

Technical Assistance to National Human Rights Commission

By BIPIN ADHIKARI

The delay on the part of His Majesty's Government to sign the Memorandum of Understanding (MOU) with the United Nations High Commissioner for Human Rights (OHCHR) concerning technical assistance to the National Human Rights Commission (NHRC) is causing dismay to the human rights community of Nepal. The reason behind the delay has not been explained.

The human rights community has been waiting since long to see that OHCHR is involved somehow with the NHRC of Nepal in promoting and encouraging respect for human rights. The Commission, whose primary mandate is not only to hold the state accountable for the effective enjoyment of human rights, but also to consistently criticize the Communist Party of Nepal (Maoist) for their abuses, has already made it clear that there is a need for such technical assistance.

The draft MOU, which was submitted by OHCHR to the Government a few months ago, establishes the general terms and conditions for such a technical assistance program. It aims at enabling the Protection and Monitoring Division of the Commission and its outreach offices to carry out their statutory monitoring and investigation functions. The focus, in particular, is on the additional and specific role assigned to the Commission under the Declaration of Commitment regarding human rights and international humanitarian law announced by the Government on 26 March 2004.

Recognizing that in order for such a monitoring arrangement to be operational and have the desired effect as an effective tool for human rights protection, the NHRC would need to have nationwide coverage. Such monitoring arrangements can be carried out independently only by adequate numbers of well resourced human rights monitors, enjoying freedom of movement and full security guarantees. The draft also envisages that the OHCHR in cooperation with UNDP Country office in Nepal will recruit and deploy necessary international advisors at NHRC headquarters and propose field officers to provide advice and support to the national monitors working out of these offices, and support the outreach programs of the Commission by providing United Nations Volunteers to carry out its monitoring mandate. In any case, the activities of OHCHR/UNDP are to be done through the capacity building activities already being undertaken under the auspices of UNDP and are to be aimed at fulfilling NHRC mandate and its objectives.

The draft MOU also deals with regulation of the status of UN personnel, their assets funds as well as property in Nepal, and facilitation of OHCHR/UNDP's cooperation activities with the Government. It provides that the OHCHR, its property, funds and assets wherever located and by whomever held, shall enjoy immunity from every form of legal process, except in so far as in

any particular case the Secretary General of the United Nations has expressly waived its immunity. Once the MOU is signed, OHCHR officials will enjoy the benefits of the provisions under the Convention on the Privileges and Immunities of the UN, adopted by the General Assembly in 1996 (to which Nepal is a party since September 1965). Personnel recruited in Nepal will also be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Officials shall enjoy freedom of entry into, exit from, and movement throughout Nepal. The Government shall recognize and accept the UN laissez-passer issued to officials of OHCHR as a valid travel document equivalent to a passport. Finally, the Government will have to provide OHCHR officials such security as is required for the effective performance of their activities.

With the re-installation of Prime Minister Sher Bahadur Deuba, who was arbitrarily dismissed from his lawful office on 4 October 2002 on the charge of incompetence, there is now a proper environment to move forward on this matter.

The current situation or the impossibility of bringing the perpetrators of human rights violations to account in most of the cases is open to everybody. This is one of the most serious human rights problems and a fundamental reason why human rights violations continue to be committed. The involvement of the OHCHR can help check the failure of the state to meet its obligations to investigate violations and ensure that they are prosecuted, tried and duly punished. Similarly, grave abuses of human rights, such as torture, kidnapping, hostage taking, extortion, killing, and suppression of freedom of opinion, routinely occur in areas under Maoist *de facto* control. Their armed cadres, although politically motivated at times, are often found by the National Human Rights Commission to be engaging in purely criminal activities. The Commission does not discriminate among victims. The NHRC has, therefore, urged each individual in a position to influence the conduct of their subordinates to reflect on their responsibility, and on how they would account for their action or inaction before a court of law - as well as before their family and community. The assistance of OHCHR can also help the Commission to deal with the Maoists on human rights and humanitarian issues.

It is high time that the Government explains the reasons behind the delay in finalizing the draft MOU. With this delay, the Government is losing its moral compass, sacrificing the global values of human rights in a blind pursuit of security. This failure of leadership is a dangerous concession to the Maoists. ■

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