

Nepal: Dialogue with the Prime Minister must make accountability and justice its cornerstone

Open letter issued to Ban Ki-Moon, Secretary General of the United Nations by the Asian Human Rights Commission: 20 September 2011, AHRC-OLT-010-2011

The Honourable Ban Ki-Moon

Secretary General

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UNITED STATES

Via fax: 1-212-963-2155

Your Excellency,

The Asian Human Rights Commission (AHRC) understands that you will be meeting the recently elected Prime Minister of Nepal, Mr Baburam Bhattarai, during the 66th session of the General Assembly, and calls on you to urge him to take all necessary measures to ensure significant advances concerning human rights and accountability during your bilateral dialogue.

The international community, through the United Nations in particular, has invested significantly in Nepal since the end of the country's conflict in 2006, to ensure stability, peace, disarmament, and the prevention of further violence and human rights abuses. The OHCHR's office in Nepal has played a key role in monitoring and upholding human rights in the country, in many cases assisting in preventing grave abuses.

However, Nepal's political parties have failed to do their part to live up to the international community's trust, and, even more crucially, that of the people of Nepal, who have mandated these officials with the task of forming a new, democratic Nepal, based on human rights, security and the rule of law. It is therefore vital that Prime Minister Bhattarai place the issue of human rights and accountability at the heart of his government's priorities, and we sincerely hope that you will raise this pressing need with him in person.

Since the end of the conflict in 2006, successive governments have repeatedly pledged that they would deliver justice to the thousands of conflict victims and their families and that the fight against impunity would be made a priority. However, five years after the end of the conflict, not a single perpetrator of human rights violations has been arrested and justice has been repeatedly delayed, frustrated and undermined. In numerous cases, the perpetrators have been named, and in some instances cases have been filed, but the governments have failed to take the required action, leaving perpetrators on both sides of the conflict to enjoy complete impunity. This impunity has enabled the perpetrators to become active political leaders, constituent assembly members, ministers or to be sent to lucrative missions abroad.

Emblematically, in 2009, a soldier against whom an arrest warrant was pending for having participated in the torture to death of a schoolgirl during the conflict, was found to be serving in a UN Peacekeeping mission in Chad. In a welcomed move, the UN repatriated him to Nepal, but he is yet to appear before the court. This year, a Maoist Constituent Assembly member accused of ordering the killing of a businessman in 2008 became Minister.

Prime Minister Bhattarai was elected on promises to bring the peace process to its conclusion and to ensure the adoption of a new constitution. Both tasks are commendable but both must be based on internationally accepted human rights law and standards. While impunity prevails, it will be impossible to ensure lasting peace and the effective implementation of a constitution that enshrines people's rights and freedoms.

The AHRC has serious concerns about the new government's intentions concerning human rights and accountability. In August, the United Communist Party of Nepal-Maoists made public its proposal for the peace, constitution and integration of the two armies, which also provides that the UCPN is committed to withdrawing court cases filed against party members. In an agreement signed on August 25 between Mr Bhattarai's party, the UCPN-Maoists, and the United Democratic Madhesi Front, prior to the Prime Minister's election, both parties agreed to withdraw cases pending against members of the Maoist party, and the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements. On September 14, the Attorney General announced that his offices are preparing the withdrawal of criminal cases filed against Maoist leaders during the conflict. However, the government has failed to give sufficient guarantees that this withdrawal will be restricted to cases of a strictly political nature, raising human rights groups' concern that the withdrawal will likely include cases of rape, killings, torture and enforced disappearances.

Numerous human rights organizations, national and international, have raised serious concerns about the government's repeated attempts to provide blanket amnesty to the perpetrators of gross human rights violations. The Asian Human Rights Commission is of the opinion that the withdrawal of criminal cases amounts to the granting of amnesty for gross human rights violations committed during the conflict. This is inconsistent with Nepal's human rights obligations under the International Covenant on Civil and Political Rights and denies victims their fundamental right to legal redress. This decision would signify the institutionalization of impunity and undermine the future prospects for the establishment of a democratic, stable Nepal based on human rights.

Among the cases likely to be withdrawn is a high-profile case of murder dating back to 1998, for which a Maoist Constituent Assembly member was convicted and sentenced to life imprisonment in 2010, a sentence that was upheld by the Supreme Court. However, the perpetrator has been allowed to remain active in the country's Constituent Assembly since then.

History has shown that peace is fragile and ephemeral where justice and human rights are sacrificed for immediate political gain. As you have yourself written, Your Excellency, peace without dignity, justice or hope for a better future is a false peace, a truce at gunpoint.

Case withdrawal deprives the people of Nepal of their ownership of the peace process by encroaching on their legitimate aspirations for redress and justice. Since the end of the conflict, mass withdrawals of cases have been conducted by successive governments, granting amnesties to their supporters. This direct political interference into the course of justice has weakened the rule of law and the justice system in Nepal, and fuelled impunity. Impunity has in turn nourished instability and insecurity in the country. It is

time to bring this trend to an end and to put the Nepal peace process on track by addressing the issues of accountability and justice.

A report released earlier this year by the Office of the High Commissioner for Human Rights in Nepal reads, “The national legal framework and practice in relation to case withdrawals does not appear to be consistent with an international consensus that impunity for serious violations of human rights and international humanitarian law is impermissible under international law. It leaves the Government of Nepal in breach of its international legal obligations under several treaties, including the ICCPR.”

The AHRC urges you to convey this important message during your dialogue with the Prime Minister of Nepal, and secure guarantees from the Prime Minister that he will oversee a process to ensure justice and accountability, as well as effective legal redress for victims, in line with international standards. The AHRC further urges you to specifically demand guarantees that all the human rights cases filed will be thoroughly investigated, that the perpetrators will be prosecuted and that all court orders will be duly implemented as promptly as possible.

Yours sincerely,

Wong Kai Shing

Executive Director

Asian Human Rights Commission, Hong Kong

CC.

1. Representative of the Office of the High Commissioner for Human Rights in Nepal, NEPAL
2. President of the United Nations General Assembly
2. United Nations Special Rapporteur on the independence of judges and lawyers, SWITZERLAND
3. UN Resident and Humanitarian Coordinator for Nepal, NEPAL