



Human Rights Agenda Cannot be Sidelined in the Pretext of Election!

As the country gears up towards the second round of constituent assembly elections scheduled to be held on 19 November 2013, the issues of human rights, transitional justice and impunity are being pushed to the shadows. Even so, human rights groups and victims have been persistently raising these issues and working to ensure electoral vetting to bar persons involved in serious violations from contesting the polls. Amid avowed boycott and threats of disruption by fringe parties led by the UCPN (Maoist) splinter Group, the CPN-Maoist, the government, backed by the major political parties, seems determined to hold the elections thereby foreboding a violent poll. In this context, the present brief outlines some of the concerns that human rights defenders have.

1. The Leadership Vacuum within the NHRC:

The tenure of all the commissioners of the National Human Rights Commission (NHRC) lapsed on 16 September 2013, rendering the constitutional human rights body leaderless and literally dysfunctional. In a situation where the country is heading towards polls and election code of conduct has been already put in place, it is technically difficult to make any new appointments. As there is no parliament in place to have proper hearing and public consultations for fresh appointments, there is a possibility of inevitable political horse-trading for the eventual replacement. If such political appointments are made, it will seriously damage the legitimacy of the commission. Accountability Watch Committee, network of human rights defenders has already warned everyone concerned that if the

commissioners are appointed in the present context without observing the Paris Principle, HRDs will take stand not to work with such commission. So, AF recommends that development partners openly articulate the importance of the commission playing its constitutional role and ensure it receives adequate and necessary support from the government for its day-to-day operation in the period leading up to the elections. *AF views that the appointment of commissioners should be done immediately after the polls, following an open and transparent procedure as per the Paris Principles.*

2. The Election Powder Keg

The fringe parties led by the CPN-Maoist are bent on disrupting the polls. They are publicly announcing that they will resort to violence if the government goes ahead with the polls on the scheduled date. They have started sending letters to would-be contestants of other political parties threatening dire consequences in case they participate in the elections. To neutralize the possible threats from anti-election elements and to ensure law and order during the polls, the government has decided to have a coordinated security arrangements involving the army, the Nepal Police, the Armed Police Force and temporary recruits. "The Integrated Security Plan - 2070" unveiled by the Ministry of Home Affairs mentions a three-tier security structure including 54,000 NP personnel

(supported by 44,000 temporary recruits) at the core, with back-up by 22,000 APF personal in the second layer, and finally the outer layer consisting of 61,995 NA personnel. **However, there is a glaring lack of transparency regarding the modus operandi, chain of command of the entire security arrangements and the actual role of NA during the polls.** Besides, there is a greater possibility of violence in the volatile Terai region and the government has already declared 16 Terai districts as ‘most-sensitive’ areas from the point of view of security. The threats from underground outfits, armed groups and election boycotters have made the situation further precarious in Terai. As there is a greater possibility of political violence and human rights violations during the polls, there is an urgent need to have a robust monitoring of election-related violence and cases of human rights violations. The NHRC can lead the monitoring but it is important to bring other major human rights organizations and civil society on board. **So, development partners also need to be serious in this respect both to prevent any untoward incidents during the elections and to assist civil society and the NHRC to keep a constant vigil over the possible violence and violations before, during and after the polls.**

3. Electoral Vetting

Human Rights Defenders have been demanding that persons convicted by the courts, against whom FIR has been lodged and court has issued mandamus to initiate investigation and prosecutions, or the NHRC has done investigations and made recommendations to the government for the investigation and prosecution, and any commissions of inquiry have recommended action should be debarred from contesting in polls. Some of these demands of HRDs were also the demands of various international election monitoring missions. Despite the Supreme Court of Nepal forbidding murder convicts from filing candidacy in the CA election in its decision on 27 September 2013,

there are several contestants who are suspects in high-profile cases of murder and whose cases are *sub judice*. **Therefore, AF expects development partners to take a firm position regarding the barring of human rights violators from contesting in election.** This is important to ensure the security of the election and also to increase the legitimacy of CA. This will also prevent these people playing negative roles in the future to prevent justice for victims.

4. Adhikari Case

The old couple, Krishna Prasad Adhikari and Nanda Kumari Adhikari, who staged 48 days of hunger strike demanding immediate investigation into the murder of their son, who was allegedly killed by Maoist cadres during the conflict, finally broke their fast after the police arrested an alleged perpetrator involved in the murder. The police did so in defiance of the UCPN-Maoist's brinkmanship threatening agitation if the government proceeded with the investigations. Rights groups had raised fears that the authorities might even release the suspect. Unfortunately, this is what it has happened. On 29th of September, the accused was released. Since the police had not initiated any action against other suspects and the investigation was not impartial and independent it was widely believed that the arrest all along was a deliberate tactic to muffle the impact of the case. In this context, **AF urges development partners to express open solidarity with all victims and urge the government to ensure justice for them and exert sustained pressure to move this case and other cases where there is sufficient evidence forward without any obstruction from the Maoists or other alleged perpetrators.**

5. Transitional Justice Mechanisms

After the dissolution of the Legislature Parliament, the caretaker government forwarded a single ordinance for the formation of a Disappearance, Truth and Reconciliation Commission to the President for promulgation in August 2012.

Despite protests by the victim groups and civil society, the president eventually endorsed the bill after some cosmetic changes on 14 March 2013. However, the Supreme Court of Nepal, responding to two writ petitions filed separately on 24 March 2013, issued a stay order directing the Chairman of the Council of Ministers not to form the Truth and Reconciliation Commission under the TRC Ordinance. The petitioners had argued that these provisions give *carte blanche* to the Commission to grant amnesty to perpetrators without the consent of the victims and they are not clear about prosecuting the alleged perpetrators. In response, the court as an interim decision, asked the government to refrain from implementing sections 3, 13, 23, 25 and 29 of the Ordinance. These sections are related with the formation of the commission, mandate of the commission, its power to recommend amnesty and procedures of the commission and statute of limitation. The court found that these sections were in contradiction with the Interim Constitution of Nepal and could not be implemented without amendments. The petition is still under consideration of the court. So, the transitional justice process remains in suspension. The only reason for a stymied transitional justice process in Nepal is the inclination of the government to grant amnesty to the alleged perpetrators of gross human rights violations. ***Therefore, AF recommends that development partners openly ally with Nepal civil society and victims' organizations to ensure the establishment of a TRC and a Commission of Enquiry on Disappearances in line with relevant international standards and after wider consultations with stakeholders.***

6. The issue of Deserters

Several army and police personnel who had to voluntarily desert their jobs during the conflict have been struggling for justice since the restoration of democracy. According to the Joint Struggle Committee of Army/Police Conflict

Victims, around 46,490 people left their job, especially because of the threats and intimidations of the Maoists including the threatening killing of their family members if they continued to serve the state. Although all political parties have expressed concern over their plight and have them assured that they would take measures to address their issue, nothing has been done yet to rehabilitate and reintegrate them back to society. ***A member of the Joint Struggle Committee, Raj Kumar Kamati, is on a fast-unto-death strike since 18 September 2013 and his health is deteriorating day by day. In this context, AF requests development partners to exert pressure on the government to be open to listen and to address the plight of army/police deserts by investigating and identifying the case of genuine deserts.***

7. HRC Communications

In Nepal, Advocacy Forum is the pioneer organization helping victims to make submissions to the HRC. Altogether 7 submissions have been made with AF's assistance. The cases submitted are strategically selected and are representative cases of torture, disappearances, extra-judicial execution and rape. Recently, AF submitted a communication on behalf of a rape victim. The communication examines the position of women in Nepalese society and the complete inaction of the government on sexual violence cases from the conflict. In particular, it examines the nature of rape as a form of torture, and the positive obligations the state has to respond and argues that the 35-day limitation for filing rape complaints is contrary to Nepal's obligations under the ICCPR. However, despite decisions from the HRC in favor of victims, the government has not implemented its Views. As submissions to the HRC are made after the exhaustion of domestic remedies, this conveys the enormity of impunity in Nepal. ***Therefore, AF urges development partners to exert pressure on the***

government to implement the recommendations made by the treaty body, so that door of justice can be opened for others who were victimized in similar crimes.

8. Torture in Detention

Torture continues with impunity in police detention facilities in Nepal. The Committee against Torture (CAT) has recently acknowledged the enormity of torture in Nepal. After its confidential inquiry under Article 20 of the CAT, the committee had confirmed that torture is systematically practiced in government detention facilities in Nepal. The conclusion of the CAT was corroborated by a recent AF report (<http://advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>) . In 2012, AF visited 3,773 detainees held in 57 detention facilities in 20 districts, of which 3,384 were male, 384 female, 5 transgender and 930 were juveniles. Overall, 22.3% of those interviewed reported that they had been subjected to torture or ill-treatment as defined under the United Nations Convention against Torture (CAT). Although this represents a slight decrease of 2.3% compared to 2011, figures for juveniles remained high at 34.7%, increasing by 0.5% on the previous year. In some districts, figures for juveniles rose alarmingly above 50% and even 60%.

The work of AF on torture, which primarily involves daily visits to detention places, is helping to reduce torture in the 20 districts where AF is working. Considering the current political context, it is expected that illegal detention, torture and ill-treatment to be increased if preventive measures are not put in place. *AF recommends that*

development partners pressurize the Nepalese government to put measures in to place to prevent illegal detention, torture and ill-treatment.

9. Vetting Measures

AF, in close coordination with national and international human rights organizations, has successfully lobbied the UN resulting in the UN Department of Peacekeeping Operations requesting the Nepal authorities to repatriate Nepalese peacekeepers after it became known that there was *prima facie* evidence of their involvement in serious human rights violations in Nepal, and that they had been sent on peacekeeping mission nevertheless. The main cases that come to mind are captain Niranjana Basnet (one of the accused in the Maina Sunuwar murder case pending before the Kavre district court who was nevertheless sent on peacekeeping to Chad in 2009) and Deputy Superintendent of Police Basanta Kunwar, against whom a case under the Torture Compensation Act was pending in the Kathmandu District Court at the time he was sent on peacekeeping to Liberia in August 2011. AF believes that, in a context where individuals suspected of involvement in serious violations of international human rights and humanitarian law remain on active service in public institutions and security forces, such measures will force the government to establish an ad hoc vetting process as a part of broader transitional justice strategies. *Therefore, AF urges development partners to exert pressure on the Nepalese government to adopt vetting measures and draft policies in line with the new UN policy for the human rights screening of UN*

Peacekeeping Personnel (adopted in December 2012) and the August 2012 Supreme Court Decision to establish vetting laws to regulate the recruitment, promotion and transfer of government officials, including those from the security services.



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