

11 October 2012, Kathmandu, Nepal.

Nepal government has failed to bring into justice system and prosecute those who are alleged of involvement in the serious human rights violation during February 1996 to November 2006. This has aggravated impunity by affecting justice system, rule of law and accountability of state. Impunity and case withdrawal prevailed in Nepal in the past also. It was continued by the democratic governments even after signing the Comprehensive Peace Accord in 2006. The senior officials of government and security agencies are still holding their offices and the UCPN-Maoist, one of the parties in conflict, is now the biggest party in the country. Currently, the party is leading the government second time after the election to the Constituent Assembly.

Decision of the government to promote Colonel Raju Basnet to the post of Brigadier General on 4 October 2012, without caring about allegations regarding his involvement in serious crimes under international law during past armed conflict, shows that the government is trying to reward the perpetrators. The UN OHCHR had collected reliable information about involvement of the then Colonel Raju Basnet in the incidents of enforced disappearance and torture when he led the Bhairavnath Barrack of Kathmandu in 2003. On the basis of the same, the Supreme Court had ordered in 2007 to conduct independent investigation and prosecution.

"According to the international laws, Nepal has the obligation to investigate in the serious violations of human rights and prosecute against the perpetrators. For this the government must suspend those alleged of involvement in such incidents until the process completes. They must be prosecuted, if found guilty" says Mr. Nutan Thapaliya, Covenor of CTCI and Ex-member, UN Committee on Economic, Social and Cultural Rights.

In August 2012, the Supreme Court ordered the government to formulate appropriate law and directives for vetting before appointment and promotion of senior security officials. The promotion of Raju Basnet has ignored this court order. Ignoring the order of the Court by Maoist leader Dr. Baburam Bhattarai led government shows that the government is heading towards autocratic rule.

The much awaited report charting ten years of violations during Nepal conflict published by the United Nations Office of the High Commissioner for Human Rights on 8 October 2012 states, "up to 9,000 serious violations of international human rights law or international humanitarian law may have been committed during the decade-long conflict ... However, at the time of writing, no one in Nepal has been prosecuted in a civilian court for a serious conflict-related crime.". "Accountability therefore remains a matter of fundamental importance to Nepal as it deals with its legacy of conflict." The report expresses concern at moves by successive governments to withdraw cases of "a political nature" and at recent Government proposals that the planned future Truth and Reconciliation Commission [TRC] be given broad amnesty powers. A recent cabinet decision shows the government withdrew criminal cases involving 425 individuals on the recommendation of UCPN (M), Nepali Congress, CPN (UML), Madeshi People's Rights Forum (MPRF) and other ruling Madhesi parties on February 27.

In the recent years, Maoist led governments have withdrawn 695 cases relating to serious

crimes. This has made mockery to the commitments of Nepal government for justice, peace and human rights. This threatens that the upcoming TRC and Disappearance Commission, if formed, shall be worthless. These commissions may not be formed in the present context, and even if formed, they will not be able to give better results than the Rayamajhi Commission or Mallik Commission.

It is a big challenge for Nepal to investigate and prosecute the 9000 serious violations of international human rights law or international humanitarian law mentioned in the report of OHCHR. Both the parties in conflict of the past are responsible for these violations. To make the perpetrators accountable, immediate steps should be taken as identified and recommended by the OHCHR. Citizen's Task Force to Combat Impunity appeals the international community to extend support for initiating vetting process in the political level, security agencies and bureaucracy of Nepal. Pressure should be exerted to the government and political parties to apply vetting process before any appointment, transfer or promotion. The campaign against impunity in Nepal cannot yield expected results till we apply vetting and prosecute those who are found guilty.

For media note: some instances of case withdrawal in Nepal

The interim government of 1990 withdrew 243 cases in the name of political cases. Among others, the cases were also related to robbery, drugs smuggling and smuggling of woods. The Nepali Congress led government withdrew 99 cases of criminal nature from 1991 to 1994. The nine months long government led by CPN-UML withdrew 210 cases. Another government of Nepali Congress, Rastriya Prajatantra Party, Nepal Sadbhawana Party withdrew 10 criminal cases. Ministry of Law and Justice sent the cabinet decision of 27 February 2012 on case withdrawal to the Office of the Attorney General for implementation. Through this decision of consensus among UCPN (M), Nepali Congress, CPN (UML), Madhesi People's Rights Forum (MPRF) and other ruling Madhesi parties, 425 criminal charges were withdrawn.

There has been an increasing trend of case withdrawals by the Government, citing clause 5.2.7 of the Comprehensive Peace Agreement of 2006 and on the basis of other subsequent political agreements. This was first used in October 2008 when the then Cabinet ordered withdrawal of 349 cases of "political nature" that had been filed against political party cadres. Most of these cases have since been successfully withdrawn. Government bodies have repeatedly decided to withdraw cases for this reason: In October 2009 under the CPN-UML led Government, the Cabinet withdrew 24 cases; in Nov 2009 the CPN-UML Government withdrew a further 282 cases; and in March 2012 the UCPN-M led Government requested the withdrawal of 34 cases against at least 300 individuals. On this occasion, the withdrawals were part of an additional September 2011 political agreement between the UCPN-M and the United Democratic Madhesi Front. In all these instances of case withdrawals, no clear and accurate definition of a "political case" was ever provided, and it is apparent that many of the accused persons have political links with members of the Government. A large number of cases recommended for withdrawal are of a serious criminal nature, and many fall outside the period of the conflict. The withdrawal of cases where serious international crimes have been alleged is contrary to both IHL and IHRL (OHCHR:2012).

Further information, please contact:

Raj Kumar Siwakoti
Secretary General, FOHRID

Citizen's Task Force to Combat Impunity (CTCI)
Secretariat: FOHRID, Human Rights and Democratic Forum
GPO Box: 19186,
Radhe Marga, Dillibazar, Kathmandu
Tel: + 977 1 44 23 125,
Cell: +977 9841842008
Fax: + 977 1 44 38 812
Email: fohrid@wlink.com.np
Website: www.fohrid.org.np