



THE CARTER CENTER INTERNATIONAL OBSERVATION MISSION IN NEPAL

Management of Arms and Armies.

5. The International Labor Organization Indigenous & Tribal Peoples' Convention 169 has articulated new responsibilities for the government towards Adivasi/Janajati communities, but is being misused by some ethnic-based organizations to justify unlawful actions.
 - . While in many districts land return and reform reportedly are not overt sources of conflict at present, there are some areas in which these issues continue to provoke disputes and violence.
 - . Progress has been made in establishing Local Peace Committees; however, politicization curbs functioning in many districts.
 - . The process of providing relief to conflict-affected persons is ongoing in most districts; however, it has reportedly been a source of concern in some areas.

Security Environment

- . The increased aggressiveness of certain ethnic-based organizations threatens security.
10. YCL violence appears to have decreased across all regions, but prominent incidents continue to be reported. YCL and Youth Force activities now appear increasingly aimed at financial gain.
 11. Weak law enforcement against politically affiliated individuals is perpetuating the long-standing culture of

I. NATIONAL FINDINGS

While the Constituent Assembly (CA) has made progress since its inception, The Carter Center is concerned by the delays in the constitution drafting process. Overall, the lack of agreement on a set of basic principles by all major parties has made it difficult for the CA to function effectively. The CA calendar has been amended five times already and a sixth amendment is likely, with only five of 11 committees having completed their Concept Papers and the September 6 deadline fast approaching. Contentious issues such as state restructuring, the system of government, and control of natural resources appear stalled by a lack of consensus. The CA calendar delays have been largely offset by cutting significant portions of the second and final planned public consultation period, a worrying setback to the CA's commitment to ensuring a participatory process. Meanwhile, several of the Concept Papers that have been submitted contain notes of dissent on key issues, indicating consensus in those committees has not yet been reached. Additionally, the Constitutional Committee – charged with putting together the first draft of the constitution – has been without a Chairman and thus non-functional for nearly three months, an indication of the low priority major parties presently place on the constitutional process.

Additionally, while much commendable progress has been made in the peace process, there remain significant outstanding obligations to address. Primary among these is the fulfillment of commitments regarding integration and rehabilitation of Maoist combatants, the immediate discharge of disqualified combatants, and democratization of the Nepal Army, as per the CPA (Clauses 4.4 and 4.7) and the Agreement on Monitoring of the Management of Arms and Armies (AMMAA, Clauses 4.1.3. and 4.2.1). Additionally, a number of Commissions have not yet been established or fully activated, including: the Commission to Investigate the Disappeared, the High-Level Commission for the Restructuring of the State, the Commission to Study and Give Recommendations on Scientific Land Reform, the National Peace and Rehabilitation Commission, and the Truth and Reconciliation Commission (June 2008 agreement, Clause 5). The Carter Center is encouraged by the Ministry of Peace and Reconstruction's recent continuation of hearings on the draft TRC bill.

Overall, the failure to institute a monitoring body with a mandate to evaluate progress on the CPA and other agreements remains a concern. Moreover, politicians

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by the central government. Ineffective management of the concerns of identity-based groups also has the potential to weaken national political parties and strengthen ethnic and political regionalism.

2. In general, citizens appear alienated from the constitutional process and prioritize basic needs, such as irrigation, education, health, food security, employment, and “peace.”

The Carter Center strongly commends the noteworthy and admirable attempts, mainly by NGOs, to inform and engage citizens in the constitutional process. However, in contrast to the efforts undertaken in advance of the CA election, the reach of constitutional awareness programs to general citizens appears to be very limited. Carter Center observers report that there are few to no constitutional materials to be found at the local level. In part, this can be traced to the relatively low priority placed by senior political leaders on the constitutional process, which has thus led to relatively low engagement by citizens at the local level.

Some of the most positive examples of civic awareness Carter Center observers noted were radio programs on the CA process in which CA members answer questions from the audience. For example, a weekly radio show produced by Chadani Nepal, a local NGO in Rupandehi, airs in Rupandehi, Nawalparasi, and Kapilbastu districts and has CA members address local questions regarding the new constitution. By contrast, other local radio programs in multiple districts have been criticized for constitutional programs with no opportunity for dialogue between listeners and presenters and for an extensive use of overly technical language. Many people say they are either working while these programs are on or they do not understand these programs and thus they lose interest. The Carter Center has also heard numerous positive reports of various groups collecting citizen opinions and submitting them to the CA or the public. However, many of the groups producing submissions to the CA have reportedly not received any acknowledgement that their suggestions have been received – a simple step which could help with public relations between the CA and local civil society groups.

Additionally, while the CA opinion gathering held in February and March 2009 was a laudable initiative in that it helped CA members engage their constituents, the majority of citizens interviewed by TCC observers felt the questionnaires were too long, technical, and complicated; doubted that their opinions would be incorporated; and in some cases complained that political parties dominated or mishandled the process. A significant number of citizens were either unaware that the opinion gathering process had taken place or felt there was not enough effort undertaken to solicit their opinion. Some citizens were also unhappy with the language used on the questionnaire, such as in Kapilbastu, where it was reported that few citizens understood the Nepali forms and

and consultation regarding legislative or administrative measures which may affect them directly. Ethnic-based organizations across all regions have raised the importance of ILO 169. In some districts, such as Morang and Dolakha, ethnic-based organizations are taking peaceful steps to educate their communities on their rights under ILO 169, and intend to use the document as an advocacy tool in discussions with the government. The government, for its part, has created an “ILO 169 Implementation Task Force” that is presently working on a report regarding how to bring Nepal into compliance with the provisions of the Convention.

However, similar to the constitutional process, the present lack of information from the central level in regards to implementation of ILO 169 is being exploited by certain organizations at the local level. In some districts visited, Carter Center observers report that activists have unilaterally been interfering in local government affairs using the Convention as a justification for unlawful actions. For example in Kailali district, the Tharu Autonomous State Council (TASC) has solicited public tenders and collected taxes on the use of natural resources. Observers reported that a notice dated April 6, 2009 was posted on the door of a VDC office in Kailali district saying the VDC Secretary is not to collect taxes on natural resources and claiming TASC

- . **The increased aggressiveness of certain ethnic-based organizations threatens security.**

Additionally, police in many districts expect political party intervention or interference in their affairs, often telling TCC observers that they face pressure from political party leaders to release their cadres. Conflicts between political parties tend to be addressed directly by the parties themselves. When police have sought to take on cases involving party cadres or supporters, local or national political party officials frequently attempt to block police action. In Bardiya, Dolakha, and Morang, there is an expectation that political party cadres will be released when pressure is applied by local leaders. The net result is that political party cadres are only beholden to their respective political parties, if at all, and are otherwise able to act with near complete impunity.

In some districts, citizens have turned to political parties for justice, either because they are instructed by parties to do so or because the police and the court systems are ineffective at the local level. One group in Kavrepalanchok claimed that parties have been interfering with the justice system in remote villages by forcing citizens to first obtain permission from them before filing their cases. There are still allegedly instances where, instead of bringing cases to the state authorities, people turn to the Maoists as they are considered more effective. In Kaski, it was reported that, rather than approaching police or courts to resolve conflicts, the YCL is receiving requests from citizens to provide mediation. This poses a concern for the legitimacy of the Nepali state's existing justice system.

10. The activities of armed groups continue to plague the security environment, particularly in the Tarai. While positive instances of police effectiveness have been noted, there are some groups who express concern about the government's new security strategy.

radio call-in programs, public debates, community dramas, or civic education volunteers in the style used previously by the Election Commission.

- **Accurately inform the public about ILO 1 and the steps being taken to bring Nepal into compliance with the Convention.** The government should also include representative Adivasi/Janajati groups in its planning for how to implement the Convention.
- **Comply with all commitments in the CPA in regards to the unconditional return of property and the formulation of policies for scientific land reform by the government, realizing that the complex challenges of land conflicts will continue to plague the peace process and Nepal's future peace until adequately resolved.** Consider conducting a high-level all-party assessment mission to evaluate the status and obstacles to property return in heavily affected districts and to inform policymaking on land reform.
- **Study effective LPCs based on clear criterion and make attempts to replicate the factors that have contributed to their success.** Seek means for establishing the LPCs as a credible peacebuilding mechanism in the districts.
- **Ensure that conflict-affected persons receive equitable treatment in the ongoing compensation process and that the process is transparent and accountable.** Additionally, consider expanding efforts to include non-financial relief to address the needs of individuals suffering from physical, mental, and emotional trauma.
- **Prosecute individuals who commit criminal activities regardless of political affiliation, including party supporters and members of youth wings, to prevent a descent into lawlessness which could become increasingly difficult for any state actor to control.** Take lawful action against criminal violations such as extortion and unlawful taxation, which are carried out by various groups with differing political agendas but have the same net result on the security environment.
- **Comply with all relevant human rights standards when implementing the government's new security strategy in order to ensure that the benefits of the strategy are not obscured by negative public perceptions.** Local law enforcement should remain actively engaged with communities, inform communities about changes in strategy, and demonstrate and uphold commitment to due process to the fullest extent possible.