



September 2, 2011

Prime Minister Dr. Baburam Bhattarai
Office of the Prime Minister and Council of Ministers
Singha Durbar
Kathmandu, Nepal

Re: Accountability for human rights and concerns over proposed withdrawals and amnesties

Dear Prime Minister:

As you assume the mantle of the highest office in Nepal, with only three months left in the mandate of the Constituent Assembly, we write to you to reiterate our longstanding request that the government makes accountability for human rights abuses before, during, and after the conflict in Nepal an urgent priority. This includes ensuring that those responsible for extrajudicial killings, torture and ill treatment, enforced disappearances, and other serious human rights abuses and crimes under international law are investigated and brought to justice in fair trials. In addition, it is vital to ensure that victims of such abuses have access to effective remedies in order to redress the abuses.

We note and welcome that in the four-point agreement between the Unified Communist Party of Nepal-Maoist (UCPN-M) and the United Democratic Madhesi Front (UDMF), both parties have committed themselves to uphold "universal fundamental rights, constitutional supremacy, rule of law, press freedom and an accountable judiciary." However, we are dismayed that the agreement calls for the withdrawal of criminal cases against individuals affiliated with the Maoist party, the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements, and declares a general amnesty which could include serious crimes and human rights abuses. We are equally alarmed by a similar provision in the 'Maoist Party's Commitments and Proposal to Government, Peace Process and Constitution,' which was made public on August 25, 2011. Withdrawals and amnesties such as these would prevent

victims of human rights abuses from enjoying their fundamental rights, including the right to an effective remedy, and threaten the principles of constitutional supremacy, judicial independence, and the rule of law.

The proposed withdrawals and amnesties are prohibited under international law and standards if the amnesties concern crimes under international law such as war crimes, crimes against humanity, enforced disappearances, torture and ill-treatment. This prohibition is contained in article 24 of the UN Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity. Such amnesties are also incompatible with Nepal's obligations under the International Covenant on Civil and Political Rights, as affirmed by the UN Human Rights Committee. Critically, the Supreme Court of Nepal has affirmed this position in several cases, including in *Rajendra Dhakal v. Ministry of Home Affairs*, *Kajee Karke v. Kavre District Court*, and *Devi Sunuwar v. Kavre District Police Office*. The agreement between UCPN-M and UDMF, if applied, would contravene Nepal's obligations under international law and would violate Supreme Court directives.

Human Rights Watch and Advocacy Forum have expressed similar concerns in the past, including in a letter to then Prime Minister Pushpa Kumar Dahal in March 2009. In May 2011, Human Rights Watch, Amnesty International, and the International Commission of Jurists wrote an open letter to your predecessor, Prime Minister Jaganath Khanal, also raising concerns about the seemingly politically motivated withdrawal of cases. We repeat these concerns once again here, and call on you to use the authority of your office to finally make good on the public commitments of the government, including then Prime Minister Dahal's statement before the United Nations General Assembly in September 2008. We urge you and members of your government not to allow impunity to become further entrenched in Nepali society and to instead prioritize the re-establishment of the rule of law and public security as the foundation of a sustainable peace.

Amnesty International, Advocacy Forum, Human Rights Watch, the International Commission of Jurists, and other national and international human rights organizations have documented a long list of conflict-related human rights abuses, which have gone unpunished and left victims without an effective remedy.¹ The Nepali justice system has thus far failed to respond to the many complaints filed by victims of human rights abuses and their families. Police regularly refuse to register these complaints on the ground that they will be dealt with by the proposed Truth and Reconciliation

¹ In September 2008, Human Rights Watch and Advocacy Forum released a report, [Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict](#), which examined in detail the state's response to 48 First Information Reports (FIRs) filed in relation to 62 cases of alleged extrajudicial killings, torture, enforced disappearances, and rape between 2002 and 2006 committed by security forces. The report included two cases of alleged killings by members of the UCPN-M. The report has been updated on an annual basis. Amnesty International raised concerns about impunity for human rights violations in the context of Nepal's UN Universal Periodic Review in January 2011.

Commission – a rationale that has been clearly rejected by the Supreme Court of Nepal. In cases in which the police have registered complaints, they have often failed to conduct meaningful investigations or adequately prepare the cases for prosecution.

Similarly, previous governments have actively obstructed the criminal justice process or turned a blind eye to obstruction by others. Alleged perpetrators and their supporters have even refused to respect the decisions of the Supreme Court, which has ruled repeatedly that the government, and the Office of the Attorney General in particular, has an obligation to investigate and prosecute all crimes, regardless of whether they were committed during or after the conflict.²

We understand the need to forge consensus among the political parties in order to bring the peace process and constitution writing process to a satisfactory conclusion. However, this must not be done at the expense of justice and safeguarding the rights of the people of Nepal. There are a number of immediate measures that we believe can enhance the credibility and effectiveness of your government promote justice and the rule of law, and contribute to a sustainable peace. These include:

- Issuing a clear and unambiguous statement that any withdrawals of criminal cases allegedly brought for political reasons will be effective only pursuant to an independent and impartial judicial process conducted in accordance with the rules set down by the Supreme Court, and consistent with Nepal's international obligations. A general amnesty for serious human rights abuses that may constitute crimes under international law would be a clear violation of those obligations.
- Ordering the Office of the Attorney General to move forward with prosecutions in compliance with the rulings of the Supreme Court, and ensuring that victims of human rights abuses have access to an effective remedy leading to full reparation, as provided under international law and standards.
- Supporting the establishment of transitional justice institutions as required by the Comprehensive Peace Agreement and Interim Constitution, including a truth and reconciliation commission and a commission to investigate enforced disappearances, but making it clear that such institutions are meant to support, rather than displace,

² For instance, on June 21, 2011, the Supreme Court issued a ruling on a petition for an interim order stating that then Minister of Information Agni Sapkota had a moral and legal responsibility to cooperate with the police investigation into his alleged involvement in the killing of Arjun Lama. The Court ordered the Office of the Attorney General to report to the Court every 15 days on the progress of the police investigation. Despite the ruling, Mr Sapkota has not presented himself to the police, and the police have not taken him into custody.

the criminal justice system. Amnesties issued by such bodies may not extend to serious human rights abuses, including gross human rights violations and crimes under international law.

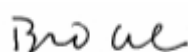
- Supporting legislative reform efforts that will help to end impunity for rights abuses by strengthening the criminal justice framework, including criminalizing enforced disappearances and torture, amending the Police Act, Army Act, and Public Security Act to remove provisions that grant immunity from prosecution, establishing a national framework for witness and victim protection, and passing criminal procedure and penal codes that respect human rights.
- Signing and ratifying the Statute of the International Criminal Court, the Convention for the Protection of All Persons from Enforced Disappearances, and the Optional Protocol to the convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We believe that a strong position against politically-motivated amnesties and withdrawals, clear and direct action towards ensuring accountability, and legislative and criminal justice reforms will go a long way toward restoring the credibility of the Government of Nepal's commitment to upholding human rights. Thank you for your consideration, and we would be pleased to meet with you to discuss these matters further.

Yours sincerely,



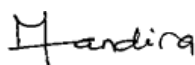
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