

# **The Report of the NHRI of Nepal on the UPR Processes**

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***Submitted by:***

National Human Rights Commission of Nepal  
National Women Commission of Nepal, *and*  
National Dalit Commission of Nepal

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## Introduction

1. This report was prepared by the national human rights institutions (here in after referred to NHRI) of Nepal namely the National Human Rights Commission (NHRC), National Women Commission (NWC) and National *Dalit* Commission (NDC). The NHRC was established in 2000 as a statutory body and elevated to a constitutional body in 2007. The NHRC is an independent and autonomous body that complies with the Paris Principles of independence and autonomy of NHRI. Since inception NHRC has been accredited with A-status by ICC of NHRI. The NWC was established by an executive order in 2002 for the protection, prevention and promotion of the women's human rights. The Commission was elevated to a statutory body by NWC Act of 2007 with wider mandates to work for the women's human rights. The NDC was formed in March 2000 under an executive directive with major responsibilities to promote and protect the rights of *dalit* people by eliminating of age old caste based discrimination against them.

## Methodology

2. The UPR process was started a year ago by providing learning sessions to NHRC staff by an international expert. The UPR focal officer of NHRC was provided OHCHR organized UPR related training abroad. The NHRC formed a Committee headed by Hon Commissioner Mr. Gauri Pradhan. The Committee was given the mandate of holding consultations across the country, preparation of required IEC materials, UPR draft report and other related works as and when required. Amidst this development the NHRC, NWC and NDC agreed to submit a joint report. As a result teams led by Hon. Commissioner Ms. Dhan Kumari Sunar and Commissioner Mr. Govinda Bahadur Nepali of NWC and NDC respectively worked together.
3. The Committee produced IEC materials and working papers as advocacy tools aiming to familiarize participants on UPR processes. A media announcement was made via two national dailies to collect public opinion. Extensive checklists were developed based on the priority human rights issues in the country. The consultation workshops were held in all the geographic regions. The participants comprised of the representatives of political parties, development and security agencies, human rights NGOs, women and *dalit* human rights network, indigenous/marginalized communities, CSO, academia, media and human rights defenders. Recently larger central level consultation was held in Kathmandu in which all above stated agencies represented from their central level. The central level consultation workshop considered upon the outcomes of regional consultations. In addition a number of meetings, interactions, dialogues and advocacy held with various agencies that include the government, security agencies and civil society along with reporting NHRI. Regional level consultative workshops and meetings were facilitated on the basis of above mentioned advocacy tools. The reports of all consultative workshops, interactions and meetings followed by relevant human rights situation reports developed in the context of armed conflict and aftermath have been reviewed during the preparation of this report.

## National framework for protection and promotion of human rights

4. The conclusion of Comprehensive Peace Agreement (CPA) between the Government of Nepal and Communist Party of Nepal Maoist (CPNM) in 2007 ended decade long armed conflict and led the country toward transition to democracy. The Interim Constitution (here in after referred to constitution) was promulgated in 2007 with wider and strong human rights mandates, provisions and mechanisms. The constitution has adopted the democratic values such as the rule of law, democracy, and independence of judiciary, human rights, devolution of powers, adult franchise and press freedom. The institutional framework for the protection and promotion of human rights has been envisaged by the constitution and the law. The constitution has adopted the idea of independent judiciary placing the Supreme Court in the apex of judicial hierarchy. The

- Legislature Parliament enjoys independence within its mandate and functions. The NHRC has been set up under the constitution. The NWC, NDC, Central Child Welfare Board and Foundation of Indigenous Minorities play crucial role in the promotion and protection of the rights of women, dalits, children and indigenous minorities. In addition good number of CSO and NGOs are very active and vibrant in the field of the promotion and protection of human rights of Nepal.
5. In order to respond the demand and aspirations of popular movement of 2006 various movements including and *Madhesh* movement of 2007, the constitution has endeavored to address the issues of social inclusion and participation of disadvantaged group of population. The constitution therefore affirmed the rule of inclusion and positive discrimination. As a result in the Constitutional Assembly there is 32 percentage of women representation followed by the good number of representation of people of various disadvantaged communities that include *dalit*, indigenous and ethnic minority, and other marginalized communities. In this context Nepal could be a good example in respect of adopting inclusive policy. The constitution aims to establish equitable society eliminating all forms of discrimination, deprivation and denial based on caste, religion, sex, gender and so on. During this period good initiatives are taken by the state and that include passage of Domestic Violence (control and punishment) Act and declaring the year 2010 year against gender based violence. Presently the country is in the process of making new constitution.
  6. For over a decade the local body election has not been held in Nepal. It has hampered the work relating to development and everyday concerns of public life.

### **Scope of international obligations**

7. Nepal has become state party to 21 international human rights related conventions and that include 7 core conventions. Nepal treaty law defines that all those conventions ratified by Nepal are equal to the statutory law. Some efforts were made to internalize treaty provisions.
8. In the recent years the Government, Parliament and Judiciary appear active in internalizing the provisions of international human rights instruments. The Parliament in general reviews the international instruments during the making of legislation. Over the years the higher judiciary has played active role basically toward eliminating discrimination. At times the Supreme Court has issued the directives to the government for the amendment of law relating to discrimination. Despite it the efforts in internalizing international human rights instruments need to reinforce from all the branches of government i.e. the Parliament, Judiciary and the Government.

### **Promotion and Protection of Human Rights on the Ground**

#### **Civil and Political Rights**

9. The constitution and laws in Nepal have enshrined civil and political rights that include the right to equality followed by various rights and freedoms. The current status of the situation of civil and political rights is as follows.

#### **Equality and non-discrimination**

10. Right to equality and non-discrimination is the fundamental right under the constitution. Discrimination on the basis of religion, caste, sex, language, nationality, origin, beliefs are not permitted. Despite it the positive discrimination is constitutionally permitted aiming to the advancement of marginalized groups and *Madheshi* communities.
11. Many discriminatory provisions continue to exist in different laws. They are incompatible with international human rights instruments. A NDC study reveals that there are some 23 discriminatory provisions in various Nepali laws. The preamble of the Civil Code of 1963 and chapter on Miscellaneous Provisions (Section 10) that encourages respecting for social usages and practices is an example for continuation of discrimination.

12. The sizeable number of people that belongs to *dalit*, *madheshi*, indigenous/ religious and sexual minorities, persons with disabilities, women, and population of interior part has experienced their exclusion from mainstream development processes. Severe of its example is the existing practice of untouchability of *dalit* people living across the country. The NDC has identified 205 forms of discriminatory practices against *dalits* that prevail in the society. At times *dalit* community people have been denied publicly for the enjoyment of public uses and benefits, participation in public life and observe the religious practices equally. In addition *madhesi dalits* has a grievance that they are discriminated in the process of issuing citizenship certificate.

### ***Right to life***

13. The right to life is the fundamental of all the rights. It has been guaranteed by the constitution as a fundamental right. As compared to the period of active armed conflict the situation of has been improved in the recent years. However people are frequently killed by different armed criminal groups especially in southern *Madhesh* and eastern hills. The threats to death, abduction, extortion, explosion in public places are frequent in *Madhesh*, eastern hills and other places targeting to urban areas. The 9 people have been killed only in June 2010 by different unidentified armed groups and six of them were killed in Janakpur area within a week. A number of people including businessmen and professionals and their family members were abducted during this period demanding for huge amount of ransom money for their release.
14. The NHRC has recorded cases of killing by security personnel in the fake encounters. As a recent example, three *dalit* women including a 12 year girl child was killed by a Nepal Army patrolling troop in Bardia National Park in March 2010. All reporting NHRI, Parliamentary Committee followed by a number of human rights NGO in their monitoring and investigation found excessive use of force for killing them by the troop. The NHRI recommended the government for the prosecution of the perpetrators and to provide adequate reparation for the families of the victims. The NHRC after its extensive investigation of a killing of journalist Birendra Shah by UCPNM cadres in 2007 recommended for reparation to the victim' family and prosecution to the perpetrators. Both the recommendations are expected to be implemented soon.

### **Right against torture**

15. The constitution has declared the act of torture a crime. Everyone has the fundamental right to be free from torture. The government has ratified CAT without any reservation. The legislation criminalizing the torture has not been made and therefore there is a difficulty to punish the torturers. The practice of torture during detention is frequent. Many of the accused are at risk of torture and other forms of inhuman, ill and degrading treatments during detention.
16. The NHRC records, in some instances show that tortures are resulted into custodial deaths. As an example in June 2010 a *dalit* male named *Sanu Sunar*, 45 died from torture in police custody in Kathmandu. NHRC and NDC separately investigated and monitored the case. Based on findings they recommended to prosecute the perpetrators. In addition the excessive use of force by security personnel during demonstration and afterwards sometimes resulted into torture. Many of the recommendations made by NHRI are not implemented yet.

### **Liberty and security of persons**

17. A number of restrictions are felt in the enjoyment of various rights and freedoms. Those rights and freedoms may include right to movement, right to security of life and property, freedom from fear, right to residence, right to education, right to work, freedom of expression among others. People of different origin, belief and profession are threatened, abducted, intimidated through violent actions. People are unable to live in an environment free from fear.

18. The frequent call of strikes, blockade to the roads and transport, forceful closure of schools, hospitals, business houses and other enterprises by various political parties and armed groups, have resulted into restriction in the enjoyment of rights stated above followed by great economic and social loss for the country.
19. Various actions of armed groups have created chaos among the people of affected areas resulting into violation of their right to residence, right to work, right to personal safety and security, right to education for children among others.

### **Administration of Justice**

20. The delays in delivery of justice have affected the right to fair trial and to enjoy right to effective and timely judicial remedy. Inadequate legal support services including legal aid, topographical location, insufficient flow of legal information and increased legal expenses has hindered the right of access to justice. In recent days the government has withdrawn a number of criminal cases which were under the consideration of the courts. In addition a number of judicial decisions made on serious human rights violations have not been enforced.

### **Economic, social and cultural rights**

21. The respect and fulfillment of economic and social rights primarily depends on available resources and its equitable allocation. The government as a guardian of common people is accountable for their well being.
22. The larger number of people in Nepal is unable to enjoy economic and social rights due to poverty, resource constraint and proper management of resources. The corruption is wide spread which denies enjoying various rights. This year Nepal stands on 143 in the Transparency International index of countries as compared to 121 in the last year.
23. By nature remedies for economic and social rights would be different from remedies available to the civil and political rights. It is therefore fulfillment of state obligation for the respect and fulfillment of those rights are observed in line with the state and government's efforts to ensure (a) equal and equitable *access* (b) *availability* of goods and services (c) providing goods and services at *affordable* prices and (d) providing *acceptable* goods and services to the people based on their choices for enjoyment of economic and social rights.

### **Right to food**

24. The constitution has declared food sovereignty as a right (art 18). But in the absence of law there is a difficulty to support creating an environment free from hunger and malnutrition. The access and availability of food items to the poor people mainly living in interior parts of the country is limited. The food items available are unaffordable to many of them comparing to their income. There is lack of proper supply and distribution system followed by a national food policy.
25. The NHRC monitors food supply system with a view to make the government accountable in creating enabling environment for the enjoyment of right to food. In 2009 summer NHRC widely monitored the diarrhea epidemic that spread across 18 districts of Midwestern and Far-western regions. The epidemic claimed approximately four hundred lives followed by estimated sixty thousands people falling ill comprising significant number of children. The victims come from economically poorer section of population, mainly *dalits*. The NHRC finding revealed that supply of contaminated and low quality food grains was among major causes behind this unfortunate loss.

### **Right to healthcare including right to reproductive health**

26. The constitution has envisaged the right to healthcare as a basic right of the citizens. Three years ago the government of Nepal decided to provide free basic healthcare services to all the people.

27. The access and availability of health care services to the poor people mainly living in interior parts of the country is limited. The medical profession is increasingly motivated for profits and therefore health service has been becoming unaffordable to the common people. As a result the people take help of traditional healers such as *dhami* and untrained *sudinies*. Those unscientific medical services frequently results into death of many mothers and newborn followed by serious health problems to many people due to improper medications.
28. The lack of preparation for prompt medical response in the field resulted into death of approximately 400 people followed by 60000 people falling ill of diarrhea in 2009.
29. Women's access to health care services is relatively limited. Nepal has the highest maternal mortality rate in the world (539/10000). The factors responsible for maternal mortality and death of infants especially girls child are due to discrimination in nurturing, inadequate nutritional intake, poor sanitation and health facilities among others.

### **Right to education**

30. The constitution stipulates that right to education is a basic right of the citizen (art 17) and the government should provide free education until secondary school level. The MDG encourages in increasing the primary school enrolment.
31. The literacy rate in the country is 72.29 percent in average. The literacy rate among the women is 61.23 percentage whereas among the male is 83.36 percentage. Literacy rate among the people of disadvantaged communities including *dalits* (33.8 percent) and rural population is much lower than the average.
32. The school enrollment ratio of girl child is 70 percent followed by 80 percentage boys in average. Among enrolled at the primary level, they start to drop out by the time they reach secondary school level. The prevalence of child marriage and social obligations at home, act as deterrents for the education of girls. The *de facto* discrimination that Nepalese women face with regard to education, their opportunities for education are more limited than opportunities for males, stems from patriarchal attitudes undermining the equality of men and women. Lack of appropriate policy measures and programs to encourage female deprived them from education. Social prejudices against female education, restrictions on mobility, low social status granted to the females, the system of early marriage and low participation of females in formal sector too result in lower literacy for females.
33. Enrollment ratio of *dalit* children is very low. The data shows that school enrollment ratio of *dalit* children at primary levels is 20.2 percent followed by 11.4 percent at lower secondary levels and 7.8 per cent at secondary levels.
34. The government allocates 16.4 percentage of budget for the education. As stipulated in the constitution, law and relevant international instruments the government is accountable to provide elementary education to all. Due to shortage of qualified teachers, educational materials including textbooks, school infrastructure, ineffective management mainly with the government schools the standard of education is not encouraging. The guardian's attitude and level of understanding, rural public perception for sending children to schools followed by traditional thinking among the people are some hurdles in the enjoyment of the right to education.
35. Private sector involvement for the establishment and management of academic institutions has made the education expensive. The education is increasingly motivated to profits and therefore education has been becoming unaffordable to the common people. Quality gap in education provided by government schools and private schools are very wide. The private schools have become centre of attraction for wealthy and educated families.

### **Rights of the child**

36. The Constitution has recognized the rights of the child as a human right. Nepal has ratified CRC and its optional protocol accepting the obligation of protection, participation, development and

survival related rights of the child. Nepal has also ratified SAARC Convention on the Welfare of the Child. The Parliament of Nepal has enacted law to safeguard the rights and interest of the children. A separate Government Ministry has been formed to deal with issues relating to children. Child Welfare Committees in the Center and all 75 districts are formed with the responsibility of coordination on the issues relating to rights and interests of the children. A number of NGOs are actively involved to ensure the rights of child. Recently the child combatants were discharged from cantonment and reintegrated into society.

37. Despite children of Nepal still seems to be the victims of violation and abuse of human rights in various walks of life. During conflict a number of children were used as combatant and noncombatant forces under the umbrella of CPNM. The decade long conflict resulted into displacement of children and some of those children are spending life in the streets without any work and opportunities for their development.
38. A number of conflicts affected and disadvantaged rural family children including *dalits* coming to urban areas seeking work. Among them many girl children are forced to involve in prostitution, other forms of sexual abuses and exploitation. A number of those children are the victims of trafficking as well.
39. Children are frequently used in the demonstration and campaigning activities by most of the political parties. The call of strikes and blockades by various political forces have seriously impaired the right to education as in all those situations schools are closed.
40. Child labor in various forms is common in Nepal. At times thousand of children are employed in life threatening hazardous conditions.
41. Child marriage and offering of girl child in the name of God and Goddesses giving the title to those children as *Jhuma, Deuki, Kumari* are still prevalent in different communities. In addition acceptance of bonded labor of girl child (commonly called as *Kamalari*) by the parents as a means of payment of loan borrowed from landlords and others is also prevalent in the western part of Nepal.

### **Women's rights**

42. Nepal has become a state party to CEDAW and its optional protocol. The constitution guaranteed women's rights as fundamental right but still 62 discriminatory provisions against women exist in Nepal. Discriminating legal provisions are in the process of revising in order to comply with CEDAW and other international commitments. The constitution provides the right to obtain citizenship from the name of mother. But due to administrative hurdles and lack of clear policy it has not implemented yet.
43. Despite achievement of 32% of women representation in the Constituent Assembly, the participation of women in all state mechanisms such as executive, legislature and judiciary and political parties are dismal. Even after three year of approval of necessary public importance proposal made by Parliament regarding minimum 33% women participation no policy has been introduced by the government.
44. In general women fall among the poorer section of population. Estimated income of women in the country is only 0.408 as compared to 0.503 of men. The contribution of women mainly in house hold chores has not been accounted in GDP.
45. Despite several specific legislation, gender based violence in the form of trafficking, rape, domestic violence, sexual harassment and trafficking remain largely unaddressed.
46. The government commitment for the abolition of harmful traditional practices like *chhaupadi* and witchcraft-ship are not met. The women labeled as witches are victimized of violence with inhumane and degrading treatments such as beating, forcing to eat human excretion among others by community people. Many women are victimized with violence in different forms on the issue of dowry that include violence to death, and child marriage.
47. Badi is a caste in *dalit* community. *Badi* women in various parts of the country are familiar as sex workers for over the centuries. After a long struggle by *Badi* women for their right to live

with dignity and respect the government of Nepal entered into agreement with them in 2007. But the government has yet to meet the commitments.

### **Rights of *dalit* People**

48. Nepal is a state party to CERD. The constitution has guaranteed right against untouchability as a fundamental right. The government has accepted Durban Declaration and Program of Action.
49. Nepali *dalits* are under represented in the state structures both at decision making and implementation levels. Even though a recommendation by a UN mechanism for due representation in government, legislative bodies and the judiciary, progress to this end is not encouraging.
50. Several studies have identified various forms of discriminations against *dalit* at work place. *Dalits* represent less than one per cent in civil service, police and other public sector agencies. *Dalits* has a realization that they are denied access to jobs, discriminated at work place and often terminated from job simply because of their caste.
51. Approximately 23% of hills origin *dalits* and 44% *Madhesi dalits* are landless. A number of them work as *Haliyas* (a bonded laborer who is forced to plough for landlords) for years. Government of Nepal freed *Haliyas* from their bondage by an agreement with them in 2008. The commitments made through the agreements are not met.

### **Rights of people with disabilities**

52. Nepal has ratified Convention on Protection of Rights of Persons with Disabilities. The disabled, incapacitated and helpless citizens are entitled to get the right to social security as provided in law.
53. Similarly, state has promised to make participation of persons with disabilities in the state structure within the ambit of social inclusion policy. But the law safeguarding those rights has yet to be made.
54. Women with disabilities are discriminated by law in respect of remarriage, divorce and right to reproductive health.

### **Rights of senior citizens**

55. Persons of 60 and above are defined as senior citizens in Nepal. The state has enacted law relating to the protection of rights and interest of senior citizens. A number of issues relating to the protection of the rights of senior citizens are raised in the recent times. Strategic national efforts are required in this regard.

## **Key initiatives, challenges and commitments**

### **The peace process**

56. The Comprehensive Peace Agreement (CPA) done between government of Nepal and CPNM in November 2006 ended the decade long armed conflict launched by CPNM. With this development the country entered into transition to democracy and in the era of social, economic and political transformation
57. The constitution was promulgated in 2007. As stipulated in the constitution the Constituent Assembly election was held in 2008. The CA comprised of 601 members who are primarily responsible for the preparation of draft constitution. The third amendment of the constitution abolished 238 year old monarchy and declared Nepal a democratic republic. As stated in the constitution the making of new constitution was expected in two years. However due to serious differences among major political parties that could not happen. And therefore the eighth amendment of the interim constitution has recently extended one year to accomplish the work of the making of new constitution. This situation has impliedly extended the period of transition to democracy for another year that virtually started in April 2006.

58. The high level Peace Committee stipulated in the constitution has not been formed yet. The Ministry of Peace and Reconstruction has been formed as a new ministry of the government. As agreed in the CPA and Management of Arms and Armies Agreement was done between the government of Nepal and CPNM. Based on those agreements UNMIN was invited for the monitoring the management of CPNM combatants, arms and ammunitions held by CPNM and the Nepal Army.
59. Despite numerous challenges the peace process has been moving forward in line with social transformation of the country. The major of the challenges include the non-implementation of commitments made by both, the government and CPNM in various issues. Those issues may include adjustment of CPNM combatants, management of arms and ammunitions, formation of the high level peace committee, formation of the commission for restructuring of the state and return of private property occupied by CPNM cadres.

### **Transitional justice system**

60. The CPA has clearly stipulated for the creation of transitional justice mechanisms under the law. The constitution promulgated after the signing of CPA also stipulated for transitional justice mechanisms.
61. The decade of conflict between 1995-2006 remained most challenging in terms of protection of human rights. Approximately seventeen thousand people lost their lives, estimated 64 thousand people including security personnel injured, more than one thousand people disappeared, hundreds of thousands of people including children, women and senior citizens displaced. A number of incidents of rape and other forms of sexual abuses, torture and other inhuman treatment committed by both the security forces and rebels are reported. At times there was government's absence for the protection of human rights in various part of the country. As a result there was a difficulty to address and collect data of human rights violated by both the warring parties.
62. The healing for the atrocious and inhuman form of commission of crimes and human rights violations that happened during the conflict would not be possible through regular judicial mechanisms. Considering it NHRI have separately recommended the formation of Truth and Reconciliation Commission and Disappearance Commission giving responsibilities to deal with conflict related grievances by the victims and their families.
63. The international commitments for the women's participation that may include the provisions of GA Resolution 1325 is not properly addressed during the process of making laws relating to transitional justice system and peace building initiatives. In addition the women's agenda, voice and needs are not addressed in the Bills and policies developed toward the formation of transitional justice mechanisms. As an example the draft Bills on Truth and Reconciliation Commission and Disappearance Commission have overlooked women' and inclusive representation.

### **Enforced disappearances**

64. The enforced disappearance remained endemic during the armed conflict. The NHRC received more than three thousand complaints of disappearances during and after this period. The status of more than eight hundred people is still unknown. The NHRC record shows that both security personnel and CPNM cadres are responsible for disappearing people. Hence, NHRC recommended to the government to make public the status of at least 43 people who were disappeared from *Bhairabnath* battalion of Nepal Army in June 2005. Likewise, NHRC recommended the government and urged CPNM to make public the status of two people who were abducted and disappeared by CPNM cadres from Lalitpur district in 2005.
65. The CPA assigned NHRC to monitor the compliance with human rights law and instruments. With this development NHRC extended its work on monitoring and investigation of the cases of enforced disappearances during armed conflict. Despite NHRC recommendations and the

Supreme Court directives the state has not yet formed the disappearance commission. As a result the grievances of the families and friends of victims of enforced disappearances have not been addressed over the years.

### **Internally displaced persons**

66. Hundreds of thousands of people were displaced during the armed conflict. A number of them returned and some are in the process of returning to their homes. A number of them are still unable to return due to security reasons. The victims of displacement were not provided adequate rehabilitation related support such as housing, food, healthcare and schooling of children or a humane living. The majority of displaced persons did not get compensation against the damage of their property. There was lack of access in getting compensation by many displaced persons. The government developed policy guidelines with a view to respond grievances and loss of IDPs. In different occasions NHRC recommended the government for proper consideration on grievances and loss of IDPs.
67. The ongoing civil disturbance in *Terai* and eastern hills in particular has created the problem of internal displacement. The population of certain caste and origin are mainly displaced as they were the target of armed groups. In addition a number of people have left their homes after receiving threats to life, abduction and extortion.

### **Impunity**

68. The state of impunity is one of the main challenges for the protection and promotion of human rights. The maintenance of rule of law has appeared a difficult problem in the recent days. The number of heinous and organized form of crimes is increased.
69. The government' willingness to take action against the perpetrators of human rights violations is in question. The non implementation of the recommendations of the high level investigation commission commonly called as Rayamajhi Commission of 2006 can be taken as an example. More than 75% recommendations of NHRC toward prosecution or departmental actions against the human rights violators are not implemented followed by various recommendations of other NWC and NDC. Significant number of final decisions of the courts on criminal matters is also not implemented. The government has withdrawn over a hundred criminal cases under court consideration in 2009 that include cases of murder, rape and other serious criminal offences. The background behind such overlook is believed to be the nexus of politics with crime.
70. The increasing habit of non-abiding of law specifically among politicians, bureaucrats and security personnel has been developing in the form of a culture. This habit has been primarily responsible to ignore the worth of rule of law and spread the culture of impunity.

### **Recommendations**

71. The constitution and laws relating to civil rights have ensured human rights for the people. Albeit a number of legislation contain discriminatory provisions on the basis of sex and caste. The state efforts to eliminate discrimination by making or amending laws, addressing gender concerns in planning, programming, strategising and implementing seems to be inadequate. It is therefore the government and the legislature should give high priority to amend those laws in order to comply with the constitution and international human rights instruments to abolish discrimination in all forms.
72. The state efforts are inadequate in terms of fulfilment of human rights obligations enshrined in the international human rights instruments. Those obligations set by the conventions relating to the rights of children, women, persons with disabilities, *dalits* and other disadvantaged groups and torture victims among others. The government need to expedite the work to ratify conventions relating to Rome Statute of ICC, enforced disappearances, rights of migrant workers, excavation and removal of landmines and CAT optional protocol. In addition

withdrawal of the reservation made in ICERD is expected in order to widen the area of protection of the rights of *dalits*.

73. The implementation of law is weak due to unwillingness on the part of state agents and politicians. As an example NHRI recommendations followed by significant number of final decisions of the courts of law are not implemented. This trend is mainly responsible in flourishing the culture of impunity. It is therefore the government need to give due priority and reinforce its efforts for the respect of the rule of law and human rights.
74. Independent and autonomy of NHRC is the highest of all values. The NHRC Bill that was submitted by the government in order to comply with the constitution contains some anomalous provisions. Those provisions include removal of the phrase 'independence and autonomy' of NHRC, provision relating to staff management, financial autonomy among others. Despite NHRC recommendations those provisions may undermine the spirit of the Paris Principles. The NHRC therefore is extensively involved in dialogue, lobbying and advocacy with the parliamentarians and civil society leaders with a view to retain those provisions stated in NHRC Act of 1997.
75. Although NHRC, NWC and NDC are established as NHRI the state has not ensured equal status of those commissions. The NWC and NDC has a call that as human rights institutions all the NHRI should be given equal legal status complying with the Paris Principles.
76. The poverty is a serious challenge of the country that impliedly creates an environment to denial of enjoyment of human rights. Access to food, healthcare, education, information, housing and employment is limited particularly to the people living in the remote hills and *Madheshi* communities. The internal displacement added the problem of housing to displaced persons followed by thousands of homeless people. A number of industries and trade houses were either forced to close or affected during and aftermath of conflict period by increasing the number of unemployment. This situation has seriously impaired the enjoyment of economic and social rights and mainly to disadvantaged section of population including *dalits*.

#### **Technical assistance and international cooperation**

85. International cooperation has significantly contributed for the protection and promotion of human rights in Nepal. The OHCHR collaboration has helped in strengthening of human rights system in the country. In addition the cooperation of other bilateral and multilateral donors including UN system and UNDP in particular has contributed in strengthening the capacity of NHRC. In addition support of donor governments and INGOs has played important role to strengthening of human rights system.
86. The technical support of international community to strengthening of human rights protection measures would be an asset. In addition support to develop indicators in various aspects of human rights is expected in order to use human rights monitoring tools. The training and education in human rights protection measures would help strengthening the capacity of human rights defenders.

## Annex –I

### The Indicative Enumerators (checklists) for the Preparation of UPR Report by NHRC-Nepal

*Following are general guidelines expected to consider during preparation of UPR report and should not be regarded as complete and exhaustive.*

#### I Context

This enumerative list has been developed on the basis of major values and principles of human rights that encompasses through most of rights on individual basis. In order to collect information on the level of respect for human rights in the country the values and principles could be used as a tool to link with various rights. Considering the scope of work, time and size of the report the analysis based on specifying particular rights would be impractical ( as the list of rights is too many). And therefore status of the respect for individual rights giving impacts to the lives of the people should be linked and seen in line with HR values and principles as below.

#### II Key Enumerators

##### 1. Discrimination (rights against)

***Persisting level of discrimination based on caste, sex, race, creed, ethnicity, religion, age, status and origin in the enjoyment of rights- all civil, political, economic, social and cultural***

- a. The level of discrimination in Law, Policy and Practice to enjoy following rights

***Civil and Political Rights as*** – in voting, candidature, religion and belief, access to justice including fair trial/legal aid, movement, free speech and expression etc

***Economic, Social and Cultural Rights as*** - the right to healthcare, right to food, right to education focusing to the elementary education, right to housing, right to work and employment (based on fulfillment of state obligations to ensuring level of ***Accessibility, Availability, Affordability and Acceptability*** of goods and services toward ensuring economic and social rights).

***Rights of the Child-*** in order to ensure Survival, Development, Protection and Participation related rights of the child

***Rights of women-*** on equal access and opportunities to ensure creating an environment to enjoy various rights including ***right to empowerment and development***

***Rights of other vulnerable sections of population including minorities-***on equal access and opportunities to ensure creating an environment to enjoy various rights including empowerment and development

##### 2. Participation (right to)

Level of respect for ***active, free and meaningful participation*** to enjoy,

Civil and political rights

Economic, social and cultural rights

Development related rights by all, and mainly by vulnerable section of population including women, children

Group rights ( only specific) such as environmental rights, minority rights

### **3. Social (and economic) Inclusion Initiatives**

a. Level of efforts and strategies

- i. To bring vulnerable population into mainstream of economic development
- ii. To bring vulnerable population into mainstream of social development
- iii. To bring vulnerable population into mainstream of political development
- iv. To bring vulnerable population into job, labor, and service sector
- vi. Enforcement of law and policy relating to social and economic inclusion of vulnerable population
- vii. To advocate for and sensitize usefulness of social and economic inclusion of vulnerable section of population into development mainstreaming

### **4. Empowering Vulnerable Section of Population**

Level of efforts and progress on

The empowerment ( both economic and social) of vulnerable section of population such as *dalit*, indigenous minorities, tribal minorities, Madhesis and disables among others

- ii. Social empowerment of people through education, information, advocacy, dialogue and participation in various activities
- iii. Economic empowerment of people through income generating activities, work and employment, right to land and natural resources as a means of livelihood, and promotion and advocacy on those issues
- iv. Status, impact and usefulness of temporary special measures as preferential treatment for the empowerment and development of vulnerable section of population
- v. Enforcement of law and policy on the empowerment of vulnerable section of population

### **5. Access to Goods and Services**

- a. Efforts toward equal/equitable opportunities focusing to needy section of population
- b. Efforts on equal availability of goods and services
- c. Policies and programs in the direction of equal and equitable services
- d. Level of impact and public realization on the access to services
- e. Access and impact of services rendered by private sector development agencies
- f. Quality assurance on the good and services

## **6. Accountability and Obligation**

Level of efforts and progress in fulfilling international obligations and accountability by the state on

Civil and political rights

Economic, social and Cultural rights

Collective and group rights including rights of the minority groups, right of vulnerable section of population

Status of international treaty monitoring

## **III General Enumerators**

Issues relating to social and political transformation in Nepal

Efforts and progress on human rights education in the country

Comparative scenario of public awareness on human rights

Overview of human rights situation

Possible ways of improving human rights situation and performance

Using research and study reports including prepared by NHRC and HR organizations

Larger sharing of the idea of UPR and UPR draft report

Addressing the issues of international humanitarian law

Role of other NHRI, HR NGO, CSO and professional organizations in the development of human rights system

Role of international agencies in the development of human rights system

Issues relating to TRC

Status of NHRC work and recommendations

Issues relating to rights of migrant workers

Issues relating to refuses

Issues relating to disappeared people

Any other relevant issues

NHRC-Nepal

## Annex-II

### List of HR related Conventions and Protocols Ratified by the Government of Nepal

| <b>Conventions/ Protocols</b>   | <b>Date of Ratification /Succession</b> | <b>Provisions under Reservation</b> |
|---|---|-------------------------------------|
| Convention on the Abolition of Slavery - 1926   | January 7, 1963                         | No                                  |
| Protocol amending the Slavery Convention, 1953  | January 7, 1963                         | No                                  |
| Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery - 1956 | January 7, 1963                         | No                                  |
| Convention on the Prevention and Punishment of the Crime of Genocide -1948  | January 17, 1967                        | No                                  |
| Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others - 1949           | December 27, 1995                       | No                                  |
| Convention on the Political Rights of Women - 1952  | April 26, 1966                          | NO                                  |
| Convention on the Elimination of All Forms of Racial Discrimination - 1965  | January 30, 1971                        | No                                  |
| International Covenant on Economic, Social and Cultural Rights - 1966   | May 14, 1991                            | No                                  |
| International Covenant on Civil and Political Rights - 1966   | May 14, 1991                            | No                                  |
| Optional Protocol to the International Covenant on Civil and Political Rights - 1966  | May 14, 1991                            | No                                  |
| Convention on the Suppression and Punishment of the Crime of Apartheid - 1973   | July 12, 1976                           | No                                  |
| Convention on the Elimination of all Forms of Discrimination against Women - 1979   | April 22, 1991                          | No                                  |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 1948                                 | May 14, 1991                            | No                                  |
| Convention against apartheid in sports - 1985   | March 1, 1989                           | No                                  |
| Second Optional Protocol to the International Covenant on Civil and Political Rights  | March 4, 1998                           | No                                  |

|  |                    |               |
|--|--------------------|---------------|
| Convention on the Rights of Child - 1989   | September 14, 1990 | No            |
| Optional Protocol to the Convention on the Elimination of Discrimination against Women - 1999  | June 15, 2007      | Section ..... |
| First Optional Protocol on the First Covenant on Civil and Political Rights  | May 14, 1991       | No            |
| Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography - 2005 | January 20, 2006   |               |
| Convention on the Rights of Persons with Disabilities  |                    |               |
| International Labor Organization Convention (ILO Convention) 169   |                    |               |