

OPINION

Conflict, Human Rights and Derailed Peace Process in Nepal

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Peace and respect for human rights are basic elements for any civilized society. All citizens are entitled to basic rights without any obstacles as ensured by international human rights instruments and the state is responsible to implement those provisions through the adoption of laws and policy and programme. However, Nepalese people are facing a threat to their right to life and security with the conflict in Nepal intensifying day by day. The present conflict arose in February 1996 when the Communist Party of Maoists (CPN- Maoists) launched the “peoples’ war” for the establishment of a republican state by abolition of monarchy in the country. Ever since, both the state and the CPN (Maoists) have been responsible for the killing of more than seven thousand people during the insurgency and continue to be involved in numerous, serious human rights violations.

The state should enforce human rights provisions promulgated by the country’s domestic law and international human rights instruments without any reservation. The 1990 Constitution of the Kingdom of Nepal recognised the fundamental human rights of the people, which are nonexistent at the moment. The constitution is in abeyance ever since the King’s intervention on 4 October 2002 when he assumed all executive powers, sacking the caretaker prime minister and postponing elections indefinitely. On the other hand, Nepal is known as one of the most energetic countries to be signatory to international instruments and has ratified nearly 20 major human rights conventions. However, there has been a clear lack of initiative in the field of implementation of these instruments and rarely ever provisions of human rights get reflected in the national programme of action. This is despite the 1990 Nepal Treaty Act, which says that all international instruments and laws should be applied as national laws.

The Present situation

Following the declaration of cease-fire (on 29 January 2003), the Nepalese people were hopeful that a lasting peace could now be achieved through dialogue and political negotiation. The people appreciated the resumption of the peace process but continued to put pressure on the government and the Maoists to remain committed to the dialogue process. Despite several stumbling blocks, three rounds of formal talks were held before the process finally broke off on 26 August 2003. According to reports, the points of disagreement that arose during the first two

rounds of talks ruined the prospects of peace primarily because of clear lack of any accompanying process of confidence building measures which could have progressively bridged up the differences between the two conflicting parties. During the third round of talks, it was seen that the Maoist demand for a Constituent Assembly emerged as the major obstacle to a continued dialogue process. In fact, it needs to be mentioned here that the government and the rebels had already signed a “code of conduct” and have agreed to set up a “monitoring team” under the coordination of the National Human Rights Commission (NHRC), which is yet to be formed. Such a team would have definitely contributed to confidence building at all levels and strengthened the dialogue process. However, the government was lackadaisical in its efforts and no such joint team could be built up during all these months. It needs further mention here that the previous peace process (in the year 2001) was also unilaterally broken by the CPN (Maoists) after three rounds of talk in November 2001, over the government’s unwillingness to entertain the notion of a ‘Constituent Assembly’.

At another level, the minimum norms required to stabilise a peace process have not been observed by either of the parties. The government has continuously mobilized the military in the name of health camp and culture programmes which do not go unnoticed by the Maoists. The Maoist rebels, on the other hand, have been constantly involved in extortion and other nefarious political campaigning, which have added to the suspicion of the government. In the absence of any monitoring team the parties also did not take care to honour the mutually agreed “code of conduct.”

To add to the complexity of the conflict, some of the causes are a result of the differences between tradition and culture among ethnic communities and their approach to the whole issue. In Nepal, the socio-economic disparity, the existing exploitative socio-economic structure and unresponsive governmental policies have created the conditions for the rise of forces like the Maoists. Many conflicts in developing countries are the result of social injustices and mis-governance that have led to widening gap between the government and the people and often crystallised in violent movements. Such movements question the legitimacy of the government and target the nation building process and demand greater participation in decision-making and policy-making processes at all levels for the under-privileged, particularly for women and minorities. The human rights situation gets terribly affected once the conflicts arising out of such movements lead to violence and in the absence of any sustained well-directed effort to resolve such conflicts the situation perpetuates further worsening the human rights situation and thus all this gives rise to a vicious cycle of violence and human rights violation.

State of Emergency and Disrupted Peace Process

The seven-year-old insurgency in Nepal has resulted in severe material destruction in the country and led to more than 7000 deaths. The economy of the country has collapsed. The country’s security budget has increased and the development budget has been diverted to purchase arms and ammunition for the defence forces. These have further complicated the problem of insurgency for the government while its decreasing emphasis on development has indirectly made the emerging socio-economic condition favourable for the rise of the Maoists and ensured expansion of their support-base. The government’s insincerity towards the process of dialogue and negotiation is also delegitimising its authority in the eyes of the general masses.

Emergency in Nepal

In this backdrop, taking full advantage of the government's insincere approach, the Maoists broke the first cease-fire in November 2001 and attacked military barracks simultaneously in Dang, Solukhumbu and Syangja district headquarters. Maoists were rewarded with a "state of emergency", which the King Gyanendra declared upon the recommendation of then PM Sher Bahadur Deuba under the Article 115 (1) of the Constitution of the Kingdom of Nepal, 1990. As per the recommendation of the PM, the King also suspended major fundamental human rights of the citizens by restricting their freedom of movement and created obstacles to carry out independent news reports and facts from the field.

During nine months of emergency, both the security forces and the Maoist rebels were involved in the killings of hundreds of people. The Maoists were also involved in the abduction of civilians and security force personnel. The security forces arrested hundreds of people in the country and several dozen are still missing. The people have been trapped between the security forces and the Maoist rebels; they are forced to live under fear and terror.

Violation with Impunity

The culture of violation of human rights with impunity has been institutionalized after the restoration of democracy in Nepal in 1990. The interim government under PM K. P. Bhattarai formed the "Mallik Commission" to bring to justice and take action against alleged perpetrators of atrocities and abusers of authority during the 1990's peaceful movement. The Commission has recommended for immediate action but the Attorney General's Office disrupted the intention of the government to provide justice to victims by stating that there were no legal provisions to pursue prosecution. As a result, some of the alleged perpetrators again came to power. There has not been one example of legal action taken due to poor governance and lack of implementation of state mechanisms. Principally, all governments after the restoration of democracy in 1990 have been committed to restoring good governance in the country. However, they have themselves influenced and violated laws for their vested interest and have also attempted to disrupt the principle of a fair judiciary system. Many reports have reported that the judiciary system is one of the most corrupted institutions in the country. However, people are afraid to raise the question of accountability of the judiciary because they may be found in "contempt of court." This illustrates the inefficiency of the judiciary system and the administration to provide justice to victims and how the government has failed to establish a culture of punishment and reward.

This "culture of impunity" was further strengthened after the genesis of the Maoist movement. Instead of taking any measure to introduce the factor of accountability into government or army operations, the government has been encouraging perpetrators by rewarding them with promotion or cash prizes. This has encouraged perpetrators to commit more human rights violations and abuses and get away with them. Of course there are several national and international mechanisms to bring perpetrators to court and provide justice to victims of the state and non-state actors but majority of them are respected in theory but violated with increasing

frequency in practice. Lack of public awareness about human rights has worsened the socio-political condition obtaining in Nepal

Human Rights Situation in Nepal

In principle, the Constitution of the Kingdom of Nepal, 1990 promulgates fundamental human rights of its citizens. The government has formed the National Human Rights Commission (NHRC) as an autonomous institution as well as the National Dalit Commission and the National Women's Commission to uplift the status of Dalits and of women in the country. In addition, the Nepalese parliament has adopted the Torture Compensation Act, which still needs to be amended to incorporate basic human rights principles.

These institutions have emerged as a result of pressure from civil society. The NHRC has also been actively working for conflict resolution and have expressed their willingness to mediate. At the same time, they are putting pressure on the government and Maoists to sign the Human Rights Accord, which calls for the monitoring of human rights and was principally agreed on by both parties. The NHRC has also held a dialogue with the government and Maoist negotiation teams and has urged them to respect the human rights of the people as well as put human rights as a key issue on the agenda for the talks. The NHRC has been actively involved in providing adequate justice to victims by issuing recommendations for government action and by ordering perpetrators to financially compensate victims. However, according to the Torture Compensation Act the perpetrator is not required to pay compensation for their atrocities, but on the contrary the state is obliged to provide compensation. Ironically, this provision rather than deterring the perpetrators has encouraged them to commit atrocities.

Similarly, international human rights watchdogs such as Amnesty International are urging the parties to bring human rights to the agenda and adopt institutional mechanisms to ensure justice for victims. Such mechanisms are essential to take action against the perpetrators and discourage officials who were involved in atrocities as well as those who deliberately committed human rights violations and brutally tortured those in custody.

Good governance can only be established by practicing respect for human dignity and the human rights of citizens. In other words, peace can be restored only through the promotion of human rights and safeguarding the rights of citizen. Justice can't be provided after the establishment of a peace agreement. Issues of justice must be addressed during peace talks and any agreement must ensure the implementation of human rights. Otherwise, both conflict parties attempt to enjoy immunity and hide their wrongdoing. Peace and justice should go together and simultaneous action should be taken for the restoration of peace and transformation of the justice system.

Agenda of Human Rights

In every peace process, human rights is considered as one of the major elements for a sustainable peace. Unfortunately, the state has not taken any significant action against human rights violators even if the government has formed human rights cells in the Home Ministry,

Nepal Police and Royal Nepal Army to demonstrate to the international community the government's commitment to human rights.

A human rights agenda should always be in the frontline of negotiations to resolve both internal and international conflicts. Following the principle of indispensability, inalienability and indivisibility, the perpetrators of atrocities should be punished and victims should have access to free and fair justice. However, the issue of human rights has been completely ignored during the negotiations in Nepal and crimes committed against humanity by the security forces and the rebels have been overlooked.

Despite continuous demands from civil society, both the government and Maoist rebels hesitated to introduce the human rights agenda into the dialogue process. Also, they were not willing to create any form of institution to investigate violations and abuses of human rights based on international human rights instruments. In this scenario, National Human Rights Commission could play significant role to establish such effective mechanism for monitoring human rights even after the cease-fire broke off. If necessary, such experts should be invited from the international community to assist the trial process. It means, both sides should agree to establish a tribunal to bring all alleged perpetrators to trial.

It is a certainty that unless and until human rights issues are considered as part of the main agenda for the dialogue, a long-term peace cannot be achieved. People want a durable and just peace; to live their life without fear or threat.

Obstacles to Peace Process

Surprisingly, the government and Maoist rebels again agreed to a cease-fire on 29 January 2003, while the government has agreed to remove the "Red Corner Notice" and "price tag" on the rebels. The reason for the cease-fire has yet to be disclosed but it is believed that the Maoists were forced to come into the cease-fire due to international politics and the reorganization of their own military and party. It is also important to note that the American government and its allies were strongly campaigning against terrorism, and the Maoists were about to be listed as an international terrorist organization on a U.S. government list, which it later was.

During the period of two rounds of talks led by then Deputy PM Badri Prasad Mandal and Maoist chief negotiator Dr. Bhattarai, there were a number of contradictions that have created obstacles in continuing the peace process. The Maoists are continuously organizing public events and expressing their commitment to the peace process. However, they threatened to re-start the war if the government does not become serious about the process, and they also stated that they want to come to a conclusion soon.

The negotiation team reached an agreement to form a monitoring committee for the implementation of the "code of conduct" under the oversight of the NHRC, but it was never formed. Despite several confusions, third round of talk was held after the formation of another government by the King under another monarchist, PM Surya Bahadur Thapa. However, the dialogue could not continue and was broken off finally by the Maoists, because the rebels constantly demanded election of a Constituent Assembly for drafting the new constitution while

the representatives of the government refused to oblige and rather publicly lobbied in favour of monarchy and the present Constitution.

At the same time, the military with its well-known sympathy for monarchy has started playing an important role by pitting itself uncompromisingly against the Maoists. This has skewed the approach from the side of the government and indirectly strengthened the resolve of the Maoist opposition.

Third Party Intervention

Many groups and countries are showing their interest in mediating the conflict in Nepal. The United Kingdom has appointed its special envoy to facilitate the process and the U.S. has also expressed its willingness to mediate as well. So far, the United Nations has officially expressed its interest in mediation through its resident representative. However, none of the groups has received any positive signal from the government so far. The government is rejecting third party mediation and stating that Nepal has the capability to resolve its internal problem all on its own. The Maoists are also reportedly not open to the idea of third-party mediation especially mediation by US and UK, for they perceive these countries as being inimical to the very ideology they cherish and champion. Even if UN mediation may be acceptable to both the sides they may not welcome direct mediation by UN and may expect it to facilitate mediation from outside rather than dictate the terms of discourse to them. Impartial observers in Nepal, however, suggest that third party mediation alone holds the key to any future breakthrough especially in view of the exclusive positions held by the two conflicting parties.