (General Comment No. 12)

Furthermore, it obliges the States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, to promote the realization of the right of self-determination and respect that right in conformity with the provisions of the Charter of the United Nations.

Measures undertaken by the state: As said above, Nepal is an independent and sovereign country wherein the supreme power of the country is vested in the people. It is politically a single unitary State wherein the division of its territory into administrative units established by law. The functions of parliament, government, and courts are divided on the principles of separation of powers, and checks and balances.

State power is exercised solely on the basis of the Constitution and such laws which are in accordance with the Constitution. The universally recognized principles and norms of international law ratified by Nepal are inseparable part of the Nepalese legal system. The people exercise their supreme power through election.

The preamble asserts that the source of sovereign authority is inherent in the people. The guarantee of the basic human rights to every citizen of Nepal is one of the basic features of the political system.⁵ Article 2 of the Constitution explicitly stipulates that the sovereignty and state authority of Nepal is vested in the Nepalese people. Moreover, as a sovereign State, Nepal has the power to enter into relations with other States, conclude treaties with them, exchange diplomatic and consular representatives, and participate in the activities of international organizations. Nepal is a member of the United Nations, its specialized agencies, Non-aligned Movement, the Group of 77 and various other international as well as regional organizations.

As a part of GON's overall strategy to transform the principle of decentralization into a living reality, to institutionalize the process of development by enhancing the participation of all the people including the ethnic communities, indigenous people, marginalized class of people, women as well as socially and economically backward groups, and to guarantee the full autonomy of the local bodies, the Local Self-governance Act (LSGA) was enacted in 1999. The newly promulgated Interim Constitution has further elaborated provisions on state restructuring and transforming, and sharing powers among all sections of people.⁶

The enactment of LSGA also marks a beginning of a new thinking in decentralization of dispute settlement and right of self-determination. It has made provisions for mediation and arbitration to resolve civil legal disputes rose at the local level with an intention to empower the local bodies to manage day to day local affairs. The overall aim of local dispute resolution is to provide alternative to formal litigation and the

⁵ See, Preamble of the Interim Constitution of Nepal 2007.

⁶ See, Part 4 of the Interim Constitution of Nepal 2007.

formal courts, and it emphasizes voluntary participation and opportunities for direct communications between disputants and outcomes based on consensus.

To this Act, at least 20 percent of the total candidates for the local level bodies must be represented by the women candidates. The Act also provisions that each ward of the VDC must have at least a female candidate. This provision has been a landmark achievement toward ensuring the participation of the women at the grass-roots level.

Provided the aforesaid legal measures to assure the free rights of people and state, no other prevailing laws in Nepal explicitly guarantee the right of self determination.

3.2.2 Equality of rights and protection of rights (Article 2)

The Covenant obliges each State Party to the Covenant to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Measures undertaken by the state: Article 13 of the Constitution guarantees the right to equality for all citizens. The state cannot discriminate citizens amongst the citizens on grounds of religion, race, sex, caste, tribe, ideological conviction or any of these. No person can, on the basis of caste, be discriminated against as untouchable, be denied access to any public places, or be deprived of the use of public utilities. In addition to the Constitution, there are other legislations such as the Civil Liberties Act which has categorically guaranteed the right to equality.

Article 13 of the Constitution reads that: "All citizens shall be equal before the law. No person shall be denied the equal protection of the law. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these. The State shall not discriminate amongst citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. No discrimination in regard to remuneration and social security shall be made between men and women for the same work."

The Constitution, through article 14, has for the first time guaranteed the right against untouchability and racial discrimination. The discriminating act has also been made liable to punishment and the victim is entitled to the compensation as provided by law.⁷

As an institutional framework to implement, *inter alia*, the ICCPR, the Human Rights Commission Act came in existence in 1997. As per the Act, the National Human Rights Commission was established in line with the UN Paris Principles. The Act requires the Chairperson of the Commission to be a retired Chief Justice of the Supreme Court as envisaged by section 3 of the Human Rights Commission Act.

The main responsibility of the Commission is the protection and promotion of human rights. The Commission has been carrying out inquiries and investigations on the basis of any kinds of information it has received about human rights violations or about negligence by any concerned individual, institution or agency for preventing human rights violations. The Commission can undertake such investigations itself, or it can assign the responsibility to an individual or any agency. The Commission after receiving the report of the investigation decides upon the case.

Independent National Dalit Commission was formed in 2002 to improve the situation of the dalits. The objective of the Commission is to promote the rights of the Dalits, improve their social, economic, political and health condition as well as to bring them into the mainstream of the country by addressing the problem of inequality and non-access to resources.

There are also some crucial judicial pronouncements to the protection and promotion of equality and equal protection of the citizens.

*Man Bahadur Viswokarma V HMG*⁸ is one of the landmark cases decided by the Supreme Court following the reinstatement of democracy in 1990 in favor of equality and equal protection of the citizens. In this case, the explanatory note of No. 10(A) of the Chapter on *Adal* of the *Muluki Ain* (the Country Code) was declared void from the date of the decision as it had contravened Article 11(4) as well as the letter and spirit of the Constitution of the Kingdom of Nepal 1990. Article 11 (4) prohibited discrimination on the basis of caste and treats untouchability as an offence. Denial of access to any public place or deprivations of the use of public utilities are made punishable by law. No. 10(A) of the Chapter on *Adal* of the *Muluki Ain* also carries the same sense. However, the explanatory provision of 10(A) had legitimized the practices traditionally adhered to in any temple or religious places as non-discriminatory. The court observed that if the explanatory provision was allowed to remain in existence and operation, the fundamental characteristic of the Constitution as the Supreme law would disappear and the general law could prevail over the fundamental law of the land.

*Kamanand Ram and Others V HMG and Others*⁹ is another example of the judicial pronouncement in favour of equality where the petitioners alleged that the defendants

⁷ See, article 14 of the Interim Constitution.

⁸ 2049 NLR at 1010.

⁹ Writ No. 3643 of 2057 B.S., Date of Decision: Sept, 28, 2002.

who were legally obligated to carry out the obligations of the State did not undertake their duties of providing administrative support and initiatives in eliminating untouchability and discouraging such malpractices in conformity with the Constitution and Convention on the Elimination of Racial Discrimination. The petitioners who belonged to the Dalit community of Siraha and Saptari districts were allegedly forced by the people belonging to the so called upper class Hindu Society to do the menial service of disposing corpses (dead bodies) of animals. On their refusal to do so, they were subjected to social and financial boycott and segregation.

Disposing the writ petition, a Division Bench held that: "In view of the Constitutional commitment towards eradication of the malpractice of untouchability and discrimination on the ground of caste it is not appropriate for Government offices like District Administration Office, District Police Office and local bodies like District Development Committees, Municipalities and Village Development Committees to display apathy and negligence in carrying out their legal obligations. Those offices and institutions are duty bound to work towards eradication of untouchability and discrimination as enjoined by No. 10 (A) of the Chapter on Adal of the Country Code". The Supreme Court issued a directive order to the defendants instructing them to always remain active and alert in carrying out their legal obligation in this regard.

However, in *Advocate Om Prakash Aryal V Council of Ministers*¹⁰, the court failed to stand in favour of equality amongst the citizens. In this case, sections 2(3), 3 and 4 of the Rajya Rajauta Act, 2017 and Rajya Rajauta Regulation, 2044 were claimed as discriminatory to the petitioner and other Nepali citizens on the basis of birth or descent because these provisions provided the title of king, life allowance and facilities/privileges to the rulers/Kings of the then States of Mustang, Bajhang, Jajarkot and Salyan, and after their death, to their descendents.

The Petitioner's claim was based on article 11 (right to equality: equality before the law, equal protection of the law, right against discrimination based on race, creed etc.) of the Constitution of the Kingdom of Nepal, 1990, articles 1 and 2 of the Convention on the Elimination of All forms of Racial Discrimination, 1965, and corresponding provisions of the International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966.)

In this case the court ruled that: "Under the equal protection of law, persons with equal circumstance are entitled to equal protection or, in other words, it is permitted that person or class or group with unequal circumstance could be treated in unequal footing or could be discriminated. They are entitled to the title of king, life allowance and other facilities or immunities in the condition of abolition of states ruled by them. In such case, the right to equality cannot be interpreted in mechanical way considering the interest of national unity and integrity."

3.2.3 Equality of rights between men and women (Article 3)

The Covenant obliges the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹⁰ 2061 Supreme Court Bulletin, Vol. 24, Ruling delivered on 2061/12/4 by the Special Bench

Measures undertaken by the state: Men and women are equal before the law. According to the Constitution, special provisions may be made by law for the protection and advancement of the interest of women, children, the aged, labourer, peasants, or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally disadvantaged.¹¹

Article 13 of the Constitution provides right to equality for all citizens by stating that: "All citizens are equal before the law. No person can be denied the equal protection of laws. No discrimination can be made against sex."

The Interim Constitution has, for the first time through article 20, explicitly guaranteed every woman the right to reproductive health and other reproductive matters. The article provides that: "No physical, mental or any other form of violence is inflicted to any woman and such act is punishable by law. Son and daughter have equal right to their ancestral property."

In addition to this, the Constitution and other legislations have paid considerable attention to provide women special privileges ensuring promotion of participation in public life and equal opportunity to work as enjoyed by the men.

It is mandatory for primary schools to have at least one female teacher. Nepal is effortful to increase women's participation in various sectors of life. GON is promoting girls education since 1975. It is also emphasizing on imparting vocational trainings, technical education and focused programmes for women as well as providing incentives to girls and disadvantaged people.

The state has focused to improve the condition of women in rural areas by providing micro credit service, enhancing capacities in development planning, creating opportunities in agriculture and a wide range of social service. The Tenth Plan aims to mainstream women into the planning process through various training programmes, skill promotion programmes, education, income generation programmes and employment creation.

The State has taken several initiatives to enhance women's participation and to improve their status. The Ninth Plan had three objectives of gender mainstreaming, eliminating gender inequality, and empowering women. Similarly, the Agriculture Perspective Plan seeks to ensure women's participation in agriculture programs through staffing and attitudinal change. It stresses that all training programmes on agriculture activities have equal number of men and women participants.

The Tenth Plan has focused on (1) Eliminating legal discrimination against women by revising existing discriminatory laws and by providing legal assistance to them to enforce the provision of the newly revised Civil Code (2) Affirmative action to increase women's role in public office, administration and community level participation and management of all which contribute to women's empowerment and (3) Introducing legal and other changes to prevent disorder against women, including social education process, involving information campaigns and public discussion about the role of women and their rights.

¹¹ See, article 13(3) of the Interim Constitution.

The State has shown its commitment to pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment. The state is also committed to pursue such policies in the protection and welfare in matters of education, health, and social security of orphans, helpless women, the aged, the disabled and incapacitated persons.¹²

Article 63 of the Interim Constitution secures women candidates for constituent assembly. For the purpose of elections to the constituent assembly, at least one third of the total number of candidates contesting the election from any organization or party must be women candidates for the purpose of proportional representation.

In addition to the Constitutional provision, the Civil Liberties Act 1955, the Labour Regulation 1993, the Act Relating to Children 1992, etc. also guarantee the right to equality. The Local Self-Governance Act 1996 has secured at least 20 percent of seats for women in local bodies i.e. VDC, DDC, and Municipalities.

Gradually, the participation of women in public service is increasing. Recently, the Ministry of Women, Children and Social Welfare has organized a special training program focusing on women with a view of preparing them for Civil Service Examination. Hopefully, the participation of women in the Civil Service will increase in the days to come. Similarly, the National Women Commission has drafted the bill of National Women Commission.

As an institutional framework, the National Women's Commission (NWC) has been formed in the country. Formed under an executive order in 2002, the Commission is claimed to be an impartial and autonomous body to promote women's empowerment, gender equity, social justice and peace, and women's participation in the mainstream of development of the nation by preserving and enhancing women's rights and well-being. To achieve these objectives, the NWC coordinates with the government, I/NGOs, intellectuals, legal experts and human rights activists. NWC identified gender biased provisions in the 1990 Constitution and held discussions for making gender sensitive constitution. Compared to the 1990 Constitution, the Interim Constitution has, to a large extent, been made gender sensitive.

Apart from the establishment of the National Women's Commission, the establishment of an informal caucus of women parliamentarian, of child welfare Committees in all 75 districts, of a separate Ministry of Women, Children and Social Welfare, separate Women Cell in Police headquarters and districts, and formation of the National Women Coordination Committee under the Chairpersonship of the Minister for Woman, Children and Social Welfare are also major breakthroughs in the institutional framework.

As a part of judicial pronouncement, the Supreme Court in *Meera Dhungana V HMG and Others*¹³ issued a directive order to the government to introduce appropriate legislation within one year so that a just and balanced scheme between men and women could be maintained. The court verdict came in response to the petition filed

¹² See, article 26 of the Constitution

¹³ 2052 NLR at 462.

by some women activists with reference to the CEDAW seeking to declare some provisions of the Country Code null and void, which discriminated between male and female members of joint family. In line with this verdict, the Muluki Ain underwent the 11th amendment to confer daughters with equal right to parental property.

In *Reena Bajracharya V HMG and Others*¹⁴, the Supreme Court examined the concept of gender justice and its application in the Nepalese legal system. In this case, Rule 16.1.3 of the Employees Service Rules of the Royal Nepal Airlines Corporation was challenged on the ground that the Rule had fixed different periods of service and age for compulsory retirement to air steward and air hostess. Twenty eight air hostesses employed at the Royal Nepal Airlines Corporation (RNAC) challenged the *Rules* as discriminatory and violative of their right to equality as it forced an air hostess to be relieved of her service upon attaining the age of 30 or after having served the job for the period of 10 years. On the contrary, rule 16.1.1 allowed the male crew members to continue their service till the age of 55. The petitioners pleaded that both airhostesses and stewards belonged to the crew service, and yet the airhostesses were subjected to blatant discrimination and forced to get early retirement merely on the ground of sex.

Addressing the question of gender equality strongly raised by the petitioners, a Special Bench held that: "Although other provisions of the Service Rules concerning provident fund, other benefits and leaves were equal for both airhostesses and stewards, the impugned provision embodied in rule 16.1.3 appeared to be discriminatory, violating the spirit of the Constitution. The concept of *equal pay for equal work* guaranteed by article 11(5) of the Constitution (1990) for both sexes is the principal source of all other guarantees regarding their service facilities and securities. And, if there is equality in regard to the fundamental issue, it is self-evident that the other related benefits, which flowed there from, such as tenure of work and resultant benefits, must also be equal." The Supreme Court stressed the need for assurance of equal benefits and security to every employee. It further opined that the provisions enshrined in Article 11(2) and (3) of the Constitution had embodied and assimilated the noble vision of elimination of discrimination on the basis of sex and implementation of the culture of equal treatment in equal situations. The impugned rule 16.1.3 was also held to be in apparent contravention with the State Policy enshrined in Article 26(7) of the Constitution which directed to *pursue a policy of making the female population participate, to a great extent, in the task of national development by making special provisions for their education, health and employment.*

The court, by highlighting the importance of gender equality, observed that: "Equality is the heart of every democratic government. Men and women are the part and parcel of humanity. Therefore, it is undisputed fact on humanitarian ground that men and women should be equally granted their rights to survive in the human world. The phenomenon of granting rights to them on similar footing is natural and cannot be avoided." Referring to the Constitution, the Court expressed that: "the Constitution is recently made by contemplating all the modern concepts of human rights recognized in the international arena. Therefore, it abolishes all forms of discrimination against women, which is enshrined under the provisions of articles 11(3), 11(5) and 26(7) of the Constitution. These articles provide for special provisions to be made by law for the protection and advancement of the interests of women, their education, health and employment and their equal remuneration for the same work." The Court furthermore

¹⁴ NLR 2057 at 376.

emphatically stated that the importance of the basic human rights like gender equality has its remote effect on the development of the human life in the aggregate, therefore, even a little smell of gender discrimination in law or legal proceeding should not be allowed as gender equality is the subject of humanity and thus a subject of common interest equally valuable for all.

In *Advocate Sapana Pradhan Malla V HMG and Others*¹⁵ relating to the issue of rape of prostitutes, the petitioner challenged the Constitutionality of No. 7 of the Chapter on Rape. The impugned No. 7 provided that a rape committed on a prostitute without her consent was punishable with a maximum penalty of up to Rs. 500 | - or imprisonment of up to one year whereas Section 3 of the Chapter on Rape provided a more stringent punishment for an offence of rape committed on women other than prostitutes—imprisonment ranging from six to ten years in the case of rape of a woman below the age of 14 and three to five years in the case of a woman above the age of 14. The petitioner contended that it was contrary to the principle of criminal justice and CEDAW to make varying provisions of punishment for the same criminal act on the basis of the status of the victims and, therefore, it infringed the fundamental rights guaranteed by articles 11, 12(1) and 20 of the Constitution.

The Special Bench observed that: "Rape is a criminal and inhuman act which directly undermines not only the individual freedom but also the right of self-determination of a woman. It is a crime not only against the victim but against the whole society. The physical suffering and mental trauma caused by this heinous crime amount to the equal degree, irrespective of whether the victim is a married or unmarried woman or a prostitute. A prostitute is also a human being and by virtue of being a human, she also has, like any other human being, the dignity, right to self-determination and independent existence. Thus, the rape of a woman without her consent constitutes a grave violation of her right of leading a dignified life and self-determination and it also amounts to an insult to the human rights of woman."

In *Sabin Shrestha & Others V Ministry of Labour & Transport Management & Others*¹⁶, Section 12 of the Foreign Employment Act, 1985 was challenged as it was inconsistent with articles 11, 12 (e) and 17 of the Constitution. The petitioner contended the impugned Section 12 claiming that it was discriminatory towards women because it imposed unreasonable restrictions on their freedom of practicing any profession or carrying on any occupation. The section stipulated that: "No employment agency shall provide foreign employment to a woman without prior permission of her concerned guardian as well as of His Majesty's Government." Disposing the writ petition, a Special Bench observed that: "The legal provision of Section 12 of the Foreign Employment Act does not impose any restrictions that women could never go out on a foreign employment or an authorized agency could never provide a foreign employment to a woman. Rather, it has simply created a procedural condition while granting foreign employment to a woman".

3.2.4 Right to life (Article 6)

The Covenant recognizes that right to life is the supreme right which can not be derogated even during a state of public emergency. It requires this right to be

¹⁵ Writ No. 56 of 2058 B.S., Date of Decision : May 2, 2002.

¹⁶ 2058 Supreme Court Bulletin (SCB), NO. 19, F.N. 229, at 4.

protected expressly by law. Moreover, it provides that in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Measures undertaken by the state: Previously, the right to life was guaranteed in the constitution as a part of personal liberty. However, along with the promulgation of the new Constitution, the right of every person to live with dignity has been constitutionally protected. Article 12 (1) of the Constitution provides that every person shall have the right to live with dignity and no law shall be made which provides for capital punishment. As the death penalty has been abolished by the Constitution, no death sentence may be carried out in the territory of the country.

Government has been providing social security allowances to the aged people and widow. Similarly, it has also been providing facilities to persons with disability and free treatment to the elderly people to save their lives.

As an institutional framework to protect and promote the right to life, the National Human Rights Commission (NHRC) was established in 2000 under the Human Rights Commission Act 1997 as a statutory and autonomous body. The newly promulgated Interim Constitution has given the Commission a constitutional status with broader mandates to monitor the Comprehensive Peace Accord endorsed between government of Nepal and CPN-Maoist in November 2006 and for monitoring the election of constituent assembly in human rights prospective. The new human rights commission act in line with the Interim Constitution is yet to come up. The fundamental responsibility of the Commission is to protect and promote human rights in the country. It has the authority to probe incidents of human rights violations or any attempt to violate human rights, or negligence or recklessness committed by any person, institution or organization relating to human rights. With regards to procedural matter, the Commission has powers similar to that of the court for the purpose of taking action on petitions, complaints and conducting fact-finding missions.

The National Human Rights Commission routinely conducts observation and fact-finding studies in various parts of the nation, and prepares reports on the basis of its findings and disseminates it. The Commission is active in raising awareness on human rights and has been imparting human rights knowledge through various sensitization and training programs. Apart from regularly presenting recommendations and

guidelines to the government, it also conducts public hearings so that the government would act to alleviate the suffering of the victims of human rights violations.

The National Human Rights Commission can play the key role in the independent monitoring of the implementation of the National Human Rights Action Plan. It is mandated to this role by its enabling Act for the effective enforcement as well as protection and promotion of the Human Rights conferred on by the Constitution and other prevailing laws. GON can provide necessary data and information required for supervision and monitoring to the Commission. The Commission may carry out inquiries and investigations on the matters of violations of human rights and abetment thereof and carelessness or negligence in the prevention of violations of human rights by any person, organization or authority concerned. It is also mandated to visit, inspect and observe any authority, jail or any organization under government of Nepal and to submit necessary recommendations to the government regarding necessary steps to be taken for the protection of human rights, and to review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions. It is also mandated to study international treaties and instruments on human rights and submit necessary and appropriate recommendations to the government for effective implementation of the related provisions, evaluate the existing human rights situation of the country and make necessary recommendations to the government regarding reports to be furnished by Nepal as its obligations under the international human rights treaties to which it is a party. It is mentioned in the Act that on the matter of Nepal's obligation to furnish reports under international treaties on human rights, the government of Nepal (then His Majesty's Government) shall furnish reports upon receiving the opinion of the Commission thereon. It also provides that the National Human Right Commission shall have a right to monitor the implementation aspect of NHRAP independently.

The Commission has built a strategic plan of five years (2003-2008). It is the product of a series of intensive exercises within the organization and many valuable feedbacks upon it from all stakeholders such as government agencies, various commissions, judiciary, law enforcement agencies, political parties, human rights organizations, civil society organizations, intellectuals, media, business sector, and donors. A product of the consolidated approach, the plan in its present shape best represents what the Commission should do, how and in what direction.

The Strategic Plan is a powerful instrument which guides the Commission in defining and performing its responsibilities. The most important strategic objectives include:

- Contribution to peace building process by ensuring that the parties to the conflict act fully in compliance with international standards of human rights.
- Promotion, monitoring and enforcement of the guarantee of fundamental rights of the people with focus on the right to life, liberty, justice and equality.
- Advocacy on the right to food, health, shelter, education and work as the fundamental rights of the people with special attention to improving the human rights situation in the most underdeveloped regions of Nepal.
- Help improve the legislative and regulatory mechanisms for control and cessation of domestic and dowry related violence against women and trafficking in women.

- Help improve legislative, monitoring and enforcing arrangements for elimination of violence against children in the form of trafficking, abuse, exploitation and the use of children in conflict.
- Help improve the extent to which international treaties and conventions are ratified, domesticated and implemented in Nepal.
- Promotion of education, information and advice about human rights.
- Transforming the image of the organization by increasing its efficiency and acceptance across all sections of Nepalese society.

In addition to NHRC, there are other human rights committees which work for the protection and promotion of basic human rights of the people, i.e the right to life.

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

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

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

HRC at the Ministry of Home Affairs (MOHA): The human rights cell, set up in the Ministry in 2003, is headed by the joint secretary. The Cell monitors any reported cases of HR violations by Nepal police, Armed Police, National Investigation Department and other government organs. It also coordinates with other HR cells established within the security agencies in order to protect human rights and to share information with them.

HRC at the Royal Nepalese Army (Now Nepali Army): The Royal Nepalese Army had set up HRC at its headquarters on July 8, 2002. The cell mainly investigates the reported cases of human rights violations by army personnel. The cell also imparts trainings to army officers on human rights, humanitarian laws and the law of war.

HRC at the Police Headquarters: HRC was established in Nepal Police Headquarters on January 16, 2003. The functions of the Cell are mainly to provide trainings to police personnel on human rights issues, to investigate complaints related to human rights violations by police personnel and to create awareness among police staff about human rights. It also coordinates with other agencies including ICRC 10 and NHRC on human rights issues. The cell is headed by the D.I.G. of police.

By dissolving the existing human rights committees functioning under different ministries, the government has formed the National Coordination Committee for Protection and Promotion of Human Rights (NCCPPHR).

The dissolved committees were Human Rights Protection Committee, Director Committee for Human Rights Promotion and National Human Rights Action Plan Implementation and Evaluation Committee. According to reports, the NCCPPHR has been formed to monitor the human rights situation across the country in a coordinated way.

Similarly, the government established an Investigation Commission on Enforced or Involuntary Disappearances on 1 July 2004 to determine the status of reported disappearances. The Commission was established following demands by relatives on hunger strikes and in accordance with the Government's "commitment on the implementation of human rights and international humanitarian law" of March 26, 2004. The Commission, consisting of representatives of the Nepal Police, the Armed Police, the Defense Ministry, the National Investigation Department and the Home Ministry, was chaired by the Joint Secretary for Home Affairs. The Commission issued four reports in total at various times with information of the status of 320 persons: 24 people in its August report, 54 people in its September report, 126 people in its October report, and 116 people in its December report. The mandate of the Commission was renewed three times for short periods. Following its fourth report, issued on 13 December 2004, the mandate of the Commission was extended for two months.

On 26 March 2004, then Prime Minister Surya Bahadur Thapa announced a 25-point commitment on the implementation of human rights and international humanitarian law, which contains detailed and concrete steps to protect and prevent human rights violations in the context of the then ongoing Maoist conflict. The commitment includes provisions for the protection of human rights without discrimination; for the respect and protection of a wide array of civil and political rights including the right to life, freedom from torture and other ill-treatment, fair trial, freedom of expression and the rights of women and children; for working together with the International Committee of the Red Cross to establish the fate and whereabouts of reported missing persons; for the respect of norms of international humanitarian law; for the protection of human rights defenders, for cooperation with international organizations such as the ICRC and the United Nations in the fields of international human rights and humanitarian law; and for strengthening of the NHRC.

The Peace Accords reached between government and CPN-Maoist at various times and the Interim Constitution also include numerous provisions and commitments to the protection and promotion of right to life.

3.2.5 Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 7)

The Covenant recognizes the right against torture or cruel, inhuman or degrading treatment or punishment and protects everyone from being subjected to such treatment or punishment. The scope of protection required under this article goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. Moreover, it requires the public authorities to ensure protection by the law against

such treatment even when committed by persons acting outside or without any official authority. (General Comment No. 7)

Measures undertaken by the state: The Constitution makes the infliction of torture as an infringement of the fundamental rights. Article 26 states that: "No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law." The fundamental right to protection from torture is non-derogable and may not be abridged or restricted under any circumstances.

Clause (a) of Section 2 of the Torture Related Compensation Act, 1996 has defined torture as "any act which causes torture whether physical or mental, inflicted upon a person who is in detention for investigation, awaiting trial or for any other reason and this term includes cruel, inhuman or degrading treatment that person is subjected to".

In accordance with Section 6 of the TRCA, the concerned District Court may, by its decision, cause GON to compensate the victims up to one hundred thousand rupees. Section 7 of the Act further stipulates that the concerned District Court shall, by its decision, issue an order to the concerned authority to take departmental action against the public official responsible for torture. However, the Act only ensures compensation to the victim; it does not make these offences punishable by appropriate penalties.

The Human Rights Commission Act empowers the National Human Rights Commission to receive complaints and award compensation on torture incidents as an alternative remedy available to the victims of torture. As per the Act, the NHRC can write to the organization or authority concerned to take necessary action against the guilty person. Similarly as per the rule of NHRC (Complaints, Action and Compensation Regulations 2000), it can determine the compensation up to Rs.100,000/- to be awarded to the victim based on the gravity of torture committed by the perpetrator.

Section 7 of the Act Relating to Children, 1992, states that no child shall be subjected to torture or cruel treatment. However, the acts of torture are not made offences under the criminal law of Nepal.

Likewise, formation of a working committee for the study and recommendation on Criminal Justice Administration on 17 August 2000 and its submission of draft of the Penal Code and Criminal Procedure Code on 8 August 2001 as well as formation of the Preparatory Committee for the implementation of the draft Penal Code and Criminal Procedure Code on 19 August 2001 under the Chairmanship of the Attorney General of Nepal are also remarkable achievements in this regard.

The Code explicitly makes torture as punishable. The Code is waiting for the Parliament to adopt. Some of the texts of the proposed draft read as follows:

- (a) Clause 180: Prohibition of torture: Any person in public authority, who commits physical or mental torture or practices cruel, inhuman or degrading treatment to any person, shall be punished with an imprisonment of three years or fine or both. The punishment will be based on the gravity of torture or such practices.

- (b) Clause 181: Prohibition of Inhuman Treatment: If any person commits such acts as to accuse anyone of practicing witchcraft or banish such person from village or boycott him/her socially or commit any inhuman or degrading treatment on such accusation or if any person banishes anyone suffering from any disease by rejecting him/her socially despite the fact that such person shall not be rejected by virtue of such disease, shall be punished with the imprisonment of up to one year or with the fine of up to Rs. 10,000/- or both. If a civil servant commits offences mentioned in this section shall be punished with additional three-month imprisonment.
- (c) Similarly clause 182 provides for a time limit of 3 months (from the occurrence of any offence, mentioned herein) for a complaint to be lodged.

Nepal Medical Council Act, 1963 has also incorporated the provision of penalizing the medical professionals who don't work in preserving the rights of patients including victims of torture. The code of conduct for Medical Professional had made it mandatory to work impartially to protect the rights of victims of torture in imparting justice. Medical professionals working contrary to the spirit of the Medical Code of ethics would face severe punishment as per the gravity of the acts so done. The Torture Related Compensation Act, 1996 has given full responsibility to the medical professionals to establish the victim of torture and assist them receive justice if so done against them by the law enforcement officials. The code of conduct for the public prosecutor is also put in effect to ensure the fairness of prosecution in offences including torture.

According to section 9 of the Evidence Act, 1974, a statement obtained by any inducement, threat, torture, and attempt to torture or against his/her consent shall not be treated as evidence by the court. Any statement given by the accused outside the Court confessing the crime shall not be taken as evidence unless the other independent evidence has proved it otherwise. The Act also details the procedures for the cross-examination of witnesses and says that the burden of proof shall be on the prosecution.

Similarly, Article 14(3) of the Constitution states that no person accused of any offence shall be compelled to be a witness against himself/herself.

3.2.6 Freedom from slavery, the slave trade or forced labour (Article 8)

The Covenant guarantees that no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. It also provides that no one shall be held in servitude and shall be required to perform forced or compulsory labour.

Measures undertaken by the state: No slavery, slave trade or institutions or practices similar to slavery are found in Nepal. Nepalese law has prohibited forced labour or servitude. Traffic in human beings, slavery, serfdom or forced labours in any form are prohibited by article 29 of the Constitution. Every citizen is provided with the right against any form of exploitation. However, compulsory service prescribed by law for public purposes is an exception to this provision.

The chapter on Trafficking in Persons of the Country Code prohibits the act of selling persons. It declares such an act as a criminal offence. Section 1 of the chapter prohibits

taking a person out of the territory of Nepal and/or to sell him or her. Similarly, the Human Trafficking (Control and Punishment) Act, 2043 provides punishment for such an act with the imprisonment of up to 15 years. Section 3 of the chapter prohibits making anyone a slave, serf or anything of that kind. The offenders to this law are liable to imprisonment for 3 to 10 years, and the victim is also entitled to compensation from the offender.

Similarly, the chapter relating to "Wages" of the Country Code provides that no one can be employed in any job without his or her consent. Except as otherwise settled by any contract and arrangement, to employ anybody without providing him with reasonable wages is illegal. The perpetrator of this offence is liable to pay a maximum fine of 100 rupees and the victim is entitled to receive the wages for his work done.

The Constitution aims at establishing an economic system based on social justice by preventing economic exploitation of any class or individual. Every citizen is free to practice any profession or to carry on any occupation, industry or trade. One is free to choose a profession in accordance with one's choice, abilities, training and education.

The Kamaiya Labour (Prohibition) Act 2002 has been enacted to prohibit the practice of bonded labour throughout the country. On July 17, 2000, GON made a landmark decision to outlaw the Kamaiya System (bonded labour), where the debt-ridden rural farmers have been working as bonded labourers to pay off debts drawn by their ancestors. "Kamaiya" system was prevailing in Dang, Kailali, Kanchanpur, Bardiya and Banke districts of Western Nepal. One hundred one thousand five hundred twenty two (101522) Kamaiyas have been liberated from the decision.

3.2.7 Rights to liberty and security of the person (Article 9)

The Covenant guarantees that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.¹⁷

Measures undertaken by the state: Every citizen has the freedom of liberty and security of person. Article 12 of the Constitution stipulates that no person shall be deprived of his personal liberty, and no law shall be made which provides for capital punishment. Article 24 of the Constitution provides that no person who is arrested shall be detained without being informed, as soon as possible, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. Moreover, every person who is arrested and detained in custody shall be produced before a judicial authority within a period of 24 hours after

¹⁷ With this freedom, the Covenant also ensures the right of anyone who is arrested be informed, at the time of arrest, of the reasons for his arrest and be promptly informed of any charges against him; anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power and be entitled to trial within a reasonable time or to release; anyone who is deprived of his liberty by arrest or detention be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful; and anyone who has been the victim of unlawful arrest or detention have an enforceable right to compensation.

such arrest, excluding the time required for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority. Similarly, section 15 of the Civil Liberties Act provides that no person shall be detained without being informed as to the reason for detention. "Right to be informed" is strictly followed in legal and judicial practices.

Anyone arrested or detained on a criminal charge is brought promptly before a competent court or any other authority authorized by law to exercise judicial power. Every citizen has in such a case the right to seek appellate jurisdiction in the Appellate Court or move writ petition in the Supreme Court or the Appellate Court to test the legality of his/her detention. The writ of habeas corpus has been an effective remedy against illegal detention in the realm.

The right against preventive detention is also a fundamental right of citizens guaranteed by the Constitution. Article 25 of the Constitution provides that no person shall be held under preventive detention unless there is sufficient ground or an immediate threat to the sovereignty, integrity or law and order situation of the country. Moreover, the Constitution in article 25 (2) explicitly provides that any person held under preventive detention shall, if his detention was contrary to law or in bad faith, has the right to be compensated in a manner prescribed by law.

The Public Security Act, 2046, a law made for this purpose, in section 3.1 provides that if a person poses an immediate threat to the sovereignty, territorial integrity or law and order situation of the country, he can be held, by an order of the Chief District Officer, in preventive detention for a specific time and in a specific place. This threat must be demonstrated with due reason and sufficient ground. Similarly, section 12 A provides that if a person is held under detention in an illegal manner or with a *malafide* intention, he is entitled to have reasonable compensation by a decree of a court of law for such illegal detention.

3.2.8 Right of detained persons to humane treatment (Article 10)

The Covenant guarantees that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It also ensures that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons; and accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. Furthermore, the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The segregation of accused persons from convicted ones is required in order to emphasize their status as un-convicted persons who are at the same time protected by the presumption of innocence stated in Article 14.¹⁸

Measures undertaken by the state: Nepal is a party to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The Nepalese

¹⁸ See, General Comment No. 9

penal system is claimed to be based on reformatory theory and Nepalese legislation has paid substantial attention to reforming the convicted persons and rehabilitating them. For example, section 41 A of the chapter on "Sentences" of the Civil Code provides that so long as the convicted person personally submits himself to the law court and becomes ready to pay a fine or undergo imprisonment in accordance with the judgment, 20 per cent of that punishment may be reduced by the court.

The Prisons Act, 2019 stipulates legal provisions concerning the process of keeping criminals in prison, the treatment therein and the facilities thereof. These provisions are aimed at providing criminals with humanitarian treatment. Section 6 of the same Act stipulates that males and females in custody and in prison, and criminals in civil and criminal cases are to be kept separately. Section 8 deals with the status and maintenance of minors in prison. Section 10 prohibits the forced labour of prisoners; however, any act can provide this in order to enhance the economic status and reformation of the prisoners. Section 12 provides that the female prisoner who is six months' pregnant may be released on bail, except for female criminals convicted of serious crimes such as sedition or homicide.

Food supply: The government is fully responsible to provide food to the inmates. It is provided in cash and rice on weekly basis. Recently, government has doubled the cash and ration. In the face of government ration, prisoners are also allowed to purchase food from the market or from prison shops. Vegetables and other daily necessities are purchased either from local markets or from the suppliers. Prisoners are allowed to conduct mesh or cook food on their own.

Clothing: Government provides two pairs of clothes every year - warm clothes for winter and cotton clothes for summer. Materials like quilts, blankets, mats, etc are also provided according to the prison regulation.

Vocational training: Vocational training is an integral part of the rehabilitation programme. Government is encouraging prisoners to be more involved in trainings. NGOs are liberally allowed to provide trainings and skill developing activities for prisoners. As a consequence, different activities take place in prisons and prisoners are engaged in many activities viz, meeting, candle making, furniture making, soap making, caps and hats making, etc. These activities support prisoners in earning additional money to make their prison life comfortable. In addition to these activities, there are four big prison industries operating inside the prisons of the country. Prison industry helps prisoners to develop skills and provides wages to them for the work they do. Prisoner works in the prison industries can get two months exemption of sentence in a year.

Education Programme: Government has given importance to prison education. It is believed that education is the integral part of the rehabilitative programme. The philosophy of prison education is to eliminate illiteracy. School level education and private examination center of the university is provided by the government. NGOs are encouraged to provide informal and pre-school education. Majority of the inmates have received basic education. Juvenile delinquents are allowed to go to schools for advance academic course as other students outside. Special rehabilitation education is also provided to the drugs addicts.

Hygiene and healthcare services: All inmates are free to use water without wastage. They have facilities to clean and wash clothes, use toilets and take bath as and when they wish. By the virtue of Prison Act, prisoners are entitled to free health service and medication. Doctors, nurse and health workers are deputed in the prison. However, health service is not adequate to satisfy the demands of inmates. Ordinary cases are treated in the prison and follow ups are made by the medical staff. Severe medical cases are referred to nearby government hospitals.

Other daily living conditions: Prison authorities encourage prisoners to organize cultural and recreational activities to boost up their mental and physical fitness. Most of the prisons in the country have library containing different books and reading materials. Big prisons have computer and typing facilities. All inmates are allowed to use library and borrow books. Those awaiting trial and convicted prisoners are allowed to watch television with different channels. Family members are allowed to meet prisoners twice a week. Smoking and alcohol are not permitted at all in the prison. Prisoners are allowed to buy their necessities by their own saving.

Medical service: All prisoners are provided free health check ups and medicines. Prisoners are checked up by the prison doctors initially and if in case they require specialized services or treatment they are referred to government hospitals on the recommendation of prison doctors.

Juvenile correction home: In 2001, Nepal produced a special treatment center for juvenile delinquents called "Bal Sudhar Griha (BSG)". BSG is established separately in a public private partnership approach. BSG resembles a children hostel wherein children are treated as school children. It is financed by government and managed by a NGO called UCEP-Nepal. It is running smoothly.

Children welfare centers: Prisoners' children are deprived of food, proper education and care. Thus, children's welfare centers are being operated by different NGOs in their own initiatives. The government has assigned responsibility to the Bal Mandir to look after dependent children of the prisoners.

Community rehabilitation center: Drug is the second highest crime after murder in the country. Young urban generations are severely affected by the drugs problem in Nepal. Community rehabilitation center in Nakhu prison is a special care center for the prisoners addicted to drugs. In this center, many activities are being conducted for correcting drugs addicts. Treatment, training, meditation and skill development activities are being conducted.

National Human Rights Action Plan for prison management and reform has been formulated by the government for the promotion and protection of human rights of the prisoners.

As an institutional framework, prison management has been working within the procedures laid down by Prisons Act and Rules. The act and rules clearly spell out details about rights and duties of the prison administrators, facilities and segregation of the prisoners. It also provides details about family contacts and legal counseling, investigating prison offences and disciplinary actions against prisoners. But most noteworthy is the provision of remission of prison sentences on the ground of good

conduct. Any prisoner who is supposed as disciplined and corrected can be released after the expiry of fifty percent of prison sentence.

There are 73 prisons in the country, ranging from smaller to bigger ones on the basis of their holding capacity and other physical infrastructure. These prison administration offices have been working under the overall policy guidelines of the Ministry of Home Affairs and under direct control of Chief District Officer in the district. The Department of Prison Management is a central policy-implementing agency concerning prison related issues and it hears the prisoners solicit.

Prison officials are appointed in the civil service through open competitive examination. Promotions and transfers are made according to the civil service regulation as there is no separate prison service. Since prison job is not lucrative, people are not willing to work with the prison. Apart from that, prison's staff members lack motivation in the absence of career opportunities and job satisfaction. There are two types of staff in the prison: civilian and police. The jailers who are civil staff are responsible for overall management of prisons while the police take charge of external security matters and they are from separate police service. Prisons are divided into four categories based on their holding capacity and other facilities available. Jailers ranges from Gazetted second to non-gazetted first class, depending upon the prisons' carrying capacity and workload.

The court has taken interest towards penal reform approach. It has tremendous positive impact on the lives of inmates in the prisons.

In *Advocate Chandra Kant Gyawali & Others V HMG and Others*¹⁹, a Special Bench delivered a landmark judgment-invalidating clause (1) of rule 21 of *the Prison Rules, 1963*, terming it to be violative of the equality clause (Art 11(3)) of the Constitution of the Kingdom of Nepal 1990. This rule had provided for classifying prisoners in class A and class B on the basis of their level of education and social and economic status. There was greater difference in respect of daily allowances and other facilities to be provided to the prisoners belonging to class A and class B. The Justices rightly observed that: "As the law does not determine the quantum of punishment on the basis of the level of education of the accused rather on the basis of the gravity of the offence so also the convicts should not be classified into different groups on ulterior considerations, like their level of education and status. Every person condemned to punishment according to the nature of the crime committed by him must be made to undergo the punishment in the similar manner. Higher education or higher living standard of a convict could not be a valid factor to detract from the punishment handed out to him."

The Justices further observed that: "Our Constitution does not permit such waiver, relaxation or special privilege to the people belonging to higher social status. It would tend to be discriminatory to differentiate between the people solely on the grounds of higher or lower status and also contrary to the spirit of the Constitution guided by the objective of the creation for an egalitarian society." Hence, the Supreme Court unanimously held the impugned provision contained in clause (1) of rule 21 of *the Prison Rules, 1963* as repugnant to Article 11(3) of the 1990 Constitution and rendered it derecognized and ineffective in view of the provision of Art 131 of the Constitution.

¹⁹ 2057 NLR at 5.

However, it is highly regrettable that although this decision had been made on June 3, 2000, the alleged discriminatory treatment is still being generally carried out in practice in various prisons.

Chief District Officer or his assistant inspects the jail in every six months or anytime as needed. A prisoner may lodge a complaint to CDO at anytime directly or through the jailer or through his relatives about any illegal activities or punishment including torture within the prison.

Besides, there is a legal provision that requires the Judges of Appellate Court to visit and inspect the jails at least once a year. They submit the report to the Supreme Court and a copy of that is given to the government for the necessary action.

Similarly, competent officials of the NHRC also visit and inspect jails and detention centers as mandated by the HRC Act, 1997.

The Jailers of prisons are responsible to protect the prisoners from any sort of abuse or violations of their human rights inside the jail as stated in the Prison Act, 1963. The ICRC is given full and free access to jails and detention centers and hears complaints in confidence. Complaints received by the ICRC are forwarded to an appropriate authority for further action.

3.2.9 Right to freedom from imprisonment for inability to fulfill a contractual obligation (Article 11)

The Covenant guarantees that no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Measures undertaken by the state: Though the specific legislations in force make no provision for imprisonment on the ground of inability to fulfill a contractual obligation, No 42 of the Chapter on "Sentences" of the Civil Code has yet such provision, which needs to be reformed by an appropriate measure.

3.2.10 Right to freedom of movement and choice of residence (Article 12)

The Covenant guarantees that everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence. Everyone is free to leave any country, including his own. The Covenant furthermore ensures that the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country.

Measures undertaken by the state: Nepalese citizens enjoy freedom of movement, free choice of residence and other rights provided for under article 12 of the Covenant. Article 12 of the Constitution provides that every citizen shall have freedom to move throughout the country and reside in any part thereof. Any Nepalese citizen is free to enter the country.

However, article 12.3 (5) of the Constitution provides that reasonable restrictions may be imposed on this right, by law if so warranted, to maintain harmonious relations

between peoples of various castes, tribes or communities. Thus, this provision substantially complies with the provisions of article 12 (3) of the Covenant. Nepali citizens freely enjoy freedom of movement and also take pleasure in the choice of residence in the country as they like. Article 12 of the Constitution has guaranteed six freedoms including freedom of movement which provides that: "All citizens shall have freedom to move throughout the country and reside in any part thereof."

3.2.11 Right of aliens to due process when expelled (Article 13)

The Covenant guarantees that an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Measures undertaken by the state: Nepalese legislation pays considerable attention to the rights of aliens. Section 3 of the Immigration Act 1992 provides that no foreigner can enter or reside in Nepal without obtaining a visa. Section 6 authorizes personnel appointed by an Immigration Officer or the Director General of the Department of Immigration may, at any time or place, scrutinize or seize the documents relating to the entrance, presence or departure of an alien. Section 5 prohibits aliens from using or making use of fraudulent passports or visas and from stating false particulars including name, age and nationality. According to section 8, an Immigration Officer can initiate an investigation into offenses relating to immigration on the basis of information received, directly or indirectly, from any person. In this regard, he/she can use the same powers as may be used by the police regarding government cases.

Section 9 stipulates that the Immigration Officer should, upon completion of the investigation, submit a report to the Director General, who, after following due procedure and with the consent of His Majesty's Government (now government of Nepal), can make a decision to expel the alien from the territory of Nepal. Under section 11, any alien aggrieved by such a decision can invoke the jurisdiction of the Appellate Court and is entitled to file a petition of appeal within 35 days of the decision in that court.

The right relating to justice conferred by article 24 of the Constitution can also be enjoyed by aliens under which they can enjoy the right against self-crimination; right against double jeopardy; right against torture; and so others.

Pursuant to article 13 of the Covenant, an alien found entering the territory of Nepal unlawfully may only be expelled in pursuance of a decision reached in accordance with law; he is allowed to submit arguments against his expulsion under the principle of natural justice followed strictly by the judicial system, and to have his case reviewed by the competent court.

3.2.12 Right to equality before the courts and tribunals (Article 14)

The Covenant guarantees that all persons are equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may

be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law is made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.²⁰

Measures undertaken by the state: Under the Judicial Administration Act 1991, each citizen has a right to invoke the jurisdiction of the concerned District Court (Trial Court) in case of violation of his or her legal rights. The parties to a case have a right of first appeal. Most importantly, under article 107 of the Constitution, any Nepalese citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with the Constitution. For the violation of any legal right conferred by the Civil Liberties Act, an aggrieved person may file a petition in the concerned Appellate Court under section 17 of that Act. The Appellate Court may, in turn, issue an order of injunction or a writ of mandamus or habeas corpus or to that effect.

Hence, the Constitution, the Judicial Administration Act, the Civil Liberties Act and other Nepalese legislation provide Nepalese citizens with the right to appropriate recourse before the courts. Citizens are entitled to defend themselves before the courts against any unlawful act perpetrated by a State organ or any of its officials, and against any encroachment upon their honour, dignity, life, health, personal freedom or property and other rights.

It has already been mentioned that equality before the law or equal protection of the law is a fundamental right of the citizens and persons as the case may be. The right to equality may not be restricted in any manner except in the case of the proviso to article 13 (3).

²⁰ With this right, the Covenant also ensures certain rights regarding criminal justice, which include: the right to be presumed innocent until proved guilty according to law; the right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; the right to be tried without undue delay; the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of Justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court; the right not to be compelled to testify against himself or to confess guilt; the right to be immune from the guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed; the right against the imposition of a heavier penalty than the one that was applicable at the time when the criminal offence was committed; the right to compensation for the victim of unlawful arrest or detention and so fourth.

Article 24 of the Constitution contains an extremely important stipulation as it guarantees suspects and accused persons the right to defense. This is ensured through the attendance of a defense lawyer from the moment one is detained, arrested or charged.

In pursuance of article 14 of the Covenant, the Constitution stipulates that the State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law.

Similarly, section 30 of the chapter on "Court Procedure" (Adalati Bandobast) of the Country Code, for the purpose of realizing and consolidating the concept of natural justice in the course of settlement of disputes or hearing a case, provides that no judge can hear and decide a case involving his blood relatives.

Under the law of Nepal, an accused person is considered innocent until his guilt is established and is not compelled to be a witness against himself.

As an institutional framework, judiciary is the firmest pillar of the government, a protector of the constitution and a watchdog of the fundamental rights and basic liberties of the people. The courts of the country consists three tiers; supreme court, appellate court and district court. The remarkable achievement of the multi-party democracy is the establishment of the independent judiciary. The Constitution has granted the judiciary the power of judicial review, checking any attempt made by executive and the legislative beyond the limits of the Constitution. To protect the human rights, the Supreme Court has the extraordinary power to issue an appropriate order and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

The judiciary of Nepal has responsibility to uphold the fundamental human rights of people. Right to fair trial and fair hearing is associated with the fair and independent judiciary system. The Supreme Court as an apex court of the country has made a number of land mark pronouncements in regard to the civil and political rights of the people.

The judges are appointed on the recommendation of the Judicial Council, a constitutional body. The Council is also responsible for the assignment of judges, disciplinary action, and other administrative matters. The Constitution has also advanced a mechanism called Constitutional Council to appoint the chief justice of the Supreme Court including other officials of the Constitutional Bodies. Judges decide cases; there is no jury system. Apart from the regular courts, there is a Special Court which has been empowered to hear cases related to trafficking in women and girls and crimes against the state.

There are also quasi-judicial bodies which exercise the judicial powers. The Chief District Officer (CDO), highest ranking in the district, has quasi-judicial power under various Acts. Similarly, forest officer and customs officer have limited quasi-judicial authority.

3.2.13 Right vis-à-vis no crime without law (Article 15)

The Covenant guarantees that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

Measures undertaken by the state: Under the law of Nepal, no one is guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under law, at the time when it was committed.

Article 24 of the Constitution stipulates that: "No person shall be punished for an act which was not punishable by law at the time the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence."

Nepalese legislation has strictly followed the recognized principle of criminal justice as enumerated in article 15 of the Covenant that no substantive laws are to be enacted having *ex post facto* effect.

3.2.14 Right to be recognized as a person (Article 16)

The Covenant guarantees that everyone has the right to recognition everywhere as a person before the law.

Measures undertaken by the state: All citizens are entitled to be treated as persons before the law and to equal protection of the law. Articles 12 and 13 of the Constitution have secured provisions in this regard. However, there is no specific legal or other measure to guarantee the right to be recognized as a person.

3.2.15 Right to privacy (Article 17)

The Covenant guarantees that no one can be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. It also ensures everyone has the right to the protection of the law against such interference or attacks.

Measures undertaken by the state: Article 28 of the Constitution stipulates that, except as provided by law, the privacy of a person, house, property, document, correspondence or information of anyone is inviolable. As the wording of this article indicates, the right to privacy is available not only to the citizens but also to every person present in the country. This provision can be seen as a measure for the implementation of the provisions of article 17 of the Covenant.

The right to privacy is one of the fundamental rights enumerated under the Nepalese Constitution that has direct relationship with the right to information. The right to privacy deals with private information and secures personal privacy. It also ensures correct personnel information by making easy access to information related to oneself. The sophisticated developments in science and technology have expanded the right to privacy by the use of internet, e-mail, fax, voice-mail, etc without disturbance.

The Civil Liberties Act 1956, except as provided by the law, prohibits forceful entrance in private houses.

The Postal Act 1962 has made the act of unlawful opening of the postal materials by any employee of the postal department or by any other person en route punishable under the law.

The Tele Communications Act 1962 has also prescribed various penalties for trespassing into the telegraph office of a licensed person or for trying to seek information about some message through unlawful means or for divulging the details or any part of any message to any unauthorized person.

Before entrance to private house for investigation, police must pre-inform the owner for the respect of right to privacy. Similarly, no officials have right to intervention on private letter, telephone or two-way communication.

State and local government authorities and their officials may not interfere with the family life or privacy of any person, except in the cases and in accordance with the procedure established by the law for the protection of public health, public order, public rights and liberties of others or in order to prevent a criminal act, or to establish facts in criminal proceedings.

The *Annapurna Rana V Kathmandu District Court and Others*²¹ is probably the first case about privacy in Nepal. The court by interpreting the significance of privacy held that the right to privacy was an integral part of right to liberty.

During the period of emergency, security forces faced heavy criticism for failing to uphold right to privacy.

3.2.16 Right to freedom of thought, conscience and religion (Article 18)

The Covenant guarantees that everyone has the right to freedom of thought, conscience and religion. This right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. It further guarantees that no one can be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Furthermore, it ensures freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Measures undertaken by the state: The Constitution in article 12 (2) (a) and the Civil Liberties Act in sections 6 and 7 guarantee citizens' freedom of thought and conscience. Article 23 of the Constitution stipulates that every citizen has the freedom to profess and practise his own religion as handed down to him from ancient times, having due regard to traditional practices. But no person can convert another person from one religion to another. Every religious denomination shall have the right to

²¹ NLR 2055 at 476, Vol 8, Dec No. 6588

maintain its independent existence and for this purpose to manage and protect its religious places and trusts. Section 7 of the Civil Liberties Act also provides the right to religion.

Hence, pursuant to article 18 of the Covenant, Nepalese legislation imposes some restrictions on the exercise of this right, imperative from the viewpoint of public safety, order, health, morals, or the fundamental rights and freedoms of others. Provided that, no person shall be entitled to convert other person from one religion to another and that every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

3.2.17 Right to hold and express opinions without interference (Article 19)

The Covenant guarantees that everyone has the right to hold opinions without interference; the right to freedom of expression; which include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Measures undertaken by the state: Since the restoration of multi-party democracy in Nepal, society has been more open and more transparent. Every citizen has the right to be informed of matters of public concern. Article 27 of the Constitution provides every citizen with the right to demand and receive information on any matter of public importance. This provision is pursuant to article 19(3) of the Covenant.

Article 12 (3) (a) of the Constitution explicitly provides that all citizens shall have freedom of opinion and expression. Article 15 of the Constitution guarantees the right regarding the press, publication and broadcasting. It is the first instance that the Constitution expressly ensures the right to broadcasting as an integral part of freedom of speech and expression. To these provisions, no publication and broadcasting or printing of any news items, articles, editorials or other reading materials or audio-visual materials shall be subjected to censorship.

Moreover, section 6(1) of the Civil Liberties Act provides freedom of speech and publication to the citizens of Nepal. The Consumer Protection Act 1997 provides the right to be informed about the price and quality of the consumer goods. The Act also recognizes the right to consumer education.

Nepal is one of the few countries of the world, which have guaranteed the right to information to their citizens by the constitution. Right to information is essential for the effective exercise of various rights guaranteed by the constitution, particularly the right to freedom of speech and expression of the citizens and the right of the mass media.

Though with the restoration of democracy in 1990, freedom of opinion, freedom of press and other means of communications were being largely developed, the conflict between government and CPN-Maoist put Nepalese media professionals and human rights defenders under threats of enjoying the constitutional rights.

In one event, on 9 October 2005, the then HMG promulgated an Ordinance by amending some of the Nepal Acts Relating to the Media. The Ordinance was in flagrant violation of constitutional norms and international law. It was clearly

designed to further the government's control over the media and further restrict the distribution of news and information within Nepal. Given the seizure of power by the King and the imposition of a state of emergency in February for several months, the role of the independent media to inform the public could not be more crucial. The imposition of this Ordinance was a highly regrettable development in Nepal which, until recently, had a very negative impact on the vibrant and independent media sector.

The Ordinance represented a continued and intensified repression of the media during the state of emergency from February 2005.

During the period, a number of newspapers and television stations were shut down and the FM and community radio stations were not allowed to broadcast any 'news', following a Notice given by the King's regime on 3 February 2005. The state of emergency was lifted only on 29 April 2005 and the six-month ban imposed by the Notice expired on 2 August 2005. The ban on news broadcasting, however, continued to be enforced despite the fact that the Nepalese Supreme Court, on 10 August 2005, held that the government had no right to take action against the Rainbow FM for defying the ban on airing news programs on FM radio. Two days earlier, Rainbow FM had filed a suit against the government for threatening to cancel its broadcast license.

The government used the Ordinance to prevent the broadcast of any news that would possibly damage the reputation of the King or members of the royal family. As a part of the premeditated actions, police on 21 October 2005 attacked the Kantipur FM and on 26 October 2005 the government issued a 24-hour ultimatum to Kantipur FM to produce a formal explanation for its failure to comply with the Ordinance or face revocation of its broadcast license. Further, the Ministry of Information and Communication issued a letter on 17 October 2005 which instructed that "all the FM stations were requested not to broadcast 'news programme' according to the newly issued government ordinance".

The key provisions of the Ordinance were as follows:

- significantly extending restrictions on the importation of foreign publications;
- providing for the Press Council, a body appointed by the government, to recommend that the government cancel a journalist's professional certification in the event of repeated violations of the professional Code of Conduct, which is adopted and applied by the Press Council;
- imposing new, retroactive rules which limit media ownership to two of radio, television and/or newspaper outlets;
- prohibiting broadcasters from broadcasting from more than one location without government permission;
- extending wide-ranging prohibitions on what may be broadcasted – including matters which aim to "create unusual fear and terror in the general public" and which "misinterpret, disregard, insult or undermine any caste or ethnicity, language, religion or culture" – from advertisements to all programmes; and
- substantially increasing penalties to a punitive level – often by ten-fold and, in the case of defamation by 100-fold for the media – for breach of a range

of restrictions on media activities, thereby exerting a chilling effect on freedom of expression.

3.2.18 Right to peaceful assembly (Article 21)

The Covenant recognizes the right of peaceful assembly and guarantees that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Measures undertaken by the state: Article 12(3) (b) of the Constitution stipulates the freedom to assemble peacefully and without arms. But reasonable restrictions can be imposed on any act which may undermine the sovereignty, integrity or law and order situation of the country. This clause complies with the provision of article 21 of the Covenant which stipulates that restrictions may be placed on the exercise of this right which are in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

During the period of emergency, right to freedom of peaceful assembly was suspended. Armed and violent assembly is prohibited under the constitutional arrangement. Peaceful assembly, demonstration, rallies, gatherings, etc are the democratic practices guaranteed by the Constitution. At present, political parties are organizing gatherings, rallies, mass meetings, strikes, bandhas, agitations, and demonstrations against the government.

Likewise, civil society organizations and NGOs are also holding gatherings and conducting workshops, seminars, rallies, press conferences, and demonstrations as well as launching several programmes. There is no obstruction in enjoying right to freedom of peaceful assembly guaranteed by the Constitution.

3.2.19 Right to freedom of association (Article 22)

The Covenant guarantees that everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Measures undertaken by the state: Article 12(3) (c) of the Constitution stipulates that all citizens are free to form unions and associations of their choice. Section 6(3) of the Civil Liberties Act also provides citizens with this right. Pursuant to article 22(2) of the Covenant, reasonable restrictions can be imposed on the exercise of this right for the protection of the sovereignty and integrity of the country, for maintaining harmonious relations between the peoples of various castes, tribes or communities and for the protection of public morality.

Under article 141 of the Constitution, citizens who are committed to common political objectives and programmes are entitled to form and operate political organizations or parties of their choice, to generate or cause to be generated publicity to secure support and cooperation from the general public for their objectives and programmes, and to

carry out any other activity for this purpose. Any law, arrangement or decision which restricts any of these activities is considered to be inconsistent with the Constitution and is void. Similarly, such law, arrangement or decision allowing for participation or involvement of only a single political organization or party or persons having a single political ideology in the elections or in the political system of the country is also inconsistent with the Constitution and is void.

The Trade Union Act 1992 has been enacted to protect and promote the vocational and professional rights and benefits of the workers in any institution or corporation. Under section 3 of the Act, workers of any institution are allowed to form trade unions for the protection of their professional interests. Under section 4, at least 50 trade unions or 5,000 workers of institutions having a similar nature can, by a contract, form a trade union association. Under section 5, at least 10 trade union associations can, by a contract, form a trade union confederation. Under section 8, a trade union is made an autonomous and a legal person or body. This Act was enacted to recognize and encourage the right of workers to form unions for the protection and promotion of their professional interest. Thus, the Nepalese Constitution and legislation guarantee that everyone has the right to freedom of association with others, including the right to form and join trade unions.

3.2.20 Right of men and women to marry (Article 23)

The Covenant believes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It recognizes the right of men and women of marriageable age to marry and to found a family. It strictly prohibits any marriage which is entered into without the free and full consent of the intending spouses. It requires states parties to the present Covenant to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

Measures undertaken by the state: Nepalese society and the State have protected the family as the natural and fundamental unit of society. Every mature person has the right to choose his/her partner for marriage. For this purpose, the legal age for marriage without parental consent is 20 for both male and female. While with parental consent it is 18 for both. The free will of the prospective spouses is given due importance. Under the same chapter, a marriage entered into without the free and full consent of the parties is voidable. The chapter contains appropriate steps to ensure the equality of rights and responsibilities of the parties to a marriage, during the marriage and at its dissolution.

Joint family system remains the norms of the Nepalese society, while nuclear families are becoming more common in the urban areas. Several types of marriage systems are prevailing in the society. Most common is arranged marriage. Nowadays, love marriage has been getting popularity among young generation.

The marriage by registration system has been introduced for those who have attained the marriageable age. Interested person may register their marriage application and obtain a Certificate of Registration of Marriage from District Administration Office. This system is applicable to everybody without any discrimination irrespective of race, caste, religion, ethnicity or creed.

3.2.21 Right of the child to be treated as a part of his family, society and State (Article 24)

The Covenant guarantees that every child has, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. It requires every child to be registered immediately after birth, have a name and right to acquire a nationality.

Measures undertaken by the state: The Interim Constitution has, for the first time, guaranteed the right of the child in a separate article. The Constitution enumerates that every child shall have right to his/her own identity and name; the right to get nurture, basic health and social security; and the right against physical, mental or any other form of exploitation. The Constitution also guarantees special privileges from the state to helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children.²²

According to article 8 of the Constitution, a person who is born after the commencement of the Constitution and whose father or mother is a citizen of Nepal at the time of his birth shall be a citizen of Nepal by descent. The Constitution also stipulates an article which says that every child who is found within the country the whereabouts of whose parents are unknown shall, until the father or mother of the child is traced, be deemed to be a citizen of Nepal by descent.

Nepalese legislation has paid substantial attention to providing every child with the right, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, to such measures of protection as are required by his status as a minor. Article 26(8) of the Constitution provides that the State shall make necessary arrangements to safeguard the rights and interests of children.

Section 2(a) of the Act Relating to Children 1992 defines child as one who has not attained the age of 16. Section 2 (e) of the Act defines a helpless child as one who does not have any parents or family members to provide necessary care. A helpless child can also be one who has been rejected by the parents or family members, or one who does not have any means of livelihood.

Section 3 of the Act stipulates that a child has the right to a name, which is to be given by his/her father, by his/her mother in the absence of the child's father, and by close relatives in the absence of the mother. In case the parents or close relatives cannot be identified, a guardian or institution that is looking after the child shall name the child in accordance with the religion, culture and customs of the guardian.

Section 4 of the Act specifies that the duties of the parents are to provide their children with food, education, health and recreational facilities. The parents' responsibilities also include immunizing their Children against diseases.

The Act states that every child labourer shall be provided equal remuneration for the work he/she does, irrespective of the child's sex, religion, race, colour, caste or community. The Act prohibits parents from discrimination between boys and girls while providing food, education and health care. Sections 4, 5 and 6 of the Act further state that no discrimination shall be made between a son and a daughter, among sons

²² Article 22.

and daughters, or between children born out of wedlock or in lawful wedlock in matters relating to their upbringing, education and health care. No discrimination of any kind shall be made between a natural and adopted child.

The Act mentions that it is the parents' duty to feed, support and raise their children and to vaccinate them against various diseases. The Act also mentions that it is the State's obligation to provide the parents with the necessary advice, education, and services related to family planning and preventive health care.

Section 7 prohibits children to be subjected to torture or cruel treatment. Provided that, the act of scolding and minor beatings by father, mother, member of the family, guardian, or teacher for the interest of the child is not considered a violation of the provision of law, and as such, it is not considered violation of the child rights.

Section 11 exempts a child below the age of 10 from criminal liability, which reads that:

- If a child below the age of 10 commits an act which is an offence under law, he\she shall not be liable to any type of punishment;
- If a child who is between the age of 10 and 14 commits an offence which is punishable by a fine, the child shall be warned; and if the offence is punishable by imprisonment, the child shall be sentenced for a period of up to six months, depending upon the degree of offence so committed;
- If a child is between the age of 14 and 16 and commits an offence, he\she shall be punished with half the penalty that is imposed by law on a person who has attained maturity.

Section 23 of the Act obliges the guardians to:

- Bring up the child in a way that will enhance the physical and mental development of the child;
- Arrange for education to promote the intellectual development of the child;
- Prevent the child from being involved in bad company or habits.

The Act provides for the establishment of children's welfare homes, children's rehabilitation centers and orphanages for children who do not have relatives. It has also provided for the appointment of child welfare officers to place the child in a family setting or in a child-care institution.

Section 19 of the Act states that the court shall not entertain or decide a criminal charge brought against the child unless there is a legal practitioner to defend the child. Under Section 57 of the Act, a case in which a child is a plaintiff or defendant shall be given priority for hearing and verdict.

The Act also states that no child shall be subjected to handcuffs and fetters, solitary confinement or confinement with an adult prisoner.

Section 14 prohibits offering a child to the deity for religious purposes. Section 16 states that nobody should engage children in immoral activities. Sections 4, 7, 14 and 15 of the Act prohibit parents or anyone from torturing or mistreating their children.

Similarly, section 21 states that the child welfare officers must make necessary arrangements to maintain helpless children. If close relatives of such children cannot

be found, the child welfare officer or the chief district officer (CDO) can assign them to a willing individual or an institution for proper upbringing. The property of the child may be placed in the custody of a person, institution or child welfare home by drawing up a legal document of custody. Such a person or institution may make use of the income from such property for the maintenance, education and medical treatment of the child. Anyone can apply to the child welfare officer to become the guardian of a child whose parents or close relatives are dead or, if alive, are unable to raise the child due to physical or mental incapacity. The child welfare officer may appoint the applicant as a guardian in conformity with existing regulations.

Various provisions have been set forth in Chapter 4 of the Act for the welfare of the child. Provisions have been made for a Central Child Welfare Board, a District Child Welfare Board, children's welfare homes, children's rehabilitation homes, orphanages and centres for mentally retarded children. Under Nepalese legislative norms and principles, a child who is temporarily or permanently deprived of his/her family environment is entitled to special protection and assistance provided by the State. Such a child is ensured of alternative care corresponding to the child's upbringing and his/her ethnic, religious, cultural and linguistic background.

The Act prohibits any form of abuse and neglect against children. It forbids anyone from engaging a child in begging or persuading a child to become a mendicant. It prohibits any person from involving a child in immoral professions, taking pornographic photographs of him/her, giving permission to do so, or exhibiting or distributing such photographs. The publication and distribution of any photographs, personal records or details of the child which may be detrimental to his/her character is also prohibited.

The Act further prohibits employment of children in any work that is hazardous to their life or health. Parents, teachers, guardians and child welfare officers may penalize a child for indiscipline, but are not authorized to give corporal punishment, detain the child in solitary confinement or deny him/her food.

Section 26 of the Act requires guardians to submit an annual report to the concerned child welfare officer that details of, among other things, the expenditures incurred in the child's (orphan's) subsistence, medical treatment and education. The officer may call upon the guardian to present the child before him/her for necessary inquiries.

Provisions under Section 44 of the Act allow the inspection of the activities of child welfare homes, child rehabilitation centres, orphanages or similar institutions. In case of any wrong-doing, appropriate action may be initiated against the centres.

The Act guarantees physical, mental and intellectual development of the children and includes various provisions in order to protect the rights and interests of the children. In May 1992, the Children's Act was enacted to protect and safeguard the rights and interests of the children. The Act covers nearly all aspects of the rights of the child enunciated in the Convention.

Under the Births, Deaths and Other Personal Events (Registration) Act 1967, the birth of each child must be registered. While applying for a birth registration certificate, the names of the child's father and grandfather must be mentioned for identification. If the father cannot be identified, the names of the mother and maternal grandfather are to

be provided. Besides, the Act also provisions about the registration of death, marriage, divorce and migration.

Some of the welfare provisions to children include:

- Constitution of Central and District Children Welfare Board
- Appointment of Children Welfare Officer
- Establishment and operation of Children's Welfare Home
- Abandoned Child to be kept in the Children's Welfare Home until the age of 16
- Establishment and operation of Children's Rehabilitation Home
- Establishment and operation of Orphanages and centres for mentally retarded children.

National Human Rights Action Plan has been formulated for the promotion, protection and development of the rights of the child.

The Tenth Plan is guided by the objective of 'education for all'. The educational sector in the Tenth Plan aims at improving the access to and quality of primary education. The plan also has among others, the objective of expanding literacy programs to improve the livelihoods of deprived groups, especially girls, dalits and disadvantaged children. The plan objective also includes development and expansion of secondary education, production of middle-level technical manpower through the expansion of vocational and technical education and production of higher level skilled manpower through the development of higher education.

The major strategy adopted by the Tenth plan to fulfill the educational objectives is the decentralization of management of local schools by handing it over to school management committees at local level, and changing the role of district and central level agency to that of facilitator, monitor, evaluator etc. The plan also adopts the strategy to improving and expanding teacher training program to uplift the quality of education and strengthening school monitoring and supervision system, in addition to mitigating social, cultural and financial barriers in order to ensure easy access to education. Similarly, promotion of vocational courses and private sector involvement in extending basic and middle level technical education also form a part of the Tenth plan strategies.

Transferring schools to School Management Committees has already been initiated under the 7th Amendment to the Education Act; and this policy will be further accelerated and expanded. School Management Committees will be made responsible for the recruitment of new teachers. Teacher training at both primary and secondary education levels will be expanded. The government will also provide partial grants to the government schools that do not receive government funding, and encourage the private sector to undertake production and distribution of textbooks to ensure adequate supply and timely distribution. It will also expand the policy of granting scholarship to the first child or first girls of poor families from which none of the family members have completed primary education. Effective system to provide middle level education for the poor will be introduced. With the effective implementation of the proposed activities in the educational sector, the net primary school enrollment is expected to increase to 90% from the existing 82%. Accessibility and the quality of education will improve rapidly; while the percentage of primary school repeaters will decline. The expanded literacy program is expected to increase

the adult literacy to 63%. Enrolment of girls and disadvantaged children at primary level will increase significantly.

The government has also announced a new program to providing free education up to tenth grade for oppressed, backward and below poverty line students; providing education in mother languages up to primary levels; regulating fees in private schools; providing basic facilities to private\boarding schools for students from oppressed and backward committees and for the setting up of a Rural Education Development Fund (financed by a levy of 1.5% of the income of private boarding schools) which would be utilized for funding the education of marginalized communities. Similarly, separate Juvenile Bench has been established in 2002 in each 75 Trial Courts of the country.

Child welfare and rehabilitation center: There are several child welfare centers and child-care homes running in the country by different NGOs. These centres and homes mainly house the destitute, orphan, conflict affected and dependent children of prisoners. According to the National Child Welfare Committee, there are 120 types of such centers and homes running in the country, accommodating 5000 disadvantaged children.

A few cases were brought before the Supreme Court seeking rulings on some related issues. In *Aashish Adhikari on behalf of Keshav Khadka V Dhankuta District Court & Others*²³, a Division Bench held the detention of a minor, Keshav Khadka, in prison as illegal and directed the concerned authorities of the then His Majesty's Government to make necessary arrangements to put the child in a Child Reform Home. Section 15 of *the Act Relating to Children* provides that a minor sentenced to imprisonment must not be placed in the prison along with adult prisoners. Rather such a minor must be kept separately in Child Reform Home as required by Section 42 of the Act. So long as such a Child Reform Home is not set up, minors may be temporarily entrusted to the care of Child Welfare Centres, orphanages or the like, privately run by other people. This very principle had been earlier affirmed by a Division Bench in *Aashish Adhikari on behalf of Bablu Godiya V Banke District Court & Others*²⁴.

In *Mithilesh Kumar Singh & Others V the Prime Minister & Others*, the petitioners challenged the Constitutionality of Section 5(2) of *the Labour Act, 1991* and Sub-rules 3(1) and 39(1) of *the Labour Rules, 1993* as inconsistent to Article 20(2) of the Constitution of 1990 which guaranteed against the employment of any minor in any factory or mine or engagement in any other hazardous work. A Special Bench held that the Constitution did not define the term "minor" but Section 2 of *the Labour Act, 1991*, defined the term "minor" as a person who had attained the age of 15 but not crossed the age of 18. Section 17 of that Act prohibited the engagement of a minor below the age of 14 as a labourer but relaxed the provision in case of a minor having crossed the age of 14 who could be engaged in certain conditions as a labourer except between the period of 6 p.m. to 6 a.m. and not against his wishes. Hence, the Justices held that the impugned laws were inconsistent with the spirit of the right against exploitation as guaranteed by Article 20 of the Constitution.

In *Tarak Dhital & Others V Chief District Administrator of Kathmandu & Others*²⁵, the Supreme Court displayed its concern and sensitivity towards exploitation and torture

²³ 2001 Supreme Court Bulletin, Vol. 216, at 10.

²⁴ Id., Vol. 214, at 18.

²⁵ 2001 Supreme Court Bulletin, Vol. 216, at 12.

meted out to minors and the infringement of their rights embodied in *the Act Relating to Children, 1991*. It is worth recalling that a few years back the national dailies caused a shocking sensation by headlining the revealing news of the exploitation of a twelve year old child named Dheeraj K.C. who had been forcibly kept as a domestic servant by Madhusudan Nakarmi who used to keep the poor child all fettered in chains and lock him inside his apartment before going out to attend his office. The Justices directed Kathmandu District Court to re-register the case which was kept dormant quite for some time and to give priority in disposal of that case.

In *Chandra Nath Sapkota V Home Ministry & Others*²⁶, the petitioner alleged that the defendant Home Ministry had cancelled the registration of Child Awareness Group in contravention of Article 12 (2)(c) of the 1990 Constitution and Article 15 (1) of the UN Convention on the Rights of the Child, 1989. Disposing the writ petition, a Division Bench observed that: "A citizen's freedom to form union and association guaranteed by Article 12 (2) (c) of the Constitution could be reasonably restricted only in accordance with laws made under provisos to that Article. Nonetheless, the State can not impose restrictions on such a freedom without making a law to that effect. The freedom of forming unions or associations is available to every Nepali citizen. And the word "citizen" mentioned in Article 12 (2) does not discriminate between a minor boy or a minor girl nor does it deprive a minor of his/her right to form a union or association. Whereas Article 11(3) of the Constitution has enjoined on the State to make special protective provisions for the protection and development of the children, it is not at all proper to cancel the registration of the above mentioned Child Awareness Group, which has been already set up by the children themselves and has even renewed for the promotion of the interests and welfare of children, only because its membership comprised of minors."

3.2.22 Right and opportunity of every citizen to take part in public affairs directly or through his representative (Article 25)

The Covenant guarantees that every citizen has the right and opportunity, without any of the distinctions such as race, colour, sex and so forth and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; to have access, on general terms of equality, to public service in his country.

Measures undertaken by the state: Article 34 (2) of the Constitution stipulates that the chief responsibility of the State is to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization. The preamble to the Constitution stipulates the consolidation of the adult franchise and the widest possible participation, multi-party democracy and a parliamentary system as its primary feature and objective.

Under article 46 of the Constitution, a citizen of Nepal having attained the age of 25 and not disqualified under any law, may be a member to the interim parliament. Moreover, under article 63(7) of the Constitution, every Nepali citizen who has attained the age of 18 is entitled to exercise his or her right of franchise. Similarly, the

²⁶ 2058 Id., No. 20, F.N. 230, at 6.

Local Authority Election Act, 1992 provides that every citizen after attaining the age of 18 is entitled to cast his or her vote for electing officials for the local authority. Hence, every citizen has a right to vote and to be elected, at the local or national election, by universal and adult suffrage and by secret ballot.

Under the Civil Service Act 1998, all citizens have right to access, on general terms of equality, to public service in Nepal.

The Constitution of Nepal has guaranteed the right to free election. To hold the general and local level elections, the Constitution's article 128 has a provision of independent constitutional body called "Election Commission".

By the constitutional and legal provisions, every citizen has right to vote, to become a candidate, right to participate in the election without any discrimination.

The Election Commission has full authority in matters of elections and is the final court of arbitration, and no regular court can intervene in matters of election.

The Civil Service Act allows women to enter in the government service until the age of 40 where as men may not enter after the age of 35. Similarly, the Act shortens the probationary period for women to six months, while the period remains one year for men. The amendment decreased the requirement of minimum service period for promotion by one year in the case of women.

3.2.23 Right to equality before the law (Article 26)

The Covenant guarantees that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. It also requires the states parties to adopt law prohibiting any discrimination and guaranteeing to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Measures undertaken by the state: Article 13 of the Constitution provides that all citizens are equal before the law and are entitled without any discrimination to the equal protection of the law. The Constitution ensures that in the application of general laws no citizen shall be discriminated against on grounds of religion, race, sex, caste, tribe or ideological conviction. Section 3 of the Civil Liberties Act also stipulates a similar right to equality before the law and equal protection of the law.

The equality of rights of citizens is a principle of the Constitution. All branches of current legislation are devoted to giving it a concrete form. Article 13 of the Constitution stipulates equality before the law and equal protection of the law as stated in article 2 of the Covenant. Article 13 (2) of the Constitution says that there shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction. However, special legal provisions may be made for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. Similarly, article 13 (3) provides that no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention to this provision is to be

made punishable by law. Similarly, section 10 A of the chapter on Adal (public order) of the Civil Code provides for punishment in this case of one year imprisonment or 3,000 rupees fine or both.

Section 3 of the Civil Liberties Act 2012 B.S. (1954 A.D.) deals with equality before the law and equal protection of the law. Section 4 prohibits any restrictions against any citizen on the basis of religion, race, sex, caste, or any of these, in appointing to civil posts.

Even in times of emergency - declared under article 115 of the Constitution - the right to equality stipulated in article 11 of the Constitution cannot be suspended.

The Constitution and other legislations have paid considerable attention to providing women with special privileges by ensuring their right to work and by promoting their participation in public life and giving them a possibility equal to that enjoyed by men of making use of those rights. The Constitution, under the above-mentioned article 11, has ensured the equal right of men and women to enjoy all civil and political rights set forth in the Covenant.

Sections 3, 4, and 5 of the Civil Liberties Act have provided, *inter alia*, the equality of rights between men and women. Thus, the Constitution and legislation have paid due attention to making it easier for women to effectively exercise their legally recognized rights, equal to those of men, to work, to have education and to take part in public, political, cultural and other social activities by improving their conditions of life and work as well as by extending help to families with children, etc.

The then HMGN had constituted a high level commission headed by the Secretary to the Judicial Council Secretariat to present a report on all existing discriminatory laws against women. The commission had submitted its report along with a draft bill to reform discriminatory provisions of laws.

Similarly, the Legal Aid Act 1997 provides the backward, dalits, minorities, women, disadvantaged groups and nationalities a free access to justice. These disadvantaged groups get free legal aid through court-hired lawyers. This programme focuses on: free legal literacy, advocacy for right to equality and legal aid.

The Country Code (Eleventh Amendment) has recognized that daughters are entitled to ancestral property; previously, only an unmarried daughter aged above 35 had this right.

The Immigration Rules have been amended to allow visa to male foreign nationals married to Nepali women. Likewise, amendment to the Act relating to Land, 1964 enables daughters, daughter-in-laws, and grand daughters to obtain tenancy rights. The civil society organizations are very active in lobbying, pressurizing and networking, launching awareness programme and drafting alternative bills on equality. They are championing to monitoring state's compliance to eliminating discriminatory laws by promoting an effective justice and service delivery for disadvantaged, women, minorities and dalits.

The Supreme Court has, for the first time following the advent of the new Constitution, in *Iman Singh Gurung V HMG and Others*²⁷ declared clause (d) of Section (3)(1) of the Military Act, 2016 void from the date of the decision, as being contrary to Article 11(1) of the Constitution. In this case, the Court held that: "The Constitution has placed restriction on the power of the Court in interfering the proceedings and decisions of the Military Court, however, it does not mean that the Military Court has power to do whatever it likes. The judiciary can scrutinize the action and decision taken by the Military Court if such action or decision is inconsistent with the provision of the Constitution."

3.2.24 Right of minorities to enjoy their own culture, religion, etc. (Article 27)

The Covenant requires that in the States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities not to deny the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Measures undertaken by the state: Article 3 of the Constitution stipulates what constitutes the Nepalese nation "having common aspirations and united by a bond of allegiance to national independence and the integrity of Nepal, the Nepalese people, irrespective of religion, race, caste or tribe, collectively constitute the nation."

Article 4 stipulates that Nepal is an independent, indivisible, sovereign, secular, inclusive and a fully democratic State.

The Nepali language in the Devnagari script is the language of the nation of Nepal as well as the official language. Each community residing within the country has the right to preserve and promote its language, script and culture, and to operate schools up to the primary level in its own mother tongue for imparting education. Similarly, under article 23 of the Constitution, each person has freedom to profess and practice his own religion, and every religious denomination has the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.²⁸

Hence, though the concept of minority and majority does not exist in Nepalese legal or social framework, Nepalese legislation is considerably devoted, pursuant to article 27 of the Covenant, to protecting and consolidating the right of each and every person, and of the community and denomination, to enjoy his/its own culture, profess and

²⁷ 2049 NLR at 710.

²⁸ Nepal is fortunate to have religious tolerance and social harmony amidst ethnic and religious diversity. There are 61 indigenous ethnic groups and four castes with more than 125 languages and dialects. The status of ethnic and minorities groups is not uniform. The constitution clearly recognized this fact. Article 17 of the Constitution provides that each community residing within the country shall have the right to preserve and promote its language, script. Likewise, each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

Article 23 of the Constitution provides that "Every person shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices. No person shall be entitled to convert another person from one religion to another".

practise his/its own religion or to use his/its own language. Moreover, each and every citizen is equal before the law and entitled to have equal protection of the law.

GON has made National Human Rights Action Plan for the protection and promotion of human rights of Dalits, indigenous people, people with special ability and senior citizens.

The census of 1990 has for the first time recorded and made public the caste, ethnic, religious and linguistic composition of Nepal. Similarly, the government constituted National Committee for Policy on Cultures in 1992, the National Language Advisory Committee in 1993 and a Task Force for the establishment of Academy for Development of Nationalities of Nepal in 1995.

The concept paper of the Tenth Plan (2002-2007) outlines that one of the four overall strategies of the Plan is targeted programs including social inclusion, in order to bring the poor and marginalized groups into the mainstream of development, together with targeted programs for the ultra poor, vulnerable and deprived groups. The main focus of the plan is to implement poverty alleviation programs specifically for women, the Dalits, Nationalities and minorities or other deprived groups of the country.

The Tenth Plan has the following special programmes to address the minority problems.²⁹

²⁹ The Tenth Plan has policies and programs related to women, children, the specially-disabled, and senior citizens as well as a separate policy and program on human rights. According to the Tenth Plan, the inalienable human rights enshrined in the Constitution of the Kingdom of Nepal, 1990, and the provisions of human rights outlined by international agreements to which Nepal is a party will be practically assured. Due to the limitation set by inadequate resources, human rights programs will be integrated with the National Development Program to help eliminate poverty.

The objective of the Tenth Plan relating to human rights is to contribute to poverty reduction through the integration of human rights components into the national development programmes by guaranteeing the fundamental human rights of Nepali people consistent with the Constitution of the Kingdom of Nepal 1990 and the commitments expressed in various international forums and international human rights instruments to which Nepal is party. To attain the above objective, the plan seeks to develop human rights culture through effective promotion and protection and respect for fundamental human rights, and formulating and amending national laws in a transparent, up to date and standardized way. In this regard, emphasis would be laid on the institutional reform of the judiciary.

The Plan envisages that the human rights related programs will be integrated into national development programmes within the extent of available resources. Emphasis will also be laid to the strengthening of basic services, institutional capacity and human resource development to enhance the quality of formulation and amendments of laws so as to make them compatible to the international human rights instruments. Priority will be given for the improvement of physical infrastructure, institutional capacity and human resource development of the Courts.

The following activities are proposed to be carried out for the protection and promotion of human rights during the Tenth Plan period: Human rights programmes on women, children, indigenous people, ethnic groups, minorities and Dalit, and on the issues of labour, education and culture, environment and development, health, prison reform, justice administration, laws and statutes and conflict management would be undertaken in a coordinated fashion within

- Institutional arrangements,
- Linguistic and cultural development,
- Human resource development,
- Social and economic development,
- The then HMG/N encouraged the DDC and VDC to allocate certain percentage of its grant budget for the promotion of minorities,
- Monitoring and evaluation program carried out by the Ministry of Local Development,
- Tenth plan has allocated the budget of 1.6 billion rupees for the development of minorities.

Nepal has initiated long term and short time initiatives to address the issues of Dalits, Nationalities and other disadvantaged groups of Nepal.

The government has expressed commitment to overcome these evil practices by means of strengthening the voice of the discriminated communities, educating the society and imposing tougher penalties and punishment to the violators.

The government formed National Dalit Commission to promote and protect the rights and welfare of the dalits. It has established an Independent Downtrodden and Oppressed Community Council. It has also formed the Committee for the upliftment of the Ignored, Oppressed and Dalit groups 2001 on the chairmanship of the Minister of Local Development.

Independent National Dalit Commission (INDC): The INDC was formed in 2002 under an executive order to improve the situation of the large section of people who continue to face extreme poverty, deprivation and exclusion. The objectives of the INDC are to promote the rights of the Dalits and improve their social, economical, political and health conditions as well as to bring them into the mainstream of development process by addressing the problems of unequal and non-access to productive resources. The specific scope of work of the Commission includes: performance of necessary functions for creating environment that ensures unhindered exercise by Dalits of their rights and privileges; recommendation of necessary amendments to the prevailing laws and policies of the government that facilitates the

the limit of available resources; Various awareness generating programs will be carried out with the involvement of stakeholders for the effective implementation of the national human rights action plan and the provisions of international human rights instruments; Existing laws will be amended to make them compatible with the international standards on human rights; Institutional capacity of all institutions on human rights including the National Human Rights Commission, Women Commission, Dalit Commission and Academy for the development of indigenous people will be enhanced; Human rights education will be included in the curricula of educational institutions and government training institutes for fostering a culture of respect for human rights; Programs will be prepared and implemented for strengthening institutional and human resource capability of the Ministry of Law, Justice and Parliamentary Affairs in order to enhance the quality of formulation and amendments of the laws; Human resource development and physical reform of the Courts will be carried out to render justice efficient, impartial, easily accessible and transparent. Modern information technology will be introduced for the efficient management of the record system of the Courts; Institutional capacity of the Judicial Academy will be enhanced to promote the competence of the manpower involved in the field of law and justice.

smooth performance of the said functions; formulation of necessary strategies and working policies for implementation by the government of the provisions of international human rights instruments including the Convention on the Elimination of Racial Discrimination to which Nepal is party; coordination and supervision of the activities of the NGOs involved in the upliftment and development of Dalits; implementation through the participation of NGOs of social awareness programmes for eliminating social discrimination, untouchability and other evils of the society that impede their development; examination of complaints on the discriminatory illegal treatment meted out to the Dalits in the society and the formulation of necessary legislation for the functioning of National Dalit Commission.

National Committee for the Development of Nationalities of Nepal (NCDN): The NCDN was formed in 1998 with the objectives to carry out programmes for the benefit of backward and disadvantaged classes living in remote areas and bringing them into political, economic and social mainstreams. Towards this end, the Committee arranges for scholarships for higher education, skill and income generating programmes and weekly radio programmes with a view to generating awareness. In addition, the Committee has been undertaking various activities like research on different ethnic groups of Nepal, capacity building of ethnic organizations, awareness generation activities, and dissemination of the rights of indigenous people, cultural promotion and advocacy. GON is committed to strengthen the institutional development of NCDN for social, economic and cultural development of the Nationalities in Nepal.

CHAPTER FOUR : OBSERVATION OF THE STATUS OF VARIOUS MEASURES

4.1 Genesis

Obviously, the safeguards set out in the Constitution, other current legislations and adopted policies in the human rights action plan demonstrate Nepal's firm commitment to the protection and promotion of human rights. The bill of rights of the Constitution codifies almost all the rights and freedoms embodied in the international instruments to which Nepal is a party. The functions of the executive, the judiciary and the legislature are clearly spelled out in the Constitution.

In some cases as stated in the above extracts, the Supreme Court has made landmark judgments in favour of people's rights. These decisions can be found compatible with the international human rights instruments.

The Directive Principles of State policy lay emphasis on the promotion of general welfare and the protection of human rights. No one is to be deprived of the rights to equality before the law and to equal protection under the laws, which are guaranteed by the Constitution and the Civil Liberties Act. The rights of women have been given due attention, taking into account the special needs of women in society. Under the Directive Principles of State policy, the State is required to involve the female population to a greater extent in national development.

As required by article 4 of the Covenant, article 143 of the Constitution deals with emergency situations. Once a state of emergency has been declared, it can be extended for up to one year if the House deems it necessary. During such periods, some rights and freedoms can be suspended, but there are non-derogable rights that cannot be suspended at the time of emergency. Such rights are, among others, the right to equality, the right to personal liberty, the remedy of habeas corpus, rights relating to justice, cultural and educational rights, the right to religion, the right to be free from exploitation and the right not to be exiled, etc.

The right to life has been guaranteed and no one is to be deprived of personal liberty. Capital punishment cannot be incorporated in any legislation, and the death penalty has been abolished. Turning to article 7 of the Covenant, Nepal is bound by the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as a State Party to that instrument. Acts of torture committed during investigation or trial (in the custody) are punishable by law, and anyone subjected to such treatment would be awarded compensation.

Forced labour and servitude are against the law. Article 29 of the Constitution prohibits trafficking in human beings, slavery, serfdom or forced labour in any form. Trafficking in human beings is punishable by imprisonment of up to 15 years; enslavement is punishable by imprisonment ranging from 3 to 10 years, and the victim is entitled to compensation from the offenders.

Article 30 of the Constitution guarantees every employee and worker the right to proper work practice. Every employee and worker has the right to form trade unions,

to organize themselves and to perform collective bargaining for the protection of their interest in accordance with law.

The right to freedom and security of person is provided for by the Constitution and guaranteed by other legislations. No person is to be detained without being informed of the alleged offence. No one is to be held under preventive detention unless there are sufficient grounds or an immediate threat to the sovereignty, integrity or law and order of Nepal. A person illegally detained is entitled to reasonable compensation, to be decreed by a court of law.

The treatment of prisoners is covered by legislation and regulations aimed at ensuring the most humane treatment possible. Men and women in custody and in prison, and offenders in civil and criminal cases, are to be held separately. Prison personnel violating the Prisons Act or other relevant legislation or failing to perform the duties set forth in the Act are liable to punishment. Citizens enjoy freedom of association, freedom to organize political parties and freedom of peaceful assembly. The Trade Union Act provides for vocational and professional rights and benefits for workers in any institution or corporation.

Freedom of movement, free choice of residence and the right to practise religion are all provided for by the Constitution and other legislation, and there is no impediment to the enjoyment of such rights and freedoms. The various communities in Nepal have the right to preserve their language, script and culture and to operate schools providing education in that language up to the primary-school level. Article 23 of the Constitution provides that everyone has the freedom to profess and practise his own religion and that every religious denomination has the right to maintain its independent existence and to manage and protect its religious places and trusts.

The rights of the child and child welfare are ensured through various legislative acts and development policy measures. Nepal is a party to the Convention on the Rights of the Child. Child labour is unlawful in Nepal.

Popular participation in public affairs and national development is ensured through the election of representatives to Parliament, a development planning system that adopts the bottom up approach, a multiparty democratic structure and a market-oriented economy. No citizen is discriminated against on grounds of religion, race, sex, caste, tribe or ideological conviction. On reaching the age of 18, every citizen is entitled to exercise his right of franchise. Marriage is voluntary, and forced marriage is subject to annulment.

The government has been formulating and implementing numerous programmes aimed at human rights promotion and welfare of people, which include, among others:

Women's rights: With the objective to mainstreaming the women in development process, the current Tenth Plan has focused on (1) Elimination of legal discrimination against women by revising existing discriminatory laws; providing legal assistance to women to enforce the provision of the newly revised Civil Code. (2) Affirmative action to increase women's role in public office, administration and community level participation and management, all of which contribute to women's empowerment and (3) Introduction of legal and other changes to prevent disorder against women,

including social education process, involving information campaigns and public discussion about the role of women.

The Plan aims to mainstream women into the planning process through training, education and employment creation. The Plan also focuses on skill promotion and income generation programmes. It may be mentioned that with concerted efforts of the government and the civil society, the participation of women in public service and in various facets of society has seen steady growth in recent years.

The Ministry of Women, Children and Social Welfare has been organizing special training programmes focusing on women with a view of preparing them for the Civil Service Examination. The government has also made mandatory provision for Primary schools to have at least one female teacher. Similarly, Local Self-Governance Act 1999 has secured at least 20 per cent of seats for women in local bodies: VDC, DDC and Municipalities. These measures are expected to contribute for the greater participation of women in the social development process and enhance their social status. The government has also accorded priority to improve the condition of women in rural areas by providing micro credit service, enhancing capacities in development planning, creating opportunities in agriculture and widening range of social services.

Children's rights: The Tenth Plan lays emphasis on child development and child rights. It has stipulated various policies and strategies for the protection of children and child health and nutrition programmes. For the development of Children, the government and nearly 240 non governmental bodies, several hundred community organizations and educational institutions and the media are engaged. While the bonded labour affecting the children has been declared illegal, juvenile benches have been established in all the district courts. Similarly, day care centres have been opened in some places for children workers and informal education programme has been expanded.

Rights of the Dalits: The establishment of National Dalit Commission in 2002 is a major step forward in promoting and protecting the rights and welfare of the Dalits. The Commission has been given the mandate to propose activities, duties and responsibilities, and authority to carry them out. The establishment of National Academy for the Upliftment and Development of Nationalities is another milestone in mainstreaming the various ethnic groups into the development process and in providing their access to the productive resources. The government has also introduced special programmes for the Dalits, especially for poverty reduction.

The current Tenth plan has various targeted programmes for the Dalits, which include: providing access to suitable agriculture technologies and products, forming distinct Dalit groups after identifying them, conducting proper trainings by forming women's groups from ultra-poor Dalits, reservation of at least 25 per cent of the total participants' seats in various rural trainings for Dalits, providing vocational education and scholarships for poor and bright Dalits, provision of health, sanitation and awareness programmes, etc. The government policies and strategies to empower the Dalits also include redesigning school curriculum to raise awareness on the evils of untouchability and monitoring of the programmes conducted by INGOs and NGOs.

Liberty to Kamaiya: The government made a landmark decision in 2000 to outlaw the Kamaiya System of bonded labour. A total of 1,01,522 Kamaiyas were liberated from

the decision. "Kamaiya" system was prevailing in Dang, Kailali, Kanchanpur, Bardia and Banke districts of Western Nepal where the debt-ridden rural farmers had been working as bonded labourers to pay off debts drawn by their ancestors. To give effect to the government decision, Kamaiya Labour (Prohibition) Act, 2002 has been enacted. Immediately after the declaration of liberty for the bonded labourers, a high level committee was formed under the chairmanship of the then Deputy Prime Minister for the rehabilitation of Kamaiyas. Each liberated Kamaiya family has been provided with a plot of land and housing support from the government. Several other activities covering education, health, training and other awareness programmes are being carried out by the NGOs for their development.

4.2 Observation

The above mentioned provisions are simply the quotations of the Constitution, ordinary laws and programs/policies. However, one can find a vast gap between the status of the *de-facto* human rights (honoured in practice) and *the de-jure* human rights (quoted in book) in the country. There is still a number of provisions even in the Constitution and other legislations, which are not compatible with the ICCPR standards. Despite the commitment and various policy measures undertaken by government, Nepal still faces serious challenges to meet the growing expectation of the people and for effective implementation of human rights agenda including the standards of ICCPR.

The atrocity perpetrated in the past and even to date by both CPN-Maoist and Government has seriously undermined the human rights situation. On the other hand, the situation is worsening by day due to the government's failure to maintain law and order in the country. In the meantime, resources constraints have impeded capacity building and have hampered in the effective implementation of human rights related plans and programmes.

Lack of enabling legislations has resulted in the slow progress of the implementation of many international treaties and conventions. Socioeconomic malaise, coupled with structural problems deeply rooted in the society, has also been stumbling blocks to bring about desired progress in human rights situation in Nepal. These are some of the major challenges the country is facing today with detrimental effects in almost all facets of human rights, more importantly the rights ensured by ICCPR including:

Status of women: Despite the legally recognized equality, the status of women is comparatively lower than that of men. The women are suffering from economic, social and political discrimination. They are also discriminated in property rights, citizenship rights, reproductive rights and family relationship rights. Women remain under-represented in the political parties. They hold mere six to nine per cent of the total seats in their respective central committees and very few make their way into the policy making position in the four major political parties of the country. Their representation in the top civil service position is also negligible.

Children and women trafficking: The law prohibits trafficking in persons and prescribes imprisonment of up to 20 years for infractions; however, trafficking in women, girls and children remains a serious problem till date. It is reported that young girls are by far the most common targets; trafficking of boys is reported in rare instances. While the vast majority of trafficking is of women and girls for sexual

exploitation, women and girls sometimes are trafficked for domestic service, manual or semi-skilled bonded labor, or other purposes.

The chapter on Human Trafficking of the Country Code defines trafficking in human being as a crime. Clause 1 of the chapter prohibits the act of taking any person or persons, by fraud or incitement, out of the territory of the country with an intention of selling. The same clause has stated that such an act is punishable by 10 to 20 years of imprisonment, and also prescribed the same punishment for those involved in buying the person or persons, provided that such culprit is available in the territory of Nepal. Section 4 of the Human Trafficking (Control) Act prohibits the following acts as the crime of trafficking in human being: selling of human being for any purpose; taking any person to foreign territory with an intention of selling; involving any woman in prostitution by enticement or allurement or fraud, or threat or coercion, or by any other way or means; and abetting or assisting or conspiring and making attempt to carry out any of the above mentioned acts.

The above mentioned acts have been made punishable by section 8 of the Act as follows:

- 10 to 20 years of imprisonment for the crime of selling a person or persons
- 5 to 10 years of imprisonment for the crime of taking a person to a foreign territory with an intention of selling
- 10 to 15 years of imprisonment for the crime of forcing a woman into prostitution, and
- 5 years of imprisonment for the crime of abetting or assisting or conspiring, or making attempt to accomplish the above mentioned acts
- Sub-section of section 8 provides for the pecuniary penalty too. As per the provision, the person convicted of the crime of selling human being is penalised, in addition to the imprisonment, with an amount of money equivalent to the amount involved in the transaction. The act, however, does not provide for any punishment or pecuniary penalty for the person engaged in the crime of buying.

Notwithstanding any thing mentioned in the law, trafficking in women and children is one of the most alarming problems in the Nepalese society over the years. It is reported that every year some fifty thousand girls are being trafficked into India and other third countries. However, the enforcement of the Human Trafficking (Control) Act 1986 seems very poor. As per the official record of GON, only 150 cases were reported in the fiscal year 1994/95. (Source CWIN)

Though this is one of the most alarming problems across the Indo-Nepal border, both the Governments of India and Nepal are not very serious to control and prevent the increasing trafficking and selling in girls. It is noted that both Nepal and India are the state parties of CRC, CEADAW and the Convention to Suppress the Trafficking and Forced Prostitution, however, there has never been any formal bi-lateral talk between the Government of India and Nepal in this regard. (Source CWIN)

According to the 2002-03 annual report of the Attorney General's Office, 66 new cases were filed in district attorneys' offices across the country. Pending from the previous

years were 76 and the new cases made it a total of 142. Of that number, 30 resulted in partial or full conviction and 69 in acquittal, while 43 are still pending. A 2001 survey conducted of 3 jails in the capital by the Human Rights and Environment Forum found 180 convicted or alleged traffickers in jail. Those convicted were serving sentences of up to 20 years.

Local NGOs combating trafficking estimated that from 5,000 to 12,000 Nepali women and girls were lured or abducted annually into India and subsequently forced into prostitution; however, these numbers were not consistent and NGOs are seeking better estimates. Citizens have also been reportedly trafficked to Hong Kong, Saudi Arabia and other countries in the Middle East. In some cases, parents or relatives sell women and young girls into sexual slavery. Hundreds of girls and women returned voluntarily, were rescued, or were repatriated to the country annually after having worked as commercial sex workers in India. Most were destitute and, according to some estimates, 50 percent were HIV-positive when they returned. The age span of those being trafficked appeared to decrease over the year. Girls as young as 9 years of age have been trafficked. (Source CWIN)

While the Government lacked both resources and institutional capability to effectively address the trafficking problem, it has established a National Task Force at the Ministry of Women, Children and Social Welfare (MOWCSW) with some personnel assigned to coordinate the response. There were programs in place to train the police, and the MOWCSW worked closely with local NGOs to rehabilitate and otherwise assist victims. However, the Government lacked the fiscal means to provide adequate training and resources to police, and the courts were overburdened and susceptible to corruption. Government welfare agencies, generally, were incapable of delivering effective public outreach programs or assistance to the victims of trafficking. As a result, anti-trafficking efforts primarily have been the domain of NGOs and bilateral donors. While the Government has promulgated a National Plan of Action to combat trafficking, its implementation has been haphazard.

The Government provided limited funding to NGOs to provide assistance to victims with rehabilitation, medical care, and legal services. The Ministry of Labor and Social Welfare sponsored job and skill oriented training programs in several poor districts known for sending commercial sex workers to India. The Government protected the rights of victims but did not detain, jail, or prosecute those responsible for the violations of other laws. The Government, together with NGOs and international organizations, has implemented local, regional, and national level public awareness campaigns about trafficking in persons. Cultural attitude towards the returned victims of trafficking is often negative which is, sometimes, reflected in the government's responses. There are more than 56 NGOs combating trafficking, several of which have rehabilitation and skills training programs for the victims of trafficking. Two representative NGOs are members of the MOWCSW's National Task Force against Trafficking. With the Government's endorsement, many NGOs have public information and outreach campaigns in rural areas. These groups commonly use leaflets, comic books, films, speaker programs, and skits to convey anti-trafficking messages and education. Some organizations involved in the rehabilitation of victims of trafficking state that their members have been threatened and that their offices have been vandalized because of their activities.

The International Agency Coordinating Group, comprised of NGOs, bilateral donor

agencies and government agencies, meet regularly to share information, plan common approaches, and avoid duplication of work.

Status of Children: Although, the various initiatives taken by both government and civil society for the protection and promotion of child rights have achieved significant progress in the areas of children's basic health, education and awareness on child rights, still more effective programmes are needed to protect the rights of the children, especially for those who work in risky conditions, and also to abolish exploitation and child abuse as well as discrimination against girls, which continue to exist in the society and is deeply entrenched.

A 2001 study by the ILO International Program on the Elimination of Child Labor found that 30 percent of sex workers in Kathmandu were below the age of 18. Another study by a foreign labor department states that 5,000 to 7,000 sex workers were between the ages of 10 and 18. The active special police units staffed by female officers in 17 districts and the capital have been dealing with crimes against women and children since 1996.

Moreover, the country has now fresh problems of children of families affected by the armed conflict in the country. Protection of rights of such children rendered homeless due to the conflict, including their care, rehabilitation and development, stands as serious challenge to the government which is already in severe financial straits due to the additional resources it had to allocate for security measures to combat the rebellion of CPN-Maoist.

Dalits, Minorities and Disadvantaged class: Despite the good intention of the government and the laws and programmes, the existence of caste based discrimination at the societal level has been a bitter truth even though it is prohibited by the Constitution and the Country Code, 1964. The constraints in both human and financial resources have resulted in the low capacity for the effective implementation of the programmes and activities aimed at raising the living standards of the Dalits, minorities and the disadvantaged classes in the society. Lack of access to resources has been another impediment in uplifting these people.

Arbitrary arrest, detention, or exile: The Constitution stipulates that the authorities must arraign or release a suspect within 24 hours of arrest; however, it is not followed in practice and the police are seen often violating this provision. Under the law, the police must obtain warrants for an arrest unless a person is caught while committing a crime. For many offenses, the case must be filed in court within 7 days of arrest. If the court upholds the detention, the law authorizes the police to hold the suspect for 25 days to complete their investigation, with a possible extension of 7 days. However, the police usually hold detainees longer. The Supreme Court has, in some cases, ordered the release of detainees held longer than 24 hours without a court appearance. Similarly, some foreigners, including refugees, have reported difficulty in obtaining bail.

Detainees not held under special anti-terrorist legislation have the legal right to receive visits by family members, and they are permitted access to lawyers once authorities file charges. However, in practice, detainees are granted access on a basis that varies from detention center to detention center. There is a system of bail, but bonds are too expensive for most citizens. Due to courts' backlogs and other reasons such as a slow

appeal process and poor access to legal representation, pre-trial detention often exceeds its period, and persons subsequently are sentenced after a trial and conviction.

Under the Public Security Act, the authorities may detain persons who allegedly threaten domestic security and tranquility, amicable relations with other countries, or relations between citizens of different classes or religions. Persons whom the Government detains under this Act are considered to be in preventive detention and may be held for up to 6 months without being charged with crime. The authorities may extend periods of detention after submitting written notices to the Home Ministry. The police must notify the district court of the detention within 24 hours, and it may order an additional 6 months of detention before authorities file official charges. Human rights groups allege that the police have used arbitrary arrest and detention during the so-called "People's War" to intimidate communities considered sympathetic to the CPN-Maoist.

The Public Security Act including other laws permits arbitrary detention. This Act has gone through a number of amendments. It covers a range of crimes such as disturbing the peace, vandalism, rioting, and fighting. Human rights monitors express concern that this Act vests too much discretionary power in the CDO, the highest-ranking civil servant in each of the country's 75 districts. The Act authorizes the CDO to order detentions, to issue search warrants, and to specify fines and other punishments for misdemeanors without judicial review. Many instances of arrest and detention of people under the Public Security Act were reported during the time of the armed conflict. Besides that, people were also commonly arrested and detained on suspicion of being Maoists under the draconian Terrorist and Disruptive Activities (Control and Punishment) Act, which gave the authority a sweeping power to arrest people on whims. Similarly, many citizens involved in public disturbances, rioting and vandalism were summarily arrested, detained for short periods (sometimes just a few hours), and released.

With reference to the compatibility of the measures adopted by Nepal, the summary record of the 1359th meeting of the fifty- second session of the Human Rights Committee has observed some of the crucial things in response to Nepal's initial report on ICCPR. Some of them include:

- There is a definite lack of substantive laws to back up the Constitution and of mechanisms such as legal and administrative remedies, an ombudsman and a human rights commission (the commission now has been formally set up). Without such means, it would be difficult for the Government to act on complaints of human rights violations. On the other hand, the independence of the Supreme Court is an extremely encouraging feature which augurs well for the future.
- In relation to article 2 of the Covenant, the Constitution's mention of caste along with other grounds for prohibited discrimination - sex, race, religion, etc. - is welcome. Criminalizing such discrimination is not sufficient, however: the eradication of caste distinctions is a long and arduous process, and educational measures are needed to change ingrained attitudes. It inquires why a number of important grounds on which the Covenant prohibited discrimination - colour, political opinion and social origin, for example - had been omitted from

the Constitution, even though it had been adopted after the promulgation of the Covenant.

- A number of non-derogable rights could be suspended in time of emergency: that constituted a violation of article 4 of the Covenant and should be corrected. It is desired to know whether the death penalty has actually been abolished - there are apparently cases still pending in which it could be imposed. Article 6 of the Covenant, on the right to life, does not merely relate to abolition of the death penalty. It involves a whole range of measures to protect the right to life - reducing infant mortality and preventing torture, for example.
- There is a great deal of information, from non-governmental organizations (NGOs) and other sources, to indicate that torture, extrajudicial executions and disappearances are still occurring in Nepal. There also seems to be a lack of commitment to investigating allegations of such abuses. Though change can not be achieved overnight, measures must be taken with a view to eliminating those practices. The legislation on torture focused on providing victims with compensation, but that is only one of the concerns that should be met: prevention of the offence and punishment of the culprits are the paramount considerations.
- It is desired to know if legal aid is available in Nepal, in accordance with article 14 of the Covenant.
- Certain existing laws in Nepal could be thought inconsistent with the provisions of the Covenant. In particular, paragraph 11 of the initial report fails to make clear whether the non-derogable rights under article 4 of the Covenant, such as the rights under articles 6, 7, 8 (1) and 8 (2), 11, 15, 16 and 18, could be suspended under article 115 of the Constitution dealing with emergency situations of the State.
- Turning to article 12 of the Covenant, Nepalese women can not pass on their citizenship to a child or spouse and need the consent of a male guardian to obtain a passport or to travel. Generally speaking, the initial report does not address the question of the right to leave the country, and article 12 (2) (d) of the Constitution also fails to cover that right.
- In connection with article 7 of the Covenant, and torture or cruel, inhuman or degrading treatment of women, the committee referred to two specific cases, one of a woman alleged to have been raped by police officers while in custody and the other of a woman reportedly tortured, beaten and threatened with rape while under arrest. Such cases brought into question the effective implementation of articles 7 and 9 of the Covenant. There is also increasing concern over the Government's failure to implement effective laws to make torture a criminal offence or to provide compensation to victims.
- Turning to the criminal justice provisions in article 14 of the Constitution, the committee was struck by the absence of any provision designed to ensure the independence of tribunals and, especially, to separate executive from judicial

functions. The fact that many judicial duties are performed by persons with authority in local government is a matter of concern.

- The right to privacy under article 22 of the Constitution can be suspended under certain circumstances which are not clearly defined. Under article 115 of the Constitution, the right to constitutional remedy and other important rights can be suspended in a state of emergency, and emergency powers can also be invoked by the authorities for reasons of "extreme economic disarray", although such a justification of emergency powers is not recognized by the Covenant and it is not clear how measures such as restricting press freedom or extending preventive detention will help to feed people in times of economic crisis.

The report emphasizes the importance of the right to self-determination both for Nepal and for other developing countries. In general, the report needs to be made readily available to NGOs to assist them in their work, although direct consultation with NGOs may not be strictly necessary. It is regrettable that the report gives no indication of any follow-up by the authorities on reports of extrajudicial killings, use of excessive force by the police and other abuses, and there is no evidence that investigations has been conducted or sanctions imposed to prevent recurrences. That tends to cast doubt on the reality of the right to freedom of association recognized under article 12 (2) (c) of the Constitution.

CHAPTER FIVE : CONCLUSION AND RECOMMENDATIONS

The conclusion of the study can be summarized as follows:

5.1- In relation to article 2 of the Covenant, the Constitution's mention of caste along with other grounds for prohibited discrimination - sex, race, religion, etc. - is welcome. But criminalizing such discrimination is not sufficient. However, the eradication of caste distinctions is a long and arduous process, and educational measures are needed to change ingrained attitudes. Similarly, a number of important grounds on which the Covenant prohibits discrimination - colour, political opinion and social origin, for example - have been omitted from the Constitution, even though it has been adopted after the promulgation of the Covenant.

5.2- Whether the death penalty has actually been abolished – is the vital question in regard to fulfilling one of the obligations accruing from ICCPR, notably its optional protocol. There are apparently cases of extra-judicial killings. Moreover, Article 6 of the Covenant, on the right to life, does not merely relate to abolition of the death penalty. It involves a whole range of measures to protect the right to life - reducing infant mortality and preventing torture.

5.3- Torture, extrajudicial executions and disappearances are still occurring in Nepal. Though change cannot be achieved overnight, measures must be taken with a view to eliminating these practices. The legislation on torture focused on providing victims with compensation, but that is only one of the concerns that should be met: prevention of the offence and punishment of the culprits are the paramount considerations.

5.4- So far as the right to life is concerned (Article 6 of the Covenant), it appears that, contrary to the pattern in virtually all countries in the world, the life expectancy of Nepalese women is less than that of men. Is that the case, and if so, to what is that situation attributable? A lower life expectancy often signals serious discrimination. So far as education and literacy are concerned, it is reported that the literacy rate for women is only 26 per cent, compared with 57 per cent for men, and that women, particularly in rural areas, often receive no education at all. The ability of women to enjoy rights under the Covenant such as the rights to vote, to participate in political life and to seek protection of the law when their rights are violated, and generally their capacity to assert their rights, would be seriously diminished. The dowry system is still prevalent in some areas. Grounds for divorce are also narrower for women than for men. Thus, both legal distinctions and practices demonstrate that women are still in an inferior position so far as marriage and the family are concerned.

5.5- The question of violence towards women is a serious issue. The law lacks to control and punish the commission of crimes of sexual assault. No effective legal or practical measures are adopted to combat all forms of violence against women as a result of which the act of domestic violence, sexual assault or rape still exist.³⁰

³⁰ Because of inequality, lack of education and access to employment, and vulnerability to sexual abuse, many women in Nepal are exposed to human rights violations in the criminal justice system. This is particularly true of women with unwanted pregnancies as a result of rape or women abandoned and left without means of subsistence by their partners.

5.6- Turning to the criminal justice provisions in article 24 of the Constitution, the absence of any provision designed to ensure the independence of tribunals and, especially, to separate executive from judicial functions is a sticking point. The fact that many judicial duties are performed by persons with authority in local government is a matter of concern.

5.7- Most of the rights ensured by the constitution are for citizens. They are recognized to be enjoyed only by citizens but not by foreign nationals residing in the country. In that case, it is against the spirit of the Covenant which expressly gives recognition to basic civil and political rights to be enjoyed both by nationals and foreigners.

5.8- The Constitution gives citizens the right of access to official information, but citizens and even courts still face great difficulties in obtaining official documents and that there appear to be a deep-rooted aversion in official circles to making information public.

5.9- Although article 19 (3) of the Covenant acknowledges that some curtailment of freedom of expression might be necessary on occasion, acceptable restrictions are very narrowly defined. On the other hand, the exceptions to the prohibition on censorship of news items, articles or other reading material detailed in article 15 (1) of the Constitution appear to be much wider in their application. Furthermore, the reference to registration in article 15 (3) of the Constitution implies that publication of newspapers and periodicals is not permitted without prior registration, which in itself is a form of censorship.

5.10- It is a basic obligation of any State to investigate any reports of human rights abuses, to identify the person or persons responsible and to mete out appropriate punishment and to compensate the victims. Since legislation to that effect does not exist in Nepal, it is urgently required to do so.

Some Recommendations:

5.11- The following rights enunciated in the Covenant need to be clearly guaranteed by the domestic law (the constitution can be appropriate document in this regard) or need to be protected from appropriate measures:

- the right of self-determination of everyone (Article 1(1));
- the right to life (Article 6(1));³¹
- the right to security (Article 9(1));
- the right of the victim of unlawful arrest or detention to compensation (Article 9(5));³²
- the right of a convicted person to be compensated from the suffering of punishment in case his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows that there has been a miscarriage of justice (Article 14(6));
- the right to recognition as a person before the law (Article 16);

³¹ Though the Constitution of the Kingdom of Nepal, 1990 has guaranteed personal liberty under article 12(1), it has not explicitly mentioned the right to life in any clauses.

³² In Nepal, Torture Compensation Act provides provision only for the compensation to the victim of torture. There is no provision for the victim of unlawful arrest or detention.

- the right of every child to acquire a nationality (Article 24(3));

5.12- The State Cases Act 1992 requires the police to notify the suspect giving reasons for his\her arrest. The power of interrogating the suspect lies implicitly in the police. The Act makes no reference to the right of the suspect to remain silent (a basic right to fair trial) even though it has been recognized by the Constitution as one of the fundamental rights. As the ICCPR has explicitly recognized the right to silent as an essential ingredient of the fair trial, it has to be domesticated in Nepal through appropriate amendment in the laws.

5.13- The Prisons Act makes no provisions for reforms and rehabilitation of the prisoners. Besides, it has some other loopholes that have made most of its provisions incompatible with the Covenant:

- It does not allow prisoners to maintain contacts with the outside world.
- There is no provision for handling prisoners' complaint against torture, cruel, inhuman or degrading treatment.
- Due to the defective provisions in the Act, court proceedings are not accessible to the prisoners.
- The jailer has right to punish and investigate certain crimes and the order may not be appealed.

5.14- The Public Security Act, 1990 empowers the authorities to detain a person who allegedly threatens domestic security and tranquility, amicable relations with other states, and relations between citizens of different classes or religions without specifying any criminal charge, which is inconsistent with the Covenant and even with the Constitution.

5.15- There are number of laws including the Customs Act, 1962, in which the officers are empowered to investigate, prosecute and adjudicate the offence. Such laws also empower them to impose a higher degree of punishment with fines. Granting such powers to the administrative officers are contrary to the principles of fair trail because the accused in such proceedings seldom gets opportunities of fair hearing. No free and fair trial is possible in a system where the same institution has the power to investigate, prosecute as well as adjudicate the alleged offence. Such laws therefore, need to be amended to eliminate provisions affecting the norms and standards of free and fair criminal justice system.

5.16- In connection with article 7 of the Covenant, the Act on Torture Compensation, 1996 does not define torture or custodial death as a crime. Hence, officials involved in torture or custodial death are not personally subject to criminal liability under the prevailing laws. The Act simply obliges the government to pay compensation for torture. Additionally, on the contrast to the criminal justice system, a government attorney defends the perpetrators. As the Act fails to recognize torture as a criminal act, it is in stark contradiction to the obligations accruing from the CAT and ICCPR.³³ Moreover, the Act ignores the independent medical practitioner's role in medical check-up of torture victims since it exclusively assigns government medical officers and senior police officers to conduct the suspect's medical check-up, which may

³³ Article 4(1) of the CAT obliges the states parties to define an act of torture as a crime against law.

provide an opportunity for the misuse of powers. More importantly, the Act deals with torture inflicted only after a person is taken into custody. Thus, the Act is not only inconsistent with the international human rights standards, but it is completely ineffective in protecting detainees from torture during their stay in police custody.

ANNEX

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, G.A. RES. 2200A (XXI), 21 U.N. GAOR SUPP. (NO. 16) AT 52, U.N. DOC. A/6316 (1966), 999 U.N.T.S. 171, ENTERED INTO FORCE MAR. 23, 1976.

PREAMBLE

*The States Parties to the present Covenant,
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Recognizing that these rights derive from the inherent dignity of the human person,
Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,
Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,
Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,
Agree upon the following articles:*

PART I

Article 1

- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
- 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

PART II

Article 2

- 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*
- 3. Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
 - (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential

aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

- 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- 2. Everyone shall be free to leave any country, including his own.*
- 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
- 4. No one shall be arbitrarily deprived of the right to enter his own country.*

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

- 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
- 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
- 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
 - (c) To be tried without undue delay;*
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

Article 20

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

Article 23

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
3. *No marriage shall be entered into without the free and full consent of the intending spouses.*
4. *States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

Article 24

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
2. *Every child shall be registered immediately after birth and shall have a name.*
3. *Every child has the right to acquire a nationality.*

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) To have access, on general terms of equality, to public service in his country.*

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

- 1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.*
- 2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.*
- 3. The members of the Committee shall be elected and shall serve in their personal capacity.*

Article 29

- 1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.*
- 2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.*
- 3. A person shall be eligible for renomination.*

Article 30

- 1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.*
- 2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.*

3. *The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.*

4. *Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*

Article 31

1. *The Committee may not include more than one national of the same State.*

2. *In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.*

Article 32

1. *The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.*

2. *Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.*

Article 33

1. *If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.*

2. *In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.*

Article 34

1. *When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.*

2. *The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.*

3. *A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.*

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as

the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

- 1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.*
- 2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.*
- 3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.*

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

- 1. The Committee shall elect its officers for a term of two years. They may be re-elected.*
- 2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:*
 - (a) Twelve members shall constitute a quorum;*
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.*

Article 40

- 1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:*
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;*
 - (b) Thereafter whenever the Committee so requests.*
- 2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.*
- 3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.*
- 4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.*
- 5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.*

Article 41

- 1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under*

the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of

experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46 .

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

- 1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.*
- 2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.*
- 3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.*
- 4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.*
- 5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.*

Article 49

- 1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.*
- 2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.*

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

REFERENCES

International Instruments

- The universal declaration of human rights 1948
- The slavery convention 1926
- The convention on the rights of the child (CRC) 1989
- The convention on the elimination of all forms of discrimination against women (CEDAW) 1979
- The international covenant on economic, social and cultural rights (ICESCR) 1966
- The international covenant on civil and political rights (ICCPR) 1966
- The optional protocol to the international covenant on civil and political rights 1966
- The convention against torture and other cruel, inhuman or degrading treatment or punishment (cat) 1984
- The convention on the suppression of the traffic in persons and of the exploitation of the prostitution of others 1949
- The second optional protocol to the international covenant on civil and political rights, aiming at abolition of the death penalty 1989

National Instruments

- The constitution of the kingdom of Nepal, 1990
- The interim constitution of Nepal, 2007
- The country code, 1963
- The disabled protection and welfare act, 1982
- The act relating to children, 1992
- The births, deaths and other personal events (registration) act, 1976
- The association registration act, 1977
- The civil liberties act, 1954
- The legal aid act, 1997
- The prison act, 1964
- The human rights commission act, 1997
- The kamaiya labour (prohibition) act, 2001
- The consumer protection act, 1998
- The torture related compensation act, 1996
- The state cases act, 1992

- The local self-governance act, 1999
- Some public (offences and punishment) act, 1969
- The defamation act, 1959
- The trafficking in- person (control) act, 1986
- The trade union act, 1992
- The civil service act, 1993
- The Nepal citizenship act, 1963
- The Nepal treaties act, 1990
- The child labour (prohibition and regulation) act, 1999
- The marriage registration act, 1972
- The social welfare act, 1992
- The labour act, 1991
- The postal act, 196
- The tele-communications act, 1962
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Other relevant references

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- United Nations Convention on the Rights of the Child: First Periodic Report (2001), Published by HMG, Nepal.
- United Nations Convention on the Civil and Political Rights: Initial Reports (1992)
- International Conventions and Nepal Laws Regarding Human Rights of the Dalit Community (2003): Published by National Dalits Commission, Kathmandu, Nepal.
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