



# Human Rights Newsletter

## National Human Rights Commission of Nepal

• Harihar Bhawan, Lalitpur, Nepal

• Volume 7

• Issue 3 - 4

• Sept - Oct, 2011

## NHRC Officials call on Chiefs of three major political parties: Attention drawn towards criminalization of politics



*The NHRC delegation led by Chairperson Justice Kedar Nath Upadhyay with Mr. Pushpa Kamal Dahal-Chairperson of UCPN Maoist, Mr. Sushil Koirala-President of Nepali Congress and Mr. Jhala Nath Khanal-Chairperson of CPN UML during the meeting held at their residence (left to right)*

**K**ATHMANDU: The NHRC delegation led by Chairperson Justice Kedar Nath Upadhyay called on the UCPN-Maoist Chairperson Pushpa Kamal Dahal (Prachanda), Nepali Congress President Sushil Koirala and CPN-UML Chairperson Jhala Nath Khanal.

At a time when there is growing concern over the withdrawal of criminal cases under the cover of insurgency-related political issues, the Chairperson Upadhyaya and other NHRC officials met with the leaders separately and discussed on the withdrawal of cases, transitional justice and criminalization of politics.

During the meeting, the NHRC delegates cautioned the top brass political leaders that the move to withdraw the cases will only promote impunity in Nepali society. They have, through the memorandum, urged the government to honor international humanitarian laws.

The NHRC also drew the leaders' attention towards the nexus between the criminals and

political parties and warned that this will eventually stir up criminalization of politics.

The NHRC has raised three main issues in the letter presented to the Chiefs of three major Political Parties. They include 'Independence and Autonomy of the Commission,' 'Transitional Justice and Case Withdrawal,' and 'Criminalization of Politics.' For detail of the letter, please visit:

[http://www.nhrcnepal.org/publication/doc/papers/NHRC%20letter%20Political%](http://www.nhrcnepal.org/publication/doc/papers/NHRC%20letter%20Political%20parties)

The memorandum further reads 'There is a need to provide full autonomy to NHRC as its recommendations to punish the guilty have not

been implemented yet.' The NHRC delegates simultaneously urged the government to adhere to the provisions enshrined in Paris Principle in this regard.

The Chairperson also drew the attention of the political leaders to expedite the establishment of Truth and Reconciliation Commission and the Commission on Disappearance to facilitate transitional justice.

All the three Chiefs of the political parties showed their concern over the issues raised by the Delegation. The NHRC delegation comprised of the Chairperson Justice Kedar Nath Upadhyay, Member / Spokesperson Gauri Pradhan, Secretary Bishal Khanal, Director Bed Prasad Bhattarai and other officers.

Prior to the meeting with the supreme leaders of the three major political parties, the Chairperson had sent a letter to the Prime Minister Dr. Babu Ram Bhattarai suggesting not to push for the withdrawal of cases of human rights violations filed during the conflict period.

# Human Rights Activities

## Monitoring carried out on the incidents of HR violations during festival holidays

- A complaint on the incident of rape was lodged at the NHRC Regional Office Biratnagar.
- The NHRC regional office, Janakpur launched investigation with regard to the incident of death of Phuldhari Mukhia on October 6, 2011.
- NHRC central office, Lalitpur received the reminders with regard to the old complaints
- The crew members including news reporters from Kantipur Television, Avenues Television and Nepal Television took to the premises of the Commission during the festival holidays. They updated and broadcast the activities carried out by the NHRC during the holidays.
- Placing various demands, the Samyukta Jatiya Morcha central committee staged a relay hunger strike programme in front of the Constituent Assembly House, Kathmandu. A monitoring team carried out monitoring on the programme on October 6, 2011. The party in perpetual peace talk with the government since August 11, 2011 had organized the relay hunger strike effecting from October 2, 2011 as per the dialogue Coordinators Dev Raj Lama and Dalmardan Kami. The demands included:
  1. Release the Morcha cadres namely Naresh BK, Jagat BK, Prabin Limbu, Prakash Rai and Prakash Magar. They were arrested by the police on September 3, 2011.
  2. Expedite the process of peace talk.
  3. Fulfill the demands placed by the rebellion parties

The NHRC monitoring team suggested to immediately inform the District Administration Office, Kathmandu about the hunger strike programme through the Tinkune Police Post.

- The inmates of the district prison of Gorkha were learnt to have been deprived of receiving Tika from the elder members of their family during the festival. The NHRC regional office Pokhara was issued a directive to monitor the issue.
- A verbal report was received from Gulmi district with regard to the torture inflicted on one person by the Police. The NHRC sub-regional office Butwal was contacted through telephone to collect the information in connection with the incident.
- Meanwhile, a woman was learned to have been injured during the dispute erupted in the Rukum prison on the "Tika" issue.
- The CA member Sandhya Dev forwarded a request to have monitoring on the arrest of a person in Nepalgunj.

## NHRC resumes investigation over the incidents of killing

**D**olakha: Based on the complaints received on various dates with regard to the incidents of killing that took place during and after the insurgency period, the NHRC has launched the follow-up investigation over the incidents from September 9-15. The incidents were reported to have taken place in various districts a few hundred KM away from the city capital Kathmandu.

As per the complaints, the victim Harishankher Bhandari, the resident of Melung VDC- Ward 7 of Dolakha district, was shot dead by the security forces way back in November, 2003. Late Bhandari was killed at his residence. In another incident, Purna Lama of Rakathum VDC, Ward- 9 of Ramechhap district, was reported to have been killed by a group of

5-20 cadres of Maoists. Late Lama was said to have been beaten to death on his way to the wedding of the daughter of his neighbor. The dead body of Lama, who was killed on November 25, 2010, is found to be still missing as per investigation report. Similarly, Raj Kumar Upreti, the resident of Namdu VDC, Ward -1 of Dolakha district was killed on September 14, 2004 by the Maoists cadres after he was taken under captivity. The victim was killed at a place called Kanlebhair of the same VDC.

Yet in another incident of killing, Raju Poudel belonging to Bhaluwajor VDC, Ward - 5 of Ramechhap district was detained by the security forces while he was tilling his field. He was killed later by the security forces of Narayandal Barrack on April 29, 2002.

## Boy sustains injury in bomb explosion

**B**anke: Til Bahadur Pun Magar, age 11, sustained serious hand injury in a bomb explosion. The boy had found the bomb while minding his cattle on October 7, 2011.



*Til Bahadur Pun Magar of Dailekh district showing his dismembered fingers of left hand due to bomb explosion*

Hailed from Kagate village, ward 8 of Dailekh district, the boy had found this unattended bomb in a jungle one hour away from his village and picked it up out of curiosity. He is reported to have lost three fingers of left hand and sustained multiple injuries on his chest and face.

The boy is undergoing treatment at a private medical centre in the district head quarter. The bomb was assumed to have been left behind by the Maoists during the insurgency period.

It may be recalled that both the military and the Maoists will assist each other in informing the other side in 30 days about mapping and storing of their ambushes and land mines and to neutralize and eliminate them in 60 days as per the line furnished under 5.1.4 of the Comprehensive Peace Accord, CPA.

The NHRC has been conducting monitoring on the series of post-war incidents of unattended bomb explosion in the country.

The family members of the victims have appealed for the compensation to the victims and action against the perpetrators upon finding the truth.



*HR Officers during the investigation with the victims' family members in Dolakha district*

# Guidelines on Consumers' Rights endorsed

## A Legal Instrument to protect HR of consumers

**K**athmandu: The NHRC has endorsed and released much awaited market monitoring guidelines amidst a programme held at NHRC. Speculations have been made that having endorsed consumer rights in human rights, rights bodies including the state agencies would find the "market monitoring" as part of their day's work.

Addressing the programme, Member Gauri Pradhan said that endorsing consumer rights as human rights has been a challenge to the Commission.

'People in general have lots of expectations. NHRC needs support from monitoring agencies and consumer rights activists,' urged Member Pradhan.

Director Bed Prasad Bhattarai said, 'The directive aims at facilitating market monitoring and protecting consumers from irregularities in the market in order to ensure their rights.'

The primary action aims at building coordination among market monitoring agencies and providing them more rights to control prevalent irregularities. The directive provides monitoring rights to the government agencies, consumer groups and the Commission. However, the Commission will not be involved on-the-spot inspection but monitor the work of the government mechanisms and consumer groups, clarified Director Bhattarai.

'NHRC will go to the market in emergency situation or it can appoint an agency to investigate a particular case,' Bhattarai said, adding that it is the first step of NHRC towards protection of economic rights of the people.

'In compliance with the Constitution and HRC Law, the Directive would be vital as the most powerful legal instrument in the country to check market irregularities,' said Jyoti Baniya, the consumer rights activist.

The directive has banned unfair and monopolistic trade and rationalized Promotion and Market Protection Act and Consumer Protection Act.

### Cases on consumer rights violations registered

Consumer rights activists have registered three cases at the NHRC central office asking for investigation in irregularities on milk, meat products and installation of price-list and irregularities in bills. Consumer activist Jagannath Mishra filed case against seven agencies including private sector agencies – Federation of Nepalese Chambers of Commerce and Industry, Nepal Chambers of Commerce and retailer's associations — for violating price-list provision of consumer law and irregularities in bills. Similarly, Bimala Khanal filed case against fish and meat vendors for rampant use of harmful chemicals and growth hormones. Activist Achyut Raj Budhathoki filed case against seven agencies including dairy factories for not maintaining minimum standard and producing synthetic milk using harmful chemicals. Similarly, a case has been registered at the NHRC with regard to irregularities in Airline Services in the remote area including Karnali resulting in the deprivation of right to free movement of the people.

As consumer rights has endorsed as human rights, people suffering from violation of such rights can directly go to the Commission for justice whereby the Commission will issue order to respective agency.

'A consumer can file a case against rights violator and after investigation, the Commission shall recommend for the departmental action to the responsible government official under article 132 of the Interim Constitution of Nepal,' added Bhattarai.

Meanwhile, central monitoring representatives of the Consumers Welfare Protection Forum have lodged complaints at the NHRC about the irregularities in the price list and invoice, use of caustic soda in milk, use of medicine in meat and fish as formalin. They have demanded monitoring on these cases, which have violated human rights of the consumers.

### Joint Media Advisory

#### South Asia's first guide on indicators for monitoring human rights released in Kathmandu

20 September, 2011

Kathmandu - The National Human Rights Commission (NHRC) and the United Nations Human Rights Office in Nepal (OHCHR-Nepal), in collaboration with civil society members of the Working Group on Economic, Social and Cultural Rights Indicators, have together developed a user's guide on Indicators for Monitoring Economic, Social and Cultural Rights. Nepal is the first country in South Asia - and one of the few worldwide - to have finalized such a tool in support of actors engaged in the monitoring of these rights.

The Chairperson of National Human Rights Commission Kedar Nath Upadhyay will launch the User's Guide at an event on Tuesday 20 September. There will be invited guest speakers from the national human rights institutions, as well as senior government officials, civil society, UN agencies and members of the international community.

The denial of the enjoyment of economic, social and cultural rights, such as the right to adequate food, adequate housing, health, education and work, contributed to creating significant disparities between different communities within Nepal. This is particularly acute in relation to the most marginalised communities. Ensuring the enjoyment of economic, social and cultural rights is crucial for a successful transition to peace in Nepal, as envisaged by the Comprehensive Peace Agreement and the Interim Constitution.

The User's Guide is designed to provide the necessary tools and methods to be able to properly monitor the enjoyment of these rights and the performance of the Government in the realisation of these rights. In so doing the guide can actively assist policy makers in the formulation of improved plans, programmes and policies to improve the enjoyment of these fundamental human rights in Nepal. The guide will be used by human rights actors across Nepal, including the national human rights institutions and human rights defenders.





## Monitoring carried out on Consumers' Rights situation in Dhading

**D**hading: Based on the monitoring directives endorsed and issued by the Commission, the NHRC team have held a discussion on over all human rights situation of consumers in Dhading district. Chaired by the NHRC Director Bed Prasad Bhattarai, the two day programme was also part of the objectives set forth in the NHRC strategic plan. Hon. District Judge Sahadev Prasad Bastola was the Chief Guest of the programme.

at the roadside motels on national highways, recruitment of minors below age 8 and 11 in such hotels and medical stores running without license. In this concern, the NHRC team found that there has been considerable lack of coordination between the district officials and concerned stakeholders.

During the programme the representatives of the political parties, all heads of government offices including district

## Stakeholders pledge support to implement the NHRC Consumers Rights Guidelines

workers, Nepal Bar Association of the district and Federation for Commerce and industries, media persons and the local residents.

### Prison and Detention Centre Monitoring

Meanwhile, the NHRC team also carried out monitoring at the prison and detention centre in Dhading district in September, 2011. The team, in accordance with section 9 of Human Rights Act, 2053, monitored the prison condition including the human rights situation of inmates serving their jail term in Dhading.

The team met with the Chief District Officer including the prison officials, jailor, security personnel and inmates. Following the discussion held on September 16, 2011, the team conducted inspection of both internal and external physical condition of the prison and detention centre during the monitoring as per the detention monitoring guideline issued by the NHRC in 2011. .

The prison, which could accommodate only 30 inmates, had 101 male and female inmates kept together which is three times more than its capacity.

However, administrative and other prison activities were found smooth and efficient as compared to those of the past, the monitoring report says. The administration was found to have maintained the record /data of the prison and kept safely for future reference. The team has, however, recommended the alternative

arrangement of separate cells for the inmates of different categories such as male and female or adult and juvenile as well as differently able and sick inmates.

The inmates were found to have been facilitated with the skill development and income generating activities within the prison. But the arrangement of health and sanitation facilities was found to be inadequately facilitated though it is the rights of prisoners. The initiative for education for the inmates, however, was made with the study arrangement for 9 inmates within the prison.

The physical condition of the prison was not up to the standard. The prison appeared in a very shabby condition for which the team has recommended improvement to be made through the concerned prison authority. The team also monitored the detention centre at the District Police Office where 14 detainees were detained for the investigation of various offenses.

No physical or mental torture was inflicted on inmates, the report says.

Meanwhile, the team has recommended the provision of identity card to the inmates as per the international law, adequate medical facilities, library and the arrangement of higher education facilities to the inmates if they desire so.

*Continues on page 11*



HR Officer Bhim Prakash Oli with the stakeholder representatives and the guests during the discussion programme held on consumers rights in Dhading

The objective of the monitoring was to collect the data based on the consumer rights situation in the district, convey the information with regard to the monitoring guidelines - 2011 issued by the Commission for the protection and the promotion of human rights of consumers.

At the programme, HR Officer Shyam Babu Kafle presented the paper on the de-facto situation of human rights of consumers in Nepal and the Monitoring Guidelines on consumers rights endorsed and issued recently by the Commission. Following this, the discussion was held. Meanwhile, the team conducted monitoring on consumer rights in Dhading district in September, 2011.

During the course of monitoring, the team comprising Director Bed Prasad Bhattarai, HR Officers duo Shyam Babu Kafle, and Bhim Prakash Oli investigated over the haphazard occurrences of market irregularities such as adulteration in edible and construction materials, use of unnecessary pesticides, lack of the installation of price list of commodities, monopolistic prices of food stuff

administration office, district police office, FNCCI of the district as well as human rights organizations of the district expressed their commitment to pledge support for the protection and promotion of human rights of consumers.

The instantaneous impact of the NHRC's discussion and monitoring was that the concerned authorities have commenced the activities as part of their work to prevent and control the market irregularities in the district head quarter and elsewhere.

Similarly, the participants of the discussion offered their suggestion with regard to awareness raising programme on consumer rights, regular monitoring on market irregularities, recommendation to the Government of Nepal for the establishment of the district level laboratories.

The participants comprised of 67 attendees including the district level chiefs of the political parties, representatives of the local administration and security agency, government offices corporations, human rights workers, and consumer rights



Director Bed Prasad Bhattarai and HR Officer Shyam Babu Kafle with the prison official observing the handicraft production by the inmates

# Series of Training held on Human Rights Based Approach to Development



NHRC Chairperson Justice Kedar Nath Upadhyay, Regional Administrator Mr. Dharni Dhar Khatiwada, Deputy Director Kosh Raj Neupane and SCNHRC Project Manager Hemang Sharma with the Stakeholder Representatives during the training held on HRBA to Development in Dhankuta district

held on the upcoming monitoring of the National Human Rights Actions Plan (2011-2013) of the Government of Nepal. NHRC Chairperson Justice Kedar Nath Upadhyay and Member Gauri Pradhan participated in the programme as the Chief Guests and provided valuable input. The participants of the training comprised concerned government organizations such as District Development Committee, District Health Offices, District Education Office, and other governmental offices. The participants appreciated NHRC's effort on human rights promotion and expressed how such trainings were crucial in making individuals think from a human rights perspective.

The training was facilitated by Advocate Rajesh Hamal and NHRC staff.

A series of training events on HRBA to Development were conducted in Jhapa, Dhankuta, and Baglung districts on 7-9, 12-14, and 25-27 September 2011 respectively by Biratnagar and Pokhara regional offices. The programmes were based on the training manual on HRBA to development that was recently developed by NHRC. The manual is a training tool that aims to integrate human rights in development plans and programmes of the Government.

The training imparted knowledge and skill to the stakeholders concerned on the concept of HRBA and ways of implementing human rights in the overall development programme cycle. During the programme, discussions were also



Participants attending the district level training on HRBA to development in Baglung

## Workshop on HR Education held in West

### Stakeholders pledge support for HR education in school curriculum

Palpa: NHRC Sub-Regional office Butwal organized a two day workshop in Tansen, Palpa on September 21-22, 2011 on human rights education in school level curriculum.

One of the objectives of the workshop was to review the achievements made so far with regard to incorporating human rights in school curriculum and future strategic collaboration with the concerned stakeholders in this concern.

First day of the workshop was chaired by Gopal Prasad Basyal, District Human Resource Training Centre, Palpa whereas the last day of the workshop was chaired by WDO Jamuna Poudyal, Women's Development Officer of Gulmi district. At the workshop, discussion was also held on the NHRC activities on

existing law pertaining to the rights of child in the present context.

Mr. Shambhu Poudel, DEO of Palpa presented the paper throwing light on the present education policies of the government. Following the presentation, discussions were held on the code of conduct to be laid out for the teachers, disabled friendly school infrastructure, schools to be treated as peace zone and incorporation of human rights in school curriculum.

Mr. Prakash Adhikari, Socio-psychological Counselor, 'Sakriya Samaj Nepal'- Kapilvastu presented the paper on the counselling on child psychology pertaining to the child rights. Thereafter, the interaction was held among the stakeholder participants on the

capacity building training provision to the teachers keeping in mind child psychology and qualitative education in schools.

Advocate Mahendra Prasad Pandey, Former Chairperson of the Nepal Bar Association of Appellate Court and Coordinator of the Accountability Surveillance Committee, Lumbini Network made the presentation on the implementation of child rights in Nepal and existing laws with regard to child rights.

Human Rights Officer Chandrakant Chapagain offered his presentation on the protection and promotion of child rights and the NHRC initiation in this concern.

*Continues on page 11*



September 4, 2011

**Subject: Case Withdrawal and Amnesty**

Excellency,

First of all, I would like to extend my best wishes and felicitation to Your Excellency for being elected as the Prime Minister and to all the honorable ministers in the government. There has been enough reasons for us to be assured now that the peace process in your leadership will gain momentum towards the logical conclusion in view of the achievements made formerly during your term as the Finance Minister and also presently, your promptness to hand over the keys of the armed container to the Special Committee after the UCPN (Maoists) came to the power. Peaceful environment and human rights are inseparable and interdependent. Peaceful environment is an integral to human rights. It is, therefore, obvious for me to anticipate your early and strong additional initiative in other factors of peace process from your side. In this context, it is pertinent to refer the past activities that have been relevant.

In short, the days that followed the Comprehensive Peace Accord (CPA) do not appear to be encouraging from human rights perspectives. It seems that most of the days were spent in the derailment of the peace process rather than sincerely implementing the commitments on human rights. The publication of NHRC's periodic reports on CPA elucidate about this. The last report among those published is enclosed herewith for your perusal.

Crimes related to the violations of human rights and humanitarian laws committed during the conflict period are not only the issue of national laws but also fall under international laws. Civil society members, human rights activists and world community are keenly watching the development in this regard. In the recent past, action has been taken in international criminal court against the cases with regard to human rights violations committed during the conflict period in Yugoslavia, South America and Africa. It is a normal judicial process to file the case and procure judgment for the punishment against the war crime or the crime against humanity. In general, there occurs delay in normal judicial process along with the increasing expenses incurred for such process and also the relief and compensation can't be made available to the victim party promptly and effectively. However, in internal strife, since the rivals in the conflict belong to the same state, society and village, reconciliation mechanism can be instituted purposely for the sake of mitigating the inimical attitude between the victims and perpetrators.

Under such circumstances, apart from the peace committee, transitional justice mechanism is espoused as an alternative to settle down the crimes of special circumstances among the crimes committed during the conflict in an easy and simple manner. We do have objective and values enshrined in the Interim Constitution of Nepal - 2007 preordained to internalize the CPA. It is a significant endeavor of transitional justice to have the conflict victims and their families provided with immediate relief and compensation from the side of the state. It is indeed admirable that this has gradually been proceeding for accomplishment.

Even after elapsing of 5 years of CPA, there has been considerable delay in the formation of the Commission on Disappearance and the Truth and Reconciliation Commission (TRC) though some attempts have been made by the GoN with regard to transitional justice. As the situation appears to me now, justice has become a distant dream for the victims and their families as the perpetrators haven't been booked due to the considerable delay in forming these commissions intended to address the issues of human rights violations occurred in the conflict period. On the other hand, the accused security personnel are rewarded with promotion and the process of arbitrary withdrawal of cases against the persons affiliated to each major political party without following any reasonable and prudent standard has obscured criminal justice. Such actions are ostensibly making government's policies incomprehensible making withdrawal of cases and grant of amnesty to convicts not transparent and reasonable. The withdrawal of cases without any basis and standard often invite debate in both national and international level. Legitimacy of such practices or laws upon which they are based, are liable to be challenged due to lack of clarity, reasonability or having any justifiable standard.

I must emphasize here that the cases of human rights violations occurred during the decade long armed conflict and those cases pertaining to post conflict period cannot be placed in the same category under the CPA and the Interim Constitution of Nepal. It is, therefore, by design, perceptible that it wouldn't be appropriate to treat them at par and apply uniform standard to the cases of both period. This would not be consonant with justice, wisdom and norms and values of international human rights. NHRC has perceived this clearly and would like to be explicit in this regard. Your Excellency is well aware of the fact that the decision to withdraw the cases and to reward promotion to the security personnel already convicted of human rights violation which was done by the governments of all the three major parties viz. Nepali Congress, CPN (Maoists) and CPN (UML) have been the issue of intense debate and disapproval among the entire human rights communities. Yet, the agreement has been reached between your party- the UCPN-Maoist and the UDMF to withdraw all the cases related to the Maoist armed conflict and movements of Madhesis, Janajatis, Dalits, Tharuhat and disadvantaged groups and to grant amnesty in cases instituted against them. NHRC, therefore, expresses serious concern and has apprehension of the withdrawal of cases which might include the grave cases of human rights violations and crimes against humanity. Specially, the act of withdrawal of cases related to abduction of the citizens for ransom, killing, violence and torture perpetrated on the ground of personal grudge and interest would be apparently against international humanitarian law and human rights. Undeniably, fingers are often raised on the legitimacy to withdraw such cases of criminal offences against human rights and to grant general amnesty to the accused. GoN has been oblivious in forming the Truth and Reconciliation Commission (TRC)- the would-be mechanism to address such issues.

# NHRC in Media

## शान्ति प्रक्रिया टुंग्याउने सहमतिको सर्वत्र स्वागत

### सहमतिप्रति इमानदार बन्न आग्रह

### भारतलायत मित्रा



## NHRC Chief against PM's move

'Cases can't be withdrawn, nor convicted'

**‘मुद्दा फिर्ता र आममाफी नहोस्’**

**कान्तिपुर संवाददाता** काठमाडौं, १० असार २०७१

काठमाडौं: राष्ट्रिय मानव अधिकार आयोगका अध्यक्ष केदारनाथ उपाध्यायले प्रधानमन्त्री बाबुराम ज्ञानेन्द्रले अघाडि पारेको सहमतिप्रति इमानदार बन्न आग्रह गर्नु भएको छ। उनले सहमतिप्रति इमानदार बन्न आग्रह गर्नु भएको छ।

## Judiciary as much to blame as parties for withdrawal of cases

Without a Truth and Reconciliation Commission, there will never be peace in this country, says Kedar Nath Upadhyay, Chairperson of the National Human Rights Commission (NHRC) and former Chief Justice of the Supreme Court. Kamal Sigdel and Gyanu Adhikari spoke with Upadhyay yesterday to discuss Prabhu Sah, who has since resigned as minister for land reforms, the culture of impunity, political parties' withdrawal of court cases pressed against party workers and the perils of non-existent transitional justice mechanisms.



For detail interview, visit: <http://www.ekantipur.com/2011/10/17/oped/monday-interview/342310.html>

Of late, Your Excellency, on behalf of the GoN, have expressed before the human rights activists that cases of fallacious nature would be withdrawn. Is it not the responsibility of a judicial administration or in the present context, the TRC formed under Interim Constitution to decide, based on available evidences, whether the case in question is true or false or fabricated? If the government interferes in the matters that are purely judicial and to be handled by the established judiciary and the transitional justice mechanism, there would be no merit in establishing those mechanisms afterward.

The proclaimed agenda of the agreement on the withdrawal of cases and grant amnesty even before Your Excellency assumed your present office has prompted human rights activists throughout the nation. Albeit there are provisions to withdraw the cases other than seeking general amnesty and the cases related to the individual property, by order of the Government and at the consent of the Court pursuant to the Article 151 of interim constitution, 2007 and the Article 29(1) of Government Prosecution Related Act 2049, the unconditional implementation of such provisions is regrettable. The provisions such as withdrawal of cases, granting amnesty or remission of sentence without setting out justifiable norms and standard compatible to court, court martial or any other judicial court or quasi-judicial body at the request of the government would bring lawlessness, impunity and legitimizing of the crime. This kind of erosion in values is obviously dangerous.

NHRC is in the view that the constitutional or legal provisions pertaining to withdrawal or grant of amnesty without prior probe or investigation should have appendage attached to conform to globally recognized international human rights norms and values. NHRC and Office of the High Commissioner for Human Rights-Nepal (OHCHR-Nepal) have jointly expressed their stand in this context and a copy of which has been enclosed herewith for your reference. Therefore, it is indeed regrettable, if it happens on the part of the GoN, to withdraw the cases without ascertaining adequate evidences and proofs and to offer general amnesty to the persons accused of crimes. It is understandable that this will not only sadden the international community, Nepalese society and the entire human rights community who believe in rule of law but also depict the image of GoN as insensitive to human rights issues than in the past. I, therefore, earnestly advise Your Excellency to think seriously, consult national human rights related mechanisms and do sufficient groundwork before taking any decision in this regard.

**Kedar Nath Upadhyay**  
Chairperson  
National Human Rights Commission, Nepal

For electronic version of the letter, visit:  
<http://www.nhrconepal.org/publication/doc/papers/Case%20Withdrawal%20-%20Letter%20to%20PM.pdf>



## Child Rights situation monitored in Mid-West

**R**upandehi: The team of NHRC Sub Regional Office, Butwal has conducted monitoring on the child rights situation in Nawalparasi district from September 12 - 18, 2011.

teachers, police post occupancy in the school premises, enforced child marriage. Similarly, the team also monitored whether or not the scholarship is provided to the conflict affected children in the district.

and obtained the information in connection with the incidents.

During the monitoring, it was found that three children namely Bishal Chaudhary, Bishal Pandey and Ashish Baniya were missing. The children were assumed to have been abducted but they, other than Ashish Baniya, were later found to have left their homes due to the fear of examinations. Ashish is found to be missing for the last 15 months. Police are dispirited to find out the missing boy, according to the family members.

Meanwhile, the team has recommended that the authority ought to introduce the preventive measures to minimize the school drop-outs in the schools of Lumbini zone.

During the monitoring, the incidents of sexual harassment were found to be perpetuated on girl children in a few boarding schools of Lumbini zone. The directives on the prevention of violation of the rights of child including sexual harassment would be instrumental to prevent and control such a menace in educational institutions, monitoring report says.

Similarly, it was found that the corporal punishment in the schools of Lumbini was rampant. The team has made recommendations seeking directives from the higher authority with regard to the "School Inspection" on the part of the District Children Welfare Committee and District Education Office. The team has also recommended the installation of complaint box in the schools for the immediate action on the incidents of child rights violations.

Ganesh High School situated in Basahiya was found to be occupied by the police post. The daily activities of the police in the post have apparently hindered the teaching and learning process of the school. Thus, immediate removal of the police post has been recommended by the NHRC monitoring team.

Yet in another incident, Rekha Pandey, 18, was found to have fallen the victim of enforced child marriage. Based on the complaint registered at NHRC sub regional office, the team conducted on-the-spot monitoring of the incident. The team has recommended the necessary enquiry over the incident in order to protect the violation of child rights of the victims.



*Ganesh High School situated in Basahiya occupied by the local police post in Rupandehi district*

The team carried out the monitoring on various incidents of child rights violation including abduction, corporal punishment in the schools, sexual harassment perpetuated on girl students by the

Besides media monitoring, the team had launched on-the-spot monitoring, met with the family members of the children, human rights workers, and the representatives of the civil society

## Workshop on Child Rights held in West

**T**anahu: A one-day workshop entitled "Responsibility of Stakeholders in the Prevention of Corporal Punishment and Abuses in Schools" was organized at Damauli Bazaar of Tanahu district on September 15, 2011. Laid out as one of the NHRC's strategic objectives to encourage the culture of punishment-free teaching process in the schools, the programme was organized by the NHRC regional office – Pokhara with the financial support extended from the Save the Children.

The workshop session was facilitated by the joint secretary Guru Prasad Poudel of district Education Office, NHRC Director Yagya Prasad Adhikari and Badri Prasad Subedi respectively.

Representing all sectors, ten participants each were invited to the programme. The concerned stakeholders unanimously expressed their commitment to implement the principle of zero punishment in the school. They also urged the NHRC to take such programmes to other districts of the region.

## Ban on corporal punishment stressed



*A child participating in recitation during the workshop held on Child Rights in Tanahu*



## NHRC Chairperson suggests PM on the withdrawal of the Criminal Cases

**L**alitpur: The Chairperson Justice Kedar Nath Upadhyay has sent a letter to the Prime Minister Dr. Baburam Bhattarai suggesting not to withdraw the cases of violation of human rights of serious nature. In the letter, the Chairperson has expressed that one of Four Point Agreement reached between the UCPN-Maoist and the Unified Democratic Madhesi Front (UDMF) to withdraw the cases related to armed conflict and various other activities of the past that are under consideration of court do not comply with human rights commitments of the state.

Through the letter, the PM has been reminded of the decision to withdraw the cases and to reward promotion to the scandalous security personnel in the matters of human rights violations commissioned by the governments of all the three parties viz. Nepali Congress, CPN (Maoists) and CPN (UML) after 2063 BS. Similarly, the Prime Minister has been reminded of the crucial issue stating that it is the responsibility of the judiciary or, in the present context, the Truth and Reconciliation Commission (TRC) to be formed under the Interim Constitution and not the job of GoN to decide, based on available evidence, whether or not to punish the accused. If the government interferes in the matters that are purely judicial to be considered by the judiciary and the transitional justice mechanisms, there is hardly any meaning of instituting mechanisms (TRCs) as such, the letter reads.

‘Even after signing of the CPA, there has been considerable delay in the formation of the TRC mechanisms. On the one hand, justice has become a distant dream for the victims and their families as the perpetrators haven't been brought to justice. On the other hand, the accused security personnel have been rewarded with promotion and the process of haphazard withdrawal of cases relating to the persons associated with each political party without any set standard wasn't reasonable. It is indeed regrettable on the part of the GoN to withdraw the cases without any adequate evidence and proof and to grant general amnesty to the persons violating human rights and commissions of crimes, the letter states.

The NHRC and the Office of the High Commissioner for Human Rights - Nepal (OHCHR-Nepal) have publicised the joint opinion through a report on the step taken by the GoN to withdraw the cases of human rights violations of serious nature under political cover.

## Indicators on ESC Rights endorsed: Immediate implementation urged



*NHRC Chairperson Justice Kedar Nath Upadhyay launching the Indicators on ESC Rights during the programme held in Kathmandu*

**K**athmandu: The NHRC Chairperson Justice Kedar Nath Upadhyay has said, 'In bygone days, the International Covenant on Civil and Political Rights (ICCPR) was abundantly prioritized due to the kinds of incidents occurred during insurgency period. Though International Covenant on Economic, Social and Cultural Rights (ESCR) was considered to be the root cause of the problem, it was overshadowed with no importance given to it.'

Speaking at the occasion of launching of the 'The Indicators for Monitoring Economic, Social and Cultural Rights (ESCR)' in Nepal amidst a programme jointly organized by NHRC and OHCHR - Nepal in Kathmandu on September 21, 2011, the Chairperson said, 'Having come to realize the significance of ESCR and the over all development of human society, ESCR now is the most sought after rights and the realization of which would be instrumental to pave ways for the prosperity of the general citizens.

'Now since the user's guide is in our hand, it will help us assess the implementation of the commitments made by Nepal towards international HR instruments, able and competent human resources, budget, the achievement accomplished throughout the year,' emphasized the Chairperson.

'Monitoring on ESCR pertaining to the food, housing, health, education and employment may be taken as a pilot-campaign at the initial phase,' informed the Chairperson.

Extending felicitation to those involved including the representatives of the government,

the Chairperson concluded that ESCR at par with other human rights would get adequate limelight to uplift the standard of common citizens of the country.

Addressing the programme, Member Gauri Pradhan said, 'Better late than never, the much needed User's Guide on monitoring on the consumers' rights has finally been endorsed.'

Illustrating human rights and human development as the two sides of a coin, Member Pradhan said that the indicators encompassing five different rights viz. as food, housing, health, education and employment, both state actors and non-state actors would embark upon monitoring process to help realize the ESCR in general spectrum.

He added that the indicators will dig the areas towards which the state is obligated for implementing the international instruments to which Nepal is a party. He, however, mentioned that indicators brought into enforcement is not the complete one as it is in initial phase.

'If ICCPR is skin of a body, ESCR does the work of spine. It will help human rights keep upright,' said Jyoti Sanghera, Head of OHCHR-Nepal.

Sharmila Karki, the General Secretary of NGO Federation, Ananda Ratna Bajracharya, Joint Secretary of Agricultural Ministry, Prakash Raj Pandey, Joint Secretary, Ministry of Education, Kedar Poudyal, Joint Secretary of Office of the Prime Minister and Minister and Council of Ministers, Govinda Nepali- Member of NDC Mohana Ansrari- Member, NWC also spoke on the occasion.

# SAARC level workshop on Torture Prevention held in Kathmandu

## Implementation of Rights against Torture stressed



*Commissioner Gauri Pradhan delivering welcome speech at the inaugural session of the training held on "Regional level Workshop on Torture Prevention" in Kathmandu*

**K**athmandu: Chairperson Justice Kedar Nath Upadhyay has said, 'Torture has been omnipresent and it has been a growing practice in recent days. Prevention of torture and punishment therefore, has to be widely considered.'

Addressing the inaugural session of the SAARC level workshop entitled "Asian Sub-Regional Training Workshop Preventing Torture: The Role of NHRIs" Kathmandu from 19 -23 September, 2011, the Chairperson said that all serious human rights violations begin initially from torture and this is outrageously inhumane and against all civilized norms and values.

The Chairperson added that it is ostensibly a challenging task to prevent torture for human rights activists and national institutions of Sub-region. Adding that Nepal is not the exception in this regard, the Chairperson said, 'Nepal is a party to the Convention on Rights against Torture and since Rights against Torture has been ensured as the fundamental rights as per the Art. 26 of the Interim Constitution of Nepal-2007, the Commission stresses the effective implementation of the Convention.'

The Chairperson further stressed that since the torture inflicted by the police is in a very gruesome state in the South Asian countries including Nepal, the NHRIs ought to conduct the skill and capacity development as well as awareness raising programme among the agencies practicing torture.

The Chairperson, in his concluding remark, commended that the initiative as such on the part of APF would gradually bring the NHRIs closer in working.

Speaking at the programme, Member Gauri Pradhan stressed the effective monitoring mechanism of the NHRIs of the concerned countries to substantiate the effective role of the state in torture prevention. He also called

for the need of the establishment of the separate mechanism of South Asian NHRIs for this.

Adding that by commissioning the withdrawal of cases of grave human rights violation harnessed with the political color, Member Pradhan said, 'The government has apparently given shelter to torture and state of impunity.'

'Despite intense debate on the status of torture inflicted by the paramilitary forces, Police and Army personnel, the perpetrators are not booked as per the International Human Rights standards,' observed Member Pradhan.

'Nepal police, however, have launched the probe on the cases of torture inflicted during investigation which has fostered optimism on the prosecution side. Whereas, on the other hand, the NHRI in partnership with APT ought to develop the national minimum standards to invoke the sense of responsibility of the GoN, Home Ministry and other security agencies to put the guidelines into action,' urged Member Pradhan.

Former Attorney General Professor Dr. Yuva Raj Sangraula, as a key-note speaker said, 'NHRC can play the crucial role in the field of torture prevention with holistic approach such as educating about torture perpetrated by the government agencies.

'Torture was and has been a strong tool in a regime where the conflict had sparked. It's a bizarre thing that even the government machineries have engaged themselves in torture in civilized nations to have their political agenda fulfilled,' lamented Jyoti Sanghera, Head of OHCHR- Nepal,

She stressed that torture is illegal and pervasive everywhere and leaves no alternative but to criminalize it with the efforts inculcated through the NHRIs initiatives.

The Programme Officer of APT Tanya Norton and Programme Manager Suraina Pasha said that the workshop would be a platform to learn a great deal through the discussion and exchange of good practices adopted on the torture prevention.

The five day long training-cum-workshop will explore and discuss on the concept of torture prevention, including international and regional instruments on torture and other forms of ill-treatment, investigating allegations of torture, monitoring places of detention and interviewing detainees, cooperating with the international human rights system including promoting public awareness and conducting public inquiries.

Organized jointly by the NHRC-Nepal and Asia Pacific Forum of NHRIs in partnership with Association for the Prevention of Torture (APT), the workshop was attended by 26 participants comprising of 6 South Asian countries including India, Afghanistan, Bangladesh, Sri Lanka, Nepal and the Maldives.



*Commissioner Ram Nagina Singh and Secretary Bishal Khanal along with the experts as well as trainees during the closing ceremony of the training held on "Regional level Workshop on Torture Prevention"*



## Other HR Activities:

### Farewell to Forensic Anthropologist Dr. Udo Krenzer

**L**alitpur: The NHRC bade Farewell to Forensic Anthropologist Dr. Udo Krenzer amidst a programme held at NHRC on 16th October, 2011.

Addressing the programme Member Gauri Pradhan, Chair of the programme, said, 'I heartily thank Dr. Udo Krenzer and all the team members for the contribution made in the forensic investigation.'

Wishing Dr. Krenzer best wishes for his future undertakings, Secretary Bishal Khanal said, 'We, at NHRC, will retain the value of his inspirational expertise and would like to express our heartfelt gratitude to Dr. Krenzer. We also hope to have his expert service in the days ahead.'

Dr. Udo Krenzer shared some of his experiences during his working days in Nepal. 'I specially wish the victims and their families that they would get justice one day. 'I would be more than happy to contribute my expertise service any time in the days to come,' concluded Dr. Krenzer.

Dr. Krenzer contributed his service for over a year and a half to the NHRC, Institute of Medicine (IOM), Tribhuvan University and National Forensic Laboratory (NAFOL) and enhanced the capacity of the national experts. Dr. Krenzer contributed his expertise in Godar Exhumation from day one.



*Commissioner Gauri Pradhan presenting the souvenir to Forensic Anthropologist Dr. Udo Krenzer at the Farewell Programme organized at the NHRC*

Dr. Harihar Wasti- IOM (TUTH) , Jiwan Prasad Rijal – National Forensic Laboratory (NAFOL), Mr. Uddhav Acharya- DOA Dr. Jenish Acharya - Res. MD, KMC Manipal, India , Dr. Rijen Shrestha - IOM (TUTH), Vinu Shova Tuladhar - NAFOL also spoke on the occasion.

*Continued from page 5*

#### Workshop on HR....



*Participants representing various organizations at the Workshop on HR Education in School Curriculum held in Palpa district*

Deputy Director Deepak Jung Dhawj Karki, NHRC sub regional office, Butwal wrapped up the final session with the presentation focusing on the definition of human rights education and training, plan formulation and assessment methodology, inclusion of basic syllabi on human rights education. The participants were divided into the groups of four which involved in comprehensive discussion that followed. At the end of the workshop, suggestions and comments were collected from the participants.

NHRC has put forth its concerted effort for the promotion of human rights education both in formal and informal education in the country. In this concern, it has established collaboration with the concerned authorities in conducting the research based programmes such as human rights training, workshops and seminars, radio programmes, human rights exhibition, internship programme, production and dissemination of publications on human rights.

The participants of the workshop comprised of 29 participants representing the district education office - Gulmi, and Palpa, district child welfare committee, school resource centre- high school education council including the representatives from child rights organizations,, officers form educational human resource training centre.

*Continued from page 4*

#### Monitoring carried out....

##### Findings of the HR situation monitoring

Despite the fact that the rate of violation of human rights is in declining progression, the overall situation of human rights in Dhading district wasn't found satisfactory, the report submitted by the monitoring team says. The nature of incidents other than that of the conflict period was reported to have taken place sporadically in the area. Since the state of impunity prevails in the district, the victims are found to be deprived of justice delivery. The reason behind this is the non-adherence of the court decision to collect the penalty. The criminals are seen to be roaming about scot-free under political shelter. Similarly, there has been dispute over the relief distributed to the conflict victims due to the lack of standard laid out for the victims. Above all, the brandishing "Don" culture in the district has harbored panic among the district level journalists.

These apart, the rare presence of the health workers, distribution of outdated medicines, corporal punishment in the schools, child labor have contributed optimum to the violation of human rights to be unleashed and perpetuated in the district and surroundings. Besides, the unnecessary intervention of the political parties has obstructed the reinstatement of the VDC secretaries in the VDCs leaving the district level developmental stagnant ever since.

Besides, regular monitoring on the de-facto situation of human rights in the district, the team has placed the recommendation to write to the GoN and concerned political parties to draw their attention towards the situation without any obliviousness. The over all human rights situation of Dhading district was monitored by the team led by Director Bed Prasad Bhattarai and Human rights Officers duo Shyam Babu Kafle and Bhim Prakash Oli.

## National Children's Day observed: Priority shift stressed to meet basic needs of children

**K**athmandu: With the theme 'Our Concern: Peace, Constitution and Ensured Child Rights' this year, the National Children's Day was observed throughout the country with varieties of programmes and funfairs. Commemorating Nepal's signing to the UN Convention on the Rights of the Child (CRC) on 14 September 1989, 'National Children's Day' has been observed since the 1990.



On the occasion, a national level programme was jointly organized by the Ministry of Women, Children and Social Welfare and Central Child Welfare Board (CCWB) and National Child Rights Organizations in Kathmandu on 15th September 2011.

At the programme, Member Gauri Pradhan said, 'Nepal has made significant achievements in the field of child rights, particularly in child education, child health and social awareness on the rights of the child; however, hundreds of thousands of children are still facing exclusion in the mainstreaming national development planning.'

He emphasized that there should be priority shift and focus should be given to meet the basic needs of children including food, shelter, clothing, education, care and protection.

Minister of Women, Children and Social Welfare Mr. Mahendra Yadav was the Guest of Honor of the programme. Representatives of UNICEF, Nepal Police and civil society and children's clubs participated in the programme.

## NHRC facilitates training on HR and Democratic Policing to the Security Personnel



*NHRC facilitator with the participants of security agency at the closing of the training*

**K**athmandu: The NHRC official including Director Bed Prasad Bhattarai facilitated on-service training to 22 officers of Nepal Police including District Superintendent of Police (DSPs) and Inspectors on 19 September, 2011. The training was jointly organized by the Nepal Police Academy and the Department of Justice, USA.

Director Bhattarai, as the lead facilitator of the training, threw light on the NHRC's activities, mandates and investigation process. The session included various other themes including the pivotal role of the police in investigation on the incidents of human rights violations including the protection and promotion of human rights.

'It is often worth-mentioning that Nepal police have relentlessly rendered their cooperation and support in the exhumation process of Godar, Janakpur and Dwari of Dailekh,' commended Director Bhattarai.

Denver H. Fleming - the representative and eminent legal advisor of the US Department of Justice / International Narcotics and Law Enforcement Agency and Mr. Shobhakar Budhathoki - the National Advisor of US Department of Justice were also present at the training.

Newsletter publication supported by SCNHRC Project

Editors: Nawin Chandra Gurung  
Kailash Kumar Siwakoti

## Joint Press Release

### End the Haliya system in Nepal say the NHRC, NDC, NWC and UN

Tuesday, 06 September 2011

KATHMANDU - Although the September 2008 agreement between the Government of Nepal and Federation of National Haliya Liberation Society formally declared the liberation of Haliyas, tangible outcomes have yet to be achieved. The draft Haliya Prohibition Bill has not been passed, and the Government has yet to form the high level Haliya Emancipation and Rehabilitation Commission as agreed, or to publicize the results of the survey of Haliyas in Nepal", stated a press statement released today by National Human Rights Commission, National Dalit Commission, National Women Commission and two UN agencies, the International Labour Organisation and the UN Human Rights Office in Nepal.

"Three years after signing of the agreement, freed Haliyas have yet to receive promised relief and rehabilitation, and have yet to be issued with identity cards. Consequently, the freed Haliyas continue to face difficulty in accessing basic needs including food, shelter and health services, thus forcing them to live in often deplorable conditions. This has a particular impact on the families of the Haliyas including women and children. The lack of access to alternative livelihoods - as promised in the agreement - has also compelled many Haliyas to continue as bonded labourers with their former landlords", the press statement continues.

On the occasion of the 3rd anniversary of Haliya Liberation Day on 21 Bhadra, 2068 (7 September 2011), the National Human Rights Commission, the National Dalit Commission, the National Women Commission, the International Labour Organisation and UN Human Rights Office in Nepal call for the immediate, effective and timely implementation of the 2008 agreement. This includes the enactment of the Haliya Act in line with international standards and the need to address Haliya rehabilitation in a comprehensive and sustainable manner. They also want to remind the Government that the NHRC has made a number of recommendations on the issue of continuing Haliya practices that have yet to be implemented.



## National Human Rights Commission

Harihar Bhawan, Lalitpur, Nepal

Phone : 00977-1-5010015

(Hunting Line)

Fax : 00977-1-5547973, 5547976

Email: [nhrc@nhrcnepal.org](mailto:nhrc@nhrcnepal.org)

Website : <http://www.nhrcnepal.org>

Please send your feedback about the NHRC  
Newsletter to [nhrc@nhrcnepal.org](mailto:nhrc@nhrcnepal.org)