



General Assembly

Distr.
GENERAL

A/HRC/11/NGO/34
9 June 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 4

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**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.

[22 May 2009]

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

NEPAL: The peace process and republic at risk without justice institutions

The resignation of the Prime Minister of Nepal on 4 May and its prompt acceptance by the country's President, expose the vulnerability of the ongoing democratisation process in the country. The peace process in the newest democracy of the region, even after ten months, appears to be extremely fragile due to continuing tensions between the Maoists and the Nepal Army. The past ten months witnessed shadow fights, predominantly between two factions, the Communist Party of Nepal (Maoist) and the People's Liberation Army (PLA), together, pitted against the Nepal Army.

The government led by Pushpa Kamal Dahal arguably inherited a broken down state with an infrastructure framework that is barely capable of running the country. The administrative infrastructure in Nepal is as good as non-existent, owing to neglect by former administrations. State offices have diminished in value and purpose, to become in essence, mere opportunities to engage in corruption with impunity. Caste prejudices and allegiance to the ruling class are trumping principles and a system of meritocracy concerning appointments to positions of authority.

It is evident that a lack of acceptable normative standards for appointments to offices that are essential to run the government is still prevalent in Nepal. Political allegiances arguably define the norms for appointments to the cabinet and to important offices like ad-hoc commissions constituted during this period of constitutional restructuring. In the rural areas, splinter political groups like the Young Communist League (YCL) clearly dominate the functioning of whatever government offices exist there. For instance, it is common practice for the YCL cadres to interfere by force in the official duties of the police, the prosecutors and even the judges and private lawyers in rural Nepal.

The area of control of the administration remains reduced to pockets including the capital city and a few far-flung towns. Beyond the limits of these towns the writ of the state is literally absent, thereby creating an administrative vacuum. It is this vacuum that is abundantly exploited by the military, the ruling class politicians and the Maoists.

The widespread support of the people for the Maoist-led resistance movement that eventually ousted the monarchy was based on the people's aspiration for a change from the status quo. It is a promise given to the people of Nepal, from which no future government can backtrack. Yet, after assuming authority by leading a coalition government, the Communist Party of Nepal (Maoist) has hardly done anything to realise this change. Instead, what is witnessed is political infighting between the PLA, with support in abundance from the Communist Party of Nepal (Maoist), and the Nepal Army.

The Constituent Assembly that was voted to office after the general elections held on 10 April 2008 is yet to make any progress in drafting a new constitution for the country. Credible sources in Nepal affirm that the fate of the Assembly was sealed before it was elected to office. Unfortunately, this is a fact that was even known to the UN mission in the country.

The former Prime Minister, Pushpa Kamal Dahal, in a speech delivered on 2 January 2008 to the PLA cadres at a Maoists' Cantonment in Nawalparasi district was found assuring the PLA that

the Communist Party of Nepal (Maoist) will spare no opportunities and avenues to strengthen the PLA in rank and file. Pushpa Kamal Dahal guaranteed the PLA cadres that towards this end, even the relief grant to be obtained in the name of the victims of the decade-long civil war, could be used to procure arms for the PLA.

The nine months Pushpa Kamal Dahal stayed in the Prime Minister's office witnessed the realisation of this promise. Between April 2008 and May 2009, the estimated strength of the PLA increased from six thousand to thirty-five thousand. The other members of the multi-party coalition that forms the current government unfortunately could not find the political and practical space to prevent this blatant breach of the Comprehensive Peace Agreement.

Article 2 (a) of the Comprehensive Peace Agreement defines "ceasefire" as the '*prohibition of all types of attacks, abductions, disappearances, obstructions, mobilisation of armed forces, their strengthening, offensive and violent activities by the government and the Maoists aimed at both parties, and the activities that include anarchy, provocation or instigation.*' Article 5 further expands the meaning and the purpose of the ceasefire to end military operation and the mobilisation of arms by the army as well as the Maoist-controlled PLA. The Agreement expressly prohibits the army and the PLA from carrying out additional recruitment. Contrary to the terms of the Agreement, the army also was engaged in recruitment. To make matters worse, the army chief, Rookmangud Katawal, unilaterally extended the tenure of eight senior generals.

These acts by Katawal are in violation of the Agreement and an intentional insubordination to a democratically elected government and a cabinet functioning under it. It is understandable that a notorious officer like Katawal and his subordinates are not used to working in a democratic framework that demands accountability and rules out arbitrariness. Yet, Katawal's actions easily found clandestine support from different corners in the current government.

The undeclared yet visible support for Katawal and his cronies in the Army is based upon the fear by an arguably large section of the elected representatives within the Constituent Assembly regarding the alarming increase in number of the PLA cadres. Unfortunately these elected members failed to find a safer alternative and a democratic space to counterbalance the PLA and its recruiting of cadres. The recurrent and often violent street protests organised by the YCL, a youth wing of the Communist Party of Nepal (Maoist), only helped to justify this fear.

The platform created by the YCL is used by the Communist Party of Nepal (Maoist) to criticise or threaten anyone who poses a challenge to the PLA. Even the Supreme Court of Nepal was not immune to this threat. Pushpa Kamal Dahal's response however was to shamelessly support the YCL in public, reiterating the common fear in the country that the Communist Party of Nepal (Maoist), the PLA and the YCL are not interested in the due process of law or the establishment of the rule of law in the country. In this aspect, these three political forces are acting no differently from the former monarch or the Nepal Army.

In light of this, the resignation of Pushpa Kamal Dahal from the Prime Minister's office is not a step forward in realising the promises made in the Comprehensive Peace Agreement. It could be arguably viewed as a strategic move by the Communist Party of Nepal (Maoist) and its political supporters within and outside the country, to continue violating the Agreement, which eventually will destabilise the overwhelmingly fragile peace process.

Nepal is one of the states in the region to have an active field presence of the UN. During the emergency and later on, the presence of the UN in the country has considerably contributed to the reduction of human rights violations in Nepal, a fact that justifies the active engagement of the UN with the past and present administrations. The access of UN agencies to the government and other policy influencing establishments places additional responsibility upon the UN to ensure that Nepal receives all required support to rebuild and restructure into a democratic republic.

Reconstruction and the establishment of permanent peace in Nepal is impossible without the re-emergence of an unbiased democratic space. Justice mechanisms form part of the essential building blocks in this process. In many parts of Nepal, law enforcement mechanisms like police stations and the infrastructure to run a police station are absent. In a wave of destruction of state symbols during the Maoist uprisings, infrastructure in police stations, including communication, transport and other logistic facilities, were destroyed. Buildings that housed police stations were either destroyed in Maoist raids or have become non-functional due to a lack of repairs. Courts and facilities for court staff, like living quarters and office equipments are generally lacking in rural Nepal. Without the guarantees to the due process of law, Nepal cannot attain stability.

The current crisis in Nepal is the result of the lack of belief by the government in due process, human rights and the rule of law. The attempt so far has been to deal with issues politically, by resorting to the use of force. This has further weakened the public institutions in the country, particularly the judiciary, and reduced the free space for democratic discourse and debate upon the issues that will affect the country's destiny. The essential need for developing a democratic space by the rebuilding of the justice institutions in Nepal was highlighted by the UN High Commissioner for Human Rights, during her visit to Nepal, earlier this year.

The opinion of the High Commissioner is not an isolated view. The report of the Working Group on Enforced or Involuntary Disappearances¹, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment² and the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions³ equivocally highlight the fact that one of the primary reasons for human rights violations and the continuation of resolvable disputes in the country is due to the appalling condition of the justice framework in Nepal.

The report of the Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances specifically highlight the immediate need for a complete overhaul of the legislative framework in the country, to deal with grave crimes like torture and disappearances. The Working Group on Enforced or Involuntary Disappearances points out that in spite of the credible and meticulous documentation of cases of disappearances in Nepal, the existing legal framework in the country instead of guaranteeing a remedy, in fact, poses hindrances to the legal process.

The UN Commission on Human Rights through Resolution 2005/78 called upon the then government of Nepal to "*...ensure the independence and effectiveness of the judiciary, and*

¹ E/CN.4/2005/65/Add.1

² E/CN.4/2006/6/Add.5

³ E/CN.4/2001/9/Add.2

therefore urges the Government to safeguard effective judicial remedies... " and further offered the government required assistance. The High Commissioner for Human Rights, in March this year, not only reiterated this offer, but further emphasised that "... *the fate of the peace process could be at risk, unless justice is ensured for the victims of the past and ongoing abuses of human rights*".

In this context the Asian Legal Resource Centre and Advocacy Forum request the Human Rights Council to:

1. *Encourage* the government of Nepal to accept the technical assistance offered by the UN to augment the country's effort in establishing a democracy;
2. *Recommend* the government to review its priorities in the national restructuring programme giving specific emphasis to the re-establishment of the justice institutions;
3. *Urge* the government of Nepal to settle its issues within the administrative structure, particularly concerning the Army and the political parties, through dialogue and mediation;
4. *Encourage* the government to setup independent commissions of enquiry with a specified time frame to inquire into past cases of human rights abuses, notably disappearances and extra-judicial executions, that were committed by the state and non-state actors with a view to providing redress to the victims.
