

Nepal

Human rights abuses escalate under the state of emergency

More than two months after King Gyanendra's seizure of power and imposition of a state of emergency, the human rights situation in Nepal continues to deteriorate while the conflict escalates. Tight restrictions on the activities of Nepali civil society have severely limited reporting on human rights abuses taking place in the country and especially in rural areas. Despite this, information is being passed on by those human rights activists and journalists who are finding ways to operate and the picture that is emerging is deeply troubling.

An Amnesty International delegation visited Nepal immediately after the King's takeover (10-16 February) and found a situation of heightened militarization and a looming human rights crisis. The findings from this mission are documented in the report *Nepal: A long ignored human rights crisis is now on the brink of catastrophe (AI Index ASA 31/022/2005)*. This report provides a further update on the growing catalogue of human rights abuses over the following months.

State of Emergency

In his statement to the United Nations Commission on Human Rights (UNCHR) on 15 March, Nepal's Foreign Minister, Ramesh Nath Pandey, stressed that restrictions under the state of emergency are being "continually relaxed", a similar statement to that made by the King during his audience with Amnesty International's Secretary General during their meeting in February. However, the government's actions over the last two months directly contradict this claim, as many fundamental rights remain suspended; mass arrests continue; media censorship tightens; and the constitution and rule of law is further undermined.

Prisoners of Conscience

The last two months have been characterised by widespread arrests of political activists, as well as human rights defenders, trade unionists and journalists, with the apparent aim of preventing protest against the King's takeover. Local human rights organisations estimate that more than 3,000 people have been arrested since 1 February, many of whom have been held in preventive detention under the Public Security Act (PSA).¹

Despite the release of a few high profile political leaders, including ex-prime minister Sher Bahadur Deuba on 11 March, the rate of arrest increased dramatically in March when the political parties began a programme of demonstrations calling for the restoration of democracy and human rights. On 14 March alone more than 700 people were arrested during

¹ The 1989 Public Security Act allows preventive detention for up to 90 days on the orders of a local authority, in order "to maintain sovereignty, integrity or public tranquillity and order".

demonstrations across the country. According to United Nations figures, at the end of March 943 political prisoners remained in detention across the country.

On 1 April - in a gesture apparently aimed at neutralising criticism of Nepal at the UNCHR - over 200 prisoners of conscience were released, including Nepali Congress President Girija Prasad Koirala. However, it is estimated that at least 700 remain in custody and these figures are in addition to the more than 300 prisoners estimated to be held illegally in army barracks. Despite the recent releases, those who protest continue to be arrested. For example, it is reported that on 12 April, 30 political activists in Bhaktapur were arrested and placed in preventive detention for three months for holding a pro-democracy demonstration.

There have been allegations that many of the political activists detained during the state of emergency have been tortured. Amnesty International has received detailed reports of torture of political party members detained in army barracks in Jhapa district. This torture includes being kicked and beaten with sticks, doused with cold water, forced to spend a long time in stress positions and being denied food and water.

Media Censorship

Over the last two months the media - which has been hit particularly hard by the state of emergency - has experienced further increases in government censorship and in the harassment of editors and journalists.

The initial imposition of media censorship at the beginning of February - which included army "censors" based in media offices and a ban on news on FM radio stations - has been followed by increasingly detailed restrictions issued at local level. Local administrations in a number of districts have issued lists of topics that local media are prohibited from covering. These include, for example, "anything that would malign nationalism and the prestige / respect of institution of monarchy"² and news about the effect of Maoist *bandhs*³. In addition to these local orders, on 1 March the Ministry of Information and Communication (MOIC) issued a national directive prohibiting the media from reporting any security matters without obtaining prior information from the security forces and threatening prosecution for any media publishing material that supports "subversive activities".

In a disturbing new development, on 10 March the MOIC announced that all independent broadcasters must air pre-prepared "public service announcements". These announcements call on Maoist cadres to surrender and warn the public not to attend any Maoist meetings. The MOIC is also reportedly putting in place measures to clampdown on electronic media by bringing it under the regulatory authority of the Press Council.

Editors and journalists have faced constant harassment by both the security forces and the civilian authorities over the last two months. International press freedom organisations

² One of the restrictions contained in a 21-point directive issued to media by the District Administration Office in Parsa.

³ One of the restrictions contained in a 12-point directive issued to media by the District Administration Office in Nepalganj. *Bandhs* are enforced strikes in which traffic is banned from the road and shops and businesses are prevented from opening.

estimate that more than 40 journalists have been detained since 1 February and that at the beginning of April ten of these remained in custody.

One such case is that of Sharad Adhikari, a correspondent for Channel Nepal, who was reportedly arrested on 14 March in Dang district while covering a story about political demonstrations and remains in detention under the PSA in Dang district jail. Another is that of Robin Poudel, Sub-editor of Tanahun Aawaj weekly, who was reportedly arrested on 8 April in Tanahu district while reporting on pro-democracy protests.

While it is journalists in the districts who face the greatest risk, even Kathmandu based publishers and editors have been arrested or summoned for questioning. For example on 7 March Kanak Mani Dixit, editor and publisher of *Himal Khabarpatrika* magazine, was arrested and taken and questioned regarding remarks he had made about the political crisis in Nepal during a visit to India. On 17 March Narayan Wagle, editor of Kantipur Post, was summoned by the Kathmandu district police and questioned over a story about the arrest of protestors. The police reportedly told him that the story was against the spirit of the Royal Proclamation of 1 February and damaging for the morale of Nepal police.

The effect of the media censorship and harassment of editors and journalists has been to create fear among the media, which has resulted in self-censorship. The lack of access to free information has also increased the general sense of insecurity among the population and prevented information about Nepal from reaching the outside world. However, in recent weeks the press have become increasingly bold in reporting on security force actions, Maoist activities, political protests and international criticism of the Nepal government. It appears that the Nepali media will not accept being silenced.

Collapse of Legal Safeguards.

Legal safeguards against human rights abuses – which were already very weak – have almost entirely collapsed since 1 February.

Breaking with the precedent set during the 2001-2002 state of emergency, throughout February and March the Supreme Court refused to hear writs related to non-suspended articles of the Constitution (as provided for in Article 88 of the Constitution, which itself has not been suspended)⁴. This meant that while in theory non-derogable rights⁵, such as the right to equality, remained in place, in reality there was no legal remedy available to enforce these rights. However, under pressure from the Nepal Bar Association, on 31 March a special judicial bench of the Supreme Court finally ruled that the court could entertain writ petitions related to non-suspended rights.

The result of this interpretation of the legal implications of the state of emergency was that for two months the only legal remedy available for victims of human rights abuses was that of

⁴ It was initially interpreted that legal remedy under Article 88 of the Constitution, which allows the Supreme Court to enforce the fundamental rights conferred by the Constitution, could only be delivered by invoking Article 23 of the Constitution, the Right to Constitutional Remedy, which was suspended under the state of emergency.

⁵ These are rights that cannot be suspended even during a state of emergency.

habeas corpus. However, *habeas corpus* has been severely undermined in recent years, as security forces have consistently obstructed and misled the courts and re-arrested those released on court orders. This pattern of re-arrest appears to have worsened since the state of emergency, with such incidences being frequently reported. Moreover, press censorship is being used to hide such illegal actions by security forces, as seen in Surkhet, where on the 10 March the District Administration Office reportedly prevented a local newspaper from printing news about the re-arrest of a person who had been freed following a *habeas corpus* writ.

In addition to the security forces long standing disregard for the courts, over the last two months worrying evidence has emerged of new practices of illegal detention. Human rights lawyers have reported that some detainees arrested under the PSA, which allows for preventive detention for 90 days, are having their status illegally converted to detention under the 2004 Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), which allows for preventive detention for up to one year.

It appears that Nepal's already weak judiciary is coming under intense political pressure, posing a serious threat to its independence. New "Justice Sector Coordination Committees" that bring judges together with police, lawyers and civil society have been established – apparently to improve the administration of justice. However, in such a heavily politicised and militarised environment there is real concern that such committees will provide an opportunity for the security forces and government authorities to exert pressure on judges.

An indication of the level of threat to the judiciary's independence can be found in the speech made by Chief Justice Hari Prasad Sharma on 20 March at an international conference⁶. In this speech the Chief Justice closely echoed the King's 1 February address, attacking the "petty" political parties and arguing that the King's seizure of power was in the "best interests and welfare of the people". Perhaps most tellingly, he stated that the judiciary's response to the crisis should be one "of respectful deference to executive wisdom". Such apparent partiality from the Chief Justice leaves little hope that the judiciary will be proactive in defending human rights in the face of the state of emergency.

It is clear that the continued suspension of basic rights, the confusion over legal remedies, consistent undermining of *habeas corpus*, and failure of the judiciary has left the Nepali people with very little legal protection and increased the impunity with which security forces can operate.

Escalating Conflict

Far from restoring "stability and security" - as Foreign Minister Pandey suggested in his speech to the UNCHR – under the state of emergency levels of violence appear to have escalated, with grave human rights abuses committed by both sides to the conflict.

⁶ This speech was made at the 11th Conference of the Chief Justices of Asia and the Pacific, held in Australia.

Increased fighting

Reports of increased military activity and substantial casualties during March and April suggest that the “intensified military offensive”, described by the RNA Chief of Army Staff during his meeting with Amnesty International in February, may be underway. Local human rights NGOs estimate that in February alone 227 people were killed in relation to the conflict, almost twice the pre-state of emergency monthly average. However, restrictions on freedom of information mean there is little independent information available on how these people died.

For example, it is reported that on 7 April Maoists attacked a security base in Khara, Rukum district. The RNA reported that more than 160 Maoists and three security force personnel were killed in the fighting. However, given that in the past many captured Maoists have been extra-judicially executed and local people killed during such clashes, and that journalists who visited the battle site with the RNA reported local homes destroyed by bombs, there is serious concern that some of these casualties may have been civilians or *hors de combat* Maoist fighters. Amnesty International is concerned that, as independent reporting on such incidents is no longer permitted, it is now easier for both parties to commit human rights abuses during such clashes with impunity.

Bizarrely, the RNA has also reported mass surrenders of Maoist cadres. For example, RNA statements claim that over 200 Maoists surrendered in Gulmi district during the first two weeks of April, by presenting themselves at security force posts. Such action by the Maoists is both unprecedented and inexplicable and these reports inevitably raise concerns about the actual nature of these “surrenders”.

Vigilante Violence

In a disturbing new development, the last few months have seen the emergence of vigilante mob violence – apparently encouraged by the state - which has spread terror among local communities. On 17 February in Ganeshpur village, Kapilvastu district, two local men were reportedly abducted by Maoists and later freed by a gang of local men who killed their Maoist captors. Although confusion remains about the precise order events, it is clear that this incident sparked massive mob violence, with thousands of local men attacking hundreds of homes in villages across Kapilvastu. While the stated aim of the mobs was to wipe out local Maoists and Maoist supporters, it is reported that most of the communities attacked were landless labourers. Local human rights groups report that in that one week at least 31 people were killed by the vigilante mobs, more than 600 houses burnt down, and at least three local women raped, including a 12-year-old girl. 11 people were also reportedly killed by Maoists in retaliation for the mob violence

What is most disturbing about these events is the apparent support provided by the security forces and authorities to the vigilantes. Some unconfirmed eyewitness reports suggest that local people were forced to participate in the violence by the security forces, while others claim that some members of the mob were security forces personnel in plain clothes. However, what is indisputable is that the security forces did not act to stop the violence. Moreover, on 21 February the Home Minister, Education Minister and Labour Minister

travelled to Ganeshpur, where they held a mass meeting with local people to congratulate them on resisting the Maoists. The Minister for Information and Communication was reported in the press as stating that those communities who take “courageous retaliatory measures” against Maoists will receive development assistance⁷.

In another apparent incident of anti-Maoist vigilantism, local human rights organisations reported that on 30 March members of a self-styled “Maoist retaliation committee” tortured and later killed Ramkishore Chamar of Somani VDC, Nawalparasi district. Ramkishore allegedly had his hand cut off and was forced to eat part of it, before being shot and killed a few days later.

The encouragement of local retaliation against Maoists and their supporters may be part of a wider strategy by the authorities to develop “village defence forces” - armed groups of local people who would help fight the Maoists. The establishment of such forces was initially suggested by the government in 2003 but never implemented. In mid-March Amnesty International received reports that a number of local residents were summoned to a RNA barrack near Kathmandu and ordered by army personnel to form a local village defence force.

Extra-judicial Killings and “Disappearances”

In addition to this mob violence encouraged by the state, there have also been reports of extrajudicial killings and “disappearances” at the hands of security forces.

Despite Foreign Minister Pandey’s statement to the UNCHR that “the right to life and security has to be the first priority over other rights”, security forces continue to kill civilians, including children. For example, on 22 March, three students, Narayan Bahadur Kanauji Magar (aged 17), Tek Bahadur Gaha (aged 15) and Dal Bahadur Darlami (aged 15) were shot and killed by plain clothes security forces personnel near Tansen, Palpa district, while they were collecting money for a religious festival. Following protests from the family and local community the RNA announced an investigation into the killings.

“Disappearances”, already a chronic problem in Nepal, have continued under the state of emergency. For example, Punya Lal Dahal was arrested by RNA personnel on 6 April from his home in Kathmandu. His family were told he would be released following an investigation. However, since the arrest Punya has “disappeared” and the family have received no information his whereabouts.

Maoist Abuses

Since the declaration of the state of emergency Maoist *bandhs* have kept much of Nepal’s countryside paralysed, causing severe poverty and hardship. The most recent nationwide *bandh* ran from 2 - 12 April and brought rural Nepal to a standstill. Local people continue to be threatened by Maoists to comply with their demands, as well as by security forces to resist them. For example, on 1 April the RNA Kathmandu valley commander, Dilip Karki, warned that stern action would be taken against businessmen who give donations to the Maoists in response to extortion demands.

⁷ Quoted in Kantipur Online, March 18 2005

Over the last two months the Maoists have continued to abduct and kill civilians. For example, on 19 March Maoists abducted 7 Nepal Electricity Authority staff members in Ilam district, although they were later released. On February 24 Maoists reportedly shot and killed Chandra Prakash Rathaur, member of the World Hindu Youth Federation, at his residence in Birendranagar, Surkhet. Likewise on 12 April Balanand Kafle, Acting Chief District Officer of Bardiya district was shot dead, reportedly by Maoists. It is reported that on 15 April Maoists attacked Bargadwa village in Samani VDC, Nawalparasi district, burning homes and then rounding up and executing 10 civilians, including a 14 year old boy.

The Maoists have bombed civilian targets, including schools. It is reported that on 3 April a student was killed and two other civilians injured when Maoists exploded a bomb at a market in Pokhara, apparently as punishment of shopkeepers who had opened their shops despite the *bandh*. On 17 April Maoists reportedly exploded a large bomb in Jaybageswori Higher Secondary School, Nepalganj, Banke district, destroying a large part of the building. It is also reported that on 17 April Maoists threw a bomb into Bal Kalyan Primary School, Khara, Rukum district, injuring three students.

Reports have also emerged of Maoists forcing local people and prisoners to work on construction projects, such as new roads, in the areas in the mid-western region under their control. On April 15 it was reported that at least 20 villagers of Bhitrikot, Pyuthan district who were taken by the Maoists for forced labour had been missing for three weeks.

An unfortunate result of the restrictions placed on the activities of human rights defenders and journalists is that human rights abuses by Maoists remain largely uninvestigated and unreported. This only increases the impunity with which Maoist cadres can terrorise local civilian populations.

Human Rights Defenders

Nepal's once vibrant human rights community has been almost entirely paralysed by the state of emergency. It is reported that at least 45 human rights activists have been arrested since the state of emergency was declared. For example, leading human rights activist, Krishna Pahadi was arrested on 9 February for planning a demonstration and remains in custody in Kathmandu under the PSA. Many other human rights defenders have faced threats and harassment or have left the country fearing for their safety. In this atmosphere of fear many human rights organisations have effectively stopped their work, while others who have attempted to investigate and report on abuses face continued obstruction.

In an apparent effort to reduce human rights monitoring in the districts, a number of human rights defenders have been prevented from leaving Kathmandu. Their names are reportedly on a list of those whose travel is restricted, which has been compiled by security forces. For example, on 26 February Subodh Pyakurel, Chairperson of INSEC, Nepal's largest human rights NGO, was prevented from travelling to Nepalganj, where he was due to lead a human rights training for security force personnel. This was despite being told by officials in the RNA and Ministry of Home Affairs that he would be able to travel.

In early April, as the government faced increasing pressure at the UNCHR in Geneva, it was announced that there would be no more restrictions on travel and that human rights defenders would be allowed to meet detainees. However, on 10 April senior academic Lok Raj Baral was turned back from the airport as he attempted to travel to the US to participate in a conference. On the same day Subodh Pyakurel was prevented from meeting CPN (UML) leader Madhav Kumar Nepal, who remains under house arrest. These incidents demonstrate the clear disjuncture between the promises of the government and the continuing restrictions facing human rights activists.

As well as facing threats from security forces, human rights defenders at the local level are also apparently experiencing harassment from civil authorities attempting to stifle all criticism. For example, On 1 April Bhupani Panta, a senior advisor to the Pokhara branch of human rights NGO HURON, was reportedly summoned by the Acting Chief District Officer of Kaski district and accused of speaking in public in a way that would “negatively impact the morale of the civil servants”. He was interrogated for six hours and told he must report again to the District Administration Office.

In a worrying development, in March the government warned that human rights defenders who speak against the government at the UNCHR would face sanction on return. Furthermore, high ranking police and RNA officials were sent to the UNCHR, apparently in part to monitor the activities of Nepali human rights defenders who attended the event.

National Human Rights Commission (NHRC)

The NHRC, which for a long time has faced obstruction, has been unable to carry out many of its core functions since 1 February. In violation of its mandate, NHRC staff and commissioners have repeatedly been prevented from visiting those detained since the state of emergency, including senior political leaders under house arrest. However, in recent weeks the NHRC has been allowed greater access to detainees, apparently in response to growing pressure on the government at the UNCHR in Geneva.

Since the state of emergency some NHRC commissioners have also been prevented from travelling outside Kathmandu to carry out their duties. On 7 February NHRC Commissioner Kapil Shrestha was prevented from travelling to Biratnagar for the opening of a NHRC regional office. Likewise, on 4 March NHRC Commissioner Sushil Pyakurel was turned back from Kathmandu airport when he attempted to lead an NHRC mission to investigate the mob violence in Kapilvastu.

The NHRC appears to be coming under intense pressure to publicly support the actions of the government, particularly as the government has faced growing pressure at the UNCHR. This can be seen in the fact that the NHRC has recently put out a number of statements downplaying the obstruction that it faces. Moreover, while speaking at a meeting of the Asia Pacific Forum of National Human Rights Institutions (APF) in Geneva on 12 April, NHRC Chair, Nayan Bahadur Khatri, reportedly stated that the King had been compelled to impose the state of emergency because of the ineffectiveness of the political parties and that restrictions on political activities were being relaxed. He also reportedly claimed that since 1 February the incidence of human rights violations had decreased and argued that the APF should not issue a statement on the situation. The loss of independence and credibility of the NHRC is now a very real concern and one to which the international community must be alert.

International Action

While the human rights situation in Nepal has worsened over the last months, the UNCHR taking place in Geneva during March and April has provided a welcome opportunity to address this deteriorating situation.

Under pressure at the UNCHR, the Nepal government signed a Memorandum of Understanding⁸ with OHCHR providing for deployment of an international human rights presence to Nepal. This international mission will monitor and report on abuses by both sides to the conflict and will establish offices across the country. Such a presence is urgently required and must now be deployed rapidly and in full. The security forces and the Maoists must cooperate in every way with this new presence, as they have both promised to do.

It appears likely that a Resolution on the situation in Nepal will also be passed at the UNCHR highlighting the Commission's concerns about the grave human rights situation in the country.

Although the achievements of the UNCHR in addressing the human rights situation in Nepal are very welcome, it is vital that the international community does not become complacent, but stays alert to the very grave human rights situation in Nepal. The international community must act in coordination to ensure that every pressure is placed on the government of Nepal to restore full rights and freedoms to the Nepali people and on both parties to respect human rights and end impunity for abuses.

⁸ The Memorandum of Understanding was signed by the High Commissioner for Human Rights and Nepal's Foreign Minister on 11 April 2005 in Geneva.