



General Assembly

Distr.
GENERAL

A/HRC/4/NGO/67
7 March 2007

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2007]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Nepal: Prolonged disappearances and persistent impunity underline the absence of justice and human rights

Developments concerning the security and political situation in Nepal during the 12 months preceding the fourth session of the United Nations Human Rights Council have gained much attention and plaudits. The erstwhile Commission on Human Rights had previously ranked Nepal as being the scene of the greatest number of reported forced disappearances. Since the establishment of the a field presence of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal, which has enjoyed access to places of detention, the number of new disappearances has been greatly reduced, which must be highly commended. However, over eight hundred remain disappeared – either by the State, notably the Armed Forces, or the Maoist insurgents, who are now joining the government of the country – and there is little to indicate that the whereabouts of these persons will be located, that those responsible for the disappearances will be held accountable or that adequate reparation will be provided to the victims or their families.

Impunity and a black hole of justice and remedies also exist concerning extra-judicial killings and torture perpetrated by all sides. The United Nations Commission on Human Rights, which has now been labeled a discredited body, was however able to play a role in bringing about positive change in the context of Nepal, notably through the establishment of the OHCHR office in the country. The new Human Rights Council has yet to prove its worth, and should not abandon the work that has begun in Nepal. In fact, such work needs to be pursued vigorously in order to ensure that justice is enabled. This is not the time for complacency or self-congratulation – only when justice for the thousands of victims of grave abuses has been attained can the Council be satisfied.

Developments in the Nepalese political sphere, which have resulted in the King of Nepal being forced to release his authoritarian stranglehold on power and the reinstatement of parliament, followed by agreements between the seven political party alliance and the Maoists, are key steps in bringing about an opportunity for much-needed peace in the country. While agreements, such as those reached on November 8th, 2006 and the subsequent November 21, 2006 Comprehensive Peace Accord, are significant milestones in putting an end to overt armed conflict in the country, the situation of human rights is still highly precarious. Most importantly, there is little to indicate that the political parties and Maoists are seriously engaged in bringing about the kind of changes that are required to ensure that short-term peace and political agreements are turned into long-term stability through justice, non-discrimination and the rule of law. Discrimination and injustice are the root causes of the previous decade of conflict in the country.

As such, the issue of the continued disappearance of hundreds of persons and the impunity that is still being enjoyed by persons from either side that have committed such abuses, is a key indicator of the extent to which Nepalese society is moving towards a system based on the respect for human rights and the rule of law. Currently, and regardless of what is being stated by the authorities, human rights are on the back-burner, with political expediency ruling the day. While nascent peace has been achieved, it can also be shattered in an instant. In order to solidify the foundations of peace, the root causes of the conflict and issues that may result in any future reversion to a state of conflict need to be addressed. Primary to the methods of addressing these issues is the creation of accessible and effective justice, which requires the institutions of the rule of law, such as the police and the

judiciary, to begin functioning effectively. For justice to have any real meaning, the perpetrators of gross violations that have been perpetrated in the country, at the very least since the beginning of the conflict in 1996, need to be tried in court and adequate reparation needs to be provided to the victims or their families. This also requires laws criminalizing abuses such as torture and forced disappearance, which are lacking at present. The lack of justice and effective systems of the State can be seen as one of the greatest components leading to the launching of the Maoist insurgency, and a continuing lack of these critical elements can only presage future internal unrest and conflict.

Disappearances: Nepal was branded the worst perpetrator of forced disappearances by the UN Commission on Human Rights in 2004. The National Human Rights Commission of Nepal has recently stated that 650 persons believed to have been disappeared by the State and 181 by the Maoists remain disappeared at present. In the November 8 agreement and subsequent Comprehensive Peace Accord, both the seven-party alliance and the Maoists have made pledges to uphold human rights and to locate the whereabouts of the disappeared. To date, there has been no such action.

The November 8 agreement stipulates that, *"...it has been agreed to constitute a High Level Investigation Commission to investigate into the status of people said to have disappeared by the state and the Maoists and to make their whereabouts public."* Similarly, under the afore-mentioned Comprehensive Peace Accord, article 5.2.2 states that, *"Both sides agree to make public the status of the people under one's custody and release them within 15 days."* Article 5.2.3. continues, *"Both sides also agree to make public within 60 days of signing of the agreement the real name, caste and address of the people made 'disappeared' or killed during the conflict and also inform the family members about it."* This agreement was signed on November 21, 2006, but to date, the promised actions have not taken place. There is little to indicate that any political actors are interested in addressing these issues in good faith at present.

A case in point – the ongoing disappearance of Maina Sunawar: We need look no further than the following example of the nexus between forced disappearance and impunity, to understand the brutality and scale of the problems currently plaguing Nepal.

Maina Sunawar was 15 years old when members of the Nepalese armed forces arbitrarily arrested her. Since this date - February 17, 2004 – her whereabouts have remained unknown, although evidence suggests that she is buried in or near the Birendra Peace Operations Training Centre in Panchkhal. The army continues to block investigations. The evidence indicates that Maina Sunawar was tortured to death by members of the military, who subsequently sought to deny her arrest and cover up her death. More recently, three members of the military were tried by a military court, but they have only received derisory punishment. Attempts by the police to investigate the case and to retrieve Maina's body are currently being blocked by the army. Furthermore, the OHCHR's investigation has also been hampered due to the army's non-cooperation and the government's indifference.

Maina was detained because the military were searching for her mother, Devi Sunuwar, who witnessed the killing of two young girls, one of whom had been gang-raped, by members of the security forces in Pokharichauri, Kavre District. She was reportedly beaten, dunked in water and subjected to repeated electric shocks, leading to her death. The military initially claimed that Maina had been killed while trying to escape from custody,

and that they had returned her body to her family following a post-mortem examination. Her family has not received her body and there has been no evidence of any post-mortem examination having been conducted.

The “Court of Inquiry Board” (CIB) of a military court that was investigating this case has concluded that a covert military team from the Birendra Peace Operations Training Centre in Panchkhal had arrested Maina on February 17, 2004 and that she had been killed by members of the army, as the result of severe torture. A bullet had been shot into the back of Maina’s dead body, to make it look like she had been shot while trying to escape. She was reportedly buried in a pit to the north-east of the officers’ mess, some 50 to 60 metres outside of the ‘concertina’ barbed-wire and a photograph of Maina’s body was taken just before she was buried. The military then ensured that a false report was prepared by the Panchkhal Police Office concerning Maina’s death.

On September 27, 2005, the media in Nepal reported that Colonel Babi Khatri, Captains Niranjana Basnet and Sunil Adhikari had been ‘found guilty of not following the proper procedures when Maina was found dead in custody’ and sentenced to six-month prison sentences and small fines. The punishment given to these persons for having tortured a 15-year old girl to death is derisory and scandalous, both in terms of the length of imprisonment terms and of the amount of compensation. The family members have reportedly refused to accept this compensation and have the case closed, and are instead seeking justice through the civilian courts.

As part of the trial before a civilian court, further investigations are required. A First Information Report (FIR) has been lodged concerning this case demanding the criminal prosecution of the perpetrators. The police are required to investigate the case and then send their findings to the public prosecutor, who then takes the case before the courts. It is reported that the military are blocking the police’s attempts to investigate these events, including the exhumation of Maina’s body. This is typical of the majority of all such cases, and represents a significant barrier to justice in the country.

This is but one case, with thousands thought to have disappeared, and many more persons having been subjected to extra-judicial killings and/or torture in Nepal over recent years, without any justice or reparation having been provided. Trauma pervades society, and will only heal if justice is achieved. The international community has a role to play in this. It is already engaged in the country and must now focus its efforts on addressing the issues of impunity and justice. It is clear that actors in the country are more concerned with political developments at present, while nothing is being done to strengthen, reform or even create the components and mechanisms within the institutions of the rule of law – such as those within the police and judiciary, to name but two – that are essential for the effective functioning of the investigation, prosecution and reparation processes.

Currently, the police are failing to investigate new complaints of human rights violations and are justifying their inaction by claiming that the political situation first needs to be resolved. Investigations into past human rights violations, even those relating to the repression of the April 2006 uprisings which brought about the current political developments, are either not being conducted or their results are being quashed. Even the promises by both sides to the recent Comprehensive Peace Accord, concerning the establishment of the whereabouts of the disappeared, are not being kept. There can be no

stable future for Nepal unless the process of rebuilding the torn social fabric of the country is undertaken.

The Human Rights Council must work with the government of Nepal to ensure that disappearance and torture are criminalized, the whereabouts of the disappeared are immediately disclosed, that all persons accused of grave rights abuses are investigated and tried, and that adequate reparation is provided as a result. Close monitoring of this process, and organic reforms and strengthening of the institutions of the rule of law as time goes by, must be conducted without fail or omission, if impunity and injustice are not going to be allowed to lead to further abuses and conflict in the country in the months or years to come.
