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Nepal

A deepening human rights crisis

1. Introduction

With the breakdown of peace talks and the deployment of the army in November 2001, the armed conflict between the Communist Party of Nepal (CPN) (Maoist) and the security forces which started in 1996 entered a new phase. The government declared the CPN (Maoist) a “terrorist” organization, the security forces were given wide powers under “anti-terrorism” legislation, a state of emergency was declared and the police and paramilitary Armed Police Force (APF) were brought under the army’s operational command.¹

Since then, the people of Nepal have experienced unprecedented levels of political violence. By the end of October 2002, according to figures made public by the Ministry of Home Affairs and the Royal Nepal Army, the number of people killed in the conflict since November 2001 had reached 4,366. This compares to around 2,700 people killed in the previous five years. According to the same sources, 4,050 of the 4,366 were “Maoists”.

Amnesty International believes that at least half of these killings may have been unlawful. The vast majority of the victims were civilians targeted for their real or perceived support to the CPN (Maoist); others were Maoists deliberately killed after they were taken prisoner or killed instead of being arrested. In addition, torture is widespread and at least 66 people are reported to have “disappeared” since November 2001 after they were seen being taken into custody by the security forces. The total number of “disappearances” reported to Amnesty International in the context of the “people’s war” is over 200.

Human rights abuses by the Maoists have included deliberate killings of an estimated 800 civilians considered “enemies of the revolution”, hostage-taking for ransom, torture of people taken captive and deliberate killings of members of the security forces after they were taken captive. The Maoists have also been responsible for recruiting children into their ranks and using them in combat situations.

The rapid deterioration in the human rights situation is situated against a background of a mounting political crisis in the country and embedded in a pervasive climate of impunity.

Impunity is a longstanding problem in Nepal. Successive governments’ willingness to condone the actions of the security forces, even when they have committed gross human rights violations, was underlined by the incorporation of Section 20 in the TADA. This

¹ The Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) was passed by Parliament for two years in April 2002. It replaced an Ordinance by the same name promulgated on 26 November 2001. For more details on TADA, see below. The state of emergency was in force from 26 November 2001 to 28 August 2002, when it was not renewed. During this period, several fundamental rights guaranteed in the Constitution were suspended, including, among others, the right to freedom of expression, association and movement and the right not to be held in preventive detention without sufficient ground.

section gives immunity from prosecution to members of the security forces “or any other person” for “any act or work performed or attempted to be performed by him in good faith under the Act”.

Even before this legislation was introduced, the authorities’ persistent failure for years to act against those responsible for grave human rights violations has raised major questions about the commitment to or concern for human rights, even though there is a chapter in the Constitution of Nepal protecting fundamental rights and Nepal is a party to all major human rights treaties.

It is clear that especially when faced with the widespread impunity and the authorities’ lack of willingness to remedy this, existing institutions in Nepal such as the Supreme Court and the National Human Rights Commission (NHRC) are not able to address the deepening human rights crisis. There is a need for international assistance to provide increased human rights protection and create a law enforcement system capable of addressing reports of human rights violations with greater transparency and accountability.

Amnesty International also believes that international insistence that human rights and humanitarian law standards should be upheld would assist in moves to de-escalate the violence and protect vulnerable civilians.

This report incorporates some of the findings of a visit by an Amnesty International delegation to Nepal, including Mid- and Far-Western areas, in September 2002.² It will be submitted to the members of the forthcoming United Nations Commission on Human Rights (UNCHR) due to take place in Geneva from 17 March to 25 April 2003.

Amnesty International will press the members to adopt a resolution expressing concern about the deepening human rights crisis in Nepal, in particular reports of widespread extrajudicial executions, “disappearances”, torture and unlawful detentions reported in the context of the Maoist “people’s war”. It will urge the international community to offer assistance to the government to address the human rights crisis, including the establishment in Nepal of an office of the High Commissioner for Human Rights (OHCHR), to include international human rights monitors with a human rights protection mandate. Furthermore, Amnesty International recommends that the OHCHR should undertake capacity building in the judiciary, NHRC and other relevant institutions to assist the government in building effective mechanisms of accountability to combat the current climate of impunity among the security forces. Amnesty International will also urge members of the UNCHR to consider appointing a Special Rapporteur for Nepal. Amnesty International is also calling on both parties to the conflict in Nepal to uphold human rights and humanitarian standards as a confidence-building step towards peace talks. For more details on Amnesty International’s recommendations to the UNCHR, see the end of this document.

² During its visit from 10 to 24 September, Amnesty International delegates visited Banke, Bardiya and Kailali district. They also met with the Commander of the Armed Services, the Inspector General of Police, the Inspector General of the Armed Police Force, the Secretary to the National Security Council and other senior army officers.

2. Background

The “people’s war” was declared by the CPN (Maoist) on 13 February 1996. According to a statement issued by the party at the time, it aims to establish a “New Democracy” and constitutes an “historical revolt against feudalism, imperialism and so-called reformists”.³

In view of the radical nature of the main demands of the Maoists, in particular the establishment of a republic and a constituent assembly, it has been difficult for successive governments to enter into a meaningful dialogue with the Maoists. Between July and late November 2001, three rounds of talks were held between the Maoists and representatives of the government of Prime Minister Sher Bahadur Deuba. In late November 2001, the negotiations broke down. Several observers have since criticized the government’s lack of analysis and strategy during this short period of negotiations.

In the nearly seven years since the start of the “people’s war”, the Maoists have gained control over large areas of the countryside, especially in the Mid-Western region. Fighting in the context of the “people’s war” has further escalated after the declaration of the state of emergency, with heavy casualties reported among army and police personnel. According to government figures released in October 2002, 873 police personnel, 97 members of the APF and 219 army personnel had been killed since the start of the “people’s war”.

Nearly one year after the army was deployed, most observers agree that military operations have had limited impact. The Maoists remain in control of several districts in the Mid-Western region, where they have put in place “people’s governments” running parallel to the government’s local administration at district level. In many other districts, similar bodies continue to function at ward and village level and the security forces’ control is limited to towns and major roads.

The Maoists have been enjoying considerable support among the unemployed, women, people belonging to traditional “lower” castes, marginalized ethnic groups and poor people in rural areas. This support has to be understood in conjunction with widespread dissatisfaction with the pervasive climate of corruption and the failure of successive governments since 1990 to alleviate the entrenched poverty of Nepal’s rural population or to introduce far-reaching land reform long demanded by the poor.

In April 2001 the government launched an “Integrated Security and Development Plan” (ISDP) aimed at kick-starting development works in 11 districts where the Maoists were most active. In March 2002, the government of Prime Minister Sher Bahadur Deuba set up a Women’s Commission (albeit it as a unit under the Ministry of Women, Children and Social Welfare) and in August 2002, a *Dalit* Commission (with a mandate to improve the conditions among the “lower” caste communities). These initiatives were seen as part of a larger attempt by the authorities to address the “root causes” of the armed conflict.

³ For more background information and analysis, see the following Amnesty International report: [Nepal: A spiralling human rights crisis](#). (AI Index: ASA 31/016/2002) of April 2002.

Furthermore, many of these initiatives have suffered due to increasing insecurity, political instability and a lack of a consistent government strategy to address the growing political crisis and worsening human rights situation. Soon after the declaration of the state of emergency and the deployment of the army in November 2001, for instance, the government announced the suspension of the ISDP in all but one of the districts.

The conflict has had many adverse effects on the overall development of the country. Tourism, one of the main sources of income, has collapsed. The Maoist strategy of targeting infrastructure, including airports, bridges, power plants and telecommunication centres combined with numerous roadblocks and checkpoints set up by the security forces presented major obstacles to economic development. In the rural areas, especially in the western part of the country, there is also an increasing fear of famine. A combination of drought with government restrictions on supply of food and medicines to areas controlled by the Maoists on the one hand and restrictions imposed by the Maoists on the transport of food to district headquarters on the other, has led to increasing concern among development and aid organizations. These factors have also led to the internal displacement of thousands people, many of whom have moved to town areas and are staying with relatives. Other people have moved across the border to India.

The political situation deteriorated rapidly after Prime Minister Sher Bahadur Deuba on 22 May 2002 asked King Gyanendra Bir Bikram Shah Dev to dissolve the House of Representatives and call elections. Elections were scheduled for 13 November 2002. However, the Maoists declared they would boycott the elections and stepped up their attacks on members of mainstream political parties. The Maoists also called a nationwide strike to coincide with the parliamentary elections.

In mid-July 2002, the government of Sher Bahadur Deuba dissolved all District Development Committees, municipalities and Village Development Committees, the local elected bodies and replaced them with government employees. This move was widely criticized, including by donor governments. Without a budget and amid threats to their lives from the Maoists, services were grinding to a halt and the political vacuum widened.

Despite being brought under a uniform command, the security forces remain under-resourced to deal with a typical Maoist insurgency strategy. They continued to incur heavy casualties. On 8 September 2002, 49 policemen were killed, many of them after they were lined up and shot in the head during an attack by Maoists on a police post at Bhiman in the eastern Sindhuli district. The next day, during a Maoist attack at Sandhikharka, headquarters of Arghakhanchi district, according to government sources, 65 security forces personnel were killed. The government responded by announcing it would call an all-party meeting to consider the reintroduction of the state of emergency which had lapsed on 28 August 2002. However, amid increasing disagreement among the political parties about the ways to address the deteriorating security situation, no all-party meeting was called.

In this context, on 4 October 2002 the then care-taker Prime Minister Sher Bahadur Deuba asked the King to postpone parliamentary elections by one year. However, the King

sacked the Prime Minister on grounds of “incompetence”, dissolved the existing cabinet and postponed parliamentary elections for an indefinite period.

On 11 October 2002, the King appointed Lokendra Bahadur Chand as interim Prime Minister and swore in five ministers. All were appointed in their private capacity and not as representatives of political parties. The interim government was given five main priorities by the King, including the improvement of the security situation in the country based on national consensus and the holding of elections to the dissolved House of Representatives and local bodies.

The King acted under Articles 27(3) and 127 of the Constitution. The latter gives the king the power to “issue necessary orders” to remove any difficulties that arise in bringing the Constitution into force. The move by the King was condemned by the six mainstream political parties as “unconstitutional” and “undemocratic”.

The constitutional validity of the king's dismissal of care-taker Prime Minister Sher Bahadur Deuba and his cabinet cannot be legally challenged. Several constitutional lawyers argued that it is against the spirit of the Constitution. They have also questioned the direct appointment of an interim Prime Minister by the King as there is no constitutional provision for the appointment of an unelected prime minister. Interim Prime Minister Lokendra Bahadur Chand has announced that elections would take place once peace is restored, whereas Article 53(4) of the Constitution requires new elections to be held within six months of the dissolution of Parliament. Several street demonstrations by the mainstream political parties, especially by the parties' student wings, took place throughout November and early December 2002. The parties fear that the interim government will remain in place indefinitely under the guidance of the king, thereby reversing the 1990 democratization of the country but had not reached an agreement for a joint strategy to address this perceived threat. The Maoists on the other hand are using these developments to strengthen their argument for the establishment of a constituent assembly and republic.

On 18 November 2002, the king announced an expansion of the cabinet, once again not appointing any members of the Nepali Congress Party (NC) or Communist Party of Nepal (United Marxist Leninist) (CPN-UML). At the time of writing, a stand-off between the King and the government on the one hand and the mainstream political parties on the other prevailed.

Since being appointed Prime Minister, Lokendra Bahadur Chand has repeatedly stated that “the doors for talks are open”. In a statement issued on 4 December 2002, Pushpa Kamal Dahal, alias Prachanda, the leader of the CPN (Maoist) announced the establishment of a committee to hold talks with “all political forces, including the current ruler of the old regime, provided that a conducive environment is ensured.” The statement, however, reiterated that the key demands of the Maoists remained unchanged. These are the convention of an all-party conference, to be followed by the formation of an interim government and the staging of elections for a constituent assembly to draw up a new Constitution. Given the stand-off between the government and the mainstream political parties, it appeared unlikely that these demands could be met.

On 24 October 2002, the Resident Coordinator of the UN in Nepal told journalists that the “UN stands ready to assist in the peace talks between the government and the Maoists if ... asked to do so”. He identified peace and security as Nepal's greatest challenges, and underlined the necessity to address the root causes of conflict in an effective manner. “Unless and until legitimate grievances of the rural population, grievances related to poverty, exclusion and poor service delivery are effectively dealt with, conflict will raise its head again no matter how successful action in other areas may be”, he was quoted. This statement follows an expression of concern by the UN Secretary General in his report on the work of the organization to the UN General Assembly. He stated the following: “In Nepal, however, I am increasingly concerned by the escalation of violence between the government and the armed insurgency. If requested, I would positively consider the use of my good offices to help achieve a peaceful solution.”⁴ In addition, UN Development Program in May 2002 dispatched a “conflict assessment mission” to Nepal to explore “ways of targeting the delivery of assistance so as not to further aggravate economic and social inequities”. To Amnesty International’s knowledge, neither the government nor the Maoists have so far formally responded to the UN offer.

On 25 November 2002, the *Himalayan Times* reported a statement by Pushpa Kamal Dahal alias “Prachanda”, the leader of the Maoists, calling on all political parties to come together for a “decisive movement similar to the one in 1990”. In a statement issued on 4 December 2002, Prachanda announced new political and military strategies had been framed by the Politburo. These included a decision to no longer to attack political workers at the same as given “strong warnings” to the political parties to order their members to stop spying against the Maoists. Furthermore, the meeting emphasized the “need to stop all activities that would sabotage the physical infrastructure directly linked to the people’s welfare”. As of the time of writing, there had not been any response from the authorities to the statement by the Maoist leader.

Amid the prevailing political and human rights crisis, it appears unlikely that parliamentary elections will be held or that talks for a peaceful solution to the conflict between the government and the Maoists will be initiated. Instead, a deepening human rights crisis looms.

3. An escalation of human rights abuses

3.1 Maoist abuses

Deliberate killings of civilians considered to be “enemies of the revolution” has been a prominent feature of the “people’s war”. Teachers and politicians have been among those most frequently targeted. Around July 2002 the Maoists stepped up attacks on members of mainstream political parties after elections were announced for November 2002. Members of the NC party were most often targeted for deliberate and unlawful killings, but there were increasing attacks on members of the CPN-UML. Three NC members were killed by 40 to 50

⁴ See UN document, A/57/1 of 28 August 2002, paragraph 25.

Maoists in Ramshikhar Jhala and Pahalmanpur villages in Kailali District on 3 September 2002. Jagat Bahadur Shaha, President of the NC's village committee, and two men from Pahalmanpur village, Ram Prasad Subedi and Shobhakar Sharma, were all beheaded.

In another incident, around 300 Maoists dragged all male villagers above age 15 from their homes at Sumshergunj, Banke district on 9 July 2002. Approximately 25 people were taken to the well, beaten with clubs, rifle butts and spears and accused of handing over two Maoists to the police who earlier that day had attacked one of the villagers. Two men, Moti Lal Tamauli and Sohan Yadav Ahil, died on the spot. Several others were severely wounded.

Among those deliberately killed by the Maoists are also people who did not obey orders given to them by the Maoists. Mahendra Bhakta Oli, a 31-year-old shopkeeper, was shot dead during the night of 31 July 2002. According to one source, the Maoists had ordered him several times to stop selling *bhelī* (raw material used to make wine) and had previously burned his provisions. Another source alleged that he may have been killed on suspicion of providing information to the security forces.

Nawaraj Sharma, editor of a weekly newspaper, *Karnali Sandesh*, was abducted from his home in Kalikot district on 1 June 2002. His badly mutilated body was found on 13 August 2002.

The Maoists also tortured captives, took hostages and linked their release to certain demands, and recruited children into their ranks. They were also responsible for the summary execution of members of the security forces taken captive during attacks, particularly on police stations.

Recruitment of children by the Maoists has been reported on a regular basis.⁵ Amnesty International was informed that in the areas under its control, the CPN (Maoist) exercise a recruitment policy of "one family, one member". Children, including girls, are deployed in combat situations, often to help provide ammunition or assist with evacuating or caring for the wounded. One 16-year-old boy from Dang district reported how in May 2002 he was forced to assist with carrying wounded Maoist combatants to India for treatment and how he and six others of the same age managed to run away while travelling back to Nepal. He also explained how after his return to his village the security forces suspected him of being a member of the CPN (Maoist), as a result of which he has moved to a nearby town.

Amnesty International also obtained evidence of how children were trained in the use of arms. One 14-year-old girl explained how arms training took place during the night by torch light and how during the day, she and other children attended classes.

⁵ Nepal is a signature to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Although not ratified, even when just signed, the state must not do anything which would conflict with the object and purpose of the Convention. The Optional Protocol does require that "armed groups distinct from the armed forces should not under any circumstances recruit or use in hostilities persons under the age of 18 years".

3.2 Human rights violations by the security forces

3.2.1 Unlawful killings

The Commander of the Armed Services told Amnesty International in September 2002 that it is the army's mission to "disarm and defeat" the Maoists. The definition of what constitutes a "Maoist", according to army commanders interviewed by Amnesty International, includes civilians who give shelter, food or money to the armed Maoists. The fact that much of this "assistance" is given under threat from the Maoists was not fully recognized.

It is unclear what the exact rules of engagement are under which the security forces are operating. When asked by Amnesty International, the heads of the army, police and APF each stressed that they were in line with general practice around the world. However, a senior superintendent of police admitted to Amnesty International that the security forces deliberately kill "Maoists". He explained that the terrain and lack of detention facilities make it difficult to take wounded Maoists to hospital or captured Maoist to prison.

In this context, killings of "Maoists" in "encounters" with the security forces are reported on a daily basis compared to very few reports of Maoists injured or arrested, suggesting at least some units within the security forces have operated a policy of deliberately killing Maoist suspects instead of arresting them. During 2002, Amnesty International submitted details of more than 200 people killed in approximately 100 incidents to the UN Special rapporteur on extrajudicial, summary or arbitrary executions.

Many of the victims of killings by the security forces are civilians deliberately killed on suspicion of providing food, shelter or financial assistance to the Maoists. For instance, Sukuram Chaudhary, (19), watch repairer, farmer and student, from Pathariya, Kailali district, was killed by members of the APF possibly from Sukhat APF camp on 10 September 2002 together with three members of the CPN (Maoist).

The night before they were killed about six or seven Maoists had come to the village and had demanded food and lodging. The next morning, around 8am, there was a search operation in the village. The Maoists ran away, leaving some of their weapons behind. Sukuram Chaudhary and his family were eating at home. The security forces started to question him. However, as he belonged to the Tharu community, he did not understand Nepali. They then started beating everyone with *lathis* (long sticks), kicking them with their boots and slapping them in the face. Then they locked the women and children in the house. They reportedly took Sukuram Chaudhary to a path near the canal nearby and beat him severely. They put sand in his mouth to stop him shouting. After that, they returned to the house and took his wife. She saw her husband blindfolded with his hands tied behind his back lying on the ground. Then she was beaten in front of him and taken back to the house where she was allegedly raped by one of the APF personnel.

Later that morning, around 11am, villagers reportedly heard about 20 gunshots coming from near the bridge. It is thought that Sukuram Chaudhary and three Maoists who had been arrested by the APF were summarily killed, and their bodies disposed of nearby.

The next evening, there was a news item at 7pm on Radio Nepal stating four “Maoists” were killed in an “encounter” at Pathariya.

The report of the killing of 35 labourers involved in the construction of an airport at Suntharali, Kalikot district (a very remote area) who were deliberately killed by an army patrol illustrates sharply the lack of respect for the right to life among security forces personnel.

The killings took place in the aftermath of an attack by members of the CPN (Maoist) at Mangalsen, Achham district, on 17 February 2002 in which 56 soldiers were killed. On 20 February 2002, an army helicopter, had tried to land at the Suntharali airport strip but had been shot at by a group of Maoists. After that, the foreman, Kumar Thapa from Gorkha district and his helper, Prem Lama stopped the construction work and instructed the labourers to stay in their homes or huts. They collected the identity cards of all labourers. When the army arrived by foot around 9am on 24 February 2002, Prem Lama tried to show the identity cards but one of the soldiers fired at him. Then the other soldiers dragged the labourers from their temporary homes out and shot all of them. Those killed included 12 people from Jogimara, Ward No. 5, Dhading district. Their names are Dil Bahadur Praja, Chitra Bahadur Praja, Sher Bahadur Praja, Kumle Bahadur Praja, Ram Bahadur Praja, Bikas Praja, Konsang Kanchha Praja, Kumar Sunar, Sanu Sunar, Tek Bahadur Sunar, Tek Raj Sunar and Tanka Bahadur Gurung. The other victims included two people from Jogimara, Ward No. 8, Dhading district, two from Ward No. 1 and two from Ward No. 4. Their names are Gokarna Gurung and Manju Thapa Magar, Sanu Shrestha and Dhruba Bahadur Praja and Bhim Bahadur Magar and Gyan Bahadur Magar respectively. Five of the victims were from Kalikot district, two from Solukhumbu and Ilam districts and one from Ramechhap, Bhojpur, Kavre, Morang and Tanahu districts.

There have been several women and children among those unlawfully killed by the security forces. One of them is a 12-year-old girl, Rupa Tharu, who was killed in the night of 22 July 2002. Late in the evening of that day, a joint patrol consisting of approximately 400 army and police personnel reportedly reached Jagatia village, Ward No. 2, Sorahawa, Bardiya district. They were reportedly travelling in five or six vehicles which were left about two kilometres away from the village.

They entered the home of Rupa Tharu and questioned her father, Ram Kishan Tharu, about providing food to the Maoists. When he denied it, he was hit on his legs. The security forces personnel then grabbed Rupa Tharu, blindfolded her and took her away in the direction of Kuwachowk. There, she was shot dead. Three villagers living nearby were forced to carry her body to the waiting vehicles. Then the police reportedly took her body to the border of Gularia municipality and buried it there in the presence of two local politicians. According a press release by the Ministry of Defence issued on 23 July 2002, a Maoist was killed while trying to run away during a cordon and search operations at Sorahawa, Bardiya district.

According to the Ministry of Defence, four Maoists, including a woman were killed at Ramshikhar Jhala Ward 6, Ganeshpur, in crossfire between the police and the Maoists on 1 July 2002. However, according to local people, the four suspected Maoists were arrested in the afternoon from Ramshikhar Jhala, taken to a neighbouring village, Pahalmanpur, Pahalman and shot dead in front of a group of villagers. The villagers alleged that the four



Relative shows wound on body of Deepa Thapa, daughter of Dal Bahadur Thapa and Parbati Thapa who were killed while sleeping in their home at Nawaster, Banke district on 10 September 2002. ©AI

Maoists were reportedly made to sit in a heap of wood powder and were then deliberately shot. The names of those killed are reportedly Basu Chaudhary (18) and Rupesh Chaudhary from Ramshikhar Jhala village and Krishna Chaudhary (29) and Maya Chaudhary of Narayanpur village.

Dal Bahadur Thapa (alias Deepak) (35) and his wife, Parbati Thapa (33) were reportedly killed while sleeping in their home at Neulapur, Ward No. 9, Nawastar, Banke district, by members of the APF. According to family members, they heard a gunshot, then after a pause, three more shots in rapid succession around 8.40pm on 10 September 2002. They reportedly saw three security forces personnel in black uniforms (whom they suspect to have belonged to the APF) running away towards the main road. Half an hour later, they came back with a group of about 15 army personnel. They carried away the bodies of Dal Bahadur Thapa and Parbati Thapa using two of the string beds belonging to the family. They asked one of the family members where Dal Bahadur Thapa's sister was. The sister had left home some time ago and was suspected to have joined the CPN (Maoist). When the relative denied knowledge of her, she was slapped in the face and locked inside the house.

The 10-month-old baby daughter of Dal Bahadur Thapa and Parbati Thapa, Deepa Thapa, who was in the bed with her parents, was injured by a bullet grazing the left side of her body. Dal Bahadur Thapa died instantly. However, Parbati Thapa was still alive and asked for water. Dal Bahadur Thapa was reportedly shot in the genital area while she was shot in the chest. One bullet was found on the floor of the bedroom.

About 12 hours after the killings took place, APF personnel returned and put wire around the compound of the home and left bullet cases. They were heard saying on the walkie-talkie that they had been in a *Across-fire* but that there were no casualties on their side. On 12 and 13 September 2002, Radio Nepal aired several news reports referring to an

“encounter” between the security forces and the Maoists in the village. It was also said that 100,000 Nepali Rupees, cameras, wire and bullets had been seized.

The security forces also searched the house, took photos, names of family members and threatened the younger daughter not to take the baby to the doctor. They also threatened the chemist not to treat the baby. The family did not make a complaint to the local police station, out of fear.

Very recently, on 30 October 2002, at Angapani, Pandusen, Bajura district, seven people, Ram Lal, Surya Raut, Tula Raut, Nara Bahadur Bohara, Chandu Bohara, Rup Damai and Kashi Sarki died after they were shot by a joint army and police patrol. The patrol had reached Angapani early in the morning and after noticing light at the house of Hari Krishna Raut, they cordoned it off and asked who was inside. The above seven people were playing cards inside the house. They immediately put off the light and kept silent. This apparently made the patrol suspicious. When there was no response to a second call, they broke into the house and shot all seven people in the room. Six of them died on the spot while Ram Lal died after a few hours. The next day, there was a report on Radio Nepal announcing that seven “Maoists” had been killed in an “encounter” at Pandusen, Bajura district. There were speculations that the card players may not have responded to the calls from outside thinking those calling were Maoists as the Maoists were known to punish people playing cards.

Very few autopsies have been carried out in cases of alleged unlawful killings said by the authorities to have been “encounters”. In most cases, the bodies are disposed of on the spot by burial or burning. The security forces also allow insufficient time for bodies to be identified before they are buried or cremated, making these reports very hard to investigate.

In those few cases where autopsies have been carried out, it would appear that often no photographs are taken of the dead body due to lack of resources and items of clothing or other possessions are not retained by the authorities to assist in identification at a later stage. Nor do the reporting officers (mainly the police) provide any detailed description in their reports of the dead person’s features which again could assist in identification at a later stage.

3.2.2 “Disappearances”

A disturbing pattern of “disappearances” and long-term unacknowledged detention in the context of the “people’s war” has emerged. Between 1998 and mid-2001 Amnesty International recorded more than 130 “disappearances”. During the state of emergency between late November 2001 and late August 2002, Amnesty International recorded 66 cases of “disappearances”. It is suspected that many of those recently reported as “disappeared” may still be alive in army custody. Others are feared to have been killed in custody and their bodies disposed of in secret.

Among those reported “disappeared” since November 2001, eight of the “disappeared” are women and six are children. There are 11 farmers and 15 students among them. The highest number of “disappearances” (29) has been reported from Banke district. Most of these people are believed to be held at Chisapani army camp, a place notorious for

torture (see below). However, the army authorities at the camp have so far denied they are holding any prisoners.

Amnesty International has so far submitted 199 cases of “disappearances” reported in the context of the “people’s war” to the UN Working Group on Enforced or Involuntary Disappearances (WGEID), 108 of which were communicated to the Government of Nepal by late 2001. According to the report of the WGEID to the UNCHR of 2002, there were 87 outstanding cases; only three cases had been clarified on the basis of information provided by the government.⁶

3.2.3 Torture, including rape, and death in custody

Torture by the army, APF and police is reported almost daily. The APF, which was established in 2001, has been increasingly cited in allegations of torture. The army systematically held people blindfolded and handcuffed for days, weeks or even months. Torture methods included rape, *falanga* (beatings on the soles of the feet), electric shocks, *belana* (rolling a weighted stick along the prisoner’s thighs causing muscle damage), beating with iron rods covered in plastic and mock executions.

Amnesty International has documented several cases of torture, including rape, in custody. In early November 2002, it submitted 57 such reports to the heads of the security forces urging for them to be investigated and for Amnesty International to be informed of the outcome. In mid-December 2002, the cases were also submitted to UN Special Rapporteur on Torture. Among them were the cases of two unmarried Muslim cousins, Tarnum Maniyar (16) and Tabsum Maniyar (18) who had been arrested by army personnel from Chisapani army camp, Banke district, on 3 April 2002. Their arrest and detention followed the earlier arrest of Masgit Maniyar, the father of Tabsum Maniyar. Masgit Maniyar was arrested on 27 February 2002 and detained in Chisapani army camp for about one month.

Masgit Maniyar was arrested by about 30 army personnel who surrounded their home at Municipality -3, Nepalgunj, Banke district, around midnight. The army personnel claimed that they had a report that Masgit Maniyar was involved in the smuggling of drugs. He was then arrested and with his hands tied he was taken away by the army. He was then put into a vehicle which was parked nearby and taken to the Chisapani army camp. His family members repeatedly tried to visit him there, but they were not given permission.

He was tortured and asked to pay Nepali Rupees 1,800,000. After some time, Captain Ramesh Swar came to the family home and asked for the money from the wife of Masgit Maniyar. She sold all her ornaments to a Jewellery Shop called Porawar Jewellery in Nepalgunj and also asked for help from different relatives. This way, she managed to collect 700,000 and handed it over to Captain Ramesh Swar. After this, Masgit Maniyar was released on the condition that he would pay the remaining 1,100,000. However, he could not find the rest of the money within the given time of a week and out of fear he moved to India.

⁶ See UN Document E/CN.4/2002/79, paragraphs 230 - 233.

On 3 April 2002, about 15 army personnel along with Captain Ramesh Swar, came to Masgit Maniyar's home and asked for him. When they found he had gone to India they asked instead for the young girls, Tarnum and Tabsum Maniyar. The girls tried to hide on the roof of the house. However, they couldn't escape and were arrested by the soldiers.

After their arrest, the two girls were taken to army vehicles parked near their house. Captain Ramesh Swar kept Tarnum with him in his own vehicle while Tabsum was asked to stay with the other army men in the next vehicle. On the way to Chisapani army camp, Captain Ramesh Swar repeatedly told Tarnum that the reason for their arrest is the "escape of Masgit".

At Chisapani army camp, they were told to sleep on the rooftop of the building. Blankets were provided and the next morning they were offered coffee. Captain Ramesh Swar told them that they should not worry and that he is "under pressure" because of the escape of Masgit Maniyar.

For a whole day they were locked in a room and told that Masgit Maniyar had been kept in this room. Later in the day they were given food. After a while, at about 9pm, a soldier came and took Tarnum saying that "Sir" had asked her to come. She was then taken to the room of Captain Ramesh Swar, where she found him drinking beer. He reportedly told her that she has to pay for her uncle's mistake. She cried and pleaded her innocence but was threatened to obey his orders if she cared for her life. She reports that he then raped her.

Tarnum cried after being raped, so she was taken back to the custody room. In the meantime, Tabsum was taken to another officer, referred to by everyone at the army camp as "Saheb". She was also allegedly raped and then taken back to the custody room. Both of them were threatened to keep quiet.

After about two and a half hours, Tarnum was again taken to Captain Ramesh Swar's room. The captain gave her a toothbrush and towel and asked her to brush her teeth and take a shower. She did so. Then she was raped again. Tarnum alleges that Captain Ramesh Swar raped her three times during that night. Around 5am, she was then asked to put her clothes on and to go back to the custody room.

Tarnum was bleeding severely. Tabsum was also feeling sick the next day and both were feeling very weak. They were told by Captain Ramesh Swar that the reason why he raped them was just to take revenge against their father and uncle. He said he would release them if they did not tell anyone. They were then threatened that if they told anyone, they will be caught again, raped and shot dead. He also told them that he would visit them every week to make sure that they had not left the place and had not told anybody.

Since Tarnum was bleeding severely, at about 3 o'clock in the afternoon, Captain Ramesh Swar put them into a vehicle and brought them to Nepalgunj bazaar. Next day Tarnum was taken to a medical doctor in Nepalgunj. She was prescribed some medicines for the bleeding, but did not tell the doctor that she had been raped.

Both continue to suffer from nightmares, excessive fear and sudden palpitations. Tabsum is also reported to be seriously mentally disturbed.

During the search operation in Pathariya village, Kailali district, on 10 September 2002 in which Sukuram Chaudhary was killed (see above), members of the APF raped Sita Chaudhary. A neighbour, Sri Krishna Devi, aged 20 and pregnant, was also allegedly raped.

Laxmi Prasad Adhikari, age 30, Moti Ram Bhatta, age 25 and Harihar Prasad Joshi, age 26, from Sera, Dhane Basi, Achham district were detained for questioning on 12 May 2002 by army personnel while staying at the Annanda Hotel in Mastamandu VDC, Sanfe Bagar, in Achham district. At the time of arrest, all three were acting as “facilitators” for the German development organization, GTZ, undertaking literacy programs.

The security forces asked them for proof of identity. When Laxmi Prasad Adhikari and Moti Ram Bhatta produced membership cards that identified them as active members of the CPN-UML they were accused of being Maoists. The security forces then checked their belongings and their notebooks where they found names of participants of the literacy classes, maps of locations where classes had taken place and names of members of the CPN-UML. The army personnel concluded that these were the names of active Maoists.

During interrogation which took place between 9am and 1pm on 12 May 2002, the three men were handcuffed and asked questions regarding the activities of the Maoists. They allege they were made to lie on the floor, kicked in the face and beaten on the head and all over the body with rifle butts. They also alleged that the security forces personnel threatened to shoot them. Harihar Prasad Joshi, who was not an active member of the CPN-UML and did not have an ID card identifying him as such, said he received less kicks than the other two and was released earlier. As a result of the beating, Moti Ram Bhatt fell unconscious for half an hour and vomited several times.

Victim showing wounds inflicted under torture by the army in March 2002. ©Private

GTZ staff members, who were present at the time of the release of Laxmi Prasad Adhikari and Moti Ram Bhatt, reported that the two had swollen faces and were bleeding. After release the three men were examined and treated in hospital at Silgadhi, Doti district. They were suffering from swollen faces (lips, nose and cheeks) and were bleeding as a result of the beating and experienced head and neck pain. Laxmi Prasad Adhikari complained of hearing loss in one ear.

GTZ lodged a complaint, in co-ordination with the German Ambassador in Kathmandu, with the authorities. Amnesty International was told by the Commander of the Armed Services that one of the officers involved in the torture was barred from attending the army’s staff college as a disciplinary measure.

There have been reports of the security forces trying to cover up the death of prisoners who died under torture as “killed during an escape attempt” or during an “encounter”. In one such case, Kancha Dangol, a carpenter, was among five men arrested by soldiers during a cordon and search operation at Tokha village, Kathmandu district on 15 March 2002. They were seen being taken to the nearby Sivapur army camp. But when their relatives went there, they were told they were not in their custody. Three days later, police brought the body of Kancha Dangol to Tribhuvan University Teaching Hospital in Kathmandu. According to a delegation of human rights activists who saw the body, he appeared to have been severely tortured and had been shot through the head. A post-mortem investigation reportedly stated that the cause of death was injury due to gunshot from a firearm to the head from a close distance. It also listed the following observations on his body:

- his clothes were stained with blood and sand and had multiple tears;
- multiple contusions all over his body;
- multiple injuries looking like stab injuries on both legs below the knees;
- one perforated injury on the midline of the lower part of the chest;
- three small punctured injuries on the back of the body;
- perforated through and through injury on the head from one temporal region to another;
- ligature mark like injury over the neck.

The body was returned to his relatives. Amnesty International was told by the Commander of the Army that an investigation by the army into his death is ongoing. However, to Amnesty International’s knowledge, to date no action has been taken against the army personnel involved and his relatives have not been provided with any redress.

The combination of unsatisfactory internal investigations and a lack of accountability for torture and death in custody (see also below, Impunity) have reinforced the climate of impunity among security forces personnel.

3.2.4 Arbitrary arrest and detention

According to official figures released in August 2002, 9,900 “Maoists” had been arrested, of whom 1,722 remained in custody.

Most arrests and initial period of detentions take place outside any legal framework, especially when suspects are held in army custody. The army denies holding detainees beyond the legally permitted period of 24 hours specified in the Army Act. However, there is overwhelming evidence of people being held for long periods incommunicado in army barracks.

Those who are transferred to police custody or prison are given a detention order under the TADA or, exceptionally, are charged under other legislation such as the Arms and Ammunition Act. Under Section 9 and 12 of the TADA respectively, people can be held in preventive detention for up to 90 days and in detention for the purpose of investigation for 60

days. However, at the time of writing, hundreds of suspected Maoists have spent more than one year in detention without being taken to court.

Chief District Officers (CDOs), the highest government servant at district level, under Section 9 of the TADA can issue preventive detention orders when “there exist appropriate grounds to believe that a person has to be stopped from doing anything that may cause a terrorist and destructive act” “at a place suitable for human beings”. This wording suggests that CDOs need to scrutinize the issuing of each detention order and specify where someone is to be detained. However, according to lawyers, many CDOs have issued the police with blank detention orders signed in advance. In other words, the security forces have been given a free hand to decide who has to be detained.⁷

The practice of prolonged detention without being taken to court is not new in Nepal. Before the TADA was introduced, many Maoist suspects were arrested and detained in similar way under the Public Security Act (PSA).⁸ It would appear that the security forces are now using a loophole in the TADA to repeatedly issue new detention orders, even if the maximum detention periods of 90 or 60 days’ detention as specified in the Act have expired.

Diwakar Adhikari, a 15-year-old student, arrested on 19 December 2001 from his classroom at Sangla, Kathmandu, has been held under the TADA ever since. After an initial period of 47 days’ detention at Balaju army camp, he was transferred to prison under a preventive detention order. Each time the 90 days’ order has been due to run out, he has been transferred to Hanuman Dhoka police station in Kathmandu where a new detention order has been issued.

Similarly, Tulasi Amgain, a tour operator arrested under the TADA on 25 November 2001, remains in preventive detention at Kathmandu Central prison. In April, August and November 2002, he was transferred to the Hanuman Dhoka police station at the time the 90 days’ detention order was due to expire. A new detention order was issued, after which he was transferred back to the prison. To Amnesty International’s knowledge, he has never been produced before a court of law. (see also below, Impunity)

According to Section 15 of the TADA, people arrested under the Act are to be tried under the Special Court Act, 1974. As of September 2002, only two Special Courts (at Kathmandu and Mahendranagar) were known to have been constituted. However, very few cases had been brought before them by the authorities. All this has resulted in the justice system itself being cause for violation of the right to be tried within a reasonable time as

⁷ During its visit to Nepal in 1996, the UN Working Group on Arbitrary Detention expressed concern at the provisions in existing legislation given powers to CDOs to detain people. The Group stated this practice “conferred on this form of detention an arbitrary character by reason of its exclusively administrative nature” (See UN document E/CN.4/1997/4/Add/2, paragraph 35 (k)). Similarly, the Human Rights Committee during its examination of Nepal’s initial report under the ICCPR in 1994 recommended that “necessary measures be taken...to give effect to the separation of executive and judicial functions (See UN document: M/CCPR/52/C/CMT/NEPAL/3, Paragraph 2).

⁸ See *Nepal: A spiralling human rights crisis* (ibidem), page 34 - 35 for details regarding preventive detention under the PSA.

provided for in Article 9(3) of the International Covenant on Civil and Political Rights to which Nepal is a party.

Under Section 13(5) of the TADA, Coordinating Committees were set up at the regional or district level to coordinate the activities of the army, APF, police and the National Investigation Department and other necessary governmental agencies “to check or control terrorist and destructive acts” within the areas under their control. These Coordinating Committees chaired by Regional Administrators or CDOs are self-regulating. It is clear that they play a key role at the district level to the extent that they decide on who should be arrested, detained or released. Amnesty International learned of prisoners being produced while blindfolded before the Coordinating Committee in Kailali District and being interrogated without the presence of a lawyer, without being able to prepare their defence or avail themselves of any other fair trial safeguards set out in international law.⁹ Several prisoners were released after they were able to nominate members of mainstream political parties that could stand surety for them.

According to Clause 13 (1) anyone who feels aggrieved at the actions taken under TADA can appeal to a monitoring committee under the chairmanship of a retired Supreme Court judge. The Committee, which only has advisory powers, after investigation, can advise the relevant authorities to redress any wrongs and make suggestions to the government for ways to address the problem. However, as of the time of writing, no such monitoring committee had been set up.

With the introduction of Coordinating Committees, largely bypassing, if not substituting the normal judicial system, the absence of any monitoring mechanism under the TADA, the delay in the establishment of Special Courts to hear cases under the TADA, there are no effective checks and balances to the powers exercised by the security forces under the Act. Combined with a largely ineffective *habeas corpus* mechanism, it is clear that impunity for human rights violations which has been a longstanding practice in relation to torture, “disappearances” and unlawful killings has now been extended to arrests and detention.

3.2.5 Impunity

Impunity in Nepal is an entrenched political culture dating back to the period before the introduction of multiparty democracy in 1990. In Amnesty International’s view, it is the single most destructive factor affecting the human rights situation. Members of the security forces feel entirely shielded from outside scrutiny for their actions. The heaviest sanction they face is an internal inquiry.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions in the report on her visit to Nepal in February 2000, summed the problem up as follows:

⁹ The Special Rapporteur on Torture has stated that “the practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers”. Therefore he recommended “blindfolding and hooding should be forbidden”. (See UN Document A/56/156 of July 2001, paragraph 39(f).

“Elements within the police force appear to still operate using methods which belong to the political culture of the past, in which human rights abuses were widespread and carried out with impunity. The Government is making efforts to rid the law enforcement agencies of this legacy by increased human rights and professional training. The Special Rapporteur is, nevertheless, concerned that the measures taken by the authorities to investigate and prosecute police officers accused of human rights abuses remain seriously wanting, and that the mechanisms and avenues of redress open to victims and their families are weak and inadequate. In this way, the criminal legal system extends impunity for serious human rights violations, including extrajudicial, summary or arbitrary executions, which in turn perpetuates the vicious circle of violence. The Government needs to take prompt and effective action to curb this emerging trend.”¹⁰

Internal police or army investigations into complaints of human rights violations lack credibility. Under pressure from the international community, in July 2002 the army set up a Human Rights Cell. When Amnesty International met with the Commander of the Armed Services in September 2002, it was informed that the Human Rights Cell was investigating between six and ten cases. Internal disciplinary action had been taken against army personnel responsible for the torture of the three people employed by the German development organization, GTZ (see above, under Torture). However, up to that point, no courts martial or criminal trials had been initiated.

Despite credible evidence that Krishna Sen, editor of *Janadesh*, a weekly newspaper known to be close to the CPN (Maoist), was arrested on 20 May 2002, the authorities continue to deny he was in their custody. Amnesty International received information that Krishna Sen was beaten at the Mahendra Police Club in Kathmandu by an apparently drunken Deputy Superintendent of Police, Bikram Singh Thapa, in the evening of 27 May 2002 and that he subsequently died. There were also reports that his dead body was taken to the Birendra police hospital at Maharajgunj; but it is unclear what happened to it after that. Under pressure from the media, the then government ordered an internal inquiry chaired by a Joint Secretary of the Ministry of Home Affairs. According to its report, the inquiry committee concluded that it had no “evidential basis that would enable it to reach any firm conclusions in respect of whether Krishna Sen is dead, is imprisoned, or in some other place”. The Committee based that conclusion largely on the fact that police records contained no record of the arrest of Krishna Sen. It also criticized the lack of an effective system for identification of bodies subjected to autopsies.

According to a report in the *Kathmandu Post* of 18 October 2002, Deputy Superintendent of Police, Bikram Singh Thapa, deployed in Kathmandu was awarded the “Policeman of the Year” award. Amnesty International on 6 November 2002 requested the Inspector General of Police to withdraw the award from the officer concerned, at least until an impartial and independent investigation into the reported death in custody of Krishna Sen has been held.

¹⁰ See UN document E/CN.4/2001/9/Add.2, paragraph 59. The report refers to a period before the APF was created and the army was called out, and therefore only refers to the police.

Especially since November 2001, the courts in Nepal have failed to take up the challenge to uphold human rights protection enshrined in the Constitution. This is most clearly illustrated by the way in which the remedy of *habeas corpus* remains largely ineffective, not only in relation to "disappearances" but for those detained under the TADA.¹¹ For example, the relatives of Tulasi Amgain (see also above, Arbitrary arrest and detention) who was arrested on 25 November 2001 filed a *habeas corpus* petition before the Supreme Court on 6 March 2002. The initial hearing took place on 12 April 2002. Since then, the case has been kept pending together with 11 other petitions. Amnesty International is concerned that the indecisiveness shown by the highest court in the country will contribute to the erosion of faith in the justice system already apparent at lower levels.

There has also been a tendency for the security forces to ignore court orders. For instance, there have been cases where the army and police have formally denied detaining someone in response to a question from the Supreme Court while at the same time allowing the relatives of the person concerned access to them in custody. One of the factors influencing this situation is the fact that there is no crime of perjury in Nepali law. On the contrary the law says that "no one can be punished for any statement made in court". In addition, the law specifies that witnesses for the prosecution in criminal cases can be punished if they exaggerate their evidence. This has meant that the courts can not impose any sanctions on members of the security forces who lie to the courts during *habeas corpus* hearings. To date, the courts, when faced with two contradictory versions provided by the security forces and the petitioner or witnesses called by him or her, invariably have given more credence to the version presented by the officials.

In relation to torture, prior to the deployment of the army and the enactment of the TADA, the Torture Compensation Act (TCA) of 1996 provided some, albeit limited, redress for victims of torture or relatives of people who died in custody as a result of torture. Under the TCA, the victims or their relatives can apply for compensation to the local district courts. However, in many respects it remained a remedy without teeth, not least because torture was not defined as a crime in the Act.

To make matters worse, after the passing of the TADA, the security forces have repeatedly ignored district court orders to take prisoners for medical examination. In addition, in six cases reported from Kathmandu, once the police had taken the prisoner to hospital and had established that the prisoner could not pay for the medical examination, they have taken the prisoner back into custody without allowing any medical examination to take place.¹²

¹¹ Principle 32(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter Body of Principles) requires that "the proceedings [to challenge the lawfulness of detention, which includes the writ of *habeas corpus*] shall be simple and expeditious...The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority".

¹² Principle 24 of the Body of Principles requires that "a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission, to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge".

4. National Human Rights Commission

After sustained pressure from local and international human rights organizations, members of the NHRC were finally appointed in June 2000 - nearly four years after legislation for its establishment was passed in parliament. For the first two years of its existence, the effective functioning of the NHRC was hampered by insufficient financing and staffing and a lack of cooperation from the authorities, particularly the defence and home ministry, and the security forces.

Over the last year, with the assistance of the international community, the NHRC has tried to address the deteriorating human rights situation in the country. In June, it sent fact-finding teams to 35 districts to verify reports of human rights abuses. Reports on their findings were submitted to the authorities and the Maoist leadership in October. The NHRC also made recommendations to the government for the prevention of killings, “disappearances” and arbitrary arrests and detention.

5. Cooperation with the international community

The international community has been slow to wake up to the impending human rights crisis in Nepal. More than six years after the start of the “people’s war”, the Government of the United Kingdom hosted a meeting in London in June 2002 with a number of government and international agencies and representatives of the Government of Nepal. In a statement issued by the Chairman at the end, it was stated that the meeting “believed that an integrated approach of security, reform and development was necessary to address the conflict”. The meeting welcomed the expressed commitment of the Nepal government to address these issues, and stressed “the need for increased urgency in tackling poverty, exclusion, poor governance, discrimination, corruption, livelihoods and human rights.” “The meeting believed that the most effective means to build sustainable peace was to address the social, political and economic grievances of the poor and excluded people of Nepal. The meeting recognized that this would require international support, the basis for which would be strong, honest, united, democratic political leadership, a security response respecting human rights, and a service-oriented government delivering on its development commitments.”

Taking advantage of the international climate post-11 September 2001, the government in early 2002 embarked on an international campaign to raise foreign military assistance. The response from the United States has been to expand its economic assistance and to begin, for the first time, a program of support for the army's counter-insurgency work. The United Kingdom also extended six and a half million pounds sterling to Nepal for humanitarian aid and purchase of military hardware. India has also provided military equipment and is helping to train the army in counter-insurgency techniques. India's involvement in Nepal's domestic affairs, however, is deeply contentious in Nepal and, so far, India has maintained a non-intrusive policy.

In a meeting held in Kathmandu in October 2002, donor governments reviewed the implementation of the recommendations made at the London meeting in June. They welcomed the progress and urged Nepal and the international community to continue with the

implementation, particularly in the areas of security, corruption control, development, human rights, democracy, food and medicine and reforms. Participants also reportedly raised concern over human rights abuses by both the government and the Maoists.

Despite being a party to all major human rights treaties, Nepal has so far largely escaped scrutiny by the UN. It has been negligent in its reporting duties to the treaty bodies.¹³ For instance, in relation to its reporting under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nepal in April 1994 appeared for the first time before the Committee against Torture, the international body of experts monitoring the implementation of the Convention against Torture. The government's initial (two-page) report of September 1993 on the implementation of the provisions of the Convention against Torture was described by the Committee as "in many respects incomplete".¹⁰ It was supplemented at the time of the meeting by a six-page statement and a 10-page background note. The Committee recommended that a supplementary report be submitted within 12 months. To Amnesty International's knowledge, no such report has been submitted in the more than eight years since the Committee asked for it. Nepal's second and third reports, which had been due to be submitted by June 1996 and June 2000 respectively, have to date not been submitted to the Committee either.

In terms of the government's cooperation with the special procedures of the UNCHR, the visit by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in February 2000 is most significant. After her visit, the government in April 2001 responded in a cursory way to five individual cases of alleged unlawful killings raised by the Special Rapporteur, denying state responsibility. To Amnesty International's knowledge, the government has not taken any action to implement the general recommendations of the Special Rapporteur. These included recommendations for changes to domestic law, ways to address the problem of impunity, strengthen the avenues for redress for victims and their families and putting in place "strong, independent and credible mechanisms" to investigate reports of human rights violations and prosecute those alleged to be responsible.¹⁴

A National Human Rights Action Plan for Nepal (NHRAP), intending to give equal attention to civil, political, economic, social and cultural rights, which was initially due to come into operation in 2002, was reportedly being finalized at the time of writing.¹⁵ National consultation meetings are reportedly scheduled to take place in January and February 2003, with a view to launch the NHRAP in March 2003.

¹³ See Appendix I, for a list of treaties to which Nepal is a party, including details of overdue reports.

¹⁴ For the full text of the conclusions and recommendations of the UN Special Rapporteur, see extract from UN document E/CN.4.2001/9/Add.2 in Appendix II.

¹⁵ See <http://www.nhrapnepal.org> for more information on the Human Rights Action Plan.

6. Recommendations to UN member states

Amnesty International believes that the UNCHR has a responsibility to address the deteriorating human rights crisis in Nepal and calls upon its members to adopt a resolution including the following:

- Call on both parties to the conflict in Nepal to uphold human rights and humanitarian standards as a confidence-building step towards peace talks;
- Call on the UN Secretary-General to step up efforts to ensure respect for human rights is part of the international community's integrated approach to address the crisis in Nepal;
- Urge the government to take urgent steps to end impunity for human rights violations by undertaking prompt, independent investigations into all allegations of human rights violations, by a body that has the powers and capacity to ensure that those responsible stand trial in accordance with international standards for fair trial, and provide compensation to the victims;
- Urge the Nepal government to fully and promptly implement the recommendations made by the relevant treaty bodies and by the thematic mechanisms of the Commission, and ensuring that implementation of these recommendations are effectively monitored;
- Encourage the government to cooperate fully with the UN including issuing a standing invitation to all the thematic mechanisms of the Commission to visit Nepal. In particular, the government should be encouraged to invite the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention to return to the country together with the Special Rapporteur on torture;
- Support the development of an office of the OHCHR, to include international monitors with a mandate for human rights protection and capacity building in terms of strengthening the judiciary, NHRC and other relevant institutions to assist the government in combating impunity.
- Mandate the OHCHR to monitor respect for human rights and to assist the government in building capacity for the implementation of the NHRAP once it is launched;
- Consider appointing a Special Rapporteur for Nepal as a complementary measure to the proposed work of the OHCHR;
- Urge the CPN (Maoist) to uphold minimum humanitarian standards applicable to the situation in Nepal, including those contained in Article 3 common to the four Geneva Conventions of 1949;
- Urge that anyone under 18 who has joined the CPN (Maoist), whether voluntarily or not, to be returned to their family or community.

Appendix I: Ratification by Nepal of major international human rights treaties

The following list reflects the information available to Amnesty International as of December 2002:

Treaty	Date of signature	Date of Ratification, Accession, Succession or Declaration	Status: Ratification, Accession, Succession, Declaration	Reporting Status
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		14/05/1991	A	Two overdue reports from 12/06/1996 and 12/06/2000
International Covenant on Civil and Political Rights (ICCPR)		14/05/1991	A	Two overdue reports from 13/08/1997 and 13/08/2002
Optional Protocol to the ICCPR		14/05/1991	A	
Second Optional Protocol to the ICCPR		4/03/1998	A	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	05/02/1991	22/04/1991	R	Two overdue reports from 22/05/1996 and 22/05/2000
Optional Protocol to CEDAW	18/12/2002		Signature only	
International Convention on the Elimination of All Forms of Racial Discrimination		30/01/1971	A	Two overdue reports from 01/03/2000 and 01/03/2002.
Convention on the Rights of the Child	26/01/1990	14/09/1990	R	Two overdue reports from 13/10/1997 and

(CRC)				13/10/2002
Optional Protocol to the CRC on the involvement of children in armed conflict	08/09/2000		Signature only	
Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography	08/09/2000		Signature only	
International Covenant on Economic, Social and Cultural Rights		14/05/1991	A	

Appendix II: Extracts from the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2001/9/Add.2)

IX. CONCLUSIONS AND RECOMMENDATIONS

57. Nepal's accession to the main international human rights instruments should be welcomed as a reflection of the country's commitment to overcoming present problems and protecting human rights. However, the Government will have to increase its efforts to bring domestic legislation into line with the country's international human rights commitments. The Special Rapporteur also believes that in order to bring the spirit of these principles to the hearts and minds of the people, an awareness-raising campaign for the general public will be needed. Human rights education and awareness-raising should be included in the curricula of schools and educational institutions at all levels. The Government must further train and instruct the bureaucracy and the police to observe the principles of international human rights instruments to which Nepal is a party. Most importantly, political leaders should be encouraged to publicly support and promote human rights norms and principles.

58. Democracy in Nepal is still fragile and it is now essential to maintain momentum and safeguard the progress already achieved. The Government must be encouraged to continue the process of democratization, renew its efforts to strengthen democratic institutions and protect the fundamental principles such development depends upon. In this regard, the international community should support and assist the Government with the resources required, including funding and expertise.

59. Reports by non-governmental sources and information gathered by the Special Rapporteur during her mission indicate that extrajudicial executions have been committed by the Nepal police. Elements within the police force appear to still operate using methods which belong to the political culture of the past, in which human rights abuses were widespread and carried out with impunity. The Government is making efforts to rid the law enforcement agencies of this legacy by increased human rights and professional training. The Special Rapporteur is, nevertheless, concerned that the measures taken by the authorities to investigate and prosecute police officers accused of human rights abuses remain seriously wanting, and that the mechanisms and avenues of redress open to victims and their families are weak and inadequate. In this way, the criminal legal system extends impunity for serious human rights violations, including extrajudicial, summary or arbitrary executions, which in turn perpetuates the vicious circle of violence. The Government needs to take prompt and effective action to curb this emerging trend.

60. There is an urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses, including extrajudicial executions and disappearances, attributed to the police and other State agents. In the eyes of the general

public, the independence and objectivity of investigations into extrajudicial executions attributed to the police are seriously compromised by the fact that the process of inquiry is entirely entrusted to the law-enforcement authorities themselves. Every alleged killing by the police must be promptly and thoroughly investigated by an independent body with the authority and resources to carry out this task in an effective and credible way. In this connection, the Special Rapporteur wishes to draw the Government's attention to the standards pertaining to the investigation of extrajudicial executions contained in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Paragraph 11 of these Principles refers to investigations into "cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons". In these cases, "Governments shall pursue investigations through an independent commission of inquiry or similar procedure". The same paragraph also gives guidelines regarding the composition and mandate of such commissions. In view of the concerns expressed above, the Special Rapporteur recommends that the Government study these Principles and consider the establishment of an independent commission or procedure to investigate past and present alleged extrajudicial executions attributed to the police and other State agents.

61. The Special Rapporteur recognizes the challenges facing the Nepal police, and the need to provide the law-enforcement authorities with more resources and equipment to enable them to carry out their duties. However, she is concerned that such a move may have serious human rights implications unless legal safeguards and mechanisms to prevent abuse of force and monitor the work of the police are put in place. Measures should also include human rights training aimed at raising the awareness among law enforcement officers of the fundamental principles of democratic police work. In this regard, particular attention should be paid to the standards contained in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

62. The Special Rapporteur is deeply concerned at reports suggesting that police officers have taken the law into their own hands and summarily executed suspects, under the pretext that they do not trust the judiciary to convict these persons. It appears further that the judiciary often find the investigative work of the police wanting, thus leaving judges unable to convict in cases brought before them. These weaknesses in the judiciary and the police have resulted in gross injustices and in impunity for human rights violations. There is an urgent need for professional training for the police in order to strengthen their skills as law enforcement officers, especially in the field of criminal investigation. Commanding police officers must ensure that their subordinates are instructed to use force only as a last resort. They should make it clear that all extrajudicial killings by members of the police will be investigated and the persons found guilty of such abuses punished.

63. The Special Rapporteur is concerned that hospitals and forensic experts do not have at their disposal adequate facilities to carry out post mortems, which seriously limits the

possibilities to investigate alleged extrajudicial executions in a professional manner. These facilities should be upgraded as a matter of urgency in connection with initiatives aimed at strengthening the criminal justice system in Nepal, so as to allow for autopsies and other forensic examinations to be conducted in accordance with international standards, including those contained in the Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

64. It is up to the public prosecutor to decide whether to initiate proceedings against members of the police accused of extrajudicial executions. The Special Rapporteur is concerned that this may lead to arbitrary decisions depriving the victims and their families of their right to see perpetrators of human rights violations brought to justice. The relevant law needs to be amended or reformed in order to ensure that every citizen has full and unhindered access to justice.

65. Information gathered by the Special Rapporteur during her mission indicates that the courts subordinate to the Supreme Court often lack the capacity and competence to process the criminal cases brought before them, and only a few people will have the resources and clout to pursue their cases to the Supreme Court level. The obvious weaknesses of the lower levels of the judiciary are therefore a cause for serious concern. Members of the judiciary at all levels should receive support and training in order to raise their awareness of domestic and international human rights standards and to strengthen their integrity and independence as judges.

66. The Special Rapporteur was disturbed by the large number of cases of alleged disappearances brought to her attention by several sources in Nepal. She recommends that a judicial inquiry at the level of the Supreme Court be set up as a matter of priority to investigate current and past cases of disappearances.

67. Much of the political violence in Nepal has its roots in grievances caused by the enormous socio-economic problems affecting large parts of the country, especially remote areas which are difficult to reach and lack communications. The Government recognizes this, and has initiated a number of development projects in many of the most disadvantaged areas. The Special Rapporteur wishes to underline that these efforts also need to be geared towards addressing the human rights aspects of development, such as the continuing use of bonded labour, the caste system and the marginalized position of women ruled by traditional values and customs. The support for radical political schemes will undoubtedly continue if these fundamental problems are left unaddressed. The essence of development lies in empowerment, which must directly engage the people, especially in disadvantaged areas, through a participatory approach, enabling them to widen their own capacities and take charge of their lives.

68. Nepal is a country of meagre resources, and the international community has an important role to play in supporting Nepal to build further on the progress already made. The Special Rapporteur notes with appreciation that technical cooperation in the field of human rights is already under way under United Nations auspices. She encourages the Government and its development partners to ensure that the problem areas identified in the present report are

adequately addressed in present and future projects. Development programmes need to be fine-tuned to address the specific political and socio-economic needs of Nepal, be geared to attracting, engaging and empowering ordinary people, and genuinely connect development to local conditions and needs by enabling and encouraging people to be more participatory and mobilized at the local grass-roots level.

69. Development projects could focus more on efforts towards forming a network of women's groups and bringing them into the mainstream of political activity. While support for women at the grass-roots level is imperative, it is also vital to place more women on decision-making posts. Strategies aimed at overcoming traditional oppressive practices should be supported by the Government and donor agencies, so that women can exercise their political, economic and social rights unhindered by such biases.

70. It is the primary duty of every State, and of the international community as a whole, to protect the right to life of children. Any violation of this right by the State itself is totally unacceptable. The Government of Nepal must investigate every single incident of children being killed and ensure that those found responsible for extrajudicial, summary or arbitrary executions are brought to justice. Such investigations should involve non-governmental organizations to ensure transparency and to inspire confidence among the families of the victims.

71. The Special Rapporteur is deeply disturbed by reports that children are being used by the CPN (Maoist) in its armed activities. She calls on the leadership of this movement to immediately bring this practice to an end, and to ensure that civilians are protected from any form of violence, threats or intimidation by members of the CPN (Maoist). At the same time, the Government should increase its efforts to address the social and economic realities that cause children to be dragged into the conflict. The Special Rapporteur further believes that non-governmental organizations can play a constructive role in assessing the scope of and identifying possible solutions to this problem.

72. The Special Rapporteur believes that despite current tensions and the occurrence of human rights violations, there is still room for people to pursue their interests or demands while continuing their struggle against injustice and abuse by non-violent means. Resorting to violence and murder in the name of people's rights cannot be justified, especially as the current violence is threatening the security and well-being of the population as a whole.

73. The Special Rapporteur is concerned over reports that members of non-governmental organizations, lawyers, human rights workers, journalists and other representatives of civil society are increasingly becoming the targets of death threats and acts of violence. This is all the more regrettable considering the crucial role of human rights defenders in supporting democracy and the rule of law in a transitional society such as Nepal. She urges the Government to take urgent steps to ensure the security of these persons and to investigate all instances of threats or violence directed against them.

74. The Special Rapporteur regrets that a large number of Nepalese police officers have lost their lives in the line of duty. The heavy losses among the police have also added to a general feeling of insecurity and vulnerability among the general population. The Special Rapporteur

notes that compensation has been given to the families of the police officers killed, which is a welcome sign that the Government is taking responsibility for persons and families struck by violence. At the same time, however, the Special Rapporteur is concerned that many families of victims of police violence have received no compensation for their suffering and loss. She urges the Government to remedy this situation without delay.

75. The Special Rapporteur urges the new Government of Nepal to refrain from using military force in countering armed opposition from the CPN (Maoist). The police and other security forces should be kept under strict civilian control, in order to ensure the transparency and accountability of these operations.

76. The Government of Nepal is encouraged to continue to seek a political settlement of the situation and to pursue the path of dialogue with the CPN (Maoist). The Special Rapporteur wishes to emphasize that any settlement of the situation should include guarantees that extrajudicial killings and other grave human rights abuses carried out in the context of the present conflict will be investigated and the persons responsible brought to justice.

77. The situation currently facing Nepal is the product of several economic, social and political factors, some of which are discussed above, and the Special Rapporteur is concerned that the situation has the potential to deteriorate further unless these root causes are promptly and adequately addressed. One of the key criterion of a functioning State is its ability and readiness to protect the rights and integrity of the citizen, and to cater for their needs in a just and equitable way. It is the same criterion that will determine the legitimacy and authority of the State and its Government in the eyes of the individual citizens.