

Hope's still alive for Disappearance Commission in Nepal...

After a chequered course of events jeopardizing the efforts to find the whereabouts of those disappeared during the decade-long conflict in Nepal and to provide victims retroactive justice and redress, the government of Nepal has once again shown a revived interest to form the much-hyped Disappearance Commission. In its latest efforts, the government, acting on some of the suggestions, put forward by a group of national and international human rights organizations, produced a revised version of the Disappearance Bill. However, the reservations of rights organizations still galore with the deliberate indifference of the government to make the bill on par with the 1 July 2007 verdict of the Supreme Court (SC).¹

The debate over establishing a disappearance commission in Nepal started immediately after the democratic renaissance of 2006. In the Comprehensive Peace Agreement signed between the then seven-party alliance government and the Maoists, both sides agreed to make public the whereabouts of those disappeared within 60 days from the day the accord was signed. Likewise in January 2007, the Interim Constitution of Nepal expressly mentioned "to provide relief to the

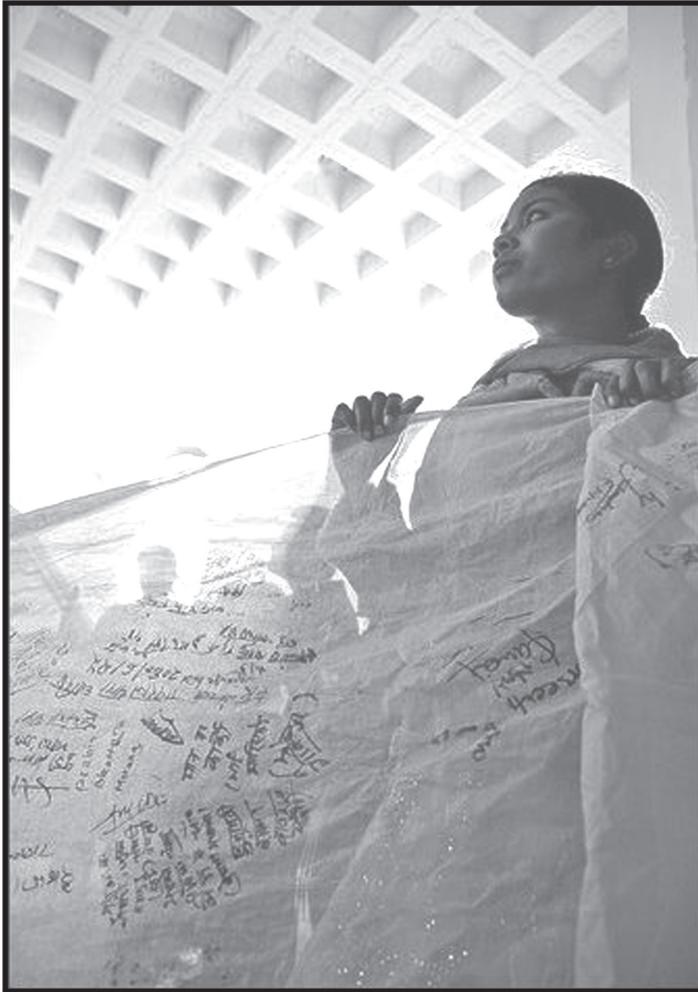
families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict." However, no concrete initiatives were taken to form the commission. Even after the momentous 1 July 2007 verdict of the Apex Court, the government made a half-hearted attempt in April 2007 to criminalize disappearance by registering a Disappearance and Abduction bill to amend the Civil Code in the Interim parliament. This step, according to the government, was a fulfillment of the Government's obligations under international human rights and humanitarian law, in line with the recommendations of the UN Working Group on Enforced or Involuntary Disappearance (WGEID) following its mission to Nepal in December 2004. However, the Bill was criticized by national and international human rights organizations on the grounds that it didn't fully meet applicable international human rights standards. Also the lawmakers of the legislature-parliament came down heavily upon the bill and put forward more than 130 proposals of amendments. Unfazed, the government constituted a three-member "High Level Investigation Commission on Disappeared Persons" headed by ex-justice Narendra Bahadur Neupane in June 2007.

Droit Ne poet pas Morier et disparaître

By Dhiraj Pokhrel

(Rights Cannot Die and Disappear)





A member of the delegation of human rights defenders, including families of the 'disappeared' holds the sheet that covered the fake 'body of justice', a symbol of Nepal's ailing justice system. The sheet was signed by those attending an event in Ratna Park, Kathmandu to mark the 5th anniversary of the killing of 15-year old Maina Sunuwar by members of the Nepal Army. (© 2009 Advocacy Forum/Robert Godden)

However, the commission became automatically defunct as various human rights organizations criticized the government's move as against the spirit of the 1 July verdict of the Apex Court.

Amid growing clamor from the victims and human rights organizations to establish the commission, the government formed a high-level coordination committee under the aegis of the Ministry of Peace and Reconstruction to prepare a draft bill on disappearances. However, the government again tried to double-cross victims and other stakeholders by deciding to establish the commission via an ordinance. Condemning the government's plans, Conflict Victims' Society For Justice (CVSJ – Nepal), the highest governing body of conflict victims across the country, submitted 1,460 signatures of victims nation-wide along with a memorandum to the Minister of Home Affairs and Peace and Reconstruction

Minister in March 2008. After the intervention, the government held the decision in abeyance leaving the victims as abandoned as ever.

As the government failed to rev-up the process for the formation of the commission, on the eve of the International Day of the Disappeared, the CVSJ-Nepal submitted a memo to the President of Nepal demanding immediate implementation of the momentous verdict of the Supreme Court in connection with the establishment of a Commission on Disappearances. Eventually on 15 November 2008, the Government of Nepal unveiled the much frantically-awaited draft bill on Enforced Disappearances (Charge and Punishment) Act 2008. The bill was formally publicized amidst a consultation program organized by the Ministry of Peace and Reconstruction (MoPR) in the presence of media, representatives from selected human rights organizations and family members of victims. Five days after, the Council of Ministers approved the bill to be finally tabled in the interim legislature for endorsement. In the meantime, Advocacy Forum (AF) and Human Rights Watch (HRW) sent a letter to Speaker of the Legislature-Parliament with a list of amendments to be made in the bill to make it in line with the relevant international standards. However, the government passed an ordinance on Disappearances on 5 February 2009 with the lame excuse to expedite the peace process. Ascribing the move to an undemocratic phenomenon, several rights organizations cried foul over the government's intentions. Even when the ordinance was promulgated by the President four days later, the controversy raged and even the Speaker of the Constituent Assembly and the Chairman of the National Human Rights Commission, the duo members of the "Commissioners Recommendation Panel", flatly denied taking their responsibility. Later in April 2009, the government submitted a "Substitute Bill" to Constituent Assembly Secretariat.

As the newly-produced bill was also weak and full of loopholes, a group of human rights organizations, including Accountability Watch Committee (AWC), Advocacy Forum (AF), Amnesty International (AI), Asian Federation Against Involuntary Disappearances (AFAD), Human Rights Watch (HRW), International Center for Transitional Justice (ICTJ), International Commission of Jurists (ICJ) and Informal Sector Service Center (INSEC) submitted a joint memorandum to Peace Minister Rakam Chemjong regarding some critical amendments



Putal Chaulagain holds a photo of her daughter, 17-year old, Subhadra Chaulagain, who was killed by the Nepal Army Soldiers on 13 February 2004. (© 2007 Nick Hogg)

to be made in the latest draft bill on the formation of a commission on disappearance at the latter's ministerial residence at Harihar Bhawan, Pulchowk, in the early hours of the morning on 30 August 2009. The memo-submission event was timed to coincide with the International Day of the Disappeared.

To make the legislation on disappearance in line with the Supreme Court verdict of 1 July 2007 and relevant international standards, the memo stressed on a host of amendments including:

Defining 'enforced disappearance' consistently with the internationally recognized definition and recognizing that, under some circumstances, the act of enforced disappearance amounts to a crime against humanity;

Defining the modes of individual criminal liability, including responsibility of superiors and subordinates, consistently with internationally accepted legal standards;

Establishing a minimum and a maximum penalty for the crime of enforced disappearance as such and for the crime of enforced disappearance as a crime against humanity;

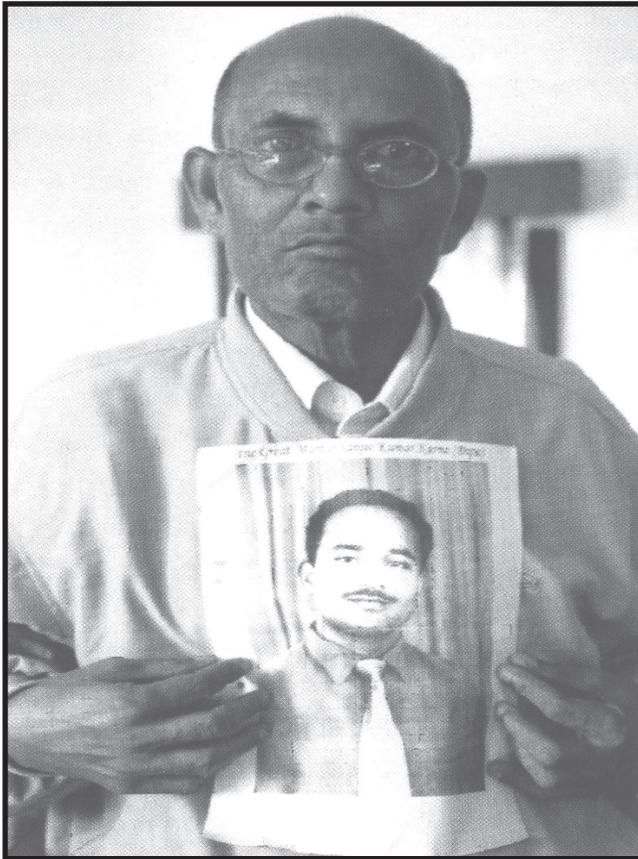
Ensuring the independence, impartiality and competence of the Commission of Inquiry into enforced disappearances;

Ensuring that the Commission of Inquiry into enforced disappearances is granted the powers and means to be able to effectively fulfill its mandate;

Ensuring that all aspects of the work of the Commission of Inquiry into enforced disappearances respect, protect and promote the rights of victims, witnesses and alleged perpetrators;

Ensuring that the recommendations of the Commission of Inquiry are made public and implemented.

Following the submission, the Peace Ministry acted promptly and incorporated some of



Jai Kishor Lal holds a photo of his 24-year old, Sanjeev Kumar Karna, who was allegedly arrested and killed by joint security forces in Dhanusha district, Nepal, in October 2003. (© 2007 Nick Hogg)

the suggestions put forward by the human rights organizations. The ministry also convened a consultation with human rights organizations to discuss the new bill. During the discussions, the issue of “definition,” “statutory limits” and “implementation of the commission’s recommendations” featured significantly. Questions were raised why the government is hesitating to define “disappearances” in line with the article of the 2006 UN Convention For the Protection of All Persons from Enforced Disappearance and the article 7(2) (i) of the Rome Statute of the International Criminal Court as suggested by the rights organizations in their memorandum. Similarly, there was much uproar vis-à-vis the statutes of limitation as the new revised bill also failed to regard “disappearance” as a continuing crime. Also the discussions focused on ensuring the effective implementation of the recommendations of the commission, in the absence of which the entire process would turn out to be a sheer anticlimax. The representatives of the Peace Ministry assured that they would make the necessary changes as suggested by the participants but were yet to produce the re-revised bill.

The family members of the victims and the human rights defenders all still waiting with their finger crossed for possible developments regarding the formation of the commission. Like the victims who are wading through the mire of injustice and state indifference with hope against hope for justice, redress and reunion with their loved ones, we, the human rights advocates, despite endless frustrations and unforeseen impediments, are marching forward with a torch of justice in our hand resounding the glossed-up dictum that “*Droit Ne Poet Pas Morier et disparaître*” (Rights Cannot Die & Disappear).

1 The Supreme Court’s verdict held that that the existing legal framework related to commissions of inquiry is inadequate to address the cases of disappearance that were systematically practiced during the armed conflict in Nepal. The order gave directives to the interim Government to introduce a new legislation to ensure the establishment of a credible, competent, impartial and fully independent commission. The order also stated that, in doing so, the Interim Government should take into account the Convention for the Protection of All Persons from Enforced Disappearance and the criteria for Commissions of Inquiry developed by the United Nations Office of High Commissioner for Human Rights.



Dhiraj Kumar Pokhel. A human rights advocate, Dhiraj works as focal person of Advocacy Forum-Nepal for the AFAD.