



Say Peace First

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## Situation Update XVII

December 8, 2006

### Nepal's Culture of Impunity

#### Introduction

The High-Level Investigation Commission (HLIC) formed on May 5, 2006 headed by former Justice Krishna Jung Rayamajhi submitted its 1,184-paged investigative report on loss of lives and property during the Popular Movement II (April 6 - 24, 2006), to the Prime Minister (PM) Girija Prasad Koirala on November 20, 2006. A total of 25 persons were killed and more than 5,000 wounded during the Movement. The Rayamajhi Commission recommended taking action against those responsible for the deaths and suppression during Popular Movement II. The HLIC Report recommended 202 perpetrators, including the King and his Cabinet, be prosecuted by formulating a new Act, because currently, no law empowers the King's prosecution. Of these 57 percent belong to the Security Forces and out of those 60 percent to the Civil Police, the remainder to the Army, Investigation Department and the Armed Police Force. Former chiefs of the army, Nepal police and members of the armed police were found guilty of ordering excessive use of force, willful killings, arbitrary arrests and torture. The former Army Chief was also charged with the misuse of 2 million Nepali Rupees (NRs.). The Commission recommended departmental action against the current Army Chief of Staff and the Chief of Armed Police. The other prominent figures named include the former Chief Secretary, Lokman Singh Karki, SSP's Madhab Thapa, Durja Kumar Rai, the then CDO of Kathmandu, Sushil Ghimire, AIG of Armed Police Force, Sahabir Thapa, IGP of Nepal Police, and Shyam Bhakta Thapa. Also found guilty of misuse of funds were Ministers Kamal Thapa (10.7 million), Sirish Rana (10 million) and Tanka Dhakal (4 million). The Commission recommended they be responsible for reimbursing the government.

The report points to the King as accountable since he was the Chair of the then Cabinet and all those interviewed by the Commission testified that they acted on "orders from above". The Commission summoned Pashupati Bhakta Maharjan, the King's Chief Secretary for questioning. The King himself failed to appear before the Commission although he was asked to do so, and was thus labeled by the Commission as uncooperative. Kamal Thapa was found responsible for the 500 thousand NRs spent per day to quell the Movement and those who arbitrarily shot in the field individually accountable for their actions but not the officials issuing orders. The Rayamajhi Commission's Report was not unanimous as two members of the Commission submitted a separate six-paged document to the PM claiming that the penalties recommended by the Commission were not commensurate with the actions for which the perpetrators were found guilty. Rather, they argued, the higher level officials got off lightly, whereas those who are less powerful were penalized severely. This is a familiar pattern in Nepal.

Following Popular Movement I (mid-February to mid-April, 1990), a Commission headed by former Justice Janardan Mallik was established to investigate the loss of lives, security and property during the Movement. A 1,100 page report was submitted to the then Interim Government led by Nepali Congress on December 31, 1990. That report acquitted the then PMs Marichman Singh and Lokendra Bahadur Chand of the gross human rights violations, totaling 45 killings and 2,300 casualties. Following the issuance of the report, the government seized the passports of senior officials and kept them under valley-arrest. There was a great deal of pressure to release the report and take action. Bishnu Pathak in his book *Politics of People's War and Human Rights in Nepal* writes, "Out of 265 members of both Houses, an absolute majority with 67 percent of the parliamentarians was in favor of taking action against the perpetrators" (2006: 138). But, the Government led by Girija Prasad Koirala failed to take firm action on the pretext of legal obstacles. Rather, those acquitted were later made PM and Ministers (e.g. Lokendra Bahadur Chand, Kamal Thapa, Rabindra Nath Sharma, Prakash Chandra Lohani, Pashupati Sumsher Rana, etc.) and the acting DIG Achyut Krishna Kharel was promoted to IGP of Police. The Former IGP of Police, DB Lama, who was jailed for life from mid-February to mid-April, 1990 on charges of human trafficking and corruption during the last period of the Panchayat (Absolute Monarchy), was freed by the NC government and elected a Member of House of Representative representing the Nepali Congress. Commissioner Mallik commenting on the report said, "I risked my life to prepare the document. There are foundations to initiate actions, if the government has guts."

#### Impunity in NA

The Supreme Court finally gave verdict as the retired army personnel surrounded the Court premises and padlocked its doors for two hours disrupting the business. Army Welfare Fund (AWF) was created from 1975 through more than 50 percent deductions of the salary and benefits received by Armymen during their service in UN Peace Keeping Force. The letter submitted by the NA to State Management Committee of the House of Representatives states that there is 10.29 billion in the AWF, but the Army personnel claim that there has to be more than 50 billion. (*Samay Weekly*: December 8, 2006) The Ex-Army Welfare Council wanted to refund the money deducted. It filed a case five and half years ago to make the amount of AWF transparent. The case filed by AWF was postponed for 27 times during hearings because it was related not only to the NA but also to the King. The decisions to deposit and withdrawal of money in the AWF rested on the King before Popular Movement II. The Supreme Court on December 5,

2006 gave a directive to the Nepal Army Headquarters that the AWF was supposed to perform audit, which was not done for 32 years, and make transparent the AWF. By Mid-April 2006, a total of 52,353 NA personnel have participated in the UN PKF. The Supreme Court also had issued letters against NA and concerned authorities more than a dozen times to the Agreements between UN in 1973, 1977, and deposited in the AWF the same. The AWF was the funds in three ways: have been distributed to senior army personnel Association. Senior are engaged in large neither the government for Investigation of Abuse of Authority (CIAA) has investigated corruption in the NA. In the past, the NA believed to be second in power rank to the King, and neither was audited.

**The Salary and Benefits to NA personnel for UN Peace Keeping Force**

- In 1974 it was USD 500; and increased to USD 680 in 1977
- In 1980 it was USD 950 with an addition of USD 280 for paratroopers
- In 2000 it was USD 988 with and addition of USD 291 for paratroopers along with clothing allowance of USD 65 and arms allowance of USD 5
- In June 1, 2002, it was USD 1,008 and clothing allowance of USD 66
- In February 2003, it was USD 1,028 with an addition of USD 303 for paratroopers along with clothing allowance of USD 68 and daily allowances at 1.28, etc.

Source: *The Himalayan Times*, December 6, 2006

disclose and submit the Government and 2000, amount and audited report of suspected to misuse a large part might the Royal family, and the Army Wives' Officials in the Army sum of money, but nor the Commission

Although lower ranking soldiers received low quality food, the senior officers in the NA accumulated wealth worth millions. Similarly, ranking soldiers were during the armed officials were from the sites of the commissions they numerous cases of inhuman and treatment (blindfolded bound behind the but not enough, roll pipes, kicking by boots drenching in ice water, latrine, electric shock, arbitrary and by Security Forces, during the Armed been investigated. Similar are the situations of the incidences of genocide at Dorumba, Khara and so forth. (See Situation Update VIII for more information)

**Killing of an MP**

Hem Narayan Yadav, the elected member of House of Representative from Siraha district's constituency four on behalf of CPN (UML), was murdered mysteriously on February 2, 2004. According to Human Rights and Peace Society he was abducted likely to Maoists at 1 pm by plain-clothed persons with face masked by red hankies while on bike at East-West Highway. He was taken to the culvert number 27 close to Dhangarhi Bazar and they chased away the labors working at stone-crushing there. Then he was killed by shooting. The Security Forces gave statement that Maoists have killed him, but Maoists disclaimed it and alleged the Royal Nepal Army for the killing. The National Human Rights Commission also stated that no report from anywhere was received to justify that he was murdered by Maoists. After the Popular Movement II, a Committee to Investigate the Murder headed by NC Chief Whip Ananda Prasad Dhungana submitted a report after seven months that the then Colonel Babu Krishna Karki of Indradhoj Battalion at Choharwa had killed him and recommended the government to try him in civilian court for the extrajudicial killing.

while the lower dying at the fronts conflict, the senior daydreaming far military action with wrenched. The kidnapping, torture, degrading for 24 hours, arms back, stale food over by plastic and butts, drowning in pit etc.) along with extrajudicial killings mostly by NA, Conflict have not

**Impunity in Maoists**

People continue to visit the offices of CPN (Maoist) to seek justice even after the signing of Political Agreement and Comprehensive Peace Accord. Most are from the poor, marginalized, disadvantaged and vulnerable (PMDV) groups/communities within Nepal. On December 5, 2006, Bikas Rai, the Maoist in charge of the Janakpur-Sagarmatha region publicly stated, "We brought the people's government into action and it will function as a parallel regime because the country is not headed towards forming an Interim Constitution and Interim Government" (*The Kathmandu Post*, December 5, 2006). Thus, the Maoists view the revocation of the people's state power as compulsory. In reality, "justice", particularly the function in the rural areas. taxes, donations and levies businessmen. They continue government level. Abductions with them are still occurring leaders of the SPA and including journalists. In the quite successful in achieving

**Madi Incident**

The land mine placed by CPN (UML) blasted a bus carrying crowded passengers in which thirty-eight passengers including small children were killed and 70 injured in the blast in a bus at Madi Badarmude in Chitawan district on June 5, 2005. Top ranking Maoist leaders, including Prachanda, on October 21, 2006 accepted that it was their greatest mistake and assured the victims and their families to justice but nothing has happened till date.

Maoists' mechanisms of kangaroo courts, continue to They have not stopped extorting from teachers and to intervene at the local of persons who do not agree and they continue to harass the Human Rights Defenders past, People's Courts were social justice and were well

regarded because (i) the public courts and administration involve a lengthy and difficult process, (ii) public courts and administration offices are not conveniently located, (iii) the PMDV cannot afford fees for lawyers and courts, (iv) the public courts and administration are corrupt, whereas in contrast, (v) People's Courts are conveniently located, and (vi) they provide service free of cost (*Pathak*: 2006:106). As the Maoist movement and organization grew, it often failed to live up to its offer of free and fair justice and which led to criticism and disappointment. Prachanda's self-imposed deadline for disclosing the fates of the individuals who were abducted according to the list provided by the National Human Rights Commission has passed. People are waiting to be reassured that such incidences will not happen again.

**Impunity in Judiciary**

The case of Supreme Court Judge Parmananda Jha is exemplary of the prevalence of corruption in judiciary. He was found guilty of acquitting DB Gurung, a drug peddler, illegally and was demoted and transferred to Biratnagar

Appellate Court as its Chief Judge. The lawyers staged a campaign and boycotted his bench and finally an agreement was reached not to give him any judicial work. (*Kantipur Daily*: December 7, 2006) The questions stirring around this issue are whether that was only an event or a reflection of the structural incompetence and the punishment meted to the acquitted was adequate.

On the evening of November 30, 2006, Prabhat Kumar Gupta, a resident of Birgunj, attacked Supreme Court Judge Kedar Prasad Giri in his home. Following the incidence, the judges are more concerned with how to protect themselves than with rendering justice. The offender claimed that he was defeated with foul play in the court case on *Mohiyani* (tenant rights). There is neither any mechanism to monitor corruption in the judiciary nor a provision for their impeachment. People regard the Judiciary as out of control. In several instances, cases of corruption among the Judges have not been addressed. Distressingly, when such cases are considered, the investigations, hearings and verdicts are under the aegis of the judges themselves. Madhav Kumar Basnet observed, "A thief arrested red-handed will be released, if he can offer bail" (*Kantipur Daily*: November 26, 2006).

The accused win almost all the cases filed by the CIAA on charges of corruption reinforcing the validity of the Nepali proverb, '*Nepalko kanoon daibale janoon*' (only the God knows the laws of Nepal). The recent cases against Govinda Raj Joshi and Khum Bahdur Khadka are glaring examples (See Situation Update VIII for more information.)

### Impunity in Political Parties

The political corruption has been alarmingly high in the past 15 years. The State and society has been subject to control by power, politics and property. The political parties in power have used the state for personal gain as has the Parliament. Glaring examples can be found in the *Human Rights Year Book 1999*:

- One of the MPs claimed reimbursement of thousands of Rupees for taxis and prostitutes in Thailand
- One woman MP received NRs. 80,000 and another MP 38,000 for lime-ashes, the actual cost of which is not more than 100.
- One MP got NRs. 18,000 for three injections
- A male MP received payment for medicines required during pregnancy and childbirth
- A male MP submitted a bill of NRs. 24,000 for six check-ups by a doctor
- Some MPs got payments of NRs. 90,000 for mineral water
- Some MPs got payments of NRs. 75,000 as Tiffin expenses, etc.

During the last 14 years and 8 months (April 1990 – December 2004), the Nepali Congress governed Nepal for 11 years and 1.5 months (76 percent) during which Girija was PM 53 percent of the time. (See *Situation Update VIII*).

Responsibility for the culture of impunity lies in the hands of the Nepali Congress because they held the reigns of power for so long. competition within their view of the congressized and congressization of prompted the culture

Dr. Ram Sharan MPs who served as tenure. Yet, there is contributed to the he was employed at a minister holding Ministry and is an the Nepali Congress peace process. The released Hasta Nepalese intervened. Standing Committee Pokhrel both are CPN (UML) and are Congress expelled

<b>Red Passport Crime</b>
In April 1998, Nima Tshering of Manang was arrested in Australia with the passport of then Finance Minister Dr. Ram Sharan Mahat. Amir Gurung was arrested with a red passport of then Assistant Minister for Health Ram Chandra Adhikary, and former state minister Hasta Bahadur Malla while trying to send three women to London using red passports, was arrested in New Delhi.
Some of the other NC parliamentarians who misused the passports were: Ram Chandra Adhikary, Bala Bahadur KC, Mani Lama, Meen B. Khatri, Bipin Koirala, Paltan Gurung, Chinkaji Shrestha, Anis Ansari, Mahendra Dhoj G.C., Rajdev Goit, Dr. Dhruva Sharma, Ramjanam Chaudhary, Deepakjung Shah, Chakra Bahadur Shahi, Moti Prasad Pahari, Gopalji Jung Shah, Surendra Hamal Krishna Prasad Gautam, Sushil Man Sherchan, Surendra Prasad Chaudhary and Devendra Kandel.
Some of those from UML were: Kashinath Adhikary, Majhila Tharu Thanet, Dana Lal Chaudhary, Jhalanath Khanal, Ishwor Pokharel, Dev Shankar Poudel, Bhim Bahadur Rawal, Himanchal Bhattacharai, Ram Nath Dhakal, Birodh Khatiwada, Jagrit Prasad Bhetwal, Mitharam Sharma Bajagain, Lila Shrestha (Subba), Nil Bahadur Tilija. Keshab Lal Shrestha, Hemraj Rai, Jagat Bahadur Bogati, Dev Bahadur Poudel, Ram Lakhn Mahato and Hikmat Bahadur Shahi were from ML (splinter of the UML). Ravindra Nath Sharma, Khovari Raya, Dr. Prakash Chandra Lohani and Rajiv Parajuli were from the Rasriya Prajatantra Party.
<i>(The Nepal Digest: March 10, 1999)</i>

The unhealthy Nepali Congress and entire country as the attitude of the entire mechanism of impunity.

Mahat is one of the a Minister for a long no evidence that he government because the UN. Yet, he remains the portfolio of Finance influential member of actively involved in the Indian authorities Bahadur Malla after the ambassador Jhalanath Khanal, a Member, and Iswar influential leaders of the immune. The Nepali Adhikary and Malla

from the party for a period of one year. The passport issue was denounced in all quarters and there was great public pressure against impunity. But, no report was issued nor any action taken against these MPs. INTERPOL informed the government that more than 40 Nepali MPs had misused red passports whereas Regmi's report stated that 50 MPs were implicated. The government formed a three-member commission led by Sri Kant Regmi, special secretary of the then Ministry of Home for investigation but in vain. The MPs who are responsible for making laws are implicated in corrupt practices and now the Maoists are joining hands with them in the Interim Parliament.

### Land mines

During the Armed Conflict, the PLA in general and the Security Forces in particular planted land mines around their camps and strategic points. The Security Forces planted three layers of bombs to fortify sensitive points, totaling over 1,000 mines. In many instances, the mines exploded killing or wounding the planters themselves. The mines planted by the security forces around 37 barracks and telecommunication towers, airports, hydropower plants consist mostly

of improvised devices imported from abroad (*Jana Aastha*; Vernacular Weekly: December 6, 2006). Similarly, the Maoists mined around their strategic points and highways, which were manufactured locally.

Some of the individuals involved in manufacturing and planting the mines have died, been transferred, retired or resigned. As a result, demining has been difficult. Demining has been a great challenge in the post-conflict periods in Cambodia, Rwanda, and Sierra Leone as well. Mines and unexploded grenades, bombs and bullets have taken the lives or maimed numerous innocent people, most of them children and women.

### **Impunity in Economy**

With each passing day, the King grows weaker and the feudal forces surrounding him are transferring their wealth and property abroad. Among them, the majority belong to the high-ranking officials of the Nepal Army. The son-in-law of the late King Birendra, Gorakh Sumsher, the only witness to the palace massacre, has bought an estate in London. The nephews of the King have transferred their wealth to Singapore. Ex-General Tara Bahadur Thapa, the Security Secretary to the King, has bought an estate at Gurgaon, Haryana in India. Other senior officials have bought property and formed a colony at DLF Company, e.g., ex-Army Chief of Staff Dharma Pal Singh Thapa, ex-IGPs Moti Lal Bohara and Pradip Sumsher Rana. Ex Army Chief Prajwal Sumsher Rana has not only invested his property in India but also in Belgium. Basanta Mishra, the closest friend of Gyanendra, has invested a huge sum in Malaysia. The families and relatives of the king have sold off their property at low prices and transferred the proceeds abroad. (*Jana Aastha*: December 6, 2006) The smugglers and businessmen close the King have followed suit. All are preparing to escape if the Maoists gain a majority in the coming CA elections.

The annual report of the Auditor General submitted to the PM states that government spending in arrears stands at NRs. 29 billion, up by 3.51 percent compared to last year. The list toppers are the Ministries of Finance, Physical Planning and Construction, Defense, Education and Sports, and Local Development with 65 percent of the total amount to be reimbursed. The loss of 21 public corporations amounts to 45 billion, which is 400 times the asset. The report shows that the negligence, corruption and impunity have increased the advance, defaulting, deferring and cheating by government employees.

On the worldwide poll conducted by Transparency International for Global Corruption Barometer 2006, 69 percent of the respondents stated that their governments were not effective in fighting corruption, or they make no effort to fight corruption, or they actually encourage corruption. It also revealed that people are forced to pay bribes as “essentials” for acquiring basic services. The most startling derivation was that political parties continue to be seen as most corrupt.

### **Conclusion**

The widespread extrajudicial killings by the security forces and the Maoist army are one of the gross violations of human rights engulfing Nepal. The current climate of impunity, the militarization and erosion of civilian institutions, the breakdown of the rule of law and the ensuing threat to the Nepali human rights community all contribute to human rights violations. In order to halt these abuses, all parties – the government, the military, the palace, the CPN (Maoist) and the international community – must act to end impunity and actively uphold human rights. This requires building strong and effective human rights monitoring systems that are respected by all parties, investigating abuses, and ensuring that those responsible for violations are prosecuted in the civilian courts. Such action will send an important signal that abuses will no longer be tolerated and help to restore the faith of the Nepali people in the rule of law.

Since April, 2006 (post-conflict period) the appointments made by the government have continued to ignore the call to restructure the State on the basis of inclusion. According to an NGO, NAMUNA Nepal, Brahmins represent 62 percent of those in civil positions, Chhetri 17 %, Newars 15 %, Janajatis 8 %, Madhesi 5 % and Dalit, a mere 1 % of appointed positions. Further, only 8 percent of women are represented although they constitute over half of the population. Such injustice continues unhindered because of the attitudes endorsed by the culture of impunity. As a result of this culture of impunity, Internally Displaced Persons (IDPs) dare not to return to their birthplaces or homes.

On July 25, 2006, following the People's Movement II, Nepal's reinstated parliament proclaimed an end to impunity and promised to punish human rights violations and their perpetrators by ratifying the Rome Statute of the International Criminal Court. The ICC defines war crimes as violation of Geneva Conventions, including willful killing or wounding a combatant who has put down his/her weapon having no more means of defense (Article 8.2). It has authority to penalize the Heads of States or governments including ministers or parliamentarians or government officials (civil) and commanders (military). Professor Asif Nazrul stated, “ICC is needed to achieve justice for all, to end impunity, to help end conflict, to remedy the deficiencies of ad-hoc tribunals and to deter future war criminals.” (*Summary of ICC Mechanism: 2006:7*)

The MPs decided to initiate the process of ratification but it has yet to be done as the leaders fear the ramifications for themselves. They do not enjoy peace of mind like Buddha, the apostle of peace, who said, “Do not overrate what you have received, nor envy others. Those who overrate and/or envy others do not obtain peace of mind.” Nevertheless, the Nepali people committed to not letting them get away with their crimes.

### **Recommendations**

The present State is a unique combination of three bodies, the executive, legislative and judiciary, with the characteristics of three different animals: the face of a lion, the body of a goat and the tail of a serpent. In order to achieve a new Nepal the culture of impunity must end to ensure social justice, and to pass a new constitution, elect a powerful parliament to impeach high officials, even judges. A reconciliation commission must be established soon to address those affected during the Armed Conflict and Popular Movement II, to strengthen legal and institutional bodies, including the CIAA, to appointment commissioners to the National Human Rights Commission, to ratify the ICC and other human rights treaties, to ensure compliance with national and international human rights commitments, to eradicate secret detentions, to provide access to information about prisoners, to make all past reports public and to strictly implement the actions recommended. To accomplish this end a new mechanism is needed to deal with offences as the existing lawmakers and ministers have been involved in previous wrongdoing. A new procedure must be created to hold every public official accountable for his/her actions.

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*CS Center is an academic, policy oriented and research based non-government, non-partisan and non-profit autonomous institution registered with the Government of Nepal. Its purpose is to promote peace, respect human rights, enhance democratic process, and protect the poor, marginalized, disadvantaged and vulnerable (PMDV) people and endorse social justice and dignity through education, training, action research, action advocacy, capacity building and networking as a Think Tank, Center for Excellence. It has networks with 2,000 academic and professional institutions, including TRANSCEND, Woodrow Wilson Center, European Peace University, etc. in 76 countries. It is the TRANSCEND chapter in Nepal. It's International Advisors are: Professor Dr. Johan Galtung, TRANSCEND; Professor Dr. Virginia E. O'Leary, USA; Professor Dr. David Seddon, UK; Professor Dr. Dietrich Fischer, European Peace University, Austria; Professor Dr. Brigitt Steinmann, France; Dr. Anthony Callow, New Zealand; Associate Professor Dr. Karen Valentin, Denmark; Associate Professor Richard Gendron, Canada; and Associate Professor Dr. Renato Libanora, Italy*