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Technical assistance and capacity-building

Written statement* submitted by the International Commission of Jurists (ICJ), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Impunity for human rights violations in Nepal

I. Civil and Political Rights

The International Commission of Jurists has been concerned by a general climate of impunity which has prevailed in respect of those responsible from among the Nepal Army and the Maoists for serious crimes and human rights and humanitarian law violations during the armed conflict.

The Case of Maina Sunuwar

The Government is refusing to abide by a September 2007 Supreme Court ruling that put squarely within the jurisdiction of civilian courts the case of the enforced disappearance, torture, and unlawful killing of 15-year-old Maina Sunuwar on 17 February 2004. The Nepal Army, with public support from the Minister of Defense, Bhidya Bhandari, has defied arrest orders issued in January 2008 against Major Niranjan Basnet and three others and challenged the jurisdiction of the civilian court, claiming that it closed the matter with its September 2005 Court Martial. The Court Martial decision, however, is manifestly incompatible with any intent to bring the perpetrators to justice, and has the effect of shielding the accused from criminal responsibility.

Noting the general threat to the separation of powers and the rule of law posed by the Government's position to date in this case, the ICJ requests that the Human Rights Council call on the Government of Nepal to comply with the Supreme Court's recognition of civilian jurisdiction in the Maina Sunuwar case, and immediately surrender Major Basnet and other accused and witnesses in the case to the Kavre District Court.

Promotion of commander suspected of crimes under international law

Despite widespread opposition from within the domestic and international community, the Government of Nepal recently promoted Major General Toran Jung Bahadur Singh. He is now second in command of the Nepal Army. General Singh commanded the 10th Brigade, including the Bhairabnath Battalion, during the period from August through December 2003. Particularly during these four months, but extending through 2004 and beyond, the Bhairabnath Battalion is widely reported (including in a May 2006 OHCHR report) to have engaged in systematic practices of enforced disappearance, torture and other cruel, inhuman or degrading treatment (ill treatment).

The Human Rights Council should urge the government of Nepal to suspend General Toran Bahadur Jung Singh and order a credible, impartial and independent investigation into allegations of his responsibility for crimes under international law, including under the principle of command responsibility, as part of the broader investigation ordered by the Supreme Court.

De facto impunity for alleged Maoist perpetrators of serious crimes

On 27 October 2008, the then Maoist-led government withdrew 349 criminal cases against mainly Maoist cadres that it claimed were of a "political nature", including alleged crimes under international law. This action contravenes international standards, which exclude crimes under international law and gross human rights violations from the ambit of permissible amnesty. The murders of Ram Hari Shrestha (April – May 2008) and of Arjun Lama (2005) are cases emblematic of Maoist obstruction and non-cooperation in the investigation and prosecution of Maoist suspects.

The ICJ requests that the Human Rights Council, noting these developments in Nepal, reaffirm the obligation of all States to investigate all violations of human rights and hold criminally accountable perpetrators gross human rights abuses constituting crimes under international law, including through application the principles of command responsibility, and that it underscore the distinct purposes and limited scope of amnesty under international law and standards.

Encounter killings

In October 2009, a number of human rights organizations, including OHCHR-Nepal, expressed concern at the high number of individuals reported killed in “encounters” with security forces and at credible allegations of extrajudicial killings involving police personnel. After the implementation of the SSS, there are indications that this trend has continued and expanded.

The ICJ urges the Human Rights Council to call on the Government of Nepal to investigate promptly all allegations of extra judicial killing, including measures to ensure independence of the Office of the Attorney General from political or other interference and effectively to protect witnesses from reprisals.

Weak statutory and institutional framework

A mere assertion of ‘good faith’ in carrying out orders shields state actors from accountability through statutory provisions in the Army Act, the Police Act, and the Public Security Act. Enforced disappearances and torture are not defined as crimes under Nepali law. There is no witness protection law or corresponding witness protection programme specifically designed to deal with alleged violations committed by state actors. No amount of training or resources for civilian police is of any benefit without addressing institutional accountability and independence from political interference.

Despite repeated orders¹ from civilian courts, including the Supreme Court of Nepal, in relation to the duty of police to register First Information Reports (FIR), these orders have been routinely ignored. The State Cases Act of Nepal obliges the Nepal Police to register FIRs immediately if officials receive these petitions either orally or in writing. When FIRs are registered, the police still typically fail to carry out their duty to investigate. Police authorities openly admit in some cases that they cannot investigate and arrest suspects because of threats to their own security and position.

The February 2009 report of Advocacy Forum² reveals that torture is still routinely practiced by the Nepal Police during criminal investigations, a problem long documented and reported by national and international organizations.

The Government’s proposed bill to criminalize enforced disappearance is presently before parliament, but fails to implement adequately international law and standards as required by the June 2007 ruling by the Nepal Supreme Court.

¹ Maina Sunuwar V. District Police Office Kavre, Arjun Lama V. District Police Office Kavre, Sanjeev Kumar Karna V. District Police Office Dhanusha and others, Yogmaya Dahal V. District Police Office Bankey and Bhumisara Thapa V. District Police Office Banke, For details Please see Supreme Court Reporter.

² Torture and Extrajudicial Executions, amid widespread violence in the Terai, Advocacy Forum, 2010, for details see http://www.advocacyforum.org/TeraiReport_English_English.pdf

The ICJ urges the Human Rights Council to call on the Government of Nepal

- to criminalize torture and ill-treatment and enforced disappearance and to implement these laws in part through strengthening the Office of the Attorney General;
- to ratify the Optional Protocol to the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute.

II. Economic, Social and Cultural Rights**Cholera Deaths**

During the months of May through August 2009, over 400 people died of cholera or diarrhea-related deaths in the Mid West and Far West of Nepal.³ In the end, it became clear that many of the deaths resulted from conditions which have been experienced annually during the monsoon season. Forty percent of victims are Dalit, even though Dalits constitute only 15 percent of the population in affected areas. The Government failed adequately to discharge its obligations concerning the right to health in the affected area, particularly in terms deficiencies in timeliness and treatment offered.

The ICJ urges the Council to recommend that the Government of Nepal take immediate steps in anticipation of the approaching monsoon season to ensure distribution of public health information, sanitation supports, water purification supplies, and sufficient medical personnel and supplies in areas now at risk.

Discrimination Against Women and Girls in Nepal

The Government appears to be doing little or nothing to address a number of practices which interfere with women's right to family life, to housing, to education and, in extremis, to the right of women and girls to life. Among the practices with most devastating human rights effects, is that of chhaupadi, in which menstruating women are kept in complete seclusion, resulting in deaths due, for example, to exposure in one recent case in which a woman froze while being made to stay in a cowshed.⁴

The ICJ urges the Council take note of this practice and to ask the Government of Nepal to introduce measures to address it, including a national public education campaign. The Government should take immediate steps to ensure adequate sanitary infrastructure for schoolgirls at education facilities.

³ Nepal human rights organization INSEC monitored the developing situation and cited the figure of 464 diarrhea-related deaths: <http://www.inseconline.org/pics/1257598337.pdf>

⁴ "Forty-year old Belu Damai of Bhairabsthan VDC-8 in Achham died of severe winter cold while staying chhaupadi in a secluded cowshed close to the house where the rest of her family lived." (Kathmandu Post, January 5th, 2010): <http://www.ekantipur.com/2010/01/05/headlines/Woman-dies-of-cold-during-Chhaupadi/305768/>