

# Increasing Abuse of Law of Internal Armed Conflict

By BIPIN ADHIKARI

The recent gunfight at Bhojpur between the Maoist rebels and the security forces of His Majesty's Government in the town of Bhojpur is yet another addition to the bloody battle going on in Nepal.

In a bid to discredit the popular assertion that the Maoist "people's war" is under control, and that its capacity to sustain itself has gone down, the rebels knocked down the telecommunications tower of Bhojpur, cutting communications to the area, and set fire to a bank and a government office in the district headquarters before fleeing in their biggest attack since walking out of peace talks in August 2003. The fighting started late evening of March 2 and continued till the next morning. The rebels who were said to be around 1,000, armed with automatic weapons and bombs, ran away after an army helicopter with night vision facilities and other reinforcements reached the place and began aerial patrol. The death toll in Bhojpur was reported 48 on March 5. Of them, 32 were from the Government side and 16 were Maoists. Some troops were missing after the clash, which also left 23 people wounded.

The Bhojpur attack means many things. At the least, it shows that the potential of the Maoists to hit and run using human shields have not diminished as claimed by the security forces justifying the pace of militarization. It also reminds all stakeholders including the state that there is no alternative to political solution to the Maoist violence, no matter how military targets are hardened.

This attack also means that the Maoists have started giving up their hope on acquiring political strength by adhering to the law of internal armed conflict. They have again started ignoring scope of application of the Common Article 3 of the Geneva Conventions, its binding nature for insurgents, and implementation and enforcement of human rights norms inherent in humanitarian laws.

In a major policy shift, in October 2003, the Maoists had announced that they would no longer carry out political killings or destroy public utilities or infrastructure. They had pointed out that the decision was taken to garner support from the public who had been dismayed at a surge in violence since the rebels pulled out of the ceasefire in August 2003. The party had said it would avoid destruction of village development committee (VDC) buildings and communication towers and vacant army barracks and police posts. The rebels had also said they would not carry out attacks against lower level unarmed police and army personnel while on leave or their families. This major shift of policy which came in the Maoist camp 55 days after they unilaterally ended the ceasefire seems to have been

abandoned one by one. The retreat shows that the Maoists are losing the faith that they can fight their war on the strength of their ideological footing. The Bhojpur attack is only the latest example.

Worried of this trend, the National Human Rights Commission (NHRC) has made an appeal for the safe release of the security personnel whom the Maoists took into custody during the Bhojpur offensive. Maoists, so far, have not made public the whereabouts of the abducted ones. Common Article 3(1)(b) of the Geneva Conventions of 1949 prohibits the taking of hostages during internal armed conflict. Article 9(1) of the ICCPR could also be seen as relevant in

*Common Article 3(1)(b) of the Geneva Conventions of 1949 prohibits the taking of hostages during internal armed conflict. Article 9(1) of the ICCPR could also be seen as relevant in this regard. The provisions of ICCPR are primarily aimed, however, at the ostensible lawful detention of individuals by the government or public authorities, rather than at the taking of hostages per se.*

this regard. The provisions of ICCPR are primarily aimed, however, at the ostensible lawful detention of individuals by the government or public authorities, rather than at the taking of hostages *per se*. Common Article 3(1)(b) is based instead on humanitarian principles, as expressed in Article 34 of Geneva Convention IV.

Another issue of grave concern again is the use of the child soldiers and women and children as human shields. Children, espe-

cially adolescents, are easily indoctrinated and are more willing than adults to carry out risky missions. The thrill of wielding weapons and the power that flows from being armed draws many into the Maoist groups. In the early years of the militancy, adolescent boys and girls may have joined up voluntarily, attracted by the romance of risk and adventure that life as a militant promised. Today, most of them are said to have been kidnapped or coerced into picking up arms. The recent news in the private sector media about the mass abduction of school students by the Maoists in the remote areas and continued attempts towards fresh recruitment of children and adolescents as combatants explain themselves. Knowing that the children are more susceptible to capture, the Maoists are not averse to using them as fighters. This trend is not going to help the Maoists in the long run.

The deficiencies on the part of the Maoists, however, do not mean that the state can ignore its responsibility to stand by good governance, the rule of law and respect for human rights in its fight against the ongoing insurgency. It has to be mindful of the fact that the protracted conflict has not only destroyed the social and economic fabric of Nepal, it has also eroded the most fundamental human rights. Unwavering political commitment and prompt, generous and sustained efforts are needed to get the Maoist to the peace process again - not least for the protection and promotion of human rights. ■