

# Nepal

## Will human rights be fully protected?

This document provides comments on the statement issued by Nepal's Prime Minister Surya Bahadur Thapa on 26 March 2004 entitled "His Majesty's Government's commitment to the implementation of Human Rights and International Humanitarian Law". These comments focus on the need to ensure immediate and effective implementation of the commitments in the statement and to set in place fully-fledged human rights monitoring and enforcement mechanisms.

### 1. Positive aspects of the Government's statement

Amnesty International notes the commitments expressed in the Government's statement which, if fully implemented, will herald a radical improvement in the human rights situation in Nepal. Without going into a detailed analysis of the wording of each of its provisions, or the extent to which they are compatible with international standards, the organization finds the following aspects of the statement particularly encouraging:

- Commitment to protect the human rights of all without discrimination (paragraph 1)
- Commitment to respect and protect a wide array of civil and political rights, including the right to life (paragraph 2), freedom from torture and other ill-treatment (paragraph 8), fair trial rights (paragraphs 3-11), freedom of movement (paragraph 12) freedom of expression (paragraph 15), freedom of religion (paragraph 15), the right to peaceful assembly and association (paragraph 16)
- Commitment to respect and fulfil certain social and economic rights – to food and healthcare (paragraph 13)
- Commitment to respect and protect the rights of women and children, with reference to specific international legal standards (paragraph 17)
- Commitment to work, together with the International Committee of the Red Cross (ICRC), to "establish the fate and whereabouts of reported missing persons." (paragraph 22)
- Commitment to respect norms of international humanitarian law (preamble, paragraphs 3, 21)
- Commitment to protect human rights defenders (paragraph 18)
- Commitment to cooperate with international organizations such as the ICRC and the United Nations (UN) in the fields of international human rights and humanitarian law
- Commitment to strengthen the National Human Rights Commission (NHRC) (paragraph 24)

## **2. Amnesty International's concerns**

As stated above, the full implementation of the Government's statement would mean an immense improvement of the human rights situation in Nepal. Amnesty International's main concern however is that the statement may largely remain on paper. This concern is heightened by the disappointing outcome of previous government initiatives towards improving the human rights situation in the country.

In principle it should be emphasized that Nepal has a duty to uphold all provisions in the treaties to which it is a state party, regardless of which government is in power at the time. Wherever there is a discrepancy between the provisions in the statement of 26 March 2004 and a specific treaty obligation, International Law requires that the latter will prevail. Amnesty International is urging the government to clarify this in unequivocal terms. It is asking for this clarification based on the fact that the government's statement merely "reaffirms the priority" given by the government to "its obligations and responsibilities" under international human rights and humanitarian law. This falls short of restating Nepal's commitment to fully implement all obligations under the treaties to which the country is a state party.

Amnesty International is concerned that the government may not understand that it is already committed to respect all the commitments set out in the 26 March document. If the "commitments" expressed there are to have any additional value it must be through effective nationwide monitoring and time-bound implementation.

In the context of the eight-year old conflict between the security forces and the Communist Party of Nepal (Maoist), on several occasions, respective Nepal governments have issued statements or announced measures aimed at protecting human rights. Among such recent measures has been a Code of Conduct containing several human rights provisions which was agreed between the government and the Communist Party of Nepal (Maoist) in January 2003 as part of a cease-fire agreement. However, although a monitoring mechanism was provided for in the Code, it was never put in place and the human rights provisions therefore were never enforced.

Even those measures that have been established in practice have not addressed the spiralling human rights crisis in Nepal in any significant way. For example, amid mounting international criticism, Human Rights Cells were established in the Royal Nepalese Army (RNA) and police in July 2002 and January 2003 respectively. The Human Rights Cells were given a mandate to investigate human rights violations, but so far there is little evidence that their role has been effective in curbing increasing human rights violations. Despite numerous cases brought to the attention of the Human Rights Cells by Amnesty International, to date, the organization has only received information about a handful of instances where disciplinary action has been taken against the officers involved. In most of the cases where action has been taken, the alleged violations were not directly related to the conflict. Until January 2004 the RNA Human Rights Cell reported that it had investigated 18 cases. Amnesty International found that only eight were related to incidents of human rights violations. Of these eight cases, court martial was recommended in four cases. In the other

four cases, disciplinary action had been taken, which, in Amnesty International's opinion, was in no way commensurate with the crimes committed.

In Amnesty International's view, full enforcement of human rights protection and effective monitoring go hand in hand. Amnesty International is therefore urging the government to give high priority to the establishment of an independent and effective human rights monitoring body at the earliest opportunity.

In the statement of 26 March 2004, the government has agreed to provide "necessary facilitation" to the National Human Rights Commission of Nepal (NHRC) to monitor the commitments contained in the statement (paragraph 24h); to strengthen the NHRC's capacity at the central level and to increase its outreach at the regional and district level (paragraph 24i). It has also committed itself to "facilitate substantial external assistance, including through the United Nations" (paragraph 24n) to the NHRC to ensure it can "carry out its mandate including monitoring and investigations in an independent, impartial and credible fashion".

Under the National Human Rights Commission Act of 1996, the NHRC has been mandated to monitor the human rights situation in Nepal. Since the members of the NHRC were appointed in mid-2000, Amnesty International has been concerned about the lack of cooperation extended to them by the Government, civil service and security forces and the lack of response by the CPN (Maoist) to the NHRC's repeated calls to end human rights abuses.

In an alarming example of this, the Home Ministry, in a letter to the NHRC of 29 March (Letter No. Sha.Su 060/061), described the NHRC as "preparing one sided reports" and stipulated that NHRC teams investigating complaints against the security forces must, in future, inform local security forces of their activities and include a representative from security forces in their investigation teams. According to the letter, this demand by the Home Ministry was based on advice received from the Ministry of Defence (letter No. ka.Pra/060/61/2472, 23 March). Not only does such a demand undermine the authority and impartiality of the NHRC, it also directly contradicts the statement of 26 March, in which the government commits to facilitating the NHRC's investigations and inspections, and to "ensuring free movement of the [NHRC] staff and of its representatives throughout the country and to interview any person or group freely and privately". It is clear that the commitment to an effective NHRC expressed in the government's recent statement will be fatally undermined by the placing of such restrictions on their activities.

Paragraph 23 of the government's statement of 26 March 2004 provides for the establishment of a "High-Level Human Rights Protection Committee" to facilitate human rights monitoring and investigations undertaken by the NHRC, to ensure cooperation and oversee the implementation of recommendations by the NHRC and the judiciary.

From the statement, it is not clear how this committee is to be constituted, what its powers will be and how exactly it would relate to the NHRC, courts and judicial process. Based on the experiences of the NHRC to date, the security forces have so far mostly ignored its recommendations. The relevant provision in the government's statement does not provide

any guarantees that this Committee will be able to enforce recommendations for the relevant authorities to take legal action (23f), let alone ensure that they give immediate effect to the orders and decisions of the judiciary (23e). The composition of this Committee will be a key factor to ensure its effectiveness and the fact that this has been left vague is a major concern. As with the Code of Conduct of January 2003 and its monitoring body (see above), there is a fear that this newly to be established body will once again remain a paper tiger. Amnesty International is urging the government to immediately establish the High Level Human Rights Protection Committee, set out in law or a government regulation its exact terms of reference and powers, and publicly announce its establishment, including a list of its *ex officio* members and its exact powers.

To make its monitoring effective, the NHRC needs to build its capacity. Furthermore, it needs formal recognition from both parties to the conflict to ensure that monitors would not be subjected to threats or political pressure and that the NHRC as an institution is able to maintain its impartiality and independence, especially if faced with threats to their safety.

Amnesty International is urging the government to agree to the establishment in Nepal of a long-term and adequately resourced office of the Office of the United Nations High Commissioner for Human Rights (OHCHR). It is urging for such presence to include international monitors with a mandate to undertake independent monitoring and reporting of the human rights situation throughout the country as well as to provide technical assistance to the NHRC.

Provisions for such measures were first made in a Human Rights Accord, drawn up by the National Human Rights Commission (NHRC) in May 2003 and presented to both the government and the CPN (Maoist). The Human Rights Accord was intended to be binding on both sides to the conflict and provided for monitoring of human rights abuses committed by both the security forces and the CPN (Maoist). The provisions in the government's statement of 26 March 2004 only apply to the security forces.

Pending the signing of such a mutually binding agreement, Amnesty International is urging the Communist Party of Nepal (Maoist) to issue a statement pledging its intention to uphold international human rights and humanitarian law standards, recognizing the OHCHR and NHRC as monitors and guaranteeing their safety.