IPS

ASIA 14.09.2018 | Yubaraj Ghimire

In search of the truth

The signing of Nepal's constitution may have ended a period of political transition, but peace and justice are still elusive

For 45 days, 62-year-old Ganga Maya refused to eat. The message she was sending to the government was clear: if you fail to bring those who killed my son to justice, I will give up my life. Her husband, Nanda Prasad Adhikary, died four years ago, on the 333rd day of his own hunger strike. His body still lies in the mortuary, in accordance with his wish that the death rituals be performed only after there is justice for their son Krishna.

As Ganga Maya's condition deteriorated, doctors began feeding her intravenously. Then, in July, she broke her strike after one of the accused in her son's murder surrendered and the government promised to pursue the case.

She doesn't trust the politicians, however; they had given similar assurances to her husband during his own crusade. 'I will wait and see how the government moves further,' she said as she accepted a glass of juice from Anup Raj Sharma, chair of the National Human Rights Commission and a former chief justice of Nepal's Supreme Court. She has good reason to be sceptical.

No amnesty for the guilty

Ganga Maya's fight for justice is not just about one individual. It represents the uncertainty surrounding Nepal's incomplete peace process and its politics, which are intimately connected. Krishna was 18 when he was abducted and killed; his parents accuse extreme-left revolutionaries who had raised arms against the state with the objective of doing away with the monarchy and establishing a Communist republic.

In 2006, 10 years after the People's War led by the Communist Party of Nepal (Maoist) began, and two years after Krishna's death, the Maoists came to an agreement with seven major political parties on an anti-monarchy platform thanks to mediation by India, the powerful

neighbour that occasionally dictates Nepal's political course.

Spurred on by a peace process that seemed it would guarantee justice, Ganga Maya and Nanda Prasad began lobbying in the corridors of power to have their son's killers caught and punished.

Under the terms of a peace accord signed between the government and the rebels, Nepal committed to investigate all cases of human rights violations, including 17,000 deaths and 1,300 disappearances, attributed to both the state and the rebels, with the clear understanding that there would be no amnesty granted to the guilty in crimes such as murder, rape and torture.

Spurred on by a peace process that seemed it would guarantee justice, Ganga Maya and Nanda Prasad began lobbying in the corridors of power to have their son's killers caught and punished. Their fight has so far been in vain. The Truth and Reconciliation Commission (TRC) – which, under the peace agreement, was meant to have been formed by January 2007 – only came into existence in 2015, a year after Nanda Prasad had died and eight years beyond the promised deadline.

The Supreme Court subsequently ordered the government to arrest and try those accused of Krishna's murder. But with Nepal's judiciary under the influence of the executive and the political parties, the lower court soon released one of the accused on bail. Having broken a previous hunger strike in response to the Supreme Court's order, Ganga Maya resumed it this year as the promise remained unfulfilled. 'I have no strength to witness this level of state protection to murderers and apathy to justice. I want to die fighting and in pursuit of justice for my son,' she insisted.

Misuse of power

The Maoist Party and the Communist Party of Nepal (Unified Marxist-Leninist) fought as allies in the election to federal and provincial legislature in December 2017; they then united to form the Communist Party of Nepal, which has a two-thirds majority control over parliament. It is now considering curtailing the TRC's autonomy and jurisdiction, inserting a clause that asks the victims of human rights violations to seek community service as punishment. If it succeeds, it will be seeking to establish peace without justice.

Within weeks of assuming power this year, Prime Minister KP Oli told diplomats including EU mission chiefs that there would be no compromise on human rights violations. However, Oli – the first elected prime minister under the newly adopted constitution – is finding it hard

to act on Ganga Maya's demands.

She began her fast on 29 May 2018, the day after Nepal's Republic Day, in protest at President Bidhya Devi Bhandari's pardoning of Balakrishna Dhungel, a former Maoist legislator who had been sentenced to life in prison for murdering a businessman during the insurgency. The misuse of the extraordinary discretionary power that rests with the cabinet indicates that despite Oli's promises to the international community, the government is willing to compromise on justice for immediate political gain.

Chasing a mirage

Nepal's republic is now 10 years old – the monarchy was abolished on 28 May 2008 – and the constitution was promulgated in September 2015. But the peace accord is far from implemented and the victims of the conflict are yet to get redress. A situation of peace without justice, and the absence of hope that the accord will be respected, is not the best background against which to consolidate democracy. Judicial appointments dictated by partisan interest have injected further fear among those who long for justice and lasting peace.

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The accord and the constitution-making process are intrinsically linked, and one cannot be considered complete while the other remains hopelessly uncertain. The TRC, which was formed long after the physical evidence of human rights violations had disappeared, remains poorly resourced to carry out its duty. It has crossed swords with governments both past and present, particularly under pressure from Maoist groups who wanted the state to have the power to grant general amnesty for any crime.

The government still fears the international community, however. Those international agencies supporting the peace process through financial assistance and supplying experts were in favour of the TRC meeting international standards. But while the commission is still unclear about its rights and autonomy three years down the line, the government is using other tactics to render it ineffective.

An end to uncertainty?

'The government gave us Rs 120 million [approximately €923,000] to

meet our annual expenditure for this year, which is less than last year's and only 20 per cent of what we asked for,' said TRC chair Surya Kiran Gurung. With more than 60,000 cases filed, the commission will not be able to summon complainants and accused for testimony and interrogation and bear their travel expenses. For conflict victims, seeking justice has become like chasing a mirage.

Ganga Maya's rigid stance set against a government reluctant to pursue transitional justice might well invoke anti-government feelings in the country. After all, the major political parties, including those now in power, curtailed the standard constitution-making process, taking it through what they called the 'fast track'. The constitution was adopted by the chair without a single provision being debated in the House, as the major parties promised that promulgation of the constitution would end the 12-year transition period and ensure swift justice and peace. Their rationale was the need to end the political uncertainty and complete the peace process. It was not meant to bury justice by ignoring the victims and their rights.



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