

Economic, Social & Cultural Rights in Conflict Zones: "If The Roots Are Not Removed During Weeding, The Weeds Return Next Spring"

By BIPIN ADHIKARI

The devastating effects of the ongoing armed conflict between the Communist Party of Nepal (Maoist) and security forces of His Majesty's Government are not limited to the armed forces opposing each other. The civilian population is also affected in many ways, either by fighting itself or through hunger, diseases, and population transfers, caused by the armed conflict. They are deliberately targeted in conflicts and the rules of international human rights and humanitarian laws are flouted with impunity. The human rights movement in the country must speak out against it with all the force at its command. The prevention of the ongoing conflict means the prevention of gross violations of human rights. To the victims of the conflict, and the civilians in the conflict zones, even after 10 years of the solemn commitments of the Vienna World Conference on Human Rights (1993) or the Vienna Declaration and Programme of Action, and the more recent commitment to human rights values in the Millennium Declaration (2000), the universality of human rights remains formal rather than real. This is a deplorable situation.

A 1999 report by UN Secretary General on the protection of civilians in armed conflict describes this appalling development as follows: "In many of today's armed conflicts, civilian casualties and the destruction of civilian infrastructure are not simply by-products of war, but the consequence of the deliberate targeting of non-combatants. The violence is frequently perpetrated by non-state actors, including irregular forces and privately financed militias. In many conflicts, belligerents target civilians in order to expel or eradicate segments of the population, or for the purpose of hastening military surrender."

The four Geneva Conventions of 1949 which Nepal has signed contains a number of provisions relevant for the protection of economic, social and cultural rights of the people. These rights in terms of armed conflict should also be seen in the context of the fact that humanitarian law has increasingly become related to human rights law. First, they include provisions on internal (non-international) armed conflicts through Article 3 common to 1949 Conventions and Additional Protocol II of 1977. Apart from this, the Geneva Conventions and their two Additional Protocols contain more than 500 articles on the protection of the wounded and sick, prisoners of war and civilians. As much as the Additional Protocol I is concerned, it also deals with methods and means of combat and the protection of the civilian population at large. For example, the third Geneva Convention contains objective standards for food and clothing for the treatment of prisoners of war. Similar provisions are to be found in the Fourth Convention with respect to civilians in occupied territory and civilian internees. Another set of quite detailed First and Second Conventions on the health rights of wounded and sick soldiers provide provisions. Second, there has, during recent years, been a search for minimum humanitarian standards, based on a combination of humanitarian law and

human rights law, which would also be applicable in situations short of armed conflict. The *Declaration of Minimum Humanitarian Standards* (the so called Turku Declaration) adopted by an international expert meeting in Turku in 1990 can be taken as an example. There is a prohibition in this Declaration on deliberate deprivation of access to necessary food, drinking water and medicine, a provision demanding satisfactory conditions of shelter, hygiene, health safety and nutrition in case of displacement of a population, a provision on the right of children to care and aid and provisions on the protection of the wounded and sick. Third, human rights law is also applicable in times of armed conflict and other public emergency threatening the life of the nation; derogations can only be made under certain conditions and a minimum core of rights are absolutely non-derogable. The human rights movement in the country has

not adequately focused on the ESC components of these humanitarian laws.

Additionally, it is important to note that contrary to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain any public emergency clause. This can be interpreted to mean that the ICESCR is in principle fully applicable in times of armed conflict and other public emergencies. There is a limitation clause, but the limitations should be compatible with the nature of these rights. The

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Convention on the Rights of the Child which has guarantees not only for civil and political rights but also economic, social and cultural rights should also be mentioned in this context. It does not allow derogations under any circumstances. The humanitarian law conventions are all basically non-derogable.

The ICESCR standard of progressive realization arises out of Article 2 (1) of the ICESCR, which commits states parties—countries that have ratified the covenant—to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized. But effective monitoring of this Covenant, which is central to the realization of the rights it enumerates, is not taking place. It is said that a "violations approach" is more feasible precisely because it does not depend on the availability and public release of extensive and appropriate statistical data or on major improvements in states' statistical systems. The monitoring of human rights is intended to ameliorate human suffering resulting from violations of international human rights standards. It follows that identifying violations in order to end and rectify abuses deserves a higher priority than promoting progressive realization. ■

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