

War criminals

BY BIPIN ADHIKARI

The Communist Party of Nepal (Maoist) has asked for an independent probe into alleged human rights violations by government troops, who have stepped up their fight against insurgents since King Gyanendra seized power on February 1.

A statement issued on April 6 accused the Royal Nepalese Army troops of murder, rape, arson and looting. The statement also claimed that human rights activists were barred by the troops from visiting areas where the alleged atrocities took place.

The statement comes after the news of army-aided vigilante-ism in Kapilavastu, which hit the headlines internationally, and on the fifth day of an 11-day strike called by the Maoists which is losing its significance. While this call of the Maoists is no more than a propaganda stunt to isolate the new dispensation, whether the fact that they make such a call or not, that the international regime is tightening the grip of international law on human rights criminals around the world must be clear to them.

Though a matter of coincidence, the same day on which the Maoists came with this statement, UN Secretary-General Kofi Annan transmitted to the International Criminal Court (ICC) a sealed list of 51 names of people blamed for war crimes and crimes under international law in the conflict between the Sudanese government, allied militia and rebels in the western Darfur region.

The Darfur case is the first the Security Council has referred to the ICC, which is also investigating alleged crimes in Uganda and the Democratic Republic of Congo. The handing over of the list to ICC Prosecutor Luis Moreno Ocampo at UN Headquarters follows March 13, 2005 Security Council's vote to refer the matter to the tribunal as recommended by the UN-appointed International Commission of Inquiry into whether genocide had occurred in the fighting.

The list transmitted to ICC includes senior Sudanese govern-

ment and army officials, militia leaders and rebel and foreign army commanders.

The ICC has also taken charge of box loads of documents about alleged war crimes and their references. The Court will now proceed with the analysis of the documents putting together a team of analysts and investigators. It is too early to say when the ICC might issue indictments or arrest warrants over Darfur, but a historical process has already started.

The job, however, is not easy. Resolution 1593, passed by the Security Council by an 11-0 majority, overrode strong opposition from the Sudanese government to impose international trials for the 51 suspects identified by the UN investigation commission. The government has been saying it would refuse to hand over its citizens to face trial abroad. It branded the resolution demanding prosecution of 51 named suspects, including senior officials, a violation of its sovereignty. It has insisted that its own courts are competent to try them.

As a point of reference, president Omar al-Beshir, solemnly swore "thrice in the name of Almighty Allah that I shall never hand any Sudanese national to a foreign court." And information minister Abdel Basit Sabdarat said the government would launch "an extensive diplomatic campaign" to explain its defiance of the world body.

These remarks are not much helpful. A cease-fire signed by both sides a year ago has been widely violated despite the deployment of an African Union monitoring force, prompting ever louder demands from the rebels for the intervention of Western armies with more sophisticated logistics capabilities. By now more than 300,000 people have been killed and more than 2.4 million others driven from their homes since rebels took up arms in early 2003, partly in protest at the distribution of economic resources by the Khartoum government.

The scorched earth campaign as waged by the government has been fatal to the conflict. Many of the deaths and atrocities are blamed on the Arab Janja-

weed militia, which the government denies arming.

The report given by the UN-appointed commission of inquiry recently into whether genocide has occurred in the war-torn Darfur region had found that the government and Janjaweed militia are responsible for crimes under international law and strongly recommends, referring the dossier to the ICC. In its report the five-member Commission found that while the government had not pursued a policy of genocide, government forces and militias "conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement."

It rebutted government statements that attacks were for counter-insurgency purposes and conducted on the basis of military imperatives, saying most were "deliberately and indiscriminately directed against civilians," and even where rebels may have been present, the use of force was manifestly disproportionate to the threat posed.

The report also said there was credible evidence that rebel forces were responsible for possible war crimes, including murder of civilians and pillage although it did not find a systematic or a widespread pattern. It said Sudan has done little to disarm the Arab militia accused of a widespread rape, killing and burning of non-Arab villages in Darfur during the two-year rebel uprising.

The conclusion that no genocidal policy had been pursued should not be taken in any way as detracting from the gravity of the crimes perpetrated. International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide. But the crucial element of genocidal intent appeared to be missing, at least as far as the central government authorities are concerned. This development must also remind the new dispensation in Nepal that the "holier-than-thou approach" of the government vis-à-vis the Maoists cannot protect the war criminals in any sense.