

# **CLEAR CULPABILITY**

## **“Disappearances” by Security Forces in Nepal**

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## I. Summary

*Policeman: "We kill them."*

*RNA Soldier: "No, we take them to jail."*

*Policeman: "Yes, we take them to jail and then we kill their asses."*

Conversation between Human Rights Watch researchers, a Royal Nepalese Army soldier, and a police officer about the treatment of detained Maoists, September 2004.

In the Nepali government's war with Maoist insurgents, the number of enforced disappearances—cases in which people are taken into custody and authorities then deny all responsibility or knowledge of their fate or whereabouts—has reached crisis proportions. Over the last two years, the Nepali security forces have made Nepal one of the world's prime locations for enforced disappearances.

According to the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID), in 2003 and 2004 Nepal recorded the highest number of new cases of disappearances in the world.<sup>1</sup> Nepal's National Human Rights Commission (NHRC) has received reports of 1,234 cases of "disappearance" perpetrated by security forces since May 2000.

Government security forces commit the overwhelming majority of the "disappearances," and instead of taking action to prevent such severe abuses, civilian authorities have focused on issuing denials and covering up the abuses. No senior officer has ever been held accountable for "disappearances" in Nepal. Even if the government has not directly asked its security forces to commit "disappearances" as part of its campaign against the Maoists, its failure to take reasonable steps to end the practice or to hold perpetrators accountable makes civilian authorities deeply complicit. In the face of such government inaction, "disappearances" can fairly be characterized as government policy.

This report, based on Human Rights Watch research in Nepal in September and October 2004, documents the pattern of "disappearances" by Nepali security forces and analyzes the factors responsible for the crisis. The Appendix to the report contains summaries of 203 cases of "disappearance" documented by Human Rights Watch.

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<sup>1</sup> This figure is based on the number of cases the Working Group receives information about, and is not based on statistically valid surveying methods.

Human Rights Watch’s research indicates that the actual number of “disappearances” in Nepal may be significantly underreported, since a number of persons we spoke with had not reported the “disappearances” of their relatives to any governmental institution or non-governmental group. In a number of cases, Human Rights Watch was the first organization the witnesses had talked to about the “disappearances.” In particular, “disappearances” that occurred during the earliest stages of the conflict and during the state of emergency (November 2001- August 2002) appear to be underreported, because the human rights community had limited capacity and experience in dealing with such cases, and because many families were unable to report cases due to security concerns and logistical hurdles, including those posed by Nepal’s challenging terrain.

While the cases documented by Human Rights Watch represent only a fraction of the total number of “disappearances” occurring in Nepal, they clearly demonstrate the responsibility of the security forces for a geographically broad pattern of “disappearances.” The prevalence of the problem makes it clear that this is not just the result of the actions of some “bad apples” or rogue elements in the security forces. The use of army camps and barracks and police stations as places to hold “disappeared” persons demonstrates that these crimes cannot be happening without the knowledge of at least some senior officers in the security forces and likely some members of Nepal’s civilian leadership as well. “Disappearances” are systemic and an integral part of Nepal’s counterinsurgency campaign, not the aberrant actions of rogue elements.

The failure of the Nepali authorities to prevent “disappearances,” to bring perpetrators to justice, and to provide victims with proper redress violates the country’s obligations under international law, including the International Covenant on Civil and Political Rights, the Convention against Torture, and the Geneva Conventions, to all of which Nepal is a party. Human Rights Watch does not challenge the right of Nepali security forces to search for, arrest, or interrogate individuals, including Maoist insurgents, suspected of involvement in illegal activities. However, any such operations must conform to Nepali and international law. Specifically, neither suspected nor proved involvement with the Maoists can justify an enforced disappearance or the summary execution of a detainee. International law unequivocally grants captured combatants the right not to be “disappeared” or summarily executed.

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The armed conflict in Nepal dates back to 1996, when the Communist Party of Nepal (Maoist) (CPN-M) launched an armed insurgency after announcing its “people’s war”

against the monarchy and the existing system of governance. The regular police forces, initially charged with suppressing the insurgency, proved unable to control the situation, and in 2001 the government declared a nationwide state of emergency and deployed the Royal Nepalese Army (RNA) to combat the Maoists. The state of emergency was repealed in August 2002, but the army remains at the center of the counterinsurgency operation.

Even with the RNA deployed, however, government forces have not managed to end the insurgency. Current estimates suggest that the Maoists control over 40 percent of Nepal's countryside. Several attempts at peace talks have failed. Since the collapse of the most recent ceasefire in August 2003, the fighting has resumed with increased intensity. With both sides blatantly violating humanitarian law and committing massive abuses, previously documented by Human Rights Watch and others, the conflict has caused a major human rights crisis in Nepal, which is exacerbated by the country's political instability and dire economic circumstances.

The Maoists have a dismal human rights record. Maoist forces have abducted, tortured, and killed civilians suspected of being "informers" or "enemies of the revolution." They have extorted "donations" from villagers, recruited children as soldiers and in other conflict-related capacities, and abducted students for political indoctrination.

If abuses by Maoist forces do not loom large in a report on "disappearances," it is because Maoists often openly execute those they abduct, accusing victims of being spies, class enemies, or guilty of defying Maoist rule. In order to achieve the maximum deterrent effect on the population, the Maoists often execute their victims in public, forcing the victim's relatives and other villagers to observe the killing. The executions are often preceded by horrendous torture and may involve excruciating methods of killing, such as burning a victim alive or breaking the victim's bones until the he or she finally dies.

In other cases, the Maoists hold those they abduct for ransom or in order to compel a victim's relative to resign from the security forces. Maoists also occasionally force entire villages or schools to attend political indoctrination meetings. They usually release the villagers or students at the end of such meetings, although some may be pressured into joining the insurgents. In some cases, however, the victims abducted by the Maoists are never seen again.

During its mission to Nepal, Human Rights Watch documented eleven cases of abductions by the Maoists: two of the victims were later released, two are believed to

have been killed, one has reportedly joined CPN-M, and others remain missing. Human Rights Watch calls on the CPN-M to clarify the whereabouts of the missing individuals and end its practice of executing those it abducts.

Nepali government forces also have a very poor human rights record. In addition to the appalling record of enforced disappearances documented here, government forces have been responsible for numerous summary and extrajudicial executions, torture, and arbitrary arrests, all perpetrated with almost complete impunity.

“Disappearances” by government forces have taken place since the late 1990s, but the number of victims skyrocketed after the resumption of hostilities in 2003. In almost all cases documented by Human Rights Watch, witness testimony confirmed that individuals who “disappeared” were last seen in the custody of government security forces, who had detained them during large-scale operations or targeted raids, arrested them at checkpoints, or had simply taken them away from places of work or study.

“Disappearances” take a particularly heavy emotional toll on family members and friends, who do not know whether the “disappeared” person is dead or alive. After being arrested by the security forces, most “disappeared” persons are never again seen or heard from, and the families are left without a clue as to their fate. Relatives continue to search for the “disappeared,” inquiring at nearby army barracks, prisons, police offices, and other places of detention, but the security officials simply claim to have no knowledge of the arrest, or deny having the detainees in their custody. The families’ appeals to the Chief District Officers (CDOs), courts, and to other governmental and non-governmental agencies prove futile in these cases. Civil authorities rarely intercede on behalf of the “disappeared,” alleging they are powerless over the army.

In a number of cases, however, family members were able to visit relatives in detention prior to their “disappearance,” or received reliable information of their whereabouts through other means, such as reports from released detainees who had spent time in custody with the “disappeared” person. Their testimonies suggest that the majority of the “disappeared” are held incommunicado in unofficial places of detention, primarily army barracks and camps across Nepal.

Human Rights Watch identified dozens of army barracks and camps, as well as police stations and other facilities, which have been implicated in “disappearances.” Among the places of detention where the “disappeared” persons were last seen alive are Bhairabnath Gulm (Maharajgunj) army barracks (Kathmandu), Chhauni (Jagadal) army barracks (Kathmandu), Balazu police station and Balazu army camp (Kathmandu), Shorakutte

police station (Kathmandu), Farping army camp (Kathmandu), Fulbari army barracks (Kaski), Bijayapur army barracks (Kaski), Pokhara police post (Kaski), Bharatpur police post (Chitwan), Rajdal army barracks (Lalitpur), Suryabinayak army barracks in Bhaktapur (Kavre), Mahedra Gand army barracks (Gorkha), Choprak police station (Gorkha), Gorkha district police headquarters (Gorkha), Nawalparasi army barracks (Nawalparasi), Bhansar police post (Tanahu), Tulsipur army barracks (Dang), Lamahi Armed Police Force barracks (Dang), Rajpur area police post (Dang), Tulsipur prison (Dang), Ghorahi regional police station (Dang), Ghorahi army barracks (Dang), Chisapani army barracks (Bardia), Thakurdwara army barracks (Bardia), Rambhapur army barracks/army post (Bardia), Guleria district police office and Guleria prison (Bardia), Kohalpur army barracks and Kohalpur police post (Banke), and Rajha Airport Army Barracks (Banke).

Enforced disappearances also increase the risk of other abuses, such as extrajudicial executions and torture. In twenty-eight cases documented in this report, families of the “disappeared” believe that their relatives were killed after being taken into custody by the security forces. Reports of the killings have come from eyewitnesses to executions, media stories, human rights and humanitarian organizations, or unofficial contacts in the security forces. However, in only one of the cases was the death officially confirmed and the body returned to the family. In many other cases documented by Human Rights Watch in Nepal, particularly those where the “disappeared” persons have been missing for years, it is likely that they were the victims of extrajudicial executions while in the custody of the security forces.

Flawed Nepali legislation contributes to the prevalence of “disappearances.” The October 2004 revision of the much-criticized Terrorist and Disruptive Activities Ordinance (TADO), originally adopted during the state of emergency in 2001, allows security forces to hold individuals in preventive detention for up to one year without charge or trial and reinstates their almost absolute immunity from prosecution, thus creating fertile ground for abuses.

The broad impunity enjoyed by Nepali security forces for human rights violations, documented previously in reports by Human Rights Watch and others, is one of the primary factors leading to widespread “disappearances.” In addition, the army routinely either ignores or refuses to accept habeas corpus orders issued by the courts. It brazenly lies to judicial authorities regarding the whereabouts of individual detainees, thereby undermining the judiciary’s meager efforts to address the problem. For its part, the Supreme Court of Nepal has been remiss in its duty to use its constitutional powers to ensure compliance with its orders and promote accountability.

Despite overwhelming evidence of human rights violations by security personnel, neither the government nor the RNA command has taken sufficient action to prevent and punish the abuses. Human Rights Watch urges senior officers not to take these responsibilities lightly: the failure to take appropriate action against “disappearances,” particularly in light of the extensive documentation provided in this and other reports, may make officers personally criminally liable for such abuses under the doctrine of command responsibility.

The RNA and the Home Ministry have also obstructed the efforts of the NHRC to address the problem of “disappearances.” Specifically, army officials have repeatedly denied NHRC representatives access to barracks and other places of detention, thus preventing the Commission from establishing the whereabouts of the “disappeared” persons in cases it was investigating.

Until the past year, the international community, particularly the United States and India, Nepal’s major suppliers of military assistance, failed to respond adequately to the crisis. After September 11, 2001, the United States largely viewed the conflict in the context of its global “war on terror.” It offered unconditional support to the Nepali government and largely disregarded its appalling human rights record. However, in late 2004 the U.S. Congress passed legislation placing human rights conditions on further U.S. military assistance. President Bush signed the bill into law in December 2004. The law requires the Nepali government to:

- take effective steps to end torture by security forces and to prosecute members of such forces who are responsible for gross violations of human rights;
- determine the number of and make substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal, including all outstanding orders;
- cooperate with the National Human Rights Commission of Nepal to identify and resolve all security related cases involving individuals in government custody; and
- grant the National Human Rights Commission of Nepal unimpeded access to all places of detention.

The U.S. Departments of State and Defense now have the duty to closely monitor compliance with these conditions and to report when they are not observed. There are



signs that the U.S. is beginning to monitor the behavior of the armed forces more carefully, but it is unclear how sustained this has been or will be.

Immediately after the passage of the U.S. legislation, the Nepali army chief of staff made an unprecedented visit to the Supreme Court and the National Human Rights Commission. He promised to comply with the Court's habeas corpus orders and to cooperate with the human rights monitoring efforts of the NHRC. It is unclear whether this was a sincere commitment or a mere public relations gesture.

In the past year, the United Nations and European Union have also significantly intensified their pressure on the Nepali government, urging its compliance with international obligations and seeking concrete action to curb human rights abuses. In January 2005, the United Nations High Commissioner for Human Rights, Louise Arbour, said in a speech in Kathmandu that the U.N. believed that unimpeded access by the NHRC to all places of detention without prior notification was of central importance to resolving the "disappearance" crisis.

Under this mounting international pressure, the Nepali government has publicly asserted its commitment to uphold human rights and to abide by the laws of war in its counterinsurgency operations. It has also taken several steps toward addressing the problem of "disappearances," such as establishing a governmental committee to investigate the "disappearances" and opening a new detention center for suspects previously held in army barracks.

These responses clearly demonstrate that the international community should continue using its influence to put an end to human rights abuses and promote accountability in Nepal. But such pressure needs to be focused, sustained, and unified. Unfortunately, India has undermined these messages by continuing to offer unconditional support for the government.<sup>2</sup> This has included recent announcements of increased military aid and the holding of high level and high profile governmental visits. India has signally failed to make human rights a formal part of its diplomacy with Nepal.

The most important test of Nepal's commitment to human rights will be its willingness to address the root problem of accountability. This will require the prosecution and

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<sup>2</sup> Following the February 1, 2005, coup by King Gyanendra and the RNA, India issued an unusually strong statement, saying that the King's actions "constitute a serious setback to the cause of democracy in Nepal and cannot but be a cause of grave concern to India." See BBC News Online, "Nepal Crisis Cabinet Unveiled," February 2, 2005 [online], [http://news.bbc.co.uk/1/hi/world/south\\_asia/4228309.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4228309.stm) (retrieved February 3, 2005).

dismissal of senior military and police officials responsible for “disappearances” and other serious violations. Progress will depend on the political will of key actors in Nepal, including the RNA command, the interim government, and the king. Neither the government nor the Maoists can expect to enjoy public support or international legitimacy so long as they engage in egregious human rights abuses.

Human Rights Watch calls on the Nepali government to take immediate measures to stop enforced disappearances and address the factors that make them possible. The authorities should thoroughly investigate all cases of “disappearance,” including those documented in this report. They must urgently take steps to hold perpetrators accountable in a credible and systematic manner. Habeas corpus orders issued by Nepali courts must be respected, and the security forces must be held accountable for contempt of court when they provide false information to the courts.

Human Rights Watch urges key supporters of the Nepali government and armed forces, including the governments of the United States, United Kingdom, and India, to make ending the practice of “disappearances” a condition of continuing military support. We urge the U.N. Commission on Human Rights to adopt a resolution at its 2005 session condemning abuses by both sides of the conflict and specifically addressing the responsibility of the Nepali security forces for widespread “disappearances.”

In order for Nepal to effectively address the crisis of “disappearances,” the international community will also need to increase its support for institutions responsible for human rights monitoring and accountability, such as the NHRC, the courts, and human rights and other relevant NGOs. All international actors should insist upon unfettered access for the NHRC to places of detention, both official and unofficial, so that it can conduct independent and impartial investigations into allegations of “disappearances” and related human rights abuses.

Detailed recommendations to the Nepali government and to the international community are found in the closing chapter of this report.

## II. Background

A devastating civil war between Maoist insurgents and government security forces has been ravaging Nepal for the past nine years. It has taken place in a climate of political instability and dire economic circumstances. The hostilities have already claimed over ten thousands lives, and the death toll continues to grow. The victims have for the most part been Nepali civilians. Since the beginning of the conflict, both the Maoists and the government security forces have been responsible for massive human rights abuses that continue unabated to date.<sup>3</sup>

The conflict broke out in February 1996, after leaders of the Maoist faction of the Communist Party of Nepal (CPN-M)<sup>4</sup> presented the government with a forty-point list of demands, including the call for a secular republican state and a constituent assembly.<sup>5</sup> When the government failed to respond, a week later the Maoists resorted to violence, attacking police stations in five districts, seizing arms, and killing several officers.<sup>6</sup>

The attacks marked the beginning of CPN-M's "people's war," for which the party had been preparing since its split from the alliance of communist parties, CPN (Unity Center), in 1994. The alliance broke apart when part of the group rejected the idea of an immediate armed uprising and chose instead to stay in mainstream politics through

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<sup>3</sup> The human rights abuses by the Maoists and the governmental forces have been extensively documented by Human Rights Watch and other organizations. See, e.g., Human Rights Watch, *Between a Rock and a Hard Place: Civilians Struggle to Survive Nepal's Civil War* (New York: Human Rights Watch, 2004); Amnesty International, "Nepal: a deepening human rights crisis," December 19, 2002, ASA 31/072/2002; Amnesty International, "Nepal: Escalating Disappearances Amid a Culture of Impunity," August 30, 2004; International Crisis Group, "Nepal: Obstacles for Peace," June 17, 2003; International Crisis Group, "Nepal: Back to the Gun," *Asia Briefing*, October 22, 2003.

<sup>4</sup> Nepal has a number of discrete political bodies that operate under the name of Communist Party of Nepal, including CPN-Maoist, but also more mainstream parties such as the United Marxist-Leninist Communist Party of Nepal (CPN-UML). These bodies operate as distinct political organizations and are often mutually antagonistic, each considering itself the only legitimate communist party in Nepal. The non-Maoist communist parties in Nepal have rejected the Maoists' resort to armed rebellion against the government. CPN-UML is a significant mainstream political force in Nepal. For a detailed analysis, see Deepak Thapa, *A Kingdom Under Siege: Nepal's Maoist Insurgency 1996-2003* (Kathmandu: The Printhouse, 2003).

<sup>5</sup> Sudheer Sharma, "The Maoist Movement: An Evolutionary Perspective," in *Understanding the Maoist Movement of Nepal*, Deepak Thapa, ed. (Kathmandu: Modern Printing Press, 2003), 361. The memorandum containing the forty-point list of demands was signed by Dr. Baburam Bhattarai, chairman of the Maoists' political wing, United People's Front. The full text of the memorandum can be found in *Understanding the Maoist Movement of Nepal*, 391-395.

<sup>6</sup> Man Ranjan Josse, "From Birth to People's War," NepalNews.com [online], <http://www.nepalnews.com.np/contents/englishweekly/telegraph/2004/jun/jun02/views.htm> (retrieved December 20, 2004).

participation in parliamentary elections. The advocates of armed uprising, later named the Communist Party of Nepal (Maoist), chose to boycott the elections and went underground, preparing their cadres for armed struggle.<sup>7</sup>

The government initially responded to the Maoist attacks with regular police forces. The police, poorly equipped and untrained in counterinsurgency operations, proved unable to control the situation. Faced with steadily escalating fighting, in the beginning of 2001 the government reinforced the regular police with the paramilitary Armed Police Force (APF). Finally, after declaring a nationwide state of emergency on November 26, 2001, the government deployed the Royal Nepalese Army (RNA) to combat the Maoist rebels. Although the state of emergency was repealed on August 27, 2002, the army remains the primary force in the counterinsurgency operation, with the police and the APF under its operational command.<sup>8</sup>

Even under the army's command, the security forces have proven unable to quell the Maoist insurgency. Since 1996, the insurgency has spread throughout the country, and estimates suggest that the Maoists have established control over approximately 40 percent of Nepal's countryside, essentially assuming the functions of governance in the areas under their control.<sup>9</sup>

Several attempts at peace talks during periods of ceasefire in 2001 and 2003 failed, with both sides violating truce agreements.<sup>10</sup> The most recent ceasefire, declared in January

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<sup>7</sup> Communist Party of Nepal (Unity Center) was formed in 1990 by two Maoist parties, the CPN (Fourth Congress) and CPN (Mashal) under the leadership of Pushpa Kamal Dahal, alias Prachanda, and later joined by a breakaway faction of CPN (Masal), led by Baburam Bhattarai. In 1991 the alliance decided that its political wing, the United People's Front of Nepal (UPFN), would take part in the parliamentary elections, and managed to gain nine seats in the parliament. However, by the 1994 parliamentary elections the Unity Center and, accordingly, the UPFN, had split into two factions. Although initially both UPFN factions approached the Election Commission for recognition, the commission only recognized one of them. The other faction, led by Baburam Bhattarai, decided along with the Prachanda-led Unity Center to boycott the elections and give up their participation in the political process in favor of armed uprising. In 1995 the party, renamed CPN-Maoist, adopted the "Plan for Historical Initiation of the People's War." See Arjun Karki and David Seddon, "The People's War in Historical Context," in *The People's War in Nepal: Left Perspectives* (Delhi: Adroit Publishers, 2003); Thapa, *A Kingdom under Siege*, 36-48.

<sup>8</sup> On November 4, 2003, the government announced the establishment of the so-called Unified Command, consisting of the army, APF, police, and National Investigation Department, under the operational command of the army. See "Statement by Rt. Hon. Prime Minister Surya Bahadur Thapa at the press conference regarding Future Plan, Strategies and Programs of His Majesty's Government" (unofficial translation), November 4, 2003 [online], <http://www.mofa.gov.np/pmpressnov4.htm> (retrieved November 27, 2004).

<sup>9</sup> Nickerson, Heather "In the Spotlight: Communist Party of Nepal – Maoists," Center for Defense Information, August 30, 2004 [online], <http://www.cdi.org/friendlyversion/printversion.cfm?documentID=2397> (retrieved February 2, 2005).

<sup>10</sup> For a detailed analysis of the failed negotiations, see International Crisis Group, "Nepal Background: Ceasefire: Soft Landing or Strategic Pause?" Asia Report N°50, April 10, 2003; International Crisis Group,

2003, was renounced by the Maoists in August 2003, shortly after government forces summarily executed two civilians and seventeen Maoists in Doramba VDC, Ramechhaap district, on August 17, 2003.<sup>11</sup> The Doramba massacre remains a notorious example of the egregious abuses that have become a characteristic feature of Nepal's civil war. Immediately after withdrawing from the peace talks, the Maoists shot two RNA colonels, one fatally, in Kathmandu.<sup>12</sup> The fighting between government forces and Maoists recommenced with increased intensity, leading to a further deterioration of the already dismal human rights situation in the country.<sup>13</sup>

During the 2003 ceasefire, the government and the Maoists agreed to the idea of a Human Rights Accord that would be binding on both sides. Most important, it would have provided for independent human rights monitoring the conduct of both sides. However, the accord was never signed. The government instead published in March 2004 a twenty-five-article "Commitment on the Implementation of Human Rights and Humanitarian Law." One motive for this commitment paper was to ward off a potentially critical resolution at the annual meeting of the United Nations Commission on Human Rights taking place in Geneva at that time.

In the course of their "people's war," the Maoists have deliberately killed scores of civilians whom they accuse of being "informers" or being engaged in other acts of defiance toward Maoist rule. They have specifically targeted local officials and civil servants, teachers, journalists, off-duty army and police personnel, and members of non-

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"Nepal: Obstacles for Peace," Asia Report N° 57, June 17, 2003; Bhagirath Yogi, "The Elusive Peace: Nepal," Peace and Conflict Monitor, November 16, 2004 [online], [http://www.monitor.upeace.org/innerpg.cfm?id\\_article=223](http://www.monitor.upeace.org/innerpg.cfm?id_article=223) (retrieved December 20, 2004).

<sup>11</sup> For a detailed description of the Doramba massacre and the botched investigation, see Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," October 2004; as well as Nepal's National Human Rights Commission, "On the Spot Inspection and Report of the Investigation Committee: Doramba, Ramechhap Incident," National Human Rights Commission, 2060 BS (2003). While the government maintained that the Maoists had been preparing for a resumption of hostilities, and simply used the Doramba massacre as a pretext for returning to war, Maoist leaders Prachanda and Baburam Bhattarai publicly pointed to Doramba as the incident provoking the withdrawal of the Maoists from the ceasefire; see Prachanda's interview published in the Maoist Information Bulletin, No 4, September 14, 2003, cited in: Rita Manchada, "On the warpath again: The collapse of the ceasefire between the government forces and the Maoists once again leaves Nepal in a state of turmoil," October 24, 2003 [online], <http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=20031024001405400.htm&date=fl2021/&prd=fline&> (retrieved December 29, 2003).

<sup>12</sup> "Nepal Rebels Kill Colonel," BBC World, August 28, 2003.

<sup>13</sup> For an analysis of the breakdown of the ceasefire and its consequences, see International Crisis Group, "Nepal: Back to the Gun," *Asia Briefing*, October 22, 2003.

Maoist political parties, such as the Nepali Congress party and the Communist Party of Nepal (Unified Marxist-Leninist) (CPN [UML]).<sup>14</sup>

In order to achieve the maximum deterrent effect on the population, the Maoists often execute their victims in public, forcing the victim's relatives and other villagers to observe the killing. The executions are often preceded by horrendous torture and may involve excruciating methods of killing, such as burning a victim alive or breaking the victim's bones until he or she finally dies.

Further, one of the weapons in the Maoist arsenal, homemade explosive devices, victimizes both security forces and civilians indiscriminately. Maoist cadres also regularly accost civilians and require them to contribute "donations" to the Maoist cause, and force the families of security personnel to leave their homes and flee the villages. The insurgents have also taken hostages for ransom and abducted villagers, including schoolchildren and their teachers, for forcible political indoctrination.

There have been credible allegations that Maoist rebels recruit and use children as soldiers or in other combat-related capacities, such as spies, cooks, or porters.<sup>15</sup> In general, the Maoists establish a harsh and oppressive atmosphere in areas under their control.

Government security forces also present a serious threat to Nepalis. Since the beginning of the conflict, and especially after the deployment of the RNA in counterinsurgency operations, government forces have been responsible for numerous summary and extrajudicial executions, enforced disappearances, arbitrary arrests, and acts of torture, all perpetrated with almost complete impunity.

The suspension of important constitutional safeguards under the state of emergency and the enactment of sweeping security legislation, such as TADO, has further entrenched this vicious cycle of abuse and impunity. TADO enables the Nepali government to label the Maoists terrorists and gives sweeping powers to the security forces. Over protests from civil society and lawyers groups, it has been renewed several times since the

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<sup>14</sup> These and other abuses committed by the Maoists are documented in Human Rights Watch, *Between a Rock and a Hard Place*, 53-63.

<sup>15</sup> See, e.g., Amnesty International, "Nepal: A Spiraling Human Rights Crisis;" "Nepal: A Deepening Human Rights Crisis;" Thapa, *A Kingdom under Siege*, 162-163.

revocation of the state of emergency and continues to govern the conduct of counterinsurgency operations today.<sup>16</sup>

The ongoing armed conflict and the deepening human rights crisis in Nepal have been aggravated by political instability in the country. One of the key destabilizing factors is the overwhelming power Nepal's monarchy wields over democratic institutions. In 1990, a mass uprising forced the monarchy to institute democratic reforms and lift the ban on political parties that existed in the country during the Panchayat years.<sup>17</sup> The constitution that was drafted in 1990 marked the beginning of a new political era. However, a stable democracy did not emerge. The constitution granted the king inordinate powers over the newly-formed parliament. At the same time, the major political parties, mired in internal rivalries and corruption, failed to promote much-needed change. These and other factors have led to a profound destabilization of the Nepali political system.<sup>18</sup>

Since the first parliamentary election in 1991, thirteen coalition governments have formed and dissolved. Largely based in Kathmandu's urban elite, representatives in the two dominant parties, the Nepali Congress Party and the United Marxist-Leninists, have done little to address key governance issues, such as the caste and ethnic discrimination and economic inequities that are the source of much discontent in Nepali society.<sup>19</sup> Widespread corruption has created further disillusionment and tension among the rural impoverished, who often do not see any benefits from development funds that have been allocated to their areas.<sup>20</sup>

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<sup>16</sup> Section V of this report contains a detailed analysis of the current Nepali legislation and its human rights implications.

<sup>17</sup> The system of governance known as Panchayat was devised by Nepal's King Mahendra in 1961. The country was governed by the king, while all political parties, with the exception of the royalist Rastriya Panchayat Party, were banned. In February 1990, several banned parties launched the so called Movement for the Restoration of Democracy, organizing nationwide strikes and protests. After the government failed to suppress the protests by force, King Birendra gave in to the demands, lifted the ban on political parties and appointed an interim government to oversee the drafting of the new constitution. See Thapa, *A Kingdom under Siege*, 18-36.

<sup>18</sup> Padmaja Murthy, "Understanding Nepali Maoists' Demands: Revisiting Events of 1990," *Strategic Analysis: A Monthly Journal of the IDSA* Vol. II/VII No. 1, January-March 2003.

<sup>19</sup> For a detailed analysis both of the disparities between urban and rural economies in Nepal, as well as a discussion of development funds, see S. Mansoob Murshed and Scott Gates, "Spatial Horizontal Inequality and the Maoist Insurgency in Nepal," World Institute for Development and Economics Research, Research Paper No. 2004/43, July 2004.

<sup>20</sup> Chitra K. Tiwari, "Maoist Insurgency in Nepal: Internal Dimensions," South Asia Analysis Group, Paper No. 187, January 20, 2001 [online], <http://www.saag.org/papers2/paper187.htm> (retrieved December 15, 2004).

The sense of instability deepened after the shocking 2001 massacre of King Birendra and other members of the royal family by Crown Prince Dipendra.<sup>21</sup> The event resulted in King Gyanendra's accession to the throne and prompted a crisis in Nepal's precarious democracy.

In 2002, Prime Minister Sher Bahadur Deuba replaced local elected bodies with appointed officials (which is allowed under Nepal's constitution). Shortly thereafter, the king dissolved the parliament. King Gyanendra postponed elections indefinitely, dismissed Deuba, and seized executive authority, appointing his own prime minister and cabinet.<sup>22</sup> These actions were deemed illegal by many legal commentators.

The April 2004 "anti-regression" demonstrations by Nepal's leading political parties eventually led to the resignation of the cabinet appointed by the king and the reappointment of Deuba. However, while the king is constitutionally obliged to call new elections to form a new parliament, to date he has failed to do so. Elections are currently planned for April 2005. However, leading opposition parties have already expressed serious doubts regarding the possibility of holding free and fair elections in the midst of the conflict with the Maoists, while the Maoists have repeatedly threatened major disruption at the polls. The government's ultimatum to the Maoists to start talks by January 13, 2005, has so far remained unanswered.<sup>23</sup>

The instability in the central government has led to severe insecurity and a crisis of faith in the government's ability to function effectively, thus creating a power vacuum that the Maoists seek to fill. In addition, with the suspension of the democratic system in October 2002, the parties were excluded from negotiations the king had initiated with the Maoists. The parties' resentment about being barred from the political process and their abject failure to forge an effective policy for dealing with the CPN-M have created further gaps in governance that the Maoists have exploited to extend and consolidate their power.<sup>24</sup>

Economic factors also contribute significantly to Nepal's ongoing crisis. With 42 percent of the population living below the poverty line and annual per capita income just

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<sup>21</sup> See Jonathan Gregson, *Massacre at the Palace: The Doomed Royal Dynasty of Nepal* (New York: Miramax Books, 2002).

<sup>22</sup> International Crisis Group, "Nepal Backgrounder: Ceasefire: Soft Landing or Strategic Pause?" April 10, 2003.

<sup>23</sup> See, e.g., "Nepal sets deadline for Maoists to start talks," *The Hindustan Times*, November 26, 2004.

<sup>24</sup> *Ibid.*



U.S.\$230, the World Bank rates Nepal the twelfth-poorest country in the world.<sup>25</sup> The situation is worst in Nepal's remote, mountainous countryside, where the economy is based on subsistence agriculture. Many believe reducing poverty in these rural areas would be a key factor in alleviating strife and conflict in the country.<sup>26</sup> However, development projects planned for the regions were abandoned after the areas fell under Maoist control. Further, the government's efforts to control the insurgency have deflected funds from development into the security sector, leaving the poverty of rural areas unaddressed.<sup>27</sup> Unsurprisingly, the Maoists have been able to politicize Nepal's dire economic situation, claiming that the failure to carry out reforms within the old "semi-feudal" system proves the urgent need to establish a "new democratic system." As noted by some analysts, to a certain extent the Maoist movement is "a by-product of Nepal's unsuccessful development endeavors."<sup>28</sup>

While the CPN-M leaders have repeatedly demanded that the United Nations or another international body supervise peace negotiations, the Nepali government has so far objected to any international mediation of the conflict.<sup>29</sup> For their part, intergovernmental organizations, such as the United Nations and the European Union, as well as individual governments have on a number of occasions called on both sides of the conflict to cease fighting and work toward a political solution of the conflict.<sup>30</sup>

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<sup>25</sup> World Bank, "Nepal Country Brief," September 2004 [online], <http://www.worldbank.org.np/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/NEPALEXTN/0,,contentMDK:20094195~menuPK:148707~pagePK:141137~piPK:217854~theSitePK:223555,00.html> (retrieved December 20, 2004).

<sup>26</sup> Murshed and Gates, "Spatial Horizontal Inequality and the Maoist Insurgency in Nepal."

<sup>27</sup> Ken Ohashi, "Crisis Opens Doors: Restoring Faith in the Face of Maoist Insurgency," World Bank [online], <http://www.worldbank.org.np/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/NEPALEXTN/0,,contentMDK:20191699~pagePK:141137~piPK:217854~theSitePK:223555,00.html> (retrieved December 20, 2004).

<sup>28</sup> Thapa, *A Kingdom under Siege*, 55.

<sup>29</sup> "Nepal Urges Rebels for Talks, Silent on Key Demands," Reuters, September 30, 2004.

<sup>30</sup> See e.g., "Secretary-General Deeply Troubled by Reported Escalation of Fighting in Nepal," ReliefWeb, December 23, 2004 [online], <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/b8a79ce15d48f84d85256f73006dc64a?OpenDocument> (retrieved December 29, 2004); "EU urges Nepal rebels to end violence, begin talks," Reuters, December 15, 2004; "US hopes Nepal, Maoist rebels forge peace pact," Agence France Presse, October 5, 2004.

### III. Nepal's Obligations under International Law

Nepal is a party to six of the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)<sup>31</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>32</sup> As a party to the treaties, it is obliged to adhere to human rights law as set out in these instruments.

Nepal also has an obligation to abide by international humanitarian law, which regulates the conduct of hostilities and protects persons affected by armed conflict, including captured combatants and civilians. Specifically, since the conflict in Nepal meets the Geneva Conventions' definition of an internal armed conflict, Nepal is required to adhere to Common Article 3 of the 1949 Geneva Conventions, which applies to "conflicts not of an international character."<sup>33</sup>

In addition, Nepal must follow the standards set out in the 1992 U.N. General Assembly's Declaration on the Protection of All Persons from Enforced Disappearances (the "Declaration on Enforced Disappearances").<sup>34</sup> Although a non-binding standard, the Declaration reflects the consensus of the international community against this type of human rights violation and provides authoritative guidance as to the safeguards that must be implemented in order to prevent it.

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<sup>31</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966), entered into force Mar. 23, 1976. Nepal acceded to the ICCPR on May 14, 1991.

<sup>32</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51, entered into force June 26, 1987. Nepal acceded to the Convention against Torture on May 14, 1991.

<sup>33</sup> Nepal ratified the four Geneva Conventions in 1964. The official commentary to the Geneva Conventions of 1949 by the International Committee of the Red Cross (ICRC) lists a set of conditions that provide guidance in defining an internal armed conflict, foremost among them whether the insurgent party "possesses an organized military force, an authority responsible for its acts, [is] acting within a determinate territory and [is] having means of respecting and ensuring respect for the conventions." Another important indication of the status of a given conflict is whether the government has deployed its regular armed forces against the insurgency. See International Committee of the Red Cross, Commentary, IV Geneva Convention (Geneva: International Committee of the Red Cross, 1958). In Nepal, the Maoist rebels have an identifiable and organized command structure, both at the national and regional level, are in de-facto control of a significant part of Nepali territory, and have repeatedly stated their willingness to abide by the Geneva Conventions. Moreover, fighting between government and rebel forces has frequently been at a level well above mere disturbances. This was reflected in the Nepali government's 2001 decision to deploy the Royal Nepali Army against the Maoist insurgency.

<sup>34</sup> Declaration on the Protection of all Persons from Enforced Disappearances, United Nations, G. A. res. 47/133, U.N.Doc. A/RES/47/133, December 18, 1992.

From 2001 until the dissolution of parliament in late 2002, Nepal was under a nationwide state of emergency. The ICCPR allows states to suspend temporarily (or derogate from) certain provisions during an officially proclaimed “public emergency which threatens the life of the nation,” but only to the extent strictly necessary under the circumstances.<sup>35</sup> However, certain rights, including the right to life and protection from torture, are never derogable.<sup>36</sup> The Declaration on Enforced Disappearances unequivocally states that “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”<sup>37</sup>

### ***Prohibition of enforced disappearances***

The U.N. Declaration on Enforced Disappearances describes “disappeared” persons as those who are arrested, detained, or abducted against their will or otherwise deprived of liberty by government officials, or by organized groups or private individuals acting on behalf of, or with the direct or indirect support, consent, or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or by a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.<sup>38</sup>

Enforced disappearances constitute “a multiple human rights violation.”<sup>39</sup> They violate the right to life, the prohibition on torture and cruel, inhuman, and degrading treatment, the right to liberty and security of the person, and the right to a fair and public trial. These rights are set out in the ICCPR and the Convention against Torture, and Nepal, as a state party to both treaties, is obligated to respect them.

Under the ICCPR, no one should be subjected to arbitrary arrest or detention. An arrested person should be informed, at the time of arrest, of the reasons for his arrest and is to be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge must be brought in a timely fashion before a judge or other officer authorized by law to exercise judicial power, and every person deprived of his or her

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<sup>35</sup> ICCPR, Article 4(3). The rights under the ICCPR can be derogated from only where the signatory state has informed other member states through the auspices of the secretary-general of the United Nations. Nepal has not formally derogated from any rights under ICCPR even during its state of emergency.

<sup>36</sup> ICCPR, Article 4(2).

<sup>37</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Article 7.

<sup>38</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Preamble.

<sup>39</sup> United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission Resolution 2001/46” (New York: United Nations, 2002), E/CN.4/2002/71, 36.

liberty by arrest or detention has the right “to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>40</sup>

International humanitarian law also provides protection against enforced disappearances by prohibiting acts that precede or follow a “disappearance.” Common Article 3 of the Geneva Conventions requires that persons taken into custody, whether civilians or captured combatants, be treated humanely in all circumstances. Such persons may never be subjected to murder, mutilation, cruel treatment or torture, or the passing of sentences and carrying out of executions, without a proper trial by a regularly constituted court.<sup>41</sup>

In addition, Protocol II to the Geneva Conventions sets out the minimum standards for treatment of persons deprived of their liberty during the conflict, which include access to relief and communication with relatives.<sup>42</sup> It also details the due process requirements that apply to all persons detained in connection with offenses arising out of a conflict, which include being charged without delay, the presumption of innocence, the prohibition on forced confessions, and the right to an adequate defense.<sup>43</sup> Nepal has not ratified Protocol II, but many of its provisions are recognized as customary international law and are therefore also applicable.

The U.N. Declaration on Enforced Disappearances recognizes the practice of “disappearance” as a violation of the rights to due process, to liberty and security of person, and to freedom from torture. It also contains a number of provisions aimed at preventing “disappearances,” stipulating that detainees must be held in officially recognized places of detention, of which their families must be promptly informed, and that they must have access to a lawyer.<sup>44</sup>

The Declaration urges each state to take “effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory

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<sup>40</sup> ICCPR, Article 9(4). Further protections are offered by Article 6 (the right to life), Article 7 (prohibition of torture), and Article 17 (protection from arbitrary interference with privacy, family and home). The rights under articles 9 and 17 are derogable during public emergencies, but even then the derogation should be proportional and subject to judicial control. Nepal has not formally derogated from any rights under ICCPR, hence the Covenant remains in full force.

<sup>41</sup> Geneva Conventions of 1949, Common Article 3.

<sup>42</sup> Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, adopted June 8, 1977, Article 5(2).

<sup>43</sup> Additional Protocol II, Article 6.

<sup>44</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Article 10.

under its jurisdiction,”<sup>45</sup> and emphasizes that “no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance.”<sup>46</sup>

“Disappearances” can also involve serious violations of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1979.<sup>47</sup> The latter requires, inter alia, that the detaining authority shall produce the arrested person without unreasonable delay before the reviewing authority, and that the proceedings to challenge the lawfulness of detention, which include the writ of habeas corpus, “shall be simple and expeditious.”<sup>48</sup>

A widespread or systematic pattern of enforced disappearances constitutes a crime against humanity, a term which refers to acts that, by their scale or nature, outrage the conscience of humankind. The Rome Statute of the International Criminal Court (ICC) provides that enforced disappearances are a crime against humanity “when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>49</sup> Nepal is not a signatory to the Rome Statute, but many of the definitions of crimes contained in the ICC are considered part of customary international law. The U.N. Declaration on Enforced Disappearances also terms “the systematic practice” of enforced disappearances to be “of the nature of a crime against humanity.”<sup>50</sup>

### ***Duty to investigate***

Under international law, Nepal has a duty to investigate serious violations of human rights and international humanitarian law standards, and to punish the perpetrators.<sup>51</sup>

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<sup>45</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Article 3.

<sup>46</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Article 6(1).

<sup>47</sup> United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

<sup>48</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 32(2).

<sup>49</sup> Rome Statute of the International Criminal Court, U.N. Doc. No. A/CONF. 183/9 (July 17, 1998), 37 I.L.M. 999, Article 7(1).

<sup>50</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Preamble.

<sup>51</sup> The duty to try and punish those responsible for grave violations of human rights has its legal basis, inter alia, in the International Covenant on Civil and Political Rights (Article 2); and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Articles 4, 5, and 7).

In its resolutions, the United Nations General Assembly has repeatedly called on governments to devote appropriate resources to searching for the “disappeared,” and to “undertake speedy and impartial investigations.” It has urged states to ensure that law enforcement and security authorities are fully accountable in the discharge of their duties, and emphasized that such accountability must include “legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights.”<sup>52</sup>

The U.N. Declaration on Enforced Disappearances emphasizes that it is the state’s obligation to ensure that persons having knowledge of an enforced disappearance have the right “to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority.” Even in the absence of a formal complaint, the state should promptly refer the matter to the appropriate authority for investigation whenever there are reasonable grounds to believe that an enforced disappearance has been committed.<sup>53</sup> When the facts disclosed by an official investigation so warrant, any person alleged to have perpetrated an act of enforced disappearance is to be brought before competent civil authorities for the purpose of prosecution and trial.<sup>54</sup>

The Declaration characterizes “disappearance” as a continuing offense so long as the perpetrators continue to conceal the fate and the whereabouts of the “disappeared” persons.<sup>55</sup> Further, the perpetrators should not benefit from any special amnesty or other measures that might exempt them from a criminal proceeding or sanction.<sup>56</sup>

The latter provision reflects the consolidated view developed in international jurisprudence over the past decade that those responsible for crimes against humanity and other serious violations of human rights should not be granted amnesty.<sup>57</sup>

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<sup>52</sup> Disappeared persons, United Nations G. A. Res. 33/173, adopted 22 December 1978.

<sup>53</sup> Declaration on the Protection of all Persons from Enforced Disappearances, Article 13.

<sup>54</sup> *Ibid.*, Article 14.

<sup>55</sup> *Ibid.*, Article 17.

<sup>56</sup> *Ibid.*, Article 18.

<sup>57</sup> See, e.g., Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994). In regard to forced disappearances this point was emphasized by expert Manfred Nowak in his 2002 report on “disappearances” to the U.N. Commission on Human Rights:

As the [U.N.] Human Rights Committee rightly concluded, in the case of particularly serious human rights violations, such as enforced disappearances, justice means criminal justice, and purely disciplinary and administrative remedies cannot be deemed to provide sufficient satisfaction to the victims. Perpetrators of enforced disappearance should, therefore, not benefit from amnesty laws or similar measures.

In cases where “complaints by relatives or other reliable reports” suggest that a “disappearance” has resulted in the unnatural death of the “disappeared” in state custody, Nepali authorities— in accordance with the U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions— should launch a thorough, prompt, and impartial investigation to “determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.” The investigation should result in a publicly available written report.<sup>58</sup>

### ***Redress for victims***

International human rights law obliges states to provide reparations to victims of serious human rights violations. The ICCPR requires states to provide an “effective remedy” for violations of rights and freedoms and to enforce such remedies.<sup>59</sup> The U.N. Human Rights Committee, which authoritatively interprets and monitors adherence to the ICCPR, has affirmed the state obligation to provide reparations under the ICCPR, noting that “reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and

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See United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission resolution 2001/46” (New York: United Nations, 2002), E/CN.4/2002/71.

<sup>58</sup> Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989). Provision 9 of the Principles states:

There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

Provision 17 of the Principles states:

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

<sup>59</sup> ICCPR, Articles 2(3) and 9(5).

changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”<sup>60</sup>

Guidance on reparation to victims can be found in the draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law that is currently being discussed in the U.N.<sup>61</sup> The Principles—still under negotiation and elaboration—reaffirm that a state should provide adequate, effective, and prompt reparation to victims for acts or omissions constituting violations of international human rights and humanitarian law norms.<sup>62</sup> In the case of Nepal, the issue of reparations for victims or their families is relevant to cases of unlawful detentions, enforced disappearances, and extrajudicial executions.

The U.N. Declaration on Enforced Disappearances specifically reaffirms the right of victims of “disappearances” and their families to obtain redress and adequate compensation, “including the means for as complete a rehabilitation as possible,” as well as the right of dependents to compensation when the victim has died as a result of an act of enforced disappearance.<sup>63</sup>

Expert Manfred Nowak in his 2002 report on “disappearances” to the U.N. Commission on Human Rights stated:

In the case of enforced disappearance, which is a particularly serious and continuing human rights violation committed with the very intention of evading responsibility, truth and legal remedies, reparation is of the utmost importance, not only as a matter of redress for the individual victims, but also as a pre-condition for establishing truth, justice and peace in the societies affected by such practices.<sup>64</sup>

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<sup>60</sup> U.N. Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/74/CRP.4/Rev.6 (2004).

<sup>61</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, U.N. Doc. E/CN.4/2000/62, January 18, 2000, annex, preamble.

<sup>62</sup> *Ibid.*, Articles 15-16. See <http://daccessdds.un.org/doc/UNDOC/GEN/GO3/170/98/PDF/GO317098.pdf>

<sup>63</sup> United Nations Declaration on the Protection of All Persons from Enforced Disappearances (A/RES/47/133), December 18, 1992, Article 19.

<sup>64</sup> United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for



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the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission resolution 2001/46" (New York: United Nations, 2002), E/CN.4/2002/71.

#### IV. “Disappearances”

The current pattern of “disappearances” in Nepal had its origins in the late 1990s, when Nepali police forces launched large-scale operations against Maoist activists and their supporters. The crackdowns occurred in the country’s western and central regions, the areas most affected by the insurgency. The number of “disappearances” skyrocketed during the state of emergency (November 26, 2001–August 28, 2002), when the RNA was first deployed in the counterinsurgency and a number of constitutional rights were suspended. The most dramatic increase in “disappearances” occurred after the breakdown of the ceasefire in August 2003: according to the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID), for two consecutive years, in 2003 and 2004, Nepal “recorded the highest number of new cases” of enforced disappearances in the world.<sup>65</sup> From January to September 2004, the WGEID transmitted 117 cases as urgent appeals to the Nepali government—more than for any other country in the world during that period.<sup>66</sup>

Since May 2000, Nepal’s National Human Rights Commission (the NHRC) has received reports of 1,234 cases of “disappearance” perpetrated by security forces.<sup>67</sup> Informal Sector Service Center (INSEC), a prominent local human rights group that monitors the human rights situation all over the country, recorded 368 “disappearances” in 2003 alone, and 1,264 since the beginning of the conflict in 1996.<sup>68</sup>

During its three-week-long mission to Nepal in September-October 2004, Human Rights Watch documented 203 cases of “disappearance,” the earliest of which dates back to the fall of 1997,<sup>69</sup> while the most recent occurred on September 17, 2004.<sup>70</sup>

“Disappearances” occur throughout the country, affecting virtually all of Nepal’s seventy-five districts. The frequency of “disappearances” has closely mirrored the development of the fighting in Nepal, with the number of “disappearances” tending to

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<sup>65</sup> United Nations Commission on Human Rights, Sixtieth session, Item 11 (b) of the provisional agenda: Civil and Political Rights, Including the Questions of: Disappearances and Summary Executions, Question of enforced or involuntary disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, January 21, 2004, E/CN.4/2004/58.

<sup>66</sup> Gustavo Capdevila, “Human Rights: Society’s Debt to the Disappeared,” *All Africa*, October 11, 2004.

<sup>67</sup> The figure cited in: *The Himalayan Times*, December 12, 2004.

<sup>68</sup> Informal Sector Service Center (INSEC), *Human Rights Yearbook 2004*, (Kathmandu: INSEC, 2004), 10.

<sup>69</sup> See Appendix, the “disappearance” of Lila Khannal.

<sup>70</sup> See Appendix, the “disappearance” of Prakash Tharu.

be highest in areas where control is most actively contested between the security forces and the Maoists. In the late 1990s the most affected districts were Rolpa, Rukum, Jajarkot, Salyan, Gorkha, and Sindhuli, but the majority of recent cases documented by local and international human rights groups occurred in the vicinity of Nepal's capital, Kathmandu, and in central districts, such as Lalitpur and Dhading.<sup>71</sup> Of the "disappearances" documented by the NHRC, 43 percent happened in middle Nepal, 23 percent in the mid-western part of the country, and 17 percent in the eastern part.<sup>72</sup>

Human Rights Watch has documented "disappearances" that occurred in fourteen districts: Kathmandu, Lalitpur, Nuwakot, Kavre, Dhading, Lamjung, Gorkha, Chitwan, Nawalparasi, Tanahu, Kaski, Dang, Bardia, and Banke. Most of the documented "disappearances" were registered in Bardia (eighty-nine cases), Dang (twenty-nine cases), Banke (twenty-five cases) and Kathmandu (twenty-two cases). The research clearly demonstrates that the problem is not confined to any particular part of Nepal, but is prevalent throughout the country.

### **Perpetrators**

In conflicts throughout the world, "disappearances" are largely carried out by secret services, special military units, death squads, or paramilitary groups.<sup>73</sup> This significantly

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<sup>71</sup> Amnesty International, "Nepal: Escalating "Disappearances" Amid a Culture of Impunity," August 30, 2004, AI Index: ASA 31/155/2004.

<sup>72</sup> Nepal's National Human Rights Commission, "Number of Disappearance & Abduction Cases Registered at NHRC." A copy of the document is on file with Human Rights Watch. In terms of Nepal's administrative division, the middle region consists of three administrative zones (Janakpur, Bagmati, and Narayani), which include nineteen districts (Dolkha, Ramechhap, Sindhuli, Dhanusha, Mahottari, Sarlahi, Rasuwa, Dhading, Kathmandu, Nuwakot, Sindhupalchowk, Kavrepalanchowk, Lalitpur, Bhaktapur, Chitwan, Makawanpur, Parsa, Bara, and Rautahat). The mid-western area consists of three zones (Rapti, Bheri, and Karnali) which include fifteen districts (Rukum, Rolpa, Salyan, Pyuthan, Dang, Dailekh, Banke, Bardia, Surkhet, Dolpa, Humla, Jumla, Kalikot, and Mugu). The eastern region consists of three zones (Mechi, Koshi, and Sagarmatha) which include sixteen districts (Taplejung, Panchthar, Ilam, Jhapa, Sankhuwashava, Terhathum, Dhankuta, Bhojpur, Morang, Sunsari, Solukhumbu, Okhaldhunga, Khotang, Udayapur, Saptari, and Siraha).

<sup>73</sup> For a detailed analysis of patterns of disappearances in other countries see, e.g., Human Rights Watch, "Disappeared in Guatemala: The Case of Efrain Bamaca Velasquez," A Human Rights Watch Report, Vol. 7, No. 1, March 1995; Human Rights Watch, "Time for Reckoning: Enforced Disappearances and Abductions in Algeria," A Human Rights Watch Report, Vol. 15, No. 2(E), February 2003; Human Rights Watch, "Last Seen: Continued "Disappearances" in Chechnya," A Human Rights Watch Report, Vol. 14, No. 3(D), April 2002; Americas Watch (now Human Rights Watch/Americas), *El Salvador's Decade of Terror* (New Haven and London: Yale University Press and Human Rights Watch Books, 1991); Human Rights Watch, "State of War: Political Violence and Counterinsurgency in Colombia," A Human Rights Watch Report, December 1993; Amnesty International, "Disappearances in Guatemala under the Government of General Oscar Humberto Mejia Victores (August 1983-January 1985), AI Index: AMR 34/01/85, March 1985; Amnesty International, *Getting Away with Murder: Political Killings and "Disappearances" in the 1990s* (London: AI Publications, 1993); Amnesty International, *Sri Lanka: Extrajudicial executions, "disappearances", and torture, 1987 to 1990* (London: AI Publications, 1990); CONADEP, *Nunca Mas: A Report by Argentina's Commission on Disappeared*

complicates the process of identifying the perpetrators—both those giving orders and those carrying them out—and often creates insurmountable obstacles for establishing the whereabouts of the “disappeared.”

In Nepal, however, the situation is quite different. Almost all arrests and detentions that lead to “disappearances” are carried out by regular army units, police, or Armed Police Force (APF) personnel. The army and the APF have been deployed in counterinsurgency operations since 2001. On November 4, 2003, after the collapse of peace talks and the Maoists’ withdrawal from the ceasefire, the government declared the formation of the so-called Unified Command, consisting of the army, APF, police, and the National Investigation Department, under the operational command of the army.<sup>74</sup>

The overwhelming majority of witnesses interviewed by Human Rights Watch unhesitatingly identified perpetrators as “army men,” “police,” “APF,” or “a joint group of army and police.” In many cases the witnesses indicated that the security personnel wore uniforms, used military vehicles, and sometimes presented their official security force identification.

Although in some cases soldiers and policemen were dressed in civilian clothes, or even disguised themselves as Maoists in an attempt to identify Maoist sympathizers in villages, they generally failed to deceive the villagers into mistaking their identity. For example, on April 11, 2002, a large group of RNA soldiers carried out a sweep in Manau VDC-8 in Bardia (described below).<sup>75</sup> They initially tried to fool some of the villagers into thinking

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People (London: Faber and Faber, 1986); Iain Guest, *Behind the Disappearances: Argentina’s Dirty War Against Human Rights and the United Nations* (Philadelphia: University of Pennsylvania Press, 1990).

<sup>74</sup> “Statement by Rt. Hon. Prime Minister Surya Bahadur Thapa at the press conference regarding Future Plan, Strategies and Programs of His Majesty’s Government (unofficial translation),” November 4, 2003 [online], <http://www.mofa.gov.np/pmpressnov4.htm> (retrieved November 27, 2004). The decision was justified by the need for effective coordination among the security forces in the face of the rapid escalation of fighting after the August collapse of the ceasefire.

<sup>75</sup> The RNA raid was likely in response to the Maoist killing of Amrit Man Shreshtra, a large landowner in the village, about two months before the sweep. According to the witnesses, as described in more detail in the Appendix of this report, relatives of the late Amrit Man accompanied the RNA soldiers, pointing out people to arrest.

they were Maoists, asking the villagers to join them in blowing up a local bridge.<sup>76</sup> The RNA arrested eight people from the village, none of whom were seen again.<sup>77</sup>

In a number of cases, the victims' families knew exactly which army barracks, camp, or post a unit was coming from, and at times could even identify the soldiers or officers by name. For example, on August 17, 2002, RNA soldiers arrested twenty-six-year-old teacher Jilla Sandesh Tharu, along with two other villagers from Magaragadi, Magaragadi VDC-9 in Bardia. But a relative of Tharu recognized one of the officers from a nearby Rambhapur army post—Jamdar Mahendra Thapa—among the soldiers.<sup>78</sup> The relatives tried to use this information to locate the three “disappeared” men, but their efforts proved futile, and the three men remain missing.<sup>79</sup>

Since at present Maoist forces control much of Nepal's countryside, security forces typically operate out of heavily fortified positions at district headquarters, carrying out raids on villages from there. This makes it easier to determine which units are carrying out large-scale sweeps or targeted search and seizure operations in a given village. Moreover, as discussed below, the families of individuals taken into custody often receive credible information regarding their relatives' detention in specific army barracks, which also helps to establish the identity of the perpetrators.

Given the relative ease in identifying individual perpetrators, as well as the army and police units routinely involved in violations, few obstacles stand in the way of authorities locating and punishing those responsible for abuses. Thus far, however, the authorities have chosen to overlook the overwhelming evidence of security force involvement in “disappearances.”

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<sup>76</sup> Human Rights Watch interview with a relative of Prem Bahadur Tharu, Bardia, September 28, 2004; Human Rights Watch interview with a relative of Dhani Ram and Sani Ram Tharu, Bardia, October 1, 2004; Human Rights Watch interview with a relative of Radhu Lal Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearances” of Prem Bahadur Tharu, Dhani Ram and Sani Ram Tharu, and Radhu Lal Chowdhury. Hereinafter the names of witness are on file with Human Rights Watch. They are being withheld to protect the witnesses' safety.

<sup>77</sup> Human Rights Watch interview with a relative of Mohan Chowdhury, Bardia, October 1, 2004; Human Rights Watch interview with a relative of Lauti Tharu, Bardia, September 28, 2004; Human Rights Watch interview with a relative of Kamali Tharu, Bardia, September 28, 2004. For more information, see Appendix, the “disappearances” of Mohan Chowdhury, Lauti Tharu and Kamali Tharu.

<sup>78</sup> Jamdar is a low-ranking officer in the Royal Nepalese Army.

<sup>79</sup> Human Rights Watch interview with a relative of Jilla Sandesh Tharu, Bardia, September 29, 2004. For more information, see Appendix, the “disappearances” of Jilla Sandesh Tharu, Shreeram Tharu, and Chulluwa Tharu.

## **Victims**

Among the victims of “disappearances” in Nepal are people of various occupations, including farmers, workers, students, teachers, journalists, lawyers, shopkeepers, housewives, and others. In cases documented by Human Rights Watch, twenty-one of the “disappeared” were women. The majority was young people between the ages of twenty and thirty-five, and twenty-five victims were minors under the age of eighteen.

Of the 203 “disappearances” documented by Human Rights Watch, twenty-three individuals were allegedly active members of CPN-M, and another seventeen were said to belong to groups affiliated with CPN-M, such as the All-Nepal Student Union (Revolutionary), the Laborers’ Union (Maoist), or the All-Nepal Women’s Organization Revolutionary. Eight persons were former members of CPN-M who, according to their relatives, had discontinued their party membership and had returned to civilian life prior to their arrest.

Significantly, however, in over one-third of the cases documented by Human Rights Watch, the “disappeared” appear never to have been involved with any aspect of the Maoist movement and, according to their relatives, were either not active politically or members of non-Maoist political parties, such as the Nepali Congress or the CPN (UML).<sup>80</sup>

In a number of cases people were detained because of their personal friendship or family connection with a person known to be a Maoist. Thus, nineteen-year-old student Dilip Chandra Hadkhale, a university student and an active member of the Nepali Congress Party, was apparently “disappeared” by the RNA solely because of his personal friendship with a CPN-M activist whom the army had killed earlier. The RNA first detained Hadkhale in September 2003, after which he was released as the result of a direct intervention by the university administration. While he was in custody, Hadkhale was questioned about his CPN-M friend and severely beaten. On January 21, 2004, Hadkhale was apparently rearrested and subsequently “disappeared.”<sup>81</sup> Another student, sixteen-year-old Bir Bahadur Thapa from Dang, “disappeared” after being arrested at home by a group of RNA soldiers on April 28, 2002. His family is adamant that Thapa

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<sup>80</sup> Human Rights Watch interview with a relative of Dharma Raj Dnagol, Kathmandu, September 18, 2004. Dnagol was a member of Nepali Congress. See also Human Rights Watch interview with a relative of Ram Prasad Acharya, Dhading, September 19, 2004. Acharya was a member of CPN-UML (United Marxist-Leninist), which has no links to CPN-M. For more information, see Appendix, the “disappearance” of Dharma Raj Dngol; the “disappearance” of Ram Prasad Acharya.

<sup>81</sup> Human Rights Watch interviews with two relatives of Dilip Chandra Hadkhale, Tahanun, September 21, 2004. For more information, see Appendix, the “disappearance” of Dilip Chandra Hadkhale.

was not involved in politics and believes that he was “disappeared” because of his father, who is active in the political structures of CPN-M.<sup>82</sup>

In other cases security forces arrested and “disappeared” villagers who had done nothing more than provide food and shelter to Maoists traveling through their villages.<sup>83</sup> These villagers are caught in a nearly impossible position: refusing to supply food and shelter to Maoists can lead to retribution from the Maoists, but offering it can lead to attacks by government forces.

### ***Modus Operandi***

In almost all cases documented by Human Rights Watch, people who had “disappeared” were last seen by their relatives or other witnesses in the custody of governmental security forces. Such forces had detained them during large-scale operations or targeted raids, arrested them at checkpoints, or had simply taken them away from their places of work or study.

### ***“Disappearances” after large-scale operations***

Large-scale operations—some of them prompted by Maoist attacks in a given area and some having no apparent cause—often result in arbitrary arrests and “disappearances.”

Thus, at least sixteen people “disappeared” after being arrested by RNA and APF forces in the course of a large-scale operation on October 20-22, 2002, in Rajapur, Bardia. The security forces based at the Manpur Tapara temporary army camp launched the arrest spree in response to Maoist destruction of many government offices in the months before the operation. The Maoists had also given an ultimatum to the family members of security personnel to coerce their relatives to resign from the security forces or leave Rajapur.

On the night of October 20, 2002, the soldiers arrested twenty-six-year-old farmer Fula Ram Tharu,<sup>84</sup> seventeen-year-old student Ram Karan Tharu,<sup>85</sup> and thirty-year-old farmer

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<sup>82</sup> Human Rights Watch interviews with two relatives of Bir Bahadur Thapa, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Bir Bahadur Thapa.

<sup>83</sup> See, for example, Appendix, the “disappearances” of Hari Prasad Acharya, the “disappearance” of Neplai Tharu.

<sup>84</sup> Human Rights Watch interview with a relative of Fula Ram Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Fula Ram Tharu.

<sup>85</sup> Human Rights Watch interview with a relative of Ram Karan Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Ram Karan Tharu.

Runchya Tharu<sup>86</sup> from Jamunabachi village, Manpur Tapara VDC-8. The same night, a combined group of uniformed RNA soldiers and APF officers also detained thirty-year-old farmer Radheshyam Tharu,<sup>87</sup> and thirty-three-year-old Raj Kumar Tharu<sup>88</sup> from a nearby Vikrampur village. Also on October 20, a combined force of RNA and APF soldiers carried out arrests in Badalpur VDC-9, detaining four persons—twenty-six-year-old mill worker Basantu Tharu,<sup>89</sup> twenty-year-old Lautan Tharu, who had returned from working in India just seven days before,<sup>90</sup> twenty-year-old student Bagale Tharu,<sup>91</sup> and twenty-one-year-old farmer Pharek Tharu.<sup>92</sup>

RNA soldiers further arrested four people from Harinagar village, Khairi Chandanpur VDC-8, during the day on October 21, 2002: forty-five-year-old Sunawa Chowdhury,<sup>93</sup> twenty-four-year-old Bagi Ram Chowdhury,<sup>94</sup> nineteen-year-old student Kessar Kumar Chowdhury,<sup>95</sup> and thirty-eight-year-old medical shop owner Pati Ram Chowdhury.<sup>96</sup> The same day RNA soldiers arrested the twenty-eight-year-old owner of a small shop, Mangru Chowdhury,<sup>97</sup> and seventeen-year-old student Gopal Chowdhury<sup>98</sup> in Chapti village, Badalpur VDC-4.

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<sup>86</sup> Human Rights Watch interview with a relative of Runchya Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Runchya Tharu.

<sup>87</sup> Human Rights Watch interview with a relative of Radheshyam Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Radheshyam Tharu.

<sup>88</sup> Human Rights Watch interview with a relative of Raj Kumar Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Raj Kumar Tharu.

<sup>89</sup> Human Rights Watch interview with a relative of Basantu Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Basantu Tharu.

<sup>90</sup> Human Rights Watch interview with a relative of Lautan Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Lautan Tharu.

<sup>91</sup> Human Rights Watch interview with a relative of Bagale Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Bagale Tharu.

<sup>92</sup> Human Rights Watch interview with a relative of Parek Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Parek Tharu.

<sup>93</sup> Human Rights Watch interview with a relative of Sunawa Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Sunawa Chowdhury.

<sup>94</sup> Human Rights Watch interview with anonymous witness, Bardia, October 1, 2004.

<sup>95</sup> Human Rights Watch interview with a relative of Kessar Kumar Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Kessar Kumar Chowdhury.

<sup>96</sup> Human Rights Watch interview with a relative of Pati Ram Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Pati Ram Chowdhury.

<sup>97</sup> Human Rights Watch interview with a relative of Mangru Chowdhury, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Mangru Chowdhury.

<sup>98</sup> Human Rights Watch interview with a relative of Gopal Chowdhury, Bardia, September 28, 2004. For more information, see Appendix, the “disappearance” of Gopal Chowdhury.



On the last day of the operation, October 22, RNA soldiers came to Pahadipur village, Badalpur VDC-3, and detained forty-one-year-old farmer and local-level CPN-M activist Moti Lal Tharu.<sup>99</sup>

According to the families, aside from Moti Lal Tharu, none of the detainees was a member of CPN-M. Testimony from several witnesses indicates that the “disappeared” detainees were taken to the Manpur Tapara Secondary School, which the RNA had occupied as their “Manpur Tapara temporary army camp.” The relatives went daily to the school and saw the blindfolded detainees held in one of the school’s rooms. Many recognized their relatives from the clothes they were wearing at the time of arrest. After the Manpur Tapara temporary camp was dismantled on October 25, the sixteen detainees were never seen again.

Another ten detainees “disappeared” after two RNA operations carried out in February and April 2002. The operations were in response to the killing of a large landowner in Nauranga village in Manau VDC-8, Rajapur, Bardia in February 2002. RNA soldiers detained four people from the area on February 25, 2002, and another eight on April 11. Two detainees from the first group were released six days later, but twenty-two-year-old Nirmal Chowdhury<sup>100</sup> and thirty-eight-year-old Jagat Prasad Chowdhury<sup>101</sup> “disappeared” after being last seen by the released detainees in the Thakurdwara army barracks. The eight persons detained in April—thirty-year-old Prem Bahadur Tharu,<sup>102</sup> seventeen-year-old Dhani Ram and his seventeen-year-old brother Sani Ram Tharu,<sup>103</sup> twenty-year-old Radhu Lal Chowdhury,<sup>104</sup> twenty-one-year-old Mohan Chowdhury,<sup>105</sup> sixteen-year-old Lauti Tharu,<sup>106</sup> nineteen-year-old Kamali Tharu,<sup>107</sup> and Chillu Tharu

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<sup>99</sup> Human Rights Watch interview with two relatives of Moti Lal Tharu, Bardia, September 30, 2004. For more information, see Appendix, the “disappearance” of Moti Lal Tharu.

<sup>100</sup> Human Rights Watch interview with a relative of Nirmal Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Nirmal Chowdhury.

<sup>101</sup> Human Rights Watch interview with a relative of Jagat Prasad Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Jagat Prasad Chowdhury.

<sup>102</sup> Human Rights Watch interview with a relative of Prem Bahadur Tharu, Bardia, September 28, 2004. For more information, see Appendix, the “disappearance” of Prem Bahadur Tharu.

<sup>103</sup> Human Rights Watch interview with a relative of Dhani Ram and Sani Ram Tharu, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Dhani Ram Tharu, the “disappearance” of Sani Ram Tharu.

<sup>104</sup> Human Rights Watch interview with a relative of Radhu Lal Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Radhu Lal Chowdhury.

<sup>105</sup> Human Rights Watch interview with a relative of Mohan Chowdhury, Bardia, October 1, 2004. For more information, see Appendix, the “disappearance” of Mohan Chowdhury.

<sup>106</sup> Human Rights Watch interview with a relative of Lauti Tharu, Bardia, September 28, 2004. For more information, see Appendix, the “disappearance” of Lauti Tharu.

(age unknown)—have not been seen since the arrest. Various security and government officials based in Tikapur Kailili district, Guleria, Thakurdwara, and Rajapur, have denied having any knowledge of the arrests.<sup>108</sup>

Similarly, six people “disappeared” after each of the RNA operations in Dang district in April and September 2002. On April 19, 2002, a large contingent of uniformed RNA soldiers arrived at the Katberawa village, Bela VDC, supported by military helicopters. The villagers believe the operation may have been linked to a Maoist attack on the nearby Lamahi army barracks four months earlier. One person in the village, twenty-seven-year-old Chatak Bahadur Chowdhury, was killed by the soldiers as he was repairing a neighbor’s roof. The soldiers rounded up about fifty men from the area and took them to the nearby river, where they were interrogated. Six of them never came back: twenty-five-year-old Dani Ram Chowdhury,<sup>109</sup> twenty-eight-year-old Kedarnath Chowdhury, thirty-two-year-old Bhim Bhahadur Chowdhury,<sup>110</sup> sixteen-year-old Hari Lal Chowdhury, his uncle Udaya Chowdhury,<sup>111</sup> and fifty-year-old Khim Bahadur Pun<sup>112</sup> “disappeared” without a trace. On several occasions relatives were told by officials that the men were killed in an “encounter,” but there has been no official confirmation of such an event. The men remain missing after last being seen alive in RNA custody.<sup>113</sup>

On September 6, 2002, RNA soldiers came to the village of Paharwa, Duduwa VDC, and arrested several men apparently at random, taking them to a riverbank where the villagers were taking part in the Guruain festival. The soldiers then blindfolded and tied the hands of thirteen of the captives, who were taken away. Several of the men were later released. However, one of the detained men, Shree Harsa Subedi, was found dead that night near the village, while six detainees—forty-one-year-old Sohan Lal

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<sup>107</sup> Human Rights Watch interview with a relative of Kamali Tharu, Bardia, September 28, 2004. For more information, see Appendix, the “disappearance” of Kamali Tharu.

<sup>108</sup> Human Rights Watch interviews with the relatives of Dhani Ram and Sani Ram Tharu, Bardia, October 1, 2004; Human Rights Watch interview with a relative of Prem Bahadur Tharu, Bardia, September 28, 2004.

<sup>109</sup> Human Rights Watch interview with a relative of Dani Ram Chowdhury, Dang, September 25, 2004. For more information, see Appendix, the “disappearance” of Dani Ram Chowdhury.

<sup>110</sup> Human Rights Watch interview with a relative of Kedarnath Chowdhury, Dang, September 25, 2004.

<sup>111</sup> Human Rights Watch interview with a relative of Hari Lal Chowdhury, Dang, September 25, 2004. For more information, see Appendix, the “disappearance” of Hari Lal Chowdhury.

<sup>112</sup> Human Rights Watch interview with a relative of Kim Bahadur Pun, Dang, September 25, 2004. For more information, see Appendix, the “disappearance” of Kim Bahadur Pun.

<sup>113</sup> Human Rights Watch interview with a relative of Kim Bahadur Pun, Dang, September 25, 2004; Human Rights Watch interview with a relative of Dani Ram Chowdhury, Dang, September 25, 2004.

Chowdhury,<sup>114</sup> twenty-five-year-old Som Raj Chowdhury,<sup>115</sup> thirty-seven-year-old Kuira Chowdhury,<sup>116</sup> thirty-three-year-old Chanak Lal Chowdhury,<sup>117</sup> twenty-three-year-old Jagi Chowdhury,<sup>118</sup> and seventeen-year-old Khushi Ram Chowdhury<sup>119</sup>—“disappeared.” The families of those detained told Human Rights Watch that the men were not involved with CPN-M in any way.

According to a released detainee, all of the arrested men were taken to the Tulsipur army barracks, where the soldiers photographed and then beat them severely with their fists, boots, and bamboo sticks. Four days after the arrest, the released detainee was transferred to the Ghorahi district police post and lost touch with the others.<sup>120</sup> In response to inquiries by the families and the VDC chairman, the army denied having the men in custody. Nothing has been heard about them since they were last seen alive at the Tulsipur army barracks.

Other major operations documented by Human Rights Watch include a May 23, 2002, raid in the village of Machaghar, Deudakala VDC-3, Bardia district, which resulted in the “disappearance” of five men;<sup>121</sup> an August 23, 2001, operation in Pipal Tandi, Motipur VDC in Bardia, in which soldiers arrested a total of five persons from the village who were never seen again;<sup>122</sup> the arrests of nine people in Pokhara area on November 4-10, 2003;<sup>123</sup> and others, as described in the Appendix to this report.

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<sup>114</sup> Human Rights Watch interview with a relative of Sohan Lal Chowdhury, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Sohan Lal Chowdhury.

<sup>115</sup> Ibid.

<sup>116</sup> Human Rights Watch interview with a relative of Kuira Chowdhury, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Kuira Chowdhury.

<sup>117</sup> Human Rights Watch interview with a relative of Chanak Lal Chowdhury, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Chanak Lal Chowdhury.

<sup>118</sup> Human Rights Watch interview with the villagers in Paharwa, Duduwa VDC, Dang, September 24, 2004.

<sup>119</sup> Human Rights Watch interview with a relative of Khushi Ram Chowdhury, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Khushi Ram Chowdhury.

<sup>120</sup> Human Rights Watch interview, Dang, September 26, 2004. The name of the witness is on file with Human Rights Watch. His identity is being withheld to protect his safety.

<sup>121</sup> See Appendix, the “disappearances” of Tirtha Bahadur Thapa, Shree Ram Tharu, Hira Sing Bathamagar, Bom Bahadur Shahi and Siya Ram Chowdhury.

<sup>122</sup> See Appendix, the “disappearances” of Kali Ram Chowdhury, Bhag Ram Tharu, Hari Charan Tharu, Kalpatti Tharu, and Lal Bihari Tharu.

<sup>123</sup> See Appendix, the “disappearances” of Netra Prasad Baral, Tirtha Nath Luitel, Budhi Pande, Prakash Khanal, Badri Khadka, Keshar Singh Thakuri Krishna Panta, Bhanu Pariya, and Devi Prasad Dhakal.

### *“Disappearances” after targeted raids*

In addition to these large-scale operations, Nepali security forces have conducted numerous targeted raids, arresting hundreds of individuals in a seemingly arbitrary manner. This has happened across the country—at homes, on roads, and at places of work or study. Many of those arrested have never been seen again.

In some cases the security forces have been accompanied during the arrests by “witnesses,” such as neighbors or co-workers of the detainee, or persons completely unknown to them, who were supposedly present to identify the suspect or testify to his affiliation with the Maoists. Security officials also often lure people away by saying they only want to talk to them, promising the detainees’ relatives they will return soon.

For example, at around 11 p.m. on December 18, 2003, five RNA soldiers in civilian clothing came to the house of thirty-five-year-old farmer Rajendra Thapa in Imadol-9, Lalitpur district. A relative of Thapa who was accompanying the army called him out of the house “to see some friends.” Thapa followed him but did not return. A day later the relative informed the family that Thapa had been taken to the Bhairabnath Gulm (Maharajgunj) army barracks for inquiry and would be released in a few days. Thapa has not been seen or heard from since then, although his relatives have petitioned numerous authorities and human rights organizations. The family went to the Bhairabnath Gulm and Rajdal army barracks, but the army denied having Thapa in its custody.<sup>124</sup>

In another case, five or six RNA soldiers in civilian dress came to Krishna Secondary School in Chhaimale, Kathmandu, at 11:30 a.m. on March 1, 2004. The soldiers approached the school’s headmaster, identified themselves as RNA soldiers, and asked to see seventeen-year-old student Parlad Waiba. After Waiba was brought to the headmaster’s office, the soldiers took Waiba away for what they indicated would be ten minutes of questioning, collected his books from the class room, and departed with Waiba. He has not been seen since then. Faculty and students recognized the soldiers as belonging to the nearby Farping army camp, but when a relative went to the camp, the guards at the gate told him not to worry, that Waiba was being provided with food and shelter and was fine. The family has received no other information.<sup>125</sup>

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<sup>124</sup> Human Rights Watch interview with a relative of Rajendra Thapa, Kathmandu, September 18, 2004. For more information, see Appendix, the “disappearance” of Rajendra Thapa.

<sup>125</sup> Human Rights Watch interview with school official, Kathmandu, September 18, 2004 (the name of the witness is withheld to protect his safety); Human Rights Watch interview with a relative of Parlad Waiba, Kathmandu, September 18, 2004. For more information, see Appendix, the “disappearance” of Parlad Waiba.

In the majority of cases documented by Human Rights Watch, security personnel did not identify themselves, gave no reasons for the arrest, and gave relatives no indication of where a detainee was being taken. Furthermore, the witnesses often stated that RNA or other forces carrying out the arrests broke into homes, severely beat and verbally abused detainees before taking them away, and kept the relatives at gunpoint, threatening to kill them should they attempt to follow the detainee.

A relative of thirty-two-year-old Tanka Sharma, who was arrested by RNA soldiers on January 22, 2002, in Dulegaunda VDC ward 7, Kaski district, and subsequently “disappeared,” described Sharma’s arrest as follows:

They came inside and started beating him with bamboo sticks. His head was bleeding. They pushed him out of the house, tied his hands behind his back and blindfolded him. They were cursing him, accusing him of destroying the police post.<sup>126</sup>

Sharma was seen by other detainees at the Fulbari army barracks, and was then reportedly seen in the company of soldiers, presumably being used to point out suspected CPN-M members during army patrols. Later, the family was directed to the Bijayapur army barracks in Kaski district, where officials told them on numerous occasions that Sharma was “out with the army,” and refused to let them see him. The army battalion stationed at the Bijayapur army barracks was later transferred to Gorkha district, and when the family inquired there, the army denied having any knowledge of the case.<sup>127</sup>

When RNA soldiers were arresting forty-eight-year-old CPN-UML member Jangu Tharu at his home in Sonpur in Magragadi VDC-5, in Bardia, on August 11, 2002, his eighty-five-year-old mother attempted to ask the soldiers where they were taking her son. She told Human Rights Watch:

I came out of the house, asked them where they were taking him, and begged them not to take my son away. But they pointed a gun at me and said they would shoot me if I did not go back into the house.<sup>128</sup>

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<sup>126</sup> Human Rights Watch interview with a relative of Tanka Sharma, Kaski, September 21, 2004.

<sup>127</sup> Ibid.

<sup>128</sup> Human Rights Watch interview with the mother of Jangu Tharu, Bardia, September 29, 2004.

Jangu Tharu was taken away with three other men from the village, none of whom have been seen since his arrest, despite the families' efforts at finding the detainees.<sup>129</sup>

In one-third of the cases documented by Human Rights Watch, the families had knowledge of where their relatives were held at some point after being detained. Some received a letter or a phone call from the detainees, others were notified by released detainees who saw their relatives in detention, and some managed to get information through contacts within the military or police. Moreover, a number of detainees were initially kept in an acknowledged place of detention where their relatives visited them regularly, and were only afterward "disappeared."

For example, after twenty-two-year-old farmer Tribhuwan Giri was arrested by the police on December 18, 2001, in Khohalpur, Pipalchautara in Bardia, his family visited him regularly, first at the Guleria police office where Giri was kept for over two months, and then in the Guleria prison, where he was transferred on February 13, 2002. Giri told his family that he was accused of being a Maoist, but assured them that he was innocent and would come home soon. The family saw him last on May 2, 2002; when they came to the prison on May 7, prison officials said that Giri was not there anymore and showed them a document indicating that nine people, including Giri, were released on May 2. A detainee released from the prison later told the family that on May 2 all nine had been taken from the prison in an RNA truck. Prison officials told the family that Giri "might have been taken" for interrogation to the Guleria district police office, but the police confirmed that Giri had been taken from prison by the army, although they did not know where exactly he was being held. The family has not received any information about Giri since.<sup>130</sup>

A relative of twenty-nine-year-old carpenter Som Bahadur Bishwokarma was also able to visit him in detention. Bishwokarma was arrested by the RNA on July 7, 2002, while visiting his aunt in Gandaki regional hospital in Pokhara. He was taken to the Fulbari army barracks and for the first three months a relative was allowed to visit him there. Soon after, he "disappeared." His relative told Human Rights Watch:

I came to see him, and the army at the barracks told me he had been transferred to jail, but did not say which one. I searched every jail in the

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<sup>129</sup> Human Rights Watch interviews with the relatives of Jangu Tharu, Ram Bharose Tharu, Jagana Tharu and Jagat Ram Tharu, Bardia, September 29, 2004. For more information, see Appendix, the "disappearances" of Jangu Tharu, Ram Bharose Tharu, Jagana Tharu and Jagat Ram Tharu.

<sup>130</sup> Human Rights Watch interview with a relative of Tribhuwan Giri, September 28, 2004. For more information, see Appendix, the "disappearance" of Tribhuwan Giri.

area, but could not find him. Then I inquired at the district police office in Pokhara, and the police said they had received his case, and were expecting him to be brought there. They told me he would come home soon, but he never did. Two months ago [in July 2004] INSEC inquired at the barracks again, and they said he was still alive, but they would not tell them where he was.<sup>131</sup>

### ***“Disappearances” after re-arrest***

The army has also become notorious for re-arresting the detainees released after investigation by the police or on the order of a judge. Such cases were frequently reported in the Nepali media, as well as in the “urgent appeals” of Amnesty International and the Asian Human Rights Commission.<sup>132</sup> Human Rights Watch has also documented several cases where detainees “disappeared” after allegedly being released from detention. The relatives believe they were arrested again by the army.

Twenty-year-old Gita Ghartimagar was arrested together with twenty-five-year-old Nanda Bahadur K.C. on February 22, 2002, in Chandanpur, Gadawa VDC-9, in Dang district. She was first taken to Lamahi APF barracks, and then to Tulsipur prison, where a relative visited her several times. Three months after the arrest and a few days after the relative’s last visit to the prison, local newspaper *Naya Yugbodh* reported the release of twenty-one detainees, including Gita Ghartimagar and Nanda Bahadur K.C., but neither detainee returned home. Officials at the Tulsipur prison told K.C.’s family that they had transferred the detainees to the district police headquarters, but staff at the headquarters told the family they had no knowledge of the detainees. A year later the prison authorities told the ICRC, which was inquiring on behalf of Ghartimagar’s family, that they had handed her over to municipal authorities. Ghartimagar’s family believes the detainees were rearrested by security forces after their release.<sup>133</sup>

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<sup>131</sup> Human Rights Watch interview with a relative of Som Bahadur Bishwokarma, Kaski, September 21, 2004. For more information, see Appendix, the “disappearance” of Som Bahadur Bishwokarma.

<sup>132</sup> See, e.g. “Prisoners Released, Rearrested,” *The Himalayan Times*, September 6, 2004; “Two Feed, Rearrested,” *The Himalayan Times*, November 18, 2004; Asian Human Rights Commission, “Nepal: Re-arrest of Four People by the Police in the Court Yard in the Presence of the Lawyers,” July 16, 2004 [online], <http://www.ahrchk.net/ua/mainfile.php/2004/739/> (retrieved December 5, 2004); Asian Human Rights Commission, “Nepal: Another Two Persons were Re-arrested Despite the Appellate Court’s Release Orders in Banke District,” December 1, 2004 [online], <http://www.ahrchk.net/ua/mainfile.php/2004/880> (retrieved December 5, 2004); Amnesty International, “Nepal: Two teenage boys and father,” September 28, 2004 [online], <http://www.amnesty.org.uk/news/press/15621.shtml> (retrieved December 5, 2004).

<sup>133</sup> Human Rights Watch interviews with the relatives of Gita Ghartimagar and Nanda Bahadur K.C., Dang, September 25, 2004. For more information, see Appendix, the “disappearances” of Gita Ghartimagar and Nanda Bahadur K.C.

In a small number of cases, persons who had “disappeared” for several months after the security forces had taken them into custody have suddenly “reappeared” in detention. In one such case, twenty-eight-year-old journalist Maheshower Pahadi and his friend, forty-seven-year-old Gyan Bahadur Koirala, were arrested on January 2, 2004, in Liwangkhalek VDC, Kaski district, and taken to the Fulbari army barracks. Four days later, Pahadi and Koirala were seen wearing army uniforms and being led by RNA soldiers, after which relatives of Pahadi were able to meet with him briefly. Following that episode, the family heard no news for four months. They continued to write to the Chief District Officer’s office and to various army barracks for information without result. After four months, the family heard on a local radio broadcast that the men were transferred to Kaski prison, and that they were being detained under the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), the successor to TADO. Since then, the family has been able to visit the detainees regularly.<sup>134</sup>

Such cases support the conclusion that most of the “disappeared” are being held incommunicado in army detention for months, and that the army’s denials of any knowledge of their whereabouts cannot be taken at face value. It is equally likely that a significant number of the “disappeared” have been summarily executed in government custody, as documented later in this report.

### ***Places of detention***

Testimonies of relatives of the “disappeared” and of detainees released from custody suggest that while a small number of detainees are initially taken to police stations and then transferred to prisons, the overwhelming majority are held incommunicado in unofficial places of detention, such as army and APF barracks and camps across Nepal. Although the army is not legally authorized, as explained below, to keep persons in detention, the practice has been prevalent throughout the country since the deployment of the RNA and APF in the conflict.

Human Rights Watch identified numerous places of detention where large numbers of detainees are reportedly being held. The facilities most frequently mentioned by witnesses as the places where their relatives had been held at some point before “disappearing” are presented in the table below. The names of the “disappeared” are listed next to a given place of detention in cases where they had been visited in the facility by their relatives, seen there by other detainees or NHRC representatives, or notified their families—by phone, letters, or through messengers—of their whereabouts.

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<sup>134</sup> Human Rights Watch interview, Kaski, September 22, 2004. The identity of the witness is withheld to protect his safety.



Some of these detainees may have been executed in custody or transferred later to another facility, yet these are the places (unless otherwise indicated) where they were last seen or reported to have been alive.

Bhairabnath Gulm (Maharajgunj) army barracks, Kathmandu	<ol style="list-style-type: none"> <li>1. Ram Shahi</li> <li>2. Dharma Raj Dangol</li> <li>3. Kiran Maharjan</li> <li>4. Bhaikaji Ghimire</li> <li>5. Surjeman Maharjan</li> <li>6. Rajendra Thapa</li> <li>7. Navaraj Thapa<sup>135</sup></li> <li>8. [Name withheld]<sup>136</sup></li> </ol>
Chhauni (Jagadal) army barracks, Kathmandu	<ol style="list-style-type: none"> <li>1. Dev Bahadur Maharjan<sup>137</sup></li> <li>2. Mukunda Sedai</li> <li>3. Dilip Chandra Hadkhale<sup>138</sup></li> <li>4. Arjun Ojha</li> <li>5. Baikuntha Bhujel</li> <li>6. Hari Prasad Acharya</li> <li>7. Navaraj Thapa</li> <li>8. Ram Prasad Acharya</li> <li>9. Indra Bahadur Aryal</li> <li>10. Sugendra Maharjan</li> </ol>

<sup>135</sup> Thapa was held in Bhairabnath Gulm barracks for eight days in October 2003, then released and rearrested a month later. After the second arrest he was seen in Chhauni barracks.

<sup>136</sup> The name of the witness is withheld to protect his safety. He was kept in Bhairabnath Gulm barracks for three months in 2003 and then transferred to 6 No Bahini Bareni army barracks in Dhading, where he spent the next four months before being released. The army never acknowledged having him in detention in response to relatives' inquiries. Human Rights Watch interview, Dhading, September 19, 2004.

<sup>137</sup> Maharjan was detained incommunicado in Chhauni barracks in November 2003. In September 2004 he was transferred to Sundarijal investigation center in Kathmandu and allowed visits by his relatives. Human Rights Watch interview with a relative of Dev Bahadur Maharjan, Kathmandu, September 18, 2004.

<sup>138</sup> Hadkhale was detained in Chhauni barracks for one day in September, 2003, then released and "disappeared" on January 21, 2004.

Fulbari army barracks, Kaski	<ol style="list-style-type: none"> <li>1. Rita Nepali</li> <li>2. Tanka Sharma<sup>139</sup></li> <li>3. Som Bahadur Bishwokarma</li> <li>4. Chaman Lal Baral</li> <li>5. Hari Prasad Poudel</li> <li>6. Raju Chettri</li> <li>7. Netra Prasad Baral<sup>140</sup></li> <li>8. Parbati Poudel</li> </ol>
Tulsipur army barracks, Dang	<ol style="list-style-type: none"> <li>1. Sohan Lal Chowdhury</li> <li>2. Som Raj Chowdhury</li> <li>3. Kuira Chowdhury</li> <li>4. Chanak Lal Chowdhury</li> <li>5. Jagi Chowdhury</li> <li>6. Khushi Ram Chowdhury</li> <li>7. Kodu Lal Chowdhury</li> </ol>
Lamahi APF barracks, Dang	<ol style="list-style-type: none"> <li>1. Gita Ghartimagar<sup>141</sup></li> <li>2. Nanda Bahadur K.C.<sup>142</sup></li> <li>3. Gyani Chowdhury<sup>143</sup></li> <li>4. Maya Kumary Chowdhury</li> </ol>

<sup>139</sup> Sharma might have been transferred to Bijayapur Army Barracks in Kaski, and then to Gorkha district – see Appendix, the “disappearance” of Tanka Sharma.

<sup>140</sup> Baral was apparently transferred to Mahendra Gand army barracks in Gorkha after a month of detention in Fulbari barracks in late 2003.

<sup>141</sup> Ghartimagar was then transferred to Tulsipur prison, but “disappeared” after allegedly being released. See Appendix, the “disappearance” of Gita Ghartimagar.

<sup>142</sup> K.C. was then transferred to Tulsipur prison, but then “disappeared” after allegedly being released. See Appendix, the “disappearance” of Nanda Bahadur K.C.

<sup>143</sup> Gyani Chowdhury has not been seen in detention in Lamahi barracks; however, after her arrest, her parents were ordered to report to the barracks for questioning about their daughter’s activities, which strongly suggests that she was in detention there. See Appendix, the “disappearance” of Gyani Chowdhury.

Chisapani army barracks, Bardia/Banke	<ol style="list-style-type: none"> <li>1. Sita Ram Tharu (Bardia)</li> <li>2. Krishna Prasad Tharu</li> <li>3. Bom Bahadur Shahi<sup>144</sup></li> <li>4. Raj Kumar Tharu (Bardia)</li> <li>5. Sher Bahadur Tharu</li> <li>6. Bhava Kumar Chowdhury</li> <li>7. Buddi Ram Tharu</li> <li>8. Pati Ram Tharu</li> <li>9. Bhook Lal Chowdhury</li> <li>10. Lahanu Chowdhury</li> <li>11. Ram Prasad Tharu</li> <li>12. Likha Ram Tharu</li> <li>13. Jagat Kumar Chowdhury</li> <li>14. Gita Kumar Chowdhury</li> <li>15. Pahadi Tharu</li> <li>16. Raj Kumar Tharu (Banke)</li> <li>17. Sita Ram Tharu (Banke)</li> <li>18. Karna Bahadur Chowdhury</li> <li>19. Yagya Buddi</li> <li>20. Nar Bahadur Buddi</li> <li>21. Gagan Bahadur Gharti</li> <li>22. Narda Ram Gharti</li> <li>23. Fula Raj Tharu</li> <li>24. Raj Bahadur Tharu</li> <li>25. Dayamanti Pun<sup>145</sup></li> </ol>
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<sup>144</sup> It is likely that four other men arrested together with Shahi were also taken to the Chisapani barracks, although there is no direct evidence of their detention there. See Appendix, the “disappearances” of Tirtha Bahadur Thapa, Shree Ram Tharu, Hira Sing Bathamagar, Bom Bahadur Shahi and Siya Ram Chowdhury.

<sup>145</sup> Soldiers at the Chisapani barracks told the family that Pun was transferred to the Thakurdwara army barracks after five days of detention there. See Appendix, the “disappearance” of Dayamanti Pun.

Thakurdwara army barracks, Bardia	<ol style="list-style-type: none"> <li>1. Nirmal Chowdhury</li> <li>2. Jagat Prasad Chowdhury</li> <li>3. Sita Chowdhury</li> <li>4. Dayamanti Pun</li> <li>5. Jilla Sandesh Tharu</li> </ol>
Rambhapur army barracks/army post, Bardia	<ol style="list-style-type: none"> <li>1. Tate Ram Tharu<sup>146</sup></li> <li>2. Hari Ram Chowdhury<sup>147</sup></li> <li>3. Jangu Tharu</li> <li>4. Ram Bharose Tharu</li> <li>5. Jagana Tharu</li> <li>6. Jagat Ram Tharu<sup>148</sup></li> <li>7. Raj Kumar Tharu</li> <li>8. Siya Ram Chowdhury</li> <li>9. Kala Ram Tharu</li> <li>10. Badhu Tharu</li> <li>11. Babu Ram Tharu</li> </ol>

As mentioned above, many of the sixteen people who “disappeared” as a result of the RNA and APF operation in the Rajapur area of Bardia RNA on October 20-22, 2002, were last seen in detention in the Manpur Tapara temporary army camp, which was later dismantled.

Other places where the detainees have been held in custody before their “disappearance” include Balazu police station and Balazu army camp (Kathmandu),

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<sup>146</sup> Tate Ram Tharu and Hari Prasad Chowdhury have not been seen in detention in Rambhapur barracks; however, when they met with a senior officer there, he told them that if they could bring a statement from village leaders certifying the men had nothing to do with the Maoists, they might be released, strongly indicating that the men were indeed in his custody. See Appendix, the “disappearances” of Tate Ram Tharu and Hari Prasad Chowdhury.

<sup>147</sup> Ibid.

<sup>148</sup> Jangu Tharu, Ram Bharose Tharu, Jagana Tharu, Jagat Ram Tharu have not been seen in detention; however, when the ex-chairman of their village inquired at the Rambhapur army post, an officer there initially asked him to bring a petition to release the detainees signed by the acting chairman, suggesting that the men were in custody there. See Appendix, the “disappearances” of Jangu Tharu, Ram Bharose Tharu, Jagana Tharu and Jagat Ram Tharu.

Shorakutte police station (Kathmandu), Farping army camp (Kathmandu), Bijayapur army barracks (Kaski), Pokhara police post (Kaski), Bharatpur police post (Chitwan), Rajdal army barracks (Lalitpur), Suryabinayak army barracks in Bhaktapur (Kavre), Mahendra Gand army barracks (Gorkha), Choprak police station (Gorkha), Gorkha district police headquarters (Gorkha), Nawalparasi army barracks (Nawalparasi), Bhansar police post (Tanahu), Rajpur area police post (Dang), Tulsipur prison (Dang), Ghorahi regional police station (Dang), Ghorahi army barracks (Dang), Guleria district police office and Guleria prison (Bardia), Kohalpur army barracks and Kohalpur police post (Banke), and Rajha Airport Army Barracks (Banke).

The fact that so many different detention facilities have been directly implicated in “disappearances” demonstrates that the problem of “disappearances” in Nepal is not caused by a few rogue soldiers and officers, but is rather a nationwide epidemic and an institutional problem.

### ***Evidence of killings in custody***

While enforced disappearances themselves constitute an egregious violation of human rights, they also greatly increase the risk of extrajudicial killings, torture, and ill-treatment of detainees in custody.<sup>149</sup> The practice of holding people incommunicado in unacknowledged detention in unofficial facilities, maintaining no records of arrest and detention, and refusing to grant access to detainees by relatives and lawyers, creates ample opportunity for further abuses.

Many of the “disappeared” may have been killed in custody. Nepali security forces have been implicated in thousands of summary and extrajudicial executions; according to the National Human Rights Commission, they have been responsible for over 2,000 extrajudicial killings since 2001, when the RNA and APF were deployed in counterinsurgency operations.<sup>150</sup> INSEC reported that in 2003, 166 people were “killed by [the] State after arrest.”<sup>151</sup> An earlier Human Rights Watch report documented numerous unlawful killings both by the Maoists and government forces.<sup>152</sup>

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<sup>149</sup> This section discusses torture and killings only in governmental custody. Maoist forces have also been responsible for numerous cases of killings and torture, documented in Human Rights Watch’s previous report on Nepal. See Human Rights Watch, *Between a Rock and a Hard Place*, 53-60.

<sup>150</sup> The National Human Rights Commission, *Human Rights in Nepal: A Status Report 2003*, 16.

<sup>151</sup> Informal Sector Service Center (INSEC), *Human Rights Yearbook 2004*, (Kathmandu: INSEC, 2004), 9.

<sup>152</sup> Human Rights Watch, *Between a Rock and a Hard Place*, 27. For a description of summary executions and unlawful killings by Nepali security forces see pages 26-53; for a description of extrajudicial executions by Maoist forces, see pages 53-60.

During its latest visit to Nepal, Human Rights Watch obtained convincing evidence of extrajudicial killings of captured Maoists and civilians. Twenty-nine of the families interviewed for this report believe their “disappeared” relatives were killed after being taken into custody by security forces. Reports of the killings came from eyewitnesses to executions, media stories, human rights and humanitarian organizations, or unofficial contacts in the military. However, in only one of the cases was the body returned to the family. In five other cases, the families believe their relatives were killed in custody, although they were unable to cite a basis for their suspicion.

Some people were executed by security forces almost immediately after arrest. Thus, on the night of October 2, 2002, about five hundred RNA troops, some uniformed and some in civilian clothing, surrounded the village of Madaha in Motipur VDC-5 in Bardia. At around 1 a.m., a group of soldiers came to the parental home of thirty-four-year-old Khagga Tharu and his twenty-three-year-old brother Kala Ram Tharu. The soldiers entered the house and started beating and yelling at Khagga. They then ordered him to put his clothes on and brought him to a nearby field. His elderly relatives told Human Rights Watch:

Shortly after they left, we heard two gunshots from across the field, and wanted to go, but other soldiers were still in the house and they did not let us. They had their flashlights and guns pointed at us. The soldiers [that left with Khagga] then came back and took a wooden bed from our house... Next morning we went to the field and found Khagga’s small sleeping veil that he took with him, all covered in blood.<sup>153</sup>

The soldiers brought Khagga’s body back to the village, although his relatives were not allowed to see it. That night, they arrested four other men, including Kala Ram Tharu, and ordered them to carry Khagga’s body away from the village on the wooden bed they had taken from his house. The body of Khagga Tharu was never returned to his family, while three of the detainees—Kala Ram Tharu, forty-nine-year-old Badhu Tharu, and twenty-six-year-old Babu Ram Tharu—have not been seen since that night. The fourth detainee was released a week after the arrest and told the families that after the four men brought Khagga Tharu’s body to a military van parked in a neighboring village, they were blindfolded and brought to the Rambhapur army post. He was transferred to the Chisapani army barracks together with the other men, and reported to the families that

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<sup>153</sup> Human Rights Watch interview with two relatives of Kala Ram and Khagga Tharu, Bardia, September 28, 2004.

the missing men were still being detained at Chisapani Army Barracks at the time of his release.<sup>154</sup> The families' efforts to locate them have proven futile.<sup>155</sup>

In a number of cases, according to witnesses, soldiers provoked the detainees to attempt an escape during the arrest—a common tactic used by RNA soldiers, who then shoot the detainee and claim he was trying to run away. A released detainee who was arrested together with five other men, who subsequently “disappeared”<sup>156</sup> during the May 23, 2002, RNA operation in the village of Machaghar, Deudakala VDC-3, Bardia, told Human Rights Watch:

The soldiers first took us to a nursery in the village—there they interrogated and beat us with their boots... Then they walked us to a riverbank, and said, ‘OK, now run away.’ We told them: ‘If we run away, you’ll shoot us,’ and we stayed.<sup>157</sup>

The villagers who saw sixteen-year-old Bir Bahadur Thapa (see above) as he was taken away by RNA soldiers later told the family that the soldiers had ordered Thapa to run away, but that he refused, and was then blindfolded and handcuffed.<sup>158</sup>

Other testimonies confirm that some of the “disappeared” were executed by RNA in unofficial places of detention, such as army barracks. Thirty-five-year-old Sita Ram Tharu, from Magarghadi VDC-4, Bardia district, was detained by RNA soldiers who arrived in his village at about 4 p.m. on December 16, 2001. The soldiers also arrested three other villagers, including two relatives of Tharu, all of whom were later released. One of the released detainees told Human Rights Watch that they had all been taken to the Chisapani army barracks, where she witnessed what appears to have been the execution of her relative Sita Ram Tharu:

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<sup>154</sup> Ibid.

<sup>155</sup> Human Rights Watch interviews with the relatives of Kala Ram and Khagga Tharu, Bardia, September 28, 2004; Human Rights Watch interview with a relative of Badhu Tharu Bardia, September 28, 2004; Human Rights Watch interview with a relatives of Babu Ram Tharu, Bardia, September 28, 2004. For more information, see Appendix, the “disappearances” of Khagga Tharu, Kala Ram Tharu, Badhu Tharu, and Babu Ram Tharu.

<sup>156</sup> See Appendix, the “disappearances” of Tirtha Bahadur Thapa, Shree Ram Tharu, Hira Sing Bathamagar, Bom Bahadur Shahi and Siya Ram Chowdhury.

<sup>157</sup> Human Rights Watch interview, Bardia, September 27, 2004. The name of the witness is on file with Human Rights Watch. His identity is being withheld to protect his safety.

<sup>158</sup> Human Rights Watch interviews with two relatives of Bir Bahadur Thapa, Dang, September 24, 2004. For more information, see Appendix, the “disappearance” of Bir Bahadur Thapa.

I was there when they killed him. They interrogated him for some time. Then, after a while, he was taken away by the soldiers, into the forest. His hands were tied and he was blindfolded. Three or four minutes after they took him into the forest, I heard two gunshots. Then the same soldiers came back to us and took us into a room.<sup>159</sup>

The case of Sita Ram Tharu, whose execution remains unconfirmed by the government to date and whose body was never handed over to his family, provides strong evidence that executions of detained people have taken place at the Chisapani army barracks, the very location where a large number of persons have “disappeared,” and raises the possibility that many other “disappeared” persons were similarly killed.

On a number of occasions, the Unified Command issued statements indicating that certain individuals—invariably categorized as “Maoists”—were killed in “encounters” with security forces, despite strong evidence suggesting that the persons had been previously detained and “disappeared” in governmental custody. The “disappearance” and execution of four persons in Gorkha district in late 2002 illustrates this tactic.

On December 4, 2002, several police officers and RNA soldiers in civilian dress came to the home of twenty-one-year-old student Niru Pokhrel in Pritihivi Narayan Municipality of Gorkha, where they showed their security force identification cards. They said they wanted to take Pokhrel in for questioning, but that they would return her the next morning. Pokhrel was never seen again; however, relatives brought Pokhrel clean clothes several times over the next few weeks at the District Police Headquarters in Gorkha, and were given her dirty clothes for washing, strongly suggesting that Pokhrel was alive and for a time was kept at the district police headquarters.<sup>160</sup>

The next day, December 5, 2002, a group of RNA soldiers came to the Choprak VDC, Gorkha home of Keshar Bahadur Nepali, a fifty-year-old teacher who had been appointed head of the local village committee of the Maoists’ “People’s Government.” Nepali was arrested from his home and taken to the Lakeside army camp, where he was used by the RNA to identify other CPN-M members over the following days.<sup>161</sup>

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<sup>159</sup> Human Rights Watch interview, Bardia, September 29, 2004. The name of the witness is on file with Human Rights Watch. His identity is being withheld to protect his safety. For more information, see Appendix, the “disappearance” of Sita Ram Tharu.

<sup>160</sup> Human Rights Watch interview with a relative of Niru Pokhrel, Gorkha, September 20, 2004. For more information, see Appendix, the “disappearance” of Niru Pokhrel.

<sup>161</sup> Human Rights Watch interview with a relative of Keshar Bahadur Nepali, Gorkha, September 20, 2004. For more information, see Appendix, the “disappearance” of Keshar Bahadur Nepali.



A high school teacher who had been in detention at the Gorkha district police office from December 28, 2002 to January 17, 2003, confirmed to Human Rights Watch that he had seen Niru Pokhrel and nineteen-year-old Durga Pokhrel, both of whom had been his students, in detention there. He also heard the voice of Keshar Bahadur Nepali, who was from his home village, at the police station. Other detainees also pointed out to him a fourth detainee, forty-seven-year-old Khadanada Pande.<sup>162</sup>

About one month after the arrest, local radio stations and newspapers carried a government announcement that Pokhrel and Nepali, together with Durga Pokhrel, a nineteen-year-old student from Choprak VDC-6 in Gorkha district, and Khadanada Pande, identified as a CPN-M activist, had been killed in an “encounter” with security forces.<sup>163</sup> Given the fact that at least two of the victims were known to have been in detention prior to the killings, the “encounter” appears to have been staged, and a more credible conclusion is that the four were killed while in police custody. Because the Nepali government has never formally acknowledged the killings or handed over the bodies to the relatives, the four remain “disappeared” to date.

The killing of these four persons in detention is not the only suspected execution case in Gorkha. According to local human rights activists, on January 2, 2003, just five days later, Nepali security forces executed another five detained Maoists suspects: twenty-one-year-old Bishnu Marahatta; twenty-two-year-old Kalika Poudel; twenty-two-year-old Purna Chandra Acharya; nineteen-year-old Kumar Thapa; and twenty-year-old Nabin Shirestha. The disappearance of all nine persons remains unresolved, and the substantiated allegations that they were all killed in custody have not been investigated by the authorities.<sup>164</sup>

Human Rights Watch has also received unexpectedly candid confessions regarding custodial killings from several soldiers and a policeman interviewed at checkpoints in Bardia district. When Human Rights Watch researchers asked a young soldier at one of the checkpoints what they generally did with the Maoists they captured, he bluntly responded: “We kill them.”

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<sup>162</sup> Human Rights Watch interview, Gorkha, September 20, 2004. The name of the witness is on file with Human Rights Watch. His identity is being withheld to protect his safety.

<sup>163</sup> Human Rights Watch interview with a relative of Niru Pokhrel, Gorkha, September 20, 2004; Human Rights Watch interview with a relative of Keshar Bahadur Nepali, Gorkha, September 20, 2004; Human Rights Watch interview with Narnath Marhatta, Gorkha, September 20, 2004; Human Rights Watch interview with INSEC official, Gorkha, September 20, 2004.

<sup>164</sup> Human Rights Watch interview with INSEC activist, Gorkha, September 20, 2004.

In a separate interview with a policeman and an RNA soldier, the policeman said that they interrogate the detained Maoists and, when asked what happened afterwards, also said: “We kill them.” The soldier corrected him, saying “No, we take them to jail,” but the policeman continued: “Yes, we take them to jail and then we kill their asses.”<sup>165</sup>

### ***Evidence of torture in custody***

Despite Nepal’s obligations under international law, and the explicit prohibition of torture in the Nepali Constitution, torture and ill-treatment in custody are prevalent throughout the country.<sup>166</sup> Based on a nation-wide survey conducted by Nepal’s Center for Victims of Torture (CVICT), the National Human Rights Commission reported that up to 70 percent of persons arrested by state authorities are likely to be tortured.<sup>167</sup> The NHRC observed that “most of the persons who are ‘disappeared’ go through extreme torture in captivity.”<sup>168</sup>

Human Rights Watch interviews with individuals who were released after the government denied holding them in custody, as well as with families who visited their relatives in detention before their “disappearance,” consistently show the prevalence of ill-treatment and torture in custody. Many individuals who subsequently “disappeared” were beaten during arrest, and in twenty-three cases evidence suggests that the persons were subjected to severe beatings or other forms of torture while in detention. In a majority of the cases where relatives were able to obtain information about the “disappeared” person’s treatment in custody, beatings and torture were reported.

For example, when relatives visited thirty-eight-year-old Satya Narayan Prajapati in detention in Suryabinayak army barracks in Bhaktapur, Kavre, he told them he had been severely tortured and complained of two broken teeth and pain in his kidneys. Prajapati, a Kathmandu-based lawyer and an activist in the CPN-M front organization, United People’s Front party, was arrested by security forces in Sangachowk, Kavre district, on April 26, 2002. The relatives saw him in detention a month after his arrest, after which

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<sup>165</sup> Human Rights Watch interviews, Bardia, September 29, 2004.

<sup>166</sup> Nepal acceded to the Convention against Torture on May 14, 1991; Article 14 (4) of the Constitution of the Kingdom of Nepal (1990) states that “no person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.”

<sup>167</sup> The National Human Rights Commission, *Human Rights in Nepal: A Status Report 2003* (Kathmandu: National Human Rights Commission, Nepal, 2003), 35.

<sup>168</sup> Sanjaya Dhakal, “A terrible situation,” *Nepalnews.com*, November 5-11, 2004 [online], <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2004/nov/nov05/national6.htm> (retrieved December 6, 2004).

he “disappeared.” The soldiers at Suryabinayak army barracks told the family Prajapati had been transferred to Kathmandu, while at the Balazu army camp in Kathmandu the family was told that he had been detained there briefly but was then transferred again. Since then, the family has been unable to obtain any information of his whereabouts.<sup>169</sup>

Thirty-four-year-old Arjun Ojha “disappeared” after being arrested on March 25, 2004, by two plainclothes RNA soldiers while he was buying groceries in the Kalimati market of Kathmandu. A second person who was arrested with Ojha<sup>170</sup> and released three months later told the family that while they were held together at Chaunni army barracks for thirty days, Ojha was severely beaten by RNA soldiers and suffered injuries to his chest. In September 2004 Ojha managed to speak with his family in a one-minute phone call, but was unable to state where he was being kept.<sup>171</sup>

Twenty-eight-year-old journalist Maheshwer Pahadi also told his family that he had been severely tortured in army custody, and that one of his fingers had been broken (see case description above).<sup>172</sup>

In at least one case involving a fourteen-year-old boy, the torture inflicted by RNA soldiers resulted in death. Fourteen-year-old Narda Ram Gharti was arrested from Jammunitole village, Kohalpur VDC-6, Banke district, together with thirteen other men by police officers on June 10, 2002. The detainees were transferred to Chisapani Army Barracks, where they were regularly beaten with heavy bamboo canes during interrogation. After eleven days of beatings, fellow detainees saw Narda Ram Gharti close to death and “swollen all over his body.” He died from his injuries soon thereafter (see case description in Appendix).

Witness testimonies strongly suggest that the detainees are often kept blindfolded throughout the entire time of their detention. In one such case, a released detainee who was held in unacknowledged detention for seven months told Human Rights Watch that after his arrest on October 1, 2003, he spent three months in the Bhairabnath Gulm (Maharajgunj) army barracks in Kathmandu, and another four months in the Bahini

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<sup>169</sup> Human Rights Watch interview with a relative of Satya Narayan Prajapati, Kathmandu, September 18, 2004. For more information, see Appendix, the case of Satya Narayan Prajapati.

<sup>170</sup> The name of the second detainee is on file with Human Rights Watch. His identity is being withheld to protect his safety.

<sup>171</sup> Human Rights Watch interview with a relative of Arjun Ojha, Kathmandu, October 11, 2004.

<sup>172</sup> Human Rights Watch interview, Kaski, September 22, 2004. The identity of the witness is being withheld to protect his safety.

Bareni army barracks in Dhading. He was blindfolded throughout that time, and only discovered his place of detention from other detainees.<sup>173</sup>

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<sup>173</sup> Human Rights Watch interview, Dhading, September 19, 2004. The name of the witness is on file with Human Rights Watch. His identity is being withheld to protect his safety.

## **V. Factors contributing to the crisis of “disappearances”**

### ***The government's failure to acknowledge and end “disappearances”***

According to the United Nations, Nepal had the highest number of new “disappearances” in the world in both 2003 and 2004.<sup>174</sup> “Disappearances” and extra-judicial killings have become an integral part of Nepal’s counterinsurgency campaign. The security forces commit the “disappearances,” and instead of taking action to prevent such severe abuses, civilian authorities have focused on issuing denials and covering up the abuses. Only one senior officer has been held accountable for “disappearances” in Nepal. Even if the government has not directly asked its security forces to commit disappearances as part of its campaign against the Maoists, its failure to take reasonable steps to end the practice or to hold perpetrators accountable makes civilian authorities deeply complicit in the epidemic of “disappearances” in Nepal. In the face of such government inaction, disappearances can fairly be characterized as government policy.

For a long time, the government of Nepal refused to acknowledge the seriousness of the human rights crisis in the country or to admit that “disappearances”—as well as other human rights violations in the country—could be attributed to government forces. The government’s failure to take sufficient action on abuses by the security forces has been further exacerbated by the impotence of its own bureaucratic institutions and the poor record-keeping of government ministries. Nepal’s institutions are further weakened by the Maoists’ campaign of intimidation and murder against government officials.

High-ranking Nepalese officials go to great lengths to persuade the outside world, which is becoming ever more concerned about Nepal’s deteriorating human rights record, that the government is doing everything necessary to protect people’s rights. Even when the government admits that certain human rights problems exist in Nepal, it blatantly denies the responsibility of its security forces for the abuses, and consistently places all the blame for the existing violations and the failure to stop them on the Maoists.

Thus, defending Nepal’s position at the sixtieth session of the U.N. Human Rights Commission in March 2004, the Minister of Foreign Affairs, Dr. Bhek Bahadur Thapa, asserted that the current situation in Nepal is caused exclusively by “threats and violence created and sustained by the Maoists,” while the government is fully “committed to

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<sup>174</sup> This figure is based on the number of cases the Working Group receives information about, and is not based on statistically valid surveying methods.

ensuring with utmost sincerity that even in responding to the threats posed by [the] insurgency,” it keeps “the respect for human values and human rights uppermost in [its] mind.” He emphasized that “the security forces have been cautious and sensitive to protect human rights of people.”<sup>175</sup>

The refusal by Nepali authorities to acknowledge the problem of “disappearances”—and their failure to take action to stop the abuses—was also evident in a statement made in September 2004 by the Nepali embassy in Washington, D.C., publicly denying the veracity of allegations of human rights violations by the Royal Nepalese Army:

[The army] is a professional force, committed to duty, discipline and caring for the civilian population. Any accusation of military atrocities against the civilian population by the [Royal Nepalese Army] is malicious propaganda.<sup>176</sup>

Even ardent supporters of the RNA and opponents of the Maoists within the U.S., U.K., and Indian military establishments privately admit that the RNA commits many abuses, blaming these on the poor quality of the country’s officer corps, poor training, and poor equipment.

On the question of “disappearances,” the government has been particularly obstinate. Addressing a meeting organized by the NHRC to mark International Human Rights Day on December 10, 2004, Prime Minister Sher Bahadur Deuba heatedly refuted the allegations of security force responsibility for “disappearances,” saying:

You know, [the Maoists] are not known by their real names... So, a Maoist gets arrested in one name and may be released with a different name. Some may have died during the battle. Some may have even crossed over to India across the open border. Then, how can the government be blamed for this?<sup>177</sup>

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<sup>175</sup> See “Dr. Thapa Defends Nepal’s Human Rights Record,” *The Kathmandu Post*, March 19, 2004.

<sup>176</sup> “The Record on Nepal,” *The Washington Times*, September 17, 2004. The statement, signed by Nepali Embassy Deputy Chief of Mission Rudra K. Nepal, was published in *The Washington Times* in response to a September 11, 2004 article by Chitra Tiwari entitled “Nepal’s Poor Suffer Most in Civil War.”

<sup>177</sup> See Nepalnews.com “Pressurize Rebels, Not the Government: PM Deuba,” [online], December 10, 2004 <http://www.nepalnews.com.np/archive/2004/dec/dec10/news08.php> (retrieved December 18, 2004).

In the absence of a clear government commitment to stop widespread “disappearances,” it is impossible to undertake the steps necessary for eliminating the phenomenon. Such steps would require addressing the factors that make the practice so widespread, including existing legislation, the impunity of security forces, the impotence of the judicial system and CDOs to exercise control over the security forces, and the weakness of human rights monitoring mechanisms.

### ***Inadequate legal framework***

Although Nepal’s constitution, in conformance with international law, guarantees fundamental human rights, such as the right to life, the right to liberty and security of person, the right to a fair trial, and prohibitions against torture, a number of existing laws either effectively negate or fail to uphold these constitutional safeguards.

Under the state of emergency declared in November 2001, the constitutional protections against arbitrary detention and the right to judicial remedies (apart from habeas corpus) were suspended altogether, thus rendering people even more vulnerable to arbitrariness and abuse.<sup>178</sup> At the same time, security forces were given additional powers to arrest and detain suspects on preventive detention orders under the Terrorist and Disruptive Activities Ordinance (TADO). The ordinance was later replaced by the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), which was enacted into law for two years in April 2002.

When TADA expired in April 2004, the Nepali authorities were unable to renew it as a parliamentary act, as Parliament and other democratic institutions had been disbanded by King Gyanendra in October 2002, effectively suspending Nepal’s brief experiment with democracy. Instead, King Gyanendra extended the legislation by royal proclamation (reverting to its status as an ordinance).

The first TADO granted security forces sweeping powers to arrest persons suspected of involvement in acts of terrorism without a warrant.<sup>179</sup> Under the law, detainees can be

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<sup>178</sup> Article 115 (8) of the Nepali Constitution allows the government to suspend certain rights, such as the rights to freedom of thought, expression, assembly, and movement, the right not to be held in preventive detention without sufficient ground and the right to judicial remedies (apart from habeas corpus) during a state of emergency. International law permits the suspension of certain rights during a state of emergency, but only to the extent strictly required by the exigencies of the situation.

<sup>179</sup> TADO, Section 5(a). Under TADA (Section 3(2)) Terrorist or disruptive activities include damage, destruction, injury, death, kidnapping and threats, and the production, distribution, storage, transport, export, import, sale, possession or installation of explosive or poisonous substances, or the assembly and training of persons for these purposes, as well as conspiring, causing, compelling, instigating, remunerating, or publicizing acts of terrorism, or harboring persons involved with terrorist and disruptive activities.

kept for up to sixty days for investigation and for up to ninety days in preventive detention in “a place suitable for human beings,” without being brought before a court of law.<sup>180</sup>

On October 13, 2004, King Gyanendra again issued by Royal Proclamation a revised and even more draconian Terrorist and Disruptive Activities Ordinance (TADO 2004), which provides the security forces with even greater powers, allowing them to hold individuals in preventive detention for up to one year without charge or trial and without any recourse to the judiciary.<sup>181</sup>

In its current incarnation, TADO 2004 also provides Nepali security forces with immunity from prosecution for “any act or work performed or attempted to be performed in good faith while undertaking their duties,” effectively making them unaccountable for possible violations.<sup>182</sup> RNA personnel seem to interpret the various versions of TADO as relieving them of accountability for unlawful actions imposed by the Army Act (see below).

The above-cited provisions of TADO 2004 are in clear breach of the Nepali Constitution, as well as of Nepal’s international obligations under the ICCPR and the Convention against Torture. The act’s blatant unconstitutionality and unlimited potential for abuse have prompted sharp criticism by the NHRC, which noted that the law “aids and abets those who, under the guise of maintaining ‘law and order’ or ‘security concerns,’ continue to violate the human rights of the citizens of Nepal.”<sup>183</sup>

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<sup>180</sup> TADO, Sections 9, 17(5). Under the sections, a person can be put in preventive detention on the basis of “a reasonable ground for believing” that the person “has to be prevented from committing acts that could result in a terrorist or disruptive act.” The wording of the sections thus creates an insufficient threshold for derogating from the constitutional protection guaranteed by Article 15(1) of Nepal’s Constitution, which states that nobody should be subjected to preventive detention “unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation” in the country.

<sup>181</sup> Terrorist and Disruptive Activities Ordinance, Ordinance no 61, 2061, *Nepal Rajpatra (Nepal Gazette)*, Part 54, Annex 33, Ashoj 27, 2061. The revised Section 9 of the Ordinance states:

In case there exist appropriate grounds to believe that a person has to be stopped from doing anything that may cause a terrorist and disruptive act, the Security officer may issue an order to keep such person in preventive detention at a place, which is suitable for human being for six months. In case there exist appropriate grounds for believing that the person in the prevention detention has to be stopped for additional period from doing anything that may cause a terrorist and disruptive act, the security officer with permission from Home Ministry of His Majesty Government may issue an order to keep in preventive detention mentioned in this clause for another six months.

<sup>182</sup> TADO, Section 20.

<sup>183</sup> The National Human Rights Commission, *Human Rights in Nepal: A Status Report 2003*, 16.



Several other laws adopted during the Panchayat era and still in place today provide a basis for arbitrary arrest and detention.<sup>184</sup> For example, the vaguely worded Public Security Act allows the authorities to keep a person who allegedly threatens the “sovereignty, integrity or public tranquility and order of the Kingdom of Nepal” in preventive detention for a period of up to twelve months, without specifying any criminal charge.<sup>185</sup>

The Public Offense and Punishment Act of 1970 and the Anti-State Crimes and Penalties Act of 1989 have also frequently been used to detain people for prolonged periods of time without proper judicial oversight.<sup>186</sup> The broad discretionary powers vested by these laws in local authorities, such as CDOs, create grounds for arbitrariness and abuse.

Nepali law does not provide a proper framework for establishing accountability for human rights violations and redress for victims. The Police Act, which regulates the functioning of Nepali police forces, does not include provisions holding police legally responsible for unlawful detention, mistreatment of detainees, or any other violations of the rights of people in police custody.<sup>187</sup> It also introduces immunity for the Chief District Officer or for any police personnel “for action taken by him in good faith while discharging his duties.”<sup>188</sup>

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<sup>184</sup> From 1962 to 1990, Nepal was under the system of governance known as Panchayat, under which all political parties except the Royalist Rastriya Panchayat Party were banned, and the country was run by the King.

<sup>185</sup> The Public Security Act 1989, *Nepal Ain Sangraha (Collection of Nepalese Laws)*, Vol.3 (ka), 2055, Section 5. The Public Security Act was adopted initially allowed preventive detention for up to ninety days on the orders of a local authority, which could be extended to six months with the endorsement of the Home Ministry. In 1991, the law was amended to allow an additional six-month extension of the detention period with the approval of an advisory board established under the act (Section 7).

<sup>186</sup> The Public Offense and Punishment Act covers such crimes as disturbing the peace, vandalism, rioting and fighting. According to NHRC, in the past the law was often used by CDOs to suppress political activists and leaders, and after 1990, the ruling party has used it against its own political opponents (See The National Human Rights Commission, “Human Rights in Nepal: A Status Report 2003,” 45). The Anti-State Crimes and Penalties Act includes crimes such as insurrection and treason and carries punishments of up to life imprisonment.

<sup>187</sup> The Police Act was adopted in 1955, and amended several times. Chapter 6 of the Police Act contains a long list of crimes for which police personnel may be responsible, ranging from to participation in an armed rebellion to feigning “sickness or physical weakness.” The only provision that could be construed as introducing responsibility for human rights violations is Section 34(n), which makes a police official liable if “he unjustly harasses any person through arrogance or intimidation or causes loss or damage to the property of any person.” This provision, however, significantly lacks specificity, and fails to ensure adequate accountability for law enforcement personnel in the discharge of their duties, as required by international law. The Police Act 1955, *Nepal Ain Sangraha (Collection of Nepalese Laws)* Vol. 3 (Kha) 2060.

<sup>188</sup> The Police Act, Section 37.

Moreover, even the 1996 Torture Compensation Act, which obliges the government to pay compensation for torture, fails to recognize torture or custodial death as criminal acts or to subject the responsible officials to criminal liability.<sup>189</sup>

Nepali law does not contain provisions that would create a legal basis for compensation to be granted by the courts in cases of “disappearance.”<sup>190</sup>

The Public Security Act contains inconsistent provisions regarding the possibility of challenging a detention order in a court of law.<sup>191</sup> Further, the act does not establish adequate criminal liability for abuse of authority under its provisions, stipulating merely that if an order issued by the local authority “is proved to have been issued with mala fide motives, departmental action shall be taken against such authority, and he shall be punished.”<sup>192</sup>

Although the Army Act of 1959 regulating the functioning and conduct of the Royal Nepalese Army establishes the legal responsibility of personnel for “improper” arrests, these provisions do not apply to arrests carried out under TADO.<sup>193</sup> In addition, the

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<sup>189</sup> Torture Compensation Act, 1996, *Nepal Ain Sangraha (Collection of Nepalese Laws)*, Supplementary Part, 2053. (Supplementary Part 2053) The Act’s failure to recognize torture as a criminal act contradicts Nepal’s obligations under the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>190</sup> In the past, international human rights organizations, such as Amnesty International, have repeatedly called upon the Supreme Court of Nepal “to follow the practice elsewhere in South Asia where the courts have ordered damages to be paid to the family” of a “disappeared” person, as a form of redress by a specified date, in cases where it has been proven that someone who has “disappeared” was last seen in the custody of the state. However, the court authorities have not acted on these recommendations. See Amnesty International, “Nepal: Widespread ‘Disappearances’ in the Context of Armed Conflict,” October 16, 2003, ASA 31/045/2003.

<sup>191</sup> Section 11 of the Act stipulates that “no order issued under this act may be questioned in the court of law.” At the same time, Section 12.A (1) allows a person who “feels that he has been detained in contravention of this law or in a *mala fide* manner” to file a complaint at the District Court “while still in detention or within 35 days after his release.” In 1996-2000, several Maoist sympathizers detained under the Public Security Act were released after the Supreme Court found their detention illegal. However, to the best of our knowledge, the procedure has not been used since 2000.

<sup>192</sup> The Public Security Act, Section 13.

<sup>193</sup> The Army Act 1959, *Nepal Ain Sangraha (Collection of Nepali Laws)*, Vol. 3 (B), 2056 (1999). Article 42 establishes that a member of the armed forces “will be liable to be punished with imprisonment for a term not exceeding two years, or with punishment of a lesser degree” mentioned in the Act:

- In case he arrests any person or places him in detention and does not present his case for a hearing without any reasons or does not present his case before the appropriate authority for investigations:  
or
- In case any person who has ordered that any person be kept in military custody fails without proper reasons to submit... a statement signed by him against the person to be kept in custody immediately or as early as possible or within 48 hours in any circumstances.

Army Act grants immunity from prosecution “in case any person dies or suffers any loss as a result of any action taken” in the course of discharging duties.<sup>194</sup>

Taken together, the various provisions allowing for long-term detention without charge and without judicial oversight, as well as the near absolute immunity from prosecution granted to the security forces, create an atmosphere in which large numbers of “disappearances” occur under the guise of legality.

### ***Impunity of the security forces***

One of the most significant factors contributing to the prevalence of “disappearances” is the systemic impunity enjoyed by Nepali security forces and their blatant disregard for the few existing safeguards whose purpose is to protect individuals from abuses.

Within the security forces, the legal provisions discussed in the previous section create a sense of being shielded from justice, of being above the law. Providing due process to detainees thereby recedes in importance, since there are likely to be no penalties for failure to follow the law. The cases of “disappearances” documented by Human Rights Watch clearly demonstrate that arrests and detentions are routinely carried out in a manner that violates existing Nepali and international laws.

As the examples cited in the previous chapter and in the Appendix to this report show:

- Security forces arrest and keep individuals in detention for periods of time exceeding prescribed limits and without CDOs having any knowledge of the detentions;
- The RNA holds people in detention in army barracks, although no law authorizes the military to keep detainees in their custody;
- The security forces often keep no record of detentions;
- The security forces keep detainees incommunicado, denying access to relatives, lawyers, and human rights groups
- In the vast majority of cases the security forces deny ever having arrested a person or having an individual in detention, even when there is clear evidence of the person being in their custody; and

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<sup>194</sup> The Army Act, Section 24.A. The explanation to the section stipulates that for the purposes of this Section, the term “any action taken while discharging duties” means any action “to be taken for internal security or self-defense, including flag march, patrolling and guard duty.”

- The security forces often re-arrest individuals released by court order.

Moreover, the sweeping impunity granted to security forces by TADO and other laws contributes to routine ill-treatment and torture in detention, as well as summary and extrajudicial executions of people in custody.

While the government often tries to shield its security forces from criticism by denying occurrences of violations, the security forces themselves, especially the army, are so confident they will not be prosecuted that they make no effort to disavow their involvement in egregious abuses.

For example, the chief spokesman for the Royal Nepal Army Brigade, General Dipak Gurung, once told *The Washington Post* that the army sometimes held people without disclosing their whereabouts. Moreover, asked about one of the torture methods reportedly used by RNA—dunking a detainee’s head into a water-filled container—Gurung acknowledged the possibility that it had occurred, lamenting that the RNA did not “have truth serum.”<sup>195</sup>

In another interview Gurung asserted that constant blindfolding is necessary to stop detainees from identifying and targeting interrogators after release, and that the constant use of handcuffs is necessary “because without them they try to run away and then we have to shoot them.” At the same time, he firmly stated: “They are not disappeared. We do not kill people in custody.”<sup>196</sup> The above-cited testimony by several security force personnel who admitted that army and police execute detained Maoists in custody clearly refutes this assertion.<sup>197</sup>

The army’s sense that it will not be punished for even egregious abuses and its unwillingness to distinguish between combatants and ordinary civilians is also demonstrated in its interactions with relatives of the “disappeared,” who often approach army officials in desperate efforts to locate their loved ones. Many witnesses told Human Rights Watch that RNA soldiers and officers treated them in a humiliating and abusive way. They said that when they came to army barracks to inquire about the whereabouts of their “disappeared” relatives, the soldiers and officers, beyond simply refusing to

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<sup>195</sup> John Lancaster, “Rights Groups Cite Pattern of Abuse by Nepal’s Army,” *The Washington Post*, November 21, 2004.

<sup>196</sup> Catherine Philp, “Torture in Kathmandu: Hundreds Just Disappear in War on Maoism,” *The Times*, December 18, 2004.

<sup>197</sup> Human Rights Watch interviews, Bardia, September 29, 2004,

provide them with any information or denying that a person was in their custody, also verbally harassed and threatened them with arrest or physical reprisals. Some witnesses said that they did not dare to inquire at the army barracks, having heard from others that they could end up arrested or killed themselves.

Internal investigations into human rights violations by the security forces are extremely rare and for the most part inadequate. Even in the most highly-publicized cases, such as the summary execution of two civilians and seventeen Maoists in Doramba in August 2003, the army failed to establish proper accountability for the perpetrators.<sup>198</sup> Army officials initially denied responsibility and made several sham investigations into the massacre. It was only under intense local and international pressure that the RNA finally brought some of the perpetrators of such killings to justice. However, to date the military has refused to openly name those indicted, and has kept the trials closed to the public. The army has also failed to acknowledge superior responsibility on the part of senior officers for the operation.

Faced with mounting evidence of human rights violations and the pressure to establish accountability for perpetrators, the government established so called Human Rights Cells, first in the civilian police and APF, and then in the RNA. The effectiveness of these bodies, however, has been questioned by human rights groups.<sup>199</sup> A number of witnesses also told Human Rights Watch that they had reported the “disappearances” of their relatives to the Human Rights Cells, but that they believed no action had been taken in response to their complaints.<sup>200</sup>

While in recent years several soldiers were reportedly prosecuted for unlawful killings,<sup>201</sup> no security personnel have ever been held accountable for a “disappearance,” arbitrary

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<sup>198</sup> For a detailed description of the Doramba massacre and the botched investigation, see Human Rights Watch, *Between a Rock and a Hard Place*, 28-32, as well as NHRC's report: “On the Spot Inspection and Report of the Investigation Committee: Doramba, Ramechhap Incident,” National Human Rights Commission, 2060 BS (2003).

<sup>199</sup> For example, Amnesty International claimed that it had raised numerous cases of reported human rights violations with the APF, police and RNA Human Rights Cells, but the number of cases investigated by the bodies remained insignificant. See, Amnesty International, “Nepal: Escalating Disappearances Amid a Culture of Impunity.”

<sup>200</sup> See, for example, Appendix, “disappearance” of Surjeman Maharjan; “disappearance” of Ram Prasad Acharya.

<sup>201</sup> See e.g., “Military Court Sentences Soldier for Killing Father, Son,” *The Kathmandu Post*, July 15, 2003, for a report on an RNA soldier convicted of murdering two people in Bardia in January 2003; Nepalnews.com, “RNA Initiates Actions Against Rights Abusers,” March 18, 2004 [online], <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2004/mar/mar19/newsnotes.htm> (retrieved November 29, 2004), referring to the killing of three persons by RNA in December 2003, for which two soldiers were sentenced to two years of imprisonment.

arrest, or unlawful detention. In December 2004, Brigade General Dipak Gurung told the press that the RNA had detected thirty-nine cases of human rights violations by its personnel, for which forty-three soldiers were given prison terms, thirty dismissed, and eleven demoted.<sup>202</sup> Although Gurung promoted the list as indicative of the RNA's efforts in prosecuting human rights abusers, the list actually shows almost complete inaction by the RNA on major abuses. Close scrutiny of the thirty-nine cases of "human rights violations" shows that most involve petty offenses such as theft and brawling by drunken soldiers. Although the security forces have been implicated in thousands of summary executions and "disappearances," such cases are almost completely absent from the list released by Gurung.

Moreover, Gurung implicitly denied allegations of unlawful military detention, saying that there were only forty-seven civilians in army detention—all of them under CDOs' orders—and another sixty-one were detained in the newly formed Sundarijal detention center.<sup>203</sup> These figures contrast sharply with the evidence gathered by Human Rights Watch and other groups of illegal detention and subsequent "disappearances" of people taken into custody by the military.

The army has also successfully eluded any control or interference by civilian authorities. A number of relatives of the "disappeared" told Human Rights Watch that after the army detained their family members, they tried to get information from CDOs and to persuade them to act. However, the CDOs refused to help. Two witnesses, in recounting the responses they received from the officers, independently cited identical answers: the witnesses described how the CDOs had told the families that "had it been the police," they would have been able to do something, but against the army they were powerless.<sup>204</sup> In many other cases, the CDOs themselves were directly involved in "disappearances."

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<sup>202</sup> "RNA Brings Guilty Soldiers to Book," *The Kathmandu Post*, December 8, 2004. Notably, the figures were released at the time when the U.N. Working Group on Disappearances was visiting Nepal, and the government was under pressure to demonstrate its commitment to accountability for human rights violations. To the best of Human Rights Watch's knowledge, the only other incident when the army took public action against its personnel was in February 2004, shortly after E.U. ambassadors to Nepal expressed serious concerns about the deteriorating human right situation in Nepal, and the U.N. Human Rights Commission was soon to debate a resolution on the human rights situation in Nepal during its March session. At that time, the report of the RNA human rights cell said that "the Army Court has penalized at least 22 army men for various crimes, ranging from murder and extortion to rights abuses, committed after the army was mobilized following the breakdown of ceasefire." See Nepalnews.com, "RNA Punishes Culprits of Rights Abuses," February 6-12, 2004 [online], <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2004/feb/feb06/newsnotes.htm> (retrieved December 6, 2004).

<sup>203</sup> "RNA Brings Guilty Soldiers to Book," *The Kathmandu Post*, December 8, 2004.

<sup>204</sup> Human Rights Watch interview with a relative of Kodu Lal Chowdhury, Dang, September 24, 2004. For case details, see Appendix, the "disappearance" of Kodu Lal Chowdhury; Human Rights Watch interview with a relative of Chaman Lal Baral, Kaski, September 22, 2004. For case details, see Appendix, the "disappearance" of Chaman Lal Baral.

The RNA is also notorious for its utter disdain for civilian courts, including the Supreme Court of Nepal. The army routinely ignores habeas corpus orders issued by the courts, refuses to accept the courts' notices, and brazenly lies to the courts regarding the detainees' whereabouts, as has been documented previously by Human Rights Watch and others.<sup>205</sup> This clearly violates the Constitution of Nepal, which establishes the duty of the government and all its related agencies to assist the Supreme Court and all other courts in "dispensing justice," and the requirement to abide by the courts' decisions and orders.<sup>206</sup> The police have demonstrated a similar attitude, routinely defying the courts. For example, in July 2004, policemen directed by the Supreme Court to appear before the court to clarify the circumstances of the arrest of two students who subsequently "disappeared" ignored the order even after police headquarters assured the court they would comply.<sup>207</sup>

The Defense Ministry has proved unwilling to rein in the forces under its command and ensure their compliance with judicial orders. Indeed, the Defense Ministry itself has often failed to provide the court with truthful information. An illustrative case occurred in late October 2004, when in response to the Supreme Court's notice, the Defense Ministry denied having detained three individuals who—as their relatives asserted—were arrested by the army on October 16. However, a day after the court received the Ministry's written explanation, the RNA headquarters confirmed that the three men were indeed arrested and were being kept in detention by the army.<sup>208</sup>

The RNA also has fiercely opposed the efforts of human rights and humanitarian monitoring bodies to establish the whereabouts of detainees allegedly held in army custody. Army officials have deceived not only the NHRC, but also international organizations. For example, one of the "disappeared" described in a letter to his family how the army was hiding detainees held in barracks during ICRC visits. Twenty-nine-year-old Sugendra Maharjan, arrested by RNA soldiers on November 15, 2003, in Kathmandu, had been missing for almost a year, when his family received a letter in

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<sup>205</sup> See Human Rights Watch, "Between a Rock and a Hard Place"; Amnesty International, "Nepal: Escalating Disappearances Amid a Culture of Impunity" and "Nepal: Widespread 'disappearances' in the context of armed conflict." INSEC, in its report on the 2003 human rights situation in Nepal, named four army establishments that denied accepting court orders seeking explanation of detainees' whereabouts: Bhairabnath Gan, Chhauni Barrack, Bhadrakali Gan, and Jagadal Gan; see Informal Sector Service Center (INSEC), *Human Rights Yearbook 2004*, (Kathmandu: INSEC, 2004), 48.

<sup>206</sup> Constitution of the Kingdom of Nepal (1990), Articles 95 and 96.

<sup>207</sup> See "Cops Defy Supreme Court Order," *The Himalayan Times*, July 10, 2004.

<sup>208</sup> "Defense Ministry Denies Hand in Detention," *The Himalayan Times*, October 27, 2004; "RNA Contradicts Defense Ministry's Denial," *The Kathmandu Post*, October 28, 2004.

September 2004 smuggled from Jagadal army barracks in Kathmandu and addressed to the head of ICRC.<sup>209</sup> In the letter Maharjan wrote:

We [have been] detained at Jagadal barracks without any legal proceedings for several months. We have been tortured and intimidated in custody, and no information of our detention is given to our family members [confirming] that we are taken in custody by the security forces. We are not produced before any judicial authorities....We came to know about [the ICRC] visit in these barracks to meet [several named detainees]. At that time, we were kept in a room which was locked by the soldiers. During [the ICRC's] second visit, we were kept in a tunnel inside the compound of the barracks.<sup>210</sup>

The testimony indicates the army's supreme confidence in avoiding scrutiny and its belief in the monitors' inability to hold its officials accountable, which fosters an atmosphere of impunity conducive to "disappearances."

### ***Impotence of the courts***

Although the Constitution of Nepal vests in the judiciary an "extraordinary power" to enforce the fundamental rights conferred by the constitution as well as "any other legal right for which no other remedy has been provided,"<sup>211</sup> in reality the courts by and large fail to use this power to uphold human rights and deliver justice to victims of governmental abuses.

The courts have been particularly inert and ineffective in the case of "disappearances." They have inexplicably limited themselves to examining only the legality of detention, and have often failed to take action in cases where the security forces refused to acknowledge the very fact of arrest or detention, thus denying the petitioners assistance in establishing detainees' whereabouts.

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<sup>209</sup> Human Rights Watch interview with a relative of Sugendra Maharjan, Kathmandu, September 18, 2004. Maharjan's name appeared on a list of seventy-five previously "disappeared" persons that the Nepalese authorities acknowledged were in detention on October 11, 2004. Apparently, shortly after he wrote the letter to the ICRC he was transferred to the Sundarijal investigation centre in Kathmandu. His family now regularly visits him in the center.

<sup>210</sup> Letter dated September 16, 2004 given to Human Rights Watch by family members (copy on file at Human Rights Watch).

<sup>211</sup> Constitution of the Kingdom of Nepal (1990), Article 88 (2).



As one of the witnesses described to Human Rights Watch, the Supreme Court's response to her habeas corpus petition on behalf of a "disappeared" relative was as follows: "They dismissed the petition, saying: 'Search yourself, we cannot do it.'"<sup>212</sup> Thirteen witnesses told Human Rights Watch that they had submitted habeas corpus petitions on behalf of their "disappeared" relatives. In four cases the petitions were dismissed, and in seven cases they remained pending for months or even years after submission.

Moreover, even in cases where the courts delivered verdicts in favor of petitioners or issued orders aimed at establishing the whereabouts of a detainee, these efforts were undermined by the courts' inability to enforce their decisions. The family of Surjeman Maharjan, who "disappeared" after being arrested on September 29, 2003, by uniformed RNA soldiers at his home in Pulchowk, Lalitpur, obtained an order from the Supreme Court ordering the army to reveal the whereabouts of Maharajan, but the army responded by denying Maharjan was in their custody.<sup>213</sup> After the "disappearance" of Ram Milan Balmiki, who was arrested in Kohalpur VDC on April 26, 2002, the courts issued three habeas corpus orders requiring the army to produce Balmiki, but the army has never responded.<sup>214</sup>

In the face of the routine failure by the army and other security forces to comply with the courts' habeas corpus notices and to provide the courts with truthful information regarding the detainees' whereabouts, the judiciary has done little to ensure compliance with its orders.

The situation is aggravated by the absence of provisions criminalizing perjury in Nepali law, which prevents holding army and police officials criminally liable for lying during court hearings.

At the same time, the constitution unequivocally empowers the Supreme Court to "initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial institutions."<sup>215</sup> Using this provision, the court could effectively oppose the security forces' impudence and promote

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<sup>212</sup> Human Rights Watch interview with a relative of Shree Ram Ghimire, Kaski, September 21, 2004. For case details, see Appendix, the "disappearance" of Shree Ram Ghimire.

<sup>213</sup> Human Rights Watch interview with a relative of Surjeman Maharjan, Kathmandu, September 17, 2004. For case details, see Appendix, the "disappearance" of Surjeman Maharjan.

<sup>214</sup> Human Rights Watch interview with S.L. Balmiki and Maili Balmiki, Banke, March 17, 2004. For case details, see Appendix, the "disappearance" of Ram Milan Balmiki.

<sup>215</sup> Constitution of the Kingdom of Nepal (1990), Article 86 (2).

accountability. Moreover, it could do much more to establish the whereabouts of “disappeared” detainees by issuing search warrants against the security forces in habeas corpus cases as provided by Supreme Court regulations.<sup>216</sup>

Instead, the Supreme Court chooses to address relevant ministries sporadically with toothless reprimands, which they do not take seriously.

In this respect, the developments in the case of Krishna Khatri Chhetri (known as Krishna K.C.) are illustrative. Krishna K.C., the former vice-president of the All Nepal Free Student Union (Revolutionary), “disappeared” after being arrested by security forces in Kathmandu on September 13, 2003. The first habeas corpus petition was dismissed in November 2003 after the army denied having arrested him. After credible information appeared suggesting that Krishna K.C. was being held in the Bhairabnath Gulm (Maharajgunj) army barracks, another habeas corpus petition was filed, and in May 2004 the Supreme Court ordered the National Human Rights Commission to prepare a report on the arrest and whereabouts of Krishna K.C.<sup>217</sup>

The RNA continued to deny having Krishna K.C. in its custody, and when NHRC staff attempted to visit the Bhairabnath Gulm barracks, where the man was allegedly being held, army officials did not let them in. In response, the Supreme Court addressed the Ministry of Defense, requiring compliance with its decision, and the army finally allowed the NHRC to enter, but again refused to produce Krishna K.C., claiming he was not in detention. At an October 2004 meeting with Human Rights Watch, the head of the Army’s Human Rights Cell stated that Krishna K.C. was not in army custody.<sup>218</sup> On November 9, 2004, however, the NHRC claimed to have “sufficient proof” that Krishna K.C. was still being kept in the Bhairabnath Gulm barracks.<sup>219</sup>

On June 28, 2004, after the Supreme Court had yet again reprimanded the army, reminding the RNA that it is obliged to follow the court’s orders and respond to inquiries in a timely manner,<sup>220</sup> Chief of Army Staff General Thapa announced at a

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<sup>216</sup> Supreme Court Regulation 2049, *Nepal Niyam Sangrha*, Vol. 1, 2055, Section 34. The Nepal Bar Association has repeatedly called on the Supreme Court to use its right to issue search warrants in habeas corpus cases, but the Supreme Court, admitting the availability of this legal action, was non-committal regarding the prospects of using it against the RNA. See Kiran Chapagain, “RNA Cocks a Snook at Supreme Court Order,” *The Kathmandu Post*, March 12, 2004.

<sup>217</sup> A detailed description of the case can be found in Human Rights Watch, “Between a Rock and a Hard Place,” and Amnesty International, “Nepal: Escalating Disappearances Amid a Culture of Impunity.”

<sup>218</sup> Human Rights Watch meeting with RNA human rights cell, October 6, 2004.

<sup>219</sup> “Krishna K.C. in RNA Detention: NHRC,” *The Kathmandu Post*, November 9, 2004.

<sup>220</sup> “Top Nepal Court Raps Army Over Rights,” *The Hindustan Times*, June 23, 2004.

press-conference that he had issued an order requiring that the court's show cause notices should be responded to promptly. He went on to state that should an army barracks fail to answer, the headquarters would be responsible for responding to the court.<sup>221</sup> Little, however, has changed, and apparently neither the courts' reprimands nor orders from the Chief of Staff were taken seriously. Just days after Thapa issued his statement, an official assigned to serve the Supreme Courts' notices to the Bhairabnath barrack in another habeas corpus case informed the court that "the army claims that neither [of] these people [is] in detention nor [is] the army ready to accept the court's orders."<sup>222</sup>

The courts' evident inability to adequately sanction the security forces or to assist people in establishing the whereabouts of their "disappeared" relatives has led to disappointment and disillusionment about the effectiveness of judicial remedies. According to INSEC, in 2003, despite the significant increase in "disappearances," the number of habeas corpus petitions filed at the courts declined.<sup>223</sup> This is an unfortunate trend, because habeas corpus proceedings that challenge the legality of arrest and detention are one of the most important instruments for the prevention of "disappearances."

### ***Obstruction of the work of the National Human Rights Commission***

Nepal's National Human Rights Commission was established by the government in 2000 in response to pressure by local and international human rights groups for creation of an "independent and autonomous" body to protect and promote human rights in Nepal.<sup>224</sup> Under the law, the NHRC has powers to conduct investigations and inquiries into human rights violations, as well as into incidents of "negligence in the prevention" of such violations by any person, organization, or authority.

In order to perform this function, the commission is authorized, among other things, to "visit, inspect and observe any authority, jail or any organization under His Majesty's Government," and to search and seize any "thing or document" if it has reasonable

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<sup>221</sup> Human Rights Watch interview with a Supreme Court official, January 21, 2005. The name of the witness is on file with Human Rights Watch.

<sup>222</sup> "City Barrack Defied Supreme Court Order," *The Himalayan Times*, July 2, 2004.

<sup>223</sup> Informal Sector Service Center (INSEC), *Human Rights Yearbook 2004*, 41. INSEC insists that the decrease in the number of petitions cannot be attributed to the actual decrease in human rights violations. Its data shows that while in January-February 2003, there were only nine writ petitions related to habeas corpus filed at the Supreme Court, while "in the same duration of one month the NHRC received some 60 applications seeking protection of life." *Ibid.*, 48.

<sup>224</sup> Human Rights Commission Act of 1997 (B.S. 2053), Preamble. The full text of the Act can be found at: <http://www.nhrc-nepal.org/?ID=122&AFD=0> (retrieved December 4, 2004).

grounds to believe that such material is related to the subject matter of the inquiry.<sup>225</sup> In addition, while conducting its inquiries, the NHRC may require “any person to appear before the Commission for recording his/her statement and information within his knowledge,” and summon and examine witnesses.<sup>226</sup>

The NHRC has tried to use its powers to address the problem of “disappearances.” In 2002, it formed a five-member committee to investigate “disappearances,” which started actively documenting the cases that had occurred since the beginning of the “people’s war,” and taking action on complaints submitted by relatives.

The commission proved effective in monitoring and reporting on the human rights situation in the country, as well as in raising human rights awareness and developing policy recommendations for the government. However, it soon became obvious that despite the provisions of the law, in practice the NHRC did not have the power or capacity to conduct adequate investigations into violations, compel testimonies, or make relevant authorities enforce its decisions.

As the NHRC has tried to implement its mandate, the government and security forces have increasingly tried to obstruct its work. In March 2004 the Home Ministry accused the NHRC of preparing biased reports that tarnished the image of the security forces. The ministry also stated that, “while deploying the teams for investigation of complaints against the security forces, the Commission and other organizations [must] inform local security forces and include a representative from security forces in the investigation team.”<sup>227</sup> The NHRC voiced serious concern about this effort to undermine its “impartiality and independence,” and requested “measures to be taken in the future for the prevention of such interventions on the Commission’s activities.”<sup>228</sup>

In June 2004, after it was denied entry to the Bhairabnath Gulm army barracks, the commission again protested the obstruction of its work. Following a Supreme Court order (see above), the NHRC team went to the barracks to inquire about the whereabouts of Krishna K.C. However, the RNA informed the prime minister, chief

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<sup>225</sup> Human Rights Commission Act of 1997 (B.S. 2053), Sections 9 (2e); 11(3).

<sup>226</sup> *Ibid.*, Section 11(1) a, b.

<sup>227</sup> Letter of Home Minister Thapa to the National Human Rights Commission, March 29, 2004, cited in the National Human Rights Commission’s press-release, April 1, 2004 [online], <http://www.nhrc-nepal.org/?ID=240&AFD=0> (retrieved December 4, 2004).

<sup>228</sup> “Commission Voices Serious Concerns Over Home Ministry Letter Hitting on the Independence of NHRC,” Press-release of the National Human Rights Commission, April 1, 2004 [online], <http://www.nhrc-nepal.org/?ID=240&AFD=0> (retrieved December 4, 2004).

justice, and chairman of the NHRC that it would not permit anybody to enter any of its units without permission from “above,” and that it was also “impractical to correspond to its units for the purpose [of entering barracks].”<sup>229</sup> The letter did not specify what was meant by “above,” but it clearly demonstrated the unwillingness of security forces to cooperate with the NHRC, and the commission’s weakness in the face of what seemed to be a coordinated effort to prevent it from effectively fulfilling its functions.

In September 2004, the commission reiterated that the army had regularly denied its representatives access to barracks and other places of detention and expressed bitter resentment about the government’s evident “indifference over the fate of hundreds of people who have disappeared.”<sup>230</sup>

Because of the systematic obstruction of its work, the NHRC has been largely ineffective in cases of “disappearances.” The majority of witnesses told Human Rights Watch that they have reported—either directly or through local NGOs—the “disappearances” of their relatives to the commission, but the NHRC was unable to help them.

While obstruction by the security forces is the main problem the NHRC faces in its work on “disappearances,” the Commission’s own institutional weaknesses also contribute to its relative lack of efficacy. The NHRC presently lacks the capacity to investigate many of the “disappearances” reported to the body, and often fails to remain in regular contact with the relatives of the “disappeared” to ensure that its information is up to date. In addition, the NHRC has made public only a small fraction of its investigations, which limits its advocacy capacity. In order to fully carry out its mandate, the NHRC needs to become a more proactive institution with the capacity to investigate and publicize abuses in a timely manner, and to ensure accountability for the perpetrators. The NHRC would also require additional resources in order to fully carry out its mandate.

Reportedly, some progress “on an agreement for cooperation between the NHRC and the RNA” was achieved during the December 2004 visit by the U.N. Working Group on Enforced or Involuntary Disappearances (WGEID) to Nepal.<sup>231</sup> On December 9, 2004,

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<sup>229</sup> “No Entry in Units: RNA,” *The Kathmandu Post*, June 23, 2004.

<sup>230</sup> “Nepal Rights Panel Says Government Indifferent over Disappearances,” Agence France Press, September 25, 2004.

<sup>231</sup> “Working Group on Enforced or Involuntary Disappearances of United Nations Commission on Human Rights Concludes Visits to Nepal,” statement by Professor Stephen J. Toope, Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, December 14, 2004 [online],

on the eve of International Human Rights Day, the RNA held an event at its headquarters at which NHRC representatives were invited to speak. The army chief of staff reassured the NHRC that “the security forces are very alert and sensitive [to] protection and promotion of human rights,” and the NHRC chairperson expressed his hope for continuing cooperation between the RNA and the Commission.<sup>232</sup>

With the expiry of the tenure of the first group of NHRC commissioners in March 2005, the future of the commission itself is uncertain. New commissioners cannot be lawfully appointed in the present political vacuum, since it requires a three-member recommendation committee comprised of the prime minister, chief justice, and the leader of the opposition party in parliament.<sup>233</sup> As there is no functioning parliament, unless a new parliament is elected, or the Human Rights Commission Act is amended to extend the tenure of the present commissioners until the parliament is in place, the future of the commission may be in danger.

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<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EC0E26503958D6B1C1256F6A005B28CF?opendocument> (retrieved December 16, 2004).

<sup>232</sup> “Security Forces Sensitive to Rights, Says RNA Chief,” *The Rising Nepal*, December 10, 2004.

<sup>233</sup> Human Rights Commission Act of 1997 (B.S. 2053), Section 4(2).

## VI. Nepal's Record in Addressing Human Rights Abuses and "Disappearances"

### *The government's pledge to uphold human rights*

On March 26, 2004, the government of Nepal announced its commitment to abide by international human rights and humanitarian law, and published a comprehensive twenty-five-article statement on the matter.<sup>234</sup> Among other things, the statement reiterated and elaborated the protections against enforced disappearances, affirming the government's commitment to take measures "to prevent illegal or arbitrary detention and enforced disappearances."<sup>235</sup>

The government announced its commitment during the sixtieth session of the United Nations Commission for Human Rights. It appeared to be crafted mostly to avoid the anticipated condemnation of Nepal under Item 9 proceedings.<sup>236</sup>

The March 2004 statement stipulated the authorities' responsibility to inform a detainee of the reasons for his or her arrest, to inform the relatives and legal representatives about the detainee's whereabouts and transfers, and to maintain a register in every place of detention that would contain "the name of every person detained and the dates of entry, discharge or transfer."<sup>237</sup> It stated that the detainees should be held in officially recognized places of detention, and reiterated the ban on torture and inhumane treatment, prescribing that "any person responsible for such treatment shall be prosecuted and punished according to the law."<sup>238</sup> The government also pledged to provide "necessary facilitation" to the National Human Rights Commission in discharge

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<sup>234</sup> "His Majesty's Government's commitment on the implementation of human rights and international humanitarian law, announced by Prime Minister Surya Bahadur Thapa on March 26, 2004;" an unofficial translation of the document can be found at: <http://www.mofa.gov.np/hrcommitments.htm> (retrieved December 4, 2004). The government's commitment was introduced in lieu of the Human Rights Accord that was agreed in principle by both sides on the conflict during the last ceasefire, but was put aside after the Maoists renounced the ceasefire in response to the Doramba massacre by governmental forces.

<sup>235</sup> "His Majesty's Government's commitment on the implementation of human rights and international humanitarian law," Article 3.

<sup>236</sup> See "Commission Adopts Chair Statement on Afghanistan, Haiti, Nepal, Timor-L'este and Colombia, Commission for Human Rights," U.N. High Commission for Human Rights, April 21, 2004. See also "Agenda Item 9: Question of the violation of human rights and fundamental freedoms in any part of the world," Amnesty International statement at Commission for Human Rights 60th Session, AI IOR 41/013/2004, April 6, 2004.

<sup>237</sup> *Ibid*, Article 4.

<sup>238</sup> *Ibid*, Articles 6 and 8.

of all of its activities,<sup>239</sup> and guaranteed the right “to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities,” proclaiming the need to “honor” the courts’ orders to make judicial remedies effective.<sup>240</sup>

The March 2004 commitment provides an improved conceptual and operational framework for upholding important human rights safeguards and promoting accountability. The government, however, still has to demonstrate the seriousness of its commitment by taking practical action to implement it.

So far the commitments have remained empty declarations, unsubstantiated by real efforts to stop the violations. Since March, the rate of illegal detentions and “disappearances” has not decreased. Human Rights Watch has documented several cases that occurred after the commitment was announced, and many more have been documented by local human rights groups. The security forces have continued to undermine judicial remedies by ignoring court orders, and the obstruction of the NHRC’s activities has grown more egregious. In September 2004, the NHRC’s chair Nayan Bahadur Khatri told diplomats and donor agencies in Kathmandu that the commission was deeply disappointed by the government’s failure to “fulfill its pledge to protect human rights.”<sup>241</sup>

The National Human Rights Commission and non-governmental human rights groups have also criticized the government’s National Human Rights Action Plan (NHRAP), which was devised with the assistance of the United Nations Development Program (UNDP), and made public in July 2004. The plan addressed a wide range of human rights and development concerns, largely focusing on the issues of education, health and culture, as well as the rights of women, children, and ethnic minorities.<sup>242</sup>

The NHRC denounced the NHRAP’s failure to focus “on the gross human rights violations such as illegal detention [and] cases of disappearances.” According to the commission’s chair, “at a time when people are being killed everywhere including

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<sup>239</sup> Ibid, Article 23.

<sup>240</sup> Ibid., Article 10.

<sup>241</sup> Cited in: “NHRC Flays Government’s Laxity,” *The Kathmandu Post*, September 9, 2004.

<sup>242</sup> National Human Rights Action Plan, His Majesty’s Government, Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu, Nepal, April 2004. A copy of the action plan is on file with Human Rights Watch. A summary of the action plan can be found in “NHRAP Aims at Improving Human Rights Situation,” *The Rising Nepal* [online], July 15, 2004, at: <http://www.gorkhapatra.org.np/pageloader.php?file=2004/07/16/topstories/main6> (retrieved December 6, 2004).



Kathmandu, and an individual's right to freedom is at stake, the plan should have devised programs to address these issues."<sup>243</sup> The non-governmental organization Human Rights and Peace Society accused the government of adopting various plans and never implementing them, tagging the NHRAP as "the government's ploy to hoodwink the international community that [the] human rights situation is under control in Nepal."<sup>244</sup>

### **Government investigations into "disappearances"**

The most significant step undertaken by the Nepali government in addressing the problem of "disappearances" has been the establishment of the five-member Committee for the Investigation of Alleged Disappearances of Persons by the State. The committee was formed in July 2004 in response to a hunger strike organized by the families of the "disappeared." Since then, its initial one-month tenure has been renewed several times. It is headed by the Home Ministry's Joint Secretary Narayan Gopal Malego. Its other members are the Joint Secretary at the Ministry of Defense, Deputy Inspector General of the Nepal Police, Deputy Inspector General of the Armed Police Force, and Deputy Chief Office of the National Investigation Department.<sup>245</sup>

The committee's initial report, released on August 11, 2004, was generally a disappointment, causing the frustrated families of the "disappeared" to resume their hunger strike. In a public statement, the NHRC excoriated the ineffectiveness of the committee, which had by then dealt with only thirty-six cases of "disappearance." It had established the whereabouts of twenty-four of the thirty-six persons, but had not sought the assistance of the NHRC, which had hundreds of complaints on file.<sup>246</sup>

Since then, however, the committee has released three other reports, allegedly establishing the whereabouts of a total of 320 persons. The September 14, 2004, report made public the whereabouts of fifty-four persons, of whom, according to the committee, thirty were already released, seventeen still in government detention, and seven killed in "encounters" with security forces.<sup>247</sup>

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<sup>243</sup> Cited in: "Government's NHRAP Draws Mixed Reactions," *The Himalayan Times*, July 16, 2004.

<sup>244</sup> Ibid.

<sup>245</sup> Nepalnews.com, "Government Forms Panel to Probe on Disappearance Cases," July 1, 2004 [online], [http://www.nepalnews.com.np/archive/2004/jul/arc\\_jul04\\_01.htm](http://www.nepalnews.com.np/archive/2004/jul/arc_jul04_01.htm) (retrieved January 20, 2005).

<sup>246</sup> National Human Rights Commission press release, August 17, 2004 [online], <http://www.nhrc-nepal.org/?ID=253&AFD=0> (retrieved December 5, 2004).

<sup>247</sup> "Whereabouts of Fifty-four Missing Made Public," *The Kathmandu Post*, September 14, 2004. The full list can be found in: "Government Makes Public Status of 54 Persons," *The Rising Nepal*, September 14, 2004 [online], <http://www.gorkhapatra.org.np/pageloader.php?file=2004/09/15/topstories/main1> (retrieved December 14, 2004).

The next report, released on October 12, 2004, revealed the whereabouts of another 126 individuals. The committee reported that three were killed in clashes, seventy-four were still in detention under TADA, twenty-one were released after interrogation, ten “have surrendered,” and another fourteen were released after detention.<sup>248</sup>

Finally, during the WGEID visit to Nepal in December, a list of another 116 “disappeared” was disclosed. Among them, according to the committee, six individuals were killed in “encounters,” one surrendered to the authorities, fourteen were released after interrogation, seventeen were set free after being detained, thirty-three remained in detention, and forty-five are being held at an investigation center at Sundarijal.<sup>249</sup>

In December 2004, the committee’s tenure was renewed for another two months. Some human right activists are skeptical about the work of the commission, claiming that instead of sincerely searching for people who had been “disappeared,” the government had embellished the list with the names of many people “who were released a long time back...in order to make the list look long.”<sup>250</sup> Of the more than 200 cases of “disappearances” documented by Human Rights Watch in this report, the work of the commission has provided answers in only a tiny minority of those cases.

A major problem is the limited mandate of the committee. For example, the committee does not examine the circumstances that led to a given “disappearance” and does not address the issue of the security forces’ responsibility for unlawful arrests and detentions in cases where the detainees were subsequently released. The committee has not investigated whether some of the “disappeared” who were allegedly killed in “encounters” were in fact victims of extrajudicial executions in custody. The committee has also not examined whether the detainees who were reportedly “released” were indeed set free or whether, as documented in several cases in this report, they actually remain “disappeared.” as has been evidenced in several cases in this report. In cases in which detainees “reappear,” moreover, the committee lacks the mandate to hold security forces accountable for having kept detainees incommunicado in unofficial places of detention.

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<sup>248</sup> “Nepal Reveals Whereabouts of 126 Missing Civilians,” Agence France Press, October 12, 2004. The full list can be found in: “Report on Whereabouts of 126 Persons Presented,” *The Rising Nepal*, October 12, 2004 [online], <http://www.gorkhapatra.org.np/pageloader.php?file=2004/10/12/topstories/main1> (retrieved December 14, 2004).

<sup>249</sup> Nepalnews.com, “Government Discloses Whereabouts of 116 Missing Persons,” December 13, 2004 [online], <http://www.nepalnews.com.np/archive/2004/dec/dec13/news13.php> (retrieved December 14, 2004).

<sup>250</sup> “Government makes names of 126 disappeared public,” *The Himalayan Times*, October 11, 2004.

### ***Legalizing illegal detention: The Sundarijal Investigation Center***

Under mounting local and international pressure, the government has also tried to address the problem of “disappearances” by legalizing illegal detention by security forces. In September 2004, the government opened an “inquiry and investigation center” in the Sundarijal Old Arsenal and reported its intention to move suspects detained under the Public Security Act and TADO to the new location. The government explained its decision to open a center separate from the existing facilities by citing the necessity to control Maoist “terrorism” by carrying out “an effective inquiry and investigation of those arrested by security forces on the charge of being Maoists,” and to stop the practice of illegal detention in military barracks.<sup>251</sup>

Indeed, the above-cited reports by the government investigation committee show that some of those listed as “disappeared” were apparently transferred to the center.

The center is headed by a Home Ministry official, although it is located in the former army barracks, and the army seems to have significant influence over the facility, including ensuring its external security. A source at the Home Ministry told *The Kathmandu Post* in September that both civil police and army personnel will be interrogating detainees at the center, and that they will either release them after questioning or hand them over to be tried in a court of law.<sup>252</sup>

It is unclear to what extent the center will help solve the problem of illegal detention and “disappearance” of people arrested by the security forces. The center can house about 115 detainees.<sup>253</sup> As mentioned above, on December 8, 2004, the army spokesperson Brigade General Dipak Gurung announced that there were sixty-one detainees at the center, while another forty-seven were still in army detention.<sup>254</sup> He did not explain why the remaining detainees were not transferred to the center. Meanwhile, local and international human rights groups continue to document numerous cases of illegal detention in army barracks and the subsequent “disappearance” of detainees.

The NHRC is quite skeptical about the potential of the Sundarijal center to solve the problem of “disappearances.” According to the NHRC, very few of the “disappeared”

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<sup>251</sup> “Government to Legalize Illegal Detention by Security Forces,” *The Kathmandu Post*, September 17, 2004.

<sup>252</sup> *Ibid.*

<sup>253</sup> *Ibid.*

<sup>254</sup> “RNA Brings Guilty Soldiers to Book,” *The Kathmandu Post*, December 8, 2004.

whose cases are on file with the Commission have indeed “reappeared” in the investigation center.<sup>255</sup> A member of the NHRC also told Human Rights Watch that despite the Home Ministry’s assurance, the NHRC representatives have been repeatedly denied access to the Sundarijal center, and the center thus remains no more accessible to outside scrutiny than other detention facilities. Moreover, according to the NHRC member, the warden of the facility had complained to the Commission that he was unable protect the detainees from the RNA, which he said came to the center in the middle of night and took detainees away without any explanation.<sup>256</sup>

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<sup>255</sup> Human Rights Watch correspondence with a member of the National Human Rights Commission, January 21, 2005.

<sup>256</sup> HRW interview with NHRC official, January 14 2005, Kathmandu.

## VII. The Role of the International Community

The importance of sustained international attention to Nepal's deepening human rights crisis can hardly be overestimated. Given the country's dependence on foreign aid, the Nepali government is quite sensitive to outside pressure. Last year was especially indicative of Nepal's susceptibility to international opinion, since increased pressure by key international players led to renewed attention to human rights by government and army officials and potentially important concessions from the government.

The European Union's criticism of Nepal's "seriously deteriorating" human rights situation in February 2004 and the threat of adopting a strongly worded resolution at the April session of the United Nations Commission on Human Rights (UNCHR) prompted the government's public pledge to uphold human rights and abide by international humanitarian law, discussed above.<sup>257</sup> In addition, consistent pressure from the E.U. has finally compelled the RNA to admit its responsibility for the Doramba killings and bring at least some of the perpetrators to justice.

Nepal managed to avoid UNCHR condemnation in 2004 largely due to United States opposition to the proposed resolution. Nonetheless, the much softer "Chairman's statement" on human rights assistance to Nepal adopted by the commission on April 21, 2004, expressed concern over Nepal's deteriorating human rights situation and the growing number of civilian victims.<sup>258</sup> The statement appealed to the government to strengthen its efforts to ensure the enjoyment of fundamental rights and condemned the indiscriminate violence by the Maoists.

The statement also encouraged the government to cooperate with the Office of the United Nations High Commissioner for Human Rights (OHCHR), especially on the issue of external assistance to the National Human Rights Commission. Subsequently, the OHCHR and the Nepali government signed a Memorandum of Understanding concerning technical assistance to the NHRC, which could potentially strengthen the

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<sup>257</sup> "EU Envoys Urge Nepal to Improve Rights Record," Agence France-Presse, February 2, 2004.

<sup>258</sup> "Commission Adopts Chairman's Statements on Afghanistan, Haiti, Nepal, Timor-Leste and Colombia," ReliefWeb, April 21, 2004 [online].  
<http://www.reliefweb.int/w/rwb.nsf/0/3cdb587851d7123949256e7e0007d434?OpenDocument> (retrieved December 29, 2004).

capacity of the commission to address human rights abuses, including enforced disappearances.<sup>259</sup>

In January 2005, United Nations High Commissioner for Human Rights Louise Arbour said in a speech in Kathmandu that the U.N. believed the human rights situation is so problematic that it is necessary for the NHRC to have unimpeded access to all places of detention without prior notification, and that this was of central importance to resolving the “disappearance” crisis.

On December 23, 2004, concern over Nepal’s human rights crisis was voiced by the United Nations Secretary General Kofi Annan, who stated that he was “deeply troubled by reports of an escalation of fighting in Nepal and of continued grave human rights violations.” He urged the government and the CPN-M to initiate a dialogue, and further called on the government, among other things, to guarantee “the safety and ability of the National Human Rights Commission” to carry out its “essential work.”<sup>260</sup>

The work of the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID) has been particularly important in addressing the “disappearances” crisis in Nepal. It is doubtful that the Nepali government would have implemented even the meager measures discussed above to address the problem of “disappearances” if it had not been for the increased attention on the part of the WGEID. Alarmed by the soaring number of new cases reported from Nepal, the WGEID made the country one of its top priorities. It has transmitted dozens of cases as urgent appeals to the government, calling on the authorities to investigate the reported “disappearances” and bring the perpetrators to justice.

In December 2004, a WGEID delegation conducted a nine-day visit to Nepal in order “to discuss the cases of enforced or involuntary disappearance received and transmitted by the Working Group to the Government of Nepal and to examine the situation of disappearances in Nepal in the light of international human rights standards.”<sup>261</sup> The

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<sup>259</sup> “Memorandum of Understanding between the United Nations Office of the High Commissioner for Human Rights and His Majesty’s Government of Nepal Concerning Technical Assistance to the National Human Rights Commission of Nepal,” Geneva/Kathmandu, December 13, 2004. A copy is on file with Human Rights Watch.

<sup>260</sup> “Secretary-General Deeply Troubled by Reported Escalation of Fighting in Nepal,” ReliefWeb, December 23, 2004 [online], <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/b8a79ce15d48f84d85256f73006dc64a?OpenDocument> (retrieved December 29, 2004).

<sup>261</sup> “Working Group on Enforced and Involuntary Disappearances of United Nations Commission on Human Rights concludes visit to Nepal,” United Nations press-release, December 14, 2004 [online].

delegation met with the highest Nepali authorities, including the king, the prime minister, the chief justice of the Supreme Court and the RNA chief, as well as with human rights groups and relatives of the “disappeared.”

At the conclusion of its visit, the WGEID reiterated its concerns over the continued practice of “disappearances” and the impunity of the security forces. The delegates urged the authorities to introduce concrete measures to end the practice, including a complete prohibition of incommunicado detention in army barracks, protection of human rights defenders from persecution, and unhindered access for the National Human Rights Commission to all places of detention without being obligated to give prior notification.<sup>262</sup> Continued pressure from the United Nations and donor governments will, however, be necessary to ensure the implementation of the WGEID recommendations.

Another significant development was recent legislation in the United States placing human rights conditions on future military assistance to Nepal.<sup>263</sup> President Bush signed the bill into law in December 2004. The law requires the Nepali government, as a condition of assistance, to:

- take effective steps to end torture by security forces and to prosecute members of such forces who are responsible for gross violations of human rights;
- determine the number of and make substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal, including all outstanding orders;
- cooperate with the National Human Rights Commission of Nepal to identify and resolve all security related cases involving individuals in government custody; and
- grant the National Human Rights Commission of Nepal unimpeded access to all places of detention.

The immediate reaction of the Nepali authorities to the new legislation has yet again demonstrated their responsiveness to international pressure. The day after the U.S. Congress passed the act, the RNA chief of staff Pyar Jung Thapa paid an unprecedented

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<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EC0E26503958D6B1C1256F6A005B28CF?opendocument> (retrieved December 16, 2004).

<sup>262</sup> Ibid.

<sup>263</sup> H.R.4818/Consolidated Appropriations Act, 2005 (Enrolled as Agreed to or Passed by Both House and Senate), enacted December 8, 2004. Section 590(c).

visit to the head of the Nepal's Supreme Court and, according to a Supreme Court source, "assured the Chief Justice that the Royal Nepalese Army (RNA) would cooperate with the Supreme Court and abide by human rights law and court orders."<sup>264</sup> The army chief of staff also visited for the first time the chairman of the National Human Rights Commission and expressed the RNA's willingness to cooperate with the Commission.<sup>265</sup>

The new U.S. legislation could have a significant effect, promoting the accountability of the security forces and preventing enforced disappearances, torture, arbitrary detention, and other abuses. However, since the Nepali government obviously has a vested interest in feigning compliance with the new law, careful monitoring by the U.S. government is crucial for ensuring that security forces actually fulfill the conditions.

In addition, a number of recent statements by U.S. officials also indicate that they might reconsider their unreserved indulgence of the Nepali security forces' conduct. For example, during his October 2004 visit to Kathmandu, Deputy Assistant Secretary of State Donald Camp reportedly stated that it would be difficult to convince Congress "to continue the flow of funding if Nepal's government forces do not improve their human rights record."<sup>266</sup>

Other states providing military assistance to Nepal, primarily India, the United Kingdom, and Belgium, also should ensure that basic human rights standards are met as a condition of providing aid. They should also monitor the use of arms provided to Nepal. European assistance has been largely conditioned by the criteria set out in the 1998 European Code of Conduct on Arms Exports and corresponding national legislation.<sup>267</sup> However, some national legislation, such as a law passed by Belgium in 2003, incorporates exceptions regarding assistance to "democratic regimes whose existence is under threat." Such laws might be used to justify further support of Nepali security forces without proper oversight.<sup>268</sup> The ability and willingness of European suppliers to devote adequate resources to monitoring the use of military assistance also remains a matter of concern.

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<sup>264</sup> "RNA Will Obey Court Orders," *The Kathmandu Post*, November 25, 2004.

<sup>265</sup> *Ibid.*

<sup>266</sup> Chitra Tiwari, "Nepalese Pause Violence for Two Festivals; Government Reciprocates Rebel Cease-fire," *The Washington Times*, October 23, 2004.

<sup>267</sup> For a detailed analysis of international military assistance to Nepal, see Human Rights Watch, *Between a Rock and a Hard Place*, 82-96.

<sup>268</sup> "Loi introduisant en droit belge le Code de conduite européen sur les exportations d'armes (Law introducing into Belgian law the EU Code of Conduct on Arms Export)," adopted March 26, 2003 [online], <http://www.grip.org/bdg/g2072.html> (retrieved December 28, 2004).



At the same time, India, which is believed to be the largest supplier of arms, training and other military assistance to Nepal, has never predicated its support on the security forces' adherence to human rights.<sup>269</sup> Moreover, it has consistently opposed broader international monitoring of the conflict, thus tacitly helping to shield the Nepali authorities from accountability.<sup>270</sup>

International actors have justified their support for the Nepali government by citing fears that the coming to power of the Maoists would have calamitous consequences, given their horrendous record of intolerance and human right abuses. While these concerns are fully justified and criticism of Maoist abuses is certainly appropriate, the behavior of the Maoists provides no excuse for government abuses. In addition, the government's sorry and well-known record of abuses only undermines public confidence in the government and may drive Nepalis to support the Maoists or lead to indifference about who governs the country.

A recent statement by a high-level E.U. delegation during its December visit to Nepal exemplifies the international community's often inappropriate response to Nepal's crisis. The delegation properly criticized the Maoists for systematic and gross human rights abuses, but completely failed to acknowledge the pattern of egregious human rights violations by government forces, including the appalling number of enforced disappearances.<sup>271</sup>

Such one-sided statements fuel the rebel forces' indignation<sup>272</sup> and send the wrong message to the government, indulging its disregard for human rights and bolstering its

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<sup>269</sup> In April 2003, India's army chief of staff revealed that India had, up to that point, provided arms and ammunition to Nepal worth U.S.\$25.8 million, and that it would provide another \$12.9 million in weapons. The chief of staff emphasized that "the Indian government is prepared to provide any type of military assistance to establish peace in Nepal," and added that "the Indian army is ready to assist the Nepali army in whatever it can and at any time." See "India to Provide Arms, Help in Restoration of Peace in Nepal," Agence France-Presse, April 25, 2003.

<sup>270</sup> The opposition to a larger international role in Nepal is largely caused by India's own domestic concerns. India, which has for years opposed similar attempts to introduce international mediation or monitoring of the conflict in Kashmir, is widely believed to be apprehensive that bringing international monitors or mediation to Nepal would set a negative precedent for its attempts to oppose such a move in Kashmir.

<sup>271</sup> Prakash Dhakal, "EU Expresses Grave Concern over Rights Situation in Nepal," *Nepalnews.com*, December 15, 2004 [online], <http://www.nepalnews.com.np/archive/2004/dec/dec15/news05.php> (retrieved December 20, 2004).

<sup>272</sup> The Maoists immediately accused the E.U. delegation of being "one-sided and irresponsible" and said that they had expected that the E.U. would play a "balanced and positive" role in settling the ongoing conflict. CPN-M Chairman Prachanda added: "If the EU is up to forcing our party, the agitating parties and the Nepali people to surrender to the feudal dictatorial regime, its desire will never become a reality." See *Nepalnews.com*, "EU Statement Unexpected: Maoists," December 16, 2004 [online], <http://www.nepalnews.com.np/archive/2004/dec/dec16/news10.php> (Retrieved December 20, 2004).

sense of impunity. International actors must undertake to avoid this tendentious approach if they hope to play a positive role in bringing the conflict to an end and alleviate the suffering of Nepali people.

## VIII. Recommendations

### ***To the government of Nepal:***

1. Acknowledge at the highest level responsibility for large-scale “disappearances,” and take all steps necessary to bring an end to the widespread practice of “disappearances,” extrajudicial and summary executions, and unlawful arrest and detention. Ensure that military, police, and other security forces comply in full with the requirements of international human rights and humanitarian law.
2. Repeal or revise laws that undermine constitutionally guaranteed protections against human rights violations, such as the Public Security Act, the Public Offense and Punishment Act, the Anti-State Crimes and Penalties Act, and TADO.
3. Take measures to prevent enforced disappearances, including:
  - Cease the practice of secret detention and of holding detainees in military barracks and other unofficial places of detention. Ensure that all persons detained by security forces are held at recognized places of detention, and that arresting officers identify themselves and present official identification.
  - All places of detention must maintain records regarding every detainee, including the date, time, and location of arrest, the name of the detainee, the reason for detention, and the name of the forces effecting the detention. The records must be available to detainees' families, counsel, and other legitimately interested persons. All transfers of detainees should be reflected in the records.
  - Detainees should be informed immediately of the reasons for arrest and any charges against them. The family should be informed promptly of the arrest and location of the detainee. Any persons detained by the security forces must be allowed contact with family and unhindered access to legal counsel.
  - Uphold the detainee’s constitutional right to be brought before a judicial authority within twenty-four hours of arrest (or within a reasonable time if arrested in a remote location).
4. Take all necessary steps to establish accountability for those who order and carry out “disappearances,” as well as other abuses of human rights and humanitarian law.

- Introduce legislation making “disappearance” a criminal offense that is punishable by sanctions commensurate with the gravity of the crime.
  - Discipline or prosecute as appropriate all those implicated for participation in abuses in accordance with international due process standards.
  - Hold superior officers, whether civilian or military, criminally accountable if they knew, or should have known, that forces under their command had committed or were about to commit criminal acts, and nothing was done to prevent such commission.
5. Investigate all cases of enforced disappearance, including those documented in this report. Ensure that each “disappearance” is investigated until the fate of the victim is clearly and publicly established. Ensure that the Committee for the Investigation of Alleged Disappearances of Persons by the State has relevant authority to conduct prompt, independent, and impartial investigations into “disappearances.” Toward this end:
- Authorize the Committee to obtain information from any state agencies, including the military, about the whereabouts and status of the “disappeared.”
  - Provide the Committee with investigative powers to search unannounced and unaccompanied security force facilities and records related to the “disappearance.”
  - Empower the Committee to compel the attendance of those implicated in carrying out or ordering the “disappearances,” and to compel the disclosure and production of documents.
  - Instruct the Committee to keep the families of the “disappeared” informed of the progress of its investigations.
6. Ensure and promote the Supreme Court’s ability to use its constitutionally vested powers to enforce fundamental rights. The court must promptly examine and pursue each valid habeas corpus petition and designate a proper officer of the court to enforce habeas corpus. Non-compliance with the Court’s orders should be subject to sanctions.
7. Order the Home Ministry and the Defense Ministry to promptly respond to inquiries and comply with all habeas corpus orders issued by the courts.
8. Provide redress for the families of those who have “disappeared” in the form of monetary compensation as well as counseling and social assistance programs.
9. Strengthen the structural and operational independence of the National Human Rights Commission. Instruct all governmental agencies, including the Home Ministry and the Defense Ministry, to cooperate with the NHRC’s investigations

into allegations of violations of human rights and humanitarian law by the security forces, including enforced disappearances. Provide adequate funding and staffing for the NHRC, ensuring that the NHRC receives unfettered access to the technical assistance of the United Nations, in accordance with the Memorandum of Understanding between the government and the Office of the United Nations High Commissioner for Human Rights.

10. Consistent with “His Majesty's Government's Commitment on the Implementation of Human Rights and International Humanitarian Law,” outline an implementation plan, with firm deadlines and measurable benchmarks, to improve the government’s compliance with international human rights and humanitarian law obligations.

### ***To the international community:***

#### ***The United Nations:***

1. The United Nations Commission on Human Rights should adopt a resolution condemning ongoing abuses by both sides in the conflict in Nepal and specifically calling on the Nepali government to end the practice of enforced disappearances by security forces.
2. The United Nations Working Group on Enforced and Involuntary Disappearances should continue its probe into “disappearances” in Nepal, urging the government to promptly investigate individual cases transmitted by the WGEID and to implement the WGEID’s recommendations aimed at ending the practice altogether.
3. The Office of the United Nations High Commissioner for Human Rights should hold the Nepali government to its commitments under the Memorandum of Understanding concerning technical assistance, ensuring that the NHRC has unhindered assistance and can fully perform its statutory functions.

#### ***The United States, India, the United Kingdom, and other states providing military assistance to Nepal:***

1. The United States government should ensure that, in accordance with recently adopted legislation, military assistance is provided to Nepal only if the Nepali government complies with the conditions in the law. In monitoring compliance with the law, U.S. officials should pay special attention to units quartered in army barracks known to be locations where many “disappeared” persons are reportedly held in unofficial detention, including the ones listed in this report.

2. States that have not done so should make military assistance to Nepal contingent on the government's adherence to international human rights and humanitarian law and exclude any assistance to units implicated in human rights violations. All suppliers should actively monitor the use of any weapons or non-lethal items to ensure they are not being utilized to commit abuses.
3. States providing military assistance to Nepal should pressure the government to abide by its commitments under international law. They should publicly condemn specific violations, including the widespread enforced disappearances committed by security forces, and urge the government to address them.