

**Assessment on Implementation of  
Core Human Rights Treaties  
With special focus on  
INTERNATIONAL COVENANT ON CIVIL  
AND POLITICAL RIGHTS (ICCPR)**



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## PROLOGUE

Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) in May 1991 along with other major international instruments. The ICCPR includes two major Protocols which have also been ratified by the Government without reservation thereby opening a wider corridor for exhausting UN mechanism to file individual complaints as well as total abolition of capital punishment. Nepal submitted an initial report under ICCPR in 1994, two years later than the due date. Three more reports are overdue.

Five front-runner human rights organizations namely, INHURED International, INSEC, CVICT, CWIN and FOPHUR submitted a common NGO alternative report to the ICCPR Committee in 1994 as a part of the counter reporting initiative. Since then, unfortunately, no report has been communicated by the Government to the concerned UN treaty monitoring body under the treaty thereby failing from its international obligation. The documentation of the violation of the ICCPR in the last thirteen consecutive years has been carried out by various human rights institutions and since the establishment of the HRTMCC, the ground work for ICCPR alternative reporting exercise is underway. However, the Government has yet to submit its overdue periodic reports which the HRTMCC expects to use for greater public debate for the purpose of alternative reporting. The HRTMCC has been ceaselessly following on the process and progress of the submission of the report with the concerned state authority. A series of high level visits have been conducted by the members of the HRTMCC in this connection to urge the Government towards fulfilling its obligation without further delay.

In this brief report, we have attempted to highlight some of the critical issues of concern in the light of constitutional and legal arrangements towards the effective implementation of the treaty at domestic level.

Various constitutional, legal and policy gaps, lapses and lacunas towards the realization of the rights enshrined in the treaty have been unveiled in order for sketching an appropriate future direction.

In the changed political context in Nepal, the emerging issues of civil and political rights need to be redefined with clearly set human rights benchmark. For example, laws regarding disappearance and criminalization of torture are some the key tasks that require urgent intervention from the human rights community. In addition, the ratification of the Rome Statute of the International Criminal Court (ICC) and the establishment of a high level independent Truth and Reconciliation Commission (TRC) as envisioned in the Comprehensive Peace Agreement (CPA) are vital to effectively address the culture of impunity and secure the state promise of non-repetition of the atrocities in future.

The new constitution-making process in Nepal is going to a daunting challenge in terms of setting proper human rights yardstick. The conventional way of understanding of human rights may not serve the purpose of attaining the aspiration of traditionally marginalized and excluded section of the society. A wider discourse is eminent to narrow down the debate and reach to commonly accepted principles without compromising the internationally accepted human rights norms and values.

Finally, while we celebrate the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights (UDHR), we believe that this report will serve as a renewed doctrine towards systematic advocacy, strategic litigation and collective campaign towards the observance of, and respect for the civil and political rights of all in the new realm.

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## Introduction

After the substantive political change in 1990 Nepal started to ratify and accede international human rights treaties in the greatest flow. Prior to that change, government was quite reluctant for recognizing fundamental human rights of individuals. Recognizing the individual rights of people, Nepal acceded International Covenant on Civil and Political Rights (ICCPR) and its first optional protocol on 14 May 1991 without any reservation and declaration. Under the First Optional Protocol, a state party recognizes the competency of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. Similarly, Nepal has acceded Second Optional Protocol of the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty on 4 March 1998 without any reservation and declaration.

Under the Article 40 of the ICCPR, Nepal was supposed to undertake submitting reports on the measures it had adopted to give effect to the rights recognized by ICCPR and on the progress made in the enjoyment of those rights. Although the initial report was due on 13 August 1992, Nepal submitted its initial report on 30 March 1994. The Second report was due on 13<sup>th</sup> August 1997; unfortunately it has not been submitted till date.

During the decade-long insurgency since 1996,, more than 13,000 people were killed, hundreds were involuntarily disappeared, thousands were tortured, abduction was rampant, freedom of expression was curtailed and fundamental liberty of people was restricted, but government neither submitted any report to human rights committee under ICCPR reporting obligation nor took any constructive initiatives to address the problems causing human rights violation.

### 1. Major Legislative Measures Taken by The Government

Since Nepal is a state party to the International Covenant on Civil and

Political Rights (ICCPR), it has obligation for respecting and ensuring rights to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant. Legal setups are fundamental for enjoyment of rights, thus; the covenant has set forth obligation to the state party of covenant to take the necessary steps, in accordance with its constitutional processes and with the provisions of the treaty itself, to adopt such laws or other measures as may be necessary to give effect to the rights recognized by the ICCPR.

Under the obligation of Article 2 of ICCPR, Nepal should have adopted necessary legal measures recognizing rights; those rights recognized by the covenant. Civil and political rights have broad spectrum considering rights under ICCPR. It recognizes right of self-determination, right to life, right to liberty and equality right, right against torture and slavery, right to fair trial, right to privacy, right to freedom of thought, conscience, opinion and religion, right to peaceful assembly and association, child rights, and group rights. Most of the domestic laws are directly or indirectly related to the rights recognized under ICCPR.

Basically, following acts can be taken as legislative measures taken by Government of Nepal concerning state party obligation under the ICCPR. The following acts have one or more provisions which recognize rights of individual which are under the letter and spirit of ICCPR.

- The Interim Constitution 2007;
- The Disabled Protection and Welfare Act, 1982;
- The Indigenous Communities' Upliftment National Act, 2002;
- The Consumer Protection Act, 1998;
- The Act Relating to Bonded Labor (prohibition) 1992;
- The Legal Aid Act, 1997;
- Prison Act, 2007;
- The Press and Publication Act, 1991;
- The Trade Union Act, 1992;
- The Nepali Citizenship Act, 2007;
- The Nepal Treaty Act, 1990;

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- The Press Council Act, 1991;
  - The Environment Protection Act, 1997;
  - The Child Labor (Prohibition and Regularization) Act, 2000;
  - The Children Act, 1992;
  - The Human Rights Commission Act, 1997;
  - The Compensation Act, 1996;
  - The State Cases Act, 1992;
  - The Army Act, 2006;
  - The Local Self Governance Act, 1999;
  - The Labor Act, 1999;
  - The Working Journalists Act, 1995; and
  - The Right to Information Act, 2007

In addition to the aforementioned Acts, Nepal Government has amended many laws making compatible with ICCPR provisions, however, they were adopted before the accession of the ICCPR

## **2. Summary of Suggestions/Recommendations**

Nepal has not submitted the state report under ICCPR since 1994, thus; there is not any suggestion, recommendation or concluding observation by Human Rights Committee regarding Nepalese legislative measures. However, considering the bleak human rights situation or extremely poor status of implementation of ICCPR, civil society, independent human rights defenders the following reports have given specific recommendations to safeguard the fundamental rights of citizens through the adoption of effective legal measures for the realization of the spirit of ICCPR which is the obligation of state party to act accordingly.

1. Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment-2006
2. Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons-2006
3. Report of the Working Group on Enforced or Involuntary Disappearances - Mission to Nepal-2005



4. Report of the Special Rapporteur on Violence against Women: Its Causes and Consequences-2001
5. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions- 2001
6. Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights and the Activities of Her Office, including Technical Cooperation, in Nepal- 2006

The suggestions and recommendations are aimed at adopting new laws, amending existing laws which are incompatible with ICCPR provisions, and for proper implementation of existing laws. The summary of suggestions and recommendations can be drawn as follow:

- Nepal has ratified ICCPR without any reservation and ratified Second Optional Protocol with out any reservation and declaration; however, the right to life is always at risk. Rampant torture, extrajudicial executions and disappearance are common as if Nepal has not abolished death penalty and has not respected the right to dignified life;
- Constitutionally, discrimination is prohibited; however, the practice of discrimination is the routine of the day in every sphere of life. Nepal Government has failed to adopt necessary laws and administrative measures to regulate discriminatory behaviors against *Dalits*, sexual, ethnic and linguistic minorities;
- Equality is guaranteed under the Constitution but more than half of the population, women are being deprived of access to mainstream of every section of governance. The problem of inequality has resulted in widespread domestic violence and sexual assaults;
- Institutional as well as legal reform is necessary to guarantee rights regarding criminal justice. Present set up has almost failed to guarantee fair trial rights which are the foundation for liberty and justice;
- State curtailed many of the rights during the time of emergency unnecessarily. Acceptable restrictions, necessary in democratic society, are provided within the provisions. However, the govern-

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ment restricted rights without justification, randomly and disproportionately;

- It is the basic obligation of any state to investigate any reports of human rights abuse, to identify the person or persons responsible and to mete out appropriate punishment and to compensate the victims. Nepal Government is found reluctant to address the problem, thus; it is suggested to take appropriate measure in this regard;
- Illegal detention, re-arrest from the court premises and incommunicado detention undermined constitutionally guaranteed rights and openly violated the spirit and provisions of the ICCPR. Unacknowledged detention increases the risk of extrajudicial executions and death in custody;
- Prevailing culture of impunity for torture is systematic. Especially the emphasis on compensation for acts of torture as an alternative to criminal sanctions against the perpetrator. The prevailing laws do not provide for the criminalization of torture, nor the imposition of punishment commensurate with the gravity of torture;
- Torture has been systematically practiced by the Police, Armed Police Force and Nepal Army. Legal safeguards are routinely ignored and effectively meaningless. Impunity for acts of torture is the culture, and consequently the victims of torture and their families are left without recourse to adequate justice, compensation and rehabilitation;
- Political intervention renders National Human Rights Commission and its mandates defunct, in the absence of Parliament. In one hand the government never complied with the specified suggestion by NHRC and on the other NHRC was often utilized to obtain approval for the government activities against the human rights principles;
- The Rome Statute on the International Criminal Court has to be ratified for punishing potential human rights violators, perpetrators of crime against humanity and war crime;
- The Government has to adopt special economic and social policies to provide access to resource, power and participation on decision

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making process in each stages for groups such as marginalized community, the victims of discrimination, slavery, social disregards and social exclusion and

- Extensive support should be given to NGOs working for protecting and promoting human rights. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in the human rights field is essential.

### **3. List of Legislative Pieces Recommended to be Annulled**

Despite a couple of amendments and reviews, many laws are still incompatible with the spirit of the ICCPR. Considering the state obligation under Article 2 of the Covenant, some legal provisions of Nepal have to be amended and/or annulled.

- The Terrorist and Disruptive Activities (Control and Punishment) Act was highly criticized in national and international level which was used as a tool to violate liberty and freedom of people, however, the Government claimed that particular Act was best tool to protect liberty of people. Adhering to large criticism by civil society and international community, the Terrorist and Disruptive Activities (Control and Punishment) Act has been scraped;
- Similarly, there are many flaws in laws considering to fair trial rights. The right to be heard by the competent court is violated in most of the acts. Investigation process and system is traditional and based on confession which has been resulting in torture. Thus, according to Article 14 of the ICCPR, the entire criminal justice system should be reviewed and reformed;
- Many provisions of Country Code 1963 that are discriminatory, ignore equality and promote injustice, have to be amended and annulled making compatible with the ICCPR provisions;
- The State Cases Act 1992 empowers police to interrogate the suspect but it makes no reference to the right of the suspect to remain

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silent as constitutionally guaranteed right. Such provision which is contrary to Constitution and ICCPR should be annulled;

- The Prison Act 2007 has no clear and substantive provisions for reforms and rehabilitation of prisoners. Facilities inside prisons are like degrading treatment which violates the dignity of the prisoners. Thus, the Prison Act should be amended incorporating and ensuring certain rights guaranteed by Standard Minimum Rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners;
- The Torture Compensation Act 1996 is not comprehensive and practical. It has flaws on defining torture, criminalizing torture; punishment to perpetrators and offenders, rehabilitation of victims and proper compensation. Thus, this Act has to be amended making strong legal tool to prohibit torture and protect the victim;
- Since the Constitution recognizes free legal aid as a constitutional right, the limitation of annual income of 40,000 in Legal Aid Act 1997 does not stand with constitutional provision, thus this Act has to be amended accordingly;
- The provisions which empower security personnel for any act beyond legal principles and offer impunity in the name of positional power of Police Act, Armed Police Act and Army Act should be amended and annulled making the provisions compatible with the ICCPR provisions.

#### **4. Suggesting Areas in Need of Fresh Pieces of Legislations**

As a state party to any international convention it is obliged to take adequate legal, judicial and administrative measures for guaranteeing rights set forth in the particular convention or covenant. Nepal Government has to enact fresh pieces of legislation to address newly encountered problems to guarantee ICCPR provisions as well as making amendment to existing laws.

Different sections of people have been demanding for the enactment of

new laws recognizing their particular rights. Dalit community has been lobbying for legal instruments to prohibit discrimination including defining such discrimination as criminal offence. Other groups of people are demanding to enact law guaranteeing equality regardless of sexual orientation. Gay, lesbians, bisexual and transgender are fighting to assert their rights. Women activists are also in the forefront for equality rights and freedom from violence. Similarly, lobbying for law against domestic violence is on the rise. Law prohibiting and criminalizing abduction is also a new demand at present. Similarly, there are many pressure groups and communities demanding different laws recognizing their rights or prohibiting particular Act or limiting power of security personnel for any procedural issues. To address the contemporary issues, following new pieces of legislations should be adopted to fulfill the state obligation under Article 2 of the ICoCPR.

- It is recommended to adopt laws which criminalises domestic violence;
- It is necessary to enact laws making individual responsible for violation of human rights;
- Torture should be defined as criminal offence with severe punishment to offender and perpetrator;
- New criminal code should be adopted respecting individual freedom and liberty with replacing traditional criminal procedure;
- New laws should be adopted criminalizing discrimination on the basis of caste and origin of person;
- Laws should be enacted to address the plights of families of the disappeared persons;
- New law should be enacted prohibiting discrimination on the basis of sexual orientation; and
- Laws should be adopted accepting rights of victim of crime and abuse of power.

##### **5. List of Reservations/ Recognition Made in The Treaty**

Nepal has ratified most of the human rights instruments with out any

reservation. Nepal accepts the competence of committee and Nepal has acceded the Second Optional Protocol without any declaration. However, the implementation status of ICCPR in Nepal is far from satisfactory. During the high voltage conflict, most of the rights were violated rampantly and the Government of Nepal is not responsive enough for guaranteeing rights recognized by ICCPR.

#### **6. Article-wise Summary & Legislative Measures for Amendment and/or That Need to be Introduced**

To audit the implementation status of ICCPR, the Government has to review most of the laws minutely because rights guaranteed under the ICCPR are in a broad spectrum directly inter-linked with several provisions of the other major human rights treaties to which Nepal is a state party. Interestingly, any particular Act is projected by the Government as the best legislative tool for protecting human rights but the same Act is being used as a legal weapon to suppress rights and liberty of people. In this context, sincere and meticulous assessment is required, however because of time and budget constraint, this paper tries to bring about a brief assessment of the Nepalese legal measures for the effective implementation of the ICCPR.

#### **Articles 1**

##### **Right of Self Determination**

##### **Nepalese Legal Measures**

The Local Self Governance Act, 1999 empowers local bodies for dispute settlement and for the realization of right of self determination. The Preamble and Articles 2,138,139,140 of the Interim Constitution 2007 has embodies the spirit of right of self-determination.

##### **Suggestions for Improvement**

There is no any explicit law guaranteeing the right of self- determination. New law is required to address the right of self determination explicitly.

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**Reference**

Adoption of Federalism, recognition of different ethnic and linguistic groups for resource management, substantial political participation through proportional manner is largely discussed in this regard.

**Articles 2****Equal Protection of Rights****Nepalese Legal Measures**

The Civil Liberty Act, 1955 and Article 13 of the Constitution have provisions of equality. The state shall not discriminate among the citizens on the grounds of religion, race, sex, caste, tribe, origin, language and ideological conviction. For the first time, Article 14 has guaranteed right against untouchability. Legal instruments to establish the National Human Rights Commission, Independent National Dalit Commission and National Commission on Women are quite significant. Social Welfare Act, 1992, Children Act 1991 and Labor Act 1991 are some of the positive efforts for equal protection of rights. The Treaty Act 1990, Section 9 is a vital legal measure for the domestication of internationally guaranteed rights in Nepal.

**Suggestions for Improvement**

Despite constitutional provision and legal setup, people are deprived of the right to equal protection. Rights of Badi community, sexual minority group, persons belonging to Dalit community, and different ethnic and linguistic groups are not effectively protected as compared to other majority population. For the enjoyment of rights guaranteed under ICCPR as well as the Constitution, the Government is obliged to adopt adequate legal measures protecting and promoting the rights of those deprived and marginalized communities.

**Reference**

Restructuring the system of governance and legal structure to protect

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rights of different groups and to promote their substantial participation in governance are major agendas of present political discussion.

### **Articles 3**

#### **Right to Equality**

##### **Nepalese Legal Measures**

Ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Article 13 and 20 of Interim Constitution, special protection or positive discrimination provisions under Constitution and many laws guarantee right to equality. The Labor Act 1991 and the Constitution itself recognize equal remuneration for men and women for the same work. The Immigration Act 1996 and 11<sup>th</sup> amendment of the Country Code 1964 are major legal measures taken by the Government.

#### **Suggestions for Improvement**

Domestic violence, sexual assault, sexual harassment on public place and working place and, dowry related violence against women are still rampant. The Citizenship Act, 2007 is still reluctant to accept women as an individual identity. New effective laws and institutional setup are necessary for promoting gender equality.

#### **Reference**

About 33% reservation for women in every sphere of governance is as the first demand for promoting equality among men and women. Adoption of law on domestic violence is highly discussed.

### **Articles 4**

#### **Non-derogation of Rights during the State of Emergency**

##### **Nepalese Legal Measures**

Article 143 has provision for non-derogation of certain rights which are fundamental even during the period of state of emergency.



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**Suggestions for Improvement**

Under the previous Constitution 1990 Article 115, the state of emergency was declared on 26 November 2001, 27 May 2002 and 1 February 2005. Despite having same provisions of Interim Constitution 2007, government used state of emergency as a tool not to be obliged with international instruments. The necessity of derogation was not tailored narrowly.

**Articles 5****Safeguard Clauses****Nepalese Legal Measures**

The Interim Constitution of 2007 and other Nepalese legislations make no provisions imposing any restriction upon on derogation of any of the fundamental rights recognized in the respective Constitution or legislation on the pretext that the covenant doesn't recognize such rights or that it recognizes them to a lesser extent.

**Suggestions for Improvement**

Interpretation of the ICCPR provisions as per convenience of state giving an excuse of ground reality and cultural relativity should be eliminated.

**Articles 6****Right to Life****Nepalese Legal Measures**

Article 12 (1) of Interim Constitution has provision guaranteeing right of every person to live with dignity and no law shall be made with provides for capital punishment.

**Suggestions for Improvement**

Right to life was violated largely violated during the conflict as well as after peace agreement between CPN Maoist and Government though

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the Constitution of 1990 and Interim Constitution 2007 have guaranteed right to dignified life as fundamental right of individual. Disappearance, extrajudicial killing and torture till the death were heavily practiced. Nepal has to develop legal measures protecting right to life through any form of risk. Ratification of ICC is important in this regard.

### **Reference**

Law against abduction is under consideration of Interim Parliament and making individual perpetrator and offender responsible for violation of right to life is a major demand of civil society.

### **Articles 7**

#### **Freedom from Torture**

#### **Nepalese Legal Measures**

Ratification of the Torture Convention-1984 without any reservation, Article 26 of the Interim Constitution- 2007, Children Act-1992, Torture Compensation Act- 1996, and Human Rights Commission Act, 1997 are major legal measures prohibiting torture.

#### **Suggestions for Improvement**

Legal measures have to be taken criminalizing torture with severe punishment and individual liability of compensation to victim. Torture Compensation Act should be amended defining torture making compatible with Article 1 of CAT and individual liability for practicing torture.

### **Reference**

Illegal detention is inflicting torture. During the state of emergency torture was rampant. It was hard to file application by torture victim for remedy which means just compensation and rehabilitation.

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## **Articles 8**

### **Prohibition of Slavery**

#### **Nepalese Legal Measures**

Article 19 of the Interim Constitution, Human Trade and Trafficking (Control) Act 2007, the Kamaiya Labour (Prohibition) Act 2002, and Child Labour Prohibition Act 2000 are important legal measures regarding effective realization of the Article 8 of the ICCPR.

#### **Suggestions for Improvement**

Proper implementation of Acts has been lacking. Bonded labors were released but they have no means of livelihood. Government has to adopt supplementary laws for making environment to enjoy the provision of adopted laws and Article 8 of the ICCPR.

#### **Reference**

Landless, previously bonded labor and many other groups of people are fighting for legal and institutional protection for enjoyment of prohibition of slavery.

## **Articles 9**

### **Liberty and Security of Person**

#### **Nepalese Legal Measures**

Article 12, 24, 25, and 32 of Interim Constitution 2007, section 12 of Civil Liberty Act, 1955

#### **Suggestions for Improvement**

Law implementation authorities are not sensitive regarding liberty and security of person. Thus; Legal measure should be adopted making them aware and responsible to law enforcement officials for encroachment of liberty.

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**Articles 10****Treatment of Persons Deprived of their Liberty****Nepalese Legal Measures**

Nepal has ratified Convention against Torture 1984 without any reservation. Similarly, it has adopted the Prison Act 2007, and Human Rights Commission Act 1997 with provision of protecting rights of persons deprived of their liberty.

**Suggestions for Improvement**

The Prison Act has to be amended incorporating the provision of Standard Minimum Rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners. Legal measure should be set up for regular monitoring and observation.

**Reference**

Open prison and community service has been recognized as a form of punishment but it lacks legal and institutional set up for proper implementation.

**Articles 11****Freedom from Imprisonment for Inability to Fulfill Contractual Obligation****Nepalese Legal Measures**

No 42 of the chapter on sentence of the Country Code 1964 has such provision, which needs to be reformed by an appropriate measure.

**Articles 12****Freedom of Movement****Nepalese Legal Measures**

Article 12 of Interim Constitution and section 6 of Civil Liberty Act, 1955 recognizes the freedom of movement and choice of residence.

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**Suggestions for Improvement**

Because of high voltage conflict and other disruptive activities, many people are compelled to move from their place of origin. Internally displaced people are having measurable life. Government has to make adequate laws addressing that indirect effect on violation on freedom of movement and choice of residence.

**Reference**

Many people originally from Hills are being displaced from Eastern and Central Terai. They are deprived from the choice of domicile.

**Articles 13****Non-expulsion of Non- National****Nepalese Legal Measures**

The Immigration Act 1992, Article 3 of Convention against Torture, and article 24 of the Interim Constitution 2007 has provision regarding to Non-expulsion.

**Suggestions for Improvement**

Immigration Act 1992 and Extradition Act 1971 have to be amended and Refugee Conventions should be ratified. Refugee laws should be adopted and Article 3 of the CAT should be implemented properly.

**Reference**

The civil society has been raising voice to ratify Refugee Convention 1951 and 1967 to address the issues of 150,000 refugees in Nepal mainly from Tibet and Bhutan.

**Articles 14****Right to Fair Trial (right to equality before the Courts and Tribunals)****Nepalese Legal Measures**

Judicial Administration Act 1991, Civil Liberty Act 1955, Section 30 of

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chapter of Court Procedure of the Country Code 1964, Article 24 and 107 of Interim Constitution 2007 have some substantive provisions regarding Right to fair trial.

### **Suggestions for Improvement**

Proper implementation of such provisions is totally lacking, many laws have provisions to investigate and deliver decision without proper procedure. Similarly, independency and competency of Court or Tribunals are always questioned in many laws. Like; Forest Act, Police Act, Immigration Act, Revenue Act, etc.

### **Reference**

Criminal law experts are demanding to reform entire criminal justice system to guarantee fair trial rights and prohibition on torture during criminal proceeding.

New Criminal code has been drafted.

### **Articles 15**

#### **Prohibition of Ex-Post Facto Laws**

##### **Nepalese Legal Measures**

Article 24 of Interim Constitution 2007, section 11 of Civil Liberty Act 1955 and most of other laws respect the provisions of prohibition of ex-post facto laws.

### **Suggestions for Improvement**

The practice of false allegation for political interest should be ended.

### **Reference**

Making new laws to punish culprit of the 2<sup>nd</sup> People's Movement (April Uprising) 2006 was questioned in this regard. But many jurists believe that this principle only applies on criminal laws but not to human rights violation, crime against humanity and war crime.

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## **Articles 16**

### **Right to be recognised as a Person under the Law**

#### **Nepalese Legal Measures**

Article 12 and 13 of Interim Constitution, CAT and section 9 of Treaty Act 1992, and Civil Liberty Act 1955 significant in this regard.

#### **Suggestions for Improvement**

Proper implementation of legal provision is necessary.

## **Articles 17**

### **Right to Privacy (Freedom from Arbitrary interference with privacy, family and home)**

#### **Nepalese Legal Measures**

Article 28 of Interim Constitution, Civil Liberty Act 1955, Postal Act 1962, Tele Communication Act 1962 and different provisions of Country Code 1964 are legal measures to protect right to privacy.

#### **Suggestions for Improvement**

Despite constitutional guarantee, privacy of people has been encroached frequently. To address new means of privacy encroachment and insensitive working pattern by investigation authority, it should be regulated by adopting new legal measure.

#### **Reference**

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

## **Articles 18**

### **Freedom of Thought, Conscience and Religion**

#### **Nepalese Legal Measures**

Article 12 and 23 of Interim Constitution and Section 5, 6 and 7 of

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Civil Liberty Act 1955 are significant protecting freedom of thought, conscience and religion.

### **Suggestions for Improvement**

Pursuant to article 18 of the covenant, Nepalese legislation imposes some restrictions on the exercise of right to thought, conscience and religion, imperative from the viewpoint of public safety, order, health, morals or the fundamental rights and freedom of others. This limitation should be interpreted and applied by narrowly tailored.

### **Reference**

Nepal has been declared as a secular state through the parliamentary decision in 2006.

### **Articles 19**

#### **Freedom of Opinion and Expression**

##### **Nepalese Legal Measures**

Article 12, 15 and 27 of Interim Constitution 2007, section 6 of Civil Liberty Act 1955, Press and Publication Act 1991, and Right to Information Act 2007 guarantee freedom of opinion and expression.

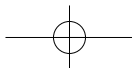
### **Suggestions for Improvement**

Restriction on FM radio, news papers and arrest and detention of journalist because of writing any news were rampant in the past. Limitation was imposed on freedom of opinion and expression for political interest of individual or group of people. Loophole of existing legal measures should be removed amending those legal provisions or adopting new legal measures.

### **Reference**

FM radios were banned for broadcasting news bulletin.





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## **Articles 20**

### **Prohibition of War Propaganda**

#### **Nepalese Legal Measures**

Article 12 (a) 1 prohibits the practice which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities, or on any act of defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behavior or morality.

#### **Suggestions for Improvement**

This constitutional provision has two edges. Concrete legal measure should be in place distinguishing between freedom of expression and expression jeopardizing harmonious relation.

## **Articles 21**

### **Freedom of Assembly**

#### **Nepalese Legal Measures**

Article 12 of the Interim Constitution 2007 and Section 6 of the Civil Liberty Act 1955 are relevant in this regard.

#### **Suggestions for Improvement**

The scope of reasonable restrictions should be clearly defined and laws addressing the ambiguity of the relevant provisions should be enacted.

#### **Reference**

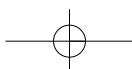
Many times restrictions were imposed limiting freedom of assembly in Nepal during the internal armed conflict.

## **Articles 22**

### **Freedom of Association and Trade Union**

#### **Nepalese Legal Measures**

Article 12 and 141 of the Interim Constitution 2007, Trade Union Act



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1992, Association Registration Act 1977, Labor Act 1992 and section 6 of Civil Liberty Act 1955 guarantee the freedom of association.

### **Suggestions for Improvement**

The scope of reasonable restrictions should be defined clearly and laws should be made to address confusion. The limitation acceptable to the extent which is necessary in democratic society.

## **Articles 23**

### **Protection of Family**

#### **Nepalese Legal Measures**

Different chapters of the Country Code 1963, Marriage Registration Act 1971, Births, Death and other personal events (registration) Act 1976 and CEDAW and Treaty Act 1992 Section 9 are legal measures which guarantee the protection of family life.

### **Suggestions for Improvement**

Still some legal provisions are not complete with the spirit of Article 23 of ICCPR. Many laws are required to be amended and some new laws are necessary for proper realization of Article 23.

### **Reference**

Male and female doesn't have equal role and right for forming family. Nepalese Supreme Court has declared that many legal provisions are incompatible with international standards regarding Article 23 of ICCPR

## **Articles 24**

### **Rights of Child**

#### **Nepalese Legal Measures**

Child Right Convention and Treaty Act 1992 section 9, Article 8, 22 of Interim Constitution 2007, different sections including 2,3,4,5,6 of Act Relating to Children 1992, Births, Death and other personal events

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(registration) Act 1976, Child Labor (Prohibition and Regularization) Act 2000, section 14 of Civil Liberty Act 1955 and Labor Act 1992 guarantee the rights of child

### **Suggestions for Improvement**

New laws and concrete policies are required addressing to child marriage, child labor in household, street children, right to education of children and guaranteeing the participation rights. Concrete juvenile justice and infrastructure should be develop for protecting right of children during criminal proceeding.

### **Reference**

Thousands of children are in street, schools are regularly being shut-down, Juvenile delinquents are forced to live together with adult criminals in prison and custody.

## **Articles 25**

### **Rights to Political Participation**

#### **Nepalese Legal Measures**

Article 43 (20), 63(7) of Interim Constitution 2007, Local Body Election Procedure Act 1992, Civil Service Act 1993, Local Self Governance Act 1999 and Public Service Commission Act 1991 recognize right and opportunity of every citizen to take part in public affair directly or through his /her representative.

### **Suggestions for Improvement**

Because of economic condition, social construction, social stigma, access to information and many other reasons, a large section of population is out of access to political participation and representation to public affairs. Necessary legal measures should be taken to uplift those groups of people guaranteeing political and public affair participation.

### **Reference**

Record shows that only Brahmins, Chhetris and Newars representing

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28% of total population held about 70 % of seat as Members of Parliament and about 95% of post of judiciary of Nepal.

## **Articles 26**

### **Right to Equality before the law**

#### **Nepalese Legal Measures**

Article 13 of Interim Constitution 2007, Section 3 of Civil Liberty Act 1955, Legal Aid Act 1997, 11<sup>th</sup> Amendment of Country Code 1964, The immigrating Act, Act relating to Land 1964 and The Prison Act 2007 have provision of equality before law

#### **Suggestions for Improvement**

However, many laws recognize the equality before laws, still there is some laws which fails to recognize equality between male and female and are not perfect with the aspiration of article 26 of ICCPR. Legal and institutional measures should be taken to make environment to believe every individual as they are equal under legal provision.

#### **Reference**

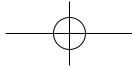
Enjoyment opportunity of the rights by the people living in different economic and social conditions, gap between poor and rich, illiterate large population, and deprivation from many facilities are major social problems in Nepal.

## **Articles 27**

### **Rights of Minorities to Enjoy their own Culture, Religion, etc.**

#### **Nepalese Legal Measures**

Article 3, 4, 17, and 23 of Interim Constitution 2007, Section 7 of Civil Liberty Act 1955, Indigenous Communities Upliftment National Academy Act 2002 and Self Governance Act 1999 have related provisions with Article 27 of ICCPR.



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**Suggestions for Improvement**

Laws are required to protect language, culture and religion of minority for creating multi-linguistic, multi- ethnic and multi-cultural society. Law should reflect that people of different minority groups are also the citizens of the country.

**Reference**

To Protect language, religion and culture, many minorities and ethnic groups are demanding for restructuring nation recognizing different language, religion, and origin of people.

