

## **BETWEEN A ROCK AND A HARD PLACE: Civilians Struggle to Survive in Nepal's Civil War**

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## I. SUMMARY

*We are very poor people with just a bit of land that feeds us. My husband and sons have gone away to work in the city. I live alone with my daughter. Every so often, men in uniform come to my house to ask for food. It is my duty to feed guests, so I try my best, though I have little to spare. But I don't ask any questions about who they are, because it is safer not to know. They can be the army. They can be Maoists. Both are dangerous.*

Forty-five year-old woman in a hill village<sup>1</sup>

The Nepali people are caught in the middle of an increasingly brutal civil war between rebels of the Communist Party of Nepal (Maoist) and government security forces. Since the conflict started in 1996, more than ten thousand Nepalis have died. Most have been civilians from the country's most vulnerable communities: the rural poor, Dalits (at the bottom of the Hindu caste system) and indigenous communities. From an isolated rebellion in remote mountainous districts of western Nepal, the Maoist insurgency has spread throughout the country, even reaching the capital Kathmandu, where the threat of Maoist attacks alone has brought the city to a standstill.

After several years during which an ill-equipped police force was left to face the Maoists in front-line combat, in November 2001 the Nepali government mobilized the Royal Nepal Army (RNA) and declared a state of emergency. Since then, the fighting has increased dramatically, as has the number of deaths of combatants and civilians.

Civilians supporting neither side are often faced with fateful choices. Refusing to provide shelter to the rebels puts villagers at risk from Maoists who are ruthless in their punishments; providing such support, however, leaves them vulnerable to reprisal attacks from the state security forces.

Both the Maoists and government forces have dismal human rights records, including the gravest of violations: summary executions, torture, arbitrary arrests and abductions, and persecution based on political associations. Human rights defenders, lawyers and journalists have been attacked for their work. The unwritten government policy to “break the backbone” of the rebellion has led to many extra-judicial killings and “disappearances.” Nepal now has the sad distinction of being among the world's prime locations for enforced disappearances—cases in which people are abducted, arrested, or

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<sup>1</sup> Human Rights Watch interview, name withheld, early March 2004.

otherwise taken into custody and those responsible deny all responsibility or knowledge of their whereabouts. According to the U.N. Working Group on Enforced or Voluntary Disappearances, Nepal had the highest number of disappearances in the world in 2003. Most of those who “disappear” are never heard from again. The Maoists rarely commit enforced disappearances, but only because those they abduct are invariably and publicly declared to be “class enemies” and executed in the name of their “People’s War.”

Both the government and the Maoists engage in regular intimidation and extortion. The Maoists infamously impose a “tax” on local villagers and travelers, while the government attempts to isolate the Maoists by trying to cut off their access to food and shelter in villages. Many soldiers use the license they enjoy from their army and police superiors to engage in extortion and blackmail, visiting hapless families and demanding money to ensure the safe release of their relatives from custody. The Maoists use children as messengers, cooks, porters and to gather intelligence on troop movements in violation of international law restrictions on the use of children during armed conflict. There have been recent reports that the Maoists have abducted schoolchildren for forced indoctrination in the remote hill districts of western Nepal.

All of this has led to a climate of intense fear in the villages. As a human rights activist in Nepalgunj, a conflict-torn city in the southern plains, told Human Rights Watch: “The Maoists are called terrorists by the government, and that is what they do—create terror. But the security forces are supposed to provide security, and they are no different. People live in constant fear.”

Exacerbating the abuses is the desperate poverty of average Nepalis. Nepal is among the poorest countries in Asia. Almost 40 percent of Nepal’s twenty-three million people live below the poverty line. Per capita income is approximately US\$230 per year. Almost 50 percent of children under five suffer from malnutrition, and 82 percent of the population survives on less than two dollars a day. Life expectancy at birth is just 59.6 years and infant and maternal mortality rates are still among the highest in the region.<sup>2</sup> The literacy rate is only 44 percent.

Almost 90 percent of the population lives in rural areas, where the delivery of basic services such as health, education, and clean water is inconsistent at best. Nepal’s mountainous terrain and poorly developed infrastructure frustrate development. The

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<sup>2</sup> “Nepal Country Brief,” September 2004, [online] <http://www.worldbank.org/np/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/NEPALEXTN/0> (retrieved September 28, 2004.)

communication and road links are underdeveloped, particularly in the poorer areas of western Nepal. According to World Bank data, there are just fourteen telephones per one thousand people. It can take villagers days to walk to the district headquarters. The terrain is mountainous and harsh. Clusters of villages exist far off the beaten track. News from these areas takes a long time to get out, and is extremely difficult to confirm.

In such conditions, both rebels and government security forces have functioned with wanton disregard for the rule of law. By the time independent investigators can reach the spot of alleged abuses, witnesses have often been threatened by the perpetrators into keeping silent. Predictably, the rule of law has almost vanished under these harsh circumstances; the result is that both the Maoists and government forces have committed numerous atrocities.

The seriousness of the crisis in Nepal is underscored by a strongly worded statement issued by eight United Nations Rapporteurs on July 14, 2004, that expressed concern about the “extremely grave human rights situation in Nepal.”<sup>3</sup> The experts noted that they had sent nearly 150 urgent appeals to the government about individual cases of concern since the beginning of 2004.

Nepal presents the international community with a difficult challenge: how to help resolve a conflict between a brutal Maoist rebel movement and Nepali security forces with a horrendous record of abuses. The United States and India have viewed the Maoists as ideologically similar to Cambodia’s *Khmer Rouge* or Peru’s *Sendero Luminoso*, both renowned for atrocities of the worst kind, and they have supported the Nepali government with little regard for (in the case of the United States and India) or in spite of (in the case of the United Kingdom) its rights record. The United States and India, in particular, have provided government forces with new weapons that, in the absence of necessary reforms in military and police, and appropriate training and monitoring, may increase the conflict’s brutality without bringing a resolution any closer.

India, Nepal’s largest supplier of military materiel and training, continues its unquestioning support for the government, reaffirming this recently in a state visit by Prime Minister Sher Bahadur Deuba to New Delhi in September 2004. The United States has also dramatically increased its military aid since the September 11, 2001, attacks, in part because it initially saw Nepal as a part of the “global war on terrorism,” a

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<sup>3</sup> “UN Commission on Human Rights Experts Reiterate Grave Concern Over Situation in Nepal,” July 14, 2004. The U.N. Rapporteurs were on torture; violence against women; extrajudicial, summary, and arbitrary executions; independence of the judiciary; freedom of opinion and expression; protection of human rights defenders; enforced and involuntary disappearances; and arbitrary detention.

position from which some parts of the U.S. government and military have since retreated. The United Kingdom and Belgium have also provided substantial military support to the Nepali security forces.

These countries are correct to be concerned about the Maoist movement in Nepal. Based on the Maoists' rights record in areas they currently control, there is reason to be extremely concerned about how they would behave if they reached power. No government is known to give direct support to the Maoist movement.

At the same time, it has become increasingly difficult for states to justify providing political and military support to the Nepali government, while ignoring continuing abuses by state security forces and the failure to bring those responsible to justice. This is why the European Union and United Nations bodies have taken a more nuanced stance to Nepal's armed conflict, condemning both sides for the country's downward spiral and for massive human rights abuses. The March 2004, United Nations Commission on Human Rights resolution on Nepal signaled the diminishing patience of many countries with both sides, and was a particular rebuke to the government for its failure to cooperate with the United Nations on human rights or address abuses committed by the security forces, and its obstruction of efforts to strengthen the independent National Human Rights Commission (NHRC).

Many government supporters have been particularly frustrated by the unpredictable behavior of King Gyanendra Bir Bikram Shah Dev and the bickering among the main political parties, which at times has left a political vacuum in Kathmandu and left the Maoists without a clear negotiating partner. Nepal's political system has been effectively paralyzed since 2002, when the King assumed direct rule over the country and suspended the country's struggling democratic process. A new government was installed in June 2004, but it has dubious legitimacy. Parliament has ceased to function and the courts have been neutralized by the executive branch and armed forces.

While both the government and the Maoists have made repeated commitments to the protection of human rights, in practice both have ignored those commitments in their zeal to defeat their enemy. The government has rejected virtually all allegations of abuse by its forces. Instead of addressing well-documented cases of abuses, it has launched verbal and physical attacks on human rights workers, activists, and their affiliates. Senior members of the government have stated that anyone working on behalf of human rights (including the National Human Rights Commission and United Nations human rights officers) is a "Maoist sympathizer," aiding and abetting terrorism.

During interviews with senior officials within the army and the government, Human Rights Watch was told over and over again that activists naively believe exaggerated accounts of abuse. When Human Rights Watch raised specific cases documented in our research, there was outright denial. This was epitomized in the case of a 15-year-old Dalit school girl, Maina Sunuwar, from Kavre district in February 2004. The girl's mother, Devi Sunuwar, was a witness to an extrajudicial execution by government forces and gave statements to journalists and human rights workers. Within days, Maina was accused of providing food to Maoists and was taken away by security forces. Since Devi was not home at that time, the soldiers left a message with her husband, asking Devi to come to the barracks to secure the release of their child. But when she went to the army, she was told that her daughter was not in custody.

When Human Rights Watch asked army spokesperson Col. Deepak Gurung about Maina's whereabouts, he insisted that an inquiry had been ordered and that the girl was not in army custody. He went on to claim that Devi Sunuwar was a liar who had lied about her niece's execution<sup>4</sup> and was now lying about her daughter's disappearance. Yet in April 2004, Devi was finally told by an international agency that her daughter was killed by security forces on the very day that she was taken into custody, a fact later confirmed to Human Rights Watch by the local district administration. Not only had the army denied the arrest when questioned by Human Rights Watch, soldiers have been visiting the family's house regularly since then. Frightened by these visits and fearing another arrest and murder, the Sunuwar family left their home and are now forced to earn a living as migrant laborers. At this writing, soldiers were still turning up, questioning neighbors about the family.

For their part, the Maoists have responded to allegations of abuse by maligning their victims: they claim those killed were acting against the liberation of the people, they were revisionists, they were informers undermining the Maoists' march toward creating a communist society. "Their methods are unimaginably brutal, like chopping off hands or tongues and breaking bones," a member of Nepal's National Human Rights Commission told Human Rights Watch. "Killing by Maoists is done to terrorize the whole population. They do not tolerate any opposition."

For example, Ganesh Chilawal<sup>5</sup>, a thirty-five-year-old father of two, was gunned down in broad daylight by the Maoists for his work advocating on behalf of victims of Maoist abuses. Chilawal was an active member of the Nepali Congress party. In 1998, Chilawal

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<sup>4</sup> See section V: EXTRAJUDICIAL EXECUTION OF TWO GIRLS, KAVRE DISTRICT.

<sup>5</sup> See section VI: EXECUTION OF ANTI-MAOIST ACTIVIST GANESH CHILAWAL.

had been attacked by Maoists in his village home for his pro-Congress activities. He was cut all over his body, leading to three months of hospitalization. After this experience, he founded the Maoist Victims Association, an NGO working to help civilians who had been victimized in different ways by the Maoists. As part of this work, Chilawal spoke out openly against the abuses suffered by the persons who sought the support of his organization.

The Maoists started threatening Chilawal directly. He received threats to his life through letters, faxes, and telephone calls. His family asked him to stop; they knew from his first experience that the Maoists could be very brutal in their assaults.

On February 15, 2004, as Chilawal was leaving his office in Kathmandu, two Maoists on motorbikes fired five rounds of bullets into him. He collapsed and died almost instantly. The Maoists have since claimed responsibility for Chilawal's murder, even posting his murder as a success on their website, Krishna Sen Online.

While the Maoists proclaim many of their abuses, the government rarely accepts responsibility, even in well-documented cases. When the government admits to the occasional allegation, it insists these are rogue acts that are investigated and punished. "Barring occasional individual aberrations, the security forces are operating with maximum restraint in their mission to provide security," then Minister of Foreign Affairs, Dr. Bhekh Bahadur Thapa, declared to the U.N. Commission on Human Rights in Geneva on March 18, 2004. The Maoists, perhaps less concerned about international opinion, simply justify their acts. For instance, when the Maoists bombed a civilian bus in Kathmandu in May 2004, they apologized for the civilian deaths but attempted to justify their human rights crime by saying that the civilians were riding with the army in defiance of a nationwide "bandh," or strike.

There have been two rounds of peace talks, both ultimately unsuccessful. Many Nepalis believe that a negotiated end to the conflict would have beneficial human rights consequences. From February to August 2003, the government and Maoists largely maintained a ceasefire and held peace talks. Both sides agreed in principle to the idea of a Human Rights Accord, which would bind both parties equally and, most critically, would include a robust nationwide monitoring component in both rebel and government held areas. The Human Rights Accord was considered a key confidence-building measure to overcome the mutual mistrust and recriminations on both sides. However, on August 17, 2003, the day that negotiations resumed between the government and Maoists, the army massacred nineteen detainees in Doramba. The Maoists renounced the ceasefire and resumed armed hostilities.



Since then, the Human Rights Accord has fallen by the wayside, replaced by the government's "recommitment" paper on March 26, 2004, which claimed to embrace the principles of the Human Rights Accord but falls far short of its standards. The Maoists, for their part, have only issued general statements affirming their commitment to abide by the laws and customs of war, but continue to justify their killings of suspect civilians.

Without a military solution or a political settlement in sight, both government forces and Maoist rebels continue to commit widespread abuses of human rights and humanitarian law. Yet while Nepal is burning, the rest of the world is doing little but watching the carnage mount. With most observers in agreement that a military stalemate will continue—U.N. Secretary-General Kofi Annan has said that there can be no military solution to Nepal's conflict—there is a substantial risk that in the absence of sustained international pressure Nepal could slide into the ranks of a failed state.

The government of Nepal must take all steps necessary to bring an end to rights violations by its security forces, particularly attacks on civilians and the mistreatment of all persons, including rebel suspects, in custody. Instead of making excuses for its troops by claiming that they are still on a "learning curve," a phrase commonly used by Nepali officers and bureaucrats and echoed by U.S. military analysts interviewed by Human Rights Watch, it is time for the Nepali government to assume full control over its forces in the field, institute prompt, independent and impartial inquiries into every allegation, and appropriately punish those found responsible.

The Maoist forces are also obligated to abide by the laws of armed conflict, including prohibitions on the killing and torture of any person in their custody. In addition, the Maoists must address practices by their forces that target the civilian population, such as extortion of the local population. Actions that discourage aid agencies from participating in needed development projects particularly harm the rural poor. The use of children in support of military operations must also cease. The Maoists must take all appropriate measures to ensure that all forces under their control comply with international law.

Detailed recommendations are found at the end of the report. Human Rights Watch urges the government of Nepal and the Maoists to:

- Comply with international human rights and humanitarian law, in particular prohibitions on attacks on civilians; executing or ill-treating persons in custody; committing "disappearances," abductions and unlawful arrests; and committing acts of extortion or looting.

- Investigate all allegations of abuse and appropriately discipline or prosecute the perpetrators in accordance with international fair trial standards.
- Sign and implement a human rights accord reiterating existing obligations pledging to abide by the Geneva Conventions and to honor and protect the human rights of civilians within their zones of control; allow independent and impartial human rights monitors, including the National Commission of Human Rights, to freely conduct investigations in such areas; and cooperate with those investigations.

Human Rights Watch urges donors to use their leverage with the Nepali government, which depends on donor assistance for almost 60 percent of its national development budget, to insist on tangible improvements in the human rights record of government forces. Countries such as India, the United States, and the United Kingdom, that are providing military aid, should properly monitor the assistance, and ensure necessary professional and rights-friendly training so that civilians are protected.

Financial, technical and political support should be provided on an urgent basis to the National Human Rights Commission to fulfill its mandate to impartially investigate human rights abuses. Political pressure should be brought to bear on both government and rebel leaders to end violations and punish and discipline the perpetrators. Foreign governments, diplomats, and relevant U.N. agencies should speak in public as well as pursue private diplomacy to address human rights violations. Special attention must be given to defending human rights defenders, lawyers, activists, and journalists raising human rights issues or exercising their fundamental rights to speak out or participate in political activities.

The states most active in Nepal—India, the U.S., the U.K. and the European Union—should act decisively and in concert to promote adherence to international human rights and humanitarian law in Nepal. International assistance, particularly military assistance, has been provided to the Nepali government with little regard for these concerns. The United States in particular remains under the illusion that criticizing the Nepali government will only aid the Maoists. But in a brutal conflict where ordinary people have been the primary victims, it is difficult to see how respecting human rights could be any kind of disadvantage.

### ***Note on Methodology***

Human Rights Watch sent a three-person research team to Nepal in March 2004. The team spent time in Kathmandu interviewing government officials (including army

officers), politicians, human rights activists, members of the international and diplomatic community and victims of human rights violations. The team then conducted investigations in several other parts of the country. For practical reasons, the team stayed largely in the southern plains known as the Terai, where there is better road access to isolated villages. The team also documented cases in and around the Kathmandu valley, and in Kavre district. All evidence of violations documented in the report is based on first-hand testimony. In order to protect victims and witnesses from reprisals by either side, the names of persons and any information which might identify them, such as village names and specific dates of incidents, has been withheld in certain cases.

## II. BACKGROUND

### ***The Maoist Insurgency***

Nepal's civil war began on February 13, 1996, with a series of attacks by the Maoist faction<sup>6</sup> of the Communist Party of Nepal (CPN-Maoist, or "the Maoists") on several police posts in three districts.<sup>7</sup> The Maoists declared the beginning of a "people's war" and the "rule of the proletariat."<sup>8</sup> While the Maoist attacks took much of Nepal by surprise, Nepal's militant communist groups had discussed the possibility of armed rebellion for years. The immediate predecessor party of the CPN-Maoists, the CPN Unity Centre, had declared as early as December 1991 that it would initiate a "people's war" to bring about a new democratic revolution in Nepal.<sup>9</sup> In 1994, the CPN Unity Centre split, apparently over disagreement about whether to initiate an armed rebellion. One faction, led by Pushpa Kamal Dhakal, alias Prachanda, went on to become the CPN-Maoist and ultimately initiated the threatened conflagration.<sup>10</sup> The CPN-Maoists

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<sup>6</sup> Nepal has a number of distinct political bodies that operate under the name of Communist Party of Nepal, including the CPN-Maoist, but also more mainstream parties such as the United Marxist-Leninist Communist Party of Nepal (CPN-UML). Although these political bodies share the "Communist Party of Nepal" name, they operate as distinct political organizations and are often mutually antagonistic, considering themselves the only legitimate Communist party in Nepal. The non-Maoist communist parties in Nepal have rejected the Maoist's resort to armed rebellion against the government. CPN-UML is a significant mainstream political force in Nepal.

<sup>7</sup> The attacks on the police posts in Rolpa, Rukum and Sindhuli, caught the police completely by surprise, and the Maoists were able to capture the stations with little or no resistance. The Maoists seized caches of explosives stored in the police stations. This tactic of overcoming poorly equipped police stations and seizing the arms and ammunition stored there became the pattern of Maoist operations in the early years of the conflict.

<sup>8</sup> "The Historic Initiation and After," *The Worker*, no. 2, June 1996.

<sup>9</sup> Deepak Thapa, *A Kingdom Under Siege: Nepal's Maoist Insurgency 1996-2003*, (Kathmandu: The Printhouse, 2003,) p. 43.

<sup>10</sup> Prachanda is the acknowledged leader of the CPN Maoist. Ram Bahadur Thapa, alias Badal, is the head of the military wing, and Baburam Bhattarai is the ideological weight behind the political wing. During the 2003 ceasefire, all major figures in the Maoist movement came out into the open except for Prachanda. The CPN Maoist is a member of the Revolutionary International Movement, which it sees as part of a new International

went completely underground, decided not to participate in elected government any further, and began to prepare for an armed uprising.<sup>11</sup>

In some of their public statements, the Maoists claim to be aiming for a democratic communist state.<sup>12</sup> Their rhetoric is considerably more radical and rigidly dogmatic. They believe that everything except state power is an illusion, and they advocate following the “lessons of Marxism-Leninism-Maoism regarding revolutionary violence.”<sup>13</sup> The Maoists are quick to label those who disagree with them – including other communist parties -- as reactionaries, revisionists, fascists, imperialists and expansionists<sup>14</sup> and, as this report documents, often kill activists of other political parties.

Even before the Maoists launched their “people’s war” in February 1996, the government had begun efforts to rout out its most radical critics. In November 1995, a police operation code-named Operation Romeo was launched in Rolpa district, the heart of the Maoist movement. Officially, Operation Romeo was labeled as an operation to control a rise in criminal activities in Rolpa, but in reality the operation focused on trying to dislodge the militant Maoist presence in the area. Operation Romeo resulted in gross violations of human rights, including the arbitrary arrest and detention of hundreds of members of left-of-center parties, rapes, executions and “disappearances.”<sup>15</sup> The Home Minister justified the police actions in a television interview, claiming that the police had acted against persons indulging in anti-monarchical activities. Instead of quelling anti-government activities in Rolpa district, the abusive Operation Romeo drove the already disaffected and impoverished rural population toward the Maoist fold, and spurred the

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dedicated to world revolution. The Maoists are also members of the Coordination Committee of Maoist Parties and Organisations in South Asia (CCOMPOSA).

<sup>11</sup> Thapa, *A Kingdom Under Siege*, p. 45.

<sup>12</sup> See, for example, Prachanda, “Appeal of the Communist Party of Nepal,” March 16, 2004. (stating, inter alia, that the “Communist Party of Nepal (Maoist) is a responsible party which by standing at the forefront, has been leading the People’s War in order to establish real democracy, respecting the sovereignty of the people—the right to rebel against class, national, regional and gender exploitation and oppressions of the old feudal state...Our Party has been committed to the fundamental norms of human rights and the Geneva Conventions since the historic initiation of the People’s War.”)

<sup>13</sup> “Plan for the Historic Initiation of the People’s War: Theoretical Premises for the Historic Initiation of the People’s War,” *The Worker*, no. 2, 1996.

<sup>14</sup> The CPN-M, for example, called the CPN-UML a “revisionist reactionary” party which “protects feudalism, imperialism and expansionism.” CPN Masal similarly was labelled “rightist revisionist” for having participated in democratic elections. Nepal Rastriya Buddhijibi Sangathan, 2054 BS, p. 12-13.

<sup>15</sup> See Amnesty International, “Human Rights Violations in the context of a Maoist peoples’ War,” December 1997, for a detailed discussion of the human rights abuses committed during Operation Romeo.

kind of resentments the Maoists needed to convince the rural population that the government was indeed their enemy.<sup>16</sup>

The outbreak of full-fledged armed conflict was preceded by a series of increasingly difficult political demands from the Maoists that were rejected by the government. On February 4, 1996, just days before the conflict began, Baburam Bhattarai, representing the United People's Front Nepal (UPFN), the political wing of the Maoists, presented a forty-point list of demands to then Prime Minister Sher Bahadur Deuba. The UPFN threatened that if their demands were not met in two weeks, they would "be forced to adopt the path of armed struggle against the existing state power."<sup>17</sup> The forty demands included relatively uncontroversial issues, such as respect for freedom of expression and an end to discrimination based on caste, gender and nationality, but also demands that would mean the end of Nepal's 200-year-old monarchy. As such, the demands were predictably unpalatable to the government.<sup>18</sup>

The demands which were more contentious and which continue to be at the heart of the Maoist agenda are the call for a secular republican state, and a constituent assembly to draw up a new constitution.<sup>19</sup> When the Prime Minister left the country on a state visit on February 11, 1996, the Maoists read this as a sign that their forty-point demand had been ignored and initiated the armed conflict.

At first, the government was ill-equipped to respond to the conflict. Until the deployment of the Royal Nepali Army (RNA) in 2001, only the poorly equipped police force had been on the front lines against the Maoists. The police were neither trained nor equipped for anti-insurgency campaign battles, and were unable to quell the uprising.<sup>20</sup> The Maoists launched massive raids on police posts and government headquarters in rural districts, overwhelming the remote outposts, slaughtering the captured police officers, and carrying off arms and ammunition.

The lack of an effective security response allowed the Maoists to quickly extend their grip on the countryside. By mid-2001, the Maoists had established effective command

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<sup>16</sup> A similar operation code-named Kilo-Sierra II in the western and mid-western regions in 1998 resulted in a similar increase in allegations of gross violations of human rights by the police forces.

<sup>17</sup> "Forty Point Charter of Demands," Dr. Baburam Bhattarai (Chairman, Central Committee, UPFN), February 4, 1996.

<sup>18</sup> Many of the points in the Forty-point agenda are found in the Constitution of Nepal (1990).

<sup>19</sup> *ibid.*

<sup>20</sup> The government created the Armed Police Force in January 2001, to help the police fight the insurgency movement.

in twenty-two of Nepal's seventy-five districts; in these districts, the insurgents severely restricted the government's access and administration. In most of these districts, the Maoists controlled development projects, courts, schools and health facilities, imposed taxes, and generally assumed the functions of a state.

Even the deployment of the RNA in 2001 did not reverse the control that the Maoists had established over much of the countryside: By early 2004, the Nepali security forces had effectively retreated to heavily fortified bases in the district headquarters of various provinces, ceding control of much of the countryside to the Maoists.

There have been several attempts at peace talks between the government and the Maoists, none of them successful. The first round of peace talks, which began on August 30, 2001, broke down on November 23, 2001, after the Maoists unilaterally withdrew from the talks and attacked police and army posts in forty-two districts, killing as many as eighty members of the security forces.<sup>21</sup> The government responded by declaring a nationwide state of emergency and deploying the army for the first time in the conflict.<sup>22</sup> The government also brought the police and the Armed Police Force under the operational command of the army under a policy known as the "Unified Command."

On January 29, 2003, the government and the Maoists announced a second ceasefire. Much of the Maoist leadership came out of hiding to participate in the peace process, but the talks soon reached an impasse over the Maoist demand for a constituent assembly, and achieved little progress. The Maoists unilaterally withdrew from the peace talks on August 27, 2003, shortly after the massacre in Doramba, described below.<sup>23</sup>

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<sup>21</sup> "Maoists Guerrillas kill at least 35 People in Attacks Across Nepal," Associated Press, November 24, 2001; "Nepal Rebels Kill 5 in Ambush, post-truce toll 42," Reuters, November 25, 2001; Maoist Rebels Kill More Policemen in Nepal," *Kyodo News*, November 27, 2001., "At least 100 Killed in Maoist Attacks over Weekend," CNN, November 29, 2001.

<sup>22</sup> Girija Prasad Koirala, the Prime Minister at the time, had tried to mobilize the army, through the National Defence Council, in July 2001, in Holeri. The reports of this mobilization are controversial with some analysts arguing that the Army deliberately disobeyed the mobilization order. What is clear is that there was no combat in Holeri following the mobilization order.

<sup>23</sup> See National Human Rights Commission, *Incident of Doramba*, Ramecchaap, 2060 BS (2003) for detailed investigation of the massacre. Prachanda and Baburam Bhattarai publicly pointed to Doramba as the incident provoking the withdrawal of the Maoists from the ceasefire (*Maoist Information Bulletin # 4, Revolutionary Worker # 1212*, September 14, 2003, *Kathmandu Post*, September 9, 2002.) The government maintains that the Maoists had been preparing for a resumption of hostilities all along, and simply used the Doramba massacre as a convenient excuse for returning to war.

The Doramba massacre remains one of the most notorious examples of brutality in a civil war marked by grave acts of violence. To this day “Doramba” stands as a symbol of the government’s violations of human rights and of the impunity enjoyed by perpetrators of such abuses. Nepal’s human rights community has been especially disturbed by the military’s delays in investigating and prosecuting a case so well-known to the public. To this day the military has refused to name publicly those indicted and it has kept the trials closed to the public.

One day after withdrawing from the ceasefire, the Maoists signaled a return to armed conflict by shooting two RNA colonels, one fatally, in Kathmandu.<sup>24</sup>

At the same time, the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) was enacted into law in April 2002, for a two-year period.<sup>25</sup> Though it has been renewed only by royal proclamation and not by parliament, apparently because parliament has been suspended and cannot act, law enforcement officials continue to use it and many others wield its possible use as a threat. The CPN-Maoist was declared a “terrorist organization” under the law.<sup>26</sup> TADA grants sweeping discretionary powers to the security forces in dealing with anyone deemed to be a terrorist, and provides immunity from prosecution for “any act or work performed or attempted to be performed in good faith while undertaking their duties.”<sup>27</sup> Such a broad grant of immunity has fostered a climate of impunity among the Nepali security forces, in clear violation of Nepal’s international obligation to investigate and punish human rights violations.<sup>28</sup>

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<sup>24</sup> “*Nepal Rebels Kill Colonel*,” BBC World, August 28, 2003. For an analysis of the breakdown of the ceasefire and its consequences, see International Crisis Group, *Nepal: Back to the Gun*, October 22, 2003. [http://www.crisisweb.org/library/documents/asia/nepal\\_back\\_to\\_the\\_gun.pdf](http://www.crisisweb.org/library/documents/asia/nepal_back_to_the_gun.pdf) (retrieved September 2, 2004.)

<sup>25</sup> TADA was first promulgated as an ordinance (TADO) in 2001, and then enacted in a revised and somewhat toned-down version as TADA, in April 2002.

<sup>26</sup> Section 7 of TADA allows the government to designate any person or organization involved in either terrorist, or disruptive acts, as “terrorist.” The definition of “terrorist and disruptive acts” in Section 3(2) of TADA is very broad, including, any persons who “conspire, cause, compel, commit, instigate, establish, remunerate or publicize acts of terrorism or disruptive acts.” Defining “disruptive acts” as terrorism has allowed for the application of TADA to legitimate political activities such as protests, for example.

<sup>27</sup> Section 5(a) of TADA grants the security forces the “special power” to arrest without warrant persons suspected of involvement in terrorist or disruptive acts; Section 5(m) allows the security forces special power to place persons under surveillance, including arrest and lock outs; Sections 9 and 17(5) allow for the detention of persons for periods of up to ninety days on the basis of ‘a reasonable ground for believing’ that the detained person has been prevented from committing terrorist or disruptive acts. A more draconian version of TADA, which allows the security forces to hold detainees incommunicado for up to a year, was contemplated, but has not been implemented because of intense public criticism. The TADA, which expired on April 9, 2004, was extended by a further two years by a royal proclamation on the date of its expiry.

<sup>28</sup> Several provisions of TADA violate Nepal’s international obligations under the International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic and Social Rights (ICESCR). See

The Maoists' resumption of hostilities in 2001, and the government's response to it, set Nepal on a downward cycle of human rights abuses and impunity. On November 26, 2001, citing Article 115 of the Nepali Constitution, the government declared a state of emergency throughout the country.<sup>29</sup> Article 115(8) of the Constitution permits 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.<sup>30</sup> The government announced that these rights would be suspended during the emergency.<sup>31</sup> 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.

The authority of the Chief District Officers (CDOs)<sup>32</sup> was enhanced. The CDOs already had the authority to order trials and sentence the accused to prison terms of up to seven years. They were additionally given the power to issue preventive detention orders under the Public Security Act<sup>33</sup> and the TADA.<sup>34</sup> This increased power of the CDOs has been controversial, especially since the dismissal of the local elected bodies by then Prime Minister Sher Bahadur Deuba in 2002.

Since the deployment of the RNA in 2002 there has been a dramatic escalation of the fighting and an increase in rights violations by both sides. Not surprisingly, the increase in authority given to security forces and government authorities under TADA and the suspension of some fundamental rights appears to have contributed to an escalation of human rights abuses by state security forces. Some six thousand of the ten thousand conflict-related deaths that have been reported by human rights organizations since 1996 have occurred since this time.<sup>35</sup> While it is unknown how many of these deaths have been in violation of international humanitarian law, Human Rights Watch has

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*INSEC 2004 Human Rights Yearbook 2004*, (Kathmandu: Informal Sector Service Center (INSEC), 2004) for a detailed analysis.

<sup>29</sup> "Nepal Emergency Declared," BBC World, November 26, 2001.

<sup>30</sup> Article 115 (Emergency Power), Constitution of the Kingdom of Nepal (1990).

<sup>31</sup> Declaration of State of Emergency, Royal Proclamation, His Majesty King Gyanendra, November 26, 2001.

<sup>32</sup> The Chief District Officer (CDO) is a civil servant from the Home Ministry, and is the highest ranking member of non-elected government at the district level. As such, the CDO is responsible for the administration of district government, and for the maintenance of law and order.

<sup>33</sup> The Public Security Act (PSA) allows for persons to be held in preventive detention for up to 90 days, on the orders of a local authority (such as a CDO), and is extendable up to 12 months.

<sup>34</sup> Sections 7 and 9, TADA.

<sup>35</sup> INSEC 2003-2003 yearbooks.



documented direct attacks on civilians, and the execution and torture of civilians and captured combatants by both sides in violation of the Geneva Conventions.

TADA has allowed the security forces of Nepal to literally get away with murder. The security forces have used their sweeping powers to broadly target anyone suspected of having Maoist sympathies—including lawyers who defend Maoists, members of left-of-center political parties, human rights workers, and civilians who are forced to give shelter to the Maoists. In addition to the killings, the security forces have committed thousands of “disappearances” and arbitrary arrests. These abuses, as well as the equally serious abuses committed by the Maoists, are the focus of this report.

Nepal is no longer under a state of emergency, but the climate of impunity continues unabated. The security forces of Nepal continue to commit unlawful killings and summary executions, forced disappearances, and arbitrary arrests without any fear of investigation or discipline. It is only in exceptional cases after intense international pressure and for reasons of political expediency, such as the Doramba killings, that the government bows to pressure and decides to investigate abuses. Even in Doramba, the government first conducted several sham investigations that were rejected by Nepali NGOs and the international community. The final Doramba report does hold the army responsible for some illegal killings, but still is more of a government concession made under international pressure than a transparent and coherent attempt to provide accountability for the killings at Doramba.

The Maoists also flout their obligations under international law. As part of their “people’s war,” they have deliberately targeted and killed civilians suspected as informers. Most of the victims are members of opposition political parties, persons suspected of having informed against them, and persons who oppose them in any other way. The Maoists often torture and execute their victims in public, to show civilians what can happen to those who dare stand against the Maoists. The government has little or no presence in areas outside the administrative district capitals, and can offer citizens no real protection. Villagers, desperate not to attract the suspicion of the Maoists, are often afraid to report Maoist abuses. Human Rights Watch has documented summary executions, torture and disappearances by the Maoists (see section below). There has been no accountability for any of these abuses.

The CPN-Maoist also faces credible allegations that it has recruited and used children as combatants and in other prohibited roles during hostilities. Under the Optional Protocol to the Child Rights Convention on children in armed conflict, to which Nepal is a signatory, armed groups “should not, under any circumstances, recruit or use in

hostilities persons under the age of eighteen years.”<sup>36</sup>International humanitarian law applicable to civil wars prohibits combatants from recruiting children under the age of fifteen or allowing them to take part in hostilities.<sup>37</sup> Human Rights Watch did not specifically investigate this issue. However, as set out more fully below, testimony gathered by Human Rights Watch strongly indicates that the Maoists have recruited children and used them for logistical support in front line combat, for carrying ammunition and supplies, and as cooks and porters.

### ***Political Paralysis in Nepal***

A major armed rebellion poses a serious challenge for any country, especially an impoverished country like Nepal. But the hardships of armed conflict have been aggravated in Nepal by a complete paralysis of the political process. Political parties, which had only gained a voice following the limited democratic reforms of 1990, were suspended by King Gyanendra in 2002. Until June 2004, Nepal was run by a clique of Royalist officials directly appointed by the King, in an arrangement that failed to garner public support. Massive protests rallies in Kathmandu in April 2004, forced the resignation of the pro-Royalist administration, adding to the political uncertainty facing Nepal.

Nepal’s struggling democracy has had a tumultuous beginning. Until 1990, all political parties except the Royalist Rastriya Panchayat Party<sup>38</sup> were banned, and the country was run by the King, under a system of governance known as the Panchayat. The Panchayat system, devised by King Mahendra in 1961, was based on four tiers of government at the village, district, zonal and national levels. The village panchayat would send representatives to the district panchayat, the district to the zonal and the zonal to the

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<sup>36</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002. Nepal signed the Optional Protocol in September 2000, but has yet to ratify it. Under international humanitarian law applicable to civil wars (e.g. Protocol II, art. 4) and the Convention on the Rights of the Child (CRC), ratified by all U.N. member states except for the United States and Somalia, fifteen is established as the minimum permissible age for military recruitment. In all other respects, the CRC’s general definition of a child is any person under the age of eighteen. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

<sup>37</sup> The Convention on the Rights of the Child (CRC), ratified by all U.N. member states except for the United States and Somalia, also establishes fifteen as the minimum permissible age for military recruitment. In all other respects, the CRC’s general definition of a child is any person under the age of eighteen. The Optional Protocol to the Convention, which entered into force in February 2002, corrected this anomaly by prohibiting the compulsory military recruitment of children under the age of eighteen. It also establishes that “armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen years.” Nepal has signed but not yet ratified the Optional Protocol.

<sup>38</sup> Following the constitutional reforms of 1990, the Rastriya Panchayat Party changed its name to Rastriya Prajatantra Party. Most of its leaders are former Panchas.

national. Only the village representatives, all of whom were members of the Rastriya Panchayat Party, were elected by the people. In addition, there were class organizations at the village, district, and zonal levels for peasants, youth, women, elders, laborers, and ex-soldiers, who elected their own representatives to assemblies. The class organizations were intended as a substitute for political expression. The ninety members of the Rastriya Panchayat, or National Assembly, were not allowed to criticize the government or to engage in democratic debate about alternative systems of governance. The King appointed his own cabinet.<sup>39</sup> Some of the banned political parties functioned underground and faced repression, but the royal government failed to wipe out the movement for democracy.

In February 1990, the main underground parties announced the launch of Jana Andolan, or Movement for the Restoration of Democracy (MRD), which consisted of nationwide strikes and protests. The government initially resisted the pressure but in mid-April 1990, after scores of demonstrators were killed by the security forces in Kathmandu,<sup>40</sup> King Birendra gave in to the demand to lift the ban on political parties and create a democratic state. The King appointed an interim government, which oversaw the drafting of a new constitution. The nation entered a new political phase.

Democracy, however, did not bring stability. Thirteen governments have formed and been disbanded since the first general elections in 1991. Most of the governments have relied on unstable coalitions to obtain the majority of votes needed to form a government. The Nepali Congress Party won a majority of seats in the 1999 elections, but a power struggle within its leadership ranks made for a government without credibility. The incapacity of political leaders to deliver promised changes, charges of corruption and incompetence, and constant in-fighting among political leaders have caused voters to lose faith in the established political leaders.

The shocking massacre of almost the entire royal family by Crown Prince Dipendra on June 1, 2001 plunged Nepal into an unprecedented state of crisis. The news that Crown Prince Dipendra had opened fire on and killed his father, mother, sister, brother and other immediate family members before shooting himself shocked the nation. Thousands of people took to the streets, openly displaying signs of mourning for King Birendra. Gyanendra, the brother of the murdered King Birendra and the nearest surviving male kin, was ushered in as the next monarch (after a one-day period during which Prince Dipendra, comatose at the time, was declared king). The fact that

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<sup>39</sup> Thapa, *A Kingdom Under Siege*, 19.

<sup>40</sup> Deepak Thapa, *Kathmandu Spring: The People's Movement of 1990*, (Kiyoko Ogura: Himal Books, 2001,) 32.

Gyanendra alone among Birendra's siblings survived created an aura of suspicion and rumor-mongering that continues to affect the credibility of the monarch to this day.<sup>41</sup>

The political instability that followed the royal massacre and the ongoing conflict quickly ended Nepal's brief experiment with democracy. In August 2002, Prime Minister Deuba dissolved all local elected bodies, and shortly thereafter he dissolved the national parliament, fearing a vote of no confidence against him. Then on October 4, 2002, King Gyanendra suspended the democratic phase that had begun in 1990. He sacked the prime minister, postponed elections indefinitely, assumed executive authority himself, and appointed his own prime minister and cabinet.

King Gyanendra cited Article 127 of the Constitution to justify his act: "If any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary orders to remove such difficulty, and such orders shall be laid before Parliament."<sup>42</sup> Other sections of the Constitution, however, unambiguously deny the King the authority to appoint his own prime minister and cabinet. Article 36(1) of the Constitution directs the King to appoint the leader of the majority party in parliament as prime minister.<sup>43</sup> If this is impossible—for example, if there is a successful vote of no confidence against the prime minister or if there is no clear majority in parliament and no agreement on a coalition—then the King may dissolve parliament but elections must be held within six months of such dissolution.<sup>44</sup> As constitutional scholars, human rights activists and members of political parties have noted, Article 127 cannot in any way be used to suspend democratic governance and the Constitution.<sup>45</sup> The King himself is granted immunity for any of his actions through Article 31 of the very Constitution he has undermined.<sup>46</sup>

There is a growing consensus within Nepal on the need for significant constitutional reform, although there is disagreement about the procedure for reform. Some argue that

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<sup>41</sup> For a general history of the Royal massacre and its aftermath, see Jonathan Gregson, *Massacre at the Palace: The Doomed Royal Dynasty of Nepal*, (New York: Miramax, 2002); Isabel Hilton, "Letter from Kathmandu," *The New Yorker Magazine*, July 30, 2001; Official Investigative Report, His Majesty's Government of Nepal, June 14, 2001.

<sup>42</sup> Article 127, Constitution of the Kingdom of Nepal (1990)

<sup>43</sup> Article 36 (1), Constitution of the Kingdom of Nepal (1990)

<sup>44</sup> Article 42(4), Constitution of the Kingdom of Nepal (1990)

<sup>45</sup> See, e.g., Dhruva Adhikari, "Nepal's Right Royal Political Muddle," *Asia Times*, June 6, 2003; Yash Ghai "Crisis Beyond Legality" *Himal Magazine*, November 2003.

<sup>46</sup> Article 31 of the Constitution provides as follows: "Question not to be raised in Courts: No question shall be raised in any court about any act performed by His Majesty." Article 56.1 further protects the monarch: "No discussion shall be held in either House of Parliament on the conduct of His Majesty, Her Majesty the Queen and the heir apparent to His Majesty."

reforms to the constitution should be made by using the amendment procedure in Article 116 of the Constitution,<sup>47</sup> while others favor of getting rid of the existing political structure and convening a constituent assembly. The idea of a constituent assembly was originally advanced by the Maoists and remains one of their central demands, so the government has resisted proposals for a constituent assembly, even when advanced by non-Maoist organizations. Reform through constitutional amendment is also problematic, as the government and the King have undermined the credibility of the present constitution through their actions.

While Nepal's main political parties have protested the King's suspension of constitutional rule, and governments appointed by the King subsequent to the dissolution of Parliament have made statements about working toward elections, there is little evidence that the government intends to hold elections anytime soon. The constitutional right to vote for local and national representatives has been suspended indefinitely.<sup>48</sup>

At the beginning of April 2004, there were "anti-regression" demonstrations in Kathmandu organized by five political parties.<sup>49</sup> In response to these demonstrations, the government enacted a ban on assembly which far exceeded what is permissible under international law. The government further granted sweeping powers to the security forces to arrest anyone engaging in "suspicious behaviour." Thousands of protestors were arrested and detained. Among those arrested were journalists, lawyers, human rights monitors, students, teachers, medical workers, and members of political parties. Prominent figures, such as former Prime Minister Girija Prasad Koirala, were arrested, as were simple bystanders including small children. Entrances to Bir Hospital and the Kathmandu Hospital were tear-gassed as injured people tried to gain entrance for treatment.<sup>50</sup>

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<sup>47</sup> Limits on the King's rule making powers can, for example, be amended through the mobilization of Article 116; such an amendment is arguably within the spirit of the preamble of the Constitution, and need not amount to a whole sale revision of the Constitution. Likewise, the institution of the Parliament can be strengthened through Article 116. See Ghai, "Crisis Beyond Legality," for a careful analysis of the procedures available under Article 116.

<sup>48</sup> Article 45 (6), Constitution of the Kingdom of Nepal (1990.)

<sup>49</sup> The five main political parties are the Nepali Congress Party (NC), the Communist Party of Nepal United Marxist-Leninists (CPN-UML), Nepal Sadbhavana (Ananda Devi) Party, Majdoor Kisan Party and Samyukta Jan Morcha Party.

<sup>50</sup> Human Rights Watch Letter to Prime Minister of Nepal, April 22, 2004.

Despite these thousands of arrests, the protests continued. Finally, on May 7, 2004, Prime Minister Surya Bahadur Thapa resigned.<sup>51</sup> The King invited representatives of all the political parties, including the five agitating parties, for consultations. The five party coalition, which had been so successful in organizing the “anti-regression” movement, could not generate a consensus candidate for the next Prime Minister. Nearly four weeks later, on June 2, in the absence of a consensus nomination by the political parties, the King appointed Sher Bahadur Deuba as Prime Minister. Deuba, the leader of the Nepali Congress Party (Democratic), a break-away faction of the Nepali Congress Party, is the Prime Minister who in 2002 had suspended local assemblies. After weeks of intense negotiations, most of the political parties agreed to give up their protests and join Deuba’s cabinet to form a multi-party government. The fragile coalition cabinet is under intense pressure to lead the country into peace talks and elections.

### ***The International Community***

The government of Nepal has so far refused to accept any international or foreign mediation of the conflict, and has resisted strong pressure to allow a joint national and international commission to monitor the human rights situation on the ground. Furthermore, the government has actively sought to undermine the legitimacy of the National Human Rights Commission in Nepal, and in general the legitimacy of human rights groups.<sup>52</sup> The Royal Nepal Army spokesperson told Human Rights Watch that all “human rights organizations are leftists, anti-government, and they make allegations without evidence.”<sup>53</sup> This dangerous conflation of human rights workers as leftists and therefore anti-government was a theme repeated by senior members of the government. Senior commissioners at the NHRC reported receiving threats to their lives, and receive little or no cooperation from the government.

Since February 2003, the international community has increased its pressure on the government to respect the human rights of its citizens. The most significant international actors in Nepal are India, the United States, the United Kingdom and the European Union. India is battling its own Maoist groups. New Delhi has also opposed a larger international monitoring or mediation role in Nepal because it is seeking to avoid a similar international role in Kashmir. The United States’ Cold War policy of combating Maoist organizations has been bolstered by casting Nepal’s Maoists as

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<sup>51</sup> “Government Collapses as PM Thapa quits,” May 8, 2004, [online] <http://www.nepalnews.com> (retrieved May 7, 2004.)

<sup>52</sup> Members of the NHRC have told Human Rights Watch that their work is actively impeded by the government. Certain members of the NHRC have received death threats as well.

<sup>53</sup> Col. Deepak Thapa, Spokesperson, Royal Nepal Army, Kathmandu, March 9, 2004. Col Thapa is now the Deputy Spokesperson of the RNA.

enemies in the “war on terror.” The U.K. has continued its long tradition of military cooperation with Nepal, a relationship strengthened by the recruitment of Nepali “Gurkha” soldiers into the U.K. military. The World Bank and the IMF also play a prominent role in donor-dependent Nepal.

The international community has supported the NHRC in its appeal to both the government and Maoists to agree to independent human rights monitoring in the field. The two sides have agreed to neutral monitoring as a matter of principle, but neither side has signed a human rights accord allowing for such monitoring. On February 2, the EU issued a demarche to the Nepali government urging it to take the deteriorating human rights situation seriously. Under this pressure, and in lieu of a human rights accord, the government issued a public pledge in March 2004, announcing its commitment to abide by its obligations under human rights and humanitarian law.<sup>54</sup> The pledge came days before an anticipated condemnation of Nepal at the sixtieth session of the United Nations High Commission for Human Rights hearings in Geneva. Although welcome, the timing of the pledge aroused serious suspicion, as it appeared to be a ploy to ward off a critical Item 9 resolution at the CHR hearings.<sup>55</sup> The international community must now carefully scrutinize the actions of the Nepali government over the next year to assess whether the pledge was issued with good intent or was simply a means of avoiding international condemnation. The government of Nepal should not be judged by words on papers, but by its actions on the ground.

The Human Rights Accord, agreed to in principle by both sides but never signed, would be an important development, as it would highlight existing legal obligations of the government and the Maoists. However, the international community should support a Human Rights Accord only if it provides for a nationwide monitoring structure to monitor compliance. In that case, they should support such an arrangement financially and with international experts.

In Nepal, both the government and the Maoists use the lack of an adequate nationwide human rights monitoring network to discredit accounts of the abuses they commit, and engage in mutual recriminations and accusations. In order to overcome the current lack of human rights monitoring capacity in Nepal, and to build a nationwide monitoring

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<sup>54</sup> “His Majesty’s Government’s Commitment on the Implementation of Human Rights and Humanitarian Law,” March 26, 2004.

<sup>55</sup> “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 60<sup>th</sup> Session, AI IOR 41/013/2004, April 6, 2004.

capacity in the face of dire logistical, communication, and transport challenges, the international community must drastically step up its support for human rights monitoring in Nepal. In addition, protection of the human rights monitors themselves must be strengthened, given the hostility and abuses that existing monitors have experienced at the hands of Nepali authorities and the Maoists. In the absence of a drastic increase for human rights monitoring activities in Nepal, the Human Rights Accord would be a convenient fig leaf for both parties, as it would remain relatively difficult to monitor actual implementation of its commitments.

### III. INTERNATIONAL LEGAL OBLIGATIONS

#### ***Nepal as an internal armed conflict***

The armed conflict between the government of Nepal and the Maoist rebels falls under international humanitarian law (also known as the laws of war). IHL provides rules regulating the method and means of combat and the treatment of captured combatants and civilians. The applicable rules depend in part on whether the conflict is between states (an international armed conflict) or within a state (a non-international—or internal—armed conflict).

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.”<sup>56</sup> Another important indication is whether the government has deployed its regular armed forces against the insurgency.<sup>57</sup>

The civil war in Nepal meets the Geneva Conventions definition of an internal armed conflict. 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.<sup>58</sup> Moreover, the level of fighting between government and rebel forces

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<sup>56</sup> International Committee of the Red Cross, Commentary, IV Geneva Convention (Geneva: International Committee of the Red Cross, 1958.)

<sup>57</sup> *ibid.*

<sup>58</sup> See, e.g., statement of Maoist leader Prachanda on March 16, 2004: “Our Party has been committed to the fundamental norms of human-right [sic] and Geneva Convention since the historic initiation of the People’s War. Anyone who without prejudicially [sic] judges the facts of eight years can find that our People’s Liberation Army has been providing a respectful behaviour, treatment to the injured and release in good conditions of the



has frequently been high, well above mere disturbances. This has been reflected in the Nepali government's decision in 2001 to deploy the Royal Nepali Army against the Maoist insurgency.

### ***Protections of International Humanitarian Law***

Among the most fundamental protections during internal armed conflicts are those contained in Article Three common to the four Geneva Conventions of 1949. Common Article 3 governs the treatment of civilians and captured combatants during internal armed conflicts, and outlaws summary executions, torture and other ill-treatment of persons, the taking of hostages, and punishment without fair trial.<sup>59</sup> Combatants who express their intention to surrender, for example, by raising their hands and throwing away their weapons, are considered *hors de combat* and may not be attacked.

Common Article 3 is binding both states parties to the Geneva Conventions and insurgent groups. Both the government of Nepal, which ratified the Geneva Conventions in 1964, and the Maoist rebels, are obligated to abide by its provisions. Adherence to the Conventions is not based on reciprocity: one party to the conflict cannot excuse its own violations of Common Article 3 on the basis that the other party to the conflict is similarly violating Common Article 3.<sup>60</sup>

Parties to an internal armed conflict are also bound by provisions of the Geneva Conventions and the 1977 Protocols Additional to the Geneva Conventions (to which Nepal is not a party) that are accepted as customary international law. These include prohibitions on attacks against civilians and civilian objects, the use of weapons that cannot distinguish between combatants and civilians, and the use of force that causes harm disproportionate to the civilian population beyond the expected military advantage.

In contrast to international armed conflicts, the laws governing internal armed conflicts do not recognize the “combatant’s privilege”—the license of combatants to kill their

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prisoners of war who have been arrested from the army and police of the enemy combatant. Our Party has been expressing its commitment not only on the Geneva Convention in relation to the war but also on the international declarations in relation to the human rights.” (from Appeal of the CPN-M) [online] <http://www.cpnm.org/Notices> (retrieved September 27, 2004); Prachanda statement from December 15, 2003: “The CPN (Maoist) has consistently sought to uphold the universal principles of human rights and relevant clauses of Geneva Conventions on war. The Party has time and again publicly welcomed any international monitoring, preferably under the UN auspices, of the human rights situation in the country.” (from Maoist Information Bulletin, No. 7, News and Views.)

<sup>59</sup> Common Article 3 of the Geneva Conventions of 1949.

<sup>60</sup> For the full text of Common Article 3, see [online] <http://www.icrc.org/ihl.nsf/O/e.html> (retrieved September 28, 2004.)

opponents during combat—and does not grant captured combatants “prisoner of war” status and all its accompanying protections. This means that the Nepali government may prosecute and punish captured combatants for acts of treason, sedition, and other crimes committed under domestic law.

### ***Protections of Human Rights Law***

In addition to the laws of war, the government of Nepal must also abide by international human rights law. Nepal is a party to all the major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)<sup>61</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>62</sup>. Human rights law prohibits, among other things, arbitrary arrest and detention, torture and other mistreatment, enforced disappearances, and extrajudicial executions.

From 2001 until the dissolution of parliament in late 2002, Nepal was under a nationwide state of emergency. The ICCPR permits the derogation of certain provisions during an officially proclaimed “public emergency which threatens the life of the nation” to the extent required by the exigencies of the situation. Certain rights however are never derogable, including the rights to be protected from extrajudicial execution, torture and other mistreatment, and “disappearance.”

Enforced disappearances have been a particular concern during the armed conflict in Nepal. Persons are considered to have “disappeared” when they have been arrested, detained, or abducted, and the perpetrator refuses to disclose the fate or whereabouts of the person or refuses to acknowledge the deprivation of their liberty.<sup>63</sup>

Forced disappearances violate a number of human rights, including 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.<sup>64</sup> The U.N.

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<sup>61</sup> United Nations General Assembly Resolution 2200 A (XXI) of December 16, 1966 (entered into force on March 23, 1976.)

<sup>62</sup> United Nations General Assembly Resolution 39/46 of December 1984, (entered into force on June 26, 1987.)

<sup>63</sup> According to the preamble of the Declaration on the Protection of all Persons from Enforced Disappearance, “enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government...followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” General Assembly resolution 47/133 of December 18, 1992.

<sup>64</sup> ICCPR Articles 6(1), 7, 9, and 14(1). For a detailed discussion of the human rights violations committed by disappearances, see United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr.

Declaration on Enforced Disappearances, adopted by the General Assembly in 1992, reflects the consensus of the international community against the crime of “disappearances,” and provides authoritative guidance as to the safeguards that need to be implemented to prevent it. Four key principles affirmed by the Declaration are that “disappearances” cannot be justified under any circumstance; that “disappearances” are continuing offenses, exempt from statutes of limitation; that their perpetrators should not be eligible for amnesty from prosecution; and that their victims and their survivors have a right to compensation.<sup>65</sup>

Widespread or systematic patterns of “enforced disappearances” constitute a crime against humanity, a term which refers to acts that, by their scale or nature, outrage the conscience of humankind. The most recent definition of crimes against humanity is contained in the Rome Statute of the International Criminal Court (ICC). Nepal is not a signatory of the Rome Statute, but many of the definitions of crimes contained in the ICC are considered part of customary international law. The Rome Statute provides in Article 7 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.”

### ***Limits on the Use of Force***

The U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>66</sup> and the U.N. Code of Conduct for Law Enforcement Officials<sup>67</sup> provide international standards governing the use of force in law enforcement, including during the policing of violent unlawful assemblies. While these principles are not legally binding, they provide authoritative guidance and reflect a high level of consensus by the international community about the standards that states are required to apply on the use of force and firearms by law enforcement officials. Principle 9 of the Basic Principles states:

Law enforcement officials shall not use firearms against persons except  
in self-defence or defence of others against the imminent threat of death

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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,” E/CN.4/2002/71, p. 36.

<sup>65</sup> U.N. Declaration on “disappearances” Articles 7, 17, 18, and 19.

<sup>66</sup> U.N. Doc. A/CONF.144/28/Rev.1 (1990), adopted in 1990 by the Eighth U.N. Congress on the Prevention of Crime and Offenders.

<sup>67</sup> G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), adopted by the U.N. General Assembly on December 17, 1979.

or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>68</sup>

The Basic Principles provide that law enforcement officials<sup>69</sup> shall “as far as possible, apply non-violent means before resorting to the use of force and firearms.” (Principle 4). The Basic Principles also call for proportionality in the amount of force used (Principle 5), for the adoption of reporting requirements where force or the use of firearms lead to injury or death (Principle 6), and for governments to ensure that “arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law” (Principle 7).

The U.N. Code of Conduct for Law Enforcement Officials provides similar international human rights standards for law enforcement. Article 3 of the Code requires that “[l]aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” The official commentary accompanying Article 3 sets forth detailed standards applying to the use of firearms, arguing for restraint in their use (“The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children.”), and recognizing the principle of proportionality in the use of firearms (“In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved”).

#### **IV. UNLAWFUL KILLINGS AND SUMMARY EXECUTIONS BY NEPALI SECURITY FORCES**

The Nepali security forces—comprised of the police, the armed police, and the Royal Nepali Army (RNA)—have been implicated in thousands of summary executions and other unlawful killings of suspected Maoist rebels and civilians. Since the deployment of the RNA in anti-Maoist operations in 2001, the fighting between the two sides has

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<sup>68</sup> U.N. Doc. A/CONF.144/28/Rev.1 (1990), adopted in 1990 by the Eighth U.N. Congress on the Prevention of Crime and Offenders, Principle 9.

<sup>69</sup> The Basic Principles define “law enforcement officials” to include “all officers of the law, whether appointed or elected, who exercise police powers, especially the power of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.” Basic Principles, “Note”.

intensified, and the number of unlawful killings by the security forces has increased dramatically.

Maoist forces have controlled much of the countryside in Nepal since the beginning of the insurgency. The Nepali security forces typically operate out of heavily fortified positions at the district headquarters of each district. From there the Nepali security forces carry out raids on suspected rebel troop concentrations, relying heavily on local informants and other sources to determine where the Maoist rebels may be located. In a typical raid, the Nepali security forces will receive information that Maoists are staying the night in a particular village and quickly send troops to the village—often walking long distances in Nepal’s inhospitable terrain—to capture or kill the Maoists.

Since 2001, all of Nepal’s security forces have operated under a “Unified Command” giving field-level command to the RNA. The police and paramilitary armed police continue to function as separate institutions, but their forces come under RNA command at the field operations level. As this report documents, Nepali security forces frequently try to disguise themselves as Maoist rebels, dressing in Maoist-style clothing with red bandanas and giving the Maoist greetings (*Lal Salaam*, or “Red Greetings”) when arriving in villages in an attempt to flush out Maoist sympathizers when they return the greetings.

Civilians are often caught between the Nepali security forces and the Maoist rebels. Maoist rebels spend most of their nights in civilian homes, arriving in villages and demanding to be put up in local homes. Civilians are normally unable to refuse such demands: the price of disobedience to the Maoists is too high, often including death. But the Nepali security forces are equally, if not more, feared by the civilian population. The security forces often assume that the rural population actively supports the Maoists and kill suspected Maoist sympathizers, even when it is clear that the civilians have had little choice but to house and feed the Maoists traveling through their villages.

According to the National Human Rights Commission of Nepal (NHRC) and other human rights organizations, government security forces have been responsible for approximately 2000 extrajudicial killings since 2001. The accounts confirmed by Human Rights Watch present only a fraction of the cases gathered by the NHRC and reputable local human rights organizations. Even from this relatively small sample, it is clear that summary executions of captured combatants and detained civilians are troublingly common in Nepal.

Almost invariably after persons are killed during security operations, the Unified Command will issue a statement identifying the dead as Maoist rebels and asserting that they were killed during gunfire exchanges. The following is a typical RNA announcement: “In a cross firing between the armed Maoist terrorist and Security Forces (SF) in Chilanga VDC of Dolakha district one (1) Maoist terrorist was killed.”<sup>70</sup> In the immediate aftermath of the Doramba incident, the Army reported that the Maoists had attacked them: “the rebels first opened fire on the army contingent...[then] the rebels regrouped for yet another onslaught on the army, which resulted in further deaths on the rebel side.”<sup>71</sup> A major attack in which nineteen persons were killed, including two civilians who were unlawfully killed and at least two Maoists who were executed after being detained (see below) was announced as follows by the RNA:

Nineteen terrorists were killed in Bhimankhola region, the border of Parsha and Makwanpur District on February 5. In the Operation District secretary of Parsha named Bashu Lamichane ( Bikash), Laxmi and the area commander named Mukti were killed.<sup>72</sup>

Such partial and often fictional accounts hide the disturbing truth of summary executions and, in some cases, the unlawful killings of civilians. All cases described below, with the exception of Doramba which is described first because of its unique status, are arranged in reverse chronological order, beginning with the most recent.

### ***Summary Execution of two civilians and seventeen Maoists in Doramba, Ramechhap, August 17, 2003***

As already noted above, the ceasefire that began on January 29, 2003 came to an abrupt end following the events in Doramba VDC, Ramechhap district. On August 17, 2003, the same day that the government and the Maoists were holding their third round of peace talks in Dang, government forces in Doramba arrested and executed nineteen persons.<sup>73</sup> Ten days later, on August 27, 2003, the Maoists pulled out of the peace talks.<sup>74</sup>

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<sup>70</sup> Royal Nepali Army News Bulletin, May 25, 2004, [online] <http://www.rna.np.html> (retrieved May 12, 2004.)

<sup>71</sup> “Army Questions Rebels Attacks,” *Kathmandu Post*, August 19, 2003.

<sup>72</sup> Royal Nepali Army News Bulletin, February 28, 2004, [online] <http://www.rna.np.html> (retrieved February 6, 2004.)

<sup>73</sup> “Government Soldiers Kill 17 Rebels in Nepal,” *USA Today*, August 18, 2003; “Shocked Leaders Urge Rebels to Return to Talks Table,” *Himalayan Times*, August 28, 2003.

<sup>74</sup> The Maoists state that they withdrew from the peace talks because of the massacre of its captured combatants at Doramba. The government, on its part, claims that the Maoists were never serious about negotiations, and simply used Doramba as a pretext for pulling out of the talks.

Doramba lies north-east of Kathmandu in a hilly region, and is inaccessible by road. It is well known that the region is dominated by Maoists. Since 1998, the Maoists have declared Doramba as an area under their control. Visitors to the area describe a tense situation in which Maoists move easily and freely through the village, aware that the villagers are too afraid to act against them.

The National Human Rights Commission sent an investigative team consisting of independent experts to Doramba on August 26, 2003, ten days after the killings, to investigate. They found strong evidence of unlawful executions of nineteen persons, of whom two were civilians and the remaining seventeen captured combatants.<sup>75</sup>

According to the findings of the NHRC, about seventy members of the security forces, acting on intelligence that there was to be a large gathering of Maoists in Doramba that day to celebrate the wedding of two Maoist rebels, went to the village on foot in the mid-morning of August 17. Government troops went to the house of Yuba Raj Moktan, a schoolteacher whose house had been commandeered by the Maoists for their gathering. All nineteen persons in the house, including Yuba Raj Moktan and his son Leela, were arrested, and their hands were tied behind their back. After some time, this group of nineteen was marched off by the army up a hill to Deurali. At that point, the soldiers providing escort suddenly changed direction. Around 2:15 p.m., the nineteen captives were lined up in rows by the army. A witness, who happened to be passing, saw the troops aiming their guns at the detainees. Shortly thereafter, the witness heard a barrage of gunfire. Nineteen bodies were found that evening by a village search party. The bodies were thrown down the slope by the mountain track on which they were killed. The exhumation team which examined the bodies ten days later found that all nineteen persons had been shot at close range, with their hands tied behind their backs. Most of the wounds were to the heads of the victims.<sup>76</sup>

Of the nineteen killed, fifteen were identified: Baburam Tamang, Ambika Dahal, Pradeep Dong, Harka Bahadur Tamang, Rabi Chauhan, Uma Karki, Shyam Tamang, Padam Raj Giri, Bishnu Maya Thapa Magar, Thulo Ram Tamang, Sano Ram Tamang, Laxman Tamang, Yuba Raj Moktan, Leela Moktan. Four bodies remained unidentified,

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<sup>75</sup> "On the Spot Inspection and Report of the Investigation Committee: Doramba, Ramechhap Incident," National Human Rights Commission, 2060 BS (2003). See also "Doramba Killings were Cold-Blooded," *Kathmandu Post*, September 19, 2003; "Storm over Doramba," *Nepali Times*, October 16, 2003.

<sup>76</sup> "On the Spot Inspection and Report," NHRC.

because they were not from the local area and thus unknown to the villagers—they were believed to be part of the Maoist delegation at the wedding.<sup>77</sup>

The Royal Nepal Army immediately claimed that the Maoists had provoked the incident by leading two separate armed assaults against a security patrol. An RNA statement said that its investigative team interviewed some soldiers and officers in the district center: “Our four-person preliminary investigation team could not go to Doramba out of safety concerns. They talked to army and police personnel in the district center, and to civilians and the CDO.”<sup>78</sup> The RNA stated that “the security forces had to retaliate in self-defense that resulted in the killing of at least twelve armed rebels. The firing continued for about twenty minutes and rocket bombs were hurled at the patrol from both sides.”<sup>79</sup>

In response to a request from the NHRC, the Army issued a letter denying that a massacre had taken place in Doramba. After the NHRC made public its findings, the Army promised to re-examine the case, all the while publicly denouncing the NHRC’s methodology and professionalism. For example, Brigadier General B.A. Kumar Sharma, the head of the RNA’s human rights unit, said the following about the NHRC’s findings:

It seems that the NHRC team went there, spent a night, then went on to exhume the bodies. They didn’t use special forensics instruments. Bodies buried that long bloated, it is hard to see shots or wounds on them. Now we had just left the bodies lying there after the encounters [of August 17]. God knows who had handled them, how many times they had been cleaned, and what else had been done to them before they had been buried.

The NHRC report also claims that the people had been shot in the head. Some had no skulls. Normally, there would be entry and exit wounds, or the bullets would be in the bodies. It would take special exploding bullets to make the entire skull shatter. We use only normal bullets. Plus, if the allegations are true, the bodies would be piled in one exact spot, as they were brought up and shot, one by one. There would have

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<sup>77</sup> *ibid.*

<sup>78</sup> “Storm over Doramba,” *Nepali Times*.

<sup>79</sup> Royal Nepal Army Statement as printed in [online] <http://www.nepalnews.com> (retrieved August 28, 2003.)



been blood on them all. In the photos, there is all over the front of one of the girls. But the back of her clothes were clean.<sup>80</sup>

Under intense pressure, the Army issued a statement on March 12, 2004, summarizing the findings of its own new investigation. The statement announced that a few of those killed in Doramba were killed unlawfully, but that the larger number were killed in lawful combat situations.<sup>81</sup> Brigadier Sharma made pointed reference to the NHRC report: “We don’t believe the NHRC report ...only a few of [the Maoists] were killed after capture. Others were killed in a separate clash.”<sup>82</sup> This finding directly contradicts not only the NHRC report but also the eyewitness testimonies compiled by others who have subsequently visited Doramba.<sup>83</sup> In a statement designed to demonstrate its sincerity, the Army announced that it would prosecute a senior member of the RNA, namely the major in charge of the Doramba operation, on two allegations: “failing to protect the detainees leading to a violation of their human rights, and misreporting to Army headquarters.”<sup>84</sup>

The Army has failed to acknowledge superior responsibility on the part of more senior officers who either knew or should have known about the operation. The Army’s argument that the major lied to headquarters about the operation, leading therefore to the Army’s initial denial of any wrong-doing in Doramba, suggests that at a minimum the Army did not investigate the allegations seriously in the first instance. As a member of the NHRC investigative team said: “The Army should have asked earlier why their company didn’t bring back any prisoners. If four or five had been killed and the others brought back as prisoners, that is one thing. But when you hear that there are no prisoners, that should raise serious questions at the command.”<sup>85</sup>

The Army has not explained its delay in investigating the massacre at Doramba, and has not imposed any accountability for the “handful” of unlawful deaths it found. The Army report has not been released, and it is impossible to know the evidentiary basis on which it made its findings. The court martial, if it occurs, will be a closed trial, and the Nepali Army in the past has not been forthcoming with the results of its courts martial.

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<sup>80</sup> “Storm over Doramba,” *Nepali Times*.

<sup>81</sup> “Major Faces Army Court,” *The Himalayan Times*, March 12, 2004; “RNA Court Punishes Guilty Soldiers,” *The Kathmandu Post*, March 12, 2004.

<sup>82</sup> “Major Faces Army Court,” *The Himalayan Times*.

<sup>83</sup> Human Rights Watch interview with senior UN official, Kathmandu, March 3, 2004; “Storm over Doramba,” *Nepali Times*.

<sup>84</sup> “Major Faces Army Court,” *The Himalayan Times*.

<sup>85</sup> Human Rights Watch interview with Kanak Mani Dixit, Kathmandu, March 10, 2004.

Bertrand Ramcharan, then the Acting U.N. High Commissioner for Human Rights, has called on the government of Nepal to ensure that reports of summary and extrajudicial executions by the authorities should be investigated by an independent body, and that perpetrators should be tried in criminal courts, and not by military tribunals.<sup>86</sup> Prosecuting the perpetrators of the Doramba massacre under normal and transparent criminal procedures would go a long way to showing the good faith of the government to prevent and punish such outrages by its security forces.

The Doramba massacre shocked Nepal. The facts were simple and brutal. It was the first time that the nation was forced to confront what human rights activists had been arguing all along—namely, that the Maoists were not the only party responsible for brutal executions. In the weeks and months following Doramba, politicians, human rights activists and foreign governments (with the notable exception of the United States) condemned the Army's actions publicly and repeatedly.<sup>87</sup> The National Human Rights Commission, through its groundbreaking work—this was the first time that a forensic exhumation had been carried out in Nepal—gained credibility that the government had actively and successfully sought to undermine up to that point.

Maoist rebels reportedly killed a local nurse shortly after the Doramba massacre.<sup>88</sup> The Maoists believe that she was the informer who told the security forces about their gathering in Doramba that day. The killing of the nurse served to increase the fear among villagers of the consequences of being suspected by the Maoists, and to increase their iron grip on the countryside.

### ***Summary Execution of two suspected Maoists in Bardiya District, March 11, 2004***

In the late afternoon of March 11, 2004, Unified Command forces surrounded the village of Belbhar, Bardiya district, on the outskirts of Nepalgunj, a city in southern Nepal. All access roads were blocked off by the distinctive green jeeps of the RNA.<sup>89</sup> Other soldiers on foot, heavily armed, went door to door, searching all houses. They said they were looking for some Maoists whom they had been informed were staying in Belbhar.

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<sup>86</sup> Bertrand Ramcharan, Acting U.N. High Commissioner of Human Rights, September 2003.

<sup>87</sup> "Make NHRC Report Public: EU," *Kathmandu Post*, September 17, 2003; "EU Calls for Multi-Party Government," *The Telegraph*, February 4, 2004.

<sup>88</sup> "Storm over Doramba," *Nepali Times*.

<sup>89</sup> Human Rights Watch interviews, Belbhar, villagers, names withheld, March 15, 2004.

Villagers working in the fields and in a brick kiln factory saw soldiers running through the fields. According to several eyewitnesses who spoke with Human Rights Watch, two men were being pursued by the Army. The men were running through the fields, and as far as the villagers could see, they were not carrying weapons visibly.<sup>90</sup> An eyewitness who was working in the fields close to where the two men were eventually shot said that he saw the two men emerge from the field, with their arms up, saying “We are not Maoists, please help us. We surrender.”<sup>91</sup> The witness watched as the soldiers, who had the suspects well outnumbered and surrounded, shot the two surrendering men dead at close range.<sup>92</sup>

Villagers saw the army taking the bodies away in one of their jeeps. They do not know what happened to the bodies afterwards.<sup>93</sup>

### ***Summary Execution of Nirajan Thapa, Bardiya District , end-February 2004***

About forty kilometres away from the southern city of Nepalgunj is a large village, which is frequently patrolled by the security forces who believe Maoist sympathies run deep in the area. Towards the end of February 2004, about sixty soldiers in military camouflage uniform came running into the village, fully armed, shouting that they were looking for some Maoists who had come to Mahmutpur from Dang. The villagers had heard that four Maoists from Dang had arrived in their village on motorbikes, but none of these four were known personally to the villagers.

The four men started running away along the main road in the village as soon as they heard the soldiers looking for them. Eyewitnesses said that none of the men were visibly armed. According to eyewitnesses, the soldiers overtook and arrested two of these men and took them away. These two men were later released uncharged and unharmed.

The soldiers continued to chase the other two men. One of the men seems to have escaped arrest; no one saw what happened to him. The security forces then surrounded the fourth man, who sought refuge at the base of a young bamboo tree behind a house in the village. The residents of this house had never seen this man before. Two soldiers approached the bamboo tree, and positioned themselves at one and five meter distances

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<sup>90</sup> Human Rights Watch interviews with two witnesses, names withheld, March 15, 2004.

<sup>91</sup> Human Rights Watch interview, name withheld, March 15, 2004.

<sup>92</sup> *ibid.*

<sup>93</sup> Human Rights Watch interview, name withheld, March 15, 2004.

from the tree. There were soldiers in the field behind the bamboo tree, and all along the avenues leading up to it. Eyewitnesses heard the man begging, saying “please save me.” The two soldiers near the bamboo tree fired three shots, and the villagers saw the man slump to the ground.

The soldiers forced some of the villagers to dig a shallow grave right at the base of the bamboo tree and the body was buried there. On their way out of the village, the soldiers took sacks of potatoes, lentils and rice from the house in front of the bamboo tree. They also destroyed a new stereo system in the house.

Later that night, local Maoists disinterred the body and re-buried it in a deeper grave with full rituals. It was only then that the villagers learned the name of the man who was killed, Nirajan Thapa.<sup>94</sup>

### ***Summary Execution of suspected Maoists in Sarlahi district, late February, 2004***

On February 24, 2004, at about 6 a.m., a group of about two hundred soldiers entered Hazariya village in Sarlahi District. Two alleged Maoists, forty-year-old Gopal Karki and thirty-year-old Raj Narayan Roy, were entering Hazariya village around the same time. An eyewitness told Human Rights Watch that a policeman accompanying the soldiers recognized Gopal Karki, and that the soldiers quickly surrounded and captured the two men: “They surrounded the two men, and ordered them to raise their hands. They raised their hands, and then their arms were tied behind their backs.”<sup>95</sup> The soldiers proceeded to search the men, and found a pistol and several pipe bombs. The men were then beaten by the soldiers, and marched away from the village. The witness attempted to follow the soldiers, but was stopped by a policeman who reassured her they would just take the men to the police station and promised they would not kill them.

The next day, the bodies of the two men were found about one kilometer from the place where they had been arrested, near the village of Bagmati. Human Rights Watch could not travel to Bagmati to interview villagers there about the killings, because Maoist activity in the area made the place unsafe. However, the accounts of the relatives of the victims establish that the men were taken away in the custody of a large group of soldiers and strongly suggests that the men were later summarily executed.<sup>96</sup>

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<sup>94</sup> Human Rights Watch interviews with four witnesses, names withheld, March 15, 2004.

<sup>95</sup> Human Rights Watch interview, name withheld, March 13, 2004.

<sup>96</sup> Human Rights Watch interview, name withheld, March 13, 2004.

### ***Summary Execution of five suspected Maoists, Banke district, February 19, 2004***

Pedari village in Banke District is surrounded on all sides by large farm fields, and is only accessible via a narrow dirt path. When Human Rights Watch visited, there were open signs of a strong Maoist presence in the village: pro-Maoist slogans painted on walls and red flags hanging from bamboo trees.

Several eyewitnesses told Human Rights Watch that in the afternoon of February 19, 2004, a group of five or six armed men, presumed to be Maoist soldiers, were resting in a house near the edge of the village. The army entered the village in large numbers. They seemed to know exactly which house the alleged Maoists were staying in, because they went directly to this house and positioned themselves. Several sharpshooters were stationed on trees surrounding the house, many others encircled the house, and yet others were stationed in the outlying fields.

The soldiers then started calling on the alleged Maoists to come out and surrender. They had a megaphone, and villagers in the nearby houses could clearly hear what was being said. The soldiers told the Maoists that they were surrounded and they would be safe if they surrendered. The soldiers fired some shots towards the house; eyewitnesses said that no shots came from inside the house. After some time, the door of the house opened, and one man came out holding his hands up in the air. Eyewitnesses said that the other men were directly behind this first one. One witness close to the scene saw that the others also had their hands up in the air. As soon as the first man came out of the door, army sharpshooters positioned in the trees opened fire and shot him dead. After this, the other Maoists started running away, heading out into the nearby fields. They were all shot and killed in different spots as they were running away.

The army gathered the bodies and buried them in shallow graves in the village. That night, a group of Maoists dug up the bodies, and carried them out to a nearby field where they buried the bodies amid some young bamboo trees. The Maoists erected red flags up on each of the graves. On one of the flags is painted a white star, indicating that this particular person had been a local commander.<sup>97</sup>

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<sup>97</sup> Human Rights Watch interviews, name withheld, March 16, 2004.

### ***Indiscriminate Killing of Three Villagers near Kabilash, February 17, 2004***

At about 5 a.m. on February 17, 2004, a group of about twenty to thirty youngsters had gathered on the main Mugling-Narayanghat Highway, leading from Kathmandu to Chitwan, near the village of Kabilash. February 17 was the day of the Shivaratri festival, celebrating the Hindu god Shiva. Children and young adults from the village had picked the day to solicit donations for the rebuilding of their village temple to Lord Shiva, which had been destroyed in a landslide the year before. The group set up to stop the traffic coming down the highway in both directions, asking for voluntary donations and giving the drivers traditional vermilion paste symbolizing blessings in return.

About fifteen minutes after the youngsters started collecting the donations, a group of army soldiers drove up from the direction of Chitwan and opened fire on the group without warning. A farmer who was standing by the road warming himself by a wood fire recalled that:

All of a sudden we heard firing, only fifteen minutes after we started collecting money. The firing came from the Chitwan side, south of the village. Five of us were wounded. The distance between us and the soldiers was only ten meters...There was no warning before the shooting.<sup>98</sup>

Another witness interviewed by Human Rights Watch recalled the shooting in almost identical terms:

Some of us were collecting money from the drivers, while others were sitting on the side of the road. I had the pot of *teeka* [vermillion paste to give traditional blessings with on the forehead of the recipient] to give blessings. Then the army came. They didn't say anything. Tirki saw them and said something like, "the army is coming." We didn't run away, we just stood there. Tirki was standing next to me and was killed. We were just standing there [at the time of the shooting], the army was less than five meters away from me. None of us had any guns or red bandanas [worn by Maoists]. I didn't see anyone trying to run.<sup>99</sup>

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<sup>98</sup> Human Rights Watch interview, name withheld, March 8, 2004.

<sup>99</sup> Human Rights Watch interview, name withheld, March 8, 2004.

Three young villagers were killed by the shooting: twenty-one-year-old Tirki Parja, who was standing in the road giving *teeka* blessings to the drivers passing by; twenty-one-year-old Biraj Gurung, who was standing near Tirki; and his brother, fourteen-year-old Sunil Gurung, who was standing at the opposite side of the road.<sup>100</sup> Two others were injured: a twenty-one year old man was shot in the right shoulder, and a nineteen-year-old woman was shot in the leg and stomach.<sup>101</sup>

It is possible that the troops who fired on the villagers believed that they were responding to Maoist cadres extorting money from drivers, because the road is in an area where Maoist rebels are active—in the night before the Human Rights Watch visit, Maoist rebels had attempted to close the highway just a few kilometers north of the village by cutting trees and destroying power lines. The villagers had also been unable to inform the authorities that they planned to hold the fundraising event for their temple, as the day prior had been a Maoist-ordered general strike day on which travel was prohibited.<sup>102</sup> However, none of these circumstances justify the lethal response of the troops, who opened fire without warning on a clearly distinguishable civilian crowd, killing three people and wounding two others.

Unlike many other incidents, the RNA does appear to have taken limited action in response to this incident. According to the father of Biraj and Sunil Gurung, a colonel from the RNA's human rights unit visited him a few days after the shooting, apologizing for the shooting and offering compensation, although no money has yet been received by the family.<sup>103</sup> The RNA has not announced whether it will take any disciplinary action against the soldiers responsible.

### ***Summary Execution of suspected Maoist in Guleriya District, mid-February, 2004***

At about 3:30 p.m. one afternoon in mid-February 2004, a group of about forty Unified Command troops entered a small village in Guleriya district, a cluster of small mud houses about an hour's drive outside of Nepalgunj. Some soldiers came on foot and others in jeeps along the one narrow dirt road in the village. The soldiers headed straight for the house at the edge of the village belonging to an elderly couple. Most of the villagers were out working in the fields at that time, so the village was largely deserted. Only the elderly woman, her daughter-in-law, and her twelve year old grand-

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<sup>100</sup> Human Rights Watch interview, name withheld, March 8, 2004.

<sup>101</sup> Human Rights Watch interview, name withheld, March 8, 2004.

<sup>102</sup> Human Rights Watch interview, name withheld, March 8, 2004.

<sup>103</sup> Human Rights Watch interview, name withheld, March 8, 2004.

daughter were near the house at that time. The daughter-in-law was inside the house cooking dinner.

The troops called out to the two older women, telling them that there was a Maoist hiding in their house. According to the women,, the soldiers said that a fleeing Maoist had quietly entered their small home, using a separate side door and thus going undetected. One of the soldiers, who seemed to be the commander of the group, ordered the elderly woman, about seventy years old, to go inside and tell the Maoist to surrender to the security forces. The security forces told her that they would kill her if she didn't do as they ordered.

The daughter-in-law and the twelve-year-old girl were told to stay outside. The elderly woman entered the house, and saw a man with a beard crouching behind the traditional earthen vats used for storing grains. The bearded man, whom the woman had never seen before, was dressed in civilian clothes and was bleeding from a wound. Meanwhile, the security forces had their weapons trained on the house, and several of them were poking their rifles through the small ventilation shafts which serve as windows. The security forces also kept shouting out to the man that he didn't have to be afraid, that he would be all right if he just surrendered. The elderly woman was terrified and shaking, and begged the man to surrender, telling him that the security forces would kill her if he didn't surrender. Many of the villagers working in the fields came to watch what was happening.<sup>104</sup>

After about fifteen minutes, the alleged Maoist agreed to surrender. He came out of the tiny house,<sup>105</sup> with his hands folded in front of him in the traditional Nepali *namaste* gesture, signifying surrender. As soon as he stepped out, the security forces directly outside the house shot and killed him. Eyewitnesses heard first one shot, and then two others. In the words of the twelve-year-old girl:

I saw him come out doing *namaste*, with his hands above his head. I heard bullets, and I looked away because I was scared. He shouted: "Oh Dai [elder brother] why are you killing me, why are you killing me." Then I saw him lying on the ground. There was a lot of blood

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<sup>104</sup> Human Rights Watch interviews, names withheld, March 15, 2004.

<sup>105</sup> Even though the house is tiny, the two women claim that they did not see the wounded man enter the house because they were busy cooking. The house is very dark and the large earthen storage vats obscure the view in the room.



everywhere. He was about one meter away from me when they shot him.<sup>106</sup>

The security forces then rifled through the man's pockets. They found a plastic bag containing about 60,000 Nepali rupees (about U.S. \$800)<sup>107</sup>. They counted the money out loud in front of the villagers. They then announced that they were going to destroy his pistol. The villagers heard a small detonation and they were told that his pistol had been destroyed, although none of the villagers saw a pistol or its remnants. The soldiers then asked one of the men to get a rope, which they then used to tie the body and drag it to the river. The villagers do not know what happened to the body after this, but believe that the troops took the body away or buried it somewhere by the river.<sup>108</sup>

### ***Extrajudicial Execution of two girls in Kavre district, February 12, 2004***

At about midnight on the evening of February 12, 2004, a group of Nepali army troops arrived in the village of Pokahari Chauri, Ward 4, located in the Kavre district about forty-five kilometers north of the town of Dolalghat along a steep mountain dirt road. According to the villagers, there was at least one Maoist sleeping in their village that night, and a large contingent of Maoists was spending the night in a village about thirty minutes walk away.

The Unified Command troops entered the village and went to the house of Karna Bahadur Rasaili, a fifty-three-year-old villager whose son Deepak and daughter Gita had joined the Maoists earlier in 2003. When the troops knocked on the door, they initially falsely identified themselves as Maoists, calling out to Karna Bahadur Rasaili by name, and saying they were comrades and friends of his son Deepak.<sup>109</sup> By the time Karna Bahadur's wife reached the door, the soldiers had already broken in and entered into the home.

The family had visitors—Karna Bahadur's sister, Devi Sunuwar and her brother-in-law, Murali Sunuwar—staying with them. Everyone was asleep when the men arrived. Four or five soldiers entered the house and woke everyone up, asked them for their names, physically searched them and also searched the house. When Reena, the seventeen-year-old daughter of the house identified herself, they grabbed her by the arm and took her outside the house. They also took thirty-eight-year-old Murali Sunuwar. According to

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<sup>106</sup> Human Rights Watch interview, names withheld, March 15, 2004.

<sup>107</sup> One U.S. dollar is equal to seventy-five Nepali Rupees (as of September 28, 2004.)

<sup>108</sup> Human Rights Watch interviews, names withheld, March 15, 2004.

<sup>109</sup> Human Rights Watch interview with Karna Bahadur Rasaili, Kavre District, March 4, 2004.

her family, Reena Rasaili had no links to the Maoists, and was a student who worked as a social worker for the Kavre Rural Energy Development Center, educating the villagers about hygiene and other life skills.

Initially, the soldiers interrogated both Reena and Murali. According to Murali, the soldiers beat them both and hit them with rifles. Karna Bahadur, his wife, and his sister Devi Sunuwar were ordered to remain inside the home and was held at gunpoint. After about an hour or so, the soldiers lost interest in Murali and told him to sit to one side. They all began to question Reena. Murali witnessed the interrogation:

They asked her, “how many months did you spend with the Maoists? Where did you go? Where are their hideouts?” But they would not let Reena answer. They asked her questions and hit her on her feet with their rifle butts. Reena said that she was innocent and wanted to show them her identity card. She kept saying, “I am not Maoist. I want to live.”<sup>110</sup>

For some time, Reena was also moved to an adjacent cowshed. Recalls Murali. “I could not see what was going on but I could hear them shouting, accusing Reena of being a Maoist and I could hear Reena crying out in pain.”<sup>111</sup>

From midnight until 4:30 a.m., the frightened family members listened as the soldiers interrogated Reena, who kept insisting on her innocence, explaining that she had two siblings who were Maoists but that she herself was only a social worker. At some point in the night, the soldiers asked Karna Bahadur to find them some rope to tie Reena’s hands with.

At 4:30 a.m., a few gunshots rang out from elsewhere in the village, and soon thereafter a second group of soldiers arrived at the home of Karna Bahadur. The newly arrived soldiers apologized for being delayed, and Karna Bahadur overheard them speaking about the killing of a girl (who was later determined to be Subhadra Chaulagain, discussed below) in the village, saying that they had some difficulties because the gun misfired. According to Karna Bahadur, another soldier then asked what should be done with Reena, and was told “We’ll have to finish her as well.” When he heard this, Karna

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<sup>110</sup> Human Rights Watch interview with Murali Sunuwar, March 5, 2004.

<sup>111</sup> Ibid.

Bahadur went to the window to plead with the soldiers, but was told to go back and warned that “if you open that window again, we will kill you as well.”<sup>112</sup>

Reena was led away behind the house, and Murali was released and ordered to join the others inside. Fifteen minutes later, the family heard three shots coming from the back of the house. The family was too afraid to leave the house in the night, but went out as dawn broke the next morning and found the partially unclothed body of Reena less than one hundred meters away from their home. She had been shot in the head and chest. Human Rights Watch could not confirm the reports of local human rights activists that Reena had been raped, although the possibility cannot be excluded.

As indicated above, a separate group of soldiers also went to the home of Kedar Nath Chaulagain, located about two hundred meters away. That night, a Maoist who was a friend of Kedar’s daughter, seventeen-year-old Subhadra Chaulagain, had come to spend the night in the family’s home. At around midnight, a group of about thirty soldiers, most of them in civilian dress but including several in army and police uniforms, knocked on the door, initially identifying themselves as “brothers” in an attempt to pass themselves off as Maoists (Maoists frequently refer to one another as “brother” or “comrade”). As soon as the soldiers came to the house, the guest succeeded in fleeing through an upstairs window. The soldiers shot at him, but he escaped unharmed.

The soldiers, angered by the successful escape, began beating and cursing Kedar Chaulagain as soon as they entered the home. One of the men with the soldiers, apparently an informant, then pointed at Kedar’s daughter Subhadra and said, “That girl is Asmita, arrest her.” While the family attempted to explain that their daughter’s name was Subhadra and not Asmita, a soldier grabbed the girl and dragged her out of the house by her hair.

As her father watched while being guarded outside his home by two soldiers, a group of ten soldiers took his daughter outside and began questioning her. Subhadra explained that she had joined the Maoists for a period a year before but was no longer with them. She asked her mother to find her school identity card and then showed it as proof that she had resumed her studies. She begged the soldiers to arrest her and take her with them to the district headquarters so everything could be sorted out.<sup>113</sup>

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<sup>112</sup> Human Rights Watch interview with Karna Bahadur Rasaili, March 4, 2004.

<sup>113</sup> Human Rights Watch interview with Putali Chulagain, March 4, 2004.

Suddenly, one of the soldiers yelled, “The bitch is trying to flee” and opened fire on Subhadra. Immediately after the shooting, the soldiers came to Kedar Chaulagain and beat and kicked him to the point of unconsciousness before leaving. Her mother rushed to pick up her husband and daughter. She found the body of Subhadra just meters away from where she had been interrogated.<sup>114</sup>

### ***Extrajudicial Execution of suspected Maoists in Raghunathpur, mid-February, 2004***

One day in mid-February 2004, at about 11:00 a.m., a group of RNA soldiers unlawfully killed two men at Raghunathpur, executing both of them after they had been wounded. According to witnesses, the soldiers were dressed to appear like Maoists, wearing red bandanas across their foreheads and red cloths over their chests, but were recognized as soldiers by the villagers (and also identified themselves later as soldiers).<sup>115</sup> The soldiers first approached a group of men and children who were gathered around a pond on the outskirts of the village, playing cricket and washing themselves. When the soldiers approached, many of the villagers ran away out of fear, and the soldiers immediately opened fire.<sup>116</sup>

Among the group gathered at the pond was Kishori Raut Kurmi, a twenty-seven-year-old man who worked as a plumber in the nearby city of Birgunj and had come to the village to participate in his sister’s wedding ceremony. Kishori was riding his bicycle home, and when the soldiers began shooting he dropped his bicycle and ran away into the nearby fields. He was wounded in the chest while running, but managed to make his way into the village. An eyewitness told Human Rights Watch how the soldiers then located Kishori in the village and executed the wounded man right in front of her:

Kishori was injured in our onion field, just on the edge of some houses. He ran between the houses and came to me, wounded in the chest. When he was sitting, the soldiers came to us and grabbed Kishori. They then shot him in the head with a rifle. The army soldiers came, they told me to go away, and shot Kishori. I was just a few meters away. Then [after they killed Kishori] they asked me if he was a Maoist. I said no, he is from our village. Then they collected some young people from the village and took the body near the pond and buried it.<sup>117</sup>

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<sup>114</sup> Human Rights Watch interview with Kedar Prasad Chaulagain, March 4, 2004.

<sup>115</sup> Human Rights Watch interview, name withheld, March 12, 2004.

<sup>116</sup> Human Rights Watch interview, name withheld, March 12, 2004.

<sup>117</sup> Human Rights Watch interview, name withheld, March 12, 2004.

Another villager whose home overlooks the pond where the incident started and the fields where the shooting took place, also watched as Kishori was wounded and ran into the courtyard between the nearby homes. According to him, the soldiers split into two groups as they came to the village, still firing. One group went to search for Kishori, while the second group continued right by his home and killed a second villager, eighteen-year-old Suresh Raut Kurmi Patel, who worked at a nearby brick factory:

Suresh came outside toward a buffalo that had been wounded in the nose. When he heard the [continuing] firing, he ran away...Suresh was shot in the leg and fell down in the field. The soldier came up to Suresh and pulled him up, and then shot him in the chest. I saw this with my own eyes [from a house nearby.] Then they took the dead bodies to the field and buried them [near the pond.]<sup>118</sup>

The villagers, angered by the killings of innocent civilians, dug up the bodies a few days later and organized a large crowd to march with the exhumed bodies on the district headquarters in protest. At the district headquarters, the village leaders met with district officials and made a formal complaint about the murders, and according to one of the participants in the meeting were promised compensation. However, as far as the villagers were aware, no investigation into the killings has yet taken place and no compensation has been provided.

### ***Summary Executions and Unlawful Killings in Chure Bhiman, February 5, 2004***

On February 5, 2004, the RNA carried out a major raid against a group of Maoists, including the district's political commissar for the Maoists, Basu "Bikas" Chapagai, that was spending the night in the village of Chure Bhiman. Seventeen Maoists were killed in the raid, as were two civilians. While the presence of the Maoists in the village presented a military justification for the raid, the manner in which the RNA carried out the raid points to many of the same violations documented by Human Rights Watch in other cases: the execution of captured combatants and detained civilians suspected of being Maoists.

According to the local villagers, a group of Maoists had come to their village at 6:00 p.m. the night before, seeking to be quartered in civilian homes for the night. As elsewhere,

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<sup>118</sup> Human Rights Watch interview, name withheld, March 12, 2004.

the local villagers felt they had little choice but to comply with the Maoists' demands, and the Maoists were put up in several homes in the village.

Shortly before midnight, a large group of RNA soldiers entered the village, apparently tipped off that there were Maoists sleeping there. During their raid on the village, RNA soldiers killed two civilians, and executed two captured Maoists that they had used to show them the locations of other Maoists in the village.

A witness related to of one of the civilians killed, described how the RNA soldiers executed Raj Kumar, who was living in the village and working as a sharecropper, and then shot an elderly woman trying to prevent the execution:

At 6:00 p.m., five Maoists came to the house. They asked if we had a place to sleep, and I told them we did not have any space. Two came inside anyway, saw some space upstairs, and prepared to sleep. Three others went to sleep in the cattle shed. They didn't ask for any food.

At about 11:00 p.m., the soldiers came and surrounded our house. We were sleeping on the ground. Also at the house were my baby, my mother, and two brothers. Just before the army came, [a neighbor] and three other of his family came to our house.

The soldiers came, knocked on the door and asked us to open the door. They asked Raj Kumar to come out, and asked him where he was from and what he was doing in our village. Raj Kumar explained that he owned no land to cultivate, and so had come to work here. They asked for his complete address and he gave it. They said he was a Maoist, but he denied it. Then they took him to the corner of the yard and started firing [killing Raj Kumar].<sup>119</sup>

The neighbor's grandmother, eighty-year-old Suka Maya Bal, ran out of the home when she heard the shots, shouting for help. On the threshold of the home, she herself was shot by the soldiers, and retreated back into the home. She died of her wounds that night, a few hours after the shooting, according to eyewitnesses.<sup>120</sup>

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<sup>119</sup> Human Rights Watch interview, name withheld, March 9, 2004.

<sup>120</sup> Human Rights Watch interview, name withheld, March 9, 2004.

While it appears that most of the Maoists were killed during exchanges of gunfire with the soldiers, at least two of the Maoists killed that night were clearly detained by the soldiers, taken around the village to locate other Maoists, and then executed. A village woman told Human Rights Watch how two Maoists came to her home the previous evening and requested to sleep there. In the night, a group of soldiers came to her home, pretending to be Maoists. They captured the two sleeping Maoists without a fight, tied their hands behind their backs, and took them away.<sup>121</sup> The next morning, the bodies of the two captured Maoists, their hands still tied up, were found near the home of Lok Badner where two civilians and several Maoists were killed (see above).<sup>122</sup>

Human Rights Watch was unable to investigate the killing of the remaining Maoists who were staying in a home located elsewhere in the village, because the owner of the home—the only witness to the killings—had left the village after the incident. However, according to a report of the Nepal Bar Association, whose investigators met with the son of the home owner who was in the house: “There were several rounds of firing. I was inside and hiding myself on the bed. I could not come out because of fear. All of the Maoists who were staying at my house were killed. There was no firing from inside.”<sup>123</sup>

#### ***Summary Execution of suspected Maoist in Uswalpur, early-January 2004***

At about 2:00 a.m. on a night in early-January, 2004, a group of army soldiers surrounded the home of twenty-two-year-old Dinesh Mahoto in Uswalpur VDC. According to a relative, Dinesh Mahoto was a Maoist area commander.<sup>124</sup> The relative said the soldiers woke them from their sleep, and then ordered Dinesh Mahoto to come with them for some “work.” The mother of Dinesh Mahoto attempted to follow the soldiers and her son, but was ordered to return to her house by the soldiers, who threatened to shoot her if she did not comply.

Two hours later, the family heard some shots outside their home. Mahoto’s wife ran outside to find the soldiers pulling the body of her husband toward their truck with a rope tied to his arms. She stood watching and crying as the soldiers loaded the body of her husband onto their vehicle and left the area. The body of her husband was never returned to the family.<sup>125</sup>

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<sup>121</sup> Human Rights Watch interview, name withheld, March 9, 2004.

<sup>122</sup> Human Rights Watch interview, name withheld, March 9, 2004.

<sup>123</sup> Nepal Bar Association Investigative report on Bhiman, September 5, 2003.

<sup>124</sup> Human Rights Watch interview, name withheld, March 15, 2004.

<sup>125</sup> Human Rights Watch interview, name withheld, March 15, 2004.

### ***Summary Execution of five suspected Maoists in Sanischare, late-December, 2003***

At about 6:30 p.m. one evening in late December, 2003, a large group of RNA soldiers came to a village in Sanischare VDC, apparently tipped off that a group of Maoists had come to the village that same day to spend the night. According to a neighbor, one of the Maoists attempted to escape, but was caught by the soldiers:

One person was running across the fields and the soldiers were chasing him. They caught him about fifty meters from my house, while another group of soldiers surrounded my neighbor's house. The caught person was taken to the field just in front of my house and they started beating him. They beat him for about half an hour, and then they shot him in my potato field. He was beaten severely, and kept asking for water. He was on the ground laying down when they shot him, standing over him.<sup>126</sup>

According to the neighbor, as well as a second witness, the soldiers were able to enter the home where the Maoists were staying without a fire fight, and spent significant time inside the home, apparently interrogating the Maoists:

“The soldiers spoke to the Maoists for about one hour before they shot them...I heard them asking if they were central [committee] members of the Maoists, and I heard someone screaming in pain from inside. The soldiers had captured the Maoists. Then I heard four shots.”<sup>127</sup>

A third witness confirmed to Human Rights Watch that the soldiers had been in the upstairs of the home for about one hour “coming and going” prior to the shooting, but he could not overhear any conversation as he had been farther away from the home, and could not be sure if the soldiers had actually detained the Maoists prior to the shooting.<sup>128</sup> The neighbor, whose home was adjacent to the home where the incident took place, was adamant that the soldiers had been in the same room with the Maoists and had spoken to them for nearly an hour prior to the shooting.

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<sup>126</sup> Human Rights Watch interview, name withheld, March 16, 2004.

<sup>127</sup> *ibid.*

<sup>128</sup> Human Rights Watch interview, name withheld, March 16, 2004.



The circumstances of the killings—the long interval between the entry of the soldiers into the home and the firing of the shots that killed the Maoists, the conversations overheard by the neighbors, and the fact that only four shots were fired to kill four suspects, as well as the lack of any gunfire exchanges—strongly indicate that the four Maoist suspects were summarily executed long after coming under the control of the soldiers.

After the shooting, the army brought the four bodies, including the body of a woman, out of the home and gathered them in the field next to the body of the fifth Maoist shot out in the potato field. The army ordered the two neighbors out of their homes and asked them to identify the bodies, but neither men knew the Maoists. The soldiers then left, ordering the men to look after the bodies for the night, and returned the next day to bury the bodies on the outskirts of the village. The five Maoists remain buried on the outskirts of the village. The five dead Maoists were identified by the Informal Sector Service Center (INSEC), a leading human rights NGO, as Mitra P. Bhattarai, Menuka Chemjong, Bir Bahadur Basret, Rajendra Gautam, and Nagendra Pokhrel.

### ***Summary Execution of two suspected Maoists in Madeli, mid-December, 2003***

At about 5:30 a.m. on a day in mid-December 2003, a group of about thirty to thirty-five RNA soldiers and police officials entered a village in Madeli VDC. According to villagers, several Maoists from other villages had stayed the night in that village, and three Maoists were captured by the security services, after some shooting which accidentally wounded an eight-year-old boy, Ashok Sharma. Three villagers were also captured by the security services, and told Human Rights Watch how the security services began to beat and interrogate the three suspected Maoists, and then executed two, before leaving the village with the third captured Maoist suspect who they never saw again.

According to a seventeen-year-old student who was among the local villagers detained with the Maoists suspects:

Another three people were arrested and their hands were tied...It was about 6:30 a.m. when I saw them. They were taken to where I was being kept, and questioned about their professions and homes. Then they were told to sit down. After they sat down, the soldiers started beating them, for about forty-five minutes. Then they took two of them just a few meters away. The soldiers ordered the two men to stand and shot them from behind. I was still sitting with the other detained

persons. The next one [i.e., the third Maoist suspect] was beaten. At around noon, they took the third one with them as they walked through the village. They released me first, I don't know what happened to him.

The people killed were not from the village, I didn't know them. When the army beat them, they admitted they were Maoists.<sup>129</sup>

A second man detained with the Maoist suspects gave an identical account in a separate interview with Human Rights Watch: "The army started beating the three Maoists, and then asked us villagers if we wanted to watch the killings. We said we didn't want to see it. The army took all three about ten meters away. They then took two of them to the road near a canal and shot them."<sup>130</sup> According to local human rights investigators from INSEC, the disappeared third person is Pramod Chaudhari, aged twenty-six, who has been missing since the incident.

### ***Summary Execution of four Suspected Maoists in Thanmunna, late-November, 2003***

A large religious festival was taking place in Thanmunna VDC in late November 2003. The festival was drawing in villagers from the surrounding area. Probably tipped off that Maoists would go to the festival, a group of fifty or sixty soldiers set up checkpoints around the village, attempting to intercept the Maoists. A sixty-three-year-old man was on his way to the festival at about 8:30 am when he heard two shots coming from the army checkpoint and saw soldiers chasing a man through the fields. According to the man, "two soldiers took a motorcycle from the village and started chasing the man who was running. He fell down in the canal, and the soldiers pulled him out of the canal, brought him to the side of the road, and shot him twice. They left his body there."<sup>131</sup>

Meanwhile, soldiers at the north side of the village had also detained three Maoists suspects, apparently after finding pipe bombs in the bags they were carrying. Several witnesses, including a local government worker, told Human Rights Watch that they saw the three detained Maoists being held in a yard in the village, blindfolded and with their hands tied behind their backs. Later, shots were heard coming from the yard, and when she returned from work the government worker saw the bodies of the three suspected

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<sup>129</sup> Human Rights Watch interview, name withheld, March 16, 2004.

<sup>130</sup> Human Rights Watch interview, name withheld, March 16, 2004.

<sup>131</sup> Human Rights Watch interview, name withheld, March 15, 2004.

Maoists in the same yard she had last seen them alive, bound and blindfolded, strongly suggesting that the men had been summarily executed.<sup>132</sup>

The bodies of the three men were thrown in a hole and superficially covered, while the fourth body was thrown in the canal. The next day, the army returned, and made local villagers bury the bodies in a deeper grave, where they remained when Human Rights Watch visited. According to local human rights workers, the four killed men were identified as Buddi Binod Pokhrel alias “Bishwas,” Bal Bahadur Sardar, Umar Chaudhari, and Shankar Poudel.

### ***Summary Execution and killing of suspected Maoists in Bengadabar, mid-September, 2003***

One morning in mid-September 2003, at about 10:30 a.m., a military vehicle stopped in front of the Bengadabar VDC home of Ganesh Jarga, a forty-seven-year-old man who was, according to a relative, a Maoist area commander. When the army arrived, Jarga was in front of his home, repairing a bicycle while a Maoist district committee member, thirty-five-year-old Rohit Kafle, was visiting him. When the army vehicle stopped in front of the home, someone inside said “He’s home.” The two suspected Maoists started running away and the soldiers gave chase.

Ganesh Jarga’s relatives told Human Rights Watch that he was caught at the back of the house before being brought back in the front yard where he was later executed. According to an eyewitness of the killing:

The soldiers started chasing from both sides of the house. Rohit was running fast, but Ganesh is older and slower. They chased him some ninety meters and then caught him...They took him to the street [in the front of the house]...They spoke to [his wife]. After about a half hour, they took him behind the mango trees in the wheat field and shot him four times.<sup>133</sup>

A relative told Human Rights Watch that the soldiers who took her husband to the street in front of the house briefly spoke to their superiors over the radio, and received direct instructions to kill the captured man. She claims that she overheard the soldiers

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<sup>132</sup> Human Rights Watch interview with government official, March 15, 2004. Another witness also saw the three Maoists blindfolded and with their hands tied in the yard, and later heard five or six shots when the soldiers executed the men.

<sup>133</sup> Human Rights Watch interview, name withheld, March 15, 2004.

speaking on their radio set, telling their superiors “We have arrested one, what should we do?” The response, according to the witness was “Shoot them from behind.” Almost immediately, the soldiers took Ganesh Jarga behind the house and executed him.<sup>134</sup>

Rohit, the Maoist district committee member who was visiting Ganesh Jarga, was also killed in the encounter. He ran behind the home, but was wounded while trying to flee. According to the witnesses, the soldiers only found Rohit after a lengthy search of the fields behind the home, and then fired several more shots, killing him. It is unknown whether Rohit resisted when he was finally located by the soldiers, or whether the soldiers executed an already wounded man. After the killings, the army collected both bodies, and took the bodies with them. The bodies were never returned to the families.<sup>135</sup>

### ***Unlawful Killings of two civilians in Bara district, early August, 2003***

Around noon on a day in early August, 2003 a group of about fifty policemen dressed in plain blue uniforms killed two civilians in Bara District. The policemen approached the village from the direction of the bazaar at about 11:00 a.m., splitting into two groups. A teenage boy witnessed the killing of forty-five-year-old Raj Dev Yadav by one of the police groups before he himself was detained:

It was during daytime, just after lunch. Six or seven people including myself were cutting grass out in the field. We were sitting under a big tree. The police came towards us and ordered us to remain seated there.

Raj Dev had gone to town to sell his cows. He didn't see the police coming from behind him. He was on his bicycle, and stopped his bicycle to go to the field to relieve himself. When he got back to the road, he had some mud on his pants.

The police were waiting at the road and asked where he was from, asking him his name and demanding he point out his house. Raj Dev said he had come back with money from selling his cows. They asked him why he had gone to the field, and he explained he had gone to the

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<sup>134</sup> Human Rights Watch interview, name withheld, March 15, 2004.

<sup>135</sup> Human Rights Watch interview, name withheld, March 15, 2004.

toilet. Then the police shot him. At first the gun didn't go off, so they shot him again [and killed him].<sup>136</sup>

After the shooting, the other men cutting grass were detained and taken to the police station for the night, where one of the men was beaten.

Around the same time as the killing of Raj Dev, the second group of policemen killed thirty-five-year-old Bramaha Dev Ram nearby. According to a farmer who was accompanying Bramaha Dev Ram to his field at the time of the shooting, a group of about fifteen policemen came up to Bramaha Dev Ram, asked him to stop, and shot him from a distance of about eight meters: "The police team stopped Bramaha Dev Ram, and then they shot him. He was stopped when they shot him, he didn't try to run away. He was about eight meters away from the police. They didn't ask any questions."<sup>137</sup>

The police motive for the killings remains unclear. The relatives of the victims and other witnesses are adamant that the victims were not Maoists, only simple farmers. Even if the two victims were suspected Maoists, the accounts of the killings given by villagers suggest that the police could have easily arrested the men, as both appear to have been stopped and cooperating with the police. As with so many killings in Nepal, no investigation of the circumstances of the killings appear to have taken place, as none of the witnesses or family members were contacted by investigators after the killings.

### ***Summary Execution of Haider Ansari, July 29, 2003***

At about 10:30 a.m. on July 29, 2003, a group of thirty or thirty-five Nepali police entered Parsa, driving their truck to the main market place before descending. Initially, the villagers thought a group of Maoists had entered the village, confused by the informal dress of the police and the red bandanas some were wearing. The police soon started shooting at villagers who attempted to run away, according to the villagers. A farmer described how the police caught one of the villagers, twenty-four-year-old Haider Ansari, and promptly executed him:

I was out doing my toilet when I saw people running and heard firing. There was a rice field nearby and I went to hide there. Haider was also there. They caught Haider, and asked him, "Who are you?" He said he was a farmer and was in the field to manage his irrigation. They accused

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<sup>136</sup> Human Rights Watch interview, name withheld, March 11, 2004.

<sup>137</sup> Human Rights Watch interview, name withheld, March 11, 2004.

him of being a Maoist, and he said he wasn't. Then they asked him for his name, and he said "My name is Haider." As soon as he gave his name, two of them started firing at him. Haider fell down in the rice field—the ones who shot him were right next to Haider.<sup>138</sup>

The shooting spree of the police seems to have been particularly indiscriminate. Another villager, a fifty-year-old retired man, was shot in the arm at the back of his house, and had to flee for his life through the fields.<sup>139</sup> After the killing of Haider, who was Muslim, the villagers took his body to the local mosque. The police then came to the mosque, and took the body away. The body was never returned to the family, which is adamant that Haider had nothing to do with the Maoists.

Although the police attempted to disguise themselves as Maoists—a common tactic, aimed at flushing out Maoist sympathizers who would return the traditional "red greetings"—they revealed their real identity during the raid by arresting about a dozen villagers, and taking them to the police station in Nawalpur where the villagers were beaten with sticks and interrogated for the next three days.<sup>140</sup>

### ***Extrajudicial Executions of two women in Bardiya District, mid-December 2003***

In the dry winter months, villagers in the southern plains known as the Terai will often take their livestock and move into makeshift accommodations by the edge of the woods where there is more fodder for the animals. Following this tradition, several women in the small isolated village of Mahadevpuri had moved with their livestock to the edge of the woods, about half an hour away from the village. On the night of December 16, 2003, some women, including Jayakali and Hitkala Dangee, were asleep in the makeshift accommodation. Also with them was Hitkala's young son.

At around one in the morning, one of the women felt someone nudging her awake. She woke up, and found several soldiers standing around the sleeping women. By the light of the dying fire, she could see that some of these soldiers were in civilian clothes, and some were in camouflage uniforms. The men were all well armed, and all of them wore black army boots. Villagers who had been in the woods both the day before and on that day remember seeing many soldiers positioned at different points throughout the woods.

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<sup>138</sup> Human Rights Watch interview, name withheld, March 13, 2004.

<sup>139</sup> Human Rights Watch interview, name withheld, March 13, 2004.

<sup>140</sup> Human Rights Watch interview, name withheld, March 13, 2004.

The soldiers falsely told the women that they were Maoists who hid by day and moved by night. They asked the women to make food for them. One woman pretended that she had hurt her hand, and on that excuse stayed lying down. Hitkala got up, re-kindled the fire, and prepared food for the soldiers. After they had eaten, the soldiers told Hitkala that they were looking for their comrades who were supposed to be at a nearby Maoist training center. They told the women that they needed to show them the way to the training center. Hitkala asked one of the other women to look after her young son, and then she asked Jayakali to come with her so that she would not be alone with the soldiers.

Jayakali and Hitkala walked ahead of the men, who followed behind with flashlights in their hands. As they went off, the women realized that there were many other soldiers right around them, stationed in different places in the fields and the woods.

The two women never returned. Their bodies were found seventeen days later, stuffed into a shallow grave by the side of a stream. Stones and rocks had been put on top of the grave. There were no bullets in their bodies. There were bruises on both their faces. Because of the lapse of time and the lack of forensic expertise in such an isolated area, the cause of their deaths has not been established. The villagers believe that the two women were raped and then strangled, but the lack of forensic evidence and the fact that the women were killed outside the presence of any villagers makes it impossible to confirm these allegations. The army and forces under its control have yet to investigate what happened to these two women who were last seen alive in their custody.<sup>141</sup>

## **V. SUMMARY EXECUTIONS OF CIVILIANS BY MAOIST FORCES**

The Maoists are responsible for a significant number of summary executions of civilians. Often, the executions are preceded by torture of the victims, which in many cases is done publicly in front of villagers and family members. The Maoists tend to target particular individuals for assassination or execution, particularly suspected government informants, local political activists or non-Maoist party officials, local government officials and civil servants, and individuals who refuse extortion demands from the Maoists. The Maoists are also responsible for executions of off-duty army and police officers, often capturing them when they go to their villages to visit family members. In

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<sup>141</sup> Human Rights Watch interview with six witnesses, names withheld, March 17, 2004. Human Rights Watch has also received corroborative testimony from a Commissioner of the National Human Rights Commission, who was present for the exhumation of the bodies.

the vast majority of cases, the Maoists officially claim responsibility for their killings, explaining that the executed individuals were “informers,” a vague charge which encompasses any act which defies Maoist dictates. Typically, the Maoists will return to the village of their victim, and inform the family or villagers of the killing. In more high profile cases, such as the murder of Ganesh Chilawal summarized below, the Maoists will post an article on their website describing the murder as a significant success in their “march towards victory.”

Because the Maoists often kill individuals to punish them for rejecting Maoist rule—that is, collaborating with the government, engaging in non-Maoist political activities, refusing to pay extortion—the Maoists often carry out their executions in plain view, and occasionally demand that local villagers and family members of the victims be present during the killings in an attempt to ensure the maximum deterrent effect on the population. In other words, the Maoists clearly use targeted killings to intimidate local villagers, ensuring that villagers know that deviance from Maoist demands will result in a brutal death. Because the killings are aimed at instilling fear, they are often accompanied by horrific torture and slow and painful killing methods, making the victim suffer for hours before death. In other cases, Maoists simply execute their victims with a single gunshot.

An official of the Nepal Human Rights Commission explained to Human Rights Watch that the “killings from the side of the Maoists were intended to terrorize the population,” and that such killings, particularly the killings of suspected informants, were often “unimaginably brutal,” involving mutilations such as cutting out the tongues of victims, breaking individual's bones until the death of the victim, and burning victims alive.<sup>142</sup> The head of Nepal's leading human rights organization, INSEC, similarly confirmed that his organization had documented that torture was used in the majority of killings committed by Maoists, and explained that his organization had documented many cases where victims had their bones broken or had been mutilated and tortured prior to death.<sup>143</sup>

The impact of the Maoists' campaign of killings is clearly visible in Nepal. A single Maoist murder sends an effective message to an entire area and makes the local population acutely aware of the consequences of arousing the suspicion of the Maoists. In many of the villages visited by Human Rights Watch in Maoist-controlled areas,

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<sup>142</sup> Human Rights Watch interview with member of the NHRC, name withheld, Kathmandu, March 4, 2004.

<sup>143</sup> The 2004 edition of the *Nepal Human Rights Yearbook* lists almost 100 killings committed by the Maoists using brutal methods such as beatings, throat-slitting, and hangings. *INSEC Human Rights Yearbook 2004*, p. 329.



villagers were simply too terrified to even discuss any Maoist violations in the area. The extreme brutality of the Maoist killings, as well as the remoteness of the areas in which some of the worst abuses have been reported, makes investigating Maoist abuses in Nepal much more difficult than documenting government abuses. In rural Nepal, almost every village has Maoist informers (reportedly often children) and publicly discussing Maoist abuses could have dire consequences. In contrast, the government forces have only an occasional presence in rural Nepal when they move through on operations, so local villagers do not fear negative consequences from discussing government abuses.

The Maoists' brutal treatment of informants indicates how the "dirty war" tactics used by both sides in Nepal contributes to an ever-increasing cycle of abuse. As documented elsewhere in this report, Nepali government forces rely heavily on local informants to identify and locate possible Maoists officials and activists, and then frequently carry out missions that involve the capture and execution of those suspected Maoists. Since one of the main threats to the security of Maoists activists is local informants, and not direct combat situations, the Maoists have resorted to unspeakable brutality to deter informants and to intimidate villagers.

Increasingly, both Maoists and government forces are blurring the lines of responsibility for killings by attempting to disguise themselves as belonging to the other side. Maoists have dressed and acted like government troops in carrying out some killings, and government troops have dressed and acted as Maoists, as in several of the case documented in the previous chapter. This reliance on misinformation and confusion contributes further to a climate of impunity in Nepal, as it makes it more difficult to establish responsibility and ultimately accountability for killings and other human rights abuses.

The continued targeting of peaceful non-Maoist political activists by the Maoists is a particularly troubling trend, and demonstrates the Maoists' intolerance for political opposition to their absolute control. Many of the political activists murdered by the Maoists committed no greater crime than continuing their membership in non-Maoist political organizations such as the Nepali Congress or the United Marxist Leninists, and many were popularly elected by the local civilian population. The Maoists' ongoing campaign of murder against their peaceful political opponents reveals that they brook no opposition, and belies their public advocacy for a democratic state.

### ***Summary Execution in Gharhal, March 8, 2004***

On March 8, 2004, at about 4:00 p.m., a group of four Maoists came to the office of Nagendra Shah, a local landowner in Gharhal VDC Ward 7 who was meeting with his farm workers at the time. Nagendra Shah had apparently caught the attention of the Maoists by claiming that he owned an AK-47 assault rifle. The four men, whose faces were covered with handkerchiefs, surrounded Nagendra Shah, immediately fired three pistol rounds into his head, and ran away. The villagers chased the Maoists and caught one of them, beating him to death with sticks.<sup>144</sup> According to a relative of the victim, Nagendra Shah was murdered by the Maoists because he refused to give them money they had demanded to purchase weapons. The Maoists had repeatedly come to see Nagendra Shah to negotiate over the amount he should pay them, and finally murdered him when he refused to meet their demands.<sup>145</sup>

### ***Summary Execution of suspected collaborator in Devapur, February 21, 2004***

On February 21, 2004, at about 10:30 p.m., a group of eight or nine armed men in black clothes came to the home of Rameshower Prasad Yadav, a forty-eight-year-old teacher living in Teta village, Bara district. The men initially claimed they were army soldiers, saying they wanted Rameshower to come with them to search some homes in the village. Rameshower reluctantly agreed to accompany the men, but apparently soon realized they were Maoists and attempted to escape. About ten minutes after he left his home, Rameshower was knifed in the stomach and shot twice in the chest and once in the arm. He died as villagers attempted to take him to a hospital.<sup>146</sup> According to a relative, the Maoists killed Rameshwor because he had negotiated the peaceful surrender of two Maoists to the army just two weeks before his murder, and had refused to pay extortion to the Maoists.<sup>147</sup>

### ***Summary Execution of anti-Maoist human rights activist Ganesh Chilawal, Kathmandu, February 15, 2004***

Ganesh Chilawal, a thirty-five-year old man, was gunned down in broad daylight by the Maoists for his work advocating on behalf of victims of Maoist abuses. Chilawal was an

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<sup>144</sup> Human Rights Watch interview, name withheld, March 11, 2004.

<sup>145</sup> Human Rights Watch interview, name withheld, March 11, 2004. According to one witness Nagendra Shah had initially falsely claimed that he owned an AK-47 when Maoists appeared in the area, in an attempt to prevent the Maoists from attacking him. The Maoists then came to demand the non-existent weapon, and later demanded 700,000 Nepali rupees from Shah, who refused to pay.

<sup>146</sup> Human Rights Watch interview, name withheld, March 11, 2004.

<sup>147</sup> Human Rights Watch interview, name withheld, March 11, 2004.

active member of the Nepali Congress Party. In 1998, he was attacked by Maoists in his village home for his pro-Congress activities. He had been cut all over his body, and had to be hospitalized for three months. After this experience, he founded the Maoist Victims Association, an NGO working to help civilians who had been victimized in different ways by the Maoists. As part of this work, Chilawal spoke out openly against the abuses suffered by the persons who sought the support of his organization.

The Maoists started threatening Chilawal directly. He received threats to his life through letters, faxes and telephone calls. His family told him to stop; they knew from his first experience that the Maoists could be very brutal in their assaults. But Chilawal persisted in his work helping victims, and denouncing the Maoists, going so far as provocatively burning an effigy of the leaders of the Maoist movement in public.

On February 15, 2004, the family noticed an increase in the number of phone calls and faxes threatening Chilawal's life. It was a Sunday, and his family urged him to stay at home, not to go to work that day. But he had meetings scheduled, and he went to his office. His office workers noticed nothing unusual. At the end of the day, at 5:10 p.m., Chilawal came out of his office to go back to his house. As he came down the stairs, five rounds of bullets were fired at him. He collapsed and died almost instantly. His office workers rushed out and noticed a motorbike with two men speeding away. The Maoists have since claimed responsibility for Chilawal's murder, even posting his murder as a success on their website.<sup>148</sup>

### ***Murder of anti-Maoist activist Musharaff Khan, November 5, 2003***

Musharaff Khan was a member of a small Muslim community in the village of Raniapur 9 who had secretly started an anti-Maoist committee, working to counter some of the Maoist propaganda. The Maoists found out about this committee, and told him to stop his activities. As a result of this threat, he moved to Nepalgunj, coming to Raniapur only occasionally for fear of what the Maoists would do to him.

He came home for the Muslim religious holiday of Muharram on November 5, 2003. That same night, at 11:30 p.m., about twenty armed Maoists surrounded his house and forced their way in. Eyewitnesses said that the Maoists were heavily armed, carrying grenades, pistols and semi-automatic rifles. When they entered the house, they grabbed all the family members who were inside by their necks, and forced them to sit on the

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<sup>148</sup> Human Rights Watch interviews, names withheld, Kathmandu, March 11, 2004. See [online] <http://cpnm.org/new/KrishnaSenOnline/index.htm> for information from the Communist Party of Nepal (Maoist) about Chilawal's murder.

ground, facing down. Musharaff Khan unsuccessfully tried to run away, but the Maoists caught him and took him away. The family searched all night for him but could not find out what happened to him or where he was taken to. Two days later, on November 7, his body was found in the fields north of Raniapur. There were multiple injuries on his face and hands from beatings. His body was riddled with eight bullets, including one through his ear, and another in the back of his neck.<sup>149</sup>

### ***Summary Execution of non-Maoist political activist in Mangalpur District, August 20, 2003***

On August 20, 2003, at about 8:45 p.m., a group of three Maoists visited the home of Min Bahadur Thapa, the ward chairman of Dhanusha Govindapur VDC Ward 6 in Mangalpur, and a member of the Nepali Congress Party. After identifying themselves as Maoists, the three men detained and blindfolded Min Bahadur Thapa and his brother, Bhuwan Thapa, telling the remaining family members that they would question and release the men, and ordering everyone to stay inside the home. After being questioned, Bhuwan Thapa was released at about 2 a.m. The body of Min Bahadur Thapa was found the next morning at 5 a.m. in a field about one kilometer from his home, his throat cut and his body apparently mutilated.<sup>150</sup>

### ***Summary execution of suspected informants in Banke District, June 19, 2003***

Around 10:30 p.m. on June 19, 2003, a group of men who identified themselves as Maoists came to the village of Bhandariya and rounded up about fourteen village men. These men were taken to a spot along the main dirt road in Bhandariya village, and tied up “chicken-style,” in a squatting position with their arms looped under their knees and tied up behind their ears. Villagers, including family members and children, were gathered around, watching. The Maoists shouted at the men, claiming that they had informed against the Maoists to the army. Among other things, the Maoists said: “Three of our comrades were killed. We are fighting for you and you dare to betray us.”<sup>151</sup> The villagers believe that this was a reference to an army ambush near their village in which some Maoists, including a senior commander, had been killed.

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<sup>149</sup> Human Rights Watch interviews, name withheld, March 15, 2004.

<sup>150</sup> Human Rights Watch interview, name withheld, March 14, 2004. Human Rights Watch was unable to interview Bhuwan Thapa, the surviving brother, because he had left the village and gone into hiding after the killing.

<sup>151</sup> Human Rights Watch interview, name withheld, March 16, 2004.

After half an hour, several of the men were released. The Maoists took away four men: Jahara Sheikh, Triveni Prasad Baniya, Shaijad Ali Sheik and Chet Prasad Sharma. Shortly thereafter, villagers heard the sound of bullet fire coming from the fields outside the village. They formed a search group, and at about 10:00 p.m., they found the bodies. All four had been shot, and their legs and arms had been broken. Villagers noticed what looked like burn marks on the body of Baniya. One of his feet was twisted around completely. Jahara Sheikh had bullet wounds in his forehead and his temple. His eye had come out of its socket with the force of the bullet. One of the four men survived the shooting; although he spent six months recovering in Bheri Zonal Hospital, he still is unable to walk properly.<sup>152</sup>

***Summary execution of suspected government informants in Dhanusadham, June 17, 2003***

On June 17, 2003 at about 9:00 p.m., a group of five or six Maoists came to the family home of Shubha Lal Yadav, a fifty-five-year-old farmer living in Dhanusadham VDC ward 7. The Maoists abducted Shubha Lal Yadav and his wife Radiya Devi Yadav, aged forty-five. The next morning, the couple's bodies were found on the eastern edge of their village, their throats cut. Apparently, the couple was killed because Shubha Lal had called in the police a year earlier when his house had been robbed, and had maintained cordial relations with several police officers since then.<sup>153</sup>

***Summary Execution of non-Maoist political activist in Bengashivapur, June 15, 2003***

On June 15, 2003 at 11:30 p.m., a group of about thirty-five Maoists came to the home of fifty-five-year-old Girdhari Shah, the president of the village development committee in Bengashivapur VDC Ward 7, near Janakpur. Girdhari Shah was a long-term member of the royalist Rastriya Prajatantra Party (RPP). Three Maoists came inside the home, captured Girdhari Shah and tied his hands, and proceeded to search and loot his home, stealing thirty grams of gold, 45,000 Nepali rupees (U.S. \$600), a VCR and CDs. The Maoists also broke the family's television. They then went to the neighboring home and detained Girdhari Shah's two sons as well as two guests staying at their house. About one kilometer from the village, the Maoists questioned all the detained men, asking them whether they supported the king. All were then released, except for Girdhari Shah, who was a well-known supporter of the king. The next morning, the body of Girdhari

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<sup>152</sup> Human Rights Watch interview, name withheld, March 16, 2004.

<sup>153</sup> Human Rights Watch interview, name withheld, March 14, 2004.

Shah was found close to the place where he was last seen alive, his hands still tied, with two bullet wounds to his chest.<sup>154</sup>

### ***Abduction and Possible Execution of a Local Politician in Kharkawai***

Prem Bahadur Oli was an RPP ward representative in the village of Kharkawa, and he was active in local politics. He was taken away by armed Maoists at around 10:00 p.m. on September 5, 2003. The Maoists surrounded his house, and forced their way in. They went to Oli and started hitting and kicking him. When his wife begged the Maoists to stop, they hit her and threw her against the door. They also held a gun to the chest of Oli's twelve-year-old son, and threatened to kill him. They then handcuffed Oli and dragged him out of the house. Oli has not been seen since then, and the family fears that he has been killed.

A village woman who was present recognized three of the Maoists as men from her own village. She says they have not returned to the village since Oli was taken away.<sup>155</sup>

## **VI. RECRUITMENT AND USE OF CHILDREN BY MAOISTS**

The conflict between government forces and Maoist rebels has had a profound effect on children throughout the country.<sup>156</sup> Human Rights Watch did not specifically investigate the Maoist's recruitment and use of children as soldiers or in other capacities during hostilities. However, accounts gathered by Human Rights Watch indicate that the Maoists have recruited children and used them for logistical support in front line combat, for carrying ammunitions and supplies, and as cooks and porters.<sup>157</sup>

The Maoists initially made no attempt to hide the fact that they use children in hostilities declaring, for example, that "the increasing participation of women in the People's War has had another bonanza... [namely] the drawing of children in the

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<sup>154</sup> Human Rights Watch interview, name withheld, March 14, 2004.

<sup>155</sup> Human Rights Watch interview, name withheld, March 17, 2004.

<sup>156</sup> *State of the Rights of the Child in Nepal: Nepal 2003*, (Nepal: Child Workers in Nepal Concerned Centre (CWIN), 2003). According to CWIN, until January 2004, two hundred and seventy eight children had been killed in the conflict and one hundred and sixty one injured. [online] [http://www.cwin-nepal.org/press\\_room/factsheet/fact\\_cic.html](http://www.cwin-nepal.org/press_room/factsheet/fact_cic.html) (retrieved April 1, 2004).

<sup>157</sup> See below, Human Rights Watch interview with Renu Ale; *State of the Rights of the Child in Nepal – 2003*, Child Workers in Nepal Concerned Centre (CWIN), 2003. One Maoist Human Rights Watch talked to said that the Maoists encourage children to spy on their neighbors and discover possible traitors. "Children find out many things because no one pays attention to them," he explained.

process of war and their politicization.”<sup>158</sup> Over time, and under increasing criticism, the Maoists have denied recruiting and abducting children less than eighteen years old.<sup>159</sup> This denial is contradicted by the findings of human rights groups and Nepal experts.<sup>160</sup> As recently as February 23, 2004, the student wing of the Maoists stated that the Maoists were going to raise a fifty thousand strong child militia in order to counter a sharp dwindling of their ranks.<sup>161</sup> “There is no age limit for recruitment to the child militia but bona fide rules of war will apply,” said Maoist student leader Kamal Shahi. “None will be coerced. One militia will be levied from each school.”<sup>162</sup> Children who have been taken into the Maoist forces and then released have also reported to human rights groups that they received guerrilla combat training.<sup>163</sup>

The RNA and the government claim that the Maoists send in waves of civilians, including children, in the fore guard of an attack, in an attempt to cripple the army’s capacity to fight back.<sup>164</sup> However, the government has not to date provided a detailed accounting of the use of children by Maoist forces beyond what has been reported in the media.<sup>165</sup>

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<sup>158</sup> Statement published on official Maoist website, August 2003, [online] <http://www.cpnm.org/english/statements> (retrieved September 27, 2004.)

<sup>159</sup> “Maoists deny charges of using child soldiers”, *The Sunday Post*, April 20, 2003, [online] [http://www.kantipuronline.com/archive/kpost/2003-4-20/kp\\_valnation.htm](http://www.kantipuronline.com/archive/kpost/2003-4-20/kp_valnation.htm) (retrieved September 27, 2004); “Rebel leader on Nepal’s ‘last war’”, CNN Interview, November 14, 2002, [online] <http://edition.cnn.com/2002/WORLD/asiapcf/south/11/14/nepal.leader.iv> (retrieved September 28, 2004.)

<sup>160</sup> See, for example, “Nepal: A Spiraling Human Rights Crisis,” AI ASA 31/016/2002; “Nepal: A Deepening Human Rights Crisis,” AI ASA 31/072/2002. Thapa, *A Kingdom Under Siege*, 162; Gautam, Shobha, Amrit Baskota, and Rita Manchanda, *Where There are No Men*, (New Delhi: Sage Publications, 2001.) Dr. Gopal Krishna Siwakoti, Executive Director of the International Institute of Human Rights, Environment and Development (INHURED) wrote in 2003 that “there is an evidential fear that children are being deliberately recruited as combatants. This has been made convincing by the fact that dozens of children are becoming victims of the target. The problem is most prevalent in Rukum, Rolpa and Jajarkot, Gorkha, Salyan, Sindhupalchowk, Kavre and Sindhuli districts, although several other districts are being crippled with violence. Most children taking part in armed conflict are found between 14 to 18 years of age, but many are believed to have been recruited from the age of below 15, and the use of even younger children cannot be ruled out.”

<sup>161</sup> See remarks of Kamal Shahi of the All Nepal National Independent Students’ Union–Revolutionary (ANNISU-R) in “Nepal Maoists to raise 50,000-strong child militia,” Indo-Asian News Service, February 2, 2004, [online] <http://www.keralanext.com/news/index.asp?id=27384>, (retrieved September 27, 2004.)

<sup>162</sup> “Abduction of Children”, UN Office of the Special Representative for Children & Armed Conflict, [online] <http://www.un.org/special-rep/children-armed-conflict/English/Abduction.html>

<sup>163</sup> *ibid.*

<sup>164</sup> “Polls on despite Beni clash:Govt,” March 23, 2004.[online] [www.thehimalayantimes.com/index/.aspname=home.htm](http://www.thehimalayantimes.com/index/.aspname=home.htm) (retrieved March 27, 2004.) However, an international human rights officer who investigated the fighting in Beni told Human Rights Watch that there was no evidence of the use of civilians by the Maoists.

<sup>165</sup> See Second and Third Combined periodic national report of Nepal to the CRC, CRC/C/65/Add.3, December 2002, para. 317.

The use of children in armed conflict is a violation of the Convention on the Rights of the Child (CRC), which Nepal ratified in 1990. The CRC sets fifteen as the minimum age for military recruitment, but in all other respects defines a child as anyone less than eighteen years of age.<sup>166</sup> The CRC standard is derived from Protocol II to the Geneva Conventions, now considered customary international law, which prohibits all parties to an internal armed conflict from recruiting children under the age of fifteen or allowing them to take part in hostilities.<sup>167</sup> The Optional Protocol to the CRC on the involvement of children in armed conflicts, to which Nepal is a signatory, prohibits states parties from compulsorily recruiting children under age eighteen or having them take a direct part in hostilities.<sup>168</sup> The Optional Protocol prohibits armed groups, under any circumstances, from recruiting or using in hostilities persons under the age of eighteen years.<sup>169</sup>

The government of Nepal has not established a functional rehabilitation and re-integration program for former Maoists combatants, child or adult, and has paid no special attention to rehabilitating or reintegrating child soldiers in particular. While some child soldiers reportedly returned home after the ceasefire was declared on January 29, 2003, they were not officially demobilized. At the time, these children told journalists they were afraid that they could be re-recruited if the conflict resumed;<sup>170</sup> what has happened to them since the breakdown of talks in August 2003 is unknown. The capacity of the government or international donors who work in Maoist-controlled areas to gather facts and install protection and reintegration programs is very limited.

In addition to the use of children in combat, the Maoists have forcibly abducted students from schools for political indoctrination. Children and adults who have been abducted describe being given lectures on Maoism and on their rights as citizens. There is also a cultural program during indoctrination, where Maoist songs and dances are taught. This practice is well-reported and is readily admitted by the Maoists.<sup>171</sup> While most abducted

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<sup>166</sup> Article 38, Convention on the Rights of the Child, G.A. Resolution 44/25, November 20, 1989, entered into force September 2, 1990. Human Rights Watch takes the position that no one under the age of eighteen should take part in armed conflict.

<sup>167</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977.

<sup>168</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002, art. 1 and 2.

<sup>169</sup> *Ibid.*, art. 4.

<sup>170</sup> "Child soldiers wish for peace, do not want to return to the jungle," Deutsche Presse-Agentur, May 2, 2003.

<sup>171</sup> See, for example, "200 school children abducted in Acchham," December 6, 2003; "150 students abducted," January 27, 2003; "153 students, 5 teachers abducted," February 1, 2004; "65 more students abducted," February 2, 2004; "Over 60 students abducted from Rukum," February 27, 2004; "Maoists abduct 40 students, kill 2 civilians," March 30, 2004; "Maoists abduct over 500 students," April 29, 2004; "over 30 students, teachers



children are returned days or weeks later, others remain unaccounted for.<sup>172</sup> Some of the girls who were released after abductions have reported sexual abuse to human rights groups.<sup>173</sup>

Child abductions have had a debilitating impact on the educational system, causing many parents to keep their children at home rather than risk sending them to school, and, in some places, forcing the schools to shut down. For instance, following the abduction of sixty-five students from a school in Bafikot in Rukum in March 2004, the principal closed the school because students were too traumatized to attend.<sup>174</sup> A teacher in a village near Nepalgunj told Human Rights Watch that attendance in her school has dropped dramatically since news of the abductions started filtering in earlier in 2004. “Parents say ‘we will send our children to school if you guarantee their safety.’ When there is no guarantee of our own safety, how can we guarantee the lives of our students?”<sup>175</sup> A coalition of children’s rights groups, Child Workers in Nepal Concerned Centre (CWIN), maintains that as many as half a million children are being deprived of their right to education because they are kept at home for fear of abductions.<sup>176</sup>

The Maoists have also reportedly abducted, presumably in the hope that they can be instrumental in forcing children to enlist; teachers who have refused to cooperate have been killed.<sup>177</sup>

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abducted in Jumla,” May 25, 2004; “500 students, teachers abducted in Jajarkot,” June 8, 2004; “Maoists abduct 38 students in Taplejung,” June 14, 2004, [online] <http://www.nepalnews.com> (retrieved September 28, 2004.)

<sup>172</sup> “Abduction of Children”, UN Office of the Special Representative for Children & Armed Conflict, [online] <http://www.un.org/special-rep/children-armed-conflict/English/Abduction.html> (retrieved September 28, 2004.)

<sup>173</sup> *ibid.*

<sup>174</sup> “War School,” *Nepali Times*, March 11, 2004.

<sup>175</sup> Human Rights Watch interview with a teacher in Banke district, name withheld, March 15, 2004.

<sup>176</sup> See CWIN, Doti Incident: Against the Understanding from State and Non-State Parties on Children Being Zones of Peace, October 15, 2003, [online] [http://www.cwin-nepal.org/press\\_room/pressreleases/doti\\_incident.htm](http://www.cwin-nepal.org/press_room/pressreleases/doti_incident.htm) (retrieved April 10, 2004.)

<sup>177</sup> See, for example, “Maoists abduct 5 dozen teachers in Dadeldhura,” April 3, 2004; “Maoists abduct over 60 teachers in Taplejung,” April 15, 2004; “Maoists release 700 teachers,” May 28, 2004; “Over 80 teachers abducted in Udaypur, Sindhupalchowk,” May 31, 2004; “500 teachers abducted in Udaypur,” June 4, 2004, [online] <http://www.nepalnews.com> (retrieved September 28, 2004.)

## VII. ARBITRARY ARRESTS AND “DISAPPEARANCES”

According to the U.N. Working Group on Enforced and Involuntary Disappearances, Nepal has the largest numbers of enforced disappearances in the world. The National Human Rights Commission, which closely monitors enforced disappearances, has documented six hundred sixty-two cases of enforced disappearances involving Nepali security forces between November 2000 and November 2003.<sup>178</sup> Amnesty International has issued scores of urgent alerts about persons who disappear in government custody. If anything, the crisis of disappearances in Nepal has become more severe since the breakdown of the last ceasefire on August 27, 2003—hundreds have been detained or abducted since then, and many remain missing.

Disappearances are reported throughout the country. In almost all cases, the disappeared persons were last seen in the custody of government security forces. Those detained are held in informal places of detention: tents, government buildings, containers, and army training centers, making it virtually impossible for family members and lawyers to locate and gain access to the “disappeared.” The army’s disregard for court orders and its blatant lies to the courts seriously undermine one of the most important legal protections against disappearances, judicial oversight of detentions.

In one illustrative case documented by Amnesty International, the army formally denied having a person in custody, even though they were allowing family members to visit the detainee at the same time. Raman Kumar Shrestha, a human rights lawyer, was arrested on August 23, 2002, and a habeas corpus petition was filed on August 28. Even though the army allowed family members to visit Shrestha at the Chhauni army barracks in Kathmandu, they continued to deny he was in their custody to the courts, until the Supreme Court ordered his release on October 4, 2002.<sup>179</sup>

Many persons whom the government denied holding were later found to be detained incommunicado under the Terrorist and Disruptive Activities Act (TADA), which came into effect in April 2002. Under the TADA, security forces can arrest without warrant and detain for up to sixty days for investigation and up to ninety days in preventive detention, without producing the detainee before a court of law. The TADA has been severely criticized as contravening the Constitution of Nepal (1990), which stipulates

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<sup>178</sup> “An Appeal: Disappearance Name List 2057-2060 Mangsir,” National Human Rights Commission, Nepal, December 2003.

<sup>179</sup> Amnesty International, “Nepal: Widespread ‘Disappearances’ in the context of armed Conflict,” October 16, 2003, AI Index ASA 31/045/2003.

that arrested persons have the right to be produced before judicial authorities within 24 hours of arrest (excluding travel time), a right which under the constitution cannot even be abrogated during states of emergency.<sup>180</sup> The government also uses the outdated Public Security Act (PSA) as a means to justify the unacknowledged detentions. The PSA, a holdover from the Panchayat days, allows for preventive detention up to ninety days with the possibility of extension of up to twelve months while police investigate. However, in many cases of “disappearances” the security forces simply ignore the law: individuals are held for long periods of time without being brought to a court, without access to lawyers and their families, and without the government even acknowledging they exist. It is likely that a significant number of the “disappeared”—some of whom have been missing since the late 1990s—have been killed in custody.

The security forces do not only arrest and “disappear” suspected Maoists. The sweeping powers granted to the security forces by TADA and PSA have resulted in the arbitrary arrests, and in some cases enforced “disappearances,” of numerous lawyers and human rights activists, activists of leftist (but non-Maoist) political parties, journalists, academics, family members of Maoists, and villagers forced to give shelter to the Maoists.

As with many cases of arbitrary arrest and detention, torture and ill-treatment are common in custody. Human Rights Watch interviewed many persons who had been released after the government denied holding them in custody,” as well as family members and colleagues of persons who remain among the disappeared. These interviews consistently showed that the government is denying those in its custody due process and communication with family and counsel. Many persons who were released described have been tortured or physically abused during interrogation, and some died from the abuse they suffered.

Many families of the “disappeared,” especially rural villagers, are desperately poor and illiterate, which means that formal mechanisms of complaint, such as filing petitions for writs of habeas corpus through a lawyer, are unavailable to them. They rely on informal approaches to security officials and rumors to find out what has happened to their loved ones. In those cases where the detained have families with access to lawyers, the security forces often ignore court orders, and refuse to respond to queries from the families or lawyers of detained persons.

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<sup>180</sup> Article 14 (6) of the Constitution of the Kingdom of Nepal (1990.)

Among the “disappeared” are at least some children. Human Rights Watch interviewed Renu Ale, a thirteen-year-old girl who had been in army custody since September 2003. Renu Ale had been abducted by the Maoists the year before; after she managed to escape to Kathmandu, she was detained by the army, who promised to return her the next morning. For months, the army denied that they had Renu Ale in their custody, until public outrage forced them to admit her detention. The army now claims that they are holding the young girl in “protective custody” from the Maoists. Renu told Human Rights Watch that she longed for her family: “I want to see my mother and father. That’s all. I don’t even need to get out, I just want to see them.”<sup>181</sup>

### ***Arbitrary Detentions of human rights lawyers***

Human Rights lawyers have been a prime target for arbitrary arrest and detention. In February 2004, the Nepali security forces detained at least ten lawyers and held them incommunicado. Six have been released, but at the time of this report four still remain in detention. Most of the lawyers either worked for human rights organizations—including the official National Human Rights Commission—or represented Maoist suspects, and their interrogations by government agents almost exclusively focused on their human rights or legal activities.

A lawyer based in Kathmandu was among those detained in February 2004. In the preceding year, he had worked as a volunteer fact-finder on three cases under the aegis of the National Human Rights Commission. He has been a member of the CPN-UML for the last thirty years, although in recent years he has not been actively involved.

In late February, 2004, at 11:15 p.m., three armed men in civilian clothes with scarves covering their mouths came to his house. They identified themselves as being from the security forces, and said they had to search his house. The witness immediately asked to see their search warrant, and they replied that they didn’t have one but would search his house anyway. They searched the whole house, from top to bottom, and found nothing. They then told the lawyer that he had to come with them. When he asked to see identification, they pulled out identification cards from the Royal Nepali Army (RNA), although they covered their names. They told him only that they wanted to find out why he was defending Maoists, and would return him after some questioning.

The lawyer was blindfolded and driven to an unknown location. He was kept blindfolded for the next 24 hours. He was told not to remove his blindfold because the

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<sup>181</sup> Human Rights Watch interview with Renu Ale, Royal Nepal Army Club, Kathmandu, March 10, 2004.

men holding him didn't want to be recognized. When the blindfolds were removed, he realized he was being held in a container on an army barracks somewhere, probably within Kathmandu.

He was interrogated several times during his detention. He was always blindfolded during the interrogations, so he could not see much. From the questions he was asked he formed the impression that the interrogating panel consisted of some seven to nine people. Almost the entire questioning focused on his work as a human rights lawyer and his activities working for the National Human Rights Commission. He was asked why he did human rights work, why he had worked with the National Human Rights Commission, why he worked to defend Maoist cases, which Maoists did he know. He was told that all human rights workers are working to weaken the army. In addition, the interrogating team often asked him questions about the work of the NHRC and other human rights groups. He realized through their questions that his interrogators had little or no understanding of the work of the human rights community, often confusing the government-related NHRC with local and international NGO's.

The witness repeatedly demanded that his interrogators follow the procedures of criminal justice and grant him his rights. He always received the same answer: "The country is in this condition. We are doing what we have to do to save the country."<sup>182</sup> He had no contact with lawyers or with his family during his detention. His wife did not know what had happened to him. The Nepal Bar Association met with the Prime Minister and demanded an investigation into the whereabouts of the ten detained lawyers. The Nepal Bar Association also had been preparing a petition for habeas corpus on his behalf, but he was released after six days in detention, before his petition could be filed. His wife had to sign a document stating that he was in good mental and physical condition when he was released.

When Human Rights Watch interviewed him, he was still shaken by the experience and uncertain whether he would continue his human rights activism:

It is ten days after my release, and I am still not able to work. I feel intense anxiety. If I hear a noise, I jump. I can't sleep at night afraid that this might happen again. I have been asked by the NHRC if I want to participate in a training course they are preparing. Normally, I would

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<sup>182</sup> Human Rights Watch interview, name withheld, March 7, 2004.

have immediately accepted. Now, I don't know, I am afraid of what might happen if I continue to work with them.”<sup>183</sup>

### ***“Disappearance” and execution of Maina Sunuwar in Kahrel Tok, February 2004***

On February 17, 2004, just four days after the killings of two girls in the Kavre district (see above), a group of eight or nine police officers came to the home of Devi Sunuwar, in Kahrel Tok VDC. Devi Sunuwar was a female relative of one of the Kavre victims, Reena Rasaili, and had been present at Reena's home the night of the killing, and had personally been harassed and sexually assaulted by a soldier who grabbed her breast.

When police officials arrived at Devi Sunuwar home shortly after 6:00 a.m., only her husband and sixteen-year-old daughter Maina Sunuwar were at home—Devi Sunuwar had spent the night at her parents' home in Sulikot. The police called Maina outside by name, and then began insulting the family, saying they were Maoists and fed the Maoists. The police asked where Devi Sunuwar was, and her husband explained that she was at her parents' home. The police then ordered the husband to come to the Shanti Gate Army barracks the next day, saying, “If you come tomorrow, we will know you are innocent, and if you don't come we'll know you are guilty.” The police then left, taking sixteen-year-old Maina Sunuwar with them.

Devi Sunuwar's husband immediately went to find his wife, reaching Sulikot at 11:00 a.m. and making it back to his home around 4:30 p.m. together with his wife. The next morning, Devi Sunuwar and her husband went to the Shanti Gate Army barracks, accompanied by the local government representative, Bahirab Sandai, and the headmaster of Maina Sunwar's school. However, when the family arrived at the Shanti Gate Army barracks, the officers at the barracks denied any knowledge of Maina Sunuwar, telling the family that no-one was detained at their barracks.

After the disappearance, the family visited numerous army and police offices, launched an application with the National Human Rights Commission, and went to see the Chief District Officer and other regional officials, without success: “Nobody has told us so far where our daughter is,” her father lamented.<sup>184</sup>

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<sup>183</sup> Human Rights Watch interview, name withheld, March 7, 2004.

<sup>184</sup> Human Rights Watch interview with Purna Bahadur Sunuwar, March 6, 2004.

Informal sources within the local administration later told the family that Maina Sunuwar had been killed on the same day she was arrested, allegedly while she tried to “run away”—a favorite pretext used by the army when persons who were clearly detained are later found dead. No official confirmation of her death has been provided to the family by the army, and no body has been produced.<sup>185</sup> Recently, the family has learned from a representative of a reliable international agency that Maina Sunuwar was killed after arrest.

### ***Arbitrary detention and torture of journalist Sita Ram Baral, September 2003***

As in all countries in the midst of civil conflict, journalists in Nepal often maintain contact with both sides: such contacts are essential to covering the conflict. However, journalists often face arrest and abuse in detention for maintaining contacts with the Maoists.<sup>186</sup> Sita Ram Baral, a journalist, used to belong to the United Marxist Leninist’s student organisation when he was in university, and some of his friends from that time have since joined the Maoist movement. In particular, one of his friends, Krishna Khatri Chhetri—popularly known as KKC—had been a vice-president of the Maoist-aligned All Nepal National Independent Student Union (Revolutionary), and had gone on to become an influential member of the CPN-M. Krishna Khatri Chhetri had also been actively involved from the Maoist side during the peace talks in 2003.

On September 12, 2003, Baral got a phone call from Krishna Khatri Chhetri asking Baral to meet him at 1:00 p.m. by a bridge over a small stream in Kathmandu. As soon as Baral met him, they were jostled and grabbed by some four men, one of whom put a pistol to Baral’s head. The four men were in civilian clothes, and later identified themselves as being from the security forces. Baral and Krishna Khatri Chhetri’s hands were then tied, they were blindfolded, and pushed into a car. After one hour of driving, they were brought to an unknown location. Baral still does not know where he and Krishna Khatri Chhetri were detained. He was kept blindfolded from the time of his arrest until his release five days later.

Baral was questioned by about twenty-five men on that first day. He was questioned from the time he arrived at the detention site until about 8:00 or 9:00 p.m. that night. During the questioning, he was beaten with truncheons and whipped with his own belt.

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<sup>185</sup> E-mail communication, May 6, 2004.

<sup>186</sup> Maoists also abuse journalists: for example, Maoists are responsible for the brutal September 2003, murder of Gyanendra Khadka, a reporter for the government news agency Rastriya Samachar Samiti. For an overview of abuses against journalists in Nepal, see the annual worldwide survey by the Committee to Project Journalists.

He was also punched repeatedly in the face. He described how he could neither sit nor stand because of the beatings. The questions all focused on the whereabouts of the Maoist leaders, and Baral's association with them. Baral repeatedly identified himself as a journalist without any political affiliations, but the interrogations continued. Different groups of interrogators would come in, and ask the same set of questions all over again.

Finally, Baral was taken away to a room where he was kept for the next three nights. During this time, the security forces watching him kept telling him that it was easier for them to kill him than to guard him. He lived in a state of terror and was in pain from his injuries. He often overheard the sounds of people screaming and being beaten. He said he had to wear handcuffs with serrated edges which clawed into his skin when he tried to ease the pressure by moving his wrists. He was told that it would be dangerous for him to take off his blindfold because his jailers did not want him to recognize them. Baral did not know at the time that there was intense public pressure being put on the security forces to secure his release. Nepal's journalist community had immediately issued statements and releases about his disappearance and mobilized international support. As a result of this pressure, on the night of September 16, Baral was told that he would be released soon and that he would be all right.

That night, Baral was given some clean clothes, good food and a clean bed. The security forces told him not to talk about what had happened. The next day, he was taken to the police station from where he was released into the custody of his family.

Krishna Khatri Chhetri, the Maoist leader who was arrested together with Baral, is still missing. Baral had no contact with him during their detention, and does not know his fate. He only remembers one security guard remarking that Baral's beatings were nothing compared to the beatings that Krishna Khatri Chhetri had received.<sup>187</sup>

### ***Arbitrary Detention and Torture of political activist in Kavre, November 2003***

Gopi Krishna Thapaliya is a lawyer and, until recently, was an active member of the left-of-center Samyukta Jana Morcha Nepal party for Kavre district. During the ceasefire in 2003, Thapaliya had helped a senior Maoist leader, Krishna Bahadur Mohora, travel to Kathmandu for negotiations with the government. After the ceasefire broke down, Thapaliya was detained for his assistance to the Maoist leader.

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<sup>187</sup> Human Rights Watch interview with Sita Ram Baral, Kathmandu, March 11, 2004.



In the early morning of November 4, 2003, six men in civilian clothes came to Thapaliya's house in Kathmandu. They introduced themselves as members of the security forces and said that they had to take him for some routine questioning. Thapaliya was given time to get dressed, then blindfolded and taken in a pick-up truck to a place he was later able to identify as Singha Durbar, the traditional seat of parliament and government offices.

Once at Singha Durbar, he was taken inside to a room in one of the many buildings there. He was kept blindfolded. After about fifteen minutes of waiting, he heard the sound of chairs being dragged into the room, and he realized that his interrogators were arriving. He was questioned several times, each time for about forty-five minutes each, with a fifteen minute pause between the sessions. He was made to stand during the interrogations. He was punched in the face, and was whipped with plastic pipes on his hips and legs. He was also kicked in between the whipping and the punching. He described how he kept falling to the ground, and how he was forced to stand up again to receive more blows. He was verbally assaulted. The language of the interrogators was rude and the tone was angry and loud. This interrogation and beatings lasted for at least three hours.

After the interrogation, Thapaliya was taken into a tent which was posted between two large buildings in Singha Durbar. Thapaliya said that the tent was used exclusively to house arrested persons and was hidden from those outside the grounds of Singha Durbar. At various times during the period of Thapaliya's detention, there were between eleven and twenty other detainees in this tent. Among them was a sixteen-year-old boy who kept crying every night. None of the detainees had any contact with family or counsel, and none had access to information about the reasons for their arrest. In most cases, the army denied holding the detainees when asked by family members. The detainees were given blankets but no mattresses. They received food and dirty water twice a day.

Security officials regularly came into the tent and threatened to give the detainees "water treatment" (also known as "submarining," submerging the detainees' heads in water to make them believe they would drown) or "nettle treatment" (beating detainees on exposed skin with the sharp edges of the nettle plant) because they had not told the truth during interrogation. Thapaliya was taken for interrogation on several occasions as were the other detainees, and the abusive interrogations always involved beatings and threats. None of the detainees received any medical treatment for wounds sustained during interrogation.

On the seventh day after Thapaliya's arrest, he noticed that the security officers started referring to him as "Mr. Jana Morchaji"—the name of his political party—which he read as a sign that they had realized that he was not a Maoist. Sure enough, the next day, he was released into the custody of his brother. Thapaliya was told that he needed to report to the Army every week, and eventually he was told that he could simply report by telephone.<sup>188</sup>

### *The Death in Custody of Kharga Bahadur Magar*

In some cases documented by Human Rights Watch, detainees died in custody from the brutal treatment they received. Kharga Bahadur Magar, a grocery shop supplier, was arrested in November 2003. Security forces had sought him earlier on August 27, 2003, the day that the most recent round of peace talks broke down. Kharga Bahadur was not at home, but the soldiers took one of his relatives, held him for nine days, blindfolded and handcuffed, and interrogated him about Kharga Bahadur. Apparently, the security forces came to suspect that Kharga Bahadur was a Maoist when a Maoist leader, Krishna Bahadur Mohara, who had once been Kharga Bahadur's wife's teacher, had come for a meal at the family's home during the ceasefire period.

One day in November 2003, some fifty government troops surrounded the house at around midnight. Some of them came inside with their guns drawn. They detained Kharga Bahadur, claiming that it was for routine questioning and he would be released in a few days. The family was warned not to talk about the search and arrest. After waiting a week for his return, the family appealed to the National Human Rights Commission, the International Committee of the Red Cross (ICRC), and local human rights groups. The army denied any knowledge of Kharga Bahadur's whereabouts. His family, fearing that appealing to the court might increase the chances of torture or execution, chose not to file a habeas corpus petition.

On March 3, 2004, two soldiers came and informed Kharga Bahadur's wife that her husband was ill and had been taken to the hospital. His wife recognized one of the men from the time her husband was arrested. They asked her to come to the hospital accompanied by a male relative. There was no man in the house, but she was too worried to wait and went to the hospital with a young niece. At the hospital there were several soldiers in plainclothes including the men that had come to summon her. She was kept waiting for almost two hours. They refused to answer her questions and instead asked why she had come without a male relative. Eventually, they said they

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<sup>188</sup> Human Rights Watch interview with Gopi Krishna Thapaliya, Kathmandu, March 11, 2004.

would take her to her husband. They brought her to the morgue and told her that her husband had died due to illness.

The RNA released a statement saying that Kharga Bahadur had fallen sick while in custody and was shifted to a hospital where he died. The NHRC informed the family, that their missing persons complaint had been forwarded to the local police station. At the police station, the family demanded an autopsy and was told that the procedure had been done in the army hospital. No report was provided to the family.<sup>189</sup>

Kharga Bahadur's brother told Human Rights Watch about the signs of abuse that he found on his brother's body:

I am a police officer and I know how to look for signs of torture. When I saw my brother's body, his feet were swollen from beating. His shin bone seemed to have broken. He must have been wearing the same clothes for the entire period of his detention because they were full of lice. He had been freshly shaved and had an army haircut. Maybe they decided to clean him up so that he looked good when we saw him.<sup>190</sup>

### ***Arbitrary Arrest and Torture of Goma Devi Shahi and the "Disappearance" of Ram Milan Balmiki and four others***

Goma Devi Shahi from Kohalpur VDC has been an active member of the left-of-center Majdoor Kisan Party since her student days.<sup>191</sup> On the night of April 26, 2002, the door of her house was broken down by five or six soldiers in camouflage uniform. They were armed and were carrying long bamboo sticks. Goma Shahi's husband was not at home; she was there with her four young daughters. The soldiers asked for her by name, and when she identified herself, one of the soldiers threw her against the door. She was led out of her house at gunpoint without any explanation of why she was being arrested. She was put into a van where she found five other people who had been similarly arrested. One of these arrested was Ram Milan Balmiki, a twenty-seven-year-old man, who lived in the same village as Goma Shahi.<sup>192</sup> He and his mother had been beaten in his house before he was taken away by the soldiers.<sup>193</sup>

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<sup>189</sup> Human Rights Watch interview with Bijaya Khadka, Kathmandu, March 11, 2004

<sup>190</sup> Human Rights Watch interview with Jhum Bahadur Khadga, Kathmandu, March 11, 2004

<sup>191</sup> Majdoor Kisan Party is a left-of-center party whose insignia includes the sickle and hammer common to most communist parties.

<sup>192</sup> Human Rights Watch interview with Goma Devi Shahi, Kohalpur, March 17, 2004.

<sup>193</sup> Human Rights Watch interview, Kohalpur, March 17, 2004.

The soldiers drove these six detainees to a field in front of the police administration headquarters in Kohlpur. One by one, each detainee was taken inside. Goma Shahi heard the sound of beatings and screaming coming from inside the administration headquarters shortly after the others were taken in. When she was taken in, she was made to stand in front of a group of about five police officers. She was beaten severely with bamboo sticks, on her thighs, her arms, and her back. When she fell down from the beatings she heard one of the police officers saying that he would hit her on the head if she didn't stand up. Goma Shahi was in great pain from these beatings. As she was being hit, the police questioned her about the Maoists, and threatened to blow up her house if she couldn't or wouldn't give them the information.

After half an hour, Goma Shahi was put into a cell. From sounds she heard, she realized that the other detainees were in a separate cell for men at the other end of the corridor. At around 4:00 a.m., she heard the sound of a car in the driveway, and heard the detainees in the other room being taken away.<sup>194</sup> These five men are still unaccounted for nearly two years later, and may have been killed. Ram Milan Balmiki's parents were informally told by the police the next morning that he had been taken into army custody, although the army continues to deny this. The parents have asked at all army barracks. The courts have issued three habeas corpus orders to the army to produce Ram Milan Balmiki, but the army has never responded.<sup>195</sup>

Goma Shahi was transferred the next day to district administration offices for further questioning. After fifteen days of detention there, during which time she was interrogated but not tortured, she was released. When she got home, she found that all the banners and flags belonging to the Majdoor Kisan Party had been confiscated by the police. Also gone was the extensive collection of books which Goma Shahi and her husband had compiled over the years.<sup>196</sup>

### ***“Disappearance” of Karna Bahadur Chowdhury, Banke District, August 2003***

In many cases of “disappearances,” very little information is available except for the knowledge that security forces arrested the person on a particular day and that no one has heard anything about the person since that day. Karna Bahadur Chowdhury, a carpenter, was arrested by government soldiers as he was leaving work on August 14,

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<sup>194</sup> Human Rights Watch interview with Goma Devi Shahi, Kohalpur, March 17, 2004.

<sup>195</sup> Human Rights Watch interview with S.L. Balmiki and Maili Balmiki, Kohalpur, March 17, 2004.

<sup>196</sup> Human Rights Watch interview with Goma Devi Shahi, Kohalpur VDC, March 17, 2004.

2003. Soldiers had visited his house three times within the preceding month, each time between 1:00 and 4:00 a.m., but he had been away each time. The soldiers were abusive to his wife, calling her a “whore,” slapping her and touching her breasts.

Karna Bahadur Chowdhury has not been seen since he was arrested. Eyewitnesses to the arrest told the family that he had been blindfolded and put in a green army jeep. All attempts to find any information about his whereabouts and well-being have failed.<sup>197</sup>

### ***“Disappearance” of Raj Bahadur Chowdhury, Banke District, August 2003***

On August 30, 2003, Raj Bahadur Chowdhury, a twenty-two-year-old carpenter, was forcibly taken away from his house outside Nepalgunj by soldiers who identified themselves as troops of the Unified Command. When his wife tried to object, one of the soldiers hit her with his gun. Another soldier called her a “whore,” and ordered her to give him her six-month-old son’s blanket so he could use it to blindfold her husband, and some rope to tie his hands. She last saw her husband as he was being led away, blindfolded with his hands tied behind his back, down the dirt road towards the main access road. The family has tried to find out what happened to Raj Bahadur Chowdhury by going to nearby army barracks, but with no success.<sup>198</sup>

### ***“Disappearance” of Chandra Kumar Dhakal, Janakpur, October 2003***

Chandra Kumar Dhakal, a twenty-five-year-old villager from Kavre district, worked at the Kyoto Hotel in the Thamel area of Kathmandu as a food server. In Kathmandu, he became a member of the Maoist-oriented Revolutionary Student Union. On November 12, 2003, he was arrested when he attended a rally in the Patan district of Kathmandu. Other student activists informed Chandra Kumar’s father three months after the arrest about the disappearance. His father, a sixty-year-old illiterate farmer, went to various police and army barracks to attempt to locate his missing son, without success. The family has had no news of Chandra Kumar’s fate since his arrest.<sup>199</sup>

### ***“Disappearance” of Manoj Kumar Dutta and Ram Chandra Lal Karma***

On October 3, 2003, the police raided the Janakpur home of Ugra Narayan Dutta, a sixty-year-old retired teacher, looking for his thirty-nine-year-old son, Manoj Kumar Dutta. The police had been searching for Manoj Kumar Dutta for several months, on suspicion that he was an area commander for the Maoists. According to Anju Dutta, the

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<sup>197</sup> Human Rights Watch interview, March 18, 2004.

<sup>198</sup> Human Rights Watch interview, March 18, 2004.

<sup>199</sup> Human Rights Watch interview, February 12, 2004.

wife of Manoj Kumar Dutta, the police found Manoj at home that day, together with another suspected Maoist, Ram Chandra Lal Karma. The police tied the two men with their hands behind their backs, and then took them out in the yard to beat them, according to Anju Dutta: “They ordered Manoj and Ram Chandra Lal to lay down in the yard. The police began beating them with their rifles, their boots, and a grinding stone, from 9:30 until 11:30 a.m.”<sup>200</sup>

After the beatings, the police blindfolded the two men and took them away in police vans.<sup>201</sup> After the arrests, the family repeatedly met the Chief District Office as well the city’s Superintendent of Police, but were given no information about the fate of Manoj Kumar Dutta. Despite the assistance of local human rights activists, the ICRC, and the National Human Rights Commission, the family has not received any information about the fate of the two men.<sup>202</sup>

### ***“Disappearance” of five young men, Janakpur, October 2003***

In the afternoon of October 8, 2003, a joint operation by army and police forces arrested a group of ten young men who had gathered for a picnic party on the outskirts of Janakpur. According to local human rights activists from INSEC, at least some of the detained men were affiliated with the Maoist movement, mostly as members of the Maoist militia. Jaya Kishar Lal, a fifty-three-year-old lawyer, heard that his son Sanji Kumar Karma was among the detained men, and immediately went to the district police headquarters to seek his release. He was informed that his son had been arrested and was being kept at the regional police station. At the regional police station, he found a group of young men standing in their underwear in the courtyard, with their hands tied and blindfolded, and he believes he recognized his son among the men. The men were taken inside the building when Jaya Kishar Lal arrived.

The next day, five of the detained men were released from police custody. Sanji Kumar and four others (Jitendra Jha, Durgesh Labh, Pramood Narayan Mandal, and Salendra Yadav) had “disappeared” in police custody. As an experienced lawyer, Jaya Kishar Lal contacted every possible person who could help, including local human rights groups INSEC and CIVICT, the National Human Rights Commission, Amnesty International, the Inspector General of Police, the Inspector General of the Armed Police, the head of

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<sup>200</sup> Human Rights Watch interview, March 14, 2004.

<sup>201</sup> Human Rights Watch interview, March 14, 2004.

<sup>202</sup> *ibid.*

the Army, the Home Minister, and the Prime Minister. Despite his extensive efforts, no information has come forth about the fate of his son and the four other missing men.<sup>203</sup>

## VIII. THE ROLE OF THE INTERNATIONAL COMMUNITY

The conflict in Nepal presents states that are supporting the Nepali government with a difficult challenge. While failing to support the government could leave the country in the control of the Maoists they are finding it increasingly difficult to justify military and political support for Kathmandu in the face of massive abuses by its security forces and the authorities' unwillingness to hold those responsible accountable.

The international community is correct to be concerned about the Maoist movement in Nepal. The aims and the tactics of the Maoists in Nepal are broadly condemned, and the Maoist receive no open support from any foreign government

For Western governments, particularly the United States, the open self-identification of the rebels as "Maoists" and their use of atrocities to control the civilian population raise troubling comparisons with the brutal, genocidal reign of the Khmer Rouge in Cambodia<sup>204</sup> —as well as with the infamous Maoist Shining Path rebel group of Peru, widely reviled for its record of abuses.<sup>205</sup>

While the comparisons between the Maoists in Nepal and the Maoist movements in Cambodia and Peru are overblown, international concern about the CPN-Maoist's poor human rights record is obviously appropriate. Their systematic murder of non-Maoist political activists and well-documented use of torture demonstrate their lack of commitment to internationally accepted human rights standards.

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<sup>203</sup> Human Rights Watch interview, March 14, 2004.

<sup>204</sup> See, e.g. David Chandler, *Voices from S-21: Terror and History in Pol Pot's Secret Prison* (Berkeley: University of California Press, 2000); Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79* (New Haven: Yale University Press, 2002).

<sup>205</sup> Like the conflict in Nepal, the civil war in Peru was characterized by large-scale human rights abuses committed by both the government security forces and the Shining Path guerrillas, including summary killings and widespread disappearances. See Human Rights Watch, *Into the Quagmire: Human Rights and U.S. Policy in Peru* (New York: Human Rights Watch, 1991); *Peru Under Fire: Human Rights Since the Return to Democracy* (New York: Human Rights Watch, 1991); *Untold Terror: Violence Against Women in Peru's Armed Conflict* (New York: Human Rights Watch, 1992); *Human Rights in Peru: One Year After Fujimori's Coup* (New York: Human Rights Watch, 1993); *Torture and Political Persecution in Peru* (New York: Human Rights Watch, 1997).

However, while the Maoists have used methods of violence, terror and intimidation, similar to those used by the Khmer Rouge and the Shining Path, there are some important differences. While both the Khmer Rouge and the Shining Path consistently rejected any dialogue with the governments they opposed and insisted only on their “surrender,” the Nepali Maoists have shown a willingness to enter into dialogue and negotiations with the government. The eight-month 2003 ceasefire between the Maoists and the government showed that at least some elements in the Maoist movement are seeking to re-enter the political mainstream, as evidenced further by the twenty-four-point set of demands put forward by the Maoists during the negotiations. Bringing the Maoists back into the political mainstream—conditional on a rejection by the Maoists of tactics fundamentally at odds with international human rights standards—provides the international community with an alternative to an all-out military victory over the Maoists, which most analysts believe will be impossible to achieve. In any effort to achieve a negotiated settlement to the conflict, mechanisms to ensure compliance with human rights standards should play a prominent role.

A real danger for foreign governments in Nepal is that their concerns about the threat posed by the Maoists, however justified, will lead them to turn a blind eye to the systematic abuses committed by the Nepali security forces. Simplistic comparisons with the Khmer Rouge and Shining Path often lead both Nepali and international commentators to conclude that abuses by the government are justified when committed in the course of fighting the Maoist movement. Instead, continuing abuses by both sides are only likely to complicate any future negotiations.

Shining Path in Peru had a horrendous record of atrocities and systematic, massive violations of international humanitarian law. Shining Path was so brutal that human rights activists feared them even more than government forces. However, the precedent of Peru is perhaps more pertinent for Nepal in its warning about allowing government forces an unchecked hand in dealing with rebel forces. During the 1980s, the Government of Peru fought Shining Path by using force in the remote villages where they had their base. The security forces were basically allowed to run amok for years, killing and causing the “disappearance” of thousands of suspected Shining Path members with impunity. In the end, what succeeded in tackling Shining Path was not force, but high quality intelligence work by the police. A special anti-terrorist unit of the police captured leader Abimael Guzman which succeeded in weakening the movement.

The legacy of Peru’s brutal response to the Shining Path guerrilla movement still scars Peru today. If any lessons can be learned from the experience of Peru, it is the need for the international community to act decisively to ensure that fundamental human rights are respected by *all* the parties to a conflict.



## ***Contrasting Approaches by the United States and the European Union***

A deep split has developed between the European Union and the United States concerning abuses by government forces in Nepal. The European Union and its member states have taken a strong public position on the need to end abuses by government forces in Nepal, and have issued regular public statements calling for an end to abuses and accountability for past abuses. On the other hand, the United States, particularly its then Ambassador Michael Malinowski, have been almost uncritically supportive of the Nepali government, claiming to favor “private diplomacy” over public criticism, and privately suggesting that the European Union states are “soft” on terrorism.<sup>206</sup>

The unwillingness of the U.S. to criticize the government appears to have been a result of its placing the Nepali civil war within the context of the “global war on terror.” United States Ambassador Malinowski has compared the Maoist rebels to al-Qaeda terrorists, stating that the Maoist rebels “are fundamentally the same as terrorists elsewhere—be they members of the Shining Path, Abu Sayyaf, the Khmer Rouge, or Al-Qaida.”<sup>207</sup> On October 31, 2003, the United States designated the CPN-Maoist as a terrorist organization, blocking any financial assets held in the United States and criminalizing financial contributions to the CPN-Maoist.<sup>208</sup> The designation of CPN-Maoist as a terrorist organization was partly in response to the December 2001, and November 2002 murders of two Nepali security guards working for the U.S. embassy, as explained by Patricia Mahoney, first secretary for the U.S. Embassy:

We have taken a much harder line on the Maoists [than the European Union] and it is because we have had two people killed. If you kill our personnel,

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<sup>206</sup> Human Rights Watch interview with senior U.N. Human Rights Officer, Kathmandu, 3 March 2004.

<sup>207</sup> Celia W. Dugger, “Nepal Says Over 400 Rebels Are Dead After Several Battles,” *New York Times*, May 6, 2002.

<sup>208</sup> United States Department of State, Consular Information Sheet: Nepal. See also, U.S. Embassy in Nepal, Press Release: Designation of the Communist Party of Nepal (Maoists) under Executive Order 13224, November 1, 2003 (explaining the rationale for the designation: “For eight years, the Communist Party of Nepal (Maoist) has committed acts of terrorism that threaten the stability of a government friendly to the U.S. Their actions have added to the escalating death toll while adversely affecting the lives of the citizens of Nepal. Destroying infrastructure, attacking government offices, and intimidating villagers through abductions, torture, and murders, the Communist Party of Nepal (Maoist) has disrupted normal government operations and economic development efforts throughout the country.”)

whether Nepali or American, it makes a difference. I think the Maoists miscalculated our reaction.<sup>209</sup>

However, the U.S. Embassy's characterization of the Maoists as a terrorist group that deserves to be targeted in the U.S.-led "war on terror" was rejected by other U.S. government officials interviewed by Human Rights Watch. When asked whether he thought the Maoist were a terrorist group, a Pentagon official closely following the situation in Nepal responded, "God no!"<sup>210</sup>

Over time, the U.S. has developed a reputation for blind support for the Nepali government and, except for the annual State Department country reports on human rights, silence on government abuses—even though the State Department's own reporting accurately reports many of the same abuses by government forces documented in this report.<sup>211</sup> U.S. Ambassador Malinowski regularly visited Nepali frontline troops for personal briefings, an activity that may have been in line with his previous assignment as a U.S. envoy to the Afghan resistance, but raised eyebrows among his diplomatic colleagues.<sup>212</sup>

Human Rights Watch has been unable to locate a single statement from the U.S. embassy in Nepal condemning specific government abuses, although the embassy regularly issues statements when Maoists commit abuses. At issue is not the strong U.S. stance against Maoists abuses, but rather its silence in the face of equally serious government abuses.

When the international community has united to condemn serious government abuses such as the Doramba massacre, attempted to build international support for the work of the National Human Rights Commission of Nepal, or to press for action at the annual meeting of the U.N. Human Rights Commission, the United States has abstained from publicly joining in the effort. Patricia Mahoney, the first Secretary at the US Embassy in Nepal, explained that the U.S. prefers to act quietly behind the scenes rather than by issuing public statements: "We have very good access with the government. So we raise these issues privately at various levels, including the highest levels."<sup>213</sup>

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<sup>209</sup> Human Rights Watch interview with Patricia Mahoney, Nepal, March 8, 2004.

<sup>210</sup> The Pentagon official spoke to Human Rights Watch on condition of anonymity.

<sup>211</sup> U.S. Department of State, Country Reports on Human Rights Practices 2003: Nepal, February 25, 2004, available on the world-wide web at <http://www.state.gov/g/drl/rls/hrrpt/2003/27949.htm>

<sup>212</sup> "International Solidarity Against Terrorism," Remarks by the U.S. Ambassador to Nepal Michael E. Malinowski at the Foundation of Nepali in America, Nepal Branch, Kathmandu, September 12, 2003.

<sup>213</sup> Human Rights Watch interview with Patricia Mahoney, Kathmandu, March 8, 2004.

But the problem with the U.S.'s "private diplomacy"—if it is indeed occurring—is that the public stance of the U.S. administration is firmly and almost uncritically in support of the Nepali government. The United States' refusal to join in a concerted international effort to end government abuses and to promote accountability for abuses committed by the Nepali security forces has seriously undermined this effort. The United States' position is seen as silently condoning the actions of the Nepali government—and providing the financial and military assistance to allow the abuses to continue.

The position of the United States on Nepal, however, should not be blamed on the views of the now-former U.S. Ambassador in Nepal, as the United States has taken a similar position on Nepal in other fora. For example, the United States opposed a consensus resolution, sponsored by the European Union at the 2004 U.N. Human Rights Commission meeting, which condemned both the government's and the Maoists' human rights record.

The stance of the United States is significantly at odds with that of other western embassies in Nepal. The British embassy, for example, until recently had a dedicated human rights officer and a much more active engagement on human rights issues in Nepal. The United Kingdom also has appointed a Special Representative for Nepal, Sir Jeffrey James, whose public statements and advocacy have been equally forceful on government and Maoist abuses. His statement at the end of his March 2004, visit discussed both government and rebel abuses at length, stating that "our deep concern at the impact of violence on the security and human rights of Nepali people...has not changed, nor has our condemnation of human rights violations from whatever quarter."<sup>214</sup>

The European Union states and other western countries have not just issued statements of concern about the abuses committed on both sides, but have taken concrete action to improve the human rights situation in Nepal. European Union countries, together with Australia, have been the most prominent financial supporters and diplomatic backers of the National Human Rights Commission of Nepal, and have funded a capacity

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<sup>214</sup> Statement by Sir Jeffrey James, United Kingdom Special Representative for Nepal, March 26, 2004. Sir James noted "that the last few months have seen an intensification of the Maoist campaign, involving widespread and severe violations of human rights, including murder, bombings, extortion, forced migration, and intimidation." Sir James acknowledged and welcomed "efforts by the leadership of the security forces to bring about respect and observance of human rights, including moves to investigate some reported violations and to take appropriate action against those found guilty. At the same time, we remain concerned at the continuing evidence of violations by the security forces, including for example reports of extra-judicial killings and disappearances." Ibid.

development project to strengthen that institution.<sup>215</sup> Following the Doramba killings, the European Union states called for an independent investigation into the killings, blamed on government security forces.<sup>216</sup> In February 2004, for example, European Union ambassadors met with then-Prime Minister Surya Bahadur Thapa, expressing their concern that the human rights situation in Nepal was “seriously deteriorating,” calling on Nepal “to take urgent steps to significantly improve the observance of human rights in conformity with its international obligations,” and reiterating their demands for a credible investigation into the Doramba killings.<sup>217</sup> The United States did not attend this crucial meeting.

The consistent pressure by the European Union has brought results. After several cover-up investigations were rejected by European Union countries, the RNA finally acknowledged that its soldiers had committed summary executions in Doramba, and announced that some of the soldiers and officers involved, including the major in charge of the RNA company responsible, would be tried before a court-martial.<sup>218</sup> The threat by some European Union members to introduce a strongly worded resolution at the April 2004 annual meeting of the United Nations Human Rights Commission also led to potentially important concessions from the Nepali authorities, including a public pledge to uphold human rights and the laws of war in its fight against the Maoists—although that pledge has gone largely unfulfilled.<sup>219</sup>

### ***The International Community, Arms Supplies and Human Rights Abuses***

Countries including the United States, Great Britain, Belgium, and India have provided lethal or non-lethal military assistance to Nepal, while India, the United States and the United Kingdom have also provided military training. Unfortunately, human rights concerns have not always been incorporated into these military assistance and training programs.

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<sup>215</sup> Capacity Development of the National Human Rights Commission,, NEP/00/010, [online] <http://www.nhrc-nepal.org.htm>. Accessed September 27, 2004

<sup>216</sup> “E.U. Calls for Establishment of a Multi-Party Government,” [online] <http://www.nepalnews.com/contents/englishweekly/telegraph.htm>, February 4, 2004 (accessed at 27 September 2004)

<sup>217</sup> “EU envoys urge Nepal to improve rights record,” Agence France Presse, February 2, 2004.

<sup>218</sup> “Nepali Army Officer to be Court-martialled over Massacre of Maoists,” Agence France Presse, March 11, 2004.

<sup>219</sup> Human Rights Watch press release, “Nepal: Without Plan of Action, Rights Pledge Will Fall Flat; Maoists Urged to Sign Similar Commitment; Impartial Monitoring Mechanisms Needed,” April 2, 2004; Human Rights Watch letter to Prime Minister of Nepal, “Deepening Human Rights Crisis Following Ban on All Political Gatherings,” April 21, 2004.

The Nepali security forces were woefully unprepared for tackling the Maoist insurgency when it began in 1996, forcing the security forces to cede control of much of the countryside to the Maoists after serious setbacks. Several independent military specialists who are familiar with the Nepali army told Human Rights Watch that the Nepali army was seriously unprepared for a major counter-insurgency war. One military analyst told Human Rights Watch: “Not a single person, not one, in the whole country is a defense specialist...They don't understand military terminology. Nepal has had to learn to put an army together while fighting a war—they are learning on the job.”<sup>220</sup> Even today, most of Nepal's police forces—including those deployed against the Maoists—continue to use long-outdated Lee-Enfield rifles produced in the 1940s.

Because of the immense lack of capacity in Nepal, the security forces are almost completely dependent on foreign weapon imports as well as military assistance and training to sustain their operations. Both sides in Nepal's civil war have long operated with obsolete equipment and rudimentary training. In recent years, the government of Nepal has received greatly increased outside military assistance to improve its weaponry, equipment and training. While the RNA has received arms and training from India for many years, since 2001, it has obtained military assistance from a number of other countries as well, most notably the United States and United Kingdom.

The Maoist insurgents are generally believed to have few external sources of arms supply. They seem to rely largely on relatively unsophisticated weapons that they steal from government armories or capture from government troops.<sup>221</sup> As the RNA's weapons have improved, the Maoists' raids have netted the insurgents better weapons as well, including automatic.<sup>222</sup> They also use homemade pistols and improvised explosive devices such as pressure-cooker bombs and pipe bombs.<sup>223</sup> Nepali authorities have asserted repeatedly that the Maoists smuggle some weapons across the border with India.<sup>224</sup> Responding to such concerns, the governments of Nepal and India stepped up efforts to patrol the border area in late 2003. In early 2004, Indian authorities arrested three alleged arms smugglers, who were charged with providing arms to the

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<sup>220</sup> Human Rights Watch interview with independent defense analyst, name withheld, May 2004.

<sup>221</sup> See, for example, “Nepal's forgotten rebellion,” *Jane's Foreign Report*, October 23, 2003. One U.S. government official contradicted this assessment, asserting that the insurgents are better armed than the RNA. Human Rights Watch telephone interview with a U.S. official familiar with Nepal, May 28, 2004.

<sup>222</sup> “Security and Foreign Forces, Nepal,” *Jane's Sentinel Security Assessment – South Asia*, June 4, 2004. This information is derived from records of weapons seized by police in 1999 and December 2003.

<sup>223</sup> *ibid.*

<sup>224</sup> “India-Nepal discuss how to halt Maoist rebels crossing border,” Agence France-Presse, February 2, 2004; “Arms smuggling continues from India to Nepal Maoists,” BBC Monitoring South Asia, November 17, 2003.

insurgents.<sup>225</sup> Some media reports have speculated that weapons caches destined for the Maoists via India may originate in Burma, but this information remains unconfirmed.<sup>226</sup>

Numerous governments offer increased levels of assistance to Nepal to counter the threat posed by the Maoists. The aid-supplying governments seek to justify their action with the argument that more military assistance will help professionalize the RNA, and thus reduce human rights abuses. Where strict human rights conditions on the use of lethal equipment are imposed and duly monitored, and where military training is designed to incorporate human rights concerns into military operational decision-making, that might prove to be the case. But more often than not in Nepal, no such human rights strings are attached—or are too loosely tied to offer any real constraint.

As this report make clear, the Nepali military is responsible for a pattern of gross human rights abuses and violations of the laws of war, often involving the misuse of firearms. Under the circumstances, military support to such a highly abusive force could actually bolster its ability to commit more abuses. The ready availability of lethal military assistance from countries such as the United States and India also sends a signal that the international community is unconcerned by the RNA's dismal human rights record, or willing to disregard it in the face of other priorities. That, in turn, can embolden the abusers to carry out more abuses with the expectation of impunity. Moreover, providing the RNA more weapons and better training in how to use them can give them enhanced power to further terrorize the civilian population. It is for this reason that Human Rights Watch calls for strict conditionality on military assistance and improved monitoring of its use.

### ***United States***

The United States is a major provider of military assistance to Nepal, allocating over U.S. \$29 million in grants to Nepal to pay for U.S. weapons, services and training from October 2001 through September 2004.<sup>227</sup> It provides both training and equipment, as well as grants and loans to cover the associated costs.

U.S. military assistance to Nepal increased dramatically after 2001, prompted both by the expansion of U.S. security assistance to allies as part of its global “war on terror” and by

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<sup>225</sup> “Security and Foreign Forces, Nepal,” *Jane's Sentinel Security Assessment – South Asia*, June 4, 2004.

<sup>226</sup> *ibid.*

<sup>227</sup> DCSA, “Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts as of September 30, 2003” (“DSCA Facts Book 2003”) [online] [http://www.dsca.mil/programs/biz-ops/facts\\_book\\_2003.pdf](http://www.dsca.mil/programs/biz-ops/facts_book_2003.pdf); Congressional Budget Justification for FY05 Foreign Operations, February 2004.

U.S. support for Nepal's counterinsurgency campaign following the collapse of peace negotiations in late 2001. Until then, the U.S. had provided modest amounts of aid, mostly to boost the ability of Nepal's security forces to contribute to peacekeeping missions.<sup>228</sup> In 2002, the U.S. Department of Defense sent an assessment team to Nepal to help the government evaluate its military assistance needs.<sup>229</sup> Later that year, the U.S. government launched training and equipment programs for the purpose of helping the RNA counter the Maoist insurgents.

The scale of U.S. assistance underwent a dramatic shift with the change in focus from peacekeeping to counterinsurgency. A comparison of budget figures best illustrates the point. In mid-2001 the U.S. administration anticipated spending some \$225,000 the following fiscal year (FY 2002: October 2001-September 2002) on military training of Nepali troops under the International Military Education and Training (IMET) program and did not plan to provide any financing (via grants and loans) for military purchases by Nepal.<sup>230</sup> After dramatic events in the United States and Nepal brought the two countries into a counterterrorist alliance, these numbers quickly grew. The U.S. administration initially asked for \$2 million in foreign military financing (FMF) for Nepal for FY 2002, then subsequently added \$20 million in a supplemental allocation.<sup>231</sup> Repayment of the FMF funds was waived. That year Nepal ordered \$3.38 million worth of U.S. military items and services.<sup>232</sup>

Fiscal year 2002 was the peak year for U.S. military funding to Nepal. In fiscal year 2003, Nepal received \$3.15 million in FMF financing (again payment was waived) and \$500,000 in IMET training.<sup>233</sup> For fiscal year 2004, the U.S. administration asked

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<sup>228</sup> Congressional Budget Justification for Foreign Operations (FY02), July 2, 2001. This document and those prepared in other years, cited below, are available as a link from the website of the Federation of American Scientists Arms Sale Monitoring Project: [online] <http://www.fas.org/asmp/profiles/aid/aidindex.htm> (retrieved May 27, 2004).

<sup>229</sup> U.S. Department of Defense, "DoD News Briefing - ASD PA Clarke and Brig. Gen. Rosa," DoD News Transcript, May 3, 2002.

<sup>230</sup> Congressional Budget Justification for Foreign Operations (FY02), July 2, 2001.

<sup>231</sup> Defense Security Cooperation Agency (DCSA), "Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts as of September 30, 2002" (hereafter "DSCA Facts Book 2002") [online] [http://www.dsca.osd.mil/programs/Comptroller/2002\\_facts/fy02\\_facts\\_book.pdf](http://www.dsca.osd.mil/programs/Comptroller/2002_facts/fy02_facts_book.pdf). It indicates that total FMF for fiscal year 2002 totaled \$22 million, and that payment was waived. In an April 2003, briefing, the State Department spokesperson indicated the administration sought a supplemental appropriation of \$20 million of FMF financing. U.S. Embassy Islamabad, "Excerpts: U.S. Working with Nepal to Undermine Insurgents," Press Release, [online] <http://usembassy.state.gov/islamabad/www02042402.html> (retrieved June 17, 2004). However, another document indicates the supplemental was \$12 million: Congressional Budget Justification for FY04 Foreign Operations, February 2003.

<sup>232</sup> "DSCA Facts Book 2002." Only \$61,000 of defense articles and services were delivered by the end of the year.

<sup>233</sup> Congressional Budget Justification for FY05 Foreign Operations, February 2004.

Congress for \$600,000 in IMET assistance for Nepal and \$10 million in FMF financing.<sup>234</sup> The justification offered for the administration's 2004 budget request is emblematic of the convergence of the U.S. counterterrorism and Nepali counterinsurgency agendas: "FMF in Nepal will help its government cope with a brutal insurgency, restore enough stability to permit elections, and prevent the countryside from becoming a haven for al-Qaeda and other terrorist groups."<sup>235</sup> In October 2003, the U.S. government declared the Maoist insurgency to be a "terrorist group," cementing prior decisions to strengthen U.S. cooperation with Nepal to defeat the Maoists.<sup>236</sup>

The nature of U.S. support also reflects the U.S.'s engagement in Nepal's counterinsurgency efforts. Along with such non-lethal items as protective gear and communications equipment, some of which was provided for free from U.S. surplus stocks,<sup>237</sup> the U.S. military assistance package through 2004 included about twenty thousand M-16 assault rifles.<sup>238</sup> As of September 2003, the Pentagon confirmed the delivery of eight thousand seven hundred seventy-nine rifles valued at \$4,326,000.<sup>239</sup>

In early 2004, the U.S. administration identified what type of equipment the RNA would receive under a new round of proposed military financing, which for fiscal year 2005 was

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<sup>234</sup> Congressional Budget Justification for FY04 Foreign Operations, February 2003. Actual expenditures totaled \$4 million: Congressional Budget Justification for FY05 Foreign Operations, February 2004.

<sup>235</sup> Congressional Budget Justification for FY04 Foreign Operations, February 2003.

<sup>236</sup> U.S. Department of State Public Notice 4522, "Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Communist Party of Nepal (Maoist)," published in the Federal Register, Vol. 68, No. 211, October 31, 2003.

<sup>237</sup> Defense Security Cooperation Agency (DSCA), "Excess Defense Articles," [online] <http://www.dsca.osd.mil/programs/eda/search.asp> (retrieved May 24, 2004.)

<sup>238</sup> Human Rights Watch telephone interview with a U.S. official familiar with Nepal, May 28, 2004. See, also, Christina B. Rocca, Assistant Secretary for the Bureau of South Asia, U.S. Department of State, "U.S. Counterterrorism Policy toward South Asia," Congressional testimony dated October 29, 2003, [online] [http://www.house.gov/international\\_relations/108/rocca1029.htm](http://www.house.gov/international_relations/108/rocca1029.htm). The U.S. also has authorized commercial weapons sales to Nepal, as well as sold its weapons directly via the Pentagon. More than \$7,000 worth of pistols and revolvers spare parts were approved in fiscal year 2002 for commercial sale by the State Department; the Pentagon, for its part, reported that it sold \$1,000 in weapons spares to Nepal that year. U.S. Department of State, "Report Pursuant to Sec. 655 of the Foreign Assistance Act: Direct Commercial Sales Authorizations for Fiscal Year 2002"; U.S. Department of Defense, "Report Pursuant to Sec. 655 of the Foreign Assistance Act: Fiscal Year 2002," [online] <http://www.fas.org/asmp/profiles/655-2002/6552002.html> (retrieved May 27, 2004.) Commercial sales in fiscal year 2003 included \$940,000 in ammunition raw materials. U.S. Department of State, "Report Pursuant to Sec. 655 of the Foreign Assistance Act: Direct Commercial Sales Authorizations for Fiscal Year 2003," [online] <http://www.fas.org/asmp/profiles/655-2003/6552003.html> (retrieved June 17, 2004.)

<sup>239</sup> U.S. Department of Defense, "Report Pursuant to Sec. 655 of the Foreign Assistance Act: Fiscal Year 2003," [online] <http://www.fas.org/asmp/profiles/655-2003/6552003.html> (retrieved June 17, 2004.)



scaled back to \$1 million.<sup>240</sup> The “high-priority items” included M-16 rifles, grenade launchers, and M-4 carbines to outfit a new ranger battalion, as well as night vision goggles, body armor, secure communications equipment, armor plating, and support for a program to refurbish Huey II helicopters that would provide the RNA with “improved mobility.”<sup>241</sup> The U.S. was consulting with India regarding the type of helicopter that would be best suited to Nepal, an official stated.<sup>242</sup> Absent any explicit prohibitions to the contrary, such helicopters could be armed, as acknowledged by the same U.S. official: “Of course you can mount a gun on a Huey.”<sup>243</sup> According to its manufacturer, the Huey II is “an extremely versatile helicopter” that can be used for utility, assault, evacuation, and troop and supply transport.<sup>244</sup>

U.S. officials familiar with the military assistance strategy for Nepal indicated that the U.S. government has not imposed any explicit restrictions or conditions on how the RNA can use U.S.-supplied equipment and is unlikely to in the future. But they stressed that the U.S. government would not want to see this equipment be used to commit human rights abuses, suggesting there was an implicit conditionality to this aid. One official put it more strongly, “U.S. security assistance is entirely contingent on their observing internationally accepted behavior: We will not turn a blind eye to abuses.” This official and others emphasized that the U.S. government often conveys its view that abusive tactics are an ineffective and counterproductive response to a counterinsurgency, and would only alienate Nepal’s citizens and endanger Congressional support for Nepal. But the U.S. has not explicitly tied provision of military assistance to the RNA’s human rights practices, they confirmed.<sup>245</sup>

The training component of U.S. military assistance to Nepal totaled approximately \$1.5 million from fiscal years 2002 to 2004.<sup>246</sup> Military training under the IMET program has occurred either in facilities in the United States or in Nepal, where mobile training teams are used. IMET training has been oriented toward intelligence, psychological operations,

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<sup>240</sup> Congressional Budget Justification for FY05 Foreign Operations, February 2004. A U.S. official stated that the decline was due to the inability of the RNA to absorb more equipment. Human Rights Watch telephone interview with a U.S. official familiar with Nepal, May 28, 2004.

<sup>241</sup> *ibid.* According to its manufacturer, the Huey II is “an extremely versatile helicopter” that can be used for utility, assault, evacuation, and troop and supply transport. Bell Helicopter, “Huey II: Homeland Security,” [online] <http://www.bellhelicopter.textron.com/en/aircraft/commercial/maHLS210.cfm> (retrieved May 27, 2004).

<sup>242</sup> Human Rights Watch telephone interview with a U.S. official familiar with Nepal, May 28, 2004.

<sup>243</sup> *ibid.*

<sup>244</sup> Bell Helicopter, “Huey Two: Homeland Security,” [online] <http://www.bellhelicopter.textron.com/en/aircraft/commercial/maHLS210.cfm>, (retrieved May 27, 2004.)

<sup>245</sup> Human Rights Watch telephone interviews with three U.S. officials in May 2004.

<sup>246</sup> Congressional Budget Justification for FY04 Foreign Operations, February 2003; Congressional Budget Justification for FY05 Foreign Operations, February 2004.

and special operations, among other elements designed to help the RNA combat the Maoist insurgents.<sup>247</sup> In early 2003, a team of military experts from the U.S. traveled to Nepal to train the RNA to use U.S.-supplied hardware and to combat the insurgency.<sup>248</sup> Nepal has also been a recipient of joint training with U.S. Special Forces under the Joint Combined Exchange Training or JCET program.<sup>249</sup> Teams of U.S. Special Forces troops rotate in to Nepal several times a year under a bilateral agreement; one such team, consisting of 28 people, was in Nepal in March 2004.<sup>250</sup>

The U.S. government asserts that its military-to-military ties with Nepal help promote human rights and that such concerns are built into its assistance. In 2003 the United States sponsored a military law exchange program that addressed human rights issues, including the laws of war, military justice and discipline, and rules of engagement training for the RNA's Judge Advocate General.<sup>251</sup> For fiscal year 2005, IMET funds were requested for Nepal in part to "improve [...] respect for human rights."<sup>252</sup> But according to several sources, U.S. training is ineffective at addressing the RNA's misuse of force. In particular, these individuals, speaking separately, asserted that the U.S. is not effective at analyzing why RNA troops commit atrocities or at teaching them how to discriminate between civilians and insurgents, or how to avoid civilian casualties.<sup>253</sup>

In principle, the United States prohibits military assistance to gross human rights abusers. This policy is contained in two legislative instruments, Section 502b of the Foreign Assistance Act and a provision known as the "Leahy Amendment" (named after its sponsor, Senator Patrick Leahy of Vermont). Section 502b requires that that "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights," but this provision has never been formally invoked. The Leahy Amendment is a binding provision of the Foreign Operations Appropriations Act that must be renewed every year. It prohibits aid and training to units of foreign security forces if there is credible evidence that the unit has committed gross human rights abuses. Its companion article,

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<sup>247</sup> Congressional Budget Justification for FY05 Foreign Operations, February 2004.

<sup>248</sup> *Jane's Sentinel Security Assessment – South Asia*, January 6, 2004.

<sup>249</sup> U.S. Department of Defense and U.S. Department of State, "Foreign Military Training In Fiscal Years 2002 and 2003, Volume 1," Joint Report to Congress, released May 2003, [online] <http://www.fas.org/asmp/campaigns/training/FMTR%202003/FMTR2003.htm>.

<sup>250</sup> "US, Nepal to hold joint military training exercises," Xinhua News Agency, March 10, 2004.

<sup>251</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices - 2003: Nepal," February 25, 2004. It added that the U.S. had signed an agreement with the government of Nepal to launch a \$250,000 police professionalization program, directed to improve the capacity of the police to manage civil disorder.

<sup>252</sup> Congressional Budget Justification for FY05 Foreign Operations, February 2004.

<sup>253</sup> Human Rights Watch telephone interviews with U.S. officials, May 2004.

which can be waived under “extraordinary circumstances,” prohibits the training of security units that have committed gross violations of human rights.<sup>254</sup> To comply with the Leahy amendment, embassy personnel are supposed to actively monitor the human rights behavior of military units that benefit from U.S. security assistance.

U.S. officials told Human Rights Watch in May 2004 that this requirement was being followed. As one put it, “Our embassy people—the political counselor, defense attaché, and ambassador—are familiar with this requirement. According to a knowledgeable U.S. government source, assistance to two RNA units was suspended because of concerns that their conduct was inconsistent with the requirements of the Leahy Amendment. However, Defense Department officials and State Department officials denied knowledge of this. Human Rights Watch requested clarification from the State Department, which is responsible for monitoring compliance with the Leahy Amendment. At the time of this writing, there was no response from the State Department. However, given the scale of human rights abuses carried out by the army, it is likely that more than two units have been responsible for abuses. The U.S. government insists that it monitors end-use of its equipment through the U.S. embassy and “other means”: “We will not tolerate abuses if the assistance is to continue. We are watching.”<sup>255</sup> Human Rights Watch will watch to see if this is the case.

### *United Kingdom*

The United Kingdom has supplied some military equipment and considerable military training to Nepal. In September 2002, a \$10.1 million military assistance package was approved by the U.K. parliament.<sup>256</sup> Military equipment has been provided through direct grants, as well as commercial deals licensed by the British government.

Commercial military sales authorized by the U.K. government in 2001 included six thousand seven hundred eighty assault rifles (among other items), at a total value of £6 million.<sup>257</sup> In 2002, commercial sales were valued at £0.5 million. The equipment was mostly of a non-lethal nature, such as bomb suits and helmets.<sup>258</sup> Figures for 2003

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<sup>254</sup> U.S. *Statutes at Large* 114 (2001): 1900A-46, 694.

<sup>255</sup> Human Rights Watch telephone interview with a U.S. official familiar with Nepal, May 28, 2004. U.S. end-use monitoring efforts have been criticized as ineffectual. See, for example, U.S. General Accounting Office (since renamed Government Accountability Office), “Foreign Military Sales: Changes Needed to Correct End Use Monitoring,” August 2000, [online] <http://www.gao.gov/new.items/ns00208.pdf> (retrieved September 27, 2004.)

<sup>256</sup> “Security and Foreign Forces, Nepal,” *Jane’s Sentinel Security Assessment – South Asia*, June 4, 2004.

<sup>257</sup> Foreign and Commonwealth Office, “Strategic Export Controls Report 2001,” July 19, 2002.

<sup>258</sup> Foreign and Commonwealth Office, “Strategic Export Controls Report 2002,” July 1, 2003.

licenses, issued in June 2004, show that approved commercial military sales to Nepal doubled to £1 million; these included two combat shotguns and an unspecified quantity of small arms ammunition.<sup>259</sup>

The U.K. government also has provided, free of charge, a range of military equipment. Over the two year period from April 2002 up to April 2004, £6.4 million worth of equipment was provided to the RNA, comprising bomb disposal equipment, tactical radios and, most controversially, two unarmed MI-17 transport helicopters and (more recently) two Islander aircrafts. Total U.K. security assistance to the government of Nepal over the same period has been around £8.9M.<sup>260</sup>

This security assistance, which is part of a wider assistance package, is viewed by the British government as supporting peace-building activities. As stated by one official, “We have been quite careful to provide only non-lethal logistics equipment.”<sup>261</sup> Such a policy is an outgrowth of domestic policy as well as regional and international commitments. As a member state of the European Union, the U.K. subscribes to the 1998 European Union Code of Conduct on Arms Exports. In accordance with the E.U. Code of Conduct and its eight criteria, E.U. governments will refuse any arms deals that are likely to contribute to repression, provoke or escalate armed conflict, or undermine regional stability, among other factors.<sup>262</sup> The U.K. has also signed up to similar criteria under an agreement of the Organization for Security and Cooperation in Europe.<sup>263</sup>

Notwithstanding the U.K.’s stated policy, the RNA’s record has raised concerns about the potential for the RNA to mount the helicopters with weapons or otherwise use them in offensive operations. The British government responded to this risk by imposing conditions on the transfers and restricting their use to troop movements and humanitarian activities. A formal agreement between the two governments established the terms of use. As stated in a document signed by the ambassador and RNA Chief of the Army Staff: “The two...helicopters...are provided with the condition that they are used exclusively for logistic, humanitarian and medical purposes with the RNA. Combat or attack roles are excluded for the lifetime of the aircraft and including the fitting of

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<sup>259</sup> Foreign and Commonwealth Office, “Strategic Export Controls Report 2003,” June 7, 2004.

<sup>260</sup> Correspondence from James Pfeffer, Policy and Defense Relations, U.K. Ministry of Defense, to Human Rights Watch, July 22, 2004.

<sup>261</sup> Human Rights Watch interview with a FCO official, May 27, 2004.

<sup>262</sup> E.U. Code of Conduct on Arms Exports, adopted June 8, 1998 (endorsed by E.U. associated countries on August 3, 1998), [online] <http://europa.eu.int/comm/development/prevention/codecondarmsexp.htm>; (retrieved September 27, 2004.)

<sup>263</sup> OSCE Document on Small Arms and Light Weapons, adopted November 24, 2000, [online] <http://www.osce.org/docs/english/fsc/2000/decisions/fscew231.htm> (retrieved September 13, 2002.)

weapons, allowing soldiers to fire from the doorways whilst airborne or the dropping of ordnance.”<sup>264</sup> The helicopters, reconditioned Russian-built Mi-17s, were delivered in mid-2003. Monitoring of their use is the responsibility of embassy personnel.<sup>265</sup>

In 2004, the U.K. government agreed to provide Nepal with two twin-engine planes.<sup>266</sup> As stated by the person who announced the deal, a British embassy official, these could be used to transport people or cargo, but would not be equipped with weapons.<sup>267</sup> The U.K. Ministry of Defense has confirmed that delivery took place in July 2004 and that conditions of use would again be imposed. It noted, in correspondence with Human Rights Watch, that a letter was signed with the Nepali chief of army staff and, under the terms of the agreement, use of the aircraft in attack roles (including the fitting of weapons and dropping of explosive ordnance) was precluded. The U.K. Ministry of Defense stated further that, as light aircrafts, these would not be suitable for weapons fittings in any case.<sup>268</sup> The same office asserted that U.K. embassy staff have investigated allegations of misuse of U.K. weapons in Nepal and found them to be unsubstantiated.<sup>269</sup>

Human rights training has been an important component of the U.K. military assistance strategy for Nepal. British trainers reportedly incorporate human rights elements into tactical training, by, for example, focusing on proper rules of engagement for any military campaign. The U.K. Ministry of Defense indicates that international law is “a central component” in the various components of its counterinsurgency training, and that it seeks to “inculcate international values within the operational context” at all times. In addition to such integrated training, the U.K. has assisted the RNA’s Judge Advocate General’s office on how to carry out an investigation of human rights abuses and states that it highlights rights issues in high-level contacts with RNA.<sup>270</sup> U.K. military trainers have to explain how each component of the training contributes to respect for human rights on the ground.

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<sup>264</sup> Information provided by an FCO official, May 27, 2004.

<sup>265</sup> Foreign and Commonwealth Office, “Government Response to the Quad Committee Report on Strategic Export Controls,” May 18, 2004.

<sup>266</sup> Agence France-Presse, “Britain to give Nepal two nine-seater planes,” December 23, 2003.

<sup>267</sup> *ibid.*

<sup>268</sup> Correspondence from James Pfeffer, Policy and Defense Relations, U.K. Ministry of Defense, to Human Rights Watch, July 22, 2004

<sup>269</sup> *ibid.*

<sup>270</sup> Correspondence from James Pfeffer, July 22, 2004.

## *India*

Nepal has an uneasy relationship with its larger neighbor, particularly because, as a landlocked country, it is dependent on India for access to sea trade. It also shares a long and highly porous border with India, which citizens of both countries are permitted to cross without restriction. This has allowed the Maoists to use India for training, to hide, and to find medical attention.

India has been instrumental in opposing a larger United Nations or international role in monitoring the conflict in Nepal. India's opposition to a larger U.N. or international role in Nepal—including opposition to international monitors and international mediation of the conflict—is fueled mostly by India's own domestic concerns. For years, India has opposed similar attempts to introduce international rights monitors or international mediation in the conflict in Kashmir, and India's stance has been that bringing international monitors or mediation to Nepal would set a negative precedent for its own attempts to oppose such a move in Kashmir.

India has consistently maintained that the insurgency in Nepal is an 'internal' matter, but that, as a close neighbor, New Delhi was willing to offer any assistance that was needed. After UML leader Madhav Nepal publicly met with Prachanda in India, an embarrassed New Delhi stepped up border patrolling, at the same time attempting to ensure that the increased vigilance did not increase the hardship of civilians who cross the border for employment. Indian intelligence sources suspect that the Maoists still have bases in the border areas of Bihar and Uttar Pradesh states and are building links with Indian Maoist and Communist militant groups.<sup>271</sup> However, the government says that these are Maoists who sneak into India. Yashwant Sinha, while he was foreign minister, declared:

I would like to say with all emphasis at my command that India provides no sanctuary to these elements from Nepal. Whenever we have had information, we have not only arrested these people, we have even repatriated them to Nepal or we have held them in prison in India. Therefore, this accusation against India as if they are being permitted to operate from our soil is entirely misplaced.<sup>272</sup>

India is believed to be the major supplier of arms and training to Nepal, and its military aid relationship with Nepal goes back a number of years, but little information is

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<sup>271</sup> HRW interview with Home Ministry official (name withheld.)

<sup>272</sup> Interview of Foreign Minister Yashwant Sinha on Nepal TV, December, 12, 2003.

available about the scope and precise nature of this assistance. Some details, however, have come to light.

In April 2003, India's army chief of staff revealed that India had, by that point, provided arms and ammunition to Nepal worth \$25.8 million, and that it would provide another \$12.9 million in weapons. General Nirmal Chandar Vij stated: "The Indian government is prepared to provide any type of military assistance to establish peace in Nepal." He added: "The Indian army is ready to assist the Nepali army in whatever it can and at any time."<sup>273</sup>

India provided, free-of-charge, two Cheetah light utility helicopters in late 2001. The light helicopters reportedly have been armed.<sup>274</sup> In early 2004, it indicated that two advanced light helicopters could also be made available.<sup>275</sup> Officials confirmed delivery of these aircraft mid-year.<sup>276</sup> India has furnished a range of other weapons, including small arms.<sup>277</sup>

India has also provided Nepal with logistics and technical support, as well as training.<sup>278</sup> India provides counterinsurgency training, with India's army chief of army staff declaring that the army's experience with "operational matters" was of particular interest to Nepal.<sup>279</sup> It reportedly has trained more than one hundred RNA officers yearly for several years.<sup>280</sup>

Although India has supplied weapons to the Royal Nepal Army, "whenever such a request is received,"<sup>281</sup> there have been no public comments from India regarding the RNA's human rights violations, with the exception of Doramba. India provides Nepal with considerable financial support for construction of infrastructure, particularly for building road and railway links, but it has never publicly offered or recommended a third party mediation to end the conflict.

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<sup>273</sup> "India to provide arms, help in restoration of peace in Nepal," Agence France-Presse, April 25, 2003.

<sup>274</sup> "Nepal's forgotten rebellion," *Jane's Foreign Report*, October 23, 2003.

<sup>275</sup> "Procurement – Nepal," *Jane's Sentinel Security Assessment –South Asia*, March 2, 2004.

<sup>276</sup> "Maoist Attack in Nepal Kills 21 Policemen," Reuters, June 15, 2004.

<sup>277</sup> "Nepal's PM to visit India, ask for help against Maoists," Agence France-Presse, November 19, 2003.

<sup>278</sup> "Indian army chief pledges military aid to Nepal," Xinhua News Agency, April 25, 2003.

<sup>279</sup> "Army Organization," *Jane's World Armies*, December 31, 2003.

<sup>280</sup> *ibid.*

<sup>281</sup> *ibid.*

## *Belgium*

In 2002, Belgium was embroiled in a controversy over its military assistance to Nepal, following the approval of the transfer of five thousand five hundred Minimi machine guns to Nepal.<sup>282</sup> Activists inside and outside Belgium protested this transfer as a contravention of the E.U. Code of Conduct.<sup>283</sup> Indeed, other E.U. member states had denied applications for arms exports to Nepal.<sup>284</sup> The European Parliament later pronounced itself on arms transfers to Nepal, calling on all E.U. member states to halt such deliveries in keeping with the E.U. Code of Conduct.<sup>285</sup>

The Nepal arms affair led a Belgian government minister to resign in protest and resulted in a vote of confidence that the government survived.<sup>286</sup> The Belgian government responded to domestic pressure by sending monitoring missions to assess Nepal's security, political, and human rights situation. The first mission, in October 2002, concluded that Nepal was improving its performance and, on that basis, the deal was allowed to go through.<sup>287</sup> A second mission was sent a month later. In meetings with army officials, Belgium emphasized the importance of respecting human rights, a message that Belgian authorities indicate has been often repeated.<sup>288</sup> The federal government of Belgium did not, however, insist on end-use monitoring of how those weapons were deployed, as this was deemed to be "impossible." The company that manufactured the weapons, FN Herstal, confirmed in early 2003 that the first consignment had been delivered.<sup>289</sup> The total value of the deal was \$24.7 million.<sup>290</sup> The license for this deal was renewed in mid-2003, when it was due to expire.<sup>291</sup> As stated by one official, "Of course we know there have been incidents [of human rights abuse by the RNA]. We monitor what happens, but to what extent our weapons are used we don't know."<sup>292</sup>

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<sup>282</sup> "Belgian FN Herstal Delivers Minimi to Nepal," *Belgian News Digest*, January 9, 2003.

<sup>283</sup> "Belgium maintains contested arms sale to Nepal," *Agence France-Presse*, October 15, 2002.

<sup>284</sup> Council of the European Union, "Fifth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports," Document 14712/1/03 Rev 1, November 26, 2003, [online] <http://register.consilium.eu.int/pdf/en/03/st14/st14712-re01.en03.pdf> (retrieved July 28, 2004.)

<sup>285</sup> "EP adopts resolution on the situation in Nepal," *European Union Press Releases – European Parliament*, October 29, 2003.

<sup>286</sup> "Belgium maintains contested arms sale to Nepal," *Agence France-Presse*, October 15, 2002.

<sup>287</sup> *ibid.*

<sup>288</sup> Human Rights Watch telephone interview with Belgian officials, June 2004.

<sup>289</sup> "Belgian FN Herstal Delivers Minimi to Nepal," *Belgian News Digest*, January 9, 2003.

<sup>290</sup> *ibid.*

<sup>291</sup> "Belgium foreign minister to decide on two sensitive arms export dossiers," *BBC Monitoring European*, July 4, 2003; Human Rights Watch telephone interview with a Belgian official, June 15, 2004.

<sup>292</sup> Human Rights Watch telephone interview with a Belgian official, June 15, 2004.



The controversy over the transfer prompted the federal parliament to pass in 2003, a landmark law making national arms export criteria binding.<sup>293</sup> These criteria are largely based on the E.U. Code of Conduct and include a requirement that recipients of arms must comply with human rights and international humanitarian law.<sup>294</sup> The language of the Belgian law is in some respects stronger than the E.U. Code, including addressing the use of child soldiers. Unlike the nonbinding E.U. Code, however, the binding Belgian law also explicitly incorporates an exception calling for a careful evaluation of the circumstances of a violent conflict or regional tensions in order to permit “adequate assistance to democratic regimes whose existence is under threat.” Analysts believe this language could provide an exemption for any further military assistance to Nepal.<sup>295</sup> It evoked the statement of the Belgian prime minister in 2002, who argued that the arms transfers were needed to support Nepal’s ostensibly democratic government.

### *Others*

E.U. member states report annually on arms exports and these reports are consolidated into one volume. The consolidated E.U. reports give data on the value of licenses approved and deliveries made in a given year, and also indicate whether any deals were denied and, if so, on the basis of which criterion of the E.U. Code. In 2002, the year Belgium approved a major arms deal to Nepal, other E.U. member states rejected applications for arms exports to that country a total of six times. In doing so, they cited provisions of the E.U. Code blocking arms supplies to areas of existing tensions, armed conflict, and violations of human rights.<sup>296</sup>

Yet other deals were approved. For Nepal, the 2003 (covering 2002) report lists the following arms approvals:<sup>297</sup>

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<sup>293</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>.

<sup>294</sup> *ibid*, Article 4 (1) 4 (b).

<sup>295</sup> Human Rights Watch telephone interview with Belgian arms researcher, November 2003.

<sup>296</sup> Council of the European Union, “Fifth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports,” Document 14712/1/03 Rev 1, November 26, 2003, [online] <http://register.consilium.eu.int/pdf/en/03/st14/st14712-re01.en03.pdf> (Accessed July 28, 2004). Under Operative Provision 2 of the E.U. Code, member states are to provide an explanation if they approve an “essentially similar transaction” that has already been rejected by another country acting under the Code within the previous three years.

<sup>297</sup> Available in the appendix of the document at [online] <http://register.consilium.eu.int/pdf/en/03/st14/st14712-re01.en03.pdf>

Austria: 1 license issued

Belgium: 1 license issued, value of license = 25,937,400 Euros; value of deliveries = 2,128,000 Euros

France: 2 licenses issued; value of licenses = 97,737 Euros

Germany: 2 licenses issued; value of licenses = 482,365 Euros

United Kingdom: 17 licenses issued, value of licenses = 795,000 Euros; value of deliveries = 174,900 Euros

Nepal has purchased Heckler and Koch assault rifles, and a first delivery reportedly arrived in early 2002.<sup>298</sup> It is unclear whether these were exported from Germany or perhaps through a licensed production deal with a U.K. company. Germany reportedly rejected a license for such weapons in 2002.<sup>299</sup> France also reportedly denied a proposed arms export, in its case in 2003.<sup>300</sup>

Others reported to supply weapons to Nepal since late 2001 include China,<sup>301</sup> Kyrgyzstan (two Mi-17 helicopters reportedly worth \$5.8 million),<sup>302</sup> Poland (tactical support aircraft),<sup>303</sup> and Israel (Galil rifles).<sup>304</sup>

## IX. RECOMMENDATIONS

### ***To the Government of Nepal:***

1. Take all steps necessary to ensure that military, police and other security forces comply in full with the requirements of international human rights and humanitarian law. In particular, bring an end to the widespread practice of extrajudicial and summary executions, “disappearances” and unlawful arrest and detention. Forces must not conduct direct or indiscriminate attacks on civilians or civilian objects.
2. Conduct prompt, independent and impartial investigations into serious allegations of violations of human rights and humanitarian law by the security

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<sup>298</sup> “World Armies – Nepal,” *Jane’s World Armies*, December 31, 2003.

<sup>299</sup> Amnesty International, “A Catalogue of Failures: G8 Arms Exports and Human Rights Violations,” June 2003, p. 61-62.

<sup>300</sup> *Jane’s World Armies*, “World Armies - Nepal” December 31, 2003.

<sup>301</sup> Human Rights Watch telephone interviews with U.S. officials, May 2003.

<sup>302</sup> “Procurement – Nepal,” *Jane’s Sentinel Security Assessment –South Asia*, March 2, 2004.

<sup>303</sup> “World Armies - Nepal” *Jane’s World Armies*, December 31, 2003.

<sup>304</sup> *ibid.*

forces. Discipline or prosecute as appropriate all those implicated for their direct participation in abuses or as a matter of command responsibility in accordance with international due process standards.

3. Cooperate with investigations conducted by the National Human Rights Commission and other independent and impartial bodies into allegations of serious violations of human rights and humanitarian law.
4. Ensure that all prosecutions of military personnel for violations of human rights or humanitarian law are brought, to the extent possible, before the civilian criminal justice systems, rather than before the military courts, as recommended by the U.N. Acting High Commissioner for Human Rights. This would ensure greater transparency and would provide concrete evidence that the government is acting in good faith when it says it seeks to stop criminal behavior by forces under its control. In cases where prosecutions are conducted by courts martial, the proceedings should be as transparent as possible, and proceedings, including judgments and sentences, should be public.
5. 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.
6. Take all necessary steps to stop the practice of enforced disappearances. Make disappearances a criminal offence. The security forces should immediately make known the whereabouts or circumstances of persons whose enforced disappearances are on file with the National Commission for Human Rights. In addition to prosecuting those responsible, the government must provide suitable compensation for the victims or family members of those who have “disappeared.”
7. Order the Home Ministry and the Defense Ministry to comply promptly with all habeas corpus orders issued by the courts. As the government itself stated on March 26, 2004, “any malicious exercise against the right to [habeas corpus] remedy shall be punishable by law.” The government must ensure an effective and prompt remedy in the case of violations of this right.
8. Ensure that all persons detained by the security forces are held at recognized places of detention, and are not subjected to torture or cruel, inhuman or degrading treatment. Their whereabouts must be made known to family, counsel and the International Committee of the Red Cross. Any persons detained by the security forces must be allowed contact with family and unhindered access to legal counsel of the detainee’s own choice. All procedural rights guaranteed under the Constitution and the Code of Criminal Procedure must be respected.

9. Ensure that TADA, which expired in April 2004, and no longer has any legal force, is not used by law enforcement authorities or prosecutors, either as a grounds for prosecution or a threat against political opponents.
10. Organize, or allow others to organize, regular and suitable training to relevant officials in all branches of the security forces on human rights law, humanitarian law and the code of criminal procedure.
11. The security forces receive training in conducting operations in compliance with international humanitarian law, such as is offered by the International Committee of the Red Cross. Forces engaged in law enforcement should receive training in the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials.
12. Fulfill the government's commitment to strengthen the National Human Rights Commission's capacity to monitor, report, and investigate allegations of violations of human rights abuses. This includes: adequately funding and staffing the NHRC, ensuring that the NHRC receives unfettered access to the technical assistance of the United Nations and others, guaranteeing free and safe movement of NHRC staff, allowing NHRC staff free and private interviews with potential witnesses and sources of information, guaranteeing the safety of persons who give evidence to the NHRC, reporting allegations of violations by the security forces to the NHRC, responding promptly to requests for information and assistance put forward by the NHRC, and protecting the independence of the NHRC commissioners and staff.
13. Stop undermining and discrediting the work of persons working to protect and report on human rights abuses, such as the NHRC, the Nepal Bar Association, human rights lawyers, journalists and others. In its pledge of 26 March, the government undertook to "protect" human rights workers and activists "working for the implementation of human rights and international humanitarian law." The government should act with determination to fulfill this pledge.
14. Follow through on its proposal to invite the special procedures of the UNHCHR. In particular, the government should invite the UN Special Rapporteur on Torture, the Special Rapporteur on Freedom of Opinion and Expression, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the UN Working Groups on Enforced and Involuntary Disappearances, and Arbitrary Detentions to Nepal to investigate and report on the situation. Recommendations which may be made by these thematic agencies should be implemented in a timely manner.
15. Consistent with the Human Rights Accord promoted by the NHRC and the government's March 26, re-commitment statement, outline an implementation

plan, with firm deadlines and measurable benchmarks, to provide for the government's compliance with international human rights and humanitarian law obligations.

16. Include within any political settlement provisions to ensure the long-term protection of human rights. Such provisions could include the deployment of international human rights monitors, the expansion of offices of the NHRC, resolution of all outstanding cases of disappearances and compensation for victims and their families.
17. Implement the Poverty Reduction Strategy (PRS) agreed with the donor community, especially the commitment to mainstream "the very poor, deprived communities and backward regions through the increased involvement of local bodies in improving service delivery and accountability [and that] deprived groups will be involved in decision-making and will be adequately represented in the decision making process" The government should, with strong support of the donor community, implement its PRS fully with regard to disadvantaged groups, and focus on reforms to (i) revise existing laws to eliminate discrimination against deprived communities and women; and (ii) implement affirmative action programs to increase the social diversity of public services.

***To the leadership of CPN-Maoist:***

1. Issue immediate instructions CPN-Maoist forces to cease the abduction, torture and killing of civilians, including but not limited to persons suspected of being "informers," or members of other political parties who advocate against the Maoists. Take all necessary steps to ensure the compliance of CPN-Maoist forces with international humanitarian law. In particular, this includes abiding by Common Article 3 of the Geneva Conventions which prohibits, among other things, the killing, torture or other ill-treatment of all persons in their custody. Forces also must not conduct direct or indiscriminate attacks on civilians or civilian objects, including the abduction of civilians.
2. Ensure that the rights to freedom of opinion, expression and association are guaranteed in areas under CPN-Maoist's effective control, and that no person or community will be punished for exercising these rights. As part of this commitment, the Maoists must also cease the practice of forcing entire communities to attend political indoctrination programs, often for weeks at a time.
3. Issue immediate instructions to CPN-Maoist cadres cease the common practice of forcing villagers to provide food, shelter and money, and using schools as training and recruitment grounds.

4. Guarantee unhindered access of humanitarian, relief and development supplies to areas under their effective control. Stop extortion of aid organizations seeking to assist communities under Maoist control. Undertake to secure the safety of local and international aid workers in areas under their control.
5. Cooperate fully and transparently with the NHRC in its investigations of allegations of abuse by the Maoist forces. Guarantee freedom of movement and ensure security of NHRC staff, allow the NHRC staff to interview freely and privately any potential witnesses or sources of information, guarantee the safety of persons who provide information to the NHRC, report allegations of abuse by its forces to the NHRC, and respond in a timely manner to any requests for information or assistance put forward by the NHRC.
6. Issue an implementation plan consistent with the Human Rights Accord proposed by the NHRC, with firm dates and measurable benchmarks, to meet the obligations of international humanitarian law, and to honor and protect the human rights of civilians within their zones of control. The undertakings in this plan should be made clear to all Maoist cadres and workers.
7. Comply with the “Minimum Immediate Steps for the Protection of Human Rights by the Maoists” as issued by the NHRC on May 27, 2004. The Minimum Immediate Steps calls on the Maoists to clearly identify a command structure which will be responsible for ensuring that Maoist forces abide by humanitarian and human rights law, to guarantee the freedoms of assembly, expression and association, and to prohibit any behavior which amounts to a violation of Common Article 3 of the Geneva Conventions.
8. Include within any political settlement, provisions to ensure the long-term protection of human rights. Such provisions could include the deployment of international human rights monitors, the expansion of offices of the NHRC, and freedom of movement for humanitarian, aid and development workers.

***To the King:***

1. Accept the limitations placed on his role under the 1990 Constitution of the Kingdom of Nepal. In particular, the Constitution unambiguously denies the King the right to choose his own Prime Minister and Council of Ministers.
2. Respect the right of the people as enshrined in the Constitution to elect their representatives at the local and national levels. The summary dismissal of an elected Prime Minister and the failure to hold elections is an unacceptable over-reach of the powers vested in the King.

***To States Providing Military Assistance to the Nepali Government:***

1. Pressure the Nepali government to abide by its commitments under international human rights and humanitarian law, the Geneva Conventions, and international human rights law. Publicly condemn specific violations and urge the government to address them.
2. Actively monitor the end use of any weapons provided and investigate whether weapons supplied have been used to commit violations of humanitarian law. Ensure that security forces are well-trained in the use of weapons.
3. Ensure that the Nepali security forces at all levels are receiving suitable training that would ensure their compliance with international human rights and humanitarian law. This training should be woven into the training and operational instructions received by all soldiers.

***To Outside States, such as the U.S., U.K., the E.U., Switzerland, and India, and International Agencies, such as the U.N., and Donors:***

1. Continue to press the Nepali government to act on its stated human rights commitments. The sustained support by the international community for the NHRC and for the human rights community more generally over the last year created an undeniable, positive pressure on the government to take human rights issues seriously. In particular, the role of the United Kingdom, the E.U. countries, Switzerland, and the United Nations High Commission for Human Rights has been critical. As a result of the pressure, on March 26, 2004, the government signed a unilateral declaration reaffirming its commitments to abide by its obligations under international law. It is critical that the international community continue to press the Nepali government to act on its stated commitments.
2. Ensure follow through on the technical and financial assistance pledged by the U.N. High Commission for Human Rights (UNCHR) in April 2004. The UN High Commission for Human Rights must keep its commitment to providing the NHRC with the necessary technical and financial expertise it needs to continue reporting neutrally on abuses by both sides on the ground. In particular, the UNHCHR should assist the NHRC with the implementation of a nationwide monitoring mission. Because of the logistical challenges of human rights monitoring in Nepal, effective UNCHR assistance will require a significant increase in international personnel and logistical support by the UNHCHR to the NHRC.
3. Encourage the Nepali government to invite the Special Rapporteurs of the U.N. High Commission to Nepal for fact-finding investigations on allegations of abuse by both sides.

4. Continue to pressure the Maoists to allow humanitarian aid and assistance and freedom of movement in areas under their control and to stop the practice of extortion of aid workers and agencies.