



ASIAN HUMAN RIGHTS COMMISSION

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An Open Letter from the Asian Human Rights Commission and Advocacy Forum to the Chairman of UCPN-Maoists Party

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Dear Mr Dahal,

NEPAL: Blanket amnesty goes against the victims' fundamental rights

The Asian Human Rights Commission and Advocacy Forum wishes to raise their serious concern on recent media reports that the three major political parties of Nepal are considering to amend the proposed draft bill on Truth and Reconciliation (TRC) and to either introduce blanket amnesty for human rights violations committed during the conflict or to make certain offences punishable at the exclusion of certain serious human rights violations including torture. We take exception to the attempts to shield perpetrators of gross human rights violations from prosecutions, which may place Nepal in breach of its international obligations to provide victims with an effective right to a legal redress, under the International Covenant on Civil and Political Rights.

Providing impunity for serious human rights violations committed during the conflict would go against Principle 19 of the United Nations' updated set of principles for the protection and promotion of human rights through action to combat impunity provides, "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished."

You are aware that the special taskforce formed by government to ascertain the loss of life and property found that during the conflict era at least 17,265 people were killed and 1,302 were disappeared. Likewise, more than 50,000 people were internally displaced. The number of conflict era rape and torture victims is yet to be established. It is the rights of those victims that would be sacrificed for political purposes should the provision for blanket amnesty go ahead.

In a joint submission to the 19th session of the Human Rights Council, Advocacy Forum and the Asian Legal Resource Center, the AHRC's sister organization, have expressed their opposition to the January proposal for blanket amnesty articulated by the parliamentary

taskforce, arguing that "since the signing of the CPA, victims have been made to wait for the establishment of transitional justice institutions before justice can be done. Despite the Supreme Court repeatedly ruling that commitments to these commissions do not supersede the regular justice institutions, the police have again and again refused to register and investigate conflict-related cases, claiming that they should fall under these commissions' jurisdiction. Should these institutions now be used as a means to provide amnesty to perpetrators, victims' fundamental rights to justice will have been cynically abused."

The supporters of blanket amnesty argue that they are inspired by the Truth and Reconciliation Commission adopted in South Africa. But the South African model did not allow for blanket amnesty, instead amnesty applications were considered individually in transparent and impartial proceedings. Out of 7112 requests for amnesty brought before the South African commission, only 849 had been granted and acts, omissions or offences which constituted a gross violation of human rights could not be amnestied. This by no means amounts to a blanket amnesty such as the one being discussed in Nepal at the moment.

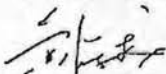
We note that the Comprehensive Peace Agreement (CPA) contains commitments by the parties not to condone impunity and to protect the victims' rights. We further recall that the Interim Constitution mandates the state to adopt a political system upholding universally accepted fundamental human rights, the rule of law and the independence of the judiciary and to eliminate corruption and impunity.

The fundamental concept of justice and its centrality to the development of the Nepalese state and justice institutions are at stake in the decision to enable or not the prosecution of human rights violations. Denying victims their fundamental right to a legal remedy would be symptomatic of a state which flouts fundamental principles of justice and equality of all before the law and would not bode well for the development of a strong judicial system, a fundamental pillar of a vivid democracy.

In article 7.1.3 of Comprehensive Peace Agreement (CPA) the Maoist party has expressed its commitment to accountability, justice and the victims' rights; "...necessary investigation will be undertaken against any individual involved in violating the rights... Both parties (...) ascertain that they will not protect impunity and along with it, the rights of the people affected by the conflict and torture" Those commitments must be now translated into reality.

We urge you, as the Chairperson of UCPN-M, to take a strong stance in favour of justice and accountability and to ask that the transitional justice institutions uphold the victims' fundamental rights to a legal remedy. We urge you to demand that the adoption of the transitional justice institutions pave the way for the much-delayed impartial and independent investigation of all allegations of human rights violations and for the prosecutions of perpetrators in proceedings that meet international standards of justice delivery.

Yours sincerely,



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Mandira Sharma
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