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# Nepal

## Killing with impunity

### 1. Introduction

*On 17 August 2003 19 unarmed CPN (Maoist) cadres were executed by RNA soldiers in Ramechhap district. On 13 February 2004 Reena Rasaili was reportedly raped and shot by security forces personnel in Kavre district. On 11 August 2004 a human rights activist, Dekendra Raj Thapa, was killed by CPN (Maoist) cadres in Dailekh district. Despite attracting widespread international and national concern nobody has been punished for these unlawful killings, or for the hundreds like them that have taken place during the conflict in Nepal.*

Amnesty International is deeply concerned at the growing numbers of unlawful killings occurring in Nepal. These are taking place as the nine year old conflict between government forces and the insurgent Communist Party of Nepal (CPN ) (Maoist) intensifies. Thousands of unlawful killings are feared to have been carried out by both sides since the beginning of the conflict and have consistently gone unpunished. However, recent reports suggest the scale of the killings is increasing.

These killings are occurring in the context of a severe human rights crisis and a breakdown in the rule of law. In addition to the killings, Amnesty International has received reports of hundreds of “disappearances”, thousands of arbitrary arrests, rape and widespread torture by Nepali security forces, and torture, abductions, attacks on civilian infrastructure, and the use of children in military activities by the CPN (Maoist).

At the heart of the problem is the environment of impunity within which security forces and the CPN (Maoist) operate. Despite high profile pledges of commitment to human rights, both the Nepali government and military and the CPN (Maoist) leadership have failed to investigate human rights abuses or punish those responsible.

This report describes the pattern of unlawful killings, the climate of impunity within which they are occurring, and how human rights promises by both sides have been broken. Amnesty International urges the government and military to investigate alleged extrajudicial executions by their forces, bring those responsible to justice and provide compensation to victims<sup>1</sup>. It also calls on the CPN (Maoist) leadership to investigate unlawful killings by their cadres and to remove from post those cadres found responsible for abuses, as well as their

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<sup>1</sup> For detailed measures the government can take to prevent extrajudicial executions see Annex 1: *Amnesty International's 14 Point Programme for the Prevention of Extrajudicial Executions.*

commanders. Such actions will send a clear signal that human rights violations will not be tolerated. Amnesty International also urges both parties to support effective human rights monitoring by the National Human Rights Commission (NHRC)<sup>2</sup> and to sign a mutually binding Human Rights Accord.

## 2. Background

Since the CPN (Maoist) declared a “people’s war” in February 1996, aimed at the *de facto* abolition of the constitutional monarchy and establishment of a people’s republic, Nepal has been gripped by a nationwide conflict and human rights crisis in which it is estimated that over 10,000 people have died<sup>3</sup>.

The fighting has largely taken the form of attacks by the CPN (Maoist) on army and police posts and personnel, government buildings and other infrastructure. The government initially responded to the conflict as a law and order problem, through deploying large numbers of police. However, on 26 November 2001, a state of emergency was declared under which the Royal Nepal Army (RNA) was deployed throughout the country. This state of emergency lapsed on 28 August 2002, although the RNA remains deployed across Nepal. Government forces have lost control of the majority of the countryside.

There have been three cease-fires between the government and CPN (Maoist). The first ran from December 1999 until October 2000, the second from July to November 2001, and the third from January to August 2003. All three cease-fires were accompanied by peace negotiations, but each broke down amid mutual mistrust and following the parties’ failure to agree on key CPN (Maoist) demands. Since the collapse of the 2003 cease-fire, fighting between the security forces and CPN (Maoist) has resumed with renewed intensity and there has been an escalation in reports of human rights abuses by both sides. In November 2003 the Armed Police Force (APF), Nepal Police and National Investigation Department were all officially placed under the unified command of the army, although in practice joint security force operations had been taking place for some time.

The political situation in Nepal has been highly unstable following the dissolution of parliament and sacking of the elected government by King Gyanendra in October 2002. In May 2003 the five main political parties<sup>4</sup> began a campaign against the dismissal of parliament, which reached its peak in spring 2004 when large numbers of protestors took to

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<sup>2</sup> The National Human Rights Commission was established in 2000 under the Human Rights Commission Act 1997 as an independent and autonomous statutory body.

<sup>3</sup> For additional information on the human rights situation in the context of the conflict, refer to *Nepal: A spiralling human rights crisis* (AI Index: ASA 31/016/2002), *Nepal: A deepening human rights crisis* (AI Index: ASA 31/072/2002), *Nepal: Widespread “disappearances” in the context of armed conflict* (AI Index: ASA 31/045/2003) and *Nepal: Escalating “disappearances” amid a culture of impunity* (AI Index: ASA 31/155/2004).

<sup>4</sup> Nepali Congress, Communist Party of Nepal – United Marxist and Leninist, Nepal Workers’ and Peasants Party, Peoples’ Front Nepal, and Nepal Sadbhawana Party.

the streets of Kathmandu in daily demonstrations. Thousands of these protestors were arrested while many others were severely beaten by police<sup>5</sup>.

In response to these protests, the King's appointee, Prime Minister Surya Bahadur Thapa, stepped down on 7 May 2004. In July, Sher Bahadur Deuba, who had been Prime Minister when the King dissolved parliament in 2002, was reappointed to the post by the King and formed a coalition government made up of a number of political parties<sup>6</sup>. However, this government remains weak and suffers from internal disunity, lack of democratic mandate and lack of support from political parties who have remained outside the coalition. It has so far failed to deliver improvements in the human rights situation or progress towards peace negotiations and its future is uncertain.

One of the key effects of these developments – in particular, the state of emergency and deployment of the military, establishment of a unified command, and continued suspension of the democratic process – has been a significant militarization of political space. It is clear that it is now the closely aligned palace and military, not the appointed government, which have power over many aspects of decision-making. It is this militarization and lack of political accountability, combined with weak state institutions, corruption, and a breakdown in the rule of law that has helped to create the climate of impunity within which unlawful killings are taking place.

### **3. A Pattern of Unlawful Killings**

Unlawful killings have been a constant feature of the conflict in Nepal and have been carried out by both sides. Security forces have been responsible for extrajudicial executions of civilians and suspected members of the CPN (Maoist) who are in their custody, as well as the unlawful killing of armed members of the CPN (Maoist) who could have been taken into custody. Meanwhile, the CPN (Maoist) have abducted and killed civilians who are associated with political parties or the state, who defy its orders or who it accuses of certain “crimes”, as well as *hors de combat* security forces personnel<sup>7</sup>.

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<sup>5</sup> From 8 April until 3 May 2004 public gatherings were prohibited anywhere inside the Kathmandu ring road, as the area was declared ‘Riot Prone’ under the Local Administration Act.

<sup>6</sup> The coalition consists of Nepali Congress Party (Democratic), Communist Party of Nepal – United Marxist and Leninist, Rastriya Prajatantra Party, Nepal Sadbhawana Party and some independents appointed by the King.

<sup>7</sup> Armed forces that are *hors de combat* are those who have laid down their arms or are no longer able to take part in hostilities due to sickness, wounds, detention, or any other cause.

The pattern of killings committed by the state and CPN (Maoist) has been fairly consistent over the last few years. However, the number of killings and the sophistication with which they are covered up have increased significantly in 2004, suggesting a growing disregard for the right to life among both parties.

### **Extrajudicial executions by the security forces – the scale of the problem**

The first reports of extrajudicial killings by government forces emerged around one year after the beginning of the conflict. However it was during large-scale police operations in 1998 and 1999 that there began to be frequent reports of extrajudicial executions of CPN (Maoist) suspects by police. The number of extrajudicial killings declined markedly in 2000 and the first half of 2001, due partly to international pressure and partly to the fact that the demoralised and weakened police force remained mostly confined to barracks. However, following the declaration of the state of emergency and deployment of the RNA in November 2001 there was a dramatic increase in reports of extrajudicial killings by security forces.



A woman holding a photo of her husband who was extrajudicially executed in October 2004

©Private

On 24 February 2002 the RNA allegedly executed 35 labourers involved in the construction of an airport at Suntharali, Kalikot district. On 20 February 2002 an army helicopter trying to land at the Suntharali airport strip was shot at by CPN (Maoist) cadres. After this incident the labourers' foreman and his assistant collected the identity cards of all the labourers and instructed them to stay in their huts. It is alleged that, when RNA personnel arrived at the site four days later, the foreman's assistant tried to show them the identity cards but was shot. The soldiers then reportedly dragged the 35 labourers from their huts and shot them all.

To Amnesty International's knowledge no investigation was ever held into these killings and no one has been brought to justice for them.

Reports of extrajudicial killings again declined during the cease-fire between January and August 2003. However, on 17 August 2003 – during the cease-fire period – RNA soldiers reportedly extra-judicially executed 19 CPN (Maoist) cadres who had been attending a meeting in Doramba village, Ramechhap district. Upon arrival in the village the soldiers reportedly shot one man in the house where the meeting was being held and took the 18 others into custody. These 18 were allegedly taken to Daduwa Village Development Committee (VDC), around two hours' walk away, where they were lined up and shot by the soldiers. Although the RNA initially claimed that the 19 CPN (Maoist) members had been killed in a gunfight, the government promised to conduct an investigation following a domestic and international outcry. Court martial procedures were initiated but have still not reached any conclusion. This incident contributed to the breakdown of the peace negotiations and a return to hostilities a few days later.

Since the end of the cease-fire in August 2003 there has been a dramatic rise in human rights abuses by both sides. In the first nine months after the cease-fire ended there was an unprecedented number of “disappearances” as the security forces arrested hundreds of people and held them in secret detention in army barracks. Amnesty International received reports of over 400 people “disappeared” between August 2003 and June 2004, while the NHRC recorded over 700 “disappearances” in the year following the breakdown of the cease-fire. However, reports of new “disappearances” have fallen since the summer of 2004, while local human rights organisations have reported increasing numbers of extrajudicial executions over the last few months. There are fears that the security forces may be replacing the tactic of arrest and secret detention, which led to widespread “disappearances”, with the immediate killing of suspects. Such a shift in tactics may be because the international and domestic pressure on the issue of “disappearances” was making large numbers of secret detentions unviable or because security forces have arrested most of the suspects they wanted for information purposes following the end of the cease-fire.



Bodies of people reportedly extrajudicially executed in Doramba village, Ramechhap district on 17 August 2003

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## **Extrajudicial executions by security forces – the patterns**

### ***Killings during search operations***

The most commonly reported pattern of extrajudicial executions by security forces is that, during a search operation in a village, a number of local people are taken into custody, interrogated and beaten, then taken to a secluded place and shot. The majority of extrajudicial executions have been reported from districts outside Kathmandu. This may be because, while the greater intelligence needs in Kathmandu require suspects to be detained and interrogated, in the districts there are less intelligence activities, less scrutiny of security forces actions and fewer facilities to hold detainees, making it more likely that those arrested in the districts will be killed immediately rather than detained and questioned.

While in many cases those executed are suspected CPN (Maoist) cadres, in others they are clearly civilians. Some civilians are killed by security forces on suspicion of providing food, shelter or financial assistance to the CPN (Maoist), despite the fact that they have been threatened into providing this assistance. For example, in autumn 2001 security forces personnel came to the pharmacy of Laxmi Prasad Gautam, in Chinchu VDC-7, Surkhet district, and accused him of supplying medicine to local CPN (Maoist) cadres. Laxmi was taken for questioning to a nearby village, along with another local man. Both men were reportedly beaten with sticks before being ordered to dig a ditch and stand inside it. The security forces personnel then allegedly shot both men and buried them in the ditch. After petitions from Laxmi's wife the security forces allowed Laxmi's family to dig up his body to perform funeral rites. There were signs of shotgun wounds to his head and neck. To Amnesty International's knowledge these killings have never been investigated and no one has been brought to justice for them.

### ***Death as a result of torture***

As well as directly executing people, the security forces have also reportedly tortured civilians to death. For example Purna Ram Bishwakarma, age 55, and Bhakta Bahadur Nepali, age 62, both of Phulbari VDC, Dang district, were participating in a festival in Bakhare village in 2002 when they were apprehended by security forces together with seven other men. It is reported that the security forces personnel accused the men of being CPN (Maoist) supporters and beat them severely with their rifles. Following the beating, villagers brought the men to their homes bruised and covered in blood. Bhakta died a month later from his injuries, while Purna died two months after the incident from his injuries. While Bhakta was injured, security forces reportedly visited his home and apologised to his wife, admitting that he was not a Maoist but "just an old man". Four of the other men beaten in the incident also reportedly died from their injuries. To Amnesty International's knowledge these killings have not been investigated and no one has been brought to justice for them.

Certain socially marginalised communities have been particularly targeted by security forces. This is due in part to their perceived association with the CPN (Maoist), as the CPN (Maoist) movement received support in its early stages from oppressed and ethnic minority communities in the west of Nepal. These groups, including the very poor and landless, dalits, and the ethnic minority Tharu and Magar communities, have reportedly suffered exceptionally high numbers of extrajudicial killings, rape, "disappearance" and torture in the context of the conflict. The widespread human rights abuses committed against these communities by security forces can be seen as an extension of the historical discrimination and violence they face in society.

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**Rape**

Although the majority of those killed by the security forces are men, in a significant number of cases extrajudicial executions are reportedly accompanied by rape, either of female victims or the victim's female relatives. One such case is that of Reena Rasaili, an 18-year-old student, who was reportedly taken from her home in Pokhari Chaur VDC, Kavre district, by a group of security forces personnel at midnight on 12 February 2004. It is reported that Reena was dragged from her house, beaten and interrogated, before being taken to a nearby cowshed by five security forces personnel. At around 5am on 13 February shots were heard from the direction of the cowshed. After the security forces left the village, villagers found Reena's naked body. She had been shot in the head and chest and bloodstains on her discarded clothes and underwear indicate that she may have been raped. Following significant media coverage of the case, the RNA launched an investigation, the findings of which were inconclusive. A second RNA investigation has now been initiated, but almost one year later no one has been brought to justice for the killing.

In another recent case, the wife of a victim was reportedly raped before her husband and brother-in-law were killed. In September 2004 around 50 security forces personnel came to Sangeeta's<sup>8</sup> house in the far western region of Nepal and accused her husband of being involved with the CPN (Maoist). Five security forces personnel then took Sangeeta and her husband to their cattle shed where they allegedly took turns to rape her in front of her husband. When her husband tried to protest the security forces beat him in his eyes until he was blinded. It is reported that Sangeeta's husband and brother-in-law were then taken a short distance from their home and shot. Sangeeta found her husband and brother-in-law's bodies on the roadside near their village. Her husband had been shot in the chest and arm. To Amnesty International's knowledge this case has not been investigated and no one has been brought to justice for the killings and rape.

**Children**

There have also been allegations that security forces have extra-judicially executed children, as well as disturbing press reports of people under the age of 18 being killed in "encounters". This raises concern that security forces are not distinguishing between adult and child combatants or suspects and are violating Nepal's commitments under the Convention on the Rights of the Child, which requires state parties to recognise children's inherent right to life. For example, at around 4am on 13 February 2004, during the same search operation in Pokhari Chaur VDC, Kavre district in which Reena Rasaili was killed, Subhadra Chaulagain, a 17-year-old student at Prava Secondary School, was reportedly taken from her home by security forces. She was interrogated before being taken to a spot a short distance from her house. At approximately 4.30am nine shots were heard. Subhadra's body was discovered two hours later. It is reported that she had been shot in the face and stomach. The first RNA investigation into the case proved inconclusive and a second RNA investigation is now underway. No one has yet been prosecuted for the killing.

In a similar incident, three girls - Hira Ram Rai aged 15, Jina Rai aged 16, and Indra Kala Rai aged 16 - were allegedly extra-judicially executed by security forces on 3 September

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<sup>8</sup> This name has been changed to protect the victim's identity.

2004. A group of security forces personnel reportedly followed the three from their school in Basikhora village, Bhojpur district and shot them when they entered a nearby forest. The girls were members of a local CPN (Maoist) cultural group<sup>9</sup>, but were unarmed. The security forces personnel buried the girls' bodies in the forest, although the family recovered them three days later and carried out funeral rites. The government radio station later carried news that the three girls had been killed in an "encounter" in a different district. To Amnesty International's knowledge there has been no investigation into this case and those responsible for the killings have not been brought to justice.

### Unlawful killings by the CPN (Maoist)

The CPN (Maoist) have been killing both civilians and *hors de combat* security forces personnel since the beginning of the conflict. This is often done as punishment for "spying" or for other "crimes". In many areas the CPN (Maoist) have set up parallel justice systems and often announce that those killed had been "sentenced to death". In some cases the CPN (Maoist) claim responsibility for these killings in the media. CPN (Maoist) victims are often abducted and many are severely tortured before they are killed. Such torture and killings of civilians are in direct violation of the CPN (Maoist) obligations under international humanitarian law, which prohibits summary executions of those not actively engaged in conflict, including those taken into custody.

An example of a civilian who was killed for "spying" is the case of Kamal Poudal, a peon from Gadi VDC-4, Surkhet district. It is reported that, in June 2004, a large number of CPN (Maoist) cadres surrounded Kamal's home and ordered him to accompany him while they locked his family in the house. After some time the CPN (Maoist) cadres who had taken Kamal returned and told his family that they had killed him because he was a spy. The family later found his body nearby.



A woman whose husband was killed by CPN (Maoist).  
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<sup>9</sup> The CPN (Maoist) have many cultural groups which organise gatherings and cultural performances and try to involve local people in the CPN (Maoist) movement. Children are often involved in these cultural groups

The CPN (Maoist) frequently kill representatives of political parties and local officials. On 2 August 2004, eight CPN (Maoist) cadres reportedly abducted Rajendra Shreebastav, the former Mayor of Gulleria Municipality, from a funeral that he was attending in Tepari Village, Gulleria Municipality-12, Bardiya district. The men allegedly hacked Rajendra to death with knives, almost severing his head from his body. It is also reported that civilians are sometimes killed because they refuse to provide “donations” to the CPN (Maoist). For example Gopal Giri, a journalist and Mayor of Birgunj town, Parsa district, was reportedly killed on 15 January 2004 after he refused CPN (Maoist) demands to “donate” 500,000 rupees (US\$ 6,900).

Like the security forces, the CPN (Maoist) have killed children. For example, in August 2004 CPN (Maoist) cadres reportedly shot and killed 15-year-old Santosh Bishwakarma of Mudebas VDC-7, Dhankuta district. A CPN (Maoist) source claimed he had been killed as punishment for committing incest and collecting donations while posing as a CPN (Maoist) cadre.

#### ***Human rights defenders***

CPN (Maoist) cadres have particularly targeted human rights activists and those who speak out against CPN (Maoist) abuses. Dekendra Raj Thapa, a journalist and human rights defender was abducted by the CPN (Maoist) in Dailekh district on 27 June 2004 and was killed on 11 August 2004. The CPN (Maoist) claimed responsibility for his killing, which it justified by accusing him of spying for the security forces and acting as master of ceremonies at an event attended by the King of Nepal. The CPN (Maoist) later reportedly apologised for Dekendra’s killing, claiming it was a “mistake”.

On 15 February 2004, Ganesh Chiluwal, Head of the Maoist Victims Association, an organisation working for the welfare of the families of CPN (Maoist) victims, was reportedly shot dead by two armed men at the offices of the association in Kathmandu. On 3 January 2005 Jaya Bahadur Rawal, a central committee member of the Maoist Victims Association, was shot and killed in a Kathmandu market. Both killings are believed to have been carried out by CPN (Maoist) cadres in retaliation for anti-Maoist campaigns organised by the association.

#### ***Hors de combat military***

As well as killing civilians the CPN (Maoist) also target security forces personnel who are *hors de combat*. For example, on 8 December 2004 an RNA Constable, Shyam Lamichhane, who was on leave, was travelling to his home in Chhaphthok village, Thansing VDC-8, Nuwakot district. It is reported that during his journey he was abducted from Ranipauwa, Nuwakot district by CPN (Maoist) cadres and beheaded. Likewise on 30 October 2004 Bala Ram Bishwakarma of Awalparajul VDC-4, Dailekh district, who had recently joined the RNA as a trainee, was reportedly abducted by CPN (Maoist) cadres and hanged from a tree.

#### ***Death as a result of torture***

Like the security forces, CPN (Maoist) cadres have not only directly executed people, but have also tortured some civilians to death. One night in 2002 many CPN (Maoist) cadres

allegedly surrounded the house of 65-year-old Chandra Bahadur Khatri, in Kunathari VDC -1, Surkhet district. Some of the cadres took Chandra away while others stayed to guard the home. After a few hours the cadres left the house and Chandra's wife and children went to look for him. It is reported that they found him the next morning, lying badly injured in a nearby empty building and begging for water. Chandra's family brought him home where he told them that over 50 Maoists had beaten him and three other local men with sticks and axe handles and had cut his feet with an axe. He died five hours later. Before this incident CPN (Maoist) cadres had come to Chandra's house regularly for food and his wife does not know why they killed him.

## 4. Legal framework

Nepal is a state party to six of the main human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states that no one shall be arbitrarily deprived of life and requires the Nepal government to guarantee the right to life, the right to liberty and security of the person and the right to be free from torture or cruel, inhuman or degrading treatment. The ICCPR explicitly states that there can be no derogation from these rights, even "*in time of public emergency which threaten the life of the nation*". Nepal has also ratified the four Geneva Conventions of 1949 and is bound by their common Article 3, which prohibits, among other things, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, and the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court.

As a party to the Convention on the Rights of the Child (CRC) the Nepal government is required to "*recognize that every child has the inherent right to life*" and "*ensure to the maximum extent possible the survival and development of the child*".

Nepal to date has not ratified the Rome Statute of the International Criminal Court. In Article 8 (2) the Rome Statute defines war crimes as grave breaches of the Geneva Conventions including "*wilful killing*" and "*killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered*".

The inadequacies of the legal framework in Nepal contribute to an environment of impunity. Crucially, Nepal's Constitution of 1990 does not explicitly guarantee the right to life<sup>10</sup>. Moreover, the provisions of the Terrorist and Disruptive Activities (control and punishment) Ordinance (TADO), as most recently re-promulgated by royal decree in October 2004, fall well below international standards. It allows "*necessary force or weapon*" to be used in a variety of circumstances, including if "*any person or group with or without weapon hinder security force(s) while obeying their duty*" (Article 5 (J)).

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<sup>10</sup> Article 12 (1) states that "no law shall be made which provides for capital punishment", but does not positively include the right to life.

However, there are clear limits on the use of lethal force within the regulations governing both the police and the RNA. Under Article 6(1) (b) of the Local Administration Act (1971) a written authorisation is required from the Chief District Officer (CDO) authorising the police to use lethal force. The law provides that if there is no time to issue a written order, a verbal order can be issued, which must be confirmed in writing within 24 hours. If this is not possible the police must report in writing to the CDO clarifying why it was not possible and setting out the circumstances in which the officers were required to use force. An internal inquiry will then be carried out to ascertain whether the officers acted within the law.

The RNA rules of engagement are clear on the very limited circumstances in which lethal force can be used. The RNA Human Rights Directive No 02/060, issued by the Chief of Army Staff on 18 August 2003, states that “*detainees must not be killed or no activities should be done to affect his/her health*” and “*weapons cannot be used to control the detainees unless he/she attempts to escape and does not obey the challenge given by security personnel*”. The RNA “Rules of Engagement (ROE) for Use of Firearms by Army Personnel Authorized to Carry Weapons” states that “*No more than necessary force will be used in all situations. Weapons will only be used as the last resort*”.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also provide that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms<sup>11</sup>. Whenever the lawful use of force and firearms is inevitable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence and minimize damage and injury and respect and preserve human life<sup>12</sup>.

As an armed group the CPN (Maoist) is also required to abide by Article 3 Common to the four Geneva Conventions (1949). Thus they must also respect the right to life and ensure the humane treatment of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.

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<sup>11</sup> Principle 4

<sup>12</sup> Principle 5(a)(b)

## 5. Escaping Justice

### Impunity for security forces

The widespread extrajudicial executions carried out by Nepal's security forces are made possible by the environment of impunity within which these security forces operate and their disregard for the rule of law. This impunity is created on a number of levels, as security forces on the ground hide evidence of killings, organisations attempting to investigate abuses face deliberate obstruction and practical



Clothes and bullets found at the scene of reported extrajudicial killings in Doramba village, Ramechhap district. August 2003  
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difficulties, and mechanisms intended to safeguard against abuses are eroded. However, it is the failure of the highest levels of the government and military to ensure that abuses are investigated and those responsible are punished that is the most crucial factor enabling security forces to carry out extrajudicial executions secure in the belief that they will never be brought to justice for these crimes.

### *Covering up abuses*

Since the beginning of the conflict there have been regular reports of security forces taking measures to cover up extra-judicial executions. Most frequently security forces report that a killing occurred during an "encounter" or when a detainee attempted to escape from custody. Security forces often use the media to disseminate this version of events, and there are many accounts from families who have witnessed a family member being arrested or deliberately killed, only to hear later, on the radio or in the newspaper, that the person died during an "encounter". There are also regular reports of security forces disguising their identity during search operations, including by wearing civilian clothes, carrying out operations at night, and claiming to be CPN (Maoist) members when they enter a village.

In addition to these strategies, which have been in use for some years, there is evidence that the security forces have begun using more sophisticated tactics to cover up extrajudicial executions. There have recently been a number of reports that, following an extrajudicial execution, security forces have coerced local people into signing false statements that corroborate the security forces' version of events. There have also been increasing reports

of security forces burying or removing the bodies of those killed, or supervising their funerals, presumably to ensure that no record is kept of the physical evidence<sup>13</sup>.

The case of Dayanidhi Burma demonstrates the increased sophistication of the security forces in covering up extrajudicial executions, as well as the cooperation between the RNA and police in such cover-ups. At around midnight on 29 October 2004 Dayanidhi was arrested from his home in Khaskarkado VDC-1 Banke district, by five RNA soldiers in civilian clothes. The soldiers took him to a nearby paddy field and around one hour later villagers heard continuous firing from that direction. After some time the soldiers went to Dayanidhi's neighbour's house and announced that they had shot Dayanidhi as he had tried to escape. Following this, at around 2 am on 30 October, the soldiers gathered five villagers at the home of ex-ward chairperson Puskar Nath Kurmi and forced these villagers to sign a document without allowing them to read its contents. The five suspected that the document falsely stated that Dayanidhi was a CPN (Maoist) member who had been killed trying to escape from custody. The security forces then demanded that Puskar provide them with a sack to take the corpse away. Following petitions to the CDO, the authorities finally handed over Dayanidhi's body to his family on agreement that the police escort the body to the village and supervise the funeral. Dayanidhi had been shot many times in the stomach as well as in the throat and wrists, a fact that would appear to contradict security forces' claims that he was shot while escaping.

### ***Obstruction of human rights defenders***

Another factor that allows extrajudicial executions to be carried out with impunity is the obstacles faced by those attempting to investigate abuses. In most districts there are few local organisations with capacity to investigate extrajudicial executions, while the mountainous terrain in most of the country makes it difficult for human rights organisations from the district headquarters or Kathmandu to reach the scene of a killing in time to collect whatever evidence is available. Moreover, the human rights community in Nepal has no capacity to collect or analyse forensic evidence. Due to these difficulties, in many cases of suspected extrajudicial execution even basic facts such as the number of victims, their age, sex, and how they died go unrecorded, with serious implications for any future initiatives for justice and redress.

In addition to these practical obstacles, Nepali human rights organisations are coming under increasing threat from security forces, as activists are harassed, arbitrarily arrested and tortured, and the offices of human rights organisations are raided, making it both difficult and dangerous for them to investigate and report on human rights abuses<sup>14</sup>. Due to threats from security forces, witnesses are often reluctant to provide testimonies for fear of reprisals. There are increasing concerns that threats to the media by the security forces are resulting in less

<sup>13</sup> The majority of Nepali's, who are Hindu, cremate their dead. This results in the destruction all physical evidence of the means of death.

<sup>14</sup> For more information on the threat faced by human rights defenders in Nepal see "*Nepal: Human rights defenders under threat*" (AI Index: ASA 31/141/2004).

reporting of human rights abuses and even highly suspicious killings simply being reported as “encounters”.

The NHRC is a statutory body that has responsibility for investigating and reporting on human rights abuses and making relevant recommendations to the government. As such it has a key role to play in combating impunity and ensuring justice. However, the NHRC is increasingly obstructed by the government and security forces in fulfilling its responsibilities. The greatest obstruction has been in the area of detention, with the NHRC denied free access to army barracks where it suspects that hundreds of people are illegally detained, at risk of torture and extrajudicial execution. The government and security forces have also consistently refused to engage with the NHRC or address its concerns. For example, despite the NHRC Chairperson requesting a meeting with the Chief of Army Staff in September 2004, it was not until the United States Congress passed a law making military assistance to Nepal dependent on RNA cooperation with the NHRC in November 2004<sup>15</sup> that the Chief of Army Staff finally agreed to meet the NHRC. While the NHRC has not so far been actively obstructed from visiting sites of extrajudicial killings, as it has been with places of detention, its findings and recommendations - including for further investigation, compensation and punishment – have been repeatedly ignored by the government and security forces. This is despite the government’s commitment in March 2004 to respond “promptly to any requests for information or suggestions [by the NHRC] for measures to improve the protection of human rights”<sup>16</sup>.



Photograph of Laptan Yadav who was reportedly extrajudicially executed in October 2004. The NHRC investigated the incident but the government has not acted on the NHRC recommendations.  
© Private

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<sup>15</sup> The law makes US military assistance dependent on the government complying with habeas corpus orders issued by the Supreme Court; granting the NHRC unimpeded access to all places of detention; cooperating with the NHRC to resolve all security related cases involving individuals in custody; and showing that it is taking effective steps to end torture and prosecute those responsible for human rights violations.

<sup>16</sup> Point 24(1) in “His Majesty’s Government’s commitment on the implementation of Human Rights and International Humanitarian Law”, 26 March 2004.

The NHRC's future independence and effectiveness is under serious threat, due to the fact that the current term of its Commissioners will end in May 2005. Under the regulations laid out in the Human Rights Commission Act (1997) the Chairperson and members of the Commission must be recommended by a committee consisting of the Prime Minister, Chief Justice and leader of the opposition. However, in the absence of parliament and a leader of the opposition this procedure cannot be followed and any attempt by the government to unilaterally appoint new commissioners would deeply undermine the independence of the NHRC. It is therefore vital that the tenure of the current commissioners is extended until

In the early hours of 2 October 2004, a group of approximately 150 security forces personnel arrested Raj Gir Yadav and Ram Pukar Yadav of Chorakoyalpur VDC, Danusha, and Laptan Yadav, Shatrughan Yadav, Ram Nath Yadav and Krishna Kumar Yadav all of nearby Bala Bakhar VDC, Danusha district. All the men were gathered together in Balabar VDC where they were reportedly questioned about involvement with the CPN (Maoist) while being kicked and beaten with sticks, rifles and rubber pipes. Some of them had their hands tied and were blindfolded. After this the men were allegedly taken to a nearby spot and shot and their bodies taken away by security forces. Two men who had been arrested and interrogated with them, Raj Kishor Yadav and Kari Yadav, were released. Following petitions by the families and local political leaders to the authorities in Janakpur the bodies were returned. Five of the men had been shot in the head, while Ram Pukar Yadav had been shot in the chest. The NHRC investigated the incident and confirmed that these unarmed men had been taken from their homes and extra-judicially executed. However an RNA spokesman refuted this claim and said that the six were Maoists who had been holding a meeting and had attacked the security forces with guns and socket bombs before being killed in an "encounter". Despite the NHRC sending its findings and recommendations on this case to the government, at the time of writing there had been no response or action by the authorities.

Parliament is reconvened and the provisions for appointing new commissioners can be met.

### ***Erosion of safeguards***

The unchecked extrajudicial executions by security forces are also being facilitated by an erosion of the legal and institutional safeguards intended to protect against human rights abuses. Since the breakdown of the cease-fire the security forces have shown an increasing disregard for the rule of law. They regularly fail to comply with their own rules of engagement, carry out illegal arrests, hold people in arbitrary and secret detention in barracks,

mislead the courts and ignore court rulings<sup>17</sup>. Such actions severely undermine existing legal protections, particularly for those in custody.

The breakdown of democratic institutions and local government structures has removed important checks on security forces' actions and opportunities for redress. For example, in the absence of parliament there is no body that can scrutinise the NHRC's reports, ensure action on its recommendations, or hold the executive to account for abuses<sup>18</sup>. Local government has been severely eroded, both by the dissolution of elected local bodies<sup>19</sup> and the resignation of many local officials under threat from the CPN (Maoist). In many districts the remaining local authorities are now confined to the district headquarters and dependent on the security forces for protection. In the past, the CDO and local authorities have been important channels for complaints about security forces' abuses. However, increasingly local people outside the district headquarters are not reporting abuses to the local authorities out of fear, because the authorities are physically inaccessible, and because they recognise that the authorities are largely powerless to provide any remedy. Moreover, the increasing dependence of local officials on the military for their security inevitably reduces their capacity to independently take up complaints and raise concerns about military actions.

The ability of victims' families to seek redress through the police and the courts has also been severely undermined. In most areas local police stations have closed due to fear of CPN (Maoist) attacks, and where police are available they lack the forensic expertise required to conduct post mortems or effectively investigate extrajudicial executions. Moreover, under the current system of unified command the police operate under the direction of the RNA and are often reliant on the military for their protection. In a significant number of cases police have also been involved either in carrying out or covering up extrajudicial killings. This has resulted in widespread distrust of the police among the population and a reluctance to report human rights abuses to them.

Public prosecutors in Nepal have also shown themselves to be lacking in independence and are extremely unlikely to take up cases against the security forces. The failure of the local government, police and public prosecution as channels of redress greatly limits access to justice for the families of those killed by the security forces.

#### ***Government and military failure to ensure justice***

It is the lack of will among political and military leaders to investigate human rights abuses and bring those responsible to justice that is the most important factor creating the current level of impunity. Despite its international obligations and repeated promises, the government

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<sup>17</sup> For more information on the obstruction of the courts by the security forces, particularly in relation to *habeas corpus* writs, see *Nepal: Escalating "disappearances" amid a culture of impunity* (AI Index: ASA 31/155/2004)

<sup>18</sup> Under the Human Rights Commission Act (1997), the NHRC is required to report annually to parliament.

<sup>19</sup> Elected local bodies were effectively dissolved on 16 July 2002 when the period for which they were elected came to an end without new elections being called. However the local administration, headed by the Chief District Officer, remained in place.

has failed to protect the right to life or act on the recommendations of the NHRC with regard to cases of extrajudicial execution. However, given the current power of the RNA, it is questionable whether a weak civilian government could end impunity without the genuine support of the military leadership.

The military leadership, which undoubtedly has the greatest power to end human rights violations by the security forces, has almost entirely failed to condemn, investigate or punish such abuses - a failure so great that it could be seen as a tacit encouragement of abuses. Although the RNA has established internal mechanisms to promote human rights, including national and regional Human Rights Cells and human rights training, such measures appear to have made little impact on the level of abuses committed by security forces.

According to RNA figures, since the military was deployed throughout the country in 2001 the RNA has only investigated 39 of what it terms "Human Rights Violations Cases". However, less than half of these cases were actually of alleged human rights abuses, as the majority were general disciplinary cases such as extortion and drunken brawling. In fact, the figures reveal that the RNA has only investigated eight cases of human rights abuses dating from the 16 month period since the end of the cease-fire, and only five of these have resulted in any punishment.

All prosecutions of army personnel accused of human rights abuses take place through court martial. This means that the justice process is not transparent, and that victims and their families are not able to hear the evidence. The court martials also result in much lighter sentences than would be imposed by civilian courts, even for the most serious crimes. For example, the RNA personnel found guilty of illegally killing three teachers, Hari Prasad Bhattari, Dekmani Koirala and Durga Prasad Koirala, on 7 December 2003, were sentenced to two years imprisonment, while their commanding officer was discharged from the army. Likewise, the soldiers found guilty of illegally killing Kanchha Kaji Dangol on 15 March 2002 were sentenced to three months imprisonment and their commander was discharged. It is clear that court martials do not provide an effective remedy for human rights violations. Such cases should be prosecuted in the civilian courts, allowing victims and their families to see that justice is done and ensuring a sentence that reflects the gravity of the crime.

The government and military's lack of commitment to ending impunity can be most starkly seen in the fact that, more than a year since the extrajudicial killings in Doramba, those responsible have still not been brought to justice. As this was a very high profile case, action on the Doramba killings has come to be seen as an indicator of the government and military's determination to address human rights abuses. However, despite the enhanced credibility on human rights that the government and military would gain by punishing those responsible for the Doramba killings, the court martial process initiated in 2003 remains inexplicably stalled. The failure to provide justice in this case sends a disturbing signal that extrajudicial killings of CPN (Maoist) members, or suspected members, are acceptable and will go unpunished.

### **Impunity for CPN (Maoist) cadres**

CPN (Maoist) cadres are also able to commit human rights abuses with impunity in the areas within their control. The absence of a clearly articulated chain of command within the CPN (Maoist) forces is one factor that facilitates this, as senior CPN (Maoist) commanders are apparently not held responsible for the actions of their cadres and therefore have limited incentive to ensure human rights are respected. The CPN (Maoist) has not provided public information on what, if any, systems it has in place for investigating human rights abuses by its cadres or removing those responsible from their posts. Like the security forces, CPN (Maoist) cadres harass human rights defenders, including by abducting and killing them, making it dangerous for human rights organisations to investigate and report on abuses by the CPN (Maoist).

## **6. Broken Commitments**

The Nepal government and the leaders of the CPN (Maoist) have repeatedly committed themselves to respect human rights. However, the continued unlawful killings carried out by both sides directly contradict such statements, raising the question of how much value “promises” on human rights can have in the absence of comprehensive monitoring and effective mechanisms for justice and redress.

### **The Nepal government’s commitments**

In addition to the human rights protections contained in Nepal’s constitution and the international human rights treaties to which it is a party, the Nepal government has recently made explicit pledges on human rights, and has also set up dedicated bodies to promote human rights.

In response to mounting criticism of its human rights record, the Nepal government established a number of internal human rights bodies within the security forces and civilian government. These include Human Rights Cells within the APF and civilian police, established in January 2001; a central RNA Human Rights Cell established in July 2002, together with subsidiary Human Rights Cells in Division and Brigade headquarters; and a similar cell in the Home Ministry, established in January 2003. A Human Rights Promotion Centre under the Prime Minister and Council of Ministers’ office was established in December 2003. However these initiatives do not appear to have resulted in a reduction in human rights abuses or levels of impunity.

In 2003 the government and CPN (Maoist) agreed a 22-point “Code of Conduct” to be observed during the cease-fire. This committed both parties to “stop violent and coercive activities and security measures that might ignite fear amongst the general public”, although regular violations of the code by both sides continued to be reported. In July 2004 the government launched a National Human Rights Action Plan (NHRAP), which is a long-term strategy for promoting a broad range of human rights. This plan has been widely criticised for failing to address the immediate human rights crisis in the context of the conflict, including the problem of widespread extrajudicial executions, and therefore distracting from the most

pressing human rights concerns facing the country. In July 2004 the government established a temporary committee under the Home Ministry to investigate “disappearances”. This committee has identified 787 cases of reported “disappearance” that it intends to investigate, and has already established the whereabouts of over 300 of these people. However, it will not be providing any analysis of the causes of these “disappearances” or recommendations to prevent future “disappearances”.

On 26 March 2004, in response to concerns about the situation in Nepal expressed at the 60th United Nations Commission on Human Rights (UNCHR), the government published “His Majesty’s Government’s Commitment on the implementation of Human Rights and International Humanitarian Law”. This is a comprehensive statement that reiterates the government’s international obligations and expresses its commitment to protect human rights and facilitate the work of the NHRC. The commitment makes explicit pledges to uphold the right to life, and states that “*women and children shall enjoy special protection*”.

The March 26 Commitment states: “*Right to life shall be respected under all circumstances... immediate instructions shall be issued to implement and respect the provisions of the Geneva Conventions, in particular Common Article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities*”.

The commitment also makes clear promises to support the investigation and prosecution of human rights abuses. It states that the government will facilitate the NHRC in discharging its duties, including “*investigating on violation*” [sic], and will “[*pass*] the cases considered by the NHRC to relevant legal structures when there is a basis of criminal investigation and prosecution”. It also pledges to “*establish an appropriate mechanism for dealing with past human rights and international humanitarian laws violations*”.

In light of the continuing widespread reports of extra-judicial executions, including of women and children, by security forces; the disregard shown for the findings and recommendations of the NHRC; and the continued impunity for security forces that commit human rights abuses, it is clear that these commitments are not being kept. However, they do provide a framework to which the government can be held to account, and which, if implemented, could help to curb the number of extrajudicial executions, protect the most vulnerable and - perhaps most crucially - facilitate effective investigation and prosecution of abuses, thereby ending impunity and sending a clear signal to security forces that killings will not be tolerated.

### **The CPN (Maoist) commitments**

As with all parties to conflict, the CPN (Maoist) are obliged to abide by Article 3 common to the four Geneva conventions. The CPN (Maoist) leadership have repeatedly stressed their commitment to fundamental human rights standards and the Geneva Conventions, as emphasised in statements made by CPN (Maoist) leaders Babu Ram Bhattarai in April 2003

and Prachanda in March 2004. Moreover, in a press statement issued on 18 March 2004, Prachanda promised to “*take positively*” any resolution related to the CPN (Maoist) passed by the 60th United Nations Commission on Human Rights, which was in session at that time. On 20 April 2004, in a “Chairman’s Statement on Human Rights Assistance to Nepal”, the Human Rights Commission called on the CPN (Maoist) to “*respect the human rights of all people*”.

Despite these specific promises the CPN (Maoist) leadership have ignored the appeal of the Commission on Human Rights and have continued to violate international humanitarian law, including by abducting, torturing and killing civilians and security forces personnel who are *hors de combat*.

The failure of both parties to live up to their own commitments indicates that there is a need to move beyond unilateral statements of good faith to a mutually binding and effectively monitored agreement to prevent human rights violations.

A Human Rights Accord was first drawn up by the NHRC in May 2003, but the government and CPN (Maoist) declined to sign it. This Accord has since been revised and is again being promoted by the NHRC. A strong Human Rights Accord would be a useful tool in curbing abuses and reducing impunity, as it would require both parties to abide by shared human rights commitments and to accept comprehensive monitoring. The joint signing and implementation of the Accord could also be an important confidence building measure towards the de-escalation of the conflict.

## **7. The Role of the International Community**

There have been some welcome efforts by the international community to address the growing human rights crisis in Nepal. This includes a visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>20</sup> to Nepal in 2000. In the report following her mission, the Special Rapporteur raised concerns about unlawful killings carried out by the Nepal police and CPN (Maoist) during the first few years of the conflict and made particular mention of the killing of children. She also identified “*an urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses, including extrajudicial executions*”<sup>21</sup>. Most of her recommendations have not been implemented and are still relevant today.

The international community has demonstrated increasing concern at the human rights situation in Nepal since the breakdown of the cease-fire in August 2003. In April 2004

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<sup>20</sup> Asma Jahangir was the Special Rapporteur at that time.

<sup>21</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2000/31, Mission to Nepal (point 60)

the United Nations Commission on Human Rights (UNCHR) issued a Chairperson's Statement on "Human Rights Assistance to Nepal", expressing concern at the human rights situation, condemning abuses by the CPN (Maoist) and calling on the government to ensure the fundamental rights of people in Nepal. The statement also called for technical assistance by the Office of the High Commissioner for Human Rights (OHCHR) to enable the NHRC to carry out nationwide monitoring and for the international community to assist the government of Nepal to improve the human rights situation. However, despite this statement, a Memorandum of Understanding between the Nepal government and OHCHR for technical assistance to the NHRC - which was explicitly required in the Chairperson's statement - was not signed until December 2004. By the end of 2004 no additional OHCHR advisers were on the ground in the districts and a programme document outlining the details of OHCHR's support to the NHRC was still being negotiated.

In July 2004, eight independent experts of the UNCHR<sup>22</sup> issued a joint statement expressing concern at the human rights situation and calling on the government to implement its 26 March Commitment. The diplomatic community has also spoken out on a number of occasions, including at the Nepal Development Forum, in May 2004, where a group of 10 donors issued a statement calling on both parties to allow unhindered human rights monitoring. In September 2004, 15 diplomatic missions and donor agencies issued a strongly worded statement condemning the "gruesome" human rights violations committed by both sides and calling for the signing of the Human Rights Accord. In a demonstration of the deepening international concern at the situation in Nepal, on 23 December 2004, the UN issued a statement expressing the Secretary General's concern at "reports of an escalation of fighting in Nepal and of continued grave human rights violations". The statement particularly highlighted the threat to human rights defenders and the NHRC and called for their safety to be guaranteed.

As concern has mounted there have been a number of visits to Nepal by UN bodies and diplomatic delegations focusing on human rights. In December 2004 the UN Working Group on Enforced and Involuntary Disappearances (WGEID) visited Nepal, while the High Commissioner for Human Rights, Louise Arbour, will visit in January 2005.

This international attention is very welcome and has encouraged the government to make some important changes, most notably in the area of detention and "disappearances". However, given the scale of the human rights crisis and the level of impunity in Nepal, more comprehensive and coordinated action by the international community is urgently needed. The international community has a vital role to play in bringing both parties to a shared human rights commitment, monitoring and reporting on human rights violations, supporting the rule of law, insisting on investigations and prosecutions for past abuses, and protecting

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<sup>22</sup> The statement was signed by the Special Rapporteur's on torture; violence against women, extrajudicial, summary and arbitrary executions; the independence of judges and lawyers; and promotion and protection of the right to freedom of opinion and expression, together with the Special Representative of the Secretary-General on human rights defenders, the Chair of the Working Group on Enforced or Involuntary Disappearances, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention.

Nepali human rights defenders. The 61st session of the UNCHR, starting in March 2005, will be a critical opportunity for the international community to acknowledge the growing human rights crisis and the failure of existing “commitments” to curb impunity, as well as to put in place strong international initiatives that can have an immediate impact on the human rights situation in Nepal.

## **8. Conclusion**

The widespread unlawful killings carried out by the security forces and the CPN (Maoist) are one of the most serious abuses occurring within the human rights crisis that is engulfing Nepal. These killings represent a grave violation of Nepal’s international obligations and of international humanitarian law, as well as a disturbing disregard for human rights.

The current climate of impunity, the militarization and erosion of civilian institutions, breakdown of the rule of law and threat to the Nepali human rights community all contribute to allow human rights violations to take place on such a large scale. In order to halt the abuses, all parties – the government, the military, the palace, the CPN (Maoist) and the international community – must act to end impunity and to actively uphold human rights. This requires building strong and effective human rights monitoring systems that are respected by all parties, investigating abuses, and ensuring that those responsible for violations are prosecuted in the civilian courts, so that justice is seen to be done. Such action can send an important signal that abuses will no longer be tolerated and help restore the faith of the Nepali people in the rule of law.

## **Recommendations to the Nepal Government:**

### ***1. Ensure justice and end impunity***

- The most senior government and military authorities should publicly condemn human rights violations by security forces.
- Those responsible for the alleged massacre at Doramba should be tried before a civilian court at the earliest opportunity, as a sign of commitment to ending impunity for human rights violations.
- Senior army and police officers and CDOs who have ordered or tolerated extrajudicial executions should be held criminally responsible for these acts.
- Those security forces personnel and their superiors who are accused of grave human rights violations should be tried at the earliest opportunity in civilian courts, in accordance with international standards of fair trial, in order to ensure that justice is done.
- Security forces personnel and their superiors who are suspected of responsibility for extrajudicial executions should be suspended while prompt, impartial investigations are carried out.
- The government should ensure that any prosecutions for human rights related offences are brought by authorities that are clearly independent from the security forces and meet the international standards of fair trial.
- Human rights defenders must be allowed to carry out their work free from harassment or intimidation. The government must fulfil its commitment, made on 26 March 2004, to “protect” human rights defenders.

### ***2. Strengthen legal and institutional safeguards***

- Security forces must exercise restraint and only use force when strictly necessary and only to the minimum extent required, in accordance with international standards. Lethal force should not be used except when strictly unavoidable and only in order to protect life.
- All security forces personnel should be made familiar with their own rules of engagement. They should also be informed that it is their duty to refuse to obey orders to carry out extrajudicial executions, torture and other forms of cruel, inhuman and degrading treatment or punishment.
- The Public Security Act and Terrorist and Disruptive Activities (Control and Punishment) Ordinance should be repealed. If they are not repealed they should be amended to ensure compliance with international standards, particularly in relation to the use of force.
- All reports of extrajudicial executions must be investigated promptly and impartially by an independent body with the authority and resources to carry out this task effectively. The NHRC should have authority to oversee all such investigations. Relatives of the victims

should be given access to all information relevant to the investigation.

- Failure to investigate suspicious deaths should be made a punishable offence.
- The disposal of bodies without post mortem should be immediately halted and independent post-mortem examinations should be carried out into all cases of suspicious death. A medical professional or other representative chosen by the family of the deceased should be allowed to be present during the examination.
- Forensic facilities and expertise should be urgently developed in order to allow for autopsies and other forensic examinations to be conducted in accordance with international standards.
- There should be an authority for the protection of witnesses and provision for confidentiality where necessary, particularly when testifying against security forces.
- There should be an immediate end to secret detention and detention in unofficial locations. The RNA should hand over detainees to police custody within 24 hours of arrest (or within a reasonable timeframe if arrests take place in a remote location).
- Regular monitoring of all places of detention where people are or may be deprived of their liberty should be permitted by an independent body at anytime in order to prevent torture and ill-treatment, and extrajudicial executions.
- All organs of the state, including the RNA, should comply promptly with court orders. Those failing to comply with court orders should be charged with contempt.
- Dependents of victims of extrajudicial execution should be given prompt and adequate compensation.

### ***3. National Human Rights Commission***

- The government should give the NHRC all necessary assistance to ensure its independent and effective functioning.
- Existing plans to establish five regional level NHRC offices should be implemented without delay and provisions made to ensure these offices are adequately staffed and equipped. The establishment of district level offices, especially in districts where there are frequent reports of human rights abuses, should also be considered.
- The government should cooperate with the NHRC and ensure its organs provide prompt replies to the NHRC inquiries on cases of human rights violations, including extrajudicial executions.
- The law should be amended to ensure the NHRC has effective powers to investigate all human rights abuses, including those allegedly committed by the army.
- The results of NHRC investigations should be referred to appropriate judicial bodies without delay. NHRC recommendations, whether for further investigation, prosecution or

compensation, should be promptly acted upon by the government and security forces.

- The tenure of the current commissioners should be extended until Parliament is reconvened and the provisions for appointing new commissioners, as outlined in the Human Rights Commission Act (1997), can be fully met.

#### **4. Strengthen human rights commitments**

- A constitutional amendment should be passed to guarantee the non-derogable right to life.
- The government of Nepal should ratify the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- All national legislation should be brought into line with Nepal's international human rights obligations.
- The government should immediately implement in full "His Majesty's Government's commitment on the implementation of Human Rights and International Humanitarian Law", of 26 March 2004.
- The government should sign and implement the Human Rights Accord
- The government of Nepal should invite relevant United Nations Special Procedures of the Commission on Human Rights, in particular the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture, to visit the country at the earliest possible opportunity. The government should issue a standing invitation to the Special Procedures of the United Nations Commission on Human Rights to visit Nepal.
- The government and military should implement in full the "United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions" and Amnesty International's "14-Point Programme for the Prevention of Extrajudicial Executions".
- The recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions, following her visit to Nepal in 2000, should be implemented without delay.

#### **Recommendations to the CPN (Maoist) Leadership:**

- The CPN (Maoist) should issue instructions to its members to cease all human rights abuses, including all killing of civilians and *hors de combat* security forces personnel.
- The CPN (Maoist) should take steps to abide by its stated policy of respect for international humanitarian law. All local CPN (Maoist) commanders and cadres must be made familiar with their obligations under international humanitarian law.

- The CPN (Maoist) should ensure a strong and clearly articulated chain of command that allows senior commanders to be held accountable for the human rights abuses committed by those under their command.
- The CPN (Maoist) should investigate abuses by its forces and ensure that those cadres who commit human rights abuses are removed from their posts.
- The CPN (Maoist) should immediately release all those it holds in custody.
- The CPN (Maoist) should sign and implement the Human Rights Accord.
- The CPN (Maoist) should allow human rights defenders to carry out their work free from harassment or intimidation.

### **Recommendations to the International Community:**

- The international community should condemn the continued grave human rights situation and breakdown of the rule of law, and urge both sides to the conflict to uphold international human rights and humanitarian standards and the rule of law.
- The international community should encourage both sides to sign the Human Rights Accord and ensure its early and full implementation.
- The international community should demand that the government respect the independence and authority of the NHRC and should actively raise NHRC findings and recommendations with the government, urging it to act on these.
- The international community should call on both sides to end harassment of human rights defenders. United Nations representatives and diplomatic missions in Kathmandu must ensure that the government upholds its responsibilities to protect human rights defenders and provide all necessary support to do so.
- Third countries should ensure that any military assistance to Nepal is made dependent on the RNA's compliance with international human rights standards. In particular they should require the government and RNA to cooperate fully with the NHRC, courts and other authorities and bring to justice security forces personnel responsible for grave human rights violations.
- The UN must support an effective human rights presence by the OHCHR with a clear mandate to monitor the human rights situation throughout the country and to report publicly on its findings.
- The 61<sup>st</sup> UN Commission on Human Rights should establish a mandate for a Special Rapporteur on the situation of human rights in Nepal.

- The 61<sup>st</sup> UN Commission on Human Rights should urge the government to issue a standing invitation to the Special Procedures of the Commission to visit Nepal and to facilitate visits by the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture; the Representative's of the Secretary-General on internally displaced persons and human rights defenders; and the Working Group on arbitrary detention.

## **Annex 1: Amnesty International's 14-Point Programme for the Prevention of Extrajudicial Executions**

Extrajudicial executions are fundamental violations of human rights and an affront to the conscience of humanity. These unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence, have been condemned by the United Nations. Yet extrajudicial executions continue, daily and across the globe.

Many of the victims have been taken into custody or made to "disappear" before being killed. Some are killed in their homes, or in the course of military operations. Some are assassinated by uniformed members of the security forces, or by "death squads" operating with official connivance. Others are killed in peaceful demonstrations.

The accountability of governments for extrajudicial executions is not diminished by the commission of similar abhorrent acts by armed opposition groups. Urgent action is needed to stop extrajudicial executions and bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of Extrajudicial Executions. It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop extrajudicial executions and to work for their eradication worldwide.

### **1. Official condemnation**

The highest authorities of every country should demonstrate their total opposition to extrajudicial executions. They should make clear to all members of the police, military and other security forces that extrajudicial executions will not be tolerated under any circumstances.

### **2. Chain-of-command control**

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions. Officials with chain-of-command responsibility who order or tolerate extrajudicial executions by those under their command should be held criminally responsible for these acts.

### **3. Restraints on use of force**

Governments should ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life.

#### **4. Action against "death squads"**

"Death squads", private armies, criminal gangs and paramilitary forces operating outside the chain of command but with official support or acquiescence should be prohibited and disbanded. Members of such groups who have perpetrated extrajudicial executions should be brought to justice.

#### **5. Protection against death threats**

Governments should ensure that anyone in danger of extrajudicial execution, including those who receive death threats, is effectively protected.

#### **6. No secret detention**

Governments should ensure that prisoners are held only in publicly recognized places of detention and that accurate information about the arrest and detention of any prisoner is made available promptly to relatives, lawyers and the courts. No one should be secretly detained.

#### **7. Access to prisoners**

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

#### **8. Prohibition in law**

Governments should ensure that the commission of an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

#### **9. Individual responsibility**

The prohibition of extrajudicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force, and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution.

#### **10. Investigation**

Governments should ensure that all complaints and reports of extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. The body of the alleged victim should not be disposed of until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially. Officials suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation, should be entitled to appoint their own doctor to carry out or be present at an autopsy, and should be entitled to present evidence. Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals.

### **11. Prosecution**

Governments should ensure that those responsible for extrajudicial executions are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

### **12. Compensation**

Dependants of victims of extrajudicial execution should be entitled to obtain fair and adequate redress from the state, including financial compensation.

### **13. Ratification of human rights treaties and implementation of international standards**

All governments should ratify international treaties containing safeguards and remedies against extrajudicial executions, including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and comply with the recommendations of intergovernmental organizations concerning these abuses.

### **14. International responsibility**

Governments should use all available channels to intercede with the governments of countries where extrajudicial executions have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate extrajudicial executions. No one should be forcibly returned to a country where he or she risks becoming a victim of extrajudicial execution.