

Role of HRDs in Democratic Movements in Nepal

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1. INTRODUCTION

This paper provides an overview of human rights situation and highlights key challenges faced by human rights defenders. A set of recommendations are outlined in a form of 'way forward' points for national and international human rights community and concerned stakeholders to consider.

2. OVERVIEW OF CONTEXT

During the autocratic regime 1961-1990, human rights were a neglected factor for the regime. King was above the constitution and was the source of law, though few treaties were ratified i.e. Slavery Convention of 1926 and International Convention on the Elimination of All Forms of Racial Discrimination, 1966. Defying government restriction, the first human rights organization of Nepal- FOFHUR (Forum for Protection of Human Rights) was established in Birgunj, Parsa in May 1984, and in 1988 the Second Human Rights Organization HURON (Human Rights Organization Nepal) was established. Political parties had incorporated HR principles in their public commitment and future plan of nation building. That was an era of close relationship and partnership between democratic parties and human rights defenders. HRDs were in shoulder to shoulder in fight for democracy.

Soon after the restoration of democracy in 1990, the HRDs were able to convince and influence the Interim Government to ratify Five core International Human Rights Treaties. Currently, Nepal is party to almost all important Human Rights laws. After the success of the second democratic movement in 2006, HRDs were succeeded in convincing the House of Representatives to pass a unanimous resolution to accede to the Rome statute.

1996-2006 was a period of armed insurgency waged by the Maoists against the state. Human Rights Organizations were engaged in documenting Human Rights violation and

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intervening to save precious lives of civilians, combatants and security forces. HRDs were present among the local people in difficult circumstances. The challenging efforts created credibility of HRDs.

Nepali people got a respite of Maoist insurgency following the signing of 12-points Agreement between the then Seven-Party-Alliance¹ and the rebelling Communist Party of Nepal- Maoists (UCPN-M) and subsequent April Movement. The movement forced the king to relinquish his absolute power, usurped from the parties on October 4, 2004 by dissolution of the parliament. After the Comprehensive Peace Agreement signed in November 21, 2006, and transitional process began, Human Rights Organizations had the reliable record of the victims (see, OHCHR Conflict Report 2012, and the Human Rights Yearbooks, www.insec.org.np).

The restored parliament decided to abolish the monarchy and the Constituent Assembly (CA) elections followed in May 2012. The CA could not fulfill its mandate of promulgating a new constitution within the stipulated two years and extended period of another two years. After a void of parliament for nearly six months, second CA election was held on November 28, 2013.

Currently, HRDs are fighting against Impunity based on political clout, discrimination based on cultural practice and derogation to rule of law based on political intervention. Maoists, which had joined mainstream politics renouncing the weapons party emerged as the largest party in 2008 Constituent Assembly (CA) election. The government led by Maoists refused to accede to ICC statute, the reason for that apparently is their fear of prosecution for the conflict-era time. The new government enacted a law to grant immunity to perpetrators of human rights violence during the conflict period that was challenged at the Supreme Court. The Supreme Court conceded that the government had the right to decide the merits of the cases to be withdrawn, but, it also stressed that grave nature of violence cannot be withdrawn. However, the governments have failed to meet their commitment towards resolving the conflict-period issues including and not limited to delivery of justice to the conflict victims.

3. UNDERLYING CHARACTERISTICS OF CURRENT CRISIS

1 The alliance was made up of the following parties: Nepali Congress, Nepali Congress (Democratic), Communist Party of Nepal (Unified Marxist-Leninist), Nepal Workers and Peasants Party (NWPP), Nepal Sadbhawana Party (Anandi Devi), Samyukta Bam Morcha, Jana Morcha

3.1 Apathy towards National Human Rights Commission Operation

The National Human Rights Commission work was not satisfactory and it was sometimes perceived as a toothless tiger. However, even mere the presence of the body was a great support for human rights community. Like, the NHRC was quite vocal against the government proposed Disappearance and Truth and Reconciliation Commission, ignoring the plan of two Commissions i.e. Truth and Reconciliation Commission and Commission on the Disappeared People². But, lack of urgency in part of the government to the NHRC situation where the term of all the commissioners was expiring show the government was more concerned about politics than human rights. There was little possibility of appointment of new commissioners due to the absence of parliament where the commissioners should face parliamentary hearing. However, the HRDs had forwarded an ad hoc solution of extending the term of the commissioners by some months so that the rights body would not go vacant; but the suggestion went unheeded. Now, there is no certainty when the new appointments would be made.

3.2 Weak rule of law and persistent impunity

The World Justice Project Rule of Law Index 2012, ranked Nepal 83rd among 97 countries surveyed in terms of guaranteeing access to civil justice.³ The number of inmates in Nepal in 2006 was 8,000 which soared to 14,000 by the end of 2012.⁴ Nepal is in 116th position out of 177 countries in the Transparency International Survey.⁵ None of the court orders pertaining to the people involved in conflict-time violence has been executed.

Despite commitments in the CPA and the Interim Constitution 2007, one of the most serious reasons of current human rights crisis in Nepal is resulted from the weak state of rule of law and engrained culture of impunity. Current government is withdrawing criminal cases, ignoring court rulings and promoting blanket amnesty to perpetrators of serious crimes against humanity.⁶ Criminalisation of politics is factoring into this 'encouragement'. The government has been promoting alleged perpetrators of human rights violations within the

2 <http://www.inseconline.org/index.php?type=news&lang=en&id=11634>

3 See <http://www.ekantipur.com/the-kathmandu-post/2012/12/01/nation/nepal-ranks-towards-the-bottom/242346.html>

4 INSEC. Nepal Human Rights Yearbook 2013. Pp. 16

5 <http://cpi.transparency.org/cpi2013/>

6 Emblematic cases are related to some of the high profile people such as Niranjana Basnet and Raju Basnet of the Nepal Army, Kuber Sing Rana of Nepal Police, and Agni Sapkota and Bal Krishna Dhungel of UCPN (Maoist). Sapkota and Dhungel enjoy inaction of the government to bring them to justice whilst Basnet and Rana have been promoted in the Nepal Army and Nepal Police despite their alleged involvement in serious cases of human rights violations in the past.

government agencies.⁷ The Prime Minister and

Attorney General, beyond their jurisdictions, are directing local attorneys to sideline cases against perpetrators of disappearance, torture and unlawful killings.⁸

3.3 Poor implementation of international obligations

3.3.1 The Human Rights Committee asked the government to pay the make the whereabouts of Surya Prasad Sharma⁹, who was disappeared at the hands of the Nepal Army during the conflict period or to pay the compensation within 180 days. However, Sharma's family got nothing and there was no comment made by the government. The family had approached HRC after exhausting all the courses of justice in Nepal and their grievance was recognized by the highest possible body. However, lack of implementation of the recommendation disheartened the HRDs but also has given an impetus to keep fighting for justice.

3.3.2 During the UN HRC UPR early 2011, the Government of Nepal had made commitments to complete the writing of a new constitution by May 2012 by ensuring full participation of people from all strata of social life and by guaranteeing fundamentals of rights and freedom. Immediate formation of transitional justice mechanisms, including a Truth and Reconciliation Commission (TRC) in compliance with international standards, effective implementation of court orders and bringing perpetrators of major conflict-era human rights violations to justice were other key commitments made by the government.¹⁰ However, neither the constitution was promulgated nor the transitional justice mechanisms were put in place. Rather the existing CA has been diminished. Uncertainties loom large around the political

7 Kuber Singh Rana, accused of human rights violations during the conflict, has been appointed to the position of Inspector General of Nepal Police on 13 September 2012 (<http://www.newsnepalonline.com/news/main-news/4614-kuber-singh-rana-appointed-as-aig.html>). Similarly, the government promoted Nepal Army General Toran Jung Bahadur Singh to the position of Lieutenant General (<http://www.ekantipur.com/2009/12/24/top-story/govt-promotes-toran-jung-bahadur-singh-recommends-koiralas-name-for-nobel-peace-prize/305051.html>). The security officials are allegedly involved in some of the serious cases of human rights violations in the past.

8 One of the examples is a case where a journalist Dekendra Thapa was killed, after abduction, by the Maoist cadres in 2004. The Prime Minister and the Attorney General tried to stop the investigations on a case filed by the journalist's wife in Dailekh district. After a series of protests by human rights defenders across the country, and a ruling by the Supreme Court, the investigation proceeded. (see <http://southasia.oneworld.net/news/journo-murder-nepal-govt-accused-of-obstructing-justice#.UTaB8Fc359w>)

9 <http://www.advocacyforum.org/hrc-cases/2011/02/surya-prasad-sharma-disappearance.php>

10 Refer to outcome document <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NPSession10.aspx>

spectrum despite the second CA elections. Political predictions are very difficult to work at the moment.

3.4 State disregard for human rights concerns

Government criticism of OHCHR's 'Nepal Conflict Report 2012'¹¹ showed the government apathy towards the improvement of human rights situation of Nepal. Similarly, the hue and cry over the arrest of Colonel Kumar Lama in the UK¹² also another indicator of state's reluctance to address past and present human rights violation in Nepal. Col Lama was the head of the then Royal Nepal Army's Goringhara Barracks in Kapilbastu during 2005 and is accused of torturing a detainee there. Lama had travelled to the UK two weeks ago to meet his wife, who works as a staff nurse there. The government has submitted the memorandum to the British envoy demanding his government release Lama. Deputy Prime Minister and Foreign Minister Narayan Kaji Shrestha summoned British Ambassador to Nepal John Tucknott at his office and handed over a protest letter.

3.5 Delay in formation of Transitional Justice Mechanism

The Human Rights community rejected the joint Disappearance and Truth and Reconciliation Commission Ordinance. The Commissioner of the National Human Rights Commission (NHRC) condemned publicly the government move to pardon those who committed human rights violations during the conflict. The government completely disregarded the concern expressed by the NHRC over the latter's request to include the constitutional body and stakeholders in the law making process regarding the formation of such commission. The NHRC, after learning about the government plan to bring the law regarding TRC with amnesty provision through ordinance and also upon receiving request from human rights organizations and victim's families, had cautioned the Prime Minister in a letter on August 12, 2012 not to institute TRC as a design to offer general amnesty without ensuring with it peace, reconciliation, compensation, relief and reparation. The move was commented also as a design to whitewash the crimes committed during the insurgency by denying justice to the victims' families. Also, it was criticized that it was more of a commission to pardon those who violated human rights during the conflict period than the one to ensure justice to families of the victims. Currently, the Ordinance has remained inactive due to the order issued by the Supreme Court.¹³

11 OHCHR. Nepal Conflict Report 2012, available at

http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf

12 Nepal govt. objects to Col Lama's arrest in UK, <http://www.ekantipur.com/2013/01/04/top-story/nepal-govt-objects-to-col-lamas-arrest-in-uk/365148.html>

13 Supreme Court Stays Ordinance on TRC, <http://www.inseconline.org/index.php?type=news&lang=en&id=11634>

3.6 Threats against human rights defenders

- 3.6.1 INSEC Chairperson Subodh Raj Pyakurel, Kul Chandra Gautam, a former UN assistant secretary-general and senior journalist Kanak Mani Dixit were labeled as 'people's enemy' in a cover story in the monthly magazine Lalrakshak published by the ruling Unified Communist Party of Nepal-Maoist (UCPN-Maoist). The trio wrote a letter to the then Prime Minister Dr Baburam Bhattarai saying that the cover story is "an incitement to violence, and part of an all-out attack that is underway against a broad range of civil society actors from the districts in the capital, including journalists, lawyers and rights activists.
- 3.6.2 On January 26, newspapers reported that a group of 22 journalists based in Dailekh district fled the district after being threatened by local Maoist cadres in the eve of a visit of the Prime Minister. They were threatened to stop covering the legal development in the case of Dekendra Thapa, a journalist from the district who was killed during the conflict by Maoist leaders in 2004.¹⁴ Special Rapporteur for Human Rights Defenders Margaret Sekaggya has been sent an open letter by the Accountability Watch Committee (AWC) detailing recent threats against its members by the Unified Communist Party of Nepal- Maoist (UCPN-M).
- 3.6.4 UCPM-M Ghyalchok VDC in-charge Ram Prasad Regmi repeatedly threatened Kantipur Television reporter for Gorkha, Bhimlal Shrestha on November 19 afternoon. He received threats for airing live scene of the election booth at Patal Devi Lower Secondary School in Ghyampesal where the UCPN-M's youth wing YCL's cadres were pressuring the people to vote for their party. Shrestha said that Regmi had told him to stop the transmission of the story.
- 3.6.5 The spokesperson of the Maoist party, Agni Sapkota accused the NGOs, specifically referring by name to one of leading human rights NGOs, Advocacy Forum and its Chairperson Mandira Sharma, of working against national interest in the search for profit, and blamed them for being behind the arrest of Colonel Lama in the UK and of Maoist cadres in Dailekh district. A senior government official warned Mrs. Sharma to

14 Thapa's body was exhumed from a jungle on 26 June 2008 and in August 2008 his wife filed a First Information Report on the abduction and murder of her husband. The police dragged their feet and did not conduct an investigation under the legally fallacious pretext that the case would be dealt with by yet to be established transitional justice mechanisms. Following the filing of a petition in the Appellate Court of Surkhet District, the police eventually arrested five of the accused on 5 January 2013. Nevertheless, the Prime Minister of Nepal is reported to have ordered the Attorney General's Office and Police Headquarters to stop the investigations into the case. In a public intervention the Prime Minister deplored the arrests and reasserted that conflict-related cases should be dealt with by transitional justice mechanisms.

be careful in relation to Col. Lama's case, leading the human rights defenders to worry about possible reprisals from the army.¹⁵

3.6.6 Contemporary Concerns of HRDs

Lack of proper constitution and lack of functioning parliament for over six months, radicalizations of the efforts to establish community identity, persisting judiciary problems of slow deliverance of justice, inability of the state to raise the capacity of the police have hewn a difficult for Nepal's road to recovery.

The first (CA) Constituent Assembly election was held in 2008 but that was dissolved with failure to promulgate constitution due to political rift. In 2013 November, 19th second election for the CA was held. During the CA election HRDs and Civil Society groups formed a coalition called CCCE (Citizens' Campaign for Clean Election) with a motive to support and encourage voters to cast vote to the right person. The mission focused on rule of law, human rights and democracy as a peaceful means to build and develop our nation towards social justice. 368 local FM stations and internet communication including social media was mobilized and included as partners to this mission. It was conducted like Public Vetting of the Candidates at the grass roots. And the election resulted to get positive message where mostly youths, new faces committed to the value of democracy has won the election. Current campaign was largely successful due to the utilization of those current phenomena of public awareness. More than 70% of the past winners were defeated.

We are planning to conduct a new campaign, CCCC (Citizen's Campaign for Clean Constitution) to upheld our responsibility to get Democracy guided by Human Rights Principles based on rule of law and democratic values and process. The available media channel and forums will be helpful in supporting the HRDs in Nepal to continue work for the people and to contribute to ensure human rights and social justice to all.

For more information on Nepal's human rights trend, cases and latest updates, please contact Informal Sector Service Centre (INSEC) at the following address:



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15 <http://www.alrc.net/doc/mainfile.php/hrc23/759/>