



General Assembly

Distr.: General
18 February 2013

English only

Human Rights Council

Twenty-second session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

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

[11 February 2013]

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

Nepal: Raising voice against impunity puts human rights defenders at risk

1. The Asian Legal Resource Center (ALRC) urges the Human Rights Council to pay special attention to the situation of human rights defenders in Nepal, who have found themselves exposed to threats, attacks and retaliation in the context of an intensified struggle against impunity. We urge the Council to remind the government of Nepal of its obligations to ensure that human rights defenders are protected and able to play their role as denouncers of human rights violations and impunity including through the right to participate in peaceful activities publicizing human rights violations and to be protected against violence while doing so.

2. At the heart of the vulnerability of human rights defenders lies the need to reform Nepal's criminal justice system. Nepal is still lacking an institutional and legislative framework adequately protecting the work of human rights defenders. The ALRC is concerned to see that a cycle of intimidation and threats against human rights defenders, protesters and journalists who have been denouncing the impunity which benefited political and institutional actors accused of human rights violations has sustained. Uninterrupted political interference in the due course of justice has put human rights defenders who opposed it at risk. The criminal justice system remains crippled, unable to provide redress to victims of human rights violations and to direct protection to human rights defenders under threats or attacks.

3. On 25 January 2012, 32 peaceful demonstrators who had been protesting against impunity for human rights violations and gender-motivated violence by staggering a sit-in in front of the Prime Minister's residence in Balutawar, Kathmandu, were arrested and manhandled by the police. They were freed after three hours, but a transgender activist who had been targeted and beaten up by the police in the margin of the demonstration had to be hospitalized. The protesters were denouncing the ineptness of the public authorities in investigating and prosecuting several recent cases of gender-based violence that protest snowballed into broader demands for action against impunity for all forms of human rights violations and reassertion of the authority of the rule of law.

4. Human rights defenders working against structural discrimination alongside gender, caste or ethnic lines are also exposed to threats and attacks. In September 2012, our attention was drawn to the harassment of women and LGBTI human rights defenders working with a victim of domestic violence who had filed for divorce. Anita (name changed) had filed for divorce after living through domestic violence for three years and has faced threats and attacks from her husband and her family for making this choice. When she went to court for the divorce hearing, thirty people forcefully entered the tribunal's premises and took her away, while the policemen present at the scene did not react. After she escaped, the offices of the organizations working with her have been visited repeatedly by the police and the relatives of the victim and their director has been receiving threatening phone calls. The victim's relatives have also forced their way into the organization's office, accompanied by police personnel. In that case, the Nepali state not only clearly failed its duty of protection of victims and human rights defenders but has become complicit of the victim's relatives in their attempts to obstruct the victim's access to justice.

5. Another recent event casts light on the tight links between the precarious situation of those who work to expose human rights abuses and the political protection which benefit human rights violators. On January 26, newspapers reported that a group of twenty two journalists based in Dailekh district fled the district after being threatened by local Maoist cadres in the eve of a visit of the Prime Minister. They were threatened to stop covering the

legal development in the case of Dekendra Thapa, a journalist from the district who was killed during the conflict by Maoist leaders in 2004. His body was exhumed from a jungle on 26 June 2008 and in August 2008 his wife filed a First Information Report on the abduction and murder of her husband. The police dragged their feet and did not conduct an investigation under the legally fallacious pretext that the case would be dealt with by yet to be established transitional justice mechanisms. Following the filing of a petition in the Appellate Court of Surkhet District, the police eventually arrested five of the accused on 5 January 2013. Nevertheless, the Prime Minister of Nepal is reported to have ordered the Attorney General's Office and Police Headquarters to stop the investigations into the case. In a public intervention the Prime Minister deplored the arrests and reasserted that conflict-related cases should be dealt with by transitional justice mechanisms.

6. In a special Nepal Conflict Report published last year, the OHCHR documented at least 2,000 incidents for which there were serious grounds to believe that they were instances of unlawful killings, hundreds of unresolved cases of enforced disappearances, over 2,500 cases of torture and numerous instances of sexual violence. The report pointed to “a systematic failure on the part of responsible authorities to bring individuals to justice, and that this lack of accountability served to perpetuate the commission of additional abuses during the conflict”. In spite of the weight and credibility of the evidences of massive violations of international human rights and humanitarian law during the conflict and of the concerns of the international community with respect to unabated impunity and the slow erosion of Nepal's rule of law framework, no steps were taken by the government to bring to book those accused of human rights violations, nor was any attempt made to strengthen its criminal justice system and reestablish the preeminence of the rule of law. Instead, it ensured that the human rights cases which had been filed could not proceed through the criminal justice system and amended the draft legislation establishing the transitional justice mechanisms to enable it to grant amnesty and pardon.

7. Although the dissolution of the constituent assembly in May last year has made the adoption of transitional justice mechanisms in transparent and democratic procedures difficult, hundreds of cases pertaining to human rights violations committed during the conflict remain pending before the national courts while no legal clause prevent their investigation and prosecution. Families of victims of human rights violations have seen times and again their request to seek justice before the regular criminal justice system crushed under the pretext that those cases fell under the jurisdiction of the criminal justice system. This is in spite of the Supreme Court having repeatedly found otherwise and ordered the investigations to go ahead in a number of cases, such a Maina Sunuwar's. We therefore urge the Human Rights Council to continue to monitor Nepal's fulfillment of its obligations to investigate and prosecute instances of violations of international human rights law.

8. We welcome the steps taken by the United Kingdom to arrest a Nepal Army soldier, Colonel Lama on 3rd January, in accordance with its international obligations. Lama is facing two charges of torture allegedly committed while he was in charge of Gorusinghe Army Barracks in Kapilbastu in 2005. The government of Nepal has officially protested against his arrest, terming it an attack against Nepal's sovereignty and called for his immediate release. The government refused to comment on the fact that no progress had been made in the investigation and prosecution of this case since 2005, domestic remedies were unable to deliver justice to the victims. We deplore that in spite of the seriousness of the allegations pending against Colonel Lama, he was deployed as a peacekeeper and served under the banner of the United Nations in Sudan. It is regrettable to see that in spite of the track record of Nepali peacekeepers having serious and credible allegations of human rights violations pending against them at home, the Department of Peacekeeping Operations (DPKO) is yet to put in place a proper vetting process of the peacekeepers it deploys.

9. As the government of Nepal is reportedly preparing a report defending its human rights and transitional justice policy to its diplomatic partners, we urge the human rights council and the international community to reassert that transitional justice mechanisms should be adopted through a fully transparent and democratic process and allow for the impartial investigation and prosecutions of allegations of human rights violations, and not be a tool to provide political justification to amnesty. Until the establishment of those mechanisms, it is important that the cases which have already been registered or for which there are court orders pending are allowed to process through the regular criminal justice system without government intervention. In that process, the importance of the work of human rights defenders alongside the victims must be publicly acknowledged by the public authorities, and they should enjoy the full protection of the rule of law while doing so.
