

# Accountability Watch Committee (AWC) जवाफदेहिता निगरानी समिति

23 September 2011

## PRESS STATEMENT

### Mass Case Withdrawal: Blatant Violation of Rights and Remedies

Accountability Watch Committee (AWC) is deeply troubled by the recent government decision to withdraw all cases filed against Maoist cadres from the time of the decade-long armed conflict. We are concerned that this interference in the due process of justice to let criminals escape accountability poses a serious challenge to the independence of the judicial system and the rule of law. Flying in the face of the demand for justice for the widespread conflict-era excesses, we condemn this attempt to further institutionalize the rapidly expanding state of impunity in Nepal.

The urgency today is to investigate all cases of human rights abuse by both the Maoists and the state forces during the armed conflict. AWC reiterates its stance that the government should firmly stand in favor of the aspirations for justice and accountability of the people and stresses that in a democratic state there is no space for impunity, where serious breaches of human rights are allowed to go scot-free time and again. We strongly condemn any action promoting impunity which fuels instability and insecurity and thus deplore the Attorney General's (AG's) intention to withdraw criminal cases in this light. The AG in his constitutional role as the chief legal advisor to the government should oppose the government's decision and refuse to implement it. We view the announcement of the AG to withdraw all cases against Maoists as one more step toward impunity and blatant disregard of the rights of victims who are ever waiting for justice.

It is important to recall that Nepal is a party to the International Covenant on Civil and Political Rights which mandates each State to ensure that victims of human rights violations have a right to effective remedy (article 2-3). Withdrawing cases of rape, torture, murder and disappearance would undoubtedly constitute a grave breach of this international obligation, as well as of the commitments Nepal has made during the recent Universal Periodic Review. There, the government stated it was "fully committed to establishing Constitutional supremacy, ensuring the rule of law, good governance and human rights, as well as providing a positive conclusion to the peace process by eliminating insecurity and addressing impunity."

The AG's explanation for the decision is that all cases from the conflict were inherently "politically motivated" and that the cases related to conflict time are against the spirit of the Comprehensive Peace Agreement (CPA) and they should be withdrawn. This position disregards the commitments in the CPA made both parties not to encourage impunity and to ensure the rights of victims (Article 7.1.3).

Concerns for justice, accountability and the rights to remedy for the victims were at the heart of the CPA and were considered part of the bedrock of the democratic system fostering the peace process. Withdrawing criminal cases amount to granting amnesty for conflict crimes including for gross human rights violations. Such move deprives the people of their ownership of the peace process by encroaching on their legitimate aspirations for redress and justice.

The practice of withdrawing cases is not new. It started in 2008 under the previous government

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led by the UCPN-M and has continued despite a Supreme Court interim order in 2008 directing the suspension of further withdrawals. The latest plan for mass withdrawal will have a disastrous effect to safeguarding human rights and justice, badly erodes public confidence with the government and hampers the due course of justice. If this mass withdrawal takes place, it will strike a real blow at the rule of law and open the floodgates for more withdrawals and denials of justice to the victims resulting in gross lawlessness. Such practice will further encourage political interference in the rule of law, demoralize police officials, prosecutors and judges working on such cases, contribute to public insecurity by allowing alleged criminals to escape prosecution, and further erode public confidence in law and order institutions and the Government.

In Nepal's protracted post-conflict transition, those who are in power still escape being questioned and function above the law. The commitments on transitional justice in the peace agreements and their non-implementation to date reveal a fundamental tension between Nepal's stated wish to end impunity and its clear reluctance of those in power to be held accountable, whether politicians, members of the security forces or of the UCPN-M. It is unfortunate that Nepalese politics have turned into an industry producing a host of wrongdoers who are allowed to go scot-free. This politics of appeasement and compromise has led to increased impunity and decreased accountability.

Given that over thousands of people have died and thousands of others disappeared, been physically or mentally injured, incapacitated and displaced, it is high time the state acknowledged those abuses, sincerely tried to heal the wounds of the victims and bring perpetrators to justice. No process can bring about sustainable peace, if serious crimes and abuses are condoned or victims are forgotten.

International law is against blanket amnesty, especially amnesty to perpetrators of systematic crimes (war crimes, genocide, crimes against humanity) and serious violation of human rights. It is the obligation of the state under national and international law to bring criminals to justice. But the trend of case withdrawal has violated this responsibility, challenging the right to effective remedy. If this filthy tendency of impunity is to continue, the fear and insecurity among the public will increase, and the mental anguish of the direct sufferers of the wrongdoings of the past will be amplified.

We appeal to political leaders, the international community, victims/survivors of the conflict and the general public to be extra alert to protect the right to justice of the victims of conflict, at a time when the government seems intent on providing a political cover for instances of grave conflict-era human rights abuses. In this context, we do appreciate the position taken by the main opposition parties in the parliament and call upon the Government:

1. To halt the trend to withdraw cases in order to preserve the trust of the people on the justice system;
2. To ensure respect for court orders and initiate investigation into human rights violations during the conflict and ensure punishment for the culprits and justice to the victims;
3. To refrain from calling for pardons and the withdrawal of any criminal cases that would be contrary to Nepal's commitments under international human rights law since such actions send a contradictory message to the country about the real purpose of transitional justice and the need for accountability for past crimes;
4. To establish the Truth and Reconciliation Commission and the Commission of Inquiry on Disappearances without further delay in accordance with the international standards and best practices to allow the commissions to effectively respond to the rights of the victims to truth, justice and reparations.

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