

## Concept paper

# CASU-UNDP Conference on Human Rights, Diversity and Social Justice

Biratnagar, 29-30 April 2007

The concept of human rights, and human rights defenders, played a critical role in the resistance to the oppression of the people by the insurgents and the army alike. The janaandolan II was triggered by gross violations of the human rights of the people of Nepal. The struggle for the democracy was inspired by the work of human rights organisations and defenders. Respect for human rights features high in the aspirations of the people; this is reflected in the 8 point and 12 point agreements between the Seven Party Alliance and the Maoists. Human rights are an important component of the peace process and are highlighted in the Comprehensive Peace Agreement. It is widely accepted that there can be no lasting peace or justice without respect for and promotion of human rights. Chapter 3 of the Interim Constitution has an expanded chapter on human rights compared to previous constitutions, including the 1990 Constitution. It also gives a constitutional status to the Nepal Human Rights Commission.

The purpose of this conference is to examine in a broad way the general regime of rights before turning to specific topics that are of particular concern in Nepal, and which must be reflected in the constitution: rights as protection against arbitrariness, rights as foundations of human dignity, rights as protection of culture, rights as an aspect of the rule of law, the framework of rights as mediating between different claims and rights as the expression of social justice. And importantly, rights consciousness as part of the common identity of Nepal.

Apart from the general commitment to human rights as protection of individuals, human rights are closely connected to the principal objectives of the janaandolan: democracy, human security, human dignity, inclusion and respect for communities, and social justice. Human rights are now seen as related to self-respect and identity. Increasingly, human rights provide a set of standards by which we can judge the record of governments in terms of democracy, fair administration, accountability, and to measure discrimination and atrocities, by government and civil society alike.

Approaches to the study of human rights are now less abstract and we have a deeper understanding of human rights, and their connections with the everyday life of individuals and communities. We think of rights as being not just the basis of entitlements for individuals, but as the basis of community solidarity and collective action. Human rights – we now believe – must influence not only the relationship of the individual with the state, but also that of individuals with each other, of the individual with the community, of the community with the state, and of communities with each other. This realisation has led to considerable growth and refinement of the concept of human rights.

Political discussion is now often dominated by human rights: individual rights, collective or group rights, rights of different kinds of communities (indigenous or cultural), civil and political rights and cultural and economic rights. The claims of

vulnerable groups or of the victims of past injustices are increasingly expressed in terms of rights. Rights are increasingly tailored for specific groups: for example, linguistic or religious minorities, indigenous peoples, women, children, the elderly and the disabled. The concept or right of self-determination is regarded as the foundation of other rights: self-government, protection of culture, the cohesion and solidarity of the community—and of identity.

These developments have increased the scope and the complexity of rights. There are also tensions between different categories of rights. And rights also provide a framework for balancing competing interests. Equality can be seen as requiring non-discrimination. But others see effective equality as being (at least in some circumstances) the justification for special provisions for the disadvantaged or the vulnerable. The notion of rights as universal and individual oriented is increasingly challenged, as ‘majoritarian’, insensitive to minority cultures. The call is for ‘differentiated’ rather than ‘uniform’ rights, with considerable shift in emphasis from the individual to the ‘community’. In multi-ethnic societies, human rights have become intertwined with questions of identity. Rights have challenged the notion of ‘nation-state’ theory, by drawing attention to diversity and cultural rights. The prominence that this shift gives to culture raises issues not only about relations between communities, and between them and the state, but also about the internal organisation of each community. It may be that culture is not an unqualified good (ask women in Asia and Africa, and ask Dalits), and constitution makers may have to decide between rights as traditionally understood (as individual rights) and cultural values. How is this dilemma to be solved?

And even as the discussion of human rights has to confront these issues of local culture, human rights are also seen as manifestations of global responsibility and solidarity. This is very evident (and appreciated) in Nepal, where the first forms of international engagement in the conflict and insurgency were driven by humanitarian concerns; and interventions were based on international norms of rights.

Fresh ways of thinking of rights have also come with the search for social justice - with the increasing recognition of the importance of economic and social rights as ensuring the basic needs of the people. This factor has led to a more flexible approach to the notion of equality and non-discrimination. And the interest in democracy as participation has expanded our notion of political rights.

All these issues have great relevance for the circumstances and aspirations of the people of Nepal. How should the constitution deal with these many aspects of human rights?

Below is the outline of a programme which will examine some of the issues identified above. The opening session will examine how human rights form part of the consciousness of Nepali and how they are seen as central to its identity as well as to social justice. It will explore the different ways in which the framework of human rights is relevant to the difficult problems facing the country: social and regional exclusion, poverty, recognition of diversity and of human dignity, poverty, and democracy and the rule of law. The next session will continue this discussion, by focussing on diversity issues in Nepal (particularly as related to language, religion and culture and customary practices. In the next session, two distinguished scholars and

legal practitioners, Professor Sujit Choudhry (of the University of Toronto) and Dr. Rajeev Dhavan (advocate of the Indian Supreme Court) will describe and analyse the connections between human rights and diversity in Canada and India respectively.

On the second day the conference will focus on the approach in human rights to social justice, and the connections between poverty, deprivation and social justice. There will be a general introduction to economic and social rights which are designed to ensure the basic needs of all the people. The policies of affirmative action, which tend to be highly controversial, will be discussed, in the context of Nepal. This will be followed by a case study of 'achieving social justice' in South Africa, presented by a leading human rights lawyer and activist from South Africa on its experiences of moving away from a highly unequal and segregated society to a more just and egalitarian society. The South African constitution has dealt with the issue of inclusion in a more systematic manner than most constitutions.

The next session will be devoted to discussion in groups on issues related to the implementation and enforcement of rights, particularly impunity, role of civil society, and the strengthening of human rights commission and the office to investigate abuse of power. The conference will conclude with general reflections, presented by foreign and local participants.