

Education International – UPR Submission – Nepal – 10th session (January 2011)

Date of submission: 5 July 2010

Education International (EI) --the world's largest Global Union Federation representing over 30 million education workers through 403 teacher organisations-- hereby lodges a submission for non implementation of the principles of freedom of expression, association and non discrimination by the Government of Nepal.

Background

1. Nepal is passing through political uncertainty and is in the process of drafting a constitution to ensure full sovereignty of the people in a Federal, Democratic Republic of Nepal. People's uprising in 2006 ousted Monarchy, laid ground for Constitution Assembly and an interim constitution and ended 10 years long Maoist insurgency in which more than 1200 teachers were killed and 700 maimed, and thousands were displaced.
2. The insurgency stopped and became the mainstream but the violence continued. Since 2006, 192 new armed groups have formed. Extortion, kidnapping, threats, arbitrary arrest and lengthy pretrial detention have increased. 1,365 people were reported missing under suspicious circumstances in 2008, 2009 and 2010. 229 people were killed, out of which 141 by unknown groups, 37 by security forces, 21 by Tarai armed groups and 4 by Maoist groups.

Constitutional Framework

3. The 2007 interim constitution provides for the fundamental rights. Twenty articles, from Article 12 to 32, in the Part 3 of the constitution provide almost all rights including the rights to association (12), equality (13), non-discrimination (14), freedom of press (15), education (17), employment and social security (18), of children and proper work (30). The part 15 of the constitution provides for the National Human Rights Commission and under the Directive Principle of the State it highlights the full commitment to the universally human rights and fundamental rights.
4. However, these rights have remained in paper. In reality, the situation has hardly changed. The governments under this constitution have changed thrice and the constitution has been amended eight times. Atrocities committed by the armed groups, security personnel and political parties go unpunished. These groups violate human rights in impunity.

Freedom of Association and Trade Union Rights

5. The rights to organize and collectively bargain exist in the law, but their actual practice is limited. Despite the constitutional rights of the public servants to form unions, the prevailing laws bar teacher organizations to form representative unions with rights to collective bargaining. Government continues to undermine negotiations and agreements reached with the teacher organizations, especially with the federation of teacher organizations called Teachers Union of Nepal. Despite its name, TUN is not a recognized union. TUN has no collective bargaining rights, but is represents its affiliated teacher associations in some government committees mostly related to the policy development. Since 2006, more than 20 teacher organizations have come to existence weakening the trade union movement.
6. Armed groups continue to extort money, harass and attack teachers with impunity. The attacks on teachers are politically biased and at times to force them to join the organization of teachers affiliated to political parties or the armed group. Many teachers were abducted along with their students for indoctrination by a number of armed groups. Those who resist are attacked.

7. On May 6th 2009 Maoists attacked the President of the Teachers Union of Nepal, Mr. Rup Narayan Jabegu, in the Panchthar district. His house was vandalized; he was stabbed a number of times and shot at. He took refuge in the district headquarters.
8. Working conditions of workers in most industries remain unsafe and the enforcement of safety standards is minimal. Only about 10% of the workers in the formal sector have collective bargaining rights. In the absence of the collective bargaining mechanisms, the unions clash with each other. On 2 January 2009 seven leaders of the General Federation of the Nepalese Trade Union were injured in a brutal attack by members of the All Nepal Federation of Trade Union in Pokhara Noodles Private Limited.
9. Two trade unionists, Kebab Raut and Hare Ram Yadav, were killed and more than 50 workers injured on 29 August 2009 in the Narayani Rolling Mills factory, Bara by the police. The workers were demanding permanent contracts, minimum wage and the reinstatement of dismissed colleagues.
10. On 3 September 2009, police opened fire at a peaceful demonstration of the UTL Workers' Trade Union in Kathmandu and arrested 80 workers including Santosh Rajyamajhi, the General Secretary of the United Telecom Ltd (UTL) workers' union. The demonstrators were demanding an end to contract workers, better working conditions and application of labour and trade union laws.

Right to Non-discrimination

11. Nepal continues to fail to effectively address caste-based discrimination and enforces laws on non-discrimination. Representing almost 25% of the country's population, the "Dalits" live in segregated communities. They are often barred to enter public areas including food markets and water wells.
12. Along side Dalits, women are discriminated in their rights. Laws make it difficult for the Nepali women marrying foreigners to obtain citizenship for spouses and children. The need to produce "property ownership document" to obtain citizenship often bars landless people citizenship.
13. Girls are forced out of schools to help household and often are married much earlier than the boys. An estimate in 2009 put the average age of marriage for girls at 16 despite the legal prohibition on marriage before 18. The number of girls attending secondary schools is half that of boys.
14. About 50,000 women are forced into commercial sex, out of whom 7,500 women in foreign countries. Human trafficking is a huge problem.

Right to Education

15. Only 52 out of 100 adults can read and write. The net enrolment figure for 2008 is 89%, much lower than many countries. Only 60% women are literate. There has been some progress in primary-level enrolment. The student teacher ratio is often over 100/1.
16. In 2008, nearly half the children repeated or dropped out in Grade 1. Only 16% completed primary education and 5% completed secondary education. Only one out of the 20 entering the state education system completes education. Students dropping out end up working and often in hazardous conditions. Child labour is rampant in the large informal sector, including agriculture, domestic service, rag picking, and rock breaking.
17. Decentralization of education has led to resources being focused in the towns and cities. The local School Management Committees have meager funds and end up recruiting teachers, who are remunerated at far below the official rate. These teachers are forced to have second jobs for sustenance. Government funding has not increased; it has remained around 17% to 19% in the last five years.

18. There is an increasing divide between government and private schools. The success rate for children from private schools in the School Leaving Certificate examination is about 80 percent while the success rate for children from government schools is only 20 percent.

Right to Freedom of Expression and Information

19. Attacks on the press has escalated amid a climate of impunity. Journalistic objectivity attracts punishment more often than praise, resulting in self-censorship and fear of personal safety.

20. On January 11, 2009 Ms. Uma Singh, an investigative journalist was killed and on January 22, a group of masked men threatened Ms. Yashoda Timsina, for investigating the killing. The assailants were not identified and are at large.

21. On April 7, Ms. Manika Jha, of Kantipur Daily was attacked. On December 9, Ms. Tika Bista of Rajdhani Daily was severely beaten up and stabbed. Investigations by the Federation of Nepalese Journalists found that Ms. Tika Bista was attacked by the Youth Communist League, a youth branch of the Maoist party. Police made several arrests. Maoist party denied and those arrested were released.

22. On June 11, in Rupendehi, Maoists burned copies of the Kathmandu Post and Kantipur Daily and on June 16, copies of Nagarik. On August 23, copies of the Kathmandu Post and Kantipur were again destroyed. Several ethnic groups in the Terai attacked newspaper offices for not highlighting their activities and printing in Nepali language.

The Right to remain Safe and free of Torture

23. Despite constitutional prohibition on torture, the laws do not clearly criminalize torture. In 2009, no one was prosecuted for torture. During the year, 98 cases of torture by non state actors were recorded; 49 by the Maoists; 34 by Tarai armed groups; 6 by Tharu Mukti Morcha; and 9 by unidentified armed groups in the Terai.

24. The fate of many of those who disappeared during the 10-year Maoist insurgency (1996-2006) remains unknown. Between 50,000 and 70,000 people remain displaced due to the fear of the Maoist reprisal on returning home.

25. In 2009, there were 835 unresolved cases of disappearances. It is believed that state was responsible for 616 cases and the Maoists for 219 cases. Not a single action was initiated against the Maoist or government perpetrators in 2009. Major General Toran Bahadur Singh, who was chain of command in the most notorious Barrack for holding and torturing suspects, was promoted in December 2009 despite the protests by the human rights organizations.

26. On January 4, police arrested and tortured Narayan Thapa. The accused police personnel furnished required reply but the court has not set a date for the hearings. An investigation on torture and ill-treatment of Sushan Limbu and Bhakta Rai in Morang found four police personnel guilty. On August 24, police issued a formal warning to the four and closed the case.

The Right to Believe

27. On March 26, Mr. Prachanda Man Thaiba, a member of the United Marxist Leninist youth faction was killed. Mr. Sujit Biswo Karma, a member of the Maoist youth group was arrested on suspicion. The Maoists initiated internal investigation result of which is unknown. Members of the same Maoist youth group were suspected of killing Mr. Anuj Thapa Magar, member of the united Marxist Leninist faction in Biratnagar. The case continues in the court.

28. The 2008 killing of Ram Hari Shrestha in Chitwan remains unresolved. The police arrested one out of the five suspects. The remaining four suspects remain at large. Suspicion runs high that they are protected by the Maoist-affiliated People's Liberation Army.
29. On May 31, a group of 27 Maoist youth activists attacked the Nepali Congress Party president of Kalikot district, Mukti Prasad Neupane. He filed a police report, but there was no subsequent investigation.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Ask State of Nepal to:

1. Respect its obligations under ICESCR, especially the right to organise in law and practice;
2. Ratify ILO Conventions No 87 and adopt policy measures to respect the right of workers' organisations to organize their activities, to hold meetings and to bargain collectively;
3. Promote social dialogue which requires participation, freedom of association and effective policy implementation;
4. Ensure a safe environment for human rights defenders' activities, including trade unionists, and that perpetrators of murders, attacks, threats and harassment of human rights activists be brought to justice;
5. Strengthen and ensure the independence of its human rights institutions;
6. Take measures to safeguard freedom of expression and effectively investigate allegations of attacks on journalists and media personnel;
7. That civil society organizations be involved in the follow-up to the UPR process
8. Continue its efforts to achieve Millennium Development Goals within the stipulated time frame;
9. Continue to strengthen its efforts in tackling poverty and enhancing the access of all persons, especially those living in rural areas, to basic social services such as health and education;
10. Give special attention to the rights of women and further promote their access to education and development through literacy programmes
11. Develop policies and programmes to support the elimination of stereotypes associated with traditional roles and prevent the emergence of new stereotypes that are discriminatory against women;
12. Promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity;
13. Effectively establish conditions enabling the indigenous peoples to secure and develop their language, culture, education, livelihoods and their societies;
14. Continue to strengthen its activities to ensure there is no discrimination in the enjoyment of the full range of human rights, in line with the comments of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women;
15. Ratify the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.