

Civil War in Nepal

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

I. Chronology of the conflict

[Source: P.J.C. Schimmelpenninck van der Oije, “International Humanitarian Law from a Field Perspective – Case Study: Nepal”, *YIHL*, Vol. 9: issue 395, pp. 394-417, (2006), © TMC Asser Press, The Hague, and the contributors, published by Cambridge University Press, reproduced with permission; footnotes omitted]

[...]

THE CHRONOLOGICAL CONTEXT OF THE ARMED CONFLICT IN NEPAL

The year 2006 was an important one in Nepalese history. The warring parties signed a peace agreement after a decade of bloody conflict. [...]

The roots of the conflict can be found in the geographical, political, social and economic reality of Nepal. Some of the causes of the outbreak of hostilities, therefore, can be traced back over centuries. A more recent process that influenced the present-day situation was that of the ‘Panchayat’ (meaning ‘Assembly’), or non-party system (1960-1990). [...] According to King Mahendra, the first attempt at parliamentary democracy (1951-1960) had not brought the country the desired stability and development. He therefore dissolved Parliament in 1960 and declared all political parties illegal. Many political parties went underground and some of their leaders, including politicians from Communist-oriented parties, spent many years in prison or in exile in India.

[...]

By 1988, however, [...] [r]ebellion against the system grew and it collapsed under pressure from a strong popular uprising in April 1990.

Many researchers have argued that the new political order set up after April 1990, when democracy was first installed in Nepal, failed to include all sections of Nepali society. Some groups felt that they remained outside mainstream politics and the reach of development programmes. The gap between urban and rural areas and between rich and poor continued to widen. The revolt by the Communist Party of Nepal (the Maoists) (hereinafter CPN-M), which meant the start of a civil war, was the outcome of a political struggle for a new democratic order. [...]

Fighting first occurred on 13 February 1996. On that day, the CPN-M launched a 'people's war' from the mid-western region of Nepal. It was a reaction to the failed attempts by the National Congress-dominated government to establish a democracy and meet the demands of the CPN-M. The aim of the armed struggle was to overthrow the existing regime, to establish a democratic republic and to transform its economy and society. [...]

In the years to follow, the Maoists intensified their attacks throughout the country. In 1999 the CPN-M formally announced the formation of their People's Liberation Army (hereinafter PLA). The police in their turn allegedly engaged in operations using excessive force [...], arrested arbitrarily and was linked to an increasing number of 'disappearances' from 1998 onwards. [...]

After the breakdown of peace negotiations with the CPN-M, a State of Emergency was declared on 26 November 2001. The Nepalese government, for the first time since the start of the conflict, deployed the Royal Nepalese Army (RNA) to fight against the Maoists. [...]

Government forces and Maoists clashed frequently, especially in western areas of the country. The far-west and far-east districts saw an unprecedented number of attacks on government buildings and acts of retaliation in areas not previously affected. Throughout 2005 the CPN-M regularly called general strikes [...], targeting all those who refused to comply. On 3 September 2005 the CPN-M unilaterally declared a three-month cease-fire, extending it by another month soon after. During this period it signed a 12-point understanding with an alliance of seven political parties, which included a call for the election of a constituent assembly under international supervision. The CPN-M and the political parties agreed to work towards ending what they called an autocratic monarchy, to accept the outcome of multiparty elections and thus to boycott the forthcoming elections in 2006. The palace did not acknowledge the cease-fire and refused to discuss it. The parties responded by organising protests in the capital and in the districts.

On 2 January 2006 the CPN-M ended its ceasefire and soon afterwards fighting between the Maoists and

security forces spread to almost all 75 districts of Nepal. [...] Maoists increasingly attacked urban areas and sought refuge among civilians, while security forces were reported to be using helicopters to drop mortar shells in civilian areas. [...]

Following the failed elections, a broadly based opposition movement instigated street protests by hundreds of thousands of Nepalese throughout the country on 4 April 2006. The royal government used force. A total of 18 people were killed and some 4,000 injured. After 19 days of widespread public demonstrations, protests and strikes, King Gyanendra announced, on 21 April, that he had relinquished executive power and invited the opposition to form a government. On 24 April the House of Representatives was reinstated. It removed the King as commander-in-chief, but allowed the monarch to retain his ceremonial authority. At the beginning of May, the CPN-M and the government declared a cease-fire. They signed a Code of Conduct on 26 May.

In November 2006, the government and the CPN-M signed a comprehensive agreement to implement a peace process, establish a constituent assembly, redraft the country's constitution, and establish an interim government. The (no longer Royal) Nepali army and the CPN-M agreed to an arms management pact under which each side would hand in its weapons and withdraw most troops to barracks under UN supervision – the mandate of the United Nations Mission in Nepal (UNMIN) started on 23 January 2007. The parties also promised to avoid recruiting anyone younger than 18 years of age for military purposes. The government released hundreds of detainees held under the Public Security Act and the TADO.¹[1] The strict limitations of freedom of speech and association were removed. Maoist cadres began to operate openly in former government-held areas such as Kathmandu and accepted other political parties to operate in areas under their control. Human rights and IHL violations decreased and casualties caused by armed clashes reduced to almost zero. [...]

THE WARRING PARTIES AND INTERNATIONAL HUMANITARIAN LAW

[...]

Applicability of international humanitarian law

In 1964 Nepal ratified the four Geneva Conventions of 1949, applicable to international armed conflict. In addition, Nepal is a party to several other IHL related conventions. The Nepali Treaty Act of 1991 stipulates the prevalence of international treaties to which Nepal is a party if any conflict exists between domestic and international law.

To date, Nepal has not signed the two Additional Protocols of 1977, the second of which regulates the application of IHL in non-international armed conflict. It can be argued that the conflict in Nepal was a classical example of a non-international armed conflict; a political group decided to take up arms and to fight the established authorities. In such cases Article 3 common to all four Geneva Conventions applies.

Next to this rudimentary set of rules, rules of customary international humanitarian law were also applicable

in the context of the conflict in Nepal. Nepal has yet to become a party to the Statute of the International Criminal Court. During the armed conflict, Nepal was a signatory to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. [...]

II. Attack against the Sharada Higher Secondary School

[Source: Kedar Prasad Poudyal, "The Role of National Human Rights Institutions in Armed Conflict Situations: With Special Reference to NHRC-Nepal", Research Paper, The Danish Institute for Human Rights (2006), pp. 87-88, available at <http://www.humanrights.dk>. Footnotes omitted]

[...]

Killing of school children: a case of disproportionate use of force by the Army

This is another serious case taken up by the [National Human Rights] Commission [of Nepal] [hereinafter referred to as NHRC] whereby at least 4 school children were killed and many were wounded in an indiscriminate firing. The incident took place on 13 October 2003, at Sharada Higher Secondary School in Mudhvara Village Development Committee (VDC)-1 of Doti District, in the Far Western Region. It was at day time, when the students were having their second classes of the day. Meanwhile, a group of armed Maoists came there and forced the teachers and the students to stop everything and ordered to get ready for a cultural program. Hardly had the cultural program started the security forces also reached there and started to shoot the Maoists. Maoists, as they were not prepared at all, could not retaliate from their side. In the shootout, six Maoists were killed and 4 students also were killed and five students were injured. It was a severe negligence from the Maoists' side despite the repeated request from the teachers not to hold any such programs, as the army was on patrol in the nearby village, the Maoists had assured that it was their responsibility to save the children and the teachers. The NHRC investigation team found that there was a serious violation of humanitarian law both from the side of the Maoists and the security forces.

Initially, the NHRC had asked the army to clarify under which law the army was mobilized that day and whether there was any appropriate legal order to carry out the search operation. But the army never replied. It meant that the army was not following any legal process, which was required to go for a search operation. It was also clear that there was no firing from the side of the Maoists when the army circled them. It was also revealed that, compared to the force of the army, Maoists were not many in number and that it was a cultural group and they were having very limited arms with them. As such, after giving them warning, security forces could easily verify and arrest them as it was day time. But the forces started firing indiscriminately even towards the students despite their pleas of not being Maoists.

It was a clear case of disproportionate use of force, and security forces had also failed to clarify the process they should have fulfilled before the shootout for example by giving warning.

It was also a violation of humanitarian law by the Maoists as despite the requests not to perform cultural program, putting the children and the teachers in jeopardy the Maoists performed a cultural program and that led to such an incident

The Commission wrote to the government to take action against those who were involved in the incident and provide financial compensation to the victims and their family. It also warned the Maoists not to repeat such incidents.

[...]

[Source: National Human Rights Commission – Nepal, Annual Report 2004, pp. 33-34, available at http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual_Report_English_2004.pdf]

Annual Report 2004

[...]

S. No.: 4

Date of decision: 18 November 2003

Meeting No.: 59

Decision No.: 3

Details of the decision

A lot of important information was elicited from the documents collected by the probe team deputed to Nepalgunj for investigating into the incident of Sharada Higher Secondary School at Mudbhara, Doti district of 13 October 2003. [...]

The investigation offers a quite clear picture. When the people reportedly identified as Maoist were engaged in a cultural show, security forces launched an offensive, killing 10 at the site, of which 6 were Maoists and four school students. Another five students were also injured in the shooting. All the collected information shows that the people – purportedly Maoists – forcefully organised the cultural programme in the school despite having the knowledge that military operation at the site was very much likely as there were security forces stationed in the proximity of the school. Through the means of terror, they had prohibited the students and teachers from leaving the school and coerced and forced them to gather at the programme, and brought back even those who had already [gone] away from the site.

The organising of the programme contravenes the widely welcomed idea of declaring schools the Zone of

Peace and treating the schools free from violence and armed conflict. It has only resulted in such a devastating incident in the school. Hence, it has established the Maoists as seriously responsible for the incident as their move contravened the international humanitarian laws enshrined in the Common Article 3 of the Geneva Conventions.

On the other hand, the security forces also were to blame for not abiding by the laws and other legal procedures related to security operation. [...] The Royal Nepal Army furnished no reply to the inquiry as to what legal provisions was the operation launched under. Therefore, it was clear that the security forces failed to observe even minimum precaution and forbearance and opened fire indiscriminately at the mass of the cultural programme, despite the repeated humble plea of the students after declaring their identity. The army men even gave no chance for surrendering, to the so-called Maoists. As a result, six Maoists and four innocent school students were killed, and another five students severely injured.

Hence, in view of the existing laws vis-à-vis facts relating to the incident, the security forces' operation is clearly seen as gross negligence. It has not only violated the existing laws of land, international humanitarian laws, and human rights, but also resulted in what has been described as crime in Nepalese laws.

[1] The Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) was part of the emergency measures promulgated by the Government in November 2001. (Authors' note)

Discussion

1.
 - a. Is there an armed conflict between the Nepalese government and the Maoists? If yes, what is the nature of the armed conflict?
 - b. Does IHL apply to the attack on the Sharada Higher Secondary School?
2. Would IHL have been violated by the mere takeover of the school by the Maoists? Because the Maoists were armed? Would IHL apply if the Maoists had not been armed? Do you agree that the performance of the cultural programme by the Maoists, knowing that it would put the children and teachers at risk, was a violation of IHL? Was it a violation of IHL because the Maoists used a school? Do you agree with the National Human Rights Commission (NHRC) that it "contravened the international humanitarian laws enshrined in the Common Article 3 of the Geneva Conventions"? (CIHL, Rule 22)
3.
 - a. Under IHL, were the Maoists in the school legitimate targets? May anyone belonging to the Communist Party of Nepal (Maoist) be targeted? Did they become legitimate targets because they were engaged in a cultural programme? Because they were armed? Because they took over the school and prevented the students and teachers from leaving?
 - b. Under IHL, if they were legitimate targets for one of the reasons mentioned in question 3a., should the government forces have tried to arrest them before targeting them? Should they have given the Maoists a possibility to surrender, as argued by the NHRC? Should they have warned them before attacking them? Could they have attacked them even if the Maoists had not resisted, but had tried to flee?

- c. Did the killing of the Maoists violate the proportionality principle under IHL?
- d. Are your answers to questions a., b. and c. the same under HRL as under IHL? If not, which law prevails?

4.

- a. Was the killing and injuring of the schoolchildren and teachers a violation of IHL? Must you make a distinction between the schoolchildren and the teachers in this respect? Were they targeted?
- b. Did the killing and injuring of the schoolchildren and teachers violate the proportionality principle under IHL? What should the government security forces have done instead? Do you agree that the attack was indiscriminate?
- c. Under IHL, do you agree that there was an obligation for the government security forces to give a warning before opening fire?
- d. Are your answers to questions a., b. and c. the same under HRL as under IHL? If not, which law prevails?

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