

# Declaration of Commitment on the Implementation of Human Rights and International Humanitarian Law

By BIPIN ADHIKARI

The UN Secretary General Kofi Annan on Monday 22 March 2004 urged His Majesty's Government and Maoist rebels to take "immediate steps" to cease fighting and revive a peace process following a heavy gun battle between the two sides over the weekend at Beni Bazar in the District of Myagdi. Weekend clashes in Nepal again claimed the lives of dozens of militants, and members of security forces.

The Secretary General does not believe there is a military solution to the conflict. He appealed to the Government and the Communist Party of Nepal (Maoist) to take immediate steps to end the fighting and resume peace process with the participation of all political and civil forces in the country. The Communist Party of Nepal (Maoist) immediately welcomed the UN to facilitate the peace process, whereas the Government side said it knows its business better.

The Home Minister not only ruled out peace process citing the violence at Beni Bazar, he also expressed the reluctance of his Government to take assistance of the United Nations in mediating for the peace. Four days after the UN statement, however, Prime Minister Surya Bahadur Thapa declared His Majesty's Government's human rights commitments, which he described as the reaffirmation on their implementation, and the implementation of international humanitarian law. The Prime Minister announced a series of measures to curb human rights abuses after growing criticisms from activists at home and abroad. The question, however, is whether there is sincere commitment that neither the concerns of security nor the aspirations of liberty can be used to undermine those principles.

The Prime Minister has promised that an independent Human Rights Protection Committee shall be constituted to facilitate human rights monitoring and investigations undertaken by the National Human Rights Commission (NHRC), to ensure cooperation with, and protection of governmental and nongovernmental entities for their human rights related work, and to help implement the recommendations of the NHRC.

This Committee will oversee the functioning of relevant government authorities in the following aspects: investigation into human rights violations and prosecution of those responsible; observance of laws applicable to detention; protection of human rights of all persons coming into contact of the security forces; immediate release of those suspected to arbitrary or illegal detention; quick implementation of the orders and decisions of the judiciary; taking necessary legal action against those responsible for human rights violations; and recommend compensation for the victims. He also assured that the Government will provide necessary facilitation to the National Human Rights Commission in the discharge of its official mandate for the promotion and protection of human rights.

If it is to be understood correctly, the Government reaffirmed the move from the law of the jungle to the rule of international law, where

international human rights and humanitarian law establishes clear principles about protecting the human rights of the people including the vulnerable lot of children, women, and elderly citizens.

Without losing time, in the same evening, the National Human Rights Commission commented that the declaration of the Government has attempted to espouse the principles of human rights and humanitarian law, although it is still unclear about the issues of impartiality in investigations of human rights violations and transparency in legal processes while dealing with the perpetrators of such violations. The Commission also pointed out that it is assured of the Government's support for the human rights monitoring work to be carried out with the technical assistance of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

Now what is expected is a similar declaration from the Maoists. The Commission has found trends of abuses being carried out by the armed groups of the Maoists, such as torture (including rape), kidnapping, hostage taking, extortion and killings of non-combatants. In many cases, the violence that they have caused looked random in which the targets were not military in nature and were not

pre-selected. The use of explosives, in areas that are civilian makes this an issue of pressing concern as well as attacks on civilian infrastructure and blockade of essential supplies to the civilian population. The CPN (Maoist) is bound to apply Article 3 common to the Geneva Conventions.

Persons taking no active part in the hostilities including those who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanly. To this end, the Maoists should also immediately stop violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrage upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

It is high time that the National Human Rights Commission recommend *Minimum Immediate Steps for CPN (Maoists) to Protect Non-Combatants* the way it recommended His Majesty's Government on March 10 some *Minimum Immediate Steps for Human Rights Protection*. This will help the Maoists to come forward making an environment for peace process that has been stalled since long. Ultimately, what counts in the peace process is the determination of all sides to find a solution. This involves taking some time everyday to slow down, wake up and resist the temptation to live beyond the means at their disposal. ■

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