



Remarks on pending accountability issues in Nepal
by Richard Bennett, Representative of OHCHR-Nepal,
at the Reporters Club
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Namaste,

Chairperson of the Reporters Club Mr Rishi Dhamala,
media representatives and colleagues,

This is the first briefing I have given since the mandate of OHCHR was extended by agreement between the Government and the High Commissioner until 9 June 2010. Today I am going to update you on some issues of lack of accountability that my Office has been following up on recently. These involve human rights violations committed both during the conflict and since. In particular, I want to address the need for both sides of the conflict to live up to their commitments to tackle impunity and to cooperate with “credible, competent, impartial and fully independent investigations.” The victims of these violations and their families deserve no less. They have the right to know the truth and to a remedy, and they should be at the heart of everyone’s concerns. Moreover, the parties to the peace process agreed that addressing the past is necessary for a sustainable peace. But, regrettably, too little progress has been made; today I am forced to repeat that no-one has been brought to justice for a conflict related offence. The situation is no better when it comes to politically related crimes committed since the peace agreement; impunity prevails and I’m going to give you a couple of examples.

In particular, I’m going to focus on disappearances and other violations including torture and arbitrary detention at the Maharajgunj barracks in Kathmandu in 2003 and 2004, and several cases where the UCPN-M are responsible.

In recent days I have written to the Prime Minister concerning the urgent need to make progress on cases raised by OHCHR in our 2006 *Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003 – 2004*. These violations have also been the subject of investigations by other human rights organizations, such as the NHRC.

A High-Level Task Force established by the NA later in 2006 chose to present only the names of 12 individuals whom the NA claimed were not disappeared and effectively dismissed the allegations contained in OHCHR's report. Following up on the Army’s claims, my Office has carefully verified that 4 out of the 12 persons

named in the NA Task Force report were eventually released, but only after being illegally detained for months and suffering ill-treatment which in some cases amounted to severe torture. One person died in NA custody and the fate of the other seven individuals named in the NA Task Force report remains unclear. OHCHR, at this stage, concludes that those seven individuals continue to be disappeared.

The OHCHR report in 2006 focused on the actions of the 10th Brigade during 2003-2004 as one example of systematic violations of human rights committed by NA personnel during the conflict and the report aimed to bring to the attention of the Government the urgent need to establish a credible, competent, impartial and fully independent investigation into the arrest, detention, torture and fate of individuals in 2003 and 2004. The list of 49 disappeared was not exhaustive and was to illustrate the issue of disappearances generally during that period of Nepal's history. The purpose of the report was not to offer a final assessment, or to judge the guilt or innocence of individual officers - that is to be determined by judicial investigation and fair trial. OHCHR considers that the NA, as the alleged perpetrator, is not the appropriate institution to investigate allegations of conflict-related disappearances.

My Office also recommended in its 2006 report that those NA officers potentially implicated directly, or responsible through the chain of command, should be suspended pending a full investigation into the NA 10th Brigade's actions. This must include an investigation into who within the chain of command directly ordered, knew or ought to have known about the serious human rights violations and grave breaches of international humanitarian law that took place and failed to take any steps to stop these actions.

I would also like to note that in December 2008 OHCHR released a report into conflict-related disappearances in Bardiya district, committed by both the UCPN-M and state security forces. The report included a comprehensive set of recommendations to the Government regarding disappearances and investigations into conflict-related crimes which equally are applicable to other instances, including those related to Maharajgunj Barracks.

Recently I met with the Chairperson of the UCPN-M, Mr. Pushpa Kamal Dahal "Prachanda" and once again expressed concerns about a number of unresolved cases, some conflict related and others post-conflict, in which his party has already publicly admitted responsibility but where the alleged culprits remain at large, and in some cases in official positions within the party. Abuses of human rights by non-State actors, in particular the United Communist Party of Nepal - Maoists (UCPN-M) and their non-cooperation with accountability mechanisms is contributing to the prevailing culture of impunity in Nepal. Let me update you on some of the cases remaining unresolved due to non-cooperation by UCPN-M. I want to emphasize that these cases are only emblematic and there are other equally serious ones.

Madi Bombing - Chitwan

On 6 June 2005, a bomb exploded in a public vehicle in Madi, Chitwan in which 39 persons were killed and 72 were wounded. CPN-M took responsibility for the incident and CPN-M at the central level carried out its own internal investigation of the incident. The

CPN-M confirmed to OHCHR that five CPN-M cadres had been identified as being responsible for carrying out the bombing. Four of the five names were released publicly: Anak Bahadur Magar “Khisan”; Chandika Poudel “Sahash”; Ram Bahadur Kumar “Sujan” and “Harka”. The full name of a further responsible cadre, referred to as Devendra (a PLA member) was not made public. Although the CPN-M had publicly made commitment to the victims of the Madi incident to ensure accountability for those responsible for the killing of civilians, none of these cadres has been subjected to criminal investigation or detained. The Nepal Police has been reluctant to conduct further investigations or proceedings into the incident without the active support of the UCPN-M. OHCHR has and continues to urge the UCPN-M to provide full support to the police investigation to locate those suspects whose whereabouts are not known to the Chitwan Police in order to hold those responsible to account.

Arjun Lama - Kavre

Arjun Lama was abducted on 29 April 2005, allegedly by CPN-M cadres, and later found dead. Following a Supreme Court Order, on 11 August 2008 the Nepal Police registered a FIR in which five CPN-M members, including a Central Committee member, were accused. After the Supreme Court decision, CPN-M cadres organized a press conference threatening the human rights defenders and lawyers involved in pursuing the case. The CPN-M has also failed to cooperate with the criminal investigation of the Nepal police. OHCHR has requested the UCPN-M to fully cooperate with the Police investigation and to refrain from any kind of threats or intimidation of human rights defenders.

Ram Hari Shrestha - Chitwan

Ram Hari Shrestha was abducted on 27 April 2008 and later died, allegedly due to severe ill-treatment received inside the PLA, Third Division Cantonment in Chitwan. Five CPN-M cadres have been formally charged in connection with the incident: Govinda Bahadur Batala “Jibit”, Keshab Adhikari “Raghu”, Ganga Ram Thapa “Atom”, Kali Bahadur Kham “Bibidh”, and Karki “Sankalpa”. Govinda Bahadur Batala has been arrested and is in pre-trial detention, while the remaining four are still at large. According to the Nepal Police, the PLA has not responded to two letters sent by them (on 23 May and 1 June 2008) requesting an interview with the PLA Third Division Commander. The Nepal Police has stated that they need cooperation from UCPN-M and PLA in order to carry out the Chitwan District Courts order to arrest Kali Bahadur Kham “Bibidh”. OHCHR has requested the Chairperson of UCPN-M to direct Mr. Kham to surrender himself to the Nepal Police, even though he considers that Mr Kham was not directly responsible, and for UCPN-M in particular the PLA to provide its full cooperation in order to locate the other suspects and to fully support the investigation by the police.

Birendra Sah – Bara

Birendra Sah- Bara was abducted and allegedly killed by four CPN-M members on 5 October 2007 in Bara. Four individuals Lal Bahadur Chaudhary, Kundan Phoujdar, Ram Ekbal Sahani and Hari Ram Patel were accused in the First Information Report filed at the District Police Office in Bara. A CPN-M report, under the coordination of Commander Pratik, was issued on 05 November 2007 and only acknowledged the involvement of three CPN-M cadres. Two of these cadres (Kundan Phoujadar and Ram Ekbal Sahani) were reported to have been stripped of their responsibilities in the party and CPN-M further committed to "active cooperation" in identifying other cadres responsible for the murder. Two persons (Ram Ekbal Sahani and Manager Giri) were arrested in November 2008 and are currently detained under pre-trial detention. Although it has been reported that Kundan Faujdar and Lal Bahadur Chaudari are still in Bara district the police say that they have not been able to take appropriate steps, including detaining these suspects, due to political pressure exerted by UCPN-M. OHCHR has requested the UCPN-M leader to direct Lal Bahadur Chaudhary and Kundan Phoujdar to surrender themselves to the Bara Police, and

that the UCPN-M provides full support to the police investigation into the killing of Birendra Sah including in locating Hari Ram Patel.

In my meeting with Mr Dahal, I also asked him to support the adoption of a Disappearance Bill in line with international human rights standards in the current parliamentary session as a matter of urgency. I have been informed by the Minister of Peace and Reconstruction, Mr Rakam Chemjung that the Government plans to introduce a new bill on disappearances soon.

Before concluding my remarks, let me quote the High Commissioner for Human Rights, Navi Pillay. During her press briefing in Kathmandu on 22 March 09, she said, "the demands of victims' families are not mere wishes; they are supported by law. And until these demands for justice are fulfilled and accountability for past, and in particular ongoing, violations is ensured, a truly new Nepal will not emerge, and indeed, the peace process could be jeopardized". I urge the Government of Nepal with the full cooperation of the political parties to take action as a matter of priority in relation to the recommendations made by my Office and other human rights organizations including the National Human Rights Commission in order to promote a culture of accountability.

Thank you !