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HUMAN RIGHTS COUNCIL

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A joint written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organisation with general consultative status with the support of WOREC, FEDO and JMC

NEPAL: Serious threats to human rights defenders hampering democratisation and peace-building

The following statement is being submitted to inform the debate of the Human Rights Council concerning human rights defenders in Nepal, by the Asian Legal Resource Centre, with the support of the Women's Rehabilitation Center (WOREC), the Feminist Dalit Organisation (FEDO) and the Jagaran Media Center (JMC).

In Nepal, constant threats from state and non-state actors against human rights defenders (HRDs), including journalists, lawyers or victims defending their rights, directly hampers the country's democratisation and peace process. The lack of a State response to threats and physical attacks ensures impunity, which further exposes those working for the realization of human rights. Threats by State and non-State actors against HRDs have become a tool allowing them to enjoy impunity for serious human rights violations, such as torture or extra-judicial killings.

The August 2010 report of the Special Rapporteur on the situation of HRDs identifies that non-state actors also endanger their work and argues that the State has a responsibility to take action to protect human rights defenders against third parties: "Defenders denouncing impunity and violations committed by armed groups are harassed and, consequently work in a state of fear. In particular, their mental and physical integrity is at risk, as they often live in regions under the control of non-State armed groups or wherein these groups operate."¹

The government of Nepal has so far failed to establish an environment conducive to and protective of the work of HRDs by failing to hold non-state actors accountable for attacks and threats against HRDs.

Threats by armed groups have been a serious concern in the agitated Terai region, directly hindering the work of HRDs. Allegations of threats against HRDs, including journalists and lawyers, by the Maoists and their youth wing, the Young Communist League, have also been reported in 2010. Lawyers defending victims in conflict-related crimes committed by non-state actors, such as torture, murder or enforced disappearances, have faced threats, intimidation and the refusal to cooperate by the Maoists.

The case of a secondary school manager who was killed by the Maoists during the conflict illustrates this point. After the US embassy in Kathmandu's decision to refuse a visa to one of the main accused in the case, members of the Maoist party threatened the lawyers involved in the defence of the victim's widow, and the head of the Maoist party publicly accused international and local human rights organisations

working on this case of trying to discredit the party. Such public accusations coming from the highest level of the Maoist hierarchy is of particular concern as it incited threats and intimidation against lawyers working on conflict-related abuses.

At the local level, political parties have also been involved in threatening lawyers and HRDs working on cases which do not, at first sight, appear to be politically sensitive. Lawyers defending victims of violations in cases in which the perpetrators had a link, however slight, with the Maoists or other groups, have been at risk of receiving threats not to pursue the case. In a number of cases the lawyers were even physically manhandled. Threats against such HRDs may result in the perversion of the course of justice. This has been seen in cases of rape, caste-based violence or child abuse, and has even lead the police to give in to pressure and act contrary to the interests of victim, for instance by placing a child in the custody of a person who threatened to expose that child to torture. over the guard of a child to an abusive employer.

Despite numerous allegations of threats, intimidation and attacks against HRDs, the State has been largely inactive in providing them with protection and in launching investigations. HRDs are not recognized as such by the State and no effective legal mechanism has been set up to ensure their protection and their ability to work unhindered. The government has the responsibility to create an environment that is conducive to the work of HRDs, notably by tackling impunity concerning attacks against them. The report of the Special Rapporteur on the situation of human rights defenders recalls that: "In the context of human rights violations by third parties, the obligation to protect, first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State's responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment."

State agents, including members of the police and army, have also been involved in threatening HRDs to cover-up violations and avoid prosecutions. Instances in which state actors are involved in hampering the work of HRDs are also common. The police and army still fiercely resist attempts to hold their personnel accountable for human rights violations, such as extra-judicial killings or torture. They do so by threatening victims seeking justice and those supporting them in their fight. Higher-ranking officers take part in the cover-up of allegations directed at their personnel and are even involved in intimidation.

Given the system of impunity that protects those who threaten HRDs, those working on the rights of marginalized or excluded communities and groups that face discrimination, are in a particularly precarious position. As they are challenging the established social order, they often do not receive support from society and the police. In the Terai region, in the Western part of Nepal in particular, where social hierarchies are the most rigid and where armed groups have been increasingly active, the vulnerability of such HRDs is greatest. Furthermore, they often lack knowledge regarding international mechanisms they could resort to when remedies are lacking at the local and national levels.

For instance, Dalit rights defenders work in the rural areas and find it difficult to gain recognition for their

work as human rights defenders. In some instances, some Dalit rights defenders have had to hide the fact that they work on this issue to avoid being portrayed as working against "Non-Dalits" and attacked as such. In one case in Doti district, stones were thrown at the house of a journalist for having reported about caste issues in the morning newspaper. In another instance, an activist documenting a case of inter-caste marriage had his camera stolen and was beaten up by the non-Dalit family in Surkhet district. Furthermore, it is common for the police to refuse to investigate cases in which the security of Dalit rights defenders is at risk. Instead, the police typically recommend that the activists drop the case or stop working on these kinds of issues.

Another case concerning a teacher reveals the extent to which society continues to be biased against those raising their voices to defend the rights of the marginalized, and how they can be muzzled due to State indifference. This non-Dalit teacher was forced to resign from her job for having spoken out against discriminatory practices in her school, and was prevented from taking a job elsewhere for two years, while the local Chief Education Officers refused to take action concerning her case, in spite of injunctions from the National Information Commission to do so.

Similarly, Women's Human Rights Defenders, working on issues related to gender-based violence, also work in a precarious situation. In Nepal's patriarchal social system, women are traditionally confined to the private sphere and the home. Society therefore often shuns women who organise themselves to defend their rights in public. Social stigma often surrounds women who file a case at the police station. As an additional consequence, the work of women human rights defenders, in particular Dalit women human rights defenders, lacks recognition and legitimacy, even among the mainstream human rights movement, which further increase their vulnerability. As a result, cases are commonly reported of intimidation, death threats, sexual baiting and slander against women and Dalit women's rights defenders. In addition to the pressure and threats from society that these rights defenders may face, they also often have to deal with an uncooperative or hostile attitude from the police, who often verbally abuse them when they complain about cases of gender-based violence and pressure them to find a negotiated settlement with the perpetrators. Even if in some cases there has been progress in sensitising and improving the behaviour of the police concerning violations of women's rights, the majority still often refuse to file cases of threats against these HRDs and encourage them to drop their cases.

A case documented by Nepali organization WOREC in 2009 illustrates this worrying pattern and the urgent need to have measures specifically designed to address the issue of attacks against women human rights defenders. After woman human rights defender Kara Devi Sardar was beaten up by a non-Dalit family for having defended the rights of one of their family members to engage in an inter-caste marriage in Sunsari District, the Illaka Police Station in Chimdi refused to register her complaint about the attack and to provide her with protection.² Instead, they insulted her. It should be noted that this District faces a high level of criminal activities and violence against women. To support her, around 500 women organised a peaceful sit-in during two days in front of the police station calling for the proper handling of her case and action against the corrupt police officer who had rejected her case. During the second day, ten police officers charged the women and beat them with batons and the butts of their guns on the women's heads, chests, thighs and legs, and in some instances sexually molested them. As a result, at least 14 women were injured, five of them seriously. This case was communicated to the government by the Special Rapporteur on the

situation of human rights defenders, but, in its response, the government rejected the allegations and placed the blame on the women human rights defenders.

The absence of comprehensive measures to ensure the protection of HRDs against threats and attacks directly infringe on a number of rights, freedoms and principles - such as the freedom of expression and independence of the judiciary - which are a necessary component of the democratization of the country. This also contributes to the general climate of impunity in the country and denies victims the right to effective remedies. Furthermore, it contributes to upholding the hierarchical and discriminatory structures within society, hampering social democratisation.

The ALRC, FEDO, the JMC and WOREC therefore welcome the recommendations made to the government of Nepal by the delegations of Norway, France, the United States of America and the Czech Republic during the Universal Periodic Review process, in which they urged it to take concrete steps to ensure the security of human rights defenders, including journalists and women and Dalits rights defenders, by promptly investigating all the allegations of violations or threats against HRDs and bringing the perpetrators to justice.

The Human Rights Council is urged to:

- 1- follow-up on the implementation of the UPR recommendations concerning the situation of human rights defenders and pay special attention to the situation of human rights defenders working on the issues of vulnerable communities' rights and to the situation of journalists in Nepal;
- 2- urge the government of Nepal to acknowledge the work of human rights defenders and adopt specific and effective legal mechanisms to ensure their protection;
- 3- draw the attention of the government of Nepal to the need to address the issue at the policing level by providing awareness-raising training to the police officers on those issues;
- 4- ensure that specific training is made available, through the OHCHR and any other appropriate vehicles, to human rights defenders in Nepal, in order to provide them with information regarding the different international mechanisms they can resort to.

Footnotes:

1 A/65/223, 4 August 2010, Report of the Special Rapporteur on the situation of human rights defenders,

[URL: http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf](http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf)

2 http://www.defendingwomen-defendingrights.org/nepal_urgent_appeal.php

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About the ALRC: *The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*

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