

Deteriorating Rights Situation in Nepal

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Assaults on human rights are a widespread social practice that happens especially at this time of rebuilding the state and promoting democracy. The deliberate human rights violations committed during this transitional period have further jeopardized the whole process of building peace and restructuring a New Nepal.

If one were to look back at the cases of gross abuse of human rights that have occurred after the signing of the Comprehensive Peace Accord by the government and the CPN (Maoist), one would hardly believe that both the parties agreed to uphold the fundamental principles and standards of human rights. According to Article 7 of the CPA, both sides agree to create an atmosphere where the Nepali people can enjoy their civil, political, economic, social and cultural rights and commit themselves to ensuring that such rights are not violated under any circumstances in the future. It also reiterates that both sides would not be involved in acts of torture, kidnapping or coercion, and would take the necessary action to discourage such acts.

The country is in a transitional period trying to address past injustices in order to prevent future abuses and enhance peace. Despite the clear understanding, the CPN (Maoist) have violated human rights and been involved in various criminal acts across the country. For instance, Maoists abducted journalist Birendra Sah. Another media-person is reported to have been kidnapped, and his whereabouts are still unknown. Maoists also abducted employees of Rukum Court in the name of maintaining law and order while they were on duty. They have confessed to being involved in the abduction and killing of the journalist, which proves that their commitment to respect press freedom is notable by its breach.

The involvement of the Maoists in such illegal activities proves that they have violated the peace accord that they signed with the government. It is also necessary to mention here that they cannot be allowed to kill innocent people with impunity as if they were living in a barbaric age. It is unacceptable for a legitimate political party to act like this. These actions weaken the entire peace process and the protection of fundamental rights set forth in the Interim Constitution besides lengthening the transitional period. This goes against the wishes of all the citizens who are against any authoritarian government. Abduction is a crime against humanity. Why do they commit such criminal acts? Felons cannot be allowed to take the law into their own hands, be they senior leaders or whatever. Abduction, extortion, denying fundamental rights related to the press and kidnapping innocent children undermine the whole range of civil, economic, political and social rights.

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The right to life, freedom of movement, expression, privacy and constitutional remedy are often affected when the local administration is unable to function, the police and judicial system are shattered or corrupt and government institutions are weak. The government has failed to prevent such criminal activities and bring the perpetrators to book. It has been unable to identify the challenges of democratization in times of transition, such as how to settle past accounts without derailing or upsetting the transition to democracy.

Instead of ensuring the people's fundamental rights illustrated in the Interim Constitution, the government is going soft on prisoners by introducing laws to deal with their grievances. It does not understand that criminals should suffer punishment for their crimes. It would be fair to grant amnesty to innocent people who might have been victimized by circumstances. But providing blanket amnesty would be a gross injustice against the victims, besides compromising and subverting the rule of law and risking encouraging more crime.

It is surprising why the government remains silent regarding such crimes against humanity. Is it not its responsibility to maintain law and order and strengthen the rule of law? If the authorities do not take action against human rights violators, how can they assure the general population that their inalienable rights are not being infringed? There could be another Janandolan (uprising) to protect the people's inherent right to life and other rights.

Issues regarding human rights and the rule of law have been overshadowed by the current political impasse. No responsible key stakeholder has shown any interest in fulfilling the understanding. Instead they have been trying to cover up their crimes and breach of the laws of the land. The government's image in and out of the country has been tarnished because of its ineffective governance. It has to be careful about maintaining its image.

The subject of addressing past injustices and protecting human rights should be taken together with a comprehensive program leading to the constituent assembly poll. The criminal activities happening these days threaten peace, democracy and human rights; but they show no signs of decreasing. Government inaction further strengthens the culture of impunity. If such offences are not thoroughly investigated, the victims not provided adequate compensation and the perpetrators not brought to book, the country is inviting anarchy.

Issue of transitional justice and victim's apathy

In accordance with the Comprehensive Peace Accord (signed on November 21, 2006) and the Interim Constitution, there must be a Truth and Reconciliation Commission to address past injustice moving the country from transition to peace. The government has drafted a TRC bill, but no initiative has been taken to establish the TRC rather it has been overshadowed by the political deadlock. Since the release of the draft of the Truth and Reconciliation Commission (TRC), it has received nothing except vehement criticism. This is because it needs an immediate review if past wrongs are to be righted. The

government should have obtained the views of the general public on the TRC and other transitional justice issues in order to make it truly effective. The delay in enacting the TRC Act has proved that the government is unable to tackle past crimes.

TRC is charged with addressing impunity, responding to the needs of victims, promoting healing and reconciliation, and preventing a repetition of violations and abuses suffered during the armed-conflict. It should be understood that in contrast with tribunals or courts, truth commissions do not normally have prosecutorial powers to bring cases to trial. Nor do they act as judicial bodies to investigate individuals accused of crimes.

As per the bill, the TRC will have the authority to investigate gross human rights violations and crimes against humanity that occurred during the decade-long conflict. It must have a broad and clear mandate to probe such violations, including disappearances, extra-judicial killings, torture, arbitrary detention, sexual violence and recruitment of child soldiers which earned notoriety for Nepal. Giving emphasis to granting amnesty and not to prosecuting the perpetrators obstructs the judicial system and opportunities for reparation or rehabilitation for the victims. The unfair opportunities for reparations contained in the bill won't give any hope to the victims that the commission is one of the key building blocks in the process of political transition, and that it plays an important role in providing a full account of the human rights violations committed during the conflict. Rather, the victims will view such reparation programs as a governmental strategy to leave the secrets of the past hidden. The TRC must not be empowered to promote reconciliation without the victims' direct involvement in the design and establishment of an approach to transitional justice.

One responsible for killing innocent civilians should be booked for the gross violations of human rights. The case of Maina Sunuwar(who was arrested by the security personnel and killed after being raped), Madi and Doramba incidents have appeared as the gross violations of human rights and many other similar incidents still remain to be disclosed. One should not forget that Milosevic --- one time fiercest leader of Yugoslavia --- died an obscure-beggar's death in custody when he was being tried for war crimes at The Hague.

A US-educated economist Charles Taylor was an influential warlord in Liberia and had got away by winning an asylum in Nigeria when the fourteen-year old conflict ended in his country. But he could no longer abscond from the hands of human rights defenders and was finally arrested in Nigeria.

In the context of Nepal, the government has tried to grant blanket amnesty to all perpetrators in the name of peace and reconciliation. On the other hand, the victims whose family members are still missing, whose whereabouts are still unknown, are of the opinion that they would not forget the past injustice unless and until perpetrators are brought to book and provided with adequate compensation including symbolic and material. Reconciliation is a very crucial component of transitional justice when raising a prosecution issue. Hence, it is essential for a country emerging from a transition to peace to fulfill its necessary preconditions. The establishment of the facts is undoubtedly a precondition for reconciliation, both individual and collective.

However, reconciliation cannot be imposed either by a truth commission or by any other official procedure. In order to ensure the people's right to know the truth, the victims and their families themselves have formed victim's pressure groups. And they have remained firm in their stand they will neither accept reconciliation nor grant amnesty to the perpetrators unless and until all those who planned, controlled and organized the repressive acts are made public and punished.

The provision in the bill for granting amnesty for politically motivated crimes is contrary to international law and is a controversial component of transitional justice. All states have an obligation to prosecute and punish perpetrators of genocide, crimes against humanity, war crimes and other serious violations of international law. Amnesty for these crimes is prohibited under international law as they deny the right of victims to justice and subvert the rule of law.

Granting a mandate limited to certain human rights violations can hamper the commission's effectiveness. In South Africa, for instance, the commission's authority was criticized because it did not include some of the violations perpetrated by the apartheid regime. Similarly, the mandate of the Equity and Reconciliation Commission in Morocco was limited to enforced disappearances and arbitrary detention. The commission itself had to interpret its mandate broadly to be able to deal with cases of torture and extra-judicial executions.

Probably, instant-noodle overnight mechanism to address impunity and establish accountability to all perpetrators is not the right way but time is a great enemy to justice. The victims and their families need something now to support to their efforts for recuperation. We should continue to keep the issue vibrant and must endorse every petition from the victims and their relatives favoring punishment for the perpetrators. This would give a strong message that we intend to hold them accountable one way or another--sooner or later with sensitivity rather than making sensational. More than psychological warfare against the impunity-fanatics is required. Otherwise, the nation will be sliding back ever faster toward fascism and the rule of jungle. One never knows the moment when it is too late, until that moment has come and gone. Better to be a little too shrill, a little too radical, a little too obnoxious, a little too unreasonable, and forestall that moment so it never comes. Time has come to build up a coordinated campaign to seek justice to the victims/survivors of atrocities and to enhance zero tolerance to impunity. Achieving peace could probably be a middle ground doctrine but compromised justice is a total chauvinism.

Conclusion

A review of the peace accord signed by the principal parties and strict orders to all those out of the mainstream to follow the Interim Constitution are necessary to ensure the people's civil, economic, social and political rights. Both the government and the Maoists must be able to assure the general public that they will fully honor their agreement and appreciate the significance of the April Uprising. Otherwise, human rights will not be safe and secure even though the decade-long armed conflict has ended.

An improvement in human rights is necessary before there can be a return to the rule of law. Improved compliance with international humanitarian and human rights law by the parties is necessary before there can be peace and meaningful restoration of democracy.

Equally, there is little chance of significant improvement in the human rights crisis until there is a renewed peace process.

The parties professed commitment to their human rights obligations should be demonstrated by them signing up to a Human Rights Accord. The accord should be implemented in such a way that it becomes a confidence-building measure and encourages the belligerents to return to the peace table.

The end of the culture of impunity and improvement in respect for human rights are inextricably linked. There cannot be a "swift return to democracy" without concrete action on human rights and the full enjoyment of democratic rights.

Democracy without these will be nothing more than a return to the unsatisfactory status quo ante. Nepal's people would be condemned to further erosion of their rights and gross violations by both armed parties, and resolution of the conflict would be at least as far away as ever.

This is a conflict in which sustained international pressure can make a real difference. So your support and interest is important, and I'd like to thank you for providing me such a platform to reveal the ongoing entire peace process and deteriorating rights situation in Nepal.

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