

Situation of  
Human Rights in 2011:  
Overall Evaluation

**Chapter**

**1**



## 1. Background

The publication of the Nepal Human Rights Yearbook, which has passed through many upheavals since 1992, has arrived at its 20<sup>th</sup> edition. Since the transition to democracy began in 1990, INSEC has contributed to the overall development of the democratic process by dedicating itself to principles of human rights and the rule of law. Revisiting the series of political development of this period, INSEC has found itself to be a resolute human rights watch dog that worked in the course of the formation of democratic governments, during a decade of Maoist armed insurgency and also during the six years since the restoration of democracy after the end of the conflict. The Yearbook has given priority to the behaviours of the state and the rights of the citizens as per the universal principles of human rights. The Yearbook continues to deal with these issues in its 20<sup>th</sup> edition as well.

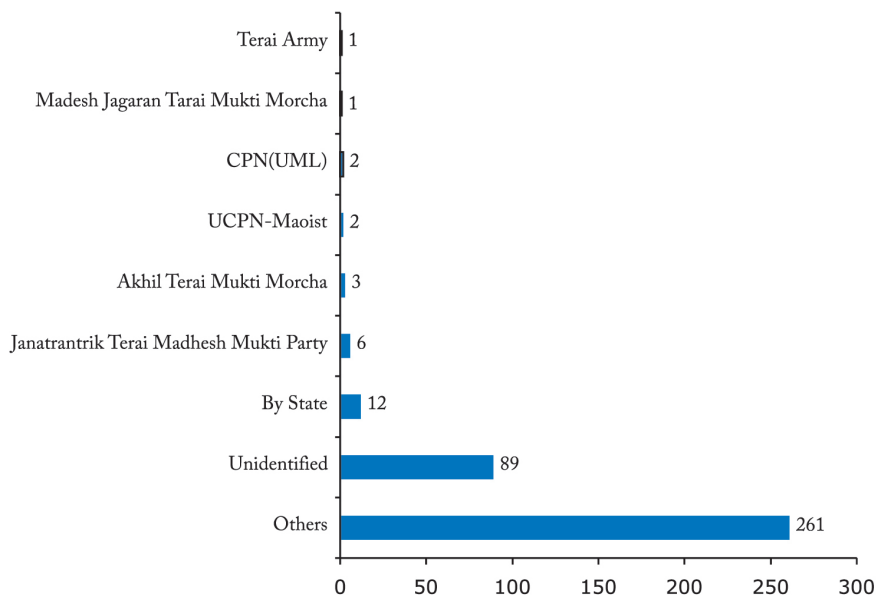
INSEC's Yearbooks have also

focused on topics related to the peace process and the constitution since the formal conclusion of the Maoist armed conflict in 2006 up until now. In these years, a glimpse at the list of unfinished businesses reveals the clear discrepancies between the words and deeds of the political parties. Even after the four tenure extensions of the originally two-year termed Constituent Assembly (CA), the constitution has not been completed yet nor has the peace process reached a conclusion. It has been demonstrated that the peace process and constitution writing process are still beleaguered. Overall, the issues which have been delayed by power-centered politics is the focus of this year's Yearbook.

## 2. Power Obsession Delays Peace and Constitution

Forming a consensus-based government in the spirit of the CPA and the Interim Constitution in order to facilitate the peace process and to strengthen

**Figure : 1** *No. of People Killed in 2011 and Perpetrators*



democracy was much expected and anticipated. However, political parties failed to work effectively towards these ends. None of the governments formed after the CA elections were consensus based. The political parties thus deviated from the path paved by the CPA and the Interim Constitution.

The government led by UML leader Madhav Kumar Nepal spent its tenure as a caretaker government. The Jhala Nath Khanal led government repeated the pledge to transform his government into a national consensus based government. Similarly, another government led by the UCPN-M vice-chairperson Dr. Baburam Bhattarai could not form a consensus-based government this year as promised.

Dr. Baburam Bhattarai signed an agreement with the UDMF. Similarly, Khanal signed an agreement with the UCPN-M before forming the government. Because of the agreements, Khanal and Bhattarai were criticized by their own parties. Khanal agreed to rule on a rotational basis and form a lasting front

with the UCPN-M, which participated in his government but his party did not participate in UCPN-M led government. The NC joined the Nepal led government and the Madhes-based parties joined all the governments.

All political parties' slogans for the formation of national consensus based government could not materialize. Signing any sort of agreements just to be the PM increased as a trend this year. Political parties were happy to sign any kind of non-transparent agreements to get to the power.

Saying the agreement reached between the UCPN-M and the UDMF was anti-nationalist, it was opposed not only by the UML and NC leaders but also by a faction of the UCPN-M. The UCPN-M leaders who opposed the agreement also boycotted the government. Although the categorization of Maoist combatants was concluded by Bhattarai-led government; the integration, rehabilitation and voluntary retirement, which were supposed to have been concluded this year, remained pending

**Table 1** *No. of Victims by Region in 2010*

Type of Events	Eastern	Mid	Western	Mid Western	Far Western	Total
Killing	129	190	65	54	21	459
Injured	82	181	54	83	24	424
Arrest & Torture	31	20	26	50	8	135
Beatings	198	166	229	198	52	843
Threats	227	74	20	205	22	548
Right to Assembly	76	114	46	17	3	256
Racial Discrimination	9	7	15	16	22	69
Women Rights	125	168	86	187	52	618
Child Rights	228	101	56	118	22	525
Economic, Social and Cultural Rights	102	17	10	10	2	141
Inhuman Behavior	4	14	11	5	3	37
Abduction	51	72	12	42	8	185
<b>Total</b>	<b>1262</b>	<b>1124</b>	<b>630</b>	<b>985</b>	<b>239</b>	<b>4240</b>

at the end of the year.

The activities of power-centric political parties sidelined the major task of concluding the constitution writing process on time. The CA term was extended successively this year. The Supreme Court issued an order to complete constitution writing within May 28, 2012. The decision created tension between the organs of the State. It further posed a question on the possible situation that would emerge in case the constitution could not be written within the ordered time. Serious disputes were triggered over the responsibilities of political parties and the jurisdiction of the Supreme Court when the latter gave the decision, which forbade another extension of the CA term. This decision of the court stirred Nepali politics. Many welcomed the decision of the court that allowed a six-month extension. The court had decided that the failure to finalize the constitution within that time would result in the automatic termination of the term and that

a plebiscite or a new election could take place. However, the reactions from political parties were mixed. The Chairperson of the CA and the PM went to the Supreme Court to file a petition against the decision. The court, however, rejected their petition.

The Commission on Disappeared Persons and the Truth and Reconciliation Commission, which were to be formed as per the provisions of the CPA and Interim Constitution, were not formed this year. This showed that political parties were reluctant to provide justice to the conflict victims.

The political parties were too busy to grab power instead of focusing on the main tasks of the peace process or the constitution writing process. All agreements reached between the political parties were concerned with power. The two major agreements of May 28 and November 1 were the examples. It was felt that power centric politics was deviating the political parties from their major responsibilities.

The CA time table for writing

**Table 2** *No. of Victims by Region in 2011*

Type of Events	Eastern	Mid	Western	Mid Western	Far Western	Total
Killing	91	168	46	53	19	377
Injured	28	127	36	59	22	272
Arrest & Torture	9	36	7	36	6	94
Beatings	115	68	82	139	53	457
Threats	33	16	9	31	23	112
Right to Assembly	119	204	13	27	24	387
Racial Discrimination	12	7	15	19	19	72
Women Rights	130	181	104	187	46	648
Child Rights	101	121	82	73	36	413
Econominc, Social and Cultural Rights	6		9	11	7	33
Inhuman Behavior	6	4	4	2	3	19
Abduction	58	61	9	11	5	144
Death in Jail	4	4		1		9
Death in Detention		1			1	2
<b>Total</b>	<b>712</b>	<b>998</b>	<b>416</b>	<b>649</b>	<b>264</b>	<b>3039</b>

the new constitution was not followed due to the disputes between the major political parties. The irresponsible acts such as frequent postponement of the meetings called for reaching consensus and insufficient preparation on resolving contentious issues were repeated the whole year.

### 3. Contentious Issues Regarding the New Constitution

Many discussions regarding the stalemate in the promulgation of the constitution were held. However, no solution was reached including on the form of governance. The Constitutional Committee could not reach a conclusion due to the separate stands of the UCPN-M and NC regarding the form of governance. They refused to backtrack from their stands. No consensus had been reached by the political parties regarding state restructuring, the right to self-determination or property rights by the end of the year.

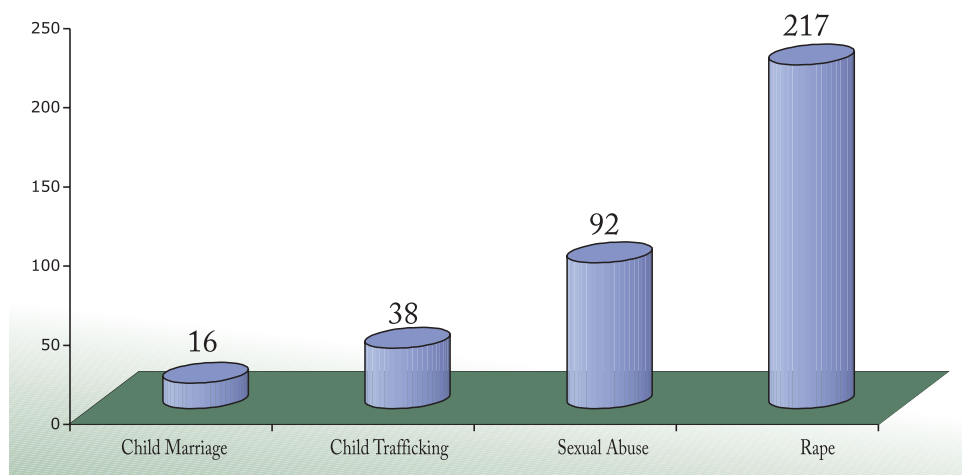
### 4. The Complex Issue of Federalism

The Interim Constitution of Nepal 2007 provided the base for ousting the monarchy from the country. However, it did

not lay down guidelines for the restructuring of the state. The UCPN-M, which regards itself as the initiator in introducing the concept of federalism in Nepali politics, did not dwell on the concept seriously. The other parties also did not took it as a serious issue. Nevertheless, debates concerning the interconnection between castes, region and linguistic groups and federalism emerged but a conclusion on an issue as contentious and complex as federalism was not reached. As demands to form states based on ethnicity increased, debates regarding the position of persons who live in the states with more number of population than the given ethnic group from whose identity state is named followed.

Going beyond their party principles, the CA members polarized based on their ethnicities and regions. An agreement was reached between major political parties and the UDMF to form a State Restructuring Commission. The commission formed in this way, however, was not without controversies. As the members in the commission were appointed on the basis of parties' recommendations, the citizenry doubted that the commission would work as was expected.

**Figure : 2** *No. of Girl Victims in 2011*



## 5. Human Rights Violations: Facts and Figures

As per the principles of human rights, we cannot say that the situation of human rights is positive until and unless the citizens within the country can live in certainty of a fearless environment. This year, INSEC monitored a total of 2,361 incidents related to human rights violations and abuses.

A total of 12 people were killed by the state in 2011. According to the INSEC monitoring, eight people were suspected to be arbitrarily killed. In some of these incidents, investigation committees were formed to probe the cases but none of the reports were made public.

There was a lesser number of human rights abuses by armed Tarai groups, unlike in previous years. The peace dialogue held with such the groups for the last two years has to be credited for this decrease. The government also had released the cadres of the armed groups who took part in the dialogue. The concern was raised that the criminal activities such as killings and abductions committed by unidentified groups could have been the result of the release.

No sufficient homework was done before talks were held with such groups. It was necessary to hold enough discussions regarding the identity of the groups and also as to their political nature. Similar discussions were held in the past keeping the power equation with the tarai based parties in mind but were futile.

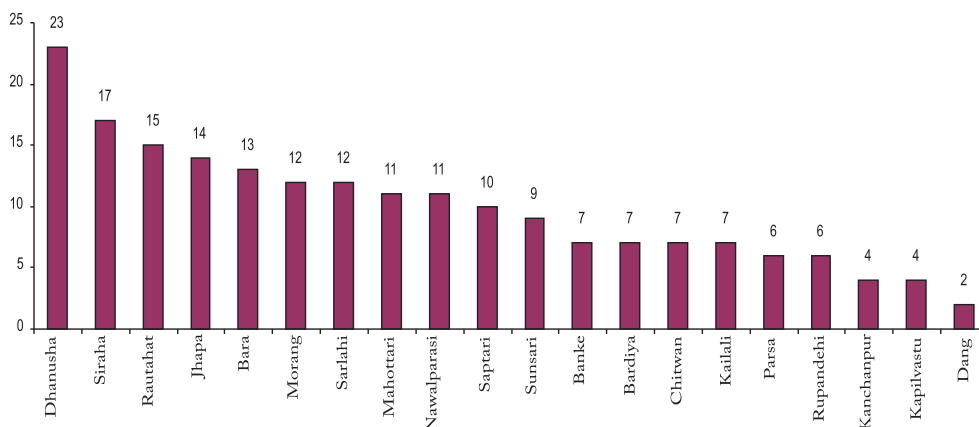
A total of 117 people were killed and 83 were abducted by unidentified groups in the past year. However, 89 people were killed and 59 were abducted this year.

The incidents of clashes among the sister organizations of political parties dropped this year. Although the UCPN-M was involved in such incidents as a non-state actor in the past, the numbers of such the incidents decreased this year. (See *District profiles for details*)

### 5.1 Institutionalized Impunity Encouraged

The tradition of withdrawing cases filed against those calling for political change, especially after political change in the country, goes back to 1950. Following the fall of the Panchayati System, the cases filed against those leaders and cadres who fought against the regime were revoked. This practice was not opposed because the cases were political in nature.

**Figure : 3** *No. of People Killed in Tarai in 2011*



**Table 3 : No. of Victims**

Killing	377
Injured	272
Arrest & Torture	94
Beatings	457
Threats	112
Right to Assembly	387
Racial Discrimination	72
Women Rights	648
Child Rights	413
Econominc, Social and Cultural Rights	33
Inhuman Behavior	19
Abduction	144
Death in Jail	9
Death in Detention	2
<b>Total</b>	<b>3039</b>

INSEC data shows that approximately 14,000 people lost their lives during the armed conflict in the country. Those who were directly and indirectly involved in killings, enforced disappearances or maiming people during that time are talked of far and wide. There is a constitutional provision to form a Truth and Reconciliation Commission to determine whether the cases filed against the alleged criminals are political in kind and if so, to either grant them pardon or recommend for their punishment. Rather than adhering to this provision, the UCPN-M led government started to grant official pardons and to withdraw charges against Maoist leaders and cadres.

Although nothing is stipulated in the constitution as to the withdrawal of cases, the provisions of the CPA, which being one of the annexes of the constitution, are, therefore, deemed constitutional. Point 5.2.7 of the CPA has stipulated that both sides

guarantee to withdraw accusations, claims, complaints and cases under-consideration leveled against various individuals due to political reasons and that both sides also immediately make public the condition of those imprisoned and release them without delay.

Political parties in Nepal seem to have misinterpreted the provisions of the CPA by withdrawing even non-political cases related to theft, murder, abduction, corruption, dacoity, etc. Although various people represented government this year and approached their duties in different ways - they all did a common thing in attempting to withdraw cases filed against cadres of various political parties. Although the government formed a team coordinated by Joint Secretary of the Ministry of Law Kedar Paudel in 2011 to formulate a standard and procedure relating to the withdrawal of criminal cases, its report was not implemented as it was claimed that it would be difficult to withdraw cases based on its recommendations.

This year, there were many instances where no criminal charges were filed against the political cadres who deserved the charges. There were even attempts to disrupt the rule of law by granting pardon to a person whose case was under court's review. The Home Minister in the Khanal government, Krishna Bahadur Mahara accepted that his government had worked on the withdrawal of murder cases against Minister of Communication Agni Sapkota and others.

Prabhu Sah, who was accused of killing Kashinath Tiwari of Birgunj for protesting the strike called by the UCPN-M, was not only appointed as a minister but even his party leader made a public statement that Sah would be defended. People could not feel the government provided guardianship at a



**Table 4 : No. of Victims of Physical Assault by Perpetrator**

Perpetrator	Total
By State	94
ANNFSU	1
ANNISU(R)	11
Chhetri Samaj	6
CPN-UML	13
Janatantrik Tarai Madesh Mukti Party	1
Kirat Janawadi Workers Party	2
Manch Sambadda SLRP	15
UCPN-Maoist	120
CPN-Maoist(Matrika)	1
Nepali Congress	13
RPP	4
SLRP	2
Tarun Dal	7
YCL	13
YAN	11
Others	120
Unidentified	23
<b>Total</b>	<b>457</b>

time when basic principles of justice were blatantly violated.

### 5.2 Violence Against Women

INSEC monitoring in all 75 districts across the country reveals that 648 women were subjected to violence in 2011. Besides that, 379 girls under the age of 18 were affected. Incidents of violence against women including domestic violence, polygamy, rape, alleged practice of witchcraft, sexual violence, trafficking, and rape attempt continued this year as well.

By ethnicity, Janajati women were the most affected. From an economic point of view, women from low economic status were mostly affected.

A report estimates that 60 to 70 per cent of women in Nepal face some sorts of domestic violence in their lifetime. Even today, the physical and mental trauma inflicted by domestic violence is not perceived with due sensitivity. The monitoring revealed that domestic violence against the women was perceived to be a deep-rooted traditional practice. Most of the cases of domestic violence are not made public while women tolerate violence against them because of economic, social and cultural reasons. (See Chapter 4 of this book for details)

### 5.3 The Return of Seized Property

The restitution of land and other property seized during the armed conflict and transitional phase is a common problem in post-conflict societies. Article 6 (A) of the seven-point agreement reached between the major political parties stipulates that the land and property captured by the UCPN-M during the conflict and that are still under their control would be returned to the rightful owners by November 23. The agreement also stipulates that the owners would be given compensation for the yield lost after they were displaced from their land. However, the agreement, as always, was not implemented. Intra-party conflict of the UCPN-M was one of reasons for this. The cadres and leaders in support of Baidhya stated that they were not compelled to adhere to the agreement. Speaking to the Media in Biratnagar Airport, General Secretary of the UCPN-M Ram Bahadur Thapa threatened that those who returned seized properties would be ousted. He was of the view that seized land and property could be restituted only after the issue of land reform was addressed through constitution. The land returned in Rajapur

in Bardiya district was recaptured by Mohan Baidhya's faction. The UCPN-M in-charge in the Bardiya district, Himlal declared that 45 *bigaha* of land captured from the former NC parliamentarian Binaya Dhvaj Chand and his brother Binod Dhvaj Chand was restituted. However, local cadres of the party in support of the Baidhya faction pitched 43 flags in the same land. Police removed the flags but Dravya Shah, a member of Tharu State Committee, insisted that returning land and property was unacceptable.

#### 5.4 Nepal's Commitment on International Treaties

The government signed the United Nations Convention Against Corruption (UNCAC) on February 24 to demonstrate its commitment in controlling corruption in the country. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011, drafted with a purpose of doing away with caste-based discrimination and untouchability was passed. However, the untiring attempts made by the concerned community for the past 10 years was fruitless as the government refused to accede to the Rome

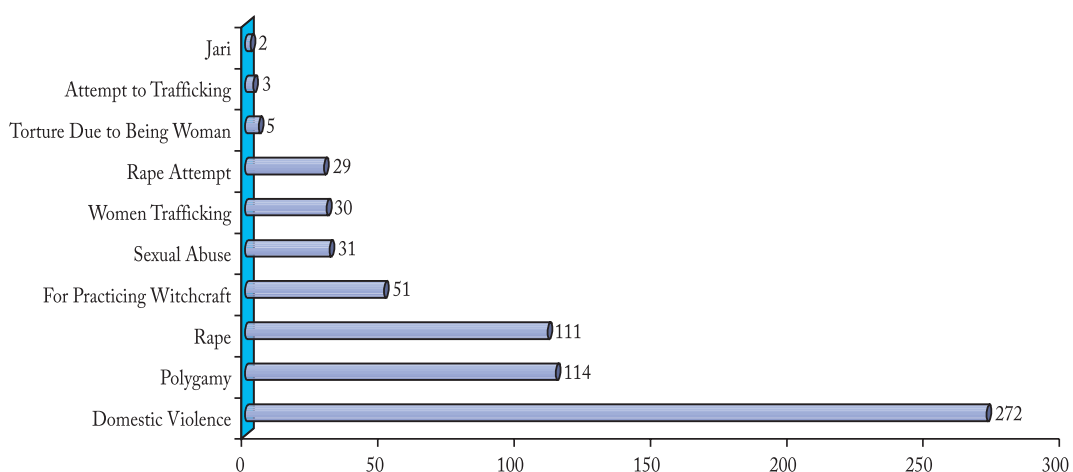
Statute. In addition, though authorized by the CPA to monitor the situation, the government decided against extending OHCHR-Nepal's term.

#### 5.5 Universal Periodic Review and Nepal

Nepal was reviewed under the Universal Period Review on January 25. A delegation led by Deputy-PM Sujata Koirala made the presentation to the UPR Working Group. 135 recommendations on various topics were made out of which Nepal accepted 55 and rejected 15. OHCHR-Nepal issued a statement in which they regretted the rejections made by Nepal. The recommendations to ratify other human rights related conventions and to carry out investigations into accusations of extra-judicial killings were two of the recommendations rejected.

During a meeting on June 28, the secretary of the PMO and Council of Ministers, Madhav Prasad Ghimire, assured that the government had accepted many of the recommendations and that the government was working on introducing a policy to implement them in practice. Speaking at the occasion, Ghimire also

**Figure : 4** *Violence Against Women by Event Type in 2011*



added that Nepal's basic goal was to achieve sustainable peace and a just society. It was also stated that the proportional and meaningful participation of women at all levels of the conflict transformation and peace building process and the protection of women and girls' rights would be ensured. The UPR provided Nepal with the opportunity to discuss its human rights objectives and challenges with other United Nations member states. The latter made recommendations regarding various aspects of human rights promotion and protection in Nepal, including eliminating caste-based discrimination, tackling gender-based violence, ensuring accountability for human rights violations and strengthening national human rights institutions. However, Nepal did not reply to queries related to their failure to ratify the 1951 Convention on the Status of Refugees or the Convention on Enforced Disappearance. A government delegate asserted that there is no systematic torture in Nepal and that "there are sufficient constitutional and legal safeguards for the prevention of torture in Nepal."

### 6. Judiciary in Confusion

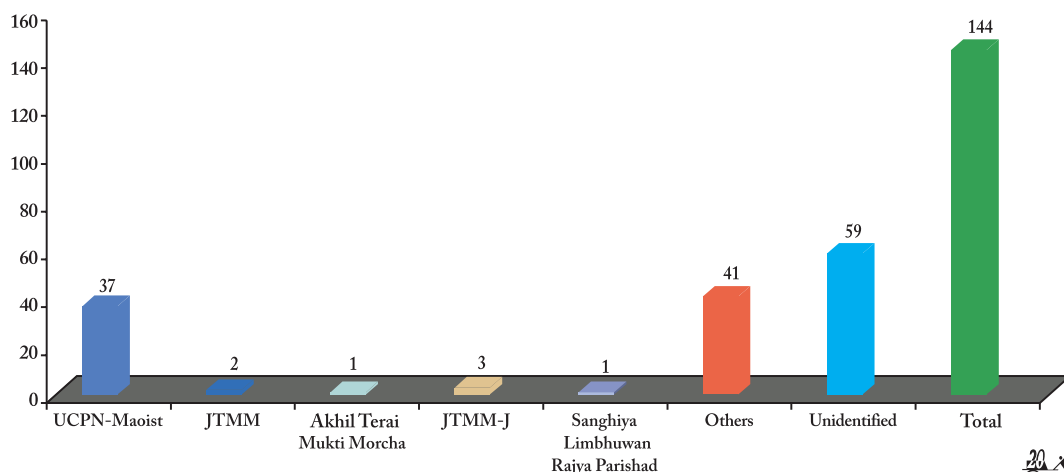
The judiciary made some

commendable decisions this year regarding the protection and promotion of human rights and ending the impunity. Some of such rulings were in cases of citizenship, senior citizens, inclusion in state bodies, education, health, employment, voters' list, investigation of the conflict era cases, caste-based discrimination and impunity.

The Supreme Court issued a directive on November 25 ordering the extension of the term for the final time after considering beforehand how much time it should take to write a constitution. The order also said that the CA would be automatically dissolved if the constitution could not be written within the extended term. It was ordered, if such was to happen, to be clear on whether to hold plebiscite or another election for the CA.

As was the case in previous years, the Judiciary faced direct and indirect interference from the Executive and the Legislature-Parliament this year as well. Rather than implementing the verdicts of the courts, especially their decisions on the cases related to the violation of human rights committed during the armed conflict, the government decided to recommend the cases to the President for an official pardon

**Figure : 5** *Number of Abductions in 2011*



claiming that the cases were political in nature. Political parties agreed on the idea of provisioning a Constitutional Court in the new constitution to deal with possible constitutional disputes. Such an agreement reached between political parties interferes with the jurisdiction of the supreme judicial body in the country.

Different decisions were given in different courts on similar cases which occurred during the conflict. The lack of a coherent voice on the jurisdiction of the proposed Truth and Reconciliation Commission and the courts confused the victims. The Supreme Court was criticized for its failure to issue clear directions to the lower courts and for issuing some vague decisions. (*see chapter on Judiciary*)

## 7. Ineffective Legislature

The Legislature-Parliament conducted a fruitful election this year after amending its rules of procedure. The same Legislature-Parliament had failed to elect a Prime Minister on 16 occasions. People's voices could not be expressed in the Legislature-Parliament as the obstruction of the House and the government formation process affected its operation.

The term of the CA was extended three times in 2011. Though the term of the

CA, which also works as the Legislature-Parliament, was extended repeatedly, small and even big political parties did not hesitate to obstruct the House. Important bills could not be passed as a result. The political parties had agreed to complete the main tasks of the peace process, prepare the draft constitution and form a consensus-based government within three months after the term of CA was extended by three months for a second time. However, none of these agreements were implemented. The regrouping of the Maoist combatants and the formation of the State Restructuring Commission (SRC) took place after the third extension of the CA. Before the fourth extension of the CA term had begun, the Supreme Court (SC) ordered that the extension of the term would not be granted for more than six months and that the most recent extension granted would be the last one of its kind for the CA.

Amid the differences among the political parties, bills related to the formation of the Truth and Reconciliation Commission (TRC) and Commission of Inquiry on Disappearances (CID), which were envisioned in the Comprehensive Peace Accord (CPA) and Interim Constitution, could not be passed by the House this year. The Legislature-Parliament ratified three

**Table 5** *Number of Female Victims by Economic Status*

Economical Status	Middle Class	Lower Class	Lowest Class	N/A	Total
Attempt to Trafficking		3			3
Domestic Violence	38	150	12	72	272
For Practicing Witchcraft	1	30	4	16	51
Jari			1	1	2
Polygamy	15	66	10	23	114
Rape	20	59	6	26	111
Rape Attempt	5	17	2	5	29
Sexual Abuse	4	19	1	7	31
Torture Due to Being Woman		4		1	5
Women Trafficking	2	21	1	6	30
<b>Total</b>	<b>85</b>	<b>369</b>	<b>37</b>	<b>157</b>	<b>648</b>

Conventions and passed the Caste-based Discrimination and Untouchability (Crime and Punishment) Bill, 2011.

Various committees of the Legislature-Parliament were active in addressing irregularities in various sectors and issues of concern. These committees investigated different incidents and directed the government agencies to take appropriate steps and also offered recommendations.

Legislature-Parliament's Zero Hour and Special Hour which are significant in drawing the attention of the government to issues of public importance were ineffective this year. The Speaker removed these Hours from the list of House business due to CA member's obstruction. Some CA members drew criticism this year too for their irresponsible conducts. Negative messages about the Legislature-Parliament were relayed as some of the CA members were found to be involved in corruption and criminal activities.

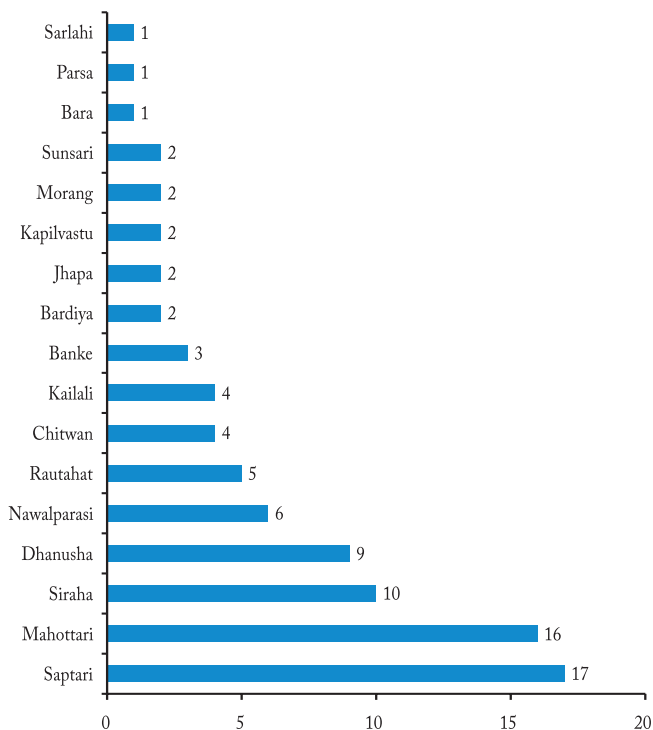
Speaker Subas Nembang, who was criticized last year for giving continuity to the fruitless elections to choose a Prime Minister, conducted regular meetings with the top leaders of main political parties to end the political stalemate and to advance the peace and constitution process. He drew the government's attention on the contemporary issues raised by the CA members. He also issued a ruling to the government to inform the Legislature-Parliament about various issues, including women's participation in cabinet, damage incurred by the earthquake and relief efforts.

### 8. Nepal as a Landmine Field Free Nation

Nepal has been declared a Landmine Field-Free Nation. With this, Nepal has now become the second country in Asia after China to receive this status. Nepal was declared a Landmine Field Free Nation on June 14 after the Prime Minister Jhala Nath Khanal and UN official Robert Piper detonated a mine of the minefield in

**Figure : 6**

*No. of Abductions in Tarai Districts in 2011*



Phulchoki. The landmine there was among the 257 landmines planted at 53 locations by the Nepal Army.

The Victim Activated Explosion (VAE) resulted in 22 incidents in which 23 people were injured and 10 people were killed. The occurrence of such kind of explosions even after five years since the end of armed conflict signals the continuation of threats and fear in the lives of people. Even though the incidents of the VAE have decreased, they still pose the risk of exploding and causing fear to civilians. Primarily, it is the state which is responsible for the eradication of such problems. Although Nepal has become landmine field free, the abandoned Improvised Explosive Devices (IEDs) which were left over from the conflict period still pose a threat. The rebels widely used IEDs as cheap and

powerful weapons during the conflict but their use continues to spread by the other armed groups creating fear of war and explosions. Like mines, IEDs have also remained a legacy of the war.

## **9. Governments' Irresponsibility Towards People**

The government made steps concerning human rights in 2011, yet at the same time made a number of decisions that gave cause for doubts to be cast on the existence of democracy in the country. Good policies were introduced for deprived communities while some long awaited decisions were still not made during the year. Three governments were formed, including the acting government of Madhav Nepal, but people observed little difference in their policies or behavior. The situation of insecurity did not change for good. The year began with an acting government and the subsequent majority government could stay in power for only six months after which it had to make a way for new government. Since the signing of the CPA almost five years ago, some progress had been made concerning a number of contentious issues such as combatants and weapons management. However, the decisions made regarding these issues ultimately remained inconclusive.

The state remained without a proper government for seven months after the Madhav Nepal government resigned. That valuable time, which should have been spent on team-building, constitution drafting and the reconstruction of the war-torn country, was instead used to hold round after round of futile elections for the post of Prime Minister. The country remained without the executive government for 217 days. Eventually, after a 7-point agreement between the UML and UCPN-M was reached, a government led by UML chairperson Jhalanath Khanal was formed. This government also failed to make any

concrete progress in the peace process. After PM Khanal resigned, a new government with UCPN-M vice-chairperson Baburam Bhattarai as Prime Minister was formed following the arrival at a 4-point deal with the UMDF. The new government took some positive steps directly or indirectly related to human rights. While doubts regarding the extent to which democratic norms were being adhered to prevailed, some useful policies were introduced while some long awaited decisions could not be made. Peace, development and human rights all featured among the commitments of all governments formed in 2011. The transfer of the keys of weapon containers, the formation of the Special Committee and the re-verification of Maoist combatants were some positive steps taken by the government with regard to such commitments in 2011. However, the problem of political instability, the priority given to power sharing, the prolongation of the peace process and instances of corruption disappointed people. The PMs remained occupied in protecting their government while Dr. Baburam Bhattarai placed a burden on people by forming the biggest Cabinet ever formed in the country. In addition, questions were raised over the power and independence of the judiciary.

The government recommended that persons convicted by the Supreme Court be granted an amnesty; a blatant example of impunity. The government boasted about fulfilling its duties in relation to transitional justice after they increased the interim relief provided to conflict victims. Though some policies were formed for security and the rights of women and children, they were not implemented effectively.

There is some sense of peace in the Madhes region; however, problems with Madhes have not yet been completely resolved. Several mechanisms of a political nature will also remain unresolved if the government does not commit wholeheartedly to remedying them at a time

when the peace process has not gained the desired momentum. It was envisaged in the Interim Constitution that political parties would move ahead in solidarity. If any political party is excluded from government, they consequently feel that other parties in government are neglecting them and they then start to make protestations to the government and also to demonstrate their presence to the people as a reminder of their existence. However, such actions will not prevent the government from carrying out its regular duties effectively.

Various steps taken by the government raised questions over the presence of justice and the rule of law in the country. The victims of the armed conflict were re-victimized as genuine efforts to establish transitional justice mechanisms did not materialize. The formation of the TRC and the Commission on Disappearance will be meaningless if the government continues to withdraw cases against perpetrators of human rights abuses. Similarly, it will be pointless if the would-be-formed TRC is vested with the power to make decisions on all conflict related cases. The government's decision to grant amnesty to those accused of committing crimes during the conflict is unnecessary as the Supreme Court has already stated that conflict related cases can be solved within the established legal system.

The government created a number of good policies this year but there are several grounds for suspicion with regard to their implementation. The government decided to restrict the imposition of strikes in 16 different sectors including transportation, storage, distribution and supply of petroleum products, health services, collection, supply, processing and disposal of garbage, construction sites, development of infrastructures and collection centers. However, school strikes have not ceased nor has the government intervened when there has been an obstruction in the

transportation sector during strikes. The government has to do a lot in practice in the sector of women rights, child rights, Dalit rights and the rights of persons with disabilities, among other sectors.

## 10. Conclusion and Suggestion

The CA term will be over after May 28, 2012, if the latest Supreme Court order is not challenged once again. If the new constitution emerges within the remaining five months, the constitution will determine the future course of Nepal. However, little thought has been given to what may happen if the constitution is not ready by the deadline. Whatever the comments on the Supreme Court ruling on CA, this has distressed the CA members. Some CA members sharply criticized the court and accused it of forgetting its jurisdiction.

The provisions stipulated in the 7-point agreement, such as integration of Maoist combatants into the national army, among others, had not been materialized by the end of the reporting year. A bill proposed for the initiation of the TRC was talked of as a bill designed to grant official pardon to those accused of committing crimes during the armed conflict on the pretext of reconciliation. Delays in the formation of a disappearances related commission clearly demonstrates how indifferent political parties are in relation to the whereabouts of those subjected to enforced disappearances during the conflict. The commitment of the UCPN-M to restitute land and property captured by them during the conflict was not kept due to non-cooperation within the party.

Dr. Baburam Bhattarai put a burden on the people by forming the biggest Cabinet ever formed in the country. Questions were also raised over the power and independence of the judiciary. The government recommended that persons convicted by the Supreme Court be granted amnesty. The government boasted about

fulfilling its duties for transitional justice by increasing the interim relief provided to conflict victims.

The SC has firmly stated that the fourth extension of the CA term would be its final one. The judiciary alarmed the CA with regard to its responsibilities as it had not prepared the draft of the new constitution even after three and half years since the CA elections. Though the Legislature-Parliament claimed that the court intervened in its jurisdiction, the Judiciary is ultimately the body to interpret the law and constitution. The activities of parties and leaders, who were unable to accomplish their assigned duties in the frequently extended tenures of the CA, were widely criticized. This also disappointed those who believe in democracy.

Legislators should take their assigned duties seriously and bear in mind that the country could plunge into a dire situation if the constitution is not drafted by the final deadline.

### **Suggestions**

- Anarchic circumstances have been created as crime has shadowed justice and impunity has dominated every sector in the country. Instead of politicizing crimes, the government has to formulate new plans, increase the morale and confidence of the security personnel and equip them with resources.
- It is the responsibility of the government to implement laws and judgments when the court gives human rights friendly verdicts. There will be a lack of trust between the judiciary and the organs of the State if justice is not delivered to victims. It is not for the benefit and development of a peaceful nation. Thus,

the government should respect courts and implement their verdicts.

- The government has not taken any concrete steps to ratify the Rome Statute though five years have elapsed since the then reinstated House of Representatives had directed the government to accede to the Statute.
- Rome Statute should be ratified early as its ratification will not only make the internal image of the nation positive but it will also be a warning to those who violate human rights in the future.
- The government decided to provide compensation to victims as per the recommendations made by NHRC on August 4, 2009. Only 28 per cent of NHRC recommendations have been implemented so far. All the recommendations of the NHRC should be implemented without any limitation of time.
- Political parties should build up consensus by resolving the differences among them to fulfill the prime responsibility of the CA i.e. to finalize the constitution. Peace and constitution should occupy a place over the partisan interest.
- Sincere implementation of the previous agreements is today's necessity. The establishment of the Commissions envisioned in the CPA should be established without any delay
- Necessary amendments should be carried out to eliminate the crimes resulting from violence against women
- Family court should be established as soon as possible.

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