

# How Political and Institutional Factors Have Impacted on the Implementation of the Human Rights and Good Governance Programme in Nepal

## Background

Democracy was restored in Nepal in 1990 through a popular movement. The 1990 Constitution of the Kingdom of Nepal is generally hailed as one of the best statutes in this part of the world, guaranteeing as it does, among others, fundamental human rights.

Political instability particularly since 2002, and the dramatic seizure of absolute executive power by the King on 1 February 2005 by dismissing a four-party coalition government, has meant that both the spirit and the letter of the constitution are seriously eroded. Nepal's democracy and most of its democratic institutions are in a dysfunctional state. The political crisis Nepal at present faces is unprecedented in its democratic era that began in 1990.

## Challenges

The political and institutional factors impacting on the human rights and good governance area have been quite significant since late nineties. However, since 2002 these factors assumed even bigger proportions. They are at present of such magnitude that protection and promotion of human rights, and governance reforms, constitute tasks that have to be carried out against overwhelming odds. Some of the major political and institutional factors impacting on human rights and good governance programme in Nepal are:

*Maoist Insurgency:* A violent insurgency that began in 1996 has so far claimed over 13,000 lives. Human rights abuses by security personnel and Maoists have been common, with often innocent people bearing the brunt of the atrocities. The conflict has seriously stalled development and exacted a huge cost to the economy. Infrastructures across the country have been destroyed.

*Democratic Deficit:* When Nepal lost representative democratic institutions both at the national and local levels in the first half of 2002, it marked the beginning of widening democratic deficit. The dissolution of parliament and non-extension of the local government representative structures, combined with the unfavourable situation for holding both national and local elections due to the insurgency-related security situation, left a political and institutional vacuum. The King's dismissal of the elected government on grounds of incompetence in October 2002 precipitated the political slide that further impacted on the human rights situation and good governance. One year from 1 February 2005, there is little sign that the King is going to abandon his three-year roadmap, a part of which is what has turned out to be very controversial municipal elections held on 8 February 2006. Boycotted by the major parties, the elections saw participation of only about 20 per cent of voters amidst, what is more, allegations of rigging.

*Systematic Suppression:* Since late nineties, the conflict has represented the most serious threat to human rights in Nepal as respect for human rights, international humanitarian laws and the safety of civilian non-combatants was systematically violated by both the state and the Maoists. However, since 1 February 2005 a systematic suppression by the new royal government of political dissent and voices in favour of human rights and fundamental freedoms has resulted in even more widespread undermining of what was at best a weak human rights regime in the country. The government detained thousands of political leaders, human rights activists, journalists, other professionals and student activists throughout the country, which already was reeling under a widespread and serious pattern of human rights violations due to the ongoing insurgency and counter-insurgency operations. Political suppression continues as restrictions are imposed on freedoms of association, assembly and expression.

*Weakening Rule of Law:* In recent years, the independence of the judiciary has been constantly challenged. Habeas corpus writs are severely undermined as security forces in several instances have obstructed the courts by re-arresting those released on the basis of court orders. The pattern of re-arrests continues up to now. The establishment of the Royal Commission on Corruption Control (RCCC), after the 1 February takeover, further eroded the independence of the judiciary and the judges. The RCCC not only bypassed the constitutional Commission for the Investigation of Abuse of Authority (CIAA) but also overrode the jurisdiction of the courts and flouted the fundamental principles of justice on the separation of the investigating and prosecuting bodies, and the adjudicator. The Supreme Court has generally been dragging its feet, for some or longer time or even indefinitely, in relation to a number of cases with clear political dimensions that have arisen in the post-1 February context. In a departure from this pattern, the Supreme Court, in response to a petition lodged many months ago, declared on 13 February 2006 that RCCC was unconstitutional. It remains to be seen whether the judiciary, now a beacon of some hope, continues on this path of providing fair justice on many pending constitutional and legal issues.

### **Opportunities**

Against the above bleak political and institutional background, attempts at building a human rights culture and promote good governance in Nepal have been an uphill task for the Nepalese people. However, some opportunities have come in handy to pursue this task.

*Civil Society:* A largely united civil society in Nepal is valiantly working to protect human rights and restore democracy, despite great odds in the form of restriction on their mobility and general climate of fear. Media, which has faced unprecedented curbs on its freedom through imposition of widespread censorship and other indirect attempts to throttle its independence, continues to raise voice against anti-democratic actions of the government. Opportunities to intensify values-led human rights and democratic movement exist thanks mainly to the resilience of the civil society that has refused to buckle even in the face of many difficulties and is more inclined now to work through networks and alliances.

*Political Realignment:* Peace is priority number one for the Nepalese who are no nearer it than they were in pre-1 February 2005 period. A recent 12-point understanding struck between the major political parties and Maoists to pursue united efforts to tackle the current political impasse has given the Nepalese some hope that this new political alignment may offer an opportunity to address the question of restoring both peace and democracy. Many Nepalese hope that Maoists' proximity with the political parties — their erstwhile enemies — will encourage the former to abandon their violent methods and that the two sides' new-found unity of purpose does not falter in the face of what are seen as threats and provocations by the government which did, Maoists claim, lead them to call off their four-month-long unilateral ceasefire early January 2006. The rapprochement between the two sides and the growing popular voices for peace and for a negotiated settlement of the conflict may provide opportunities to further advance human rights and conflict transformation on the ground.

*Donor Coordination:* Because of the human rights and governance crisis that Nepal is facing and the immense needs to address the challenges, donors in Nepal now maintain more contacts than ever before within this field with the aim of ensuring that different donor-sponsored initiatives are supplementing each other, that conflicting or overlapping activities are avoided and that a balanced development of partner organisations is ensured. There are real opportunities, some of which have already been picked by donors including Danida, to support joint initiatives with a broad spectrum of human rights defenders. This should continue to be a key approach in supporting work in this area.

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