

**Situation of
Human Rights in 2008 :
Overall Evaluation**

Chapter

1

The year began with the uncertainty hovering over the CA elections. The law and order situation had deteriorated because of the unruly activities of the Maoist cadres, a major party in the coalition government. Nonetheless, people were hopeful that the success of the CA elections would lead the country towards a successful conclusion to the peace process. But as soon as the CA elections were held, the country was caught up in more political turmoil. The new government was formed amidst an environment of disputes and disagreements. The formation of the new government did not give an impression of improvement in the law and order situation in the country nor an improvement in respect for the rule

of law.

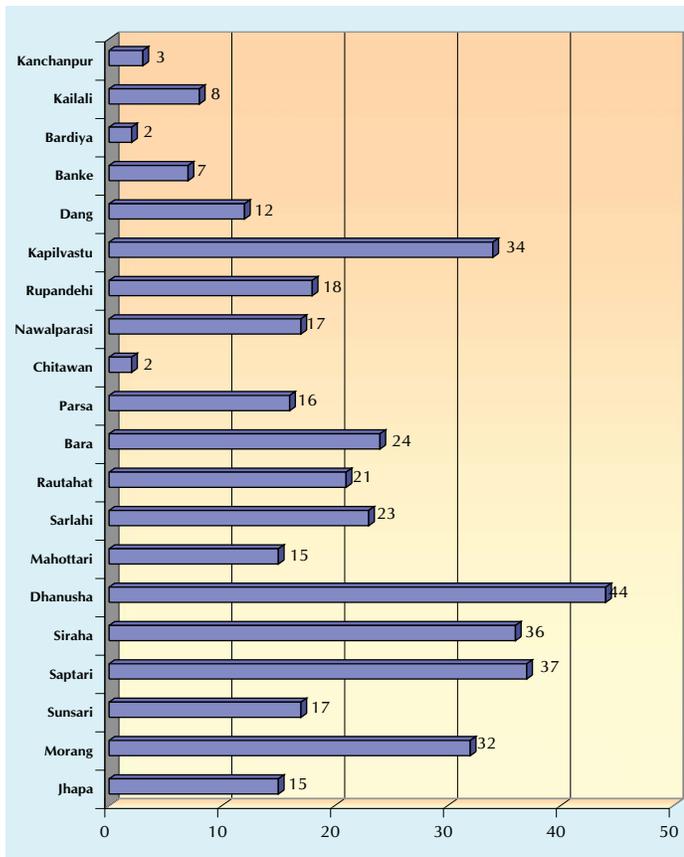
The period between the beginning of the New Year and the day of the CA elections was a waiting period for the common people. At that time, most of the decisions were made based on political consensus and the NC, UML and Maoists had a common understanding. On the eve of the elections these three forces were united against the Madhesi parties.

The Nepali Congress could not get the majority in the CA elections. But the party which was leading the then government did not resign over an instable political environment. The status of the government remained ad hoc till the new government was formed. So the period between the

CA elections and the formation of the new government was quite a stressful time. It was hoped that the formation of the new government as per the CA results would bring an end to such instability. Unfortunately, even after the formation of the new government and until the end of the year, there was no perceptible improvement in the law and order situation in the country.

At the end of the year, the post-CA government had been in power for four months. The time was not insufficient to establish its identity by initiating some bold steps. The government should have been able to create a viable environment for security for the

Table : 1 No. of Persons Killed by State and Non-State Actors in 20 District of Tarai-Madhes in 2008



people, provide immediate relief and be a facilitator in meeting the deadline for the new constitution in two years. The government also said in the 2008/09 budget that it had taken as a challenge and an opportunity the mandate of transforming the financial revolution into a success by institutionalizing the political achievements to build a new sovereign, prosperous and pro-people Nepal. Unfortunately, there has been no progress in leading the government towards an environment of consensus. The government, coalition partners and opposition has not shown any urgency towards the issue of transitional justice, which is an essential condition for the drafting process of the new constitution. Providing relief to the people from high costs, food shortages, the poor security situation and even ensuring justice to victims of the past conflict was not on the government's priority.

Nepal entered a post-conflict phase following the signing of the Comprehensive Peace Agreement between the seven political parties and the Maoists towards the end of 2006. But, some of the most important steps that are absolutely necessary for the transition process were not initiated. From this point of view, there have been no achievements in the direction of peace and stability as was expected in the past two years. The CA elections certainly took the peace process to a new height. But after the elections, there was little progress in topics with long term importance such as the integration of Maoist combatants and the restructuring of the state during the Maoists' nine months in power.

Besides the issues directly related to human rights and social justice, both the pre and post-election government could not demonstrate their honesty and political will towards their commitments. Even the government that came to power after CA elections overlooked the sensitivity of the transitional phase that began since the signing of the peace agreement towards lasting peace.

Continuity of Violence and Anarchy

The government was very weak between the time of the elections and the formation of the new government. It can be said that violent and unruly forces continued their activities and utilized the weakness of the government. Even the government that was formed after garnering a majority could not take hold of the situation. In the first 100 days from the New Year to the CA Election Day, 156 persons lost their lives at the hand of the Maoists, the state and the others. A total of 352 were abducted. 191 persons lost their lives at the hands of the state, the Maoists and the others in the 120 days between the CA elections and the formation of the new government. Similarly, 198 persons were abducted in the same period. In 134 days from the first day of the new government until the end of the year, 194 persons were killed by the state, Maoists and others while 179 were abducted. Thus, in 2008, 541 persons lost lives at the hands of the state and others (See Table 2).

The year 2008 cannot be analysed from a positive perspective if we consider the lack of respect for law and order and the lack of ground for transitional justice. A total of 383 persons were killed in 334 incidents in 20 districts (Jhapa, Morang, Sunsari, Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara, Parsa, Chitwan, Nawalparasi, Rupandehi, Kapilbastu, Dang, Banke, Bardiya, Kailali and Kanchanpur) of the Tarai-Madhesh. Both state and non-state actors were responsible for the violation of the victims' right to life. In 2007, 363 persons had lost their lives in the same 20 districts.

INSEC documentation shows that a total of 13,347 persons were killed across the country between 1996 and 2006. A total of 4,129 persons were killed at the hands of the state and the Maoists in the 20 districts of the Tarai-Madhesh in the same period. 188 and 158 were killed at the hands of state and non-state actors in 2007 and 2008 respectively, except for the 20 districts of the Tarai-Madhesh. 746 were killed in 20 Tarai-

Madhes districts in the same period. These figures show that the violence increased in the Tarai-Madhes after the signing of the CPA. (See Table 1). After Tarai-Madhes, hilly districts of Eastern Region remained affected in 2008. 41 persons were killed in the eastern hilly districts of Ilam, Panchthar, Terahthum, Bhojpur, Sankhuwasabha, Khotang and Solukhumbu in 2007 while in 2008, 30 were killed in the above mentioned districts and Okhaldhunga.

The youth wing of the Maoists became more anarchical after the party won the elections. The other parties followed suit by forming similar organizations and adhered to the same unruly line. It became clear that the role of such groups was one of the reasons for the persistence of the poor situation of law and order. Instability continued even after CA elections and overshadowed the issues of human rights and social justice.

Based on the information collected from across the country, we can conclude that the action of Maoist cadres was a major reason for continued poor law and order situation in the country. Maoist cadres remained involved in incidents of killing, abduction and assaults even after the CA election. Their unruly behaviour was demonstrated by incidents ranging from differences in villages to disputes in the capital. Chapter 2: Highlights of the Year: Challenges of the Constitution Drafting Process discusses this in details.

Elections: Milestone in Peace Process

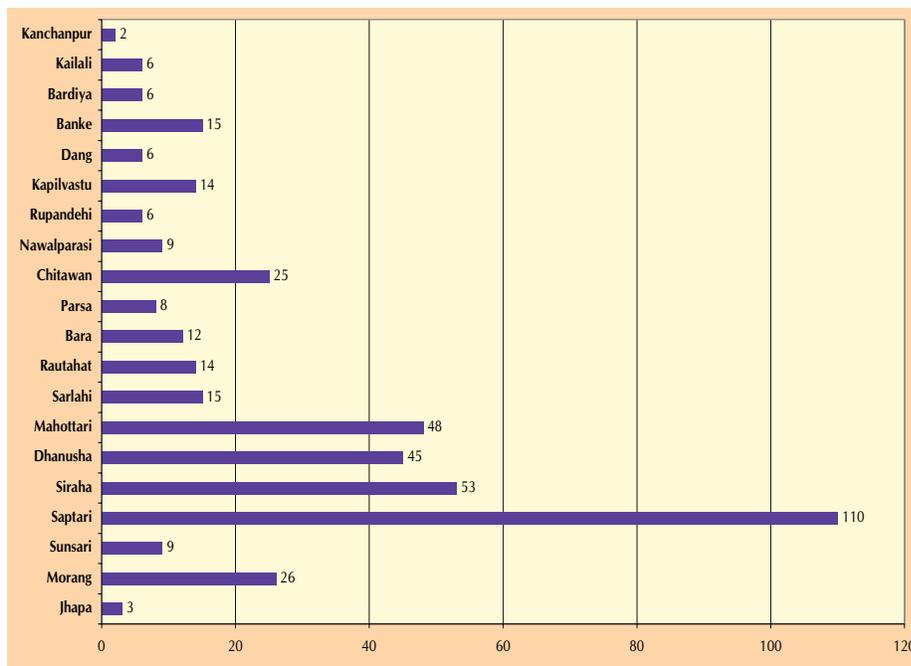
Chapter 3: Executive mentions the CA elections as a milestone of 2008. The peace process progressed to another level with the successful conclusion of the CA elections. The establishment of the CA is accepted as the preliminary condition for a peaceful transition. The CA election is viewed not only as a way to draw a particular political force into the mainstream but also as a result

1. INSEC Sambidhansabha Rajya Punhsamrachanako Praweshdwar. Aryal, Kundan. Informal Sector Service Centre.p 3
2. Ibid.

Table : 2 Persons Killed by Different Perpetrator in 2008

Perpetrators	No. of Victims
By State	50
SJTMM	4
UML	1
Maoist	4
MMT	10
MRJP	2
Virus Killer	3
NDA	3
NDA(Trishul)	1
JTMM(Rajanmukti)	8
JTMM-J	27
JTMM-G	8
JTMM(Ranbir)	1
LTTE	1
Youth Force	1
YCL	8
TMMM	1
TRMS	1
Terai Army	5
TMM	1
TJKP	1
Terai Camado Force	1
Terai Cobra	1
Others	229
Unidentified	169
Total	541

of a long time need to establish sovereignty for the Nepali people¹. Maoists indeed played the catalytic role in establishing the importance of the CA in Nepali politics. However, the CA election was presented both as a process to draft the constitution with the participation of the people and as a political slogan². The election was assumed

Table : 3**No. of Persons Abducted in 20 Districts of Tarai-Madhes in 2008**

as an effective medium to draft the people-owned constitution in the country.

No party could receive a majority in the CA elections. Still it was natural to expect that the constitution drafting process would be simplified after the formation of the government as a coalition of three parties. Unfortunately the opposite occurred. The government itself was seen as inefficient actor. The government in power for the first few months of 2008, the ad hoc government after the elections and the government led by the Maoists are talked about in details in Chapter 3.2 Executive.

The elections made the CA inclusive but it could not play an effective role in leading the government in the right direction considering the sensitiveness of the transitional phase. The Truth and Reconciliation Commission Bill was drafted last year pursuant to the CPA and the Interim Constitution but the parties who promulgated the Constitution were not sincere enough to set up the commission,

as provisioned in the State Responsibility, Directive Principles and Policies section of the Constitution. The political parties did not display any urgency for the formation of the Commission even two years after the CPA was signed.

A 9-point demand was submitted to the government by the NC after the elections and also excludes the demand for a Truth and Reconciliation Commission was left out. Even parliament did not seem strong enough to guide the government in the right direction regarding the formation of the Truth and Reconciliation Commission. Chapter 3.3 Legislature bases the details of the human rights situation of the country on these issues.

The holding for the CA elections was taken as a big achievement in itself but the untoward events that occurred before, during and after elections cannot be brushed aside. The election was organized mostly in a peaceful manner but there were many faults in the election

process including issues of violence and intimidation³. Violence, clashes, assaults, beatings, abductions, intimidation and bomb explosions continued even after the elections⁴. In some places, voters were denied basic amenities for voting for the parties of their choice⁵. Issues regarding voters' registration, voters' education, civic education, the election campaign, the code of conduct, security provisions, violence, intolerance, effectiveness of the election act and the method of election observation were seen as weak aspect⁶. The election booths in some places were captured. For example, four booths in Dolakha constituency-1, 15 booths in Ramechhap constituency-1 and 15 booths in Ramechhap constituency-2 were captured by the CPN (Maoist)⁷.

The environment near and around the election booths remained tensed because of the presence of organised and sometimes armed youth groups. As a result, common voters felt threatened⁸. YCL cadres entered the polling station at the Janata Secondary School election centre in Chisapani VDC of Ilam district wearing volunteer tags on the morning of 10 April⁹. Though the election was peaceful on the surface, in most of the districts, it was conducted under the influence of the Maoists or the regional parties¹⁰. Election monitors believe that it is necessary to analyse to what extent greed, intimidation, fear and threats influenced the election results¹¹. INSEC monitoring across the country shows that the CA elections were conducted peacefully in an environment of fear.

In many places, people were scared and in some places the fear factor was

Table : 4 No. of Persons Abducted by Different Perpetrators in 2008

Perpetrators	No. of Victims
Rastriya Janamorcha	23
SJTMM	10
UML	10
ANNISU-R	4
Maoist	138
MMT	20
MTMM	4
MRJP	1
MTMM	8
Virus Killer	2
NDA	1
NC	2
JTMM(Kishan)	1
JTMM(Rajanmukti)	5
JTMM-J	68
JTMM-G	11
JTMM(Ranbir)	1
VC Force	3
People's Army	4
LTTE	1
KJWP	7
Youth Force	12
YCL	162
Terai Cobra	1
Others	35
Unidentified	195
Total	729

3. Loktantra ra Nirbachan Sanjal (DEEN). Sambidhan Sabha Nirbachan Paryabekshan BS 2064 Chait 28 Antim Pratibedan, Kathmandu

4. NEMA. Sambidhansabha Nirbachan 2064 Paryabekshan Pratibedan, Kathmandu

5. Ibid.

6. NEOC. Sambidhansabha Nirbachan 2064, Nirbachan Paryabekshan Pratibedan, Kathmandu

7. Loktantra ra Nirbachan Sanjal (DEEN). Sambidhan Sabha Nirbachan Paryabekshan BS 2064 Chait 28 Antim Pratibedan, Kathmandu

8. NEMA. Sambidhansabha Nirbachan 2064 Paryabekshan Pratibedan, Kathmandu

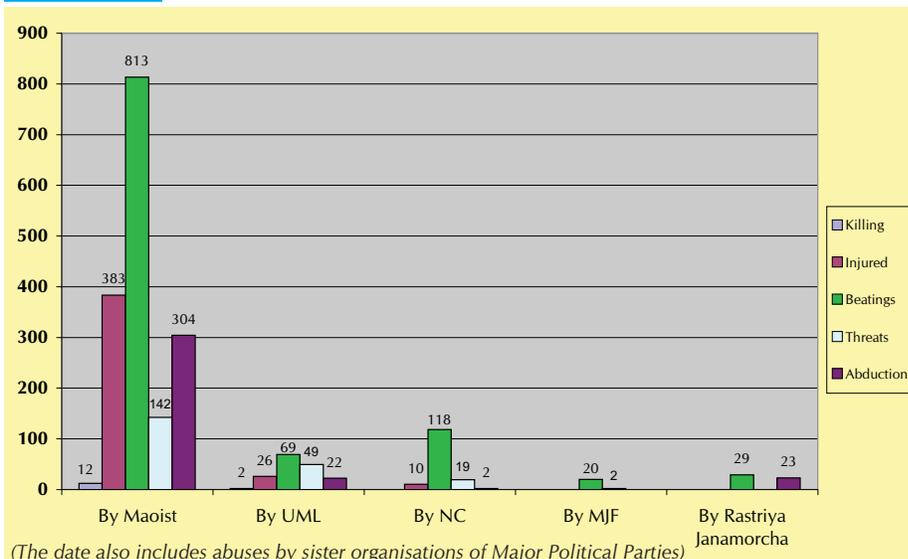
9. NEOC. Sambidhansabha Nirbachan 2064, Nirbachan Paryabekshan Pratibedan, Kathmandu p. 103

10. GEOC. Sambidhansabha Sadasya Nirbachan Paryabekshan 2064, Kathmandu

11. Ibid. p.135

Table : 5

Abuses by Major Political Parties in 2008



effective even on the Election Day¹². The political activists of other parties could not reach voters during the election publicity campaign because they were scared of the CPN (Maoists) and its sister organization, the YCL¹³. There was even post-election violence in several parts of the country. For instance, Maoists beat up UML cadres Bhabindra Rai and Shankar Adhikari of Sidhkakali VDC in Sangkhuwasabha after taking them to a jungle on 6 May for not voting for the Maoists¹⁴.

It was not unusual for such incidents to occur between a party in a transitional phase from the background of armed conflict and which was still partially armed, and the parties involved in peaceful politics. Other parties and voters must have demonstrated tolerance with a great concern for a negative impact on the peace process. That is why there was an environment where the results were acceptable to all.

Disregard for Transitional Justice

Nepali people threw themselves into the popular movement in April 2006, wishing for a lasting peace that would encompass political progress for human rights and social justice. Even the party involved in the armed conflict joined the other parties to fulfil the people’s wish. It is a matter of relief that the nation is heading for drafting of the new constitution through the CA elections, as per the vision of the 12-point agreement. Unfortunately, soon after the elections, the Maoists attempted to impede the peace process by demanding a new agreement.

The peace process could not proceed as expected in 2008 because of political differences. A lack of political will power was cited for the lack of implementation of the CPA and pacts that were agreed upon only after realising the sensitiveness of the transitional phase. All political parties were

12. DEAN. Sambidhansabah Sadasya Nirbachan Paryabekshan 2064 Chaitra 28 (final report), Kathmandu

13. Ibid. p. 57

14. NEOC. Sambidhansabha Nirbachan 2064, Nirbachan Paryabekshan Pratibedan, Kathmandu p. 103

more or less responsible for the situation. The people's sense of insecurity remained due to the wartime mentality of the Maoist cadres and this insecurity encouraged the people to continue to break the law. Political instability ensued because of disagreements and a blatant disregard in the government for its commitments resulted in a disruption of the constitution making process. The CA work schedule, 2008 published towards the end of the year, raised people's hopes and attempted to express a commitment towards the responsibility of drafting of the Constitution. According to the schedule, the Constitution will be finalised by 28 May 2010. However, the Constitution making process appeared challenging right up until the end of 2008 due to the political instability. This is mentioned in more detail in Chapter 2: Highlights of the Year: Challenges of Constitution Drafting Process.

The inclusion of transitional justice could have supported the Constitution making process and create political stability but there was no initiative to find the whereabouts of disappeared persons, prosecuting the persons guilty of violating human rights or reparation for the victims. All the political parties seemed more or less apathetic to providing immediate relief to the conflict victims while ensuring the democratic rights for peace and progress.

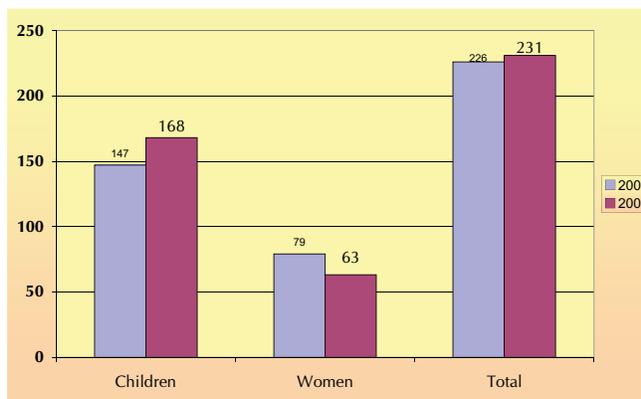
There were debates in intellectual circles in 2007 and 2008 on whether Nepal should fulfil its responsibility to investigate the violations of human rights and humanitarian law during the armed conflict to create a stable democratic peace. The government also made public for discussions the draft Truth and Reconciliation Commission Bill 2007, which was envisaged

by the CPA and the Interim Constitution. Discussions were held on a provision for a pardon for perpetrators, the mandate of the proposed commission, its working procedure and its independence. Voices were raised on the need to present a responsible body answerable to the international community on the relationship between the victims and the perpetrators, and reparation for the victims. But the issue was not revived until the end of 2008 after it was overshadowed by the CA elections.

All political parties in Nepal seem to understand transitional justice as providing compensation to the victims and amnesty to the violators of human rights and humanitarian laws. The parties who think that even the CPA paves the way for amnesty for all, except for those involved in serious crimes, want the demand for transitional justice to subside in silence. They might have inferred that if the TRC begins its work, many memories will be dug up, there will be a demand for action against the perpetrators which will not be possible and the people's disappointment and anger will lead to a chaos. They are trying to ignore justice in the name of peace. The government has not dared execute the work list on providing reparation to the victims of human rights violations which are pending from before the talk of elections. The opposition and other parties maintained

Table : 6

No. of Rape Victims in 2007 and 2008



silence on the issue. While analysing the two years following the signing of the CPA, it can be concluded that in Nepal, sympathy and justice for the victims and their self-respect were sidelined. So there is increasing chance that confession from the violators of human rights and the proper recording of this time in history might not be possible.

Dream of a New Nepal

Last year's CA elections and the declaration of the country as a republic and were historical events in the realisation of the dream of a new Nepal even among the persisting issues of human rights and social justice. The government, on the one hand, has the responsibility to provide people with a sense of peace, security and rule of law while, on the other, the government is also required to provide reparation to victims of the past conflict and legal punishment to the criminals. While fulfilling these responsibilities the government also has the responsibility to ensure an environment complimentary to drafting the unanimous

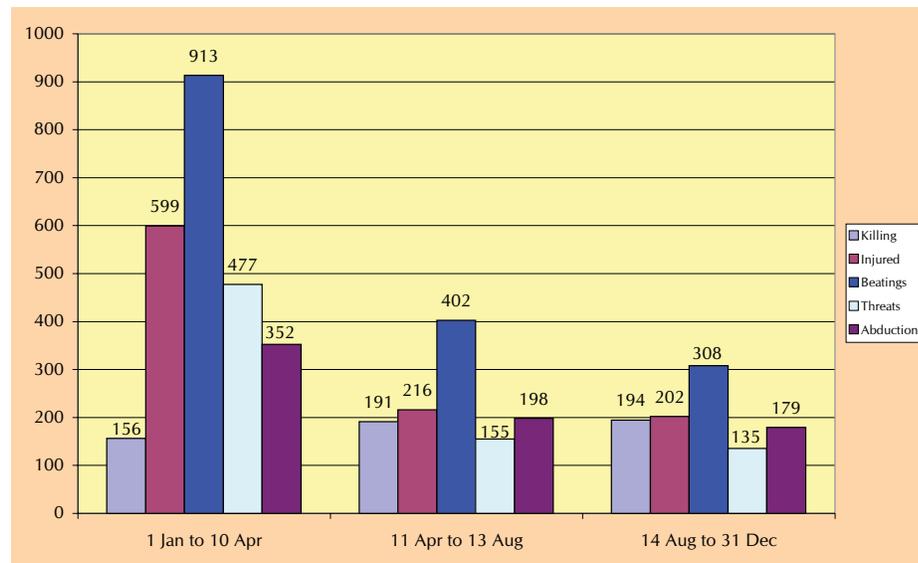
and inclusive constitution within the timeframe.

This year, significant information emerged on human rights violations against women. A total of 1,433 women were became victims. 204 women were affected by domestic violence. The incidents of murders over petty issues are a result of 10 years of a well-spread culture of violence in every nook and corner of the country. Likewise, it can also be concluded that the rise in the numbers of rape cases are linked to a scaling impunity and political protection for the criminals. Impunity contributed to the increased threats from unidentified Tarai-Madhes groups. In 2008, the perpetrators were unidentified in 170 killings. (See Table 2)

In 2007, 226 women were the victims of rape while this year the number of this social crime was 223 and 231 victims. Among the victims, 168 were below the age of 16. Such incidents have occurred across the country as an epidemic (See district information on human rights violations Annex 1 and Table 6).

Table : 7

Total No. of Human Rights Violation/Abuses in 2008



There was a concern over the possible increase of interference in the judiciary by the executive and the Legislature-Parliament while, at the same time, many fingers were pointed at judges regarding their judgement, capacity and honesty. Legal practitioners were the ones who raised the highest concern over the integrity of the judiciary. At last, the bar and bench agreed that the judiciary's image is shaped by the behaviour of the judges. In many cases, the judiciary demonstrated cognizance while in some cases it showed that it was aware of the international human right standards. Chapter 3.1 discusses in details about this issue.

There are many aspects of social justice and human rights which the government should pay keen attention to. A New Nepal cannot be dreamed of while marginalising this truth. In 2008, along with these issues, the under-preparation of the Constitution was the main topic of concern. This year, the contents of the Constitution remained the centre of discussion. Voices were raised on the fulfilment of civil and political rights like the inclusion of the people's rights to life, right to equality before law, freedom of expression and opinion, guarantee of press and publication rights in the constitution and the rights of the nationalities and marginalised communities. Similarly, concerns were raised on the need for a constitutional guarantee of women rights and equality, an end to all kinds of racial discrimination including caste discrimination, decentralisations and local autonomy, pro-poor economic policy, and the rightful distribution of natural resources. People also seemed conscious about including economic and social rights such as sovereignty and the guarantee of national integrity, a healthy life and clean environment, secularism and religious freedom in the Constitution. Updated concepts of human rights such as the right to development define peace and development as people's rights. It is hoped that the new Constitution will encompass

such topics. Ironically, the political parties and the government who were supposed to be facilitating the Constitution drafting process could not generate public trust for themselves until the end of 2008.

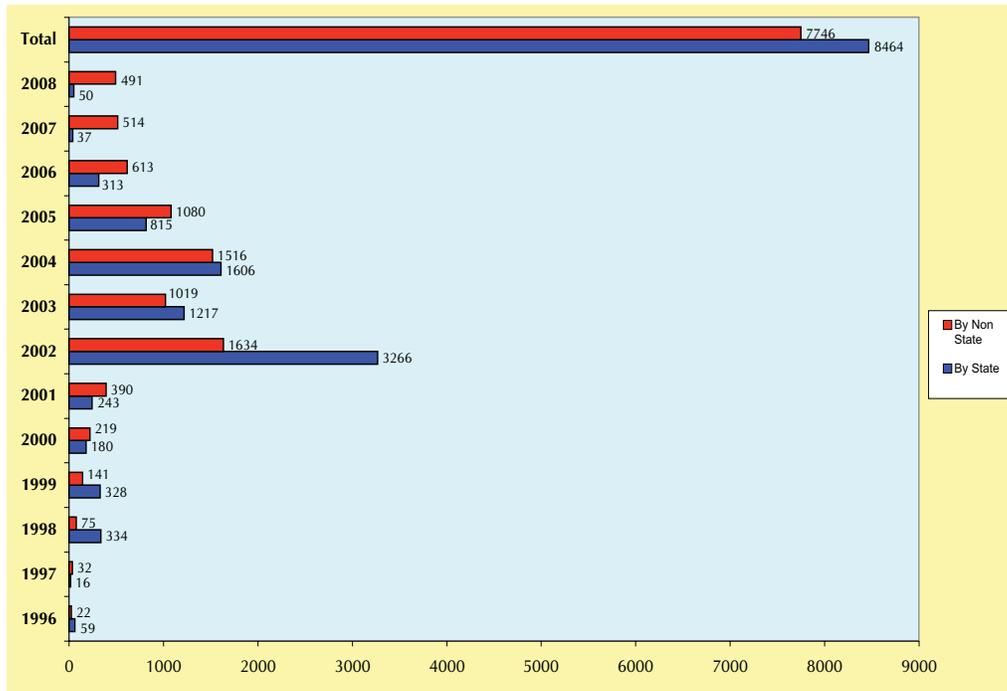
Political parties expressed commitments in writing to the people during the time of the CA elections and had won their votes on that basis. If the Maoists, NC and UML do not forget their manifestoes, the environment of political consensus can be built. Almost all political parties have expressed a commitment to realise the dream of the Federal Democratic Republic Nepal.

The Interim Constitution 2007, a result of the consensus between seven political parties and the Maoists after the CPA, also tried to incorporate economic, social and cultural rights. It is a hope that the up-coming Constitution will include a well-structured concept in this regard. Nepalis still hope that there will be a guarantee of civil, political, economic, social and cultural rights after the conclusion of the peace process in the new Nepal. However, a commitment by the state towards economic, social and cultural rights and the development of an effective mechanism to realize these rights is a crucial issue. It is necessary for the government to have the people's confidence in implementing economic and social rights as these rights are supposed to be attained progressively. The agreement among the then seven political parties that existed before election should remain in tact till the conclusion of the peace process. The dream of a new Nepal will not be achieved without national consensus. Given to the lack of consensus, the people could not be confident that the government could lead the country on the path of human rights and social justice.

Nepalis should be detached from dependency in the desired new Nepal. Development can be seen as a process of expanding the real freedoms that people enjoy. Focusing on human freedoms contrasts with the narrower

Table : 8

No. of Persons Killed by State and Non-State Actors Between 1996 and 2008



views of development, such as identifying development with the growth of gross national product, the rise in personal incomes, industrialisation, technological advance or social modernisation. The growth of the GNP or of individual incomes can, of course, be very important as a means to expanding the freedoms enjoyed by members of society. But freedoms depend also on other determinants, such as social and economic arrangement (for example, facilities for education and health care) as well as political and civil rights (for example, the liberty to participate in public discussion and scrutiny)¹⁵. Nepalis want political parties to contemplate these issues in relation to the new Constitution.

The country was not led effectively towards drafting the unanimous, inclusive

and all-accepted Constitution while peacefully institutionalising human rights to open the way for sustainable peace. The government that was formed after the CA elections did not demonstrate an expected political willpower in this direction. The year 2008 bid farewell amidst concerns over the successful drafting of the Constitution due to the increasing differences among the political parties in the government and those out of it.

Kundan Aryal
Editor-in-chief

15. Sen, Amartya. Development As freedom. New Delhi: Oxford University Press, 1999, p 3.