NEPAL

In 2010-2011, human rights defenders remained exposed to serious risks in Nepal. In a context where justice is not ensured for victims of human rights abuses, those documenting violations and fighting against impunity continued to be subjected to reprisals by both State and non-State actors, including by the Maoists. Defenders promoting the rights of marginalised communities and women human rights defenders also remained particularly vulnerable. With the peace process at the verge of breakdown, there are serious concerns over a possible escalation of attacks, threats and intimidation of human rights defenders.

Political context

In 2010, Nepal remained locked in a political stalemate, which has prevailed since May 2009 and further contributed to the fragility of the peace process. The Maoists staged a nationwide strike (*bandh*) at the beginning of May 2010, in an attempt to force the resignation of the Government and the reinstatement of the national unity Government. The nationwide strike, which brought the country to a virtual standstill, was eventually called off after six days. There were widespread concerns over the increasing levels of violence and intimidation surrounding the strike and the coercive enforcement of the *bandh*[1].

A particular low point was highlighted by the failure of the Constituent Assembly to meet the May 28, 2010 deadline to finalise a new Constitution by the end of its two-year mandate. In a last-minute compromise, the mandate of the Constituent Assembly was extended for another year. Following the resignation of Prime Minister Madhav Kumar Nepal in June, the Parliament failed to form a new Government in 2010. On February 3, 2011, Mr. Jhalanath Khanal, Chairman of the Communist Party Nepal - United Maoist Leninist (CPN-UML), was elected Prime Minister after he won a clear majority in the 17th round of voting at the Assembly.

1/ See Office of the High Commissioner in Nepal (OHCHR-Nepal) Press Statement, May 7, 2010. In particular, OHCHR-Nepal stressed that "while upholding the right to peaceful assembly, freedom of opinion and expression, OHCHR opposes the coercive enforcement of the *bandh*, including threats, psychological terror, intimidation and any other violent measure. The impact of this *bandh* has been felt particularly harshly by the poor and disadvantaged sections of society".

Due mostly to the continued political instability, there was no move ahead on establishing accountability for human rights violations committed during the decade-long (1996-2006) internal conflict between Government forces and Maoists. Despite the provisions of the Comprehensive Peace Agreement of 2006, little progress has been made in connection to the establishment of transitional justice mechanisms[2] and not a single individual has been successfully prosecuted by civilian courts for a conflict-related case[3]. There has also been no progress in the implementation of the much applauded 2007 Supreme Court decision on disappearances[4].

The lack of accountability for past human rights violations also contributes to the prevailing impunity with regard to violations committed since the end of the conflict, to the breakdown of law and order and to a lack of adequate public security. Torture is still systematically practised by the police and the army[5]. Furthermore, armed criminal groups continued to seriously undermine public security, in particular in the southern Terai districts[6]. Therefore, killings, attacks, abductions, forced donations and

2/ Although the Government made some critical amendments in the bill to set up a High-Level Commission of Inquiry into Disappearances taking heed of suggestions from human rights organisations and also organised consultations on the bill to establish a Truth and Reconciliation Commission (TRC), which first draft was made public in July 2007, the commissions were not set up as of April 2011. Besides, major concerns remained to be addressed on clauses regarding amnesty provisions, formation of the TRC, reparations and reconciliation. In particular, although the Bill states that amnesty cannot be recommended for five categories of gross human rights violations, the clause which says the Attorney General's office will have the final say on whether or not to prosecute cases recommended by the Commission is problematic. The Bill also still fails to explicitly spell out how the Commission will go about providing protection to witnesses. Moreover, while the Government intensified the distribution of interim relief to conflict victims, it appears that most of the victims receiving the money have been members of influential political parties. See Advocacy Forum (AF).

3/ See Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, UN Document A/HRC/16/23, February 16, 2010.

4/ The decision included an order that the Government enact a law which would criminalise enforced disappearance in line with the International Convention for the Protection of all Persons from Enforced Disappearance; establish a high level commission of inquiry on disappearances in compliance with the international criteria on such commissions of inquiry; require investigations and prosecutions of persons responsible for disappearances; and provide for adequate compensation and relief to the victims and their families.

5/ See Human Rights Council, Working Group on the Universal Periodic Review (UPR), *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1*, UN Document A/HRC/WG.6/10/NPL/2, October 13, 2010. See also Advocacy Forum Report, *Torture and Extrajudicial Executions amid widespread violence in the Terai*, 2010.

6/ From January 2008 to June 2010, OHCHR-Nepal documented 39 allegations of extrajudicial killings in the Terai, resulting in the deaths of 57 persons. In all cases, there were credible allegations of unlawful use of lethal force by security forces, and in most cases no thorough and impartial investigations or criminal prosecutions were undertaken. See OHCHR-Nepal Press Statement, September 23, 2010.

extortions have again been commonplace, with an apparent lack of corresponding political will to make those responsible for such violations accountable for their actions. The police frequently refuse to register complaints and political parties often resort to direct intervention into judicial proceedings[7].

In January 2011, Nepal underwent its first Universal Periodic Review (UPR) before the UN Human Rights Council, during which the Government of Nepal acknowledged existing and ongoing human rights challenges in the country, while failing to provide any concrete commitments, in particular with regard to addressing torture and extrajudicial killings[8]. Although the Nepal Government accepted a recommendation to "take concrete steps to ensure the security of human rights defenders, including journalists", it requested more time to consider whether it will accept three further recommendations on the issue[9].

Moreover, relations with the United Nations became increasingly difficult. After lengthy negotiations, the mandate of the Office of the High Commissioner in Nepal (OHCHR-Nepal) was eventually extended for a further year on June 9, 2010[10]. As a compromise, OHCHR agreed to reduce its presence in Nepal and to close its field offices outside Kathmandu. In January 2011, the United Nations Mission in Nepal (UNMIN) withdrew from the country.

Ongoing repression against human rights defenders and lawyers fighting against impunity

Human rights defenders, including lawyers fighting against impunity, continued to operate in an environment dominated by constant threats from both State and non-State actors. Lawyers defending victims of conflict-related crimes continued to face threats, intimidations, refusals

7/ See Human Rights Council, Working Group on the UPR, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1,* UN Document A/HRC/WG.6/10/NPL/2, October 13, 2010.

8/ See Press Statement of the Nepal NGO Coalition for the UPR (NNC-UPR), January 25, 2011. The NNC-UPR is representing 235 human rights and civil society organisations in Nepal. Particularly, the NNC-UPR was troubled by the response of the Government delegation who claimed today that "there is no systematic torture in Nepal", in spite of well documented and credible reports of systematic practices of torture at the hands of State security forces.

9/ See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review - Nepal,* UN Document A/HRC/WG.6/10/L.3, January 28, 2011.

10/ See OHCHR Press Release, June 9, 2010. OHCHR has monitored and reported on human rights and provided training and technical assistance to State institutions and civil society since it was established in Nepal in 2005. The Comprehensive Peace Accord signed in 2006 also requests OHCHR to monitor the human rights provisions of the peace agreement.

to cooperate and in some instances, even direct intervention into judicial proceedings against them by the Maoists and political parties at the local level[11]. State and non-State actors have spared no efforts to prevent human rights defenders from uncovering human rights violations committed during the conflict and to avoid prosecutions. For instance, on the occasion of the UN International Day in Support of Torture Victims on June 26, 2010, the NGO Advocacy Forum (AF) filed a total of 45 First Information Reports (FIRs)[12] demanding criminal investigations in torture cases committed both by the State security forces and the Maoists during the internal conflict in different police offices where AF works. However, the police flatly denied registering those cases citing either the statute of limitation in the existing Nepali law or prevailing on the repeated cliché that those cases fall under the jurisdiction of the proposed transitional justice mechanisms, including the Truth and Reconciliation Commission[13]. In Jhapa, Dolakha and Ramechhap districts, AF lawyers were obstructed from visiting detainees under various pretexts and threatened of reprisals if they were to lodge complaints about those obstacles. In particular, from December 16, 2009 to June 3, 2010, and again from July 29 to January 3, 2011, lawyers of AF Jhapa were denied access to the police detention centres of Birtamod and Kakadbhitta. Likewise, on July 19, 23 and 26, 2010 respectively, AF lawyers from Rupandehi, Kaski and Dolakha districts faced similar obstacles to visit detention centres upon orders of the inspectors in charge of the offices. On July 28, 2010, AF was informed that the Senior Police Officer had ordered through a circular to all the police offices not to let the human rights lawyers to meet the detainees, except the representatives of the National Human Rights Commission. Similarly, on January 9, 2011, an AF legal officer from Banke district was threatened by an unknown caller through an Indian phone number not to proceed in human rights violations cases. He had already received similar phone calls in the past[14].

Journalists also received death threats when reporting human rights violations. For example, on May 14, 2010, Mr. **Motiram Timilsina**, Editor of *Chesta Weekly*, a Kavre-based newspaper, was threatened to death by district member of the United Communist Party of Nepal - Maoist (UCPN-M) Gopal Ghimire for publishing on May 13 a news report

11/ See Human Rights Council, *Joint Written Statement submitted by the Asian Legal Resource Centre, with the support of WOREC, FEDO and JMC, to the Human Rights Council, to inform the debate about human rights defenders in Nepal,* February 18, 2011.

12/ A FIR is a written complaint filed at the police.

13/ See AF.

14/ See AF. Names of AF lawyers are not disclosed for security reasons.

against the Maoist and entitled "collecting money in the name of labourers". Mr. Timilsina lodged a complaint and Mr. Ghimire subsequently apologised on May 17, pledging not to repeat such an incident in the future[15].

Some lawyers and human rights defenders were also castigated for their work, both directly and indirectly, by the Maoists[16]. For instance, on May 3, 2010, Mr. **Janak Bdr Shahi**, Secretary of the Banke District Bar Association, was stopped by UCPN-M cadres as he was on his way to the Bar office. When Mr. Shahi clarified that he was a staff employed at the Bar and was returning from monitoring the nationwide strike, he was told by the cadres that "lawyers turn black information into white and vice versa" and was prohibited by the latter from entering the premises of the court[17]. On June 26, 2010, representatives of the Maoist Party publicly accused lawyers seeking justice in the murder of Mr. Arjun Lama, a social worker in Kavre, of "conspiring with international human rights organisations to defame the Maoist Party"[18]. Likewise, on June 30, 2010, on the eve of a jail bail hearing in a case in which a juvenile was severely tortured by family members of a police officer, a Maoist cadre, Mr. Deepak Karki, who is the elder brother of the main suspected perpetrator, met the AF leading lawyer in the case, and requested him not to represent the victim in the court[19]. When the AF lawyer rejected his request, Mr. Deepak Karki got angry and said, "If my sister is jailed, you and your organisation will face bad consequences. We will spare no one". On July 1, 2010, the day of the final hearing of the case, Mr. Deepak Karki threatened again the AF leading lawyer, telling him "to remember his words". Yet, nothing untoward happened after that day[20]. The same day, the District Court of Kathmandu ordered to send the perpetrator to jail until trial. As of March 2011, the case was still sub judice and the lawyer remained under threat. Throughout the court proceedings held on August 8, 9 and 10, 2010 vis-a-vis the case of Mr. Ramhari Shrestha's murder, a businessman from Kathmandu who was allegedly abducted in April 2008 by UCPN members, and later

15 / See Informal Sector Service Centre (INSEC).

16 / See OHCHR-Nepal Press Release, July 16, 2010. OHCHR-Nepal Chief further urged the Maoists to fully cooperate with the justice system and stressed that "while every individual or party is entitled to voice their disagreement, this should not be expressed in a way that is perceived as threatening against individuals who work to provide remedy and justice to the victims of human rights and international humanitarian law".

17 / See INSEC.

18 / The names of the lawyers are not disclosed for security reasons. The accused in the murder are six Maoist cadres, including Mr. Agni Sapkota, a Maoist Politburo member. The reaction of the Maoist Party followed the earlier refusal of the US Government to issue a visa to Mr. Sapkota on the basis of the seriousness of charges against him. See INSEC and AF.

19 / The name of the lawyer is not disclosed for security reasons.

20 / See AF.

died reportedly in the aftermath of severe ill-treatment received inside the People's Liberation Army (PLA) third division in Chitwan, a truckload of PLA combatants from the Chitwan district-based cantonment was continuously on the prowling nearby the lodgings of AF lawyers who had been there to plead in the criminal proceedings in Chitwan District Court. The combatants were even seen in the premises of the court[21].

Defenders of the rights of marginalised communities and women human rights defenders targeted

Human rights defenders working to promote the rights of marginalised communities, including the Dalits, and women human rights defenders, remained particularly vulnerable given the lack of social recognition and legitimacy of their work. Defenders working on the rights of Dalits are often not recognised as human rights defenders and police frequently refuse to investigate cases in which they are affected due to their work[22]. In addition, given that in Nepal women are traditionally confined to the private sphere and the home, women human rights defenders who organise themselves and speak publicly to raise human rights issues face hostility both from their own families and communities, as well as from the police. For example, on April 12, 2010, Ms. **Mahenigar Ansari**, a woman human rights defender of Dhangadi, was severely beaten by Mr. Sekh Munil Ahamad Ansari, a cadre of the Nepali Congress, the second largest political party in the country, who defined her as a "characterless woman", for advocating the rights of Muslim women. On the same day, Mr. Sekh Munil Ahamad Ansari was taken in police custody before being later released after interrogation. The Women's Rehabilitation Centre (WOREC) helped her to lodge a complaint and a FIR was registered. Yet, Ms. Ansari subsequently withdrew the case following pressure exerted by the Nepali Congress and the police[23]. Similarly, on July 1, 2010, Ms. **Malati Thakur**, Chairperson of the Women Rights Forum, an NGO advocating women's rights, Dhanusa district, was verbally abused, assaulted and rebuked by a local man for fighting against violence against women. The perpetrator was subsequently held liable by the community justice and fined 1,000 nepali rupees (about 10 euros)[24].

21/ *Idem.*
22/ Cases are not disclosed for security reasons.
23/ See INSEC Statement, April 12, 2010 as well as WOREC.
24/ See WOREC.