

IPJ Public Report: The State of Affairs in Nepal *May 26, 2005*

The Joan B. Kroc Institute for Peace & Justice (IPJ) conducted an assessment, from May 13 thru May 26, 2005, of the state of affairs in human rights and governance in Nepal since February 1, 2005 when King Gyanendra usurped all powers from the constitutional monarchy. The following report is a brief summary of findings after meeting with representatives from the following sectors: government, political parties and student unions, national nongovernmental organizations, women, media, security forces, jurists, business, and the international community. This report identifies roadblocks to peace and democracy, suggests opportunities for addressing some of these challenges to inclusive security and sustainable peace, and renews the IPJ's commitment to work with all sectors of the Nepali community.

The State: There are no elected officials in the current government of Nepal. When King Gyanendra assumed all authority on February 1, 2005 'to restore democracy and confront the Maoists,' he declared himself Chair of the Council of Ministers. Most of the appointed ministers and two Vice-Chairs have previous experience in government when they served during the *panchayat* regime that governed Nepal from 1960 – 1990, after King Gyanendra's father had assumed full authority despite the establishment of democracy in 1950. When King Gyanendra announced his proclamation on February 1st, he declared a state of emergency for 100 days in the country, curtailing civil and political liberties in the name of security concerns. The state of emergency was "lifted" two days before it was due to expire, but most of the liberties restricted under the state of emergency, such as press freedoms and freedom of assembly, have remained curtailed via ordinances and directives. Both during the state of emergency and after its expiration, the King has issued ordinances that have amended laws and established new and sometimes parallel administrative and judicial institutions, i.e. zonal administrators and the Royal Commission for Corruption Control (RCCC), respectively.

The post-February 1st establishment of this Royal Commission for Corruption Control (RCCC) and ordinances gave authority to newly created bodies, and limited the role of established judicial and legal resources established by the constitutional democracy. The RCCC, with appointed members, has full investigatory and judicial powers and duplicates the constitutionally mandated Commission for the Investigation of Abuse of Authority. As there is no parliament, it is unclear how the Chair of the Council of Ministers will abide by the law that requires parliament's approval to extend ordinances six months after they are issued.

While the judicial branch may not be functioning at its fullest, many courts, including the Supreme Court, are acting independently. However, the judicial system and "rule of law" as established by Nepal's 1990 constitution, have been continually challenged by the state since February 1st. The state has disregarded the courts' decisions, resulting in the immediate re-arrest of detainees ordered released by the courts, for example. Other laws are being considered for amendment, such as the Media Laws; these changes would prohibit any investigative reporting or disparaging statements about the royal family or contrary to the royal government's edicts. Currently editors are called in for questioning when publishing a story the state finds contrary to

its own interests, the process for questioning and requiring a justification from the press is not followed according to law. Journalists are frequently arrested around the country.

As the state battles the nine-year insurgency with the Communist Party of Nepal (Maoists), the Royal Nepal Army (RNA) and the Armed Police Force (APF) have been accused of systematically abusing human rights. The RNA, APF, and the Nepal Police all have human rights cells within their institutions. Efforts to integrate respect for international human rights and humanitarian laws in each have been made, but the RNA and the APF, now operating under a Unified Command, continue to be accused of abuses such as rape, torture and disappearances. The manner in which the RNA and APF have been used since February 1st is disconcerting. Nepalese civil society and the international community have raised alarm over the use of covert tactics, such as masked faces and cutting communication and electricity lines in order to raid homes and detain political leaders. The growing use of plain-clothed forces has also increased as a means of monitoring the activities of political activists and civil society. Of specific concern is the now common deployment of forces at the gates of universities and colleges and the “planting” of plain-clothed officers inside university and college classrooms in order to observe student activities, as students have traditionally been most active in times of political crisis.

Overall, the issuing of unilateral ordinances and use of the RNA and APF to enforce ordinances and to intimidate and hold power over Nepalese citizens has resulted in a tightly controlled society and a state that increasingly operates under an umbrella of secrecy and impunity.

Political Parties: Although political parties remained active, there has not been a democratically elected government since October 2002, blamed initially on postponement of elections due to Maoist control of rural Nepal. Now the political parties and their institutions have severe restrictions, directives, and policies issued since February 1st; these actions have further limited their ability to mobilize for the reestablishment of their democracy and address the Maoist insurgency. Some of the increasingly complicated situations they face include detention of leaders and cadres, intimidation and harassment, and restrictions on movement and information dissemination. The political space in the country continues to be minimized by the state, weakening some political mechanisms and institutions that will be necessary for the restoration or establishment of democracy. Political cadres also face restrictions and threats from the Communist Party of Nepal (Maoists) in most districts of the country. This situation further restricted political parties’ access to their constituencies and their ability to relay the needs of their constituencies to the now centralized government structure.

Student unions of the parties are of particular importance - traditionally, in the current context, and for the future. Historically the student unions have been active when democracy has been threatened or when the parties were opposing the *panchayat* system, particularly in the 1980s. Now, the student unions makeup the largest segment of cadres for the political parties and they once again are going to the streets in non-violent protest. The student unions are calling for political reform, and some are calling for reform within their own parties in order to democratize the parties and bring the next generation of leaders to the decision-making process. The student unions, like the political parties, have formed a coalition.

The coalition of the political parties has resulted in an alliance guided by a code of conduct and their agreed to minimum common agenda. The agenda calls for the reinstatement of parliament, a coalition government, and amendments to the 1990 constitution with the possibility for a

constituent assembly. They admit to and state that they are looking at ways to rectify the mistakes made over the past 15 years, particularly by trying to develop “inclusive” policies. Self reflection on the parties’ achievements and failures, as well as a unified voice, may slowly encourage the growth of support for the parties by the general population, which has been minimized by past party short-comings.

Civil Society: The media, human rights defenders, associations and unions, businesses, and ordinary citizens, have all suffered in varying degrees due to the King’s February 1st proclamation. Ordinary citizens have no effective way to speak to the state. Businesses have had to tackle a shaky economy in the face of decreasing tourism due to the conflict and new political crisis. Associations and unions, losing their rights along with the rest of Nepal’s communities, are hard hit as this impacts their ability to quickly organize and appeal for the restoration of their civil rights. This assessment report focused more closely on the media and human rights defenders, as these two sectors of society have been most immediately and visibly affected by the February 1st proclamation and we had greater access to their representatives.

The media have struggled to move forward over the course of democracy in Nepal to be responsible and independent. Asserting that a free and independent media is an indicator of a genuine democracy, print, television, and radio have flourished during democracy. Now, however, they face profound challenges and obstacles. Amendments to media laws appear to target the independent media houses so the state can further control information. Two primary restrictions on the media include the government’s decision to deny sale of government advertisements to private newspapers and television stations, thus threatening their ability to continue operating at all, and the imposition of censorship on news regarding the insurgency by requiring approval of news releases by the RNA. The state also summons editors of newspapers and magazines who publish anything that “demoralizes” the government to account for their words. During the assessment trip, editors were interrogated because they published reports of the proposed ordinance to amend media laws which will allow no criticism of the monarchy, among other things; the state immediately declared the news reports “baseless” as they were “published before the ordinance was official”, not because they were incorrect.

Perhaps hardest hit media are the FM radio stations throughout Nepal. After democracy was reestablished in 1990 there was an “FM revolution” during which stations and programs were set up throughout the country. They have served as information sources to rural areas that do not have electricity or where it is geographically difficult to deliver information, and to the millions who are illiterate. The FM stations have been particularly important for the flow of information during the nine-year insurgency, as much of the countryside is cutoff from urban areas and contact with the larger Nepali community. Since February 1st FM stations have been shut down, and those that continue to be allowed to function at all are prohibited from running any news, interviews, discussions, or anything other than entertainment (music) programs.

Intimidation, fear, and unclear “rules” for the media have led to self-censorship, further stifling the media’s ability to responsibly report and pass information. The targeting of the media not only isolates significant portions of Nepalese society from the decision-makers in Kathmandu, but it also threatens the livelihood of thousands, as jobs from reporting and editing to delivering papers are lost or jeopardized. The media sector is trying to resist self-censorship. Locally and internationally many professionals are speaking out against the regulations being placed on the media as well as the abusive treatment of journalists. Just as the concerns of the media should be

taken up by human rights defenders, concerns of other sectors must also be taken up by the media.

Human rights defenders and organizations have faced monitoring and intimidation by the state. They are concerned by the state's increasingly regulated civil society and calls for landlords to report all tenants' identities, and non-governmental organizations to re-register. Threats of investigating human rights defenders and organizations on the basis of suspected corruption are disconcerting. Civil society suspects the investigation to be conducted under auspices like that of the RCCC, i.e., through royal ordinances rather than through pre-existing legal structures. Human rights defenders and organizations have tried to establish alliances in order to voice their common concerns since February 1st. They have continually raised issues to the international community, hoping for ongoing interest and greater understanding by the diplomatic and donor communities. Due to the insurgency and past security force abuses, human rights monitoring and reporting has always been difficult and dangerous. While these previous dangers of monitoring still exist, after February 1st monitoring and reporting have become still more difficult with the RNA placing restrictions on even the questions that can be asked. As a result, the human rights community strongly and successfully lobbied for an Office of the High Commissioner for Human Rights (OHCHR) to establish a Nepal Office to monitor and report abuses. Even as this office prepares to open, the National Human Rights Commission, had its primary human rights specialists replaced by appointees who have no experience in documenting human rights abuse.

The alliances that have been formed represent marginalized voices as well as the traditional human rights leaders and organizations. Many organizations and individuals focused on issues such as gender and conflict, health, or Dalit rights are represented within alliances, as they often have access to communities that lay on the outermost edges of society and are most affected by the conflict. These organizations are necessary participants in alliances and are important to Nepal becoming a more inclusive democratic society. The alliances formed should not only raise issues and pass information of importance to the international community, but they also have a responsibility toward strengthening the culture of rights and democracy that took root in the past 14 years, and sharing information and raising issues that concern the general Nepalese public.

International Community: In the face of so much uncertainty, the international community in Kathmandu expresses some hesitation regarding program development and aid. Like other sectors in Kathmandu, the international community has difficulty in gathering accurate information, particularly from rural areas. While some of the diplomatic corps spend the majority of their time in the capital and gather information from only the more prominent members of each sector of society, a few in the diplomatic and donor communities spend at least 25% percent of their time in the countryside trying to understand the plight and needs of the average Nepalese citizen. The donor community is still encouraging and supporting projects that focus on development, peace, human rights, and democracy.

The roles of the United States and Indian governments are prominent factors in alternative outcomes of the political crisis and internal conflict. These two governments maintain that they are temporarily withholding lethal aid. Military support from foreign governments is highly criticized by civil society and by the political parties. However, those supplying military aid do so because they place combating the Community Party of Nepal (Maoists) as a higher priority

than the concerns of those opposing the February 1st and subsequent actions of King Gyanendra that have consolidated power within the arms of the palace. While these governments trust the King not to use the arms against the pro-democracy movement, civil society and political activists are concerned over the legitimacy that military aid grants the armed forces and the government.

The prospects of the opening of an OHCHR Nepal Office has an encouraging affect on civil society, and has increased hope that human rights abuses will be effectively monitored and accurately reported. However, the limitations of such an intergovernmental organization and of the framework of the April 11, 2005 Memorandum of Understanding between the government and the OHCHR are underestimated by civil society. Other international nongovernmental organizations continue to give continuous support to Nepal's civil society and have developed programs focused on strengthening alliances and building civil society's capacity.

IPJ reflections following the May 2005 assessment: The IPJ believes that strengthening human rights, which includes democratic principles, is the foundation for sustainable peace. As the internal conflict, political uncertainty, and human rights abuses continue in Nepal, we call upon all actors to take steps to demonstrate their commitment to a peaceful and just resolution.

- We call upon the state to uphold the international principles of human rights and humanitarian law and to abide by the letter and spirit of the law, Nepal's 1990 constitution, and international commitments. Specific concerns to be addressed immediately are the lack of adequate healthcare of detainees and restriction of the freedom of the media and information.
- We call upon the Communist Party of Nepal (Maoists) to abide by human rights and humanitarian laws, and pursue a political and non-violent method to bring their ideas to the table. Specific concerns to be addressed immediately are the abduction and indoctrination of children and the limitations placed on development and human rights organizations.
- We call upon the political forces of Nepal to pursue a policy of inclusion and maintain their non-violent efforts to establish a representative democratic system. Specific concerns to be addressed immediately are the minimal inclusion of marginalized voices in internal and joint decision-making, and the need to research and design democratic policies and structures that could allow for political remedies to social and economic problems in the future.
- We call upon civil society, particularly national NGOs, to maintain and strengthen alliances, and to include marginalized voices in their decision-making processes.
- We call upon the International Community in Kathmandu to continue their support of civil society, to consult all levels of society in order to understand the impact of their decisions, and, specifically for the donor community, to coordinate their funding activities in order to support NGOs' democracy and human rights programs.

The IPJ remains committed to working with all actors as they seek peaceful resolution, reconciliation, and development of a democratic government that works to address the needs of all Nepalese.