

NEPAL

Human rights at a turning point?

Introduction

Political detainees are being tortured and unarmed civilians extrajudicially executed within the context of the government security forces' response to a Maoist "people's war", waged by armed members of the Communist Party of Nepal (Maoist), (CPN (Maoist)).

The human rights situation in Nepal has deteriorated since February 1996 when the CPN (Maoist), which is ideologically close to the Communist Party of Peru (Shining Path), launched a "people's war" aimed at overthrowing the government and establishing a republican state. Serious human rights abuses by both sides to the conflict have been reported.¹ There have been widespread reports of human rights violations by police including extrajudicial executions, "disappearances", unacknowledged detention, torture and arbitrary arrests. Armed members of the CPN (Maoist) are also reported to have been responsible for the killing, abduction and torture of unarmed civilians, including members of mainstream political parties.

Based on the findings of a visit to Nepal in November 1998, Amnesty International is concerned at the prospect of a further deterioration of the human rights situation in Nepal in the coming months during campaigning in the context of forthcoming parliamentary elections on 3 May 1999. It is appealing to all political parties participating in the elections to make clear commitments to uphold the rule of law and human rights of all people in Nepal. It also is urging all parties to pledge the implementation of prompt and effective measures to prevent human rights violations continuing in the context of the Maoist "people's war", including the steps recommended at the end of this report. The organization is also calling upon the leadership of the CPN (Maoist) who, on 12 February 1999, announced a boycott of the elections, to give clear orders to their armed members to refrain at all times from attacks on civilians, including candidates, campaigners, electoral staff and voters in the forthcoming elections.

Increasing political instability has been a contributing factor in the deteriorating human rights situation in Nepal. During the last four years, there have been six different coalition governments, and 1998 alone saw four governments, including three coalitions. Human rights have been among the main victims of this instability. On the one hand, there has been a tendency to be reactive rather than pursue a holistic long-term human rights strategy which takes into account the complex background to the "people's war". On the other hand, as a result of increased politicization in the administration at the centre, a quick turn-over in officials at the local level has created political vacua, including in the areas affected by the "people's war".

¹See Amnesty International report *Nepal: Human rights violations in the context of a Maoist "people's war"*, AI Index: ASA 31/01/97, published in March 1997.

Amnesty International is also concerned that lack of accountability among law enforcement officers has led to a climate of impunity in which fundamental human rights, including the right to life and not to be subjected to torture have been violated. The organization is concerned that these problems will persist unless perpetrators are brought to justice.

Ever since the establishment of multi-party democracy in Nepal in 1990, politicians have pledged to uphold human rights when coming to power. Nearly ten years later, there are some tangible results such as the ratification of all main human rights treaties, the passing of the Human Rights Commission Act, Torture Compensation Act and the abolition of the death penalty. However, implementation of the provisions contained in the treaties and laws has been problematic and slow. Members of the Human Rights Commission, for instance, have not been appointed despite the fact that the Human Rights Commission Act was passed by Parliament as far back as October 1996. To date, torture has not been made a specific crime nor has the right to life been guaranteed in the Constitution.

The announcement of parliamentary elections for 3 May 1999 gives an opportunity for politicians in Nepal to refocus their attention on the need to uphold human rights at all times. Amnesty International recognizes that the threat to law and order from armed opposition groups such as the CPN (Maoist) is not an easy problem for any government to address; but it is precisely in such a context that upholding basic human rights such as the right to life and the right not to be tortured should be upheld even more rigorously, in order to avoid a downward spiral of violence.

Amnesty International believes the “people’s war” and the government’s response represent a turning point for human rights in Nepal. It poses a fundamental challenge, not only for the protection of human rights, but for Nepal’s stability and development in the future.

Background Information

On 4 February 1996 the political wing of the CPN (Maoist), the *Samyukta Jana Morcha*, United People’s Front (Bhattarai) (SJM), presented the government of the then Prime Minister, Sher Bahadur Deuba, with a memorandum listing 40 demands including the abolition of royal privileges and the promulgation of a republican constitution. When the government failed to respond officially to the memorandum, the CPN (Maoist) formally declared the “people’s war” on 13 February 1996², stating their aim was to “bring an end to the rule of vengeful regime and to establish a people’s New Democracy”. The declaration was accompanied by attacks in five districts on police posts, local administrative offices and on local

² The “people’s war” was declared on Falgun 1, 2052, first day of the 10th month in the *Bikram Sambat* standard Hindu calendar used in Nepal, coinciding with 13 February 1996 in the Gregorian calendar.

landowners, politicians of the Nepali Congress Party (NC) and other mainstream political party members.

In March 1997 Amnesty International published a report *Nepal: Human rights violations in the context of a Maoist “people’s war”* (AI Index: ASA 31/01/97) which gave details of human rights abuses by both government security forces and members of the CPN (Maoist) after the start of the Maoist “people’s war”. The report detailed cases of human rights violations including the killing of 50 people by police in what were claimed to be “encounters” or armed confrontations with armed activists of the CPN (Maoist). The victims included people suspected of being members or sympathizers of the CPN (Maoist) or its political wing, the SJM. Many were members of the Magar tribal community and lower Hindu castes; others were lawyers, teachers and juveniles. The report also gave details of 14 people killed by armed activists of the CPN (Maoist).

During 1997 reports of serious human rights abuses by both sides to the conflict continued. At the time of local elections in May 1997, attacks by armed members of the CPN (Maoist) on candidates of mainstream political parties led to the postponement of Village Development Committee (VDC) elections in 19 districts including Rukum, Rolpa, Jajarkot and Salyan in Mid-Western Region. District Development Committee (DDC) elections were also postponed in 11 districts due to “people’s war” related violence.

According to figures made available by the Home Ministry, 97 people were killed in so-called “encounters” with the police between the start of the “people’s war” on 13 February 1996 and 25 May 1998. At least 2790 people were arrested, of whom 1708 were released and 1082 remained in custody pending legal action. Sixty-six civilians were killed in attacks by armed members of the CPN (Maoist) during the same period and 196 people were injured. In addition 17 policemen were reported to have been killed in confrontations with armed members of the CPN (Maoist).

Amnesty International remains concerned that among those arrested since the start of the “people’s war” may be prisoners of conscience, i.e. people arrested on the basis of their real or imputed political beliefs but who have not used or called for violence.

The organization is also concerned that the Public Offences and Penalties Act and the Public Security Act (PSA), the two laws most commonly used to arrest and detain people suspected of being members or sympathizers of the CPN (Maoist), allow long-term administrative detention on the authority of a Chief District Officer (CDO), without recourse to legal review. The United Nations (UN) Working Group on Arbitrary Detention, after its visit to Nepal in April 1996 expressed concern about provisions in the Public Offences and Penalties

Act which, in its words, confer on this form of detention “an arbitrary character by reason of its exclusively administrative nature”. The Group recommended reform of the Act.³

In May 1998, a new government led by Prime Minister Girija Prasad Koirala of the Nepali Congress Party (NC), launched an “intensified security mobilization” operation in the districts most affected by the Maoist “people’s war”: Rukum, Rolpa, Jajarkot, Salyan in Mid-Western Region, Gorkha in Western Region and Sindhuli in Central Region. The operation involved the transfer of armed police units from Kathmandu to these regions and the establishment of new police posts. Evidence suggests that police units were also mobilized in other districts including Kailali, Kalikot, Ramechhap, Pyuthan, Achham, Bardiya, Surkhet and Banke in the Mid-Western and Far-Western Regions. The police operation has resulted in an alarming increase in reports of extrajudicial killings, “disappearances”, torture and arbitrary arrests.

According to figures given by the Home Ministry, 1659 people were arrested during the “intensified security mobilization” operation between 26 May and 7 November 1998 and 227 people were killed. During the same period, 24 civilians were killed by armed members of the CPN (Maoist) and at least 52 civilians were attacked and injured.

A report in the newspaper *Gorkhapatra* on 10 July 1998 referred to the government’s announcement of a general amnesty to members of the CPN (Maoist), who surrendered and agreed to “give up arms and participate within the democratic framework as laid out by the Constitution”. The announcement referred to compensation that would be paid and arrangements for rehabilitation. According to the government, over 1400 people surrendered as a result.

On 26 October 1998 the CPN (Maoist) announced the start of the fourth phase of the “people’s war” involving the establishment of “base zones” or captured territory, made easier by the political vacuum created by postponed elections at village and district level. The announcement was accompanied by surprise attacks on a number of police stations in Mid-Western and Central Regions, during which several civilians were reported to have been killed.

Human rights groups within the country have found it increasingly difficult to verify on-the-spot reports of alleged human rights violations. Amnesty International has learned that some human rights observers were refused permission to travel to certain villages where police operations were in progress. Moreover, local police reportedly refused to cooperate with members of fact-finding teams of human rights organizations which visited the Mid-Western Region in mid-1998. In at least one instance, the delegation was refused permission by the Chief

³ The Group did not make any specific recommendations with regard to the Public Security Act. At the time of the Group’s visit in 1996, the PSA had not been used for several years. For more details on the visit, see UN report, reference E/CN.4/1997/4/Add.2 of 26 November 1996.

District Officer to meet prisoners at a local jail, contrary to past practice. In addition, editors of mainstream newspapers have reportedly been pressurized by officials of the Ministry of Home Affairs to “play down” coverage of fact-finding reports expressing concern about human rights abuses.

The Amnesty International delegation visiting Nepal in November 1998 raised its concerns regarding the alarming increase in reports of human rights violations within the context of the “people’s war” with the government authorities. The delegation met with the Prime Minister, Home Minister, Inspector General of Police (IGP) and leader of the Communist Party of Nepal-United Marxist Leninist (CPN-UML). They also met with the Chief Justice, members of the Nepal Bar Association, lawyers and representatives of local human rights groups and members of the diplomatic community.

Amnesty International appealed to the government to make protection of human rights, including establishing the National Human Rights Commission (NHRC), a priority. Soon after the Amnesty International visit, a further political crisis resulted in a change of government, although the NC remained part of the coalition and Prime Minister Girija Prasad Koirala maintained his portfolio.

The new coalition government consisting of NC, CPN-UML and the smaller Nepal Sadbhavana Party (NSP) called a general election for May 1999.

Human rights violations

Arbitrary arrest and detention

According to figures supplied by the government, out of 1659 people arrested during the “intensified security mobilization” operation between 26 May and 7 November 1998, 845 have been released, 408 have been charged and 406 remained in detention without charge or trial as of 7 November.

Information gathered by Amnesty International found that those arrested during the period May to November 1998 include teachers, farmers, women and human rights defenders, such as lawyers who have been detained on suspicion of being members or sympathizers of the CPN (Maoist). Among them were active members and supporters of mainstream political parties.

Many ex-detainees interviewed by Amnesty International complained about lack of adherence to legislative procedures. None had been given arrest warrants at the time of arrest or were presented before a judicial authority within 24 hours, as required under the Constitution of Nepal. Many had been kept in police custody for periods longer than the 25 days permissible

under the Public Offences Act⁴, the legislation most commonly used to detain people. The majority of ex-detainees interviewed were not told of the specific charges against them. Most had been denied access to relatives or a lawyer, at least during the initial days of their detention in police custody.

Several former detainees interviewed stated they were forced to sign a statement which said that they had been involved in Maoist activities but promised not to do so in the future. Apparently those who surrendered were required to sign a statement in front of the Chief District Officer saying that although they had been involved in Maoist activities in the past, they promised not to do so in future. Those who surrendered were required to report on a weekly or monthly basis to the local authorities. However, Amnesty International was informed that out of approximately 100 people who were released after they signed such statements in Rukum, Rolpa, Salyan, Jajarkot, Pyuthan and Dailekh districts, about 50 were later rearrested.

Torture

Throughout the “intensified security mobilization” operation, torture of political detainees in police custody was widespread. It appears to have been used to intimidate or punish political detainees and to extract information and/or confessions. Torture often took place while detainees were held incommunicado and unable to contact people outside police premises such as family members, doctors and lawyers who could help them.

Interviews conducted by Amnesty International delegates with torture victims revealed a widespread pattern of torture in police custody, involving all ranks of police officers at police posts, district and regional police stations. Torture methods included severe beatings with bamboo sticks and PVC pipes, beatings on the soles of the feet usually with a bamboo stick (*falanga*), rolling weighted bamboo sticks along the prisoner’s thighs (*belana*) and simultaneous boxing on the ears (*telephono*). Women who were interviewed also reported being tortured by these methods.

A teacher from Kailali District, Far-Western Region, who was also a member of the local committee of the CPN-UML, who was arrested in August 1998, said that he had been tortured during questioning at the regional police headquarters in connection with a raid by Maoists on a local house during which some weapons were stolen.⁵ He was tortured over a period of four days by being subjected to *falanga* with an iron pipe for periods of up to one hour

⁴ The 1970 Public Offences and Penalties Act deals with offences such as “obstruction to any public servant . . . through violence or hooliganism” and permits detention pending investigation for up to one month on the order of the Chief District Officer (a local government official).

⁵ It is common practice for farmers and local officials to keep hand-made guns in their houses.

and was also beaten severely on the buttocks. He lost consciousness on several occasions but was revived with cold water. After the *falanga* he could not walk and was carried back to the cell. After 12 days in police custody he was made to sign a paper which he was not allowed to read. He was subsequently released.

A farmer from Achham District, Far-Western Region, arrested in July 1998 for questioning about a theft of weapons from a nearby house, was kept in police custody for 28 days and was subjected to torture for seven days. He was hung upside down and beaten on the calves with a bamboo stick. He was subjected to *falanga* and *belana*, using bamboo sticks. He was repeatedly made to squat and then kicked so that he fell over. He had his ears pulled forcefully. Police officers who were interrogating him said: "you're not going to tell, so we will have to kill you in the forest". He was made to sign a piece of paper which he was not allowed to read. When he asked to read it, he was told that he did not need to because he would soon be released. On 3 August he was taken to court where he was charged with theft and attempted murder and remanded to jail. He was given an arrest warrant with a false arrest date on it, 12 days after his actual date of arrest. He was finally released after two and a half months.

A 58-year-old farmer from Kailali District, Far-Western Region, who was arrested in August 1998 on suspicion of being a Maoist sympathizer, was taken to a police post and subjected to *falanga* on three consecutive days. He was made to lie with a bamboo stick across his chest while police personnel applied pressure by standing on either end. He was then taken to the District Police Office where he was interrogated by an Inspector and three constables. The Inspector said to him "we're not going to hurt you - we'll take you to the jungle and kill you. If you want to live, tell us the truth old man". He was released after four days in police custody after being made to sign a statement he was not allowed to read.

In the context of the people's war women who have been arrested on suspicion of being active supporters of the CPN (Maoist) or their relatives were subjected to similar torture as male detainees. In addition, they were subjected to rape as a form of torture and other sexually humiliating abuses.

A woman arrested in August 1998 in Bardiya District, Mid-Western Region was severely tortured with *falanga* and *belana* after her arrest on suspicion of involvement in the murder of a local NC politician. She was unable to walk at all for several days afterwards. Her torturers put a stick across her lower back and stood on it and banged her head against the wall. She was threatened with electric shock treatment, rape and with death unless she confessed to involvement in the murder. She claimed that one of the policemen who questioned her boasted "I will be promoted if I kill you". She was eventually taken to court and charged after one month in police custody and released on bail two weeks later.

On 13 July 1998 a group of 20 armed police raided a house in Lalitpur District, Central Region where it had been reported that 11 armed Maoist members were staying. One man and two women were killed during the police action and the remaining seven people - four men and three young women aged 19, 16 and 15, were kept at the house for two days, tied together with a rope. During that time, the three young women allege that they were stripped naked. They claim they were brought out of the house on two occasions and were beaten by police with rifle butts on their backs and on the soles of their feet. The police officers threatened to shoot them if they did not have sexual intercourse with them. One of the young women alleged she was repeatedly raped. On 17 July, the three women were transferred to Lalitpur district police office at Jawalakhel. On 15 August 1998, they were transferred to jail in Kathmandu where they are awaiting trial on charges of subversion and illegal possession of weapons.

The majority of the torture victims interviewed by Amnesty International complained of physical symptoms, some serious, including traces of blood in urine and stool, severe headaches, muscular pain, pain in the joints, palpitations, burning micturition, chest pain, diminished vision, loss of sensation in the limbs, back pain, dizziness and inability to walk in bare feet. Many victims also complained of psychological symptoms, such as depression, suicidal tendencies, insomnia, memory loss, problems with concentration, loss of appetite and feelings of insecurity.

Several victims complained that they had been subjected to psychological torture by the police. They stated they were threatened with death or had guns pointed at them during the course of interrogation in police custody. One woman who was among four women and five men taken on a tractor by police said they were told "we are going to kill all these Maoists"; another prisoner said he was told "if you want to send a final message to your family, write a letter now". Another one was told "We're not going to torture you. We'll take you to the jungle and kill you." Yet another one who had been asked to name leaders of the CPN-UML was told "we'll check if you're lying, we'll take you to the jungle and shoot you."

Torture victims or their relatives can make claims for compensation under Torture Compensation Act, enacted by parliament in October 1996.⁶ Twelve people made claims during 1998. Of these 12 people, six later withdrew their cases because of intimidation and fear for their safety. A lawyer representing another of the claimants reported receiving threats from the police and the relative of one victim also reported being threatened by police to withdraw his case. To date, no one has been granted compensation under the Torture Compensation Act.

"Disappearances" and Unacknowledged Detention

⁶ See Amnesty International report *Nepal: Human rights violations in the context of a Maoist "people's war"*, AI Index: ASA 31/01/97, published in March 1997.

Since the “intensified security mobilization” operation was launched on 26 May 1998 reports of “disappearances” have been on the increase.⁷

In one such case, Mohan Prasad Oli, a lower secondary level teacher and a supporter of the CPN-UML, was arrested by eight armed police in uniform from his home in Mahadeopuri VDC, Banke District, at around midnight on 12 June 1998. According to witnesses, he was dragged to the main road wearing only his undergarments. There he was put into one of two waiting police vans and taken away. Onlookers heard shots and shouts of “Long Live the Maoists”. Relatives suspect police shouted this in order to cover up their identity. When the family lodged a complaint about the arrest, constables at the police post said they were not responsible and suggested that he had been abducted by members of the CPN (Maoist). On further inquiry, the Deputy Superintendent of Police at the District Police Office denied that Mohan Prasad Oli had been taken into custody and the Chief District Officer of Banke District said he had no knowledge of his arrest. The “disappearance” of Mohan Prasad Oli was also raised in parliament but despite a number of appeals to the authorities by both relatives and human rights organizations, to Amnesty International’s knowledge, no steps have been taken by the authorities to investigate his “disappearance”.

Rajendra Dhakal, a lawyer and human rights defender “disappeared” after his arrest by police on 8 January 1999 from Jamdi, Khairanitar VDC, Tanahun District. He was reportedly arrested along with two teachers, Prem Bahadur Thapa and Naina Dutta Adhikari and taken to the Bel Chautara Area Police Post. The teachers were released two days later. The police had reportedly obtained a warrant for his arrest from the district court on the basis of his alleged involvement in acts of violence by members of the CPN (Maoist) in Gorkha District. Rajendra Dhakal, who is Chairman of Gorkha District Bar Association and a member of the Forum for Protection of Human Rights (FOPHUR), a local human rights organization, had been arrested repeatedly since the start of the Maoist “people’s war” and released on the orders of the district court.⁸ To avoid further harassment, he had gone into hiding and was staying with friends in Tanahun district at the time of his arrest. In response to a *habeas corpus* petition filed in the Supreme Court on 26 January 1999, the court sent a written order to the police to present him in court within 7 days. In a reply to the court, police in Gorkha district denied having arrested him. At the time of writing his whereabouts were not known.

⁷ A “disappearance” is a deprivation of liberty of a person, perpetrated by agents of the state or by persons or groups acting with the authorization, support or acquiescence of the state, followed by an absence of information regarding the deprivation or refusal to acknowledge it, or by the refusal to provide information on the fate or whereabouts of the “disappeared” person or the concealment thereof.

⁸ See also Amnesty International report *Nepal: Human rights violations in the context of a Maoist “people’s war”*, AI Index: ASA 31/01/97, March 1997.

There have also been several cases where political prisoners have been held for long periods of time in unacknowledged detention. A 35-year-old chemist, Bhanu Sharma, was reportedly arrested by police on 30 November 1998. Police personnel visited Bhanu Sharma, a resident of Chailahi VDC, Dang District, at his home to request some medicine. On their way to his shop, he was reportedly forced into a van belonging to the Land and Watershed Conservation Office and taken to the District Police Office. From there he was reported to have been transferred to the Police Training Centre in Maharajgunj in Kathmandu on 5 January 1999. Following the filing of a writ of *habeas corpus* in the Supreme Court on 13 January, Bhanu Sharma was finally released on 7 February. In a reply to an appeal by Amnesty International, the authorities stated “he was not arrested by the police” and claimed “he went underground voluntarily”. They did, however, assert that he surrendered “to the District Administration Office, Dang, on 8 February 1999, after resigning from [the] Maoist Organization due to differences with Maoist activists”. He is required to report to the Chief District Officer once a month.

Sumitra Ghimire and Bharat Regmi were initially among 23 people, including six children, who were arrested by police in Rupandehi District on 21 October 1998 during a cultural event. Two children and one adult were released two days later. The release of the remaining detainees was ordered on 29 October by the Rupandehi District Appellate Court in response to a *habeas corpus* writ filed on their behalf. However, Sumitra Ghimire and Bharat Regmi were rearrested on the orders of the Deputy Superintendent of Police at the court premises itself, soon after the order to release them had been given. In response to a new writ of *habeas corpus* filed on 3 November 1998, the police denied all knowledge of their arrest. The detainees remained in unacknowledged detention for over three months. They were eventually released on bail on 15 February, charged under the Public Offences Act. The Deputy Superintendent of Police responsible for their arrest has reportedly been charged with contempt of court.

Extrajudicial executions

According to government figures, at least 227 armed activists of the CPN (Maoist) were killed by police during the “intensified security mobilization” operation between 26 May and 7 November 1998. However, human rights groups report that many civilians were among those alleged by police to have been killed in so-called “encounter” killings. Furthermore, evidence suggests that police have resorted to deliberate killings of members of the CPN (Maoist) as an alternative to their arrest. In other instances, civilians suspected by police of being sympathizers of the CPN (Maoist) are reported to have been victims of extrajudicial killings.

Due to the remoteness of the districts in which many of these alleged extrajudicial executions are reported to have taken place, it is often difficult to verify allegations of police excesses on the ground. Circumstantial evidence, however, suggests that scores of suspects

were deliberately killed while being taken through remote areas to the district police office, several hours or even days' walk away, with no independent witnesses present. This is supported by further evidence provided by torture victims interviewed by Amnesty International, as detailed above, who alleged that police threatened to take them "to the jungle" and kill them.

In one case of apparent extrajudicial executions, Hem Raj Khatri Chhetri, Chairman of Tharmare VDC, Salyan District, and two other villagers were beaten and then shot dead in cold blood by police during a public event organized by the All Nepal National Free Students' Union (Revolutionary) in the village on 26 February 1998. According to reports, when Hem Raj Khatri Chhetri and Khim Bahadur Dangi Chhetri verbally contested the intervention by police to disperse the crowd, they were beaten and then shot at close range. Dhan Bahadur Thapa, an 18-year-old student from Balchaur village, was fatally wounded in the firing and later died. It is also alleged that Hem Raj Khatri Chhetri was lying on the ground at the time he was shot. All three men were reportedly unarmed.

In another case in Sakla, Jajarkot District, as many as nine civilians including two women were deliberately killed by police during a cultural program at the local primary school on 6 June 1998. At around 5am, a group of 40 to 50 policemen led by an Inspector from the Area Police Office surrounded the school and started shooting randomly at people watching religious dances in the compound. A woman, Mishri Rawal, who had alerted the onlookers to the police presence, was first to be shot. Other villagers who were killed in the police firing include Mohan Rokaya, a primary school teacher, Prithvi Bahadur Khadka, Gorakh Bahadur Shahi, Hari Narayan Thakur, and Tek Jung Shah. A fact-finding mission by a group of local human rights groups was told by the local authorities that the police operations were being directed from the capital and that they were not able to comment on the incident.

Villagers were witness to the arrest by police of Bishnu Pokhrel and Dhaniram Tharu from Bardiya District on 11 June 1998. Bishnu Pokhrel was a former central committee member of the SJM and Dhaniram Tharu was a leader of the All Nepal Revolutionary Peasants' Association. Farmers said they saw from a distance how police surrounded the two men in their custody in the forest and shot them. When the farmers went closer to the spot, they could find no bodies. Members of local political parties subsequently appealed to the Chief District Officer for information about the two prisoners. The body of Bishnu Pokhrel was eventually handed over to his relatives who were told that he had been killed in an "encounter".

Bishweswor Prasad Pokhrel, 55-year-old former member of Rukum DDC, was arrested from his home in Simrutu, Rukum District, by three policemen on 5 August 1998 and was seen being taken towards the forest in Bhalakcha, Laha Khola, in Rukum District. Circumstantial evidence suggest he was killed in retaliation at the site of an ambush laid by members of the CPN (Maoist) in which two police officers had been killed earlier that day. According to sources

close to the CPN (Maoist), the police cremated his body but Amnesty International has not been able to confirm this information from other sources.

Government response

Throughout the period of the “intensified security mobilization” operation and at the time of the Amnesty International visit to Nepal, the organization appealed to the government for an end to human rights violations. The organization also inquired about steps the government had taken to investigate reports of human rights violations and what action, if any, had been taken against any police personnel alleged to be responsible. Generally, the government failed to provide substantial responses.

The need to investigate independently and impartially all reports of human rights violations was discussed with relevant authorities at the time of the visit to Nepal. The Home Minister put the responsibility for lodging complaints and investigating reports of human rights violations on the 25-member Parliamentary Foreign Affairs and Human Rights Committee. He stated that reports are investigated when individual members of parliament voice concern about alleged human rights violations in their constituencies in the House of Representatives. Amnesty International is concerned at the apparent increasing politicization of the issue of human rights, underlined by the above suggestion that reports of human rights violations can only be investigated by the government when raised in parliament.

As a long term measure aimed at establishing a mechanism of impartial investigation, Amnesty International urged that the National Human Rights Commission (NHRC), should be constituted at the earliest opportunity. The Prime Minister, in response to a question about the delay in appointing members of the NHRC, stated that the Recommendation Committee of the NHRC would convene in less than 10 days from the day of the meeting with the Amnesty International delegates on 16 November 1998 to select the Chairman and other members. However, soon afterwards, a further political crisis resulted in a change of government. To date, to Amnesty International’s knowledge, the members have not been appointed.

When discussing the need for impartial investigations with the Inspector General of Police (IGP), Amnesty International was informed that members of the public can lodge complaints with the “central abuse authority cell” under the Deputy Inspector General of Police and the “regional abuse authority cells”, set up in each of the five development regions. The IGP stated that either the Home Ministry or the police will investigate reports of human rights violations, depending on the gravity of the case and whether the initial report was considered to be biased or not.

The IGP asserted that torture was not systematic but accepted that there had been some isolated cases. He cited one case where the victim, Ganesh Rai, had died in police custody

in October 1998 as a result of torture, and where two junior police officers had subsequently been charged with murder. However, to date, further details about this case and other details of cases in which official action has been taken against police personnel allegedly responsible for human rights violations which had been promised by the IGP have not been provided despite repeated prompting by Amnesty International.

At the time of writing the report, no responses had been provided by the government on 36 reports of alleged extrajudicial executions, five cases of torture and three cases of “disappearance” which had been submitted by Amnesty International in July and September 1998 with a request for independent investigations to be instituted.

Amnesty International also sought clarification about the announcement in July 1998 by the government of a general amnesty to members of the CPN (Maoist) who surrendered. Although the announcement referred to arrangements for compensation and rehabilitation, Amnesty International was not able to establish whether these measures were being implemented. According to the government, more than 1400 people surrendered to the police as a result of the amnesty.

In December 1998 Amnesty International learned that the International Committee of the Red Cross (ICRC) had been invited by the government of Nepal to visit political detainees on a regular basis.

Human rights abuses by members of the CPN (Maoist)

Armed members of the CPN (Maoist) have been responsible for deliberate killings, abduction and torture of people they consider to be enemies of the “people’s war”, including members and candidates of mainstream political parties, particularly the NC.

According to information provided by the Home Ministry, between 26 May and 7 November 1998, 24 civilians were killed by armed members of the CPN (Maoist) and there were 52 incidents in which civilians were injured.

At the time of the local elections in May 1997, there were reports of deliberate killings and hostage-taking of prospective candidates by armed activists of the CPN (Maoist), which had announced a boycott of the elections. At least seven candidates and voters were reported to have been killed, particularly in Rolpa and Rukum district. Among them were Sita Ram Thapa, an NC member from Amale in Sindhuli district who was hacked to death at his home on 21 May 1997 and Jit Bahadur Oli of Mijhing in Rukum District, an activist of the *Rastriya Prajatranta Party*, who was killed on 11 May 1997.

Amnesty International delegates interviewed two local level politicians who had been abducted by members of the CPN (Maoist). In one case, a farmer who was abducted by armed members of CPN (Maoist) in Mid-Western Region in September 1998, was taken to a nearby village for questioning. He was accused of collaborating with the government and breaching an agreement not to take part in the VDC elections. He was boxed, punched and kicked and subjected to *belana*. He was beaten with a stick so forcefully that his arm fractured. He was also threatened with death. Due to threats from members of the CPN (Maoist) he was unable to leave the village to seek hospital treatment for five days.

In May 1998 a local politician in Mid-Western Region was abducted in order to prevent his participation in a party political program at the district headquarters. His captors tried to persuade him to join the Maoists. He was kicked, slapped and punched and beaten with a gun butt on the shoulders. He was threatened with a *khukuri* and had guns pointed at him. He was eventually released after 12 days in captivity and allowed to make his way home.

Members and local politicians of the NC have been the prime target of armed members of the CPN (Maoist) throughout the period of the Maoist “people’s war”. Govinda Poudel, a NC member, was hacked to death by a group of armed Maoists at Rambhapur, Bardiya District on 9 August 1998. Shankar Bahadur Shaha, an NC member and former chairman of the Mahadeopuri VDC, Banke district was killed by suspected Maoists in July 1998.

In the run-up to the second phase of local elections in Rukum, Rolpa, Salyan and Jajarkot on 18 December members of the CPN (Maoist) stepped up their attacks on political activists, particularly NC members. Hari Bhakta Oli, former chairperson of Rukum DDC and Chairman of the Rukum Committee of the NC was killed during electioneering for the DDC elections at Chaurjahari Bazaar by suspected members of the CPN (Maoist) on 15 January 1999.

Members of the CPN (Maoist) were also suspected of planting a bomb at the residence of the Minister for Land Reforms and Management, Chiranjivi Wagle, in Kathmandu on 15 December 1998. This is the first attempted killing of a member of the central government to have been reported.

Amnesty International delegates while on their visit to the country in November 1998 sought to meet with leaders of the political wing of the SJM, but were told by intermediaries that such a meeting was not possible due to the prevailing security situation.

In the context of the “people’s war”, Amnesty International is appealing to the CPN (Maoist) to respect the lives of people taking no active part in the hostilities. Amnesty International is appealing to the CPN (Maoist) to instruct all of its members to refrain at all times

from the killing of civilians and to ensure that the mutilation and torture of civilians, including candidates, campaigners, electoral staff and voters in the forthcoming elections, is not permitted.

Threat to the human rights community

Since the start of the Maoist “people’s war”, human rights defenders including lawyers have become victims of human rights abuses at the hands of both the police and members of the CPN (Maoist) as illustrated by cases above, including the “disappearance” of Rajendra Dhakal the killing of Hem Raj Khatri Chhetri. Those documenting human rights violations by the police are suspected of being active supporters or sympathizers of the CPN (Maoist). Similarly, those highlighting abuses by members of the CPN (Maoist) have come under threat.

Human rights groups are concerned that their ability to freely investigate reports of human rights violations is being eroded through lack of cooperation by the authorities. Some have been prevented visiting areas where police operations have been going on and have been denied access to political detainees, not only in police custody, but also in prison.

Lawyers who have taken up cases on behalf of political prisoners have reported receiving threats by the police not to continue with their work. Sahadev Jung Shah, Chairman of the Jajarkot District Nepal Bar Association was detained for two weeks in June 1998 after he appeared as a defence lawyer on behalf of some members of the CPN (Maoist). He was later released on condition that he would not take on similar cases in future. However, on 12 January 1999, he was rearrested under the Public Security Act. At the time of writing he remained in custody reportedly in Jajarkot jail.

Gopal Siwakoti Chintan, a human rights defender and Secretary General of the Nepal Concern Society, a non-governmental organization, was arrested by police from the office of the Nepal Concern Society on 14 June 1998. Police officers confiscated audio and video cassettes of interviews conducted with victims of human rights violations and of seminars organized by the Nepal Concern Society. Gopal Siwakoti Chintan was detained under the Anti-State Crimes and Penalties Act, 1989, until 24 June 1998 when the court released him finding the police had no evidence against him.

Several human rights activists in Mid-Western Region have complained of intimidation by the CPN (Maoist). Apparently, they have been pressurized by members of the CPN (Maoist) not to report human rights abuses committed by its members.

Amnesty International is appealing to the government to uphold freedom of expression and movement, to grant human rights groups unrestricted access to the affected areas and to provide them with assistance to ensure that human rights violations can be reported and investigated.

In Amnesty International's view, the local human rights community's ability to continue to carry out its activities is one of the key factors to safeguarding human rights in Nepal.

Recommendations to the government and to political parties in the run-up to parliamentary elections

As a party to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), Nepal is obliged to respect and protect human rights including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. These rights are non-derogable in any circumstances including the difficult security situation presented by the “people’s war”. The measures needed to ensure respect for the right not to be tortured, are set out in detail in the CAT. The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions set out particular measures needed to protect the right to life. As a minimum, the Nepalese authorities must ensure that all reports of torture and extrajudicial execution are promptly and impartially investigated and that those responsible are brought to justice.

Amnesty International is also calling on the leadership of the CPN (Maoist) to give clear orders to their members prohibiting the deliberate and arbitrary killings and maiming of civilians, the taking of hostages and the torture of people they have abducted.

Amnesty International is appealing to the leadership of the CPN (Maoist) to respect the lives of all civilians, to refrain from taking hostages and to instruct its members not to harm those who are wounded, captured or abducted.

The following 12 specific recommendations are based on the above mentioned international standards and would help ensure human rights are safeguarded at the same time as maintaining security, law and order. Amnesty International is urging all political parties contesting the general elections to commit themselves publicly to making implementation of these recommendations a priority.

1. Official condemnation

The government should publicly declare its opposition to extrajudicial executions and torture. A clear message should be given to members of the security forces that extrajudicial executions and torture will not be tolerated under any circumstances.

2. Chain-of-command control

Chief District Officers and senior officers of the police should maintain strict control to ensure that officers under their command do not commit extrajudicial executions and torture. Officials who are found to have ordered or tolerated extrajudicial executions or torture by those under their command should be held criminally responsible for their acts.

3. Restraints on use of force

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

4. Prohibition in law

The government should consider introducing a constitutional amendment guaranteeing the non-derogable right to life. The government should review and amend existing legislation, particularly the Local Administration Act and the Police Act, to ensure that there are strict legal limitations on the use of force and firearms by the police, in accordance with international standards. The government should ensure that the act of torture is a punishable offence under criminal law.

5. No incommunicado detention

The government should end the practice of incommunicado detention by ensuring that precise regulations are drawn up to safeguard the rights of detainees. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that relatives, lawyers and doctors have immediate and regular access to them.

6. No use of statements extracted under torture

The government should ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in legal proceedings.

7. Individual responsibility

The prohibition of extrajudicial executions and torture should be reflected in the training and all orders given to 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 or torture. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution or torture. All officials must be made aware that they will face criminal prosecution for such acts.

8. Investigation

The government should ensure the independent and impartial investigation of all allegations of serious human rights violations reported in the context of the "people's war", either by the

National Human Rights Commission or a similar independent body. The methods and findings of all such investigations should be made public in full. The government should order a review of post mortem procedures in cases of suspicious death; ensure that post mortem examinations are carried out into all cases of suspicious death and independently of anyone implicated in the death; and allow the presence during examination of a medical or other representative of the family of the deceased. Relatives of the victims should be given access to all information relevant to the investigation. Officials suspected of responsibility for extrajudicial executions or torture should be suspended from active duty during the investigation. Complainants, witnesses, lawyers and others involved in the investigations should be protected from intimidation and reprisals.

9. Prosecution

The government should bring to justice anyone against whom there is reasonable evidence of involvement in extrajudicial executions and torture. The definition of those responsible should include those who may have given orders as well as those who carried out the actions.

10. Compensation and redress

The government should provide adequate legal assistance to allow victims of torture to file cases under the Torture Compensation Act. Victims of extrajudicial executions and torture or their relatives who lodge a case for financial compensation under the Torture Compensation Act should be free from threats or intimidation. Victims should be provided with appropriate medical care and rehabilitation.

11. Safeguards during interrogation and custody

The government should review procedures for detention and interrogation. An important safeguard against torture would be the separation of authorities responsible for detention from those in charge of interrogation. All prisoners should be promptly told of their rights, including the right to complain about their treatment to a judge. There should be regular independent visits of inspection to places of detention, including by respected members of the community. The government should ensure that prisoners are held in publicly recognized places, and that accurate information about their whereabouts is made available to relatives and lawyers.

12. An independent complaints' authority and the NHRC

The government should consider the establishment of a permanent, independent complaints authority as a measure to ensure the public accountability of the police. Such a body should be able to function at the local level and be given the powers to carry out continuous assessments of the police's own measures to ensure compliance with national and international regulations

on the use of force, to prevent torture and corruption; to record the incidence of complaints of excessive force, and where necessary conduct its own investigations. This would promote greater transparency and accountability among the police, and contribute to the government's long-term plan to transform the force from a quasi-military force into a community service.

The National Human Rights Commission should be constituted at the earliest opportunity and given all necessary assistance to ensure its independent and effective functioning.

Glossary of Terms

CDO	Chief District Officer
CPN (Maoist)	Communist Party of Nepal (Maoist)
CPN-UML	Communist Party of Nepal-United Marxist Leninist
DDC	District Development Committee
ICRC	International Committee of the Red Cross
IGP	Inspector General of Police
NC	Nepali Congress Party
NHRC	National Human Rights Commission
NSP	Nepal Sadbhavana Party
PSA	Public Security Act
SJM	Samyukta Jana Morcha
VDC	Village Development Committee
UN	United Nations