

Situation of
Human Rights in 2009:
Overall Evaluation

Chapter

1

The peace process that began three years ago remained incomplete in 2009. Human rights situation of Nepal couldn't improve as expected even in 2009 for which there was no basis to label as satisfactory. The Comprehensive Peace Agreement was signed respecting the norms and spirit of the Universal Declaration of Human Rights, 1948, however; the series of events carried out by the parties of the CPA, human rights situation in the country remained unsatisfactory during the year.

It was felt that the pledges expressed for the socio-political and economic transformation and for elimination of the class, ethnicity, language, gender and culture based discriminations so as to create new Nepal were gradually being limited to the programmatic list only.

The acts of killing, abduction, intimidation and extortion went unabated even this year. The government seemed unable in putting a stop to such violation of human rights and bringing the perpetrators to justice. The people who were seen as politically involved in carrying out criminal activities and taking the law into their hands and capitalizing the political influence got impunity. This resulted in weakened rule of law in the country.

Government decision to withdraw cases of those accused of being involved

in heinous crimes on partisan interest encouraged impunity. While taking such decisions, the government did not consult with the independent court. The unabated violent activities in Tarai-Madhesh did not only disrupt the normal life, it gave an impression that the faith of common people on the government was wavering.

There was no initiation of the investigation into the killing carried out by the security forces in the name of peace and security. Prioritizing political compromise without acknowledging patriotism and people's aspirations, failure to speed up the peace process, limiting the regards for human rights to lip service and inability to internalize values and norms of democracy created such a situation.

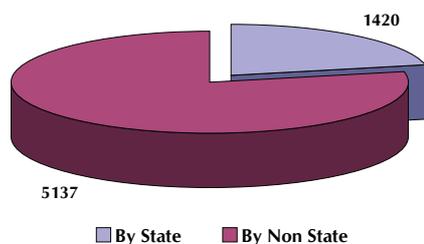
1. POLITICAL INSTABILITY: HURDLES OF CONSTITUTION DRAFTING PROCESS

The political stalemate lasted throughout the year 2009 though the logical conclusion was termed as the second in the list after the Constituent Assembly elections. The political parties could not be able to meet three mandates requisite for the conclusion of the peace process which were (a) Constitution drafting (b) Reintegration and rehabilitation of the Maoist combatants and (c) Management of the transitional justice. There were ample debates regarding all three topics but no tangible step was taken.

Rule of law discourages the culture of impunity however; the rule of law was not translated into action. Governmental and political parties' disregard for human rights commitments were seen as one of the reasons for the political instability. All crucial issues of the country remained unattended when UCPN-M, the largest party in the CA, obstructed the parliamentary proceedings, which was seen as disregarding the commitments to the CPA, a foundation to wind up the armed conflict, and to take the peace process to a logical conclusion.

Figure : 1

Number of Victims of HR Violations and Abuses



The acts of UCPN-M including agitation in the name of civilian supremacy, obstruction of the parliament, threats and manhandling against the cadres of other political parties, extortion, capture of property and forests in the name of landless people naturally deviated the attention of the stakeholders from drafting the constitution. The environment was not conducive enough for people to participate in the national debate over the upcoming constitution. There lacked expected attention for the dialogues to converge into consensus in the serious issues like federalism.

Understanding and agreements were signed to provide the same landscape of Tarai-Madhesh to Tharuwan and Madheshis. Similarly, UCPN-M remained unyielding for the blanket integration of the Maoist combatants while the other parties refused that stand.

Later, the UCPN-M denied

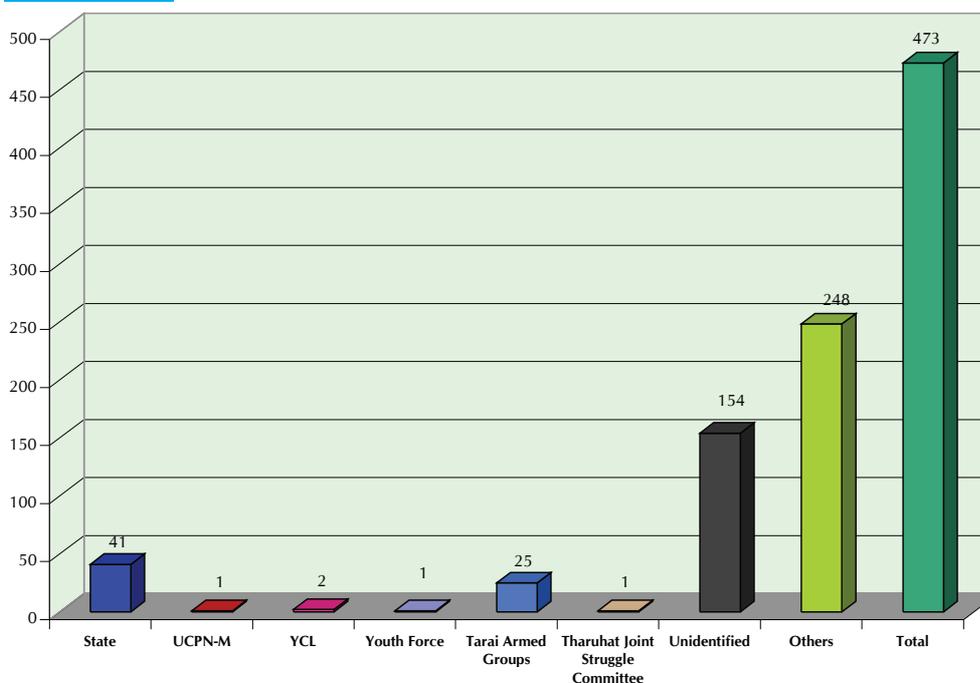
integrating the former combatants until the constitution is promulgated while other parties held the view that constitution should and could not be drafted before the combatants are integrated. Misunderstanding among the parties turned out to be a major contributor to the political instability. Consequently, not only hurdles emerged in the drafting of the constitution, even meeting the deadline for the promulgation of the constitution came under doubt.

2. CHALLENGES TO INDEPENDENCE OF JUDICIARY

There were some important decisions made by the Supreme Court that contributed to the promotion and protection of human rights. One such important decision made by the Supreme Court, related to the protection of right to life and freedom of citizens, was that the Supreme Court publicized the whereabouts

Figure : 2

Number of Persons Killed by State and Non-State Actors



of two persons one day after the filing of a Habeas Corpus writ, thus highlighting their dedication to their role as the protector of fundamental human rights.

In many instances, it seemed that the legislature and executive attempted to influence judiciary. The Supreme Court also made similar claims to this effect in its annual report. Such claims are the matter of much concern as any such situation is a great challenge to the independence of the judiciary.

Hundreds of disputes regarding the matters of public interest and human rights violation were registered in the courts across the country including the Supreme Court. The writ petition filed at the Supreme Court, regarding the recruitment of Nepal Army soldiers and Maoist Combatants, drew widespread attention. Delays by the Supreme Court in deciding on constitutional questions of cases with a serious political nature also drew the Apex Court into public criticism. Complaints of

delays in justice delivery, administrative irregularities, and the grievances of both parties to a case were not addressed. The people's expectation that such complaints would be effectively resolved was not met.

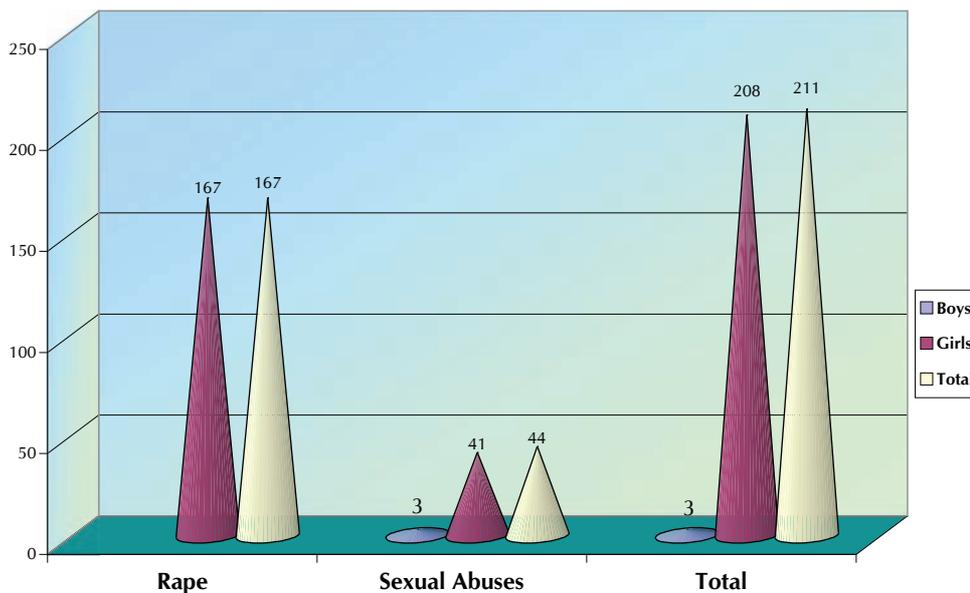
On a different principle of democratic norm of independent judiciary and separation of power, the Judicial System Committee of the CA proposed the concept of judiciary controlled by the legislature. The draft proposal with the concept of judiciary subordinated to the legislature emerged as a challenge to independent judiciary.

3. THE GOVERNMENT IN DILEMMA

The Government showed its respect towards human rights by declaring through its programs and policies that human rights would be further effectively promoted and protected and human rights education would be compulsorily integrated in the military training courses. Towards the end

Figure: 3

Number of Children Victimized from Sexual Abuses



of the year, with an aim of eliminating gender-based violence, the government declared to observe 2010 as beginning of campaign against gender-based violence.

Besides that, the government attempted to speed up the peace process to some extent by deciding to discharge the disqualified Maoist combatants from the cantonments, preparing code of conduct for Technical Committee which is under the Maoist Combatants Integration Special Committee and the combatants, and by forwarding some new policies for social security but the results showed that the efforts remained short of the target.

The Government could not succeed in eliminating the culture of impunity, providing guarantee of security and creating of an environment where the human rights can be enjoyed unhindered. Moreover, the political parties were seen directly involved in the activities like killings, beatings, and calling for bandhs and resorting to violence. UCPN-M was

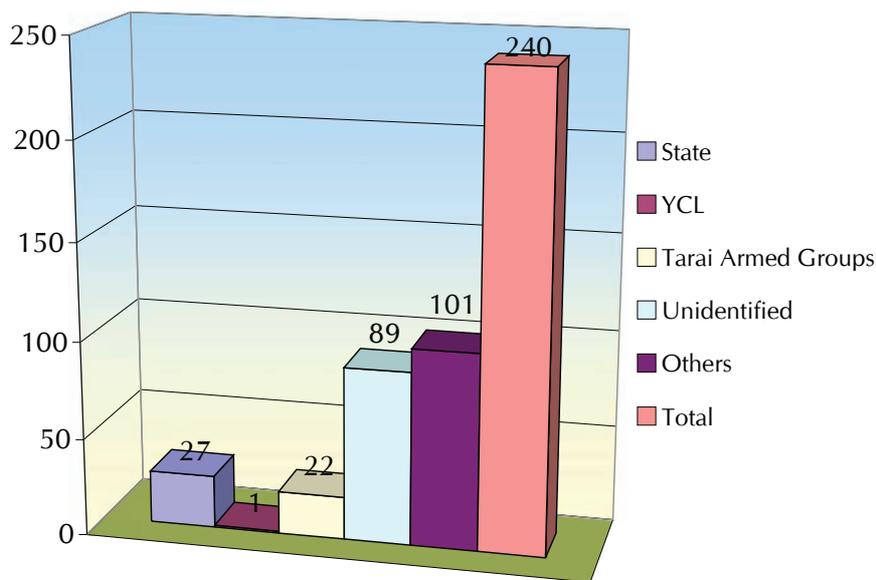
seen trying to establish the unilateral grip when leading the coalition government while the government led by UML was seen busy in facing the bandh and protests of opposition and building up consensus.

The sister organizations of UCPN-M, CPN-UML and NC were not only limited to clash against each other, but were found involved in the gross acts like killings. This year, UCPN-M and its sister organizations were involved in killings of three persons, beating of 652 and abduction of 55. Likewise, the UML's sister organizations were involved in the killing of one person and beating of 104 persons.

This year also mechanisms like Commission on Disappeared Persons and Truth and Reconciliation Commission were not established as per the spirit of the CPA and the Interim Constitution. The steps to be forwarded as a state party to carry out the responsibilities coming with signing of international treaties and other important human rights treaties could not

Figure : 4

Number of Persons Killed in 15 Districts of Tarai after Implementation of Special Security Policy



go forward. The directive issued by the parliament to the government by passing the resolution motion for the ratification of Rome Statute three years ago remained unheeded even this year.

Both governments revealed a tendency of ignoring the demands of territorial, regional and professional interest groups at first and then agreeing with the aim of pacifying them for the time being but none of the governments apparently took such agreements seriously.

4. LEGISLATURE AFFECTED BY MISINTERPRETATION

The parliament is the common platform of the representatives who are elected by the people to maintain civilian supremacy. The representatives utilize that platform to raise the problems faced by people and find ways out to resolve the problem. This year, the parliament remained obstructed for nine months, that too, ironically in the name of civilian supremacy affecting all the proceedings of the people's agenda as well as the economy of the country.

Delayed approval of the budget not only affected the government employees, but also the support provided to the Maoist combatants who were placed in cantonments. UCPN-M stubbornly kept trying to define a government which was formed with the support of 62 percent of the parliamentarians, as a government of minority. Obstruction of the parliament hampered the endorsement of several laws related to the establishment of mechanisms that deal with transitional justice.

Constitutional Committee, Determinant of the Form of the Governance of State Committee and State Re-Structuring and Distribution of State Power Committee could not table their drafts. All committees should have prepared the draft concepts by the end of the month of Jestha (June 14) as per the timetable passed last year.

Table : 1 Number of Victims of Capture of Property

Perpetrator	Male	Female	N/A	Total
State	6	1		7
UCPN-M	66	4	4	74
YCL	2			2
ANNISU-R	2		2	4
Nepali Congress	1			1
Youth Force	1			1
Federal Limbuwan State Council	1	1	1	3
CPN-M	13		5	18
Madesh Rastra Janatrantrik Party (Revolutionary)	4			4
MJF			1	1
Federal Limbuwan State Council-Manch	1	1		2
JTMM-Pratik			1	1
Tarai Madesh Democratic Party	1			1
Tharuhat Syawatta Pardesh	2			2
Tharuhat Joint Struggle Committee	3			3
Unidentified	7			7
Others	5	1	1	7
Total	115	8	15	138

The parliament remained stalled for many days during winter session when NC obstructed the parliamentary proceedings demanding return of properties captured by Maoists. UML's demand for arrest of alleged killer of Youth Force leader Prachanda Thaiba, protest by Madheshi parties that claimed state disregard for Madheshi issues and several other issues raised by other parties continued to hold the parliament. Repeated assurances by the top leaders of political parties remained limited to words.

5. ADVERSITIES TO PEACEFUL LIVING

The situation of peace and security of the country did not improve even



this year. Both governments in power this year implemented Special Security Policy. First five months of the year had a government led by UCPN-M and after that new government-led by UML was formed. During the five months of erstwhile government, 191 persons were killed while 282 persons were killed when there was UML-led government. 282 persons were abducted this year among them, in the first five months, 149 persons were abducted and 132 were abducted during remaining months. A total of 6,842 persons were victimized by human rights violation in 2009.

5.1 Violent situation in Tarai-Madhesh

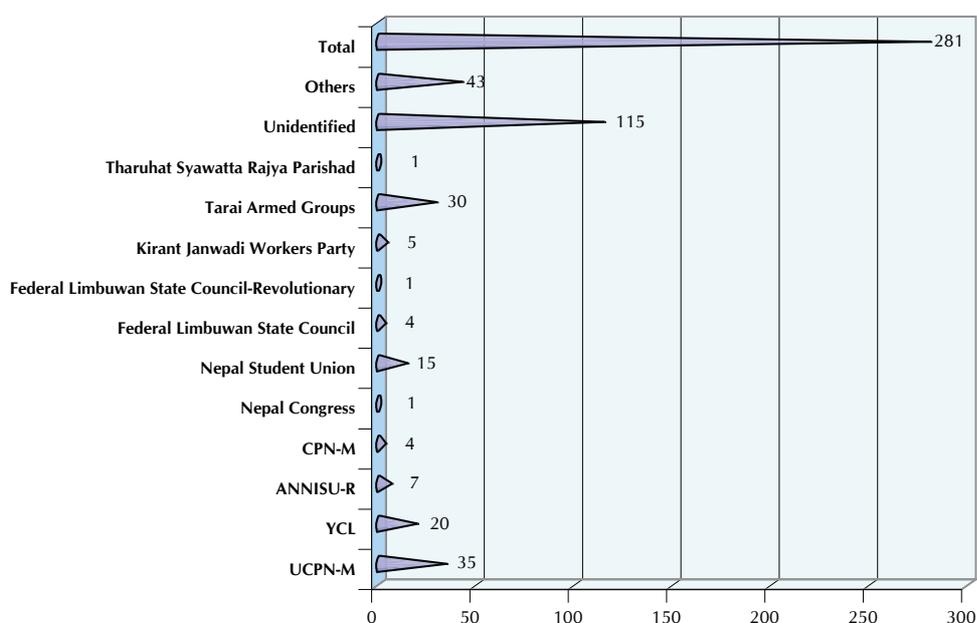
There was no improvement in Tarai owing to the activities of the armed groups. Splinter group of then CPN-M, Tarai Jantantrik Mukti Morcha formed by Jaya Krishna Goit and mushrooming of groups after it added to the violence in Tarai. This year, 15 districts of Tarai saw killing of 240 persons, among them, 27 persons

were killed by state, 22 by armed groups and 89 persons by unidentified groups and one person each killed by the YCL and others. Record showed Dhanusha as being the most affected district considering the security condition. 39 persons were killed in the district this year. Nawalparasi had least number of killing i.e. 5. The Special Security Plan implemented in 15 districts of Tarai and seven districts of hilly region was claimed to have minimized the violence but INSEC documented that some persons killed reportedly in the encounter with police in the districts of Siraha, Saptari and Dhanusha were killed after arrest.

Udgar Mandal, 26, of Dhanushadham VDC-4 and Ghuran Shah Halwai, 19, of the same place were shot dead by police on May 24. They were arrested in Mahadaiya VDC in Mahottari on charge of being involved in abduction. They were arrested by police and shot dead after being taken to Kurtha VDC-2. Police claimed that the victims were killed in retaliation, after the victim's group

Figure : 5

Number of Victims of Abduction



opened fire, targeting the police team that was tracking kidnappers of Ram Bilas Shah of Kakanipatti VDC. Family members of the victims performed final rites following postmortem of the bodies.

State Organs, UCPN-M, YCL and Youth Force were found involved in incidents of beatings this year. A total of 1,327 persons were beaten up this year. Among them, 1,112 were male and 163 were female. UCPN-M and its sister organizations were involved in most of the incidents while CPN-UML and NC and their sister organizations were not far behind. Likewise, 636 persons received threats. In most of the incidents of intimidation, state organs, political parties and their sister organizations, ethnic organizations and armed groups were involved. The accused remained out of legal prosecution because of the political protection they enjoyed.

5.2 Political protection to crime

The then PM Pushpa Kamal Dahal, who was elected expressing the commitment towards democratic transformation, addressing a public program said that they would capture power in case the government was toppled by the others political parties.

Table :2

Number of Persons Killed in 15 Tarai Districts after Implementation of Special Security Policy

District	By State	By Non-State	Total
Jhapa	1	15	16
Morang		13	13
Sunsari		12	12
Saptari	5	16	21
Siraha	2	20	22
Dhanusha	6	33	39
Mahottari		16	16
Sarlahi		15	15
Rautahat		18	18
Bara	1	15	16
Parsa	6	10	16
Nawalparasi		5	5
Rupandehi	4	5	9
Kapilbastu		7	7
Banke	2	13	15
Total	27	213	240

Such statement gave a feeling of contravening the CA, democracy and pluralism achieved by untiring efforts of the people.

Instead of being concerned over negative impact, such incidents triggered by political intolerance and pride would

Figure : 6

Number of Victims of Women's Rights Violations

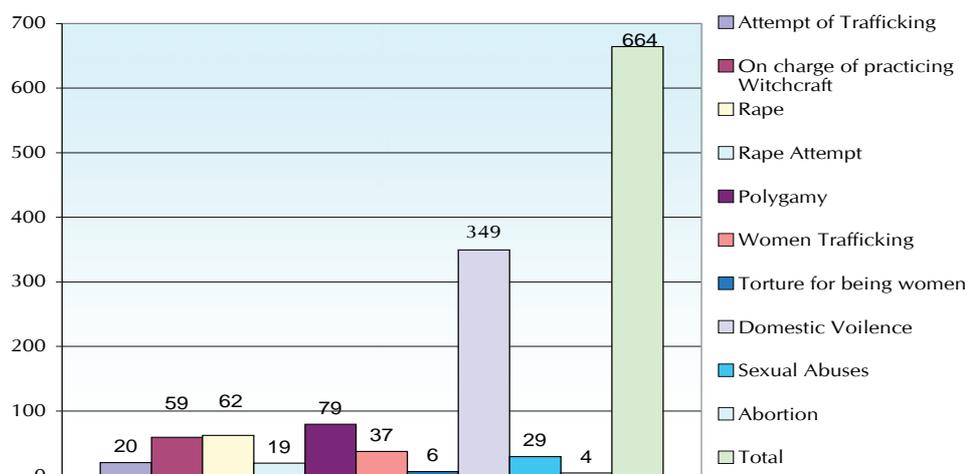


Table : 3 Number of Victims of Beatings

Perpetrator	Male	Female	N/A	Total
State	214	26	3	243
UCPN-M	258	29	5	292
YCL	188	10		198
ANNISFU-R	94	19	4	117
CPN-UML	24	3		27
Youth Force	61	3		64
ANNFSU	6		11	17
Nepali Congress	11			11
Nepal Student Union	11			11
Federal Limbuwan State Council	1			1
CPN-M	1			1
MJF	3			3
Federal Limbuwan State Council-Manch	1	1		2
Jansamrakshan Party	1			1
JTMM-Jwala Singh	2			2
Kirant Janwadi Worker Party	3			3
Terai Madhesh Democratic Party	1			1
Nepal Tarun Dal	7			7
Tharuhat Syawatta Pardesh	1	1		2
Tharuhat Syawatta Rajya Parishad	2			2
Tharuhat Joint Struggle Committee	7	1		8
Unidentified	40	6		46
Others	175	64	29	268
Total	1112	163	52	1327

create, leaderships of the political parties began encouraging such loud statements. No action was taken against the persons guilty of being directed by philosophy of refusing or eliminating the existence of different thoughts and political parties. All the political parties, that expressed commitment to multiparty contest, pluralism and human rights, saw partisan interest upheld when they provided protection to their cadres instead of bringing them to justice.

Govinda Basnet, Youth Force district joint-coordinator and Youth Force

member Basu Baral of Lamjung Besisahar VDC-2 were injured in an attack by YCL cadres on March 10. YCL cadres attacked them with iron rod and khukuri when the Youth Force cadres had gone to Siudibar of Bhotodara to observe Holi. A murder case was filed against the perpetrators on March 11. No action was taken against them till the end of the year.

In the same district, Youth Force cadres assaulted All Nepal Teachers' Association district vice president Hari Danai, All Nepal Trade Union Federation district chairperson Shambhu Shrestha, trader Basu Panta and FNJ district joint secretary Nabin Raj Kuinkel and district chairperson of Revolutionary journalists' Association Basu Thapa for their alleged involvement in the beating of Youth force cadres in Bhotodara VDC by YCL cadres on the same day. Among the injured, Danai and Shrestha were treated in Kathmandu. Although UCPN-M District Committee filed an attempt to murder case against District vice Chairperson of Youth Force, Govinda Basnet and Member Basu Baral on March 11, no action was taken against the perpetrators by the end of the year.

Accountant of District Development Committee Mahottari Laxman Ray and clerk Binod Jha were beaten up by TMDP district leaders and senior officials of District Development Committee Indra Raja Prasad Singh, district members Saroj Kumar Singh, Manoj Jha and Rakesh Sharma on July 14, on charge of delaying work. No action was taken against the perpetrators.

These are some of the representative cases of many similar incidents which occurred across the nation in 2009 and none of the perpetrators were punished.

5.3 Capture of people's properties by different groups continues

The tactic of capturing property first emerged during the armed conflict was adopted by many armed groups. A

pledge made in CPA that the captured properties would be returned within 60 days of the signing of the agreement was ignored by the Maoists while even the government did not pay any attention to it. 80 incidents of capture of properties by UCPN-M and its sister organizations were recorded this year. Besides that, the ethnic and armed groups of Tarai and eastern hill also carried out such activities. Same plot of land was captured by several groups in Dhanusha.

CPN-M organized a press conference on October 12 to inform that it had captured 1,500 bighas of land owned by several persons in Dhanusha district. Its secretary Yadav said they distributed the land among landless persons with one family getting three katthas of land. The captured land had been captured by the then Maoists and Akhil Tarai Mukti Morcha among others.

5.4 Year of non-execution of commitments

Over 100 commitments and agreements have occurred since the signing of the CPA to the end of 2009 but the results of such agreement is next to none. It seemed that various commitments including CPA were forgotten as soon as they were signed. Non-implementation of the talks and agreements related to lingual, regional, ethnic and other collective interest added to a gap in trust. There was no change to the possibility of facing bandh, protest and threat any time due to failure of the government to execute the commitments made at different times to Tharuwan, Madheshi, Backward group, Muslim Joint Front and groups of Tarai.

5.5 Society getting increasingly insensitive to violence

It was seen that Nepalis who witnessed armed conflict launched by the then CPN-M for a decade and following spate of violence in Tarai and eastern hills, are taking such violence

Table : 4 Number of Victims of Threats

Perpetrator	Male	Female	N/A	Total
State	16	2		18
UCPN-M	88	6	10	104
YCL	36	3	32	71
ANNISU-R	5		135	140
Nepali Congress	1			1
Youth Force	2			2
Rastriya Janamorcha	2			2
Federal Limbuwan State Council	2			2
Bardiya Black Cobra Sayukta Morcha	1			1
CPN-M	10		44	54
Madesh Mukti Tigers	1			1
Madheshi Tigers	1			1
Madheshi Virus Killers Party	1			1
Madheshi Student Union	1	1		2
Federal Limbuwan State Council-Manch	8	1	23	32
Janwadi Hill Tigers			24	24
JTMM-Rajan	1			1
JTMM-Jwala Singh	2			2
Akhil Tarai Mukti Morcha	4			4
Pallo Kirat Workers Party			16	16
Limbhuwan and Khumbhuwan	1			1
Kirat Janwadi Workers Party	28	1	48	77
Kochila Liberation Armed Force	1			1
Tarai Army	1			1
Tarai Mukti Morcha	1			1
Tarai Madhesh Democratic Party	3			3
Tarai Janatrantrik Revolutionary	1			1
Tarun Dal	1			1
Tharuhat Sayawatta Pradesh	2			2
Tharuhat Joint Struggle Committee	5	1		6
Unidentified	14	3		17
Others	29	17		46
Total	269	35	332	636

as normal occurrences. The way a total of 15 persons were killed in Dhanusha, Mahottari, Saptari and Sunsari showed that people were losing their sensitivity and having distraught mentality. The rumor of abduction began in Dhanusha and spread to eastern districts. In Joginiya VDC-1 of Saptari district, a teenager and an elderly

persons were beaten and set ablaze alive on charge of touching a young cowherd. Police claimed that they managed to rescue 75 persons accused of being abductors, from being lynched to death. These incidents showed development of the inclination to violent activities to find solutions of problems and also exposed the appeal made by violence to the society.

5.6 Women and children affected by violence

Several incidents of violence against women were recorded this year. Many women were subjected to violence on charge of not bringing enough dowries, leaving the first husband, polygamy, not giving birth to child or son among others. Some of them even lost their lives at the hand of the relatives for those reasons. Police were found dodging their responsibility by filing a public offence cases or mediating between the victims of sexual violence including rape and domestic violence and the perpetrators.

A 35-year-old woman of Belapur VDC-6 in Dadeldhura district filed a complaint at police office on February 4 accusing Bhagi Singh Karki of the same place of attempting to rape her. But, the police registered the case under Public Offence Act. Karki was released on the deposit of Rs 10,000 after the order by CDO Parshuram Aryal.

Bisara Sarki, 64, of Bahnu VDC-6 of Tanahu district was killed by her husband who set her on fire on March 10.

More than 300 incidents of domestic violence were recorded and 17 cases of rape attempt were also made public. A total of 349 cases of violence incurred by families became public. Domestic Violence (Offence and Punishment) Act was enacted this year. It was expected that the Act would reduce the number of incidents but it did not happen so. The condition of easy escape for the perpetrators persists as

the police are eager to settle the case out of court in such incidents. From a girl of three years of age to elderly woman of 102 years became victim of grave violation as rape. A total of 167 girls were raped this year. Moreover, INSEC documented 37 incidents of trafficking of women and girls.

6. CONCLUSION

Top priority among the programmatic actions in the country which is considered as an important part of the peace process in the new constitution is to be promulgated on May 28, 2010. Many actions and commitments that needed to be completed before finalizing the constitution, could not be done even this year. Reparation to the conflict victims on the basis of transitional justice, and the formation of Commission on Disappeared Persons and Truth and Reconciliation Commission could not be established. Drafting of the constitution seems difficult without resolving the violent strife based on ethnic and regional issue.

During the transitional period, the government should have accomplished its plan of actions with firm commitments but it could not move ahead in this direction. It seems confused over several topics including integration of the combatants and several understandings and agreements while sometimes even seemed incompetent.

Political consensus has been reckoned by 12-point Understanding, Interim Constitution and CA election. Realization of new Nepal is possible only by internalizing this fact. The dream of shaping a new Nepal, presently based on the foundation of 12-point Understanding that concluded the decade-long struggle, can be possible if all political parties work for the national interest.

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