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Nepal: Overturning the Legacy of War - priorities for effective human rights protection

As Nepal's new Constituent Assembly (CA) members prepare to take their seats following the 10 April elections and with the formation of a coalition government expected within weeks, Amnesty International calls on the CA members to fulfil their election pledges to build a "New Nepal", seizing the historic opportunity to place human rights protection at the heart of their work.

The mass people's movement of April 2006, the Jana Andolan, precipitated high expectations of renewed respect for human rights in Nepal. However within a climate of persistent impunity, these expectations are yet to be fulfilled.

Amnesty International recognizes the enormous economic and social challenges that the new CA and future coalition government faces, but believes that now is the moment to commit in earnest to the delivery of effective human rights protection for all in Nepal.

Based on the findings of an extensive and wide-ranging visit in February and March 2008, Amnesty International sets out a selection of key priorities for action by the future government and incoming CA, including accountability for past abuses, human rights-based security sector reform, protection and inclusion of minority groups, and urgent steps to stop violence against women.

1. Time to Renew Commitment to Human Rights

The successful holding of elections for the CA is an important milestone for Nepal. The new Assembly is charged with drafting a new Constitution and has an opportunity to ensure the process of constitutional change in Nepal is inclusive, participatory and aimed at the realisation of the human rights of all Nepali people.

Amnesty International calls on the new Constituent Assembly and Government to ensure:

- women and marginalized groups are adequately consulted in the Constitution-drafting process;
- the Constitution must ensure that human rights principles are implemented in law, policy and practice, including through training of officials, the establishment of human rights monitoring mechanisms and cooperation with international human rights monitoring bodies.

2. Accountability for Past Abuses

Amnesty International calls on CA members to create a comprehensive national accountability Plan of Action to ensure that the truth is told, that justice is done, and that reparation is provided to all the victims of

human rights abuses and violations of international humanitarian law that occurred during and after years of prolonged armed conflict.

The current draft Bill to establish a Truth and Reconciliation Commission (TRC) should not be submitted to Parliament until it is consistent with Nepal's obligations under international law. Amnesty International is gravely concerned by initiatives to establish an amnesty for serious human rights violations which threatens to reinforce impunity and undermine the rights of victims. International law clearly prohibits the granting of amnesties for crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances.

The CA has an opportunity to widen national consultation on the establishment, mandate and powers of the future TRC. The new CA needs to listen to victims' groups who have identified their central need as accountability for past human rights violations. There is a continuing risk that without wide national consultation the TRC members will be appointed and their work defined without the transparency and independence necessary to guarantee an independent process.

Amnesty International calls on the new Constituent Assembly and Government to:

- ensure national law is reviewed and amended to enable national authorities to investigate and prosecute, in accordance with the highest standards of international law, crimes under international law, including crimes against humanity, war crimes, torture, extrajudicial killings and enforced disappearances;
- grant all victims of serious violations of international human rights and humanitarian law full reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with international law and standards;
- ensure that any legislation and related regulations for the establishment of a Truth and Reconciliation Commission are only adopted following 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. They should be able to suggest names and conduct a careful evaluation of the qualification and experience of each candidate being considered;
- ensure that legislation establishing a Truth and Reconciliation Commission does not include any amnesties for international crimes whereby perpetrators may avoid justice;
- ratify the Statute of the International Criminal Court without delay.

2. Security Forces and Human Rights

In order to address Nepal's legacy of armed conflict and the causes of systematic and widespread human rights abuses, the CA should undertake a comprehensive review of Nepal's security forces.

The review should ensure firm control of all security forces by civilian authorities. The future of combatants of both sides of the internal conflict requires careful discussion. There are currently two armies in Nepal; the Nepal Army (NA) and the Maoist People's Liberation Army (PLA). Given the fact both the NA and the PLA committed human rights abuses during the armed conflict accountability of these institutions under a civilian oversight body is urgent.

The Armed Police Force (APF) was set up in early 2001 by the state as a counter insurgency force. As such the APF is poorly trained for civilian policing and its function requires careful review. The security forces, in particular the Armed Police Forces (APF), responded to anti-state demonstrations in Terai in February 2008 with excessive use of force. Amnesty delegates met victims' groups in Nepalgunj who shared their eyewitness accounts of the policing of a demonstration on 17 February 2008 when at least one person was killed and over 27 people were injured when the police fired at crowds using metal bullets.

Maoist forces include the Young Communist League (YCL). The YCL acts as a parallel justice system; there are also reports of the YCL intimidating political opponents and targeting critical journalists.

In the course of 2007, the failure of state institutions, including the police, to protect the lives and security of people has become increasingly apparent. The new members of the CA must prioritize the strengthening of the Nepal police service in recruitment, selection and training.

Marginalized groups have raised demands for better representation in the Police. An agreement between the Madhesi groups and the government in August 2007 laid out the principles that the Police should be representative of the community according to key criteria, including race or ethnic group, women and men, language and religion. Minority communities must be adequately represented, and individuals from these groups must be able to pursue their careers fairly and without discrimination. According to Saferworld, at the time of the signing of the CPA in November 2006, the Nepal Police consisted of approximately 50,000 officers; of this only 0.2 percent were drawn from the Dalit community or other underrepresented caste/ethnic groups.

The redeployment of the national police since the internal conflict has failed to reassure the public about security as the police continue to lack adequate communications, transport, arms, offices and accommodation. The security vacuum that has emerged in the Terai as a result of poor public security has allowed armed groups to commit human rights abuses with impunity. The presence of over a dozen armed groups has now been reported in the Terai including the Janatantrik Terai Mukti Morcha (JTMM) led by Jaya Krishna Goit (JTMM-G) and the Jwala Singh (JTMM-J) faction. Human rights activists told Amnesty International delegates who visited the region in February that political interference in the release of detainees particularly members of criminal armed groups is the norm and that in many areas of the Terai local police chiefs will not take action against suspects of armed group activity without the approval of the Seven Party Alliance Committees.

Amnesty International calls on the new Constituent Assembly and Government to:

- ensure that the Army, police and all other security forces are accountable to civilian authorities;
- establish an independent complaints authority as a measure to ensure public accountability of the police. Such a body should be able to function at the local level and be given the powers to carry out continuous assessments of the police's own measures to ensure compliance with national and international regulations on the use of force, to prevent torture and corruption; to record complaints; investigate incidents on its own volition and carry out research into issues related to policing. It should ensure vetting of new and current recruits to ensure adherence to, human rights and professional standards within the Police;
- ensure any recruitment into the security forces, including of former members of the Young Communist League (YCL), must involve extensive training in international human rights standards and their application to policing;
- ensure that Nepal Police and the Armed Police Force (APF) are representative of the community; that working conditions are non-discriminatory; and that career development and other opportunities are based on merit;
- ensure that the Police only use force when strictly necessary and only to the minimum extent required under any circumstances;
- ensure that independent inquiries into the police response and use of excessive use of force in the context of the Madhesi Andolan are conducted and any police officers who are suspected of having used excessive force against protesters should be prosecuted.

3. Marginalized groups: a need for protection and inclusion

Long-standing discrimination on the basis of caste, gender and ethnicity emerged as a critical issue in the peace process. The Comprehensive Peace Accord (CPA) of November 2006 commits all parties to a

spectrum of civil, political and economic rights including ending discrimination. This commitment inspired a range of identity based movements demanding better inclusion in state structures particularly in the Terai in southern Nepal. The Madhesi Andolan (Uprising) of January and February 2007 was perhaps the most significant in terms of raising concerns of persistent political and social exclusion, but there have also been similar demands for better representation in state institutions by Tharus (mostly in Western Terai) and Limbus (Eastern Terai) amongst others.

Nepal has obligations under international law with regard to non-discrimination. The United Nations High Commissioner for Human Rights (OHCHR) in her second report to the Human Rights Council in January 2007 highlighted the right of individuals to participate in the conduct of public affairs directly or through chosen representatives.

A human rights activist told Amnesty delegates; “the Comprehensive Peace Agreement, the Interim Constitution and the 22-point agreement with Madhesi Janadhikar Forum (MJF) have guaranteed proactive compensatory measures to ensure proportional representation of various marginalized communities including Madhesis, at all levels of the three state organs - executive, legislature and judiciary”. However a number of interviewees complained of the gap between this promise and delivery blaming the inability of mainstream political actors to bring marginalized groups into the peace process as a factor fuelling conflict.

The issue of political participation and representation precipitated an indefinite strike by the United Democratic Madeshi Front (UDMF) in the Terai on 13 February 2008. The strike closed government offices, disrupted public services, and led to the imposition of curfews in certain districts. Clashes between Madeshi protestors and the security forces resulted in at least 5 deaths. Both international and domestic human rights organisations have raised concerns about the excessive use of force in the policing of demonstrations in the Terai.

The Citizenship Act adopted in 2006 enabled more than 2 million people to obtain citizenship certificates, including many in the Terai. This was a welcome move but long-term measures to address ongoing concerns about discriminatory provisions for women and certain Madhesi, Dalit and Muslim communities who were unable to gain certificates need to be addressed.

Amnesty International calls on the new Constituent Assembly and Government to:

- create enabling legislation to ensure that discrimination on the basis of race, sexual orientation or ethnic group is not being promoted and to improve legislative effectiveness in eliminating such discrimination;
- ensure the right of traditionally marginalized groups to participate in State mechanisms;
- urgently consider legislation to resolve the rights of non-citizens.

4. Violence Against Women: a human rights scandal

Violence against women is a serious problem across Nepal. Many women and girls are afraid to report rape and other forms of violence, not only because of hostility and stigma from their community, but also due to state inaction in ensuring the investigation, prosecution and punishment of perpetrators through the justice system.

Women’s human rights defenders face particular risks when they defend the right to life and freedom from sexual and other violence. Amnesty International delegates were told by a number of women human rights defenders that due to the lack of security in the Terai women are extremely vulnerable to gender based violence. Reported violations include rape by members of armed groups; violence in the family including battering by intimate partners; rape; dowry deaths; and other violent and discriminatory cultural practices against women.

The state's duty to protect women from violence is explicitly stated in the UN Declaration on the Elimination of Violence against Women. States should pursue by "all appropriate means and without delay a policy of eliminating violence against women" (Article 4). Under international human rights law, the state has an obligation not only to ensure that its agents and officials do not commit violence against women, but also to protect women from violence committed by private individuals and bodies including members of their own families and communities.

Amnesty International calls on the new Constituent Assembly and Government to:

- recognize and protect women's human rights including the right to life, the right to be free from discrimination and all rights that protect women from gender-based violence;
- implement all international and regional treaties, declarations, resolutions and recommendations aimed at condemning, prohibiting and preventing all acts of violence against women;
- ensure that law enforcement personnel and other government agents are made fully aware that rape of women in their custody is an act of torture and must not be tolerated under any circumstances;
- encourage and support the establishment of shelters and other facilities for women survivors of violence, in consultation with women's rights organizations.