

# AMNESTY INTERNATIONAL

## Public Statement

AI Index: ASA 31/011/2007 (Public)  
News Service No: 227  
20 November 2007

### **Nepal at a crossroads – urgent need for delivery on transitional mechanisms for truth, justice, inclusion and security**

The first anniversary of the signing of the Comprehensive Peace Accord (CPA) offers an opportunity for the Nepali Government to renew its commitment to the promises of justice, security, social, cultural and economic equality and inclusion and set in motion the mechanisms in the CPA for the realization of these values. Today Amnesty International is launching 60 days of action to hold both the Government of Nepal and the Communist Party of Nepal (CPN) (Maoist) accountable for commitments made in the CPA.

The CPA of 21 November 2006 ended a decade of armed conflict in Nepal between the security forces and CPN (Maoist). The Accord talked of a 'new Nepal' and promised a set of transitional mechanisms to take forward political, social and economic transformation. By April 2007, an interim Parliament and an interim Government - including 73 Members from the CPN (Maoist) - had been formed. However, elections to a Constituent Assembly (CA) which was envisioned to have a key role in bringing about the 'new Nepal' have been delayed indefinitely. Also, the country has experienced the emergence of an ethnic conflict in the southern *Terai* area where members of several Madeshi communities are demanding an end to centuries of discrimination;<sup>1</sup> the *Terai* has seen violent protests and crippling transport strikes; a sharp rise in communal and sectarian violence and a rise in crime, especially in urban areas.<sup>2</sup>

Amnesty International believes that without delivering on the promises of justice, security and inclusion in the CPA, there is a real danger of Nepal's recent tragic history repeating itself. Anything less would be a gross betrayal of the victims of violations of international human rights and humanitarian law, including hundreds of families still anxiously awaiting news of their missing relatives.

The Nepalese are hungry for justice after a war in which at least 13,000 people died, among them thousands of civilians killed by the security forces.<sup>3</sup> At least 900 people disappeared after they were detained by the security forces. The CPN (Maoist) is responsible for several hundreds of killings, abductions and torture of people seen as opposed to their cause.<sup>4</sup> Around 200 remain unaccounted for in CPN (Maoist) detention.<sup>5</sup>

#### **Promise of transitional justice**

The "peace" which Nepal has so far achieved is temporary, incomplete and extremely precarious. While the CPA does include an acknowledgement that it is necessary to address past violations of international human rights and humanitarian law, the implementation of these provisions has been extremely problematic to date.

The CPA promised four transitional justice mechanisms:

- the Truth and Reconciliation Commission (TRC);
- the National Peace and Reconciliation Commission (NPRC);
- a High-Level Inquiry Commission on Disappeared Citizens (Disappearances Commission)  
and
- a High-Level State Restructuring Recommendation Commission (SRRC).

While there have been some moves in this process, none of these mechanisms have fully materialized. Thus the promises of dealing effectively with the crimes committed during the armed conflict or to work towards a more inclusive society have so far remained unfulfilled.

Commitments made in the Accord also included making public the names of all the people who were victims of enforced disappearance and abduction as well as those who were killed during the conflict, within 60 days of signing the CPA and informing families of the truth about what happened to their

relatives. The government has introduced some measures to address the issue of enforced disappearances. However, most of the families of the victims are no nearer to knowing the whereabouts of their loved ones.

On 1 June 2007, a landmark Supreme Court judgement recommended that Parliament establish a commission to investigate enforced disappearances in line with international law and standards.<sup>6</sup> In response, the Government of Nepal established a High Level Commission of Inquiry on Disappeared Persons (Commission on Disappeared Persons), to investigate enforced disappearances committed in Nepal between 13 February 1996 and 21 November 2006. However the Commission on Disappeared Persons was established under a law that the Supreme Court had already found to fall short of international standards. The process of setting up the Commission failed to involve meaningful consultation with relatives of victims and civil society. Though Commissioners have been appointed, the Disappearances Commission has not started its work and remains marred in controversy.

A draft Truth and Reconciliation Commission Bill was published by the government in July 2007. The draft Bill was intended to establish a Truth and Reconciliation Commission to investigate 'persons involved in gross violations of human rights and crimes against humanity during the course of armed conflict'.<sup>7</sup> Amnesty International has a number of concerns about the process by which this Commission is being set up and outlined these in a report.<sup>8</sup> Key concerns include provisions that appear to allow the granting of amnesties to perpetrators of crimes under international law, including hundreds of cases of enforced disappearance. As a result of these and other provisions, the TRC Bill reflects what one former member of the Human Rights Commission, Sushil Pyakurel, calls; "the justice of the victors, both sides want to bury their secrets".<sup>9</sup>

### **Ongoing impunity**

"Neither the government nor the Maoists has shown any interest to investigate and punish perpetrators," says Mandira Sharma, Director of Advocacy Forum, an NGO working closely with victims' families. Although disappearances cases have been taken up by the UN Working Group on Enforced and Involuntary Disappearances, the Nepal Army has so far failed to cooperate with police investigations.

In one case, for instance, of the arbitrary detention of 15-year-old Maina Sunuwar, who was tortured to death on 17 February 2004. Advocacy Forum notes that: *"In a sham proceeding in September 2005, a Court martial found three officers guilty of negligence and "not following the proper procedure" with respect to disposing of Maina's body; they were imprisoned for six months"*.<sup>10</sup>

The enforced disappearance of at least 46 prisoners from Bhairab Nath battalion, Maharajgunj, Kathmandu in 2004 has also failed to be properly investigated, despite an authoritative report published by the United Nations Office of the High Commissioner for Human Rights in May 2006.<sup>11</sup> Human rights lawyer Jitman Basnet was arrested by the army in 2004, and was held for almost nine months in Kathmandu's Bhairab Nath army barracks, where he was reportedly tortured. His book, *258 Dark Days*, is an account of his own experiences and also of the accounts he heard from other detainees. In the book, he names soldiers he claims raped, tortured and killed people during the conflict.<sup>12</sup>

Despite first hand accounts such as this, all arms of the criminal justice system (including the police and Attorney General's Department) are reluctant to proceed with criminal investigations even when complaints are filed with the police. Neither the security forces nor the CPN (Maoist) have taken concrete steps to strengthen accountability within their ranks.

Amnesty International is concerned by ongoing abuses by the CPN (Maoist) and the Young Communist League (YCL). The YCL have reportedly committed a number of human rights abuses including abductions and ill-treatment in captivity, attacks on physical and mental integrity, and the violent disruption of political activities. The CPN (Maoist) did admit public responsibility for the abduction and killing of journalist Birendra Kumar Sah on 5 October 2007 in the Bara district in the South.<sup>13</sup> However instead of condemning increasing attacks on press freedom by Maoist affiliated trade union groups, the CPN (Maoist) said that 'individualistic' and 'anarchist' nature of lower-rung party cadres had caused the incident.<sup>14</sup>

Given the fragile peace process, some analysts highlight the need to balance justice and security. What has been learned from other conflicts is that if impunity remains embedded it often fuels further conflict. Those responsible for human rights violations often continue to perpetrate abuses if they think their actions will continue to go unpunished. Today, perpetrators of torture, enforced disappearances and unlawful killings openly walk the streets of Nepal while victims continue to face threats and harassment. Human rights groups in Nepal have not given up hope of justice and some of the victims, including Jitman Basnet, continue to speak out demanding that perpetrators of past violations are brought to account. In the next 60 days Amnesty International members will be writing to families of those who remain missing

to express their solidarity. It is the duty of the Government to listen to their voices and act now, before it is too late.

## Recommendations

- The Supreme Court ruling of 1 June 2007 calling for the establishment of an effective, independent and impartial commission of inquiry to determine the fate and whereabouts of all “disappeared” persons in accordance with international law and standards must be implemented;
- The Nepali government and CPN (Maoist) should immediately make information about the disappeared persons available to their families, as well as to any independent and impartial body investigating human rights violations, as stated in the CPA;
- The Nepali authorities must ensure that all victims of serious violations of international human rights and humanitarian law are granted full reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with international law and standards;
- Any legislation for the establishment of a Truth and Reconciliation Commission must involve a comprehensive process of consultation with all those concerned, including civil society organizations, both Nepalese and international, victims, human rights defenders, persons belonging to minorities and vulnerable groups, and others;
- Legislation establishing a Truth and Reconciliation Commission must not include any amnesties or other means whereby perpetrators may avoid justice. Rather, the establishment and publicizing of the truth about violations in Nepal should complement the process of prosecuting perpetrators of these violations, in proceedings which meet international standards of fairness.
- The Government should ratify the Statute of the International Criminal Court.

---

<sup>1</sup>International Crisis Group, Asia Report No. 136, 9 July 2007.

<sup>2</sup>‘Nepalese wary after strikes and clashes’, *BBC South Asia*, 5 April 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6499499.stm](http://news.bbc.co.uk/2/hi/south_asia/6499499.stm).

<sup>3</sup>‘Nepal: UN brings together local leaders for talks on human rights in peace process’, *UN News Centre*, 25 April 2007, <http://www.un.org/apps/news/story.asp?NewsID=22348&Cr=&Cr1=>

<sup>4</sup>OHCHR-Nepal (2005), paragraphs 36-41.

<sup>5</sup>‘South Asia: Nepal appeal on missing people’, *BBC South Asia*, 15 February 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6363729.stm](http://news.bbc.co.uk/2/hi/south_asia/6363729.stm)

<sup>6</sup>*Dhakal and Ors. V Ministry of Home Affairs and Ors.*, Supreme Court Division Bench, Order of 1 June 2007.

<sup>7</sup>Preamble, ‘A Bill Made for making provisions relating to Truth and Reconciliation Commission’, available on [www.peace.gov.np/admin/doc/TRC-English.doc](http://www.peace.gov.np/admin/doc/TRC-English.doc)

<sup>8</sup>Nepal: Reconciliation does not mean impunity - A Memorandum on the Truth and Reconciliation Commission Bill (AI Index: ASA 31/006/2007).

<sup>9</sup>[*Nepal Times Special*, “No truth, some reconciliation”, <http://www.nepalitimes.com/print.php?id=13896&issue=363>, From Issue #363 (2007-08-24 - 2007-08-30)]

<sup>10</sup>*Torture Still Continues, A brief report on the Practice of Torture in Nepal*, Advocacy Forum, 2006-2007, p6. Advocacy Forum, Nepal, June 2007.

<sup>11</sup>Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003 – 2004, 25 May 2006,

[http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006\\_05\\_26\\_OHCHR-Nepal.Report%20on%20Disappearances%20linked%20to%20Maharajgunj%20Barracks\\_\(Final Version\). pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_05_26_OHCHR-Nepal.Report%20on%20Disappearances%20linked%20to%20Maharajgunj%20Barracks_(Final%20Version).pdf)

<sup>12</sup>Nepal: Fear for safety: Jitman Basnet,

<http://web.amnesty.org/library/Index/ENGASA310092007?open&of=ENG-NPL>

<sup>13</sup>‘Maoist hand in Sah’s abduction: House team’, 4 November 2007, *The Kathmandu Post*.

<sup>14</sup>‘Sah killed on day of abduction: Maoist probe panel’, 3 November 2007, *Kantipur Report*, <http://www.kantipuronline.com/kolnews.php?&nid=127272>.

