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Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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World Report 2009 Introduction By Kenneth Roth

National elections in April 2008 with the participation of former Maoist rebels and the subsequent seating of a Constituent Assembly marked a new era in Nepal after a decade of conflict that claimed over 13,000 lives. On May 28, the assembly abolished the monarchy and declared the country a republic. The deposed king moved out of the Kathmandu royal palace in June.

The Communist Party of Nepal (Maoist) (CPN-M) won more than a third of the assembly's 601 seats, making it the largest party. After months of political deadlock, the CPN-M in August formed a coalition government and Maoist leader Pushpa Kamal Dahal, also known as Prachanda, became prime minister. Women make up a third of the new assembly, a historic jump in women's representation in government.

Marginalized communities, particularly Dalits, ethnic minorities, and women, continue to face widespread discrimination. There is hope that proposed constitutional protections and new resolve from the Maoist-led government-the rebellion was fueled in part by a desire to remove discrimination against such groups-will lead to new legal protections and a significant reduction in abuses.

The new government has shown little interest in ending impunity for the widespread human rights violations committed before, during, and after the armed conflict.

During the 1996-2006 armed conflict both security forces and the Maoist rebels were responsible for human rights abuses. Security forces committed hundreds of extrajudicial killings, widespread torture, and, in some years, the largest number of "disappearances" in the world. Maoist forces abducted, tortured, and killed civilians suspected of being "informers" or "enemies of the revolution," extorted "donations" from villagers, recruited children as soldiers, and abducted students for political indoctrination. Maoists often executed their victims in public, forcing the victim's relatives and other villagers to observe the killing.

Even after they signed a peace agreement in November 2006, both the army and Maoists failed to cooperate with police investigations. At this writing, not a single perpetrator had been brought to justice before a civilian court. The Nepal Army continues to resist accountability. The police, subservient to the army, resist filing cases of human rights violations.

In one success, Kavre District police on August 11, 2008, following a Supreme Court order, finally registered a complaint for the murder of royalist party member Arjun Bahadur Lama in December 2005. But despite court orders and interventions from local and international organizations, no arrest followed.

Morang District police still have not filed a criminal complaint in the case of civilian Madhuram Gautam, allegedly killed by army personnel in December 2004, despite court orders and repeated appeals by local and international organizations.

The lack of political will to address such crimes is also reflected in proposals to grant an amnesty for serious human rights abuses committed during the conflict. Draft laws on both a truth and reconciliation commission and a disappearances commission contain such an amnesty.

In September 2008 the ruling parties affirmed their commitment to establish commissions on national peace and rehabilitation, truth and reconciliation, "disappearances," and land reform, but had not made significant progress on establishing any of them at this writing.

Impunity for killings continues. Paramilitary police deployed for the security of Khum Bahadur Khadka, a former minister and Nepali Congress candidate, killed seven Maoists on April 7, 2008. Accounts conflict as to who initiated fire, but reports suggest that police used excessive force. The families of the victims have filed complaints, but police had taken no action at this writing.

There were widespread protests after the May 8, 2008, torture and killing of businessman Ram Hari Shrestha. Members of the People's Liberation Army, the armed wing of the CPN-M, are believed responsible.

Under the November 2006 Comprehensive Peace Agreement, Maoist cadres were registered in cantonment sites under the protection of the United Nations Mission in Nepal (UNMIN), which also took custody of their weapons. According to UNMIN, after the verification of registered Maoist combatants was completed in December 2007, 15,756 men and 3,846 women remain in the cantonments. CPN-M wants to ensure that the former fighters are integrated into government security forces or provided alternate livelihoods.

In October 2008 the government said it would set up a special committee to ensure proper rehabilitation of combatants, but at this writing, there were still disagreements on the extent to which Maoist combatants should be integrated into the Nepal army.

During the conflict, an estimated 6,000 to 9,000 Maoist cadres were believed to have been children. Not all were cantoned after the conflict, however, making a precise count impossible. UNMIN has reported that over 3000 child recruits remain in the cantonment sites.

The government of Nepal now including the Maoists has said it will not use or enlist children age 18 or below in any military force and that all child soldiers will be properly rehabilitated. To date, these policies are not being properly implemented. Without proper rehabilitation and reintegration, many child combatants have found their way into violent groups such as the Young Communist League (YCL), the youth wing of the CPN-M.

The YCL has been implicated in abductions, beatings, and killings since it was re-established in December 2006. Violent attacks attributed to the YCL against perceived political opponents intensified before and after the April 10, 2008, elections. The YCL is comprised mainly of former People's Liberation Army commanders; its members are age 16-40.

The YCL has assumed broad powers to patrol communities across the country and "arrest" and punish offenders, saying police are failing to perform this function. Anointing itself the moral guardian and arbiter of disputes, the YCL has attacked political opponents, journalists, alleged drug users, and individuals suspected of extramarital relations. On August 6, ahead of his election as prime minister, Maoist chairman Prachandra ordered all party members including the YCL to halt violent activities.

Despite Nepal having ratified the Convention against Torture and other Cruel, Inhumane or Degrading Punishment, torture is still not a criminal offense in Nepal. Between January 1 and June 30, 2008, Advocacy Forum, a Nepal-based NGO, interviewed 1,423 detainees in their regular visits to 35 detention centers across 16 districts. Of this number, 396-124 of them children-claimed they had been tortured or ill-treated by police. The cases show a pattern of police abuse of juvenile suspects, with long periods of illegal detention, lack of access to adequate medical and legal assistance, and inhumane treatment including frequent and multiple beatings.

Ethnic tensions continued in Nepal in 2008 over the rights of Madheshi communities in the southern Terai region. In February a strike by Madheshi groups turned violent. While the protesters threw stones and petrol bombs, targeting police posts and destroying government property, the police used lethal force to control the protest. At least six persons were killed and hundreds, including some police officers, were injured.

After March 10, 2008, Tibetans living in Katmandu conducted a series of protests against the Chinese government's harsh crackdown in Tibet. Nepali authorities, in their efforts to appease China, opposed such demonstrations and engaged in unnecessary and excessive use of force, arbitrary arrest, sexual assault of women during arrest, arbitrary and preventive detention, beatings in detention, unlawful threats to deport Tibetans to China, and unnecessary restrictions on freedom of movement in the Katmandu Valley.

The government has in effect sealed the border to prevent the arrival of Tibetan refugees and has allowed Chinese security personnel to operate on the Nepali side of the border.

In December 2007 Nepal's Supreme Court directed the government to repeal laws criminalizing homosexual conduct and laws otherwise discriminating against sexual minorities. The court also directed the government to official recognize a "third gender" in addition to "male" and "female," and established a committee to explore same-sex marriage for Nepal. No other country in South Asia has taken these steps.

Human rights defenders, especially women defenders, continue to face attacks. The Youth Communist League has been involved in several violent attacks against defenders, journalists, and political opponents but such cases are usually not investigated by police.

Nepal relies on the aid and support of foreign governments including India, China, the United States, the United Kingdom, the European Union, and Japan. These actors have at times played an important role in strengthening human rights protection and demanding an end to impunity and security sector reform.

The US has still not removed the CPN-M from its terrorist exclusion list.

Nepali Prime Minister Dahal visited India in September and November 2008, and India assured him of economic assistance and help drafting a new constitution. Dahal also visited China to build economic and strategic ties.

On July 23, the Security Council extended the UNMIN monitoring mission until January 23, 2009. Despite budget reductions, the Office of the High Commissioner for Human Rights continues to play a significant role in Nepal investigating human rights violations, including "disappearances," and seeking accountability for abuses committed during the conflict.

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