

Implementation of Concluding Observations on ICERD

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Background

As mandated and required by the Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, which came into force in 1969 entered into force for Nepal in 1971, Nepal as a state member is obliged to submit its progress report in connection with Convention in each two years. It has been 33 years and there could have been 16 progress reports submitted at the United Nations since then. Nepal, on the capacity of a state party, has submitted only eight reports, many of them in joint form. Obviously, following the same Article, the UN Committee on ICERD makes suggestions and recommendations based on the examination of the reports and information received. Now, we have such observations at least, eight times since 1972 when we first submitted state report.

We have been citing its noble provisions (except Articles 4 and 6) for restructuring our society and transforming it so that all of us could live in it being equally responsible for its advancement and enjoying equal fruits of our deeds for the same. I must say, with a higher degree of regret, it could not have been so and has not been so. However, let us be optimistic that we will have our society transformed, advanced welcoming all of us without any discrimination on any ground. A point to be noted here- it will be so as a result of our sincere collaborative efforts for it is our society.

Implementation of Concluding Observations passed by UN Committee on ICERD.

In its fifteenth and sixteenth joint report on ICERD submitted to the Committee, government has believed that the points raised by the Committee in its concluding observations have been properly and adequately addressed. We should thank the State for responding, submitting its periodic progress report, though jointly.

Did the government act enough to have the Committee's concluding observations 'properly and adequately addressed'?

Notably, the recommendations and concluding observations are not to be entertained as 'mere suggestions'. They carry a sense of urgency to act pro-actively on what have been recommended and suggested. It can't be encouraging only to respond that 'we are considering', 'we are committed', 'we are serious' and so on. How to gauge such sincerity? Such commitment? Such seriousness? Just being serious, committed for more than three decades for same issues repeatedly falls short to have it proclaimed that 'concluding observations have been properly and adequately addressed'.

Areas of Concerns and Recommendations: 2004

The Committee has expressed its concern in many of sectors but essentially related to dalits:

- Impact of the insurgency especially on the vulnerable groups.
- Diversion of state resources away from social and development programs.

- State party seek to balance those concerns of security issues with its human rights obligations, in particular, for members of vulnerable groups, and allocate its budgets accordingly.
- The Committee underscores the importance of the *restoration of Parliament* in order to expedite the process of *resuming normality in the country*.
- Sstrengthening and giving adequate financial support, so as to ensure their independence and effectiveness to National Human Rights Institutes.
- Consider as a priority the adoption of the relevant statutory law to enable the National Dalit Commission to carry out its mandate effectively. (Unfortunately, it exists no more now).
- The Committee remains deeply concerned at the persistence of de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system.
- The Committee recommends that the State party as a matter of priority take measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind.
- The Committee regrets the lack of information regarding the implementation of the Convention in relation to the enjoyment of all human rights by the indigenous people of Nepal.
- The Committee regrets the lack of information on prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination.
- Lack of information in the periodic report on the situation of women who belong to disadvantaged groups as victims of multiple discriminations.
- Under-representation of disadvantaged groups in government, legislative bodies and the judiciary.
- Proper rehabilitation of freed kamaiyas.
- Lack of representation of disadvantaged groups in the state-owned media, and that issues such as racial discrimination and human rights receive little coverage by the media in general.
- Take into account the relevant parts of the Durban Declaration and Program of Action when implementing the Convention in the domestic legal order, and that it include in its next periodic report information on the follow-up measures taken.
- The Committee encourages the State party to continue its engagement with civil society organizations during the preparation of the next periodic report and to disseminate it widely among the public upon submission. It further recommends that the Committee's concluding observations be similarly publicized.

These are some of the major issues raised by the Committee as concluding observations. Most of them have been repeatedly suggested. Where and when have they been 'addressed properly'?

Our Legislative Efforts

Constitutional provisions, primarily right to equality under fundamental rights and directive principles, Treaty Act, 1990 that recognizes international human rights instruments, to which we are state party, as national law. Civil Liberties Act, 1954 - includes right to equality and equal protection of the law. The Act also provides grounds for affirmative action in favor of the socially and economically backward communities. Legal Aid Act, 1998 - the Parliament has enacted this law for the purpose of providing necessary legal aid to indigent persons who are incapable of protecting their rights and interests due to economic and social factors, in as much as it is essential to provide justice to everybody on an equal basis according to the principle of the rule of law. Local Self-Governance Act, 1999 - aims wider participation including that of the ethnic communities, indigenous people and down-trodden as well as socially and economically backward groups. Bonded Labour (Prohibition) Act, 2002 - land has been distributed to 9,378 families out of 13,259 freed *Kamaiya* families.

Some Programmatic Efforts

The Government constituted a National Committee for Policy on Cultures in 1992, a National Language Advisory Committee in 1993, and a Task Force for the establishment of an Academy for Development of Nationalities of Nepal in 1995. Five year plans have been talking about programs for dalits and nationalities repeatedly. The Tenth Plan (2003-2007) outlines that one of the three overall strategies of the Plan will be to implement poverty alleviation programmes specifically for women, Dalits, nationalities and other deprived groups of the country a National Committee for the Development of Nationalities of Nepal in 1998 under the Ministry of Local Development to mainstream the Nationalities of Nepal into national development process. The bill on "National Academy for the Upliftment of Nationalities" was approved by Parliament at its twentieth session. The basic objective of this bill is to establish an independent national academy for social, economic and cultural development and uplifting of the nationalities. His Majesty's Government of Nepal in 1998 established a National Committee for the Upliftment of the Depressed, Oppressed and Dalits Community under the Ministry of Local Development. The Committee is working under the executive order of the Government for the development of the Dalits.

On 16 August 2001 the Nepalese Prime Minister, Mr. Sher Bahadur Deuba, in a special statement of public importance made before Parliament announced that special measures to combat these inhumane practices will be undertaken by the Government.

The Prime Minister announced on 16 August 2001 that an academy, vested with full authority, for the upliftment of the nationalities and indigenous peoples of Nepal will be formed. Accordingly, the Parliament passed the bill on the National Academy for the upliftment of Nationalities.

The existing laws authorize the local/government institutions like VDCs, municipalities, the Office of the Chief District Officer, and the local police stations to take action against any person or groups practicing caste-based discrimination

Implementation

- ❖ Reservation of Article 4 and 6 and a continuous repetition by the Committee to withdraw it- it is enough whether Committee's remarks have really been paid attention. It is obvious, withdrawal of the Articles and their proper implementation hits at the 'absurdly structured' contemporary Nepali society.

- ❖ The bill passed to establish an academy for indigenous people by the 12th session of the House has not yet been implemented. You can draw your conclusion in rest of the issues.
- ❖ Are the legislative efforts sufficient ? What about (framing law on reservation)?
- ❖ Honest and sincere implementation of existing provisions, national and international, and of course, of the concluding observations with results is what we need today.
- ❖ Specific law with strong implementing mechanism and stiffer penalties to the observer of caste-based discriminations is what the need of the hour.
- ❖ A structural stereotypical traditional power of state governance and lack of result oriented political will has hindered it. A collective efforts on the part of civil society is also another front we should check in this line.
- ❖ However, a growing collaboration and awareness to eliminate such inhuman practice, which must clearly be defined in law as public offence, proves to be a silver lining in a cloud.

References:

- State Reports on ICERD: 1997, 1999 and 2004
- Alternative Report on ICERD: 2004
- Concluding Remarks by CERD Committee: 2004
- Situation of Dalits Human Rights-2004 and Legal Provisions: JUP-Nepal, 2004
- INFORMAL: INSEC, 2004
- Relevant National Legal Documents