

TABLE OF CONTENTS

1. Introduction	1
2. Background	1
3. Ongoing grave human rights abuses	3
4. Impact of the State of Emergency	4
5. Human rights commitments by parties to the conflict	9
6. Conclusion	10
7. Recommendations	10

Nepal

A long ignored human rights crisis is now on the brink of catastrophe

Report of Amnesty International mission to the country, 10 – 16 February 2005

Introduction

Nepal has been in the grip of a human rights crisis for a number of years, in which many people throughout the country have suffered massive human rights abuses arising from the long-standing conflict between the Communist Party of Nepal (CPN) (Maoist) insurgents and the security forces. Now, after the declaration of the state of emergency, a human rights catastrophe is looming amidst heightened militarization and an attack on democracy.

This report summarizes the findings of an Amnesty International visit to Nepal from 10 to 16 February 2005. The delegation, led by Secretary General Irene Khan, assessed the impact of the state of emergency on a rapidly deteriorating human rights situation, as the “people’s war” declared by the CPN (Maoist) on 13 February 1996 entered its tenth year.

During the mission, the delegation visited Kathmandu, Nepalgunj and Biratnagar. The Secretary General of Amnesty International was granted an audience with His Majesty King Gyanendra Bir Bikram Shah Dev. The delegation also met with the Minister of Home Affairs, Minister of Foreign Affairs, the Chief of Army Staff, the Inspector General of Police, the Chief Justice, National Human Rights Commission (NHRC), district level government and military officials, members of the international community, human rights defenders and representatives of the media. Following specific requests to the authorities, the delegates were able to meet with Krishna Pahadi, a well known human rights defender, and Bishnu Nisturi, Secretary General of the Nepal Federation of Journalists, both of whom had been arrested in early February and remained in police custody.

Background

The Amnesty International visit took place in the context of dramatic political developments, following a proclamation by the King on 1 February, in which he took direct control of government and declared a state of emergency. Fundamental human rights were suspended. There were widespread arrests; strict censorship was imposed on the media; and all internal and external communications were cut for seven days.

The new ministers appointed by the King, following the declaration of the state of emergency, are mostly hard-line politicians from the panchayat (the autocratic state that was overthrown in 1990 after 30 years in power). Analysts told Amnesty International that these appointments appear to signal a return to Nepal's oppressive past and are an ominous sign for the protection of human rights.

Following the declaration of the state of emergency, the CPN (Maoist) leadership denounced the King's seizure of power, announced that they would not participate in peace negotiations in the current circumstances, and called an indefinite *bandh* (strike) beginning on 12 February. The delegation visited Nepalgunj and Biratnagar during the *bandh* and observed the severe restrictions it was imposing on local communities. For example, in Nepalgunj the CPN (Maoist) had seized control of the highway just four kilometres from the town and there were no cars on the roads, while in Biratnagar commerce and traffic were light. It was reported as it progressed, the *bandh* was becoming increasingly strong outside Kathmandu valley.

During the first few days of the state of emergency hundreds of national and district level political leaders were arrested and placed in preventive detention under the Public Security Act, apparently to prevent any protest. In addition a number of trade unionists, journalists, students and human rights defenders were also detained. While some of the detainees were released after a few days, during the time of the Amnesty International visit, most of them continued to be detained and further arrests of political leaders and journalists took place in the districts.

There have been some protests against the state of emergency, most notably by students in Pokhara on 1 and 2 February, and by human rights activists in Kathmandu on 10 February. These protestors were immediately arrested and detained, although the human rights defenders were later released. It is reported that the main political parties are considering establishing a coalition to campaign for the restoration of democracy, which most likely will result in larger and more coordinated demonstrations. In the current repressive climate any mass demonstrations are likely to prompt a harsh reaction from security forces, with serious consequences for human rights.

The state of emergency does not officially give any more power to the army, but in practice the army is involved in implementing many of the restrictions imposed under the state of emergency. Since its deployment to fight the CPN (Maoist) in 2001 the RNA has grown rapidly to become the strongest element of the state. The state of emergency has further increased the military's power and it appears that some of the recent restrictions on human rights are being driven by the RNA's counter insurgency strategy. For instance, the Chief of Army Staff informed the delegation that telephone communications had been cut and media reporting restricted in order to prevent the CPN (Maoist) sharing or accessing information.

Ongoing grave human rights abuses

Although the recent state of emergency and suspension of freedoms have drawn global attention to the situation in Nepal, it is this daily violence and terror inflicted on ordinary communities across the country that is the greatest and most serious human rights concern in Nepal. The conflict has already eroded the security and human rights of the rural population and now the state of emergency is undermining the rights and freedoms of the urban population who, until now, had remained largely untouched by the abuses taking place in the countryside.

The delegation found evidence that such grave human rights abuses continue to be carried out by both security forces and the CPN (Maoist) in the context of the conflict. These abuses have been taking place for a number of years and have dramatically increased in scale since the breakdown of a ceasefire in August 2003. Amnesty International has consistently monitored and documented the human rights violations taking place in the conflict over a number of years. The organisation has recently issued reports on illegal killings, “disappearances” and threats to human rights defenders in Nepal.¹

Amnesty International heard numerous reports and first hand testimonies of grave human rights violations by security forces, which had gone unpunished. The delegation found a growing pattern of extrajudicial killings, as well as large numbers of illegal detentions and “disappearances”. The delegation met detainees who had been illegally detained and tortured in RNA barracks, including two 15 year old boys who had been severely beaten in RNA custody, before being sent to Kathmandu jail where they have been held for seven months in arbitrary detention, unaware of any charges against them and with no prospect of release. There were also reports of sexual violence by security forces against local women, including women living in camps for internally displaced people (IDPs). In Nepalgunj, one woman told the delegation how she had been gang raped by security forces personnel during a search operation in her village in 2004.

There were also widespread reports of abuses by the CPN (Maoist). The Amnesty International delegation met with families of those killed by the CPN (Maoist), as well as those who had fled CPN (Maoist) violence and were living in IDP camps. One woman in Nepalgunj told how CPN (Maoist) cadres, while searching for her sons who they believed had joined the police, had stripped her naked, threatened to kill her, and forced her to stand in a ditch with a gun to her head. The delegation heard reports of the abduction of government officials, including Acting Chief District Officer and Local Development Officer of Argakhachi district, both of whom were abducted in January 2005 and are still missing. The delegation also met children who had been forcibly recruited, beaten and compelled to participate in Maoist military activities. There appear to be no facilities for the rehabilitation of children who have been involved in military activities.

¹ See Amnesty International website, <http://www.amnesty.org/library/eng-npl/reports>

Impact of the State of Emergency

The state of emergency has aggravated the existing culture of non-accountability and lack of transparency. It has increased the pattern of militarization and restricted the space for political dialogue, thereby reducing the chances of peace.

The attacks on the media, human rights defenders, trade unionists and others following the state of emergency are crippling Nepal's dynamic civil society. Those who were exposing and condemning the human rights abuses perpetrated both by the security forces and CPN (Maoist) are being muzzled. This will fuel the current environment of impunity and increase the vulnerability of the civilian population.

Assault of civil liberties

Under the state of emergency, a large number of fundamental rights have been suspended.

These include:

- Freedom of opinion and expression
- Freedom of assembly
- Freedom to form unions and associations
- Press and publication rights
- Right against preventive detention
- Right to information
- Right to privacy
- Right to a constitutional remedy

This list is actually in addition to restrictions that are already in place under anti-terrorist legislation, which allow preventive detention for up to one year. The suspension of the right to constitutional remedy under the state of emergency means that, although some rights provided in international human rights treaties to which Nepal is a party - such as freedom from torture and freedom from discrimination - are not suspended, in practice the Nepali people have no means for legally asserting these rights.

Silencing the media

The media has been hit hard by the state of emergency and the effect of the censorship is profound. Not only are journalists and editors intimidated and prevented from carrying out their work effectively, but the lack of free information has greatly increased the sense of insecurity and fear among ordinary Nepali people.

The media is operating under tight censorship, which in the first few days of the state of emergency was enforced by RNA personnel based in media offices. A number of local newspapers have shut down entirely while FM radio stations – an important source of information for people in remote districts – are not allowed to broadcast any independent news. Some journalists have been arrested and a leading editor was threatened with “disappearance” by senior palace staff.

Editors reported that the central government has not provided clear guidelines on what can be published or broadcast, which is creating confusion and further hampering the work of the media. However, local government and RNA officials in Banke district told Amnesty International that the main restrictions are on reporting criticisms of the King or the state of emergency, information about loss of life among the security forces, or any information that may reduce the morale of the security forces or bolster the morale of the CPN (Maoist).

A particular concern among publishers is that the suspension of press and publication rights means that publications can now have their registration withdrawn on the basis of their content, something which they are protected from under the constitution. Concern about the possibility of withdrawal of registration has reportedly led to self-censorship by publishers.

Human rights activists and civil society at risk

Human rights defenders, who were already at risk from both the security forces and the CPN (Maoist), reported that under the state of emergency they are now facing an even greater threat. Human rights defenders in Kathmandu and in the districts repeatedly told the Amnesty International delegation that they are not able to carry out their normal work due to fear of reprisal from both the security forces and the CPN (Maoist).

A number of human rights defenders have been arrested following the state of emergency, including Krishna Pahadi, ex-Chairperson of Amnesty International Nepal and Gauri Pradhan, Secretary General of respected human rights organisation Child Workers in Nepal (CWIN). Other activists have been threatened by the security forces; many have left Nepal or are living in hiding.

In Nepalgunj local human rights defenders told the delegation that, after the declaration of the state of emergency, the RNA commander had called them to the barracks and told them that they must cooperate with security forces. Following this, local CPN (Maoist) commanders summoned the same group of human rights defenders and told them they must cooperate with the CPN (Maoist). Such incidents demonstrate the pressure that human rights defenders are coming under from both sides, making it very difficult for them to carry out their work independently.

Lawyers are also coming under threat and Amnesty International was informed that no habeas corpus cases had been filed in the Nepalgunj Appellate Court since the declaration of the state of emergency as lawyers were too afraid to initiate them. One local lawyer

reported that RNA personnel had come to his office and threatened him not to file any habeas corpus petitions. The delegation was told that a lawyer in Surkhet district had recently been arrested for filing a torture case.

Trade unionists are having their work impeded and some leading trade unionists have been arrested. Pushkar Achari, Senior Vice President of the Nepal Trade Union Congress was arrested in Biratnagar, while Manju Bhattarai, Executive Member of the Trade Union Congress was arrested in Kathmandu. Both were arrested on 1 February and continue to be held in detention. Trade union leaders informed the delegation about the threats to their members who are caught between the two parties to the conflict. This included bus drivers being told by the CPN (Maoist) that they would cut the drivers' hands off if they drive during the *bandh*, and then being told by local security forces that they would cut the drivers' hands off if they do not drive.

Although there have been some welcome individual efforts by some diplomatic missions to support human rights defenders and civil society activists, a more coordinated approach by the international community is needed. Mechanisms must be established to protect human rights defenders who wish to continue their work in Nepal, as well as to negotiate safe passage for those who are at great risk and wish to leave the country.

Weakening of institutional safeguards

The delegation found evidence that legal and institutional safeguards against human rights abuses – which were already very weak – are being further eroded by the state of emergency.

Under the state of emergency all legal remedies, apart from habeas corpus, have been suspended. However, although habeas corpus remains available, lawyers and human rights defenders told Amnesty International that in practice it is often ineffectual as the security forces mislead the courts and ignore court orders. Security forces have demonstrated a widespread disregard for the courts for some time and a number of lawyers told the delegation that the situation has become even worse under the state of emergency.

During their visit, the Amnesty International delegation attempted to follow up on the case of Krishna K.C. a student leader who was arrested by security forces in September 2003 and subsequently “disappeared”. Krishna K.C. has been the subject of a long running habeas corpus case which resulted in the Supreme Court rebuking the security forces for their failure to cooperate with the court. Although the independent National Human Rights Commission (NHRC) informed the delegation that there is strong evidence that Krishna K.C. remains in army custody, neither the Home Minister or Chief of Army Staff could provide information on his whereabouts, while the Chief Justice was unable to explain why this habeas corpus case had gone on for more than one and a half years or why the security forces personnel involved had not been held in contempt of court.

The judiciary have been reluctant to take a strong stand to uphold human rights, or against contempt of court by security forces. However, in a welcome decision, on 10 February the Supreme Court - ruling in the habeas corpus case regarding former Chairman of the Nepal Bar Association, Sindunath Pokharel, who had been arrested in the crackdown following the state of emergency - for the first time requested that the defendant be physically produced before the court. Rather than complying with the court's orders and allowing a precedent to be set, the authorities released Sindunath Pokharel on 14 February 2005.

During its meeting with the Chief Justice, the Amnesty International delegation stressed that the judiciary must take a more proactive role in defending human rights. In a time of emergency the role of the judiciary becomes crucial and it must proactively defend the rights of the citizens against the power of the state.

In addition to the courts, the other institution whose role is to protect human rights is the National Human Rights Commission (NHRC), a statutory body that is mandated to carry out investigations and report on the human rights situation. The NHRC has faced continued obstruction by the security forces in carrying out its work. In particular it has been consistently denied full access to detainees, despite its mandate to visits all places of detention. In meetings with the NHRC, Amnesty International learnt that, following the state of emergency, the NHRC is facing even greater obstruction in carrying out its activities. It has been denied access to many of those arrested under the state of emergency, and one of its commissioners was turned back at the airport when he attempted to travel to the opening of a new NHRC office in Biratnagar. The NHRC commissioners made it clear that they are being prevented from functioning independently and freely.

The NHRC expressed concern at the way in which restrictions on freedom of expression may affect its credibility and ability to operate. Under current censorship any reports by the NHRC that are critical of the government or security forces cannot be reported in the press, meaning that only NHRC criticism of the CPN (Maoist) will be reported. This imbalance in reporting will make the NHRC appear partial and place its staff at risk when operating in CPN (Maoist) areas. This concern applies not only to the NHRC but to all human rights defenders as well as the media.

The mandate of the NRHC will end in May 2005. Both the King and the Foreign Minister confirmed to Amnesty International that the institution of the NHRC will be continued. However Amnesty International is concerned about the degree to which the NHRC will be able to operate independently and credibly. Under the regulations laid out in the Human Rights Commission Act (1997), the Chairperson and members of the commission must be recommended for appointment by a committee consisting of the Prime Minister, Leader of the Opposition and Chief Justice. However, as there is currently no Prime Minister or Leader of the Opposition, this procedure cannot be followed. In discussions with the delegation the Foreign Minister implied that the recommendation to the King on new appointments could be made by the Chief Justice alone. However, Amnesty International does not believe that under current circumstances such a procedure would be sufficient to ensure

the credibility and independence of commission. Amnesty International believes that the best solution to the problem is the extension of the current commissioners' mandates until the legal provisions for new appointments can be fully met.

Reinforcing impunity

Impunity remains at the heart of the human rights crisis in Nepal. Both the government and military and the CPN (Maoist) leadership have failed to investigate human rights abuses or punish those responsible. The state of emergency will only reinforce the existing culture of impunity.

During meetings with officials, the delegation was informed about recent steps taken by the authorities to investigate human rights abuses. The committee to investigate "disappearances", established under the Home Ministry in August 2004 and chaired by Joint Secretary Malegu, has already reported on the whereabouts of more than 300 people who had been reported as "disappeared". In discussion with relevant officials, Amnesty International stressed the need for this committee to make specific recommendations for the prevention of "disappearances" as well as recommendations for criminal prosecutions on those cases where prima facie evidence points to the culpability of the security forces for such "disappearances". Preventive measures are particularly crucial at the present time as there is likely to be an increase in "disappearances" under the state of emergency, as there was during the last state of emergency in 2001.

Although the committee on "disappearances" is a welcome step, others human rights measures put in place by the authorities – such as the RNA and police human rights cells - are largely cosmetic. It was clear to the delegation that the security forces continue to remain outside the law for grave human rights violations, including possible crimes against humanity, bar in a few exceptional cases.

For example, the Inspector General of Police provided the delegation with information about the number of complaints lodged with the Human Rights Cell established by the police in January 2001 and the actions taken by the police authorities. On examination of the data, the Amnesty International delegation found that out of over 1,500 complaints received during 2004, in only 18 cases some level of disciplinary action was taken. In a mere two cases (each concerning rape, including one of a minor), criminal prosecutions were pending.

Similarly, information provided by the RNA revealed a disturbing pattern of extremely light punishment imposed by courts martial on members of the RNA accused of serious crimes, including murder and rape. For instance, members of a patrol who were alleged to have shot dead Kanchha Kaji Dangol in March 2002, supposedly while he tried to escape, were sentenced to three months' imprisonment and their commander was discharged from the army. In many cases, dismissal, demotion, forfeiture of promotion and the granting

of compensation appeared to be the only action taken against perpetrators of grave human rights violations.

In meetings with the King and the Commander of the Army, Amnesty International noted the judgement against a Major found to have been responsible for dereliction of duty at the time of the killing of 19 members of the CPN (Maoist) who had been taken prisoner at Doramba in August 2003. It acknowledged that this was a step in the right direction; but that much more was needed in relation to these killings as well as the thousands of others reported from across the country.

Amnesty International believes that, in order to address impunity, all allegations of human rights abuses by security forces should be investigated by an independent authority and prosecutions should take place in the civil courts. Both the Chief Justice and Chief of Army Staff informed the delegation that cases of rape or murder by security forces should by law be transferred to the civilian authorities. However, in practice this is not happening as the military have responsibility for conducting the first investigation and deciding if there is a case to answer.

Human rights commitments by parties to the conflict

Throughout Amnesty International's visit the government was open with the delegation, providing it with access to government and military officials at the highest level and listening to its concerns. Government representatives appeared to be genuinely concerned about Nepal's image abroad and repeatedly assured the delegation of the government's commitment to human rights. However, there appeared to be discrepancies between the information provided to the delegation by the government and that which the delegation was able to corroborate from other sources. For example, senior government representatives assured the delegation that the United Nations Secretary-General had been informed of Nepal's derogation from certain rights, as required under the ICCPR. However, United Nations representatives were not aware of any such notification.

The gap between the government's promises on human rights and its actions on the ground are most evident in relation to "His Majesty's Government's Commitment on the implementation of human rights and international humanitarian law", published on 26 March 2004 in response to concerns about Nepal raised at the United Nations Commission on Human Rights. This document is in effect a pledge by the government to abide by its international human rights obligations and facilitate the work of the NHRC. However most elements of the Commitment have not been implemented.

During the royal audience the King assured Amnesty International that the government remains entirely committed to its 26 March Commitment. The government also

informed the delegation that they will report on the implementation of the Commitment at the United Nations Commission on Human Rights in March – April 2005.

One sad casualty of the state of emergency is the proposed Human Rights Accord, which would commit both the government and CPN (Maoist) to abide by clear human rights standards and accept human rights monitoring. This Accord was drawn up by the NHRC and widely promoted by the international and human rights community, including by the High Commissioner for Human Rights during her visit to Nepal in January 2005. The Accord would be a valuable confidence building measure towards future peace negotiations.

Conclusion

The state of emergency has strengthened the hand of the military, reduced the prospect of a political process towards peace and increased the likelihood of escalated conflict, with a consequent risk of increased human rights abuses. It is ordinary Nepalis who are suffering most, as they are caught between the armed forces and the CPN (Maoist), both of whom adopt a ‘with us or against us’ approach that increases the vulnerability of civilians and removes any space for independent civil society. Without urgent measures to protect the population and end the gross human rights abuses by both sides, the human rights crisis in Nepal - which has for so long gone almost unnoticed by the international community – looks set to deteriorate into a catastrophe in which many more people will suffer.

Given the importance that Nepal places on its international image and its dependence on international assistance, the position that the international community adopts will be of critical importance in shaping the policy of the Nepal government in coming months. It is therefore important that the international community, when sending a strong message about the importance of restoring democracy, stresses that this must be a democracy with human rights and protection for a pluralist civil society at its core.

Recommendations

Below are set out a number of recommendations to address the human rights concerns highlighted during the Amnesty International visit to Nepal.

Amnesty International calls on the Government of Nepal to:

- Immediately restore the fundamental human rights suspended during the state of emergency and initiate a political process for resolving the conflict, based on justice and respect for human rights;

- Act to strengthen the existing remedy of habeas corpus, by ensuring access to the remedy for those held in preventive detention, and by insisting that the security forces comply with court rulings in habeas corpus petitions;
- Protect human rights defenders, journalists, trade unionists and other activists, including by providing safe passage for those seeking temporary sanctuary in other countries, and guaranteeing the safety of those who remain in Nepal;
- Take effective steps to end impunity of the security, including independent investigations and trial of human rights crimes by civilian (as opposed to military) courts.

Amnesty International calls on the CPN (Maoist) to:

- Abide by their stated commitments to respect international humanitarian law;
- End all attacks on civilians.

Amnesty International calls on the Government of Nepal and the CPN (Maoist) leadership:

- Sign a Human Rights Accord, in order to ensure respect for human rights at all times during the conflict and to build confidence towards future peace negotiations.

Amnesty International calls on the international community to:

- Suspend military aid to the Government of Nepal as a means of exerting pressure to change its human rights policies. India, the UK and US, in particular, must make this a central part of their response to the situation in Nepal;
- Appoint at the forthcoming UN Commission on Human Rights a Special Rapporteur to scrutinize Nepal's human rights record.

Amnesty International calls on the United Nations to:

- Verify that Nepalese troops who are to be deployed in peace keeping operations have not been implicated in human rights violations in Nepal;
- Establish a mission of the United Nations High Commissioner for Human Rights in Nepal to protect human rights defenders, support the National Human Rights Commission and strengthen the judiciary.