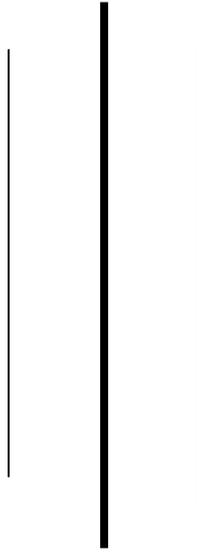
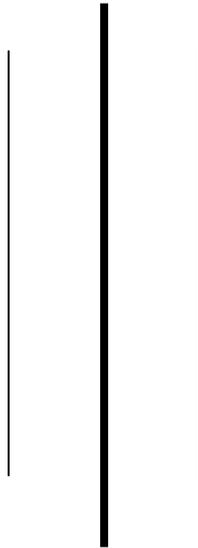


Violence, Emergency and Human Rights



(Human Rights Monitoring Report)
2059/60, 2002



National Human Rights Commission
Harihar Bhawan, Lalitpur

Foreword

The National Human Rights Commission (NHRC) felt the necessity of conducting monitoring activities more effectively especially in the violence hit districts due to the serious crisis seen in the protection of the Human Rights caused by the conflict between the government and the Communist Party of Nepal (Maoist). As a result, the monitoring of Human Rights situation was conducted in 35 districts and the report has been published.

Incidents of violations of human rights reported in this report may cause uneasiness to both/all sides as human beings cannot easily accept one's own weakness and this weakness is common to all. In spite of the difficulty to accept such issues, incidents of human rights violations can be reduced if we adopt a positive and corrective posture towards such incidents. The purpose of revealing the incidents in this report is not to debase anyone; rather, it is compliance to the duty of the Commission in accordance to its nature of work. The incidents of violation of Human Rights are not only made public but actions are also initiated against the offender.

In the special and difficult situation of the State of Emergency and the mobilization of the army there may have been mistakes and shortcomings in that period. Now, the time has come to accept such mistakes with an open heart. The Royal Nepal Army has presented an example by accepting the mistakes in *Kaule* of Nuwakot. The process of self-criticism, however, is not meant to give a clean chit to an offender. Instead of delving into prejudices and arguments as to what was done and what was not done in the past, it is necessary to consider as to what can be done in the time to come. With more than seven thousand lives lost already as a result of the conflict, it is the need of the day for everyone to contribute to peace from one's own respective quarters.

The fact that all conflicts, including World Wars, have eventually culminated in negotiations, understanding and agreements, is evidence that violence can exist only for a limited period of time. The violence in Nepal, as a small part of the general history of violence in the world, cannot be exception to the fact as well. For whatever reason the violence may have erupted, history is witness to the fact that the Nepalese people have always been on the side of peace and will continue to do so. With due respect to this spirit of Nepali people, the NHRC has been working for the protection and promotion of Human Rights by establishing peace in the country. For this purpose, NHRC, as always, expects cooperation and collaboration from all quarters.

The Commission had been repeatedly called on both sides for lasting peace and both the government and CPN (Maoist) have now declared cease-fire. A code of conduct and its compliance becomes a must to transform this cease-fire into permanent peace. For this purpose, the Commission has already sent a draft of the code of conduct to both the government and CPN (Maoist). As negotiation is the basis of permanent peace, the Commission once again calls on both sides to move ahead with the negotiation process in an appropriate manner as soon as possible. The first and foremost aspect of the negotiation, however, should be the humanitarian aspect or human rights. Therefore, it should be the chief agenda as to how both the parties will address the human rights issues in during the negotiation process or in the aftermath of the negotiations.

Nayan Bahadur Khatri
Chairman
National Human Rights Commission

Background

1. *From the Beginning of Violence to the Period of Emergency:*

The background of the structural violence in the Nepalese Society may be quite long and the reasons and forms of such violence may be varied. In this sense, it is a difficult task to ascertain when, how and why the violence currently raging in the Nepalese society actually began. However, the most dominant form of direct violence observed in Nepal, which is the conflict between the Government and the CPN (Maoist), formally began on 14 February, 1996. Prior to this date, the CPN (Maoist) had submitted a forty-point list of demands to the then government. Incidents of sporadic violence started from 1996 when the CPN (Maoist) started attacking police posts in the remote mountainous areas. In the initial days, the government did not carry out any steps for resolving the problem through negotiations and agreements with the CPN (Maoist). The Maoists persisted with acts of confiscating and tearing apart loan bonds held by various financial institutions of the government, resorted to *bhata* beatings¹, and continued with the expansion of their organization. Prime Minister Sher Bahadur Deuba, who was in office at the time of submission of the demands of the CPN (Maoist) in 1996, was succeeded in February, 1997, by the government of National Democratic Party (RPP) under Lokendra Bahadur Chand followed by the CPN (UML) government which conducted the elections of the local bodies but failed to address the socio-economic issues to resolve the Maoist problem.

The Maoist problem did not recede even during the period of the government of National Democratic Party (RPP) under Surya Bahadur Thapa and the Nepali Congress. A new government of Nepali Congress was formed in May 1998 under the leadership of Girija Prasad Koirala. From September to December, 1998, the CPN (ML) and thereafter the CPN (UML) were partners in the Congress government. Although the government of the Congress and the CPN (UML) succeeded in holding elections in a phased manner, the Maoist problem and incidents of violence remained unabated during the period of the government of Krishna Prasad Bhattarai formed thereafter. A high-level committee to resolve the Maoist problem was set up during by the Bhattarai government under the Chairmanship of ex-Prime Minister Sher Bahadur Deuba. However, no significant progress could be made in resolving the conflict.

Girija Prasad Koirala and Sher Bahadur Deuba once again came to power in March 2001 and July 2001 respectively. But the incidents of murder and violence increased day by day in the country. As the violence escalated, the then government announced an integrated security and development program in the 11 districts affected by the Maoist insurgency with the purpose of addressing the violence as well as the structural discrepancies prevalent in the society that had perpetuated for centuries. A Dalit Commission and a Women's Commission were set up; a land reform program was announced; commitment was expressed to make the practice of untouchability punishable. Although the people enthusiastically received these measures in the initial days, these steps could not have any impact to reduce the prevalent violence.

During the Premiership of Sher Bahadur Deuba, a cessation of war took place and negotiations were held in three phases. For nearly four months, the sister organizations of the CPN (Maoist) and its workers openly resorted to massive mobilization of people through their representatives. Hopes had risen for an outlet through the negotiations, but the third phase of the negotiations suddenly broke down. On 23 November 2001, the Maoists attacked the district headquarters in Dang along with the Army barracks situated there. The incidents of murder and violence escalated further and the problem acquired an even more dangerous dimension. Consequently, a State of Emergency was declared in the country on 27 November 2001 and **the Terrorist and Disruptive Activities (Control and Punishment) Act** was promulgated.

After the commencement of the system of governance of the country on the basis of the historic people's movement of 1990 and subsequent promulgation of **The Constitution of the Kingdom of Nepal**, only a few could have imagined that a State of Emergency would be declared in the country. In this sense, the State of Emergency was a new experience for most of the people. Those who had experienced the introduction of the State of Emergency

¹ Bhata beating involves the beating with bamboo sticks commonly carried out by the Maoists against alleged wrongdoers in the society

thirty years ago were now few in number. After the promulgation of the State of Emergency on November 27, 2001, intellectuals and legal practitioners started comparing this State of Emergency with the State of Emergency declared during the beginning of the Panchayat regime in Nepal as well as the State of Emergency imposed in 1970 in India. It was not clear to the common people as to what actually the State of Emergency meant and what should and should not be done during that period. Some people even mistook the State of Emergency for curfew whereas there were others who also viewed it as the beginning of a military rule. The civil society, the intelligentsia and even the responsible authorities of the government were confused by the co-relation between Article 118 of the Constitution, which provides for the operation of the Royal Nepal Army, and Article 115, which dealt with the State of Emergency. They were confused whether the two Articles were separate or whether or not Article 115 could have been invoked while exercising Article 118.

The ordinance concerning **the Terrorist and Disruptive Activities (Control and Punishment) Act** was issued on the very day in which the State of Emergency was promulgated. This Act had provided the security forces an opportunity to exercise excessive force and widespread powers. Some sort of an environment of terror and threat had developed among the people. Certain fundamental rights had also been suspended as per Article 115 of the Constitution. Even the Supreme Court was caught in a dilemma whether or not the cases relating to the fundamental rights could be heard during the State of Emergency.

When this problem emerged even in the Supreme Court, which is the final custodian of the fundamental rights, it was not surprising that other organs of the civil society, too, were not clear about their status during the State of Emergency, and to what extent they could speak or act for the rights of the people. There was an air of uncertainty even in the media sector and consequently the press seemed to be self-censored.

2. Monitoring Human Rights: Objectives in a Compulsive Situation:

The National Human Rights Commission is subject to the limits defined by the Human Rights Commission Act, 1997, and is active in the protection and promotion of the human rights. Although the Commission was engaged for some time in its organizational and structural development after its establishment on 26 May, 2000, its basic activities are focused on the protection and promotion of human rights. It was in this capacity that the Chairperson and the members of the Commission started visiting the places of encounters between CPN (Maoist) and the government in order to monitor the human rights situation. Some NGOs and media channels had been also conducting this type of monitoring.

However, the situation underwent changes after the declaration of the State of Emergency. Although the incidents of encounters between the Maoists and the state continued to increase, the acts of monitoring the incidents by the civil society decreased. The incidents of killings increased. Even the incidents of killing of the innocent people, besides those of the combatants, were on the rise.

In such a situation, the National Human Rights Commission, by virtue of being a national-level organization, felt the need to do some concrete work in monitoring the human rights situation. In such a situation the objective of the Commission was not to be fulfilled by monitoring only at one or two places as before. The Commission, therefore, started undertaking the monitoring activities in order to evaluate the human rights situation in the districts of the country that were affected by violence.

Another significant reason for starting monitoring activities by the Commission was the commencement of **the Terrorist and Disruptive Activities (Control and Punishment) Act**. Section 13(1) of the Act states that the Government may itself form a committee for monitoring human rights. Any aggrieved person, or any other person on his/her behalf may file a complaint before the Committee mentioned in the particular Section against acts or proceedings undertaken by any competent official in course of investigation, or in the exercise of rights conferred by the Act. The purpose of such a provision in the Special Act promulgated by the government in the form of an ordinance that was subsequently passed by the parliament was guided by the anticipation of greater probabilities of the occurrence of human rights violations in such a situation as compared to other times. In the absence of such a Committee according to the Act, the Commission was entrusted with more responsibilities.

At a time of armed internal conflict there is a greater probability of violation of the basic principles of humanitarian law stated in the Common Article 3 of the Geneva Conventions. To find out the reality about the events of such violations made by the State Party and the CPN (Maoist) was another objective of the monitoring.

Therefore, in such a serious circumstance it became imperative for the National Human Rights Commission, in its capacity as a responsible custodian of human rights, to take special initiatives.

Likewise, as per Section 9 of the aforementioned Act, it is stated that security officials can detain any person on grounds of suspicion for 90 days at a place decent enough for human living. Therefore, it also became a duty of the Commission to monitor whether or not the detention had been made in accordance to that particular Section and whether or not the place was decent enough for human living. Furthermore, Section 20 of the Act states that no official or person shall be liable for any act or proceeding undertaken with good intention under the Act. As the misuse of these Sections could allow for possible immunity to the guilty party, these possibilities were also to be covered by the monitoring activities. The Commission, therefore, started the work of monitoring, for such varied reasons, at the places affected by violence.

The monitoring activities were intended to document serious incidents of violations of human rights; incidents of violations of the humanitarian law; mass killings as well as unlawful killings carried out in a malicious manner, and similar types of human rights violations. The records were to be utilized to prosecute the guilty in the immediate as well as the long-term future.

Notwithstanding the fact that there were sufficient reasons and justifications for the Commission to start the monitoring, it could not be undertaken in all the districts because of the serious conditions prevailing at the time, along with limitations of means and resources, and the paucity of experience in this particular task. Whatever limited monitoring was undertaken, it was carried out as a model that afforded ample experiences to make the monitoring more effective in the days to come.

3. Monitoring: Working in Collaboration with the Civil Society:

Primarily, it is the duty of the civil society to monitor and maintain a record of the state of human rights. After receiving the reports from the civil society, and after scrutinizing them, it is the function of the Commission to submit those reports to the concerned organ of the Government for necessary action. Taking this matter into consideration, the representatives of the civil society were involved in the work of monitoring in large numbers. The roles of the Nepal Bar Association, the Federation of Journalists and NGOs working in the area of human rights are significant.

Before beginning monitoring activities, a strategic discussion was held with the representatives of civil society. In the discussion, suggestions were made to conduct monitoring in a systematic way with the massive participation of the civil society. In this regard, it was concluded that the Commission had to essentially undertake the following tasks:

- A. To prepare a Manual for human rights monitoring;
- B. To carry out interactions with other stake holders on the procedure of monitoring;
- C. To provide training to persons engaged in monitoring; and
- D. To prepare and keep ready a roster of the persons engaged in monitoring.

A Human Rights Monitoring Basic Information Booklet was prepared and it contained legal and other necessary materials necessary for those engaged in monitoring activities. This booklet included materials on the legal provisions concerning security; medico-legal investigation procedures; methods of keeping record of a corpse in case it was found; methods of collecting information regarding torture; methods of collecting facts related to encounter deaths; methods of gathering the facts concerning economic, social and cultural rights, and basic rules of the International Humanitarian Law, etc. The booklet also included the Human Rights Monitoring Manual and a code of conduct for those engaged in monitoring.

In the context of conducting interactions with the stakeholders related to monitoring activities, the Commission held interactions with the Secretary to the Judicial Council, Deputy Attorney General, forensic experts, judges, senior police officers, the Joint Secretary of the Ministry of Law and Justice and the Chief of the Legal Department of the Royal Nepal Army. Separate interactions were also conducted with the responsible persons of the security agencies.

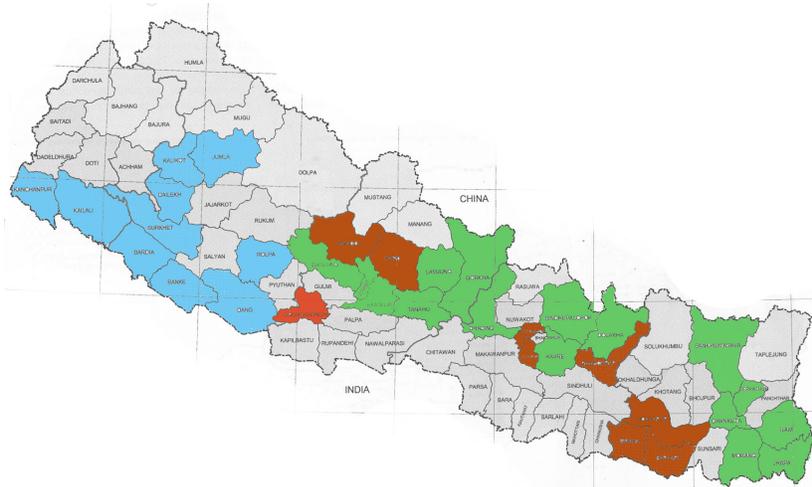
On the same occasion, when the Commission drew the attention of the Judicial Council for the establishment Special Courts, the latter received it in a positive manner, and after some time the Council constituted five Special Courts.

In accordance with the written request made to civil society concerned with human rights to participate in the work of monitoring, 72 persons were given a two-day training about monitoring. The Commission prepared a permanent roster of the participants of the training and arranged for enlisting them for the task of monitoring when required.

The Commission also held discussions with political parties as to how joint work could be done in the area of monitoring. The representatives of major political parties were present on that occasion.

After those preparations, three teams were dispatched to monitor the state of human rights in ten districts of the Mid- and Far Western regions of Nepal. Each team consisted of 5 to 7 participants. Before starting the work of monitoring, a regional symposium was organized at Surkhet in the Far Western region. The representatives of security agencies, civil society and the political parties were present at the symposium. Moreover, the persons deputed for monitoring conducted interactions in every district in the presence of the representatives of civil society and the security agencies. Regional symposiums were also held at Biratnagar and Pokhara.

Five teams were sent to monitor of state of human rights in 18 different districts of the Eastern and the Central regions after the return of the first group that had been sent earlier.



Monitoring Work took place in the following Districts:

- | | |
|----------------------------|-----------------------|
| 1. Ilam | 29. Bardiya |
| 2. Jhapa | 30. Kailali |
| 3. Morang | 31. Kanchanpur |
| 4. Dhankuta | 32. Surkhet |
| 5. Terahthum | 33. Dailekh |
| 6. Sankhuwasabha | 34. Kalikot |
| 7. Saptari | 35. Jumla |
| 8. Siraha | |
| 9. Udayapur | |
| 10. Dolkha | |
| 11. Ramechhap | |
| 12. Sindhupalchowk | |
| 13. Kavrepalanchowk | |
| 14. Kathmandu | |
| 15. Lalitpur | |
| 16. Dhading | |
| 17. Gorkha | |
| 18. Lamjung | |
| 19. Tanahu | |
| 20. Kaski | |
| 21. Parbat | |
| 22. Baglung | |
| 23. Myagdi | |
| 24. Syangja | |
| 25. Arghakhanchi | |
| 26. Dang | |
| 27. Rolpa | |
| 28. Banke | |

National Human Rights Commission
Complete Description of the Incidents Found During Monitoring

Types of Incidents	Parties	Terathum, Dhankuta,	Dang, Rolpa	Surkhet, Dailekh Kalikot, Jumla	Baglung, Parbat, Kaski Myagdi, Syangja	Dolkha, Ramechhap Sindhu, Kavre	Dhading, Lamjung Gorkha, Kaski	Banke, Kailali Bardiya, Kanchanpur	Ilam, Jhapa Morang	Sub -total	Total
		Sankhuwasabha									
Killing	By the State Party	7	5	24	10	12	2	5	11	76	125
	By the CPN (Maoist)	6	3	4	0	21	5	4	6	49	
Rape	By the State Party	0	0	5	0	0	0	0	0	5	6
	By the CPN (Maoist)	0	0	0	0	0	0	0	1	1	
Torture	By the State Party	17	5	2	4	4	6	9	7	54	84
	By the CPN (Maoist)	4	2	5	1	2	2	9	5	30	
Illegal Detention	By the State Party	17	15	12	7	13	9	11	21	105	105
	By the CPN (Maoist)	0	0	0	0	0	0	0	0	0	
Disappearances	By the State Party	0	2	0	0	1	0	2	0	5	7
	By the CPN (Maoist)	0	1	0	0	0	0	1	0	2	
Displaced	By the State Party	0	1	0	1	2	2	2	1	9	69
	By the CPN (Maoist)	2	6	7	9	11	8	13	4	60	
Destruction, arson and loot	By the State Party	1	2	1	2	1	1	4	2	14	40
	By the CPN (Maoist)	2	4	5	3	4	2	3	3	26	
use of minors	By the State Party	0	0	0	0	0	0	0	0	0	3
	By the CPN (Maoist)	0	1	1	0	1	0	0	0	3	
Others	By the State Party	0	0	0	0	0	0	0	0	0	6
	By the CPN (Maoist)	0	0	1	0	1	1	1	2	6	
											445

The monitoring teams completed the task of monitoring between 4 August, 2002 and 17 October, 2002. On the basis of the reports received from all the teams, the state of human rights in the country was found to be as follows:

As displayed in the Table above, altogether 445 cases have been documented on the basis of the reports of the monitoring teams. Besides this, special reports have been received following the visits made by the Chairman and the members of the Commission to the districts including Arghakhanchi, Siraha, Saptari, Udaypur, Rukum, Rolpa, Parbat and Jumla.

The incidents discovered by monitoring teams have been classified into 9 categories. While determining the types of the incidents, there were also some instances that could not be confined only to one particular category. For example, if an incident of murder after rape was placed in the category of either murder or rape, that would not give a complete picture of the incident and, hence, it has been placed in both the categories. Such cases were also found with regards to cases of torture and illegal detention.

Listing only 445 incidents in the Table does not mean that only those incidents had occurred at the places monitored by the teams deputed for monitoring. These cases are the basic specimens, which cover most of the incidents that occurred at the places monitored by the teams. Due to adverse circumstances prevailing at the time of monitoring, along with other limitations of monitoring, some incidents might not have been covered. However, the reports received from the monitoring teams present an actual and complete picture of the state of human rights prevailing in those places. A real picture of the existing state of human rights has been gathered from the reports presented by the monitoring teams as a result of contacts and meetings with concerned security officials, representatives of the civil society and the stakeholders of each and every district or place. The Commission has written to concerned institutions for a full investigation into incidents of human rights violations accounted by the monitoring teams along with the violations of human rights by the security agencies.

General Scenario of Human Rights

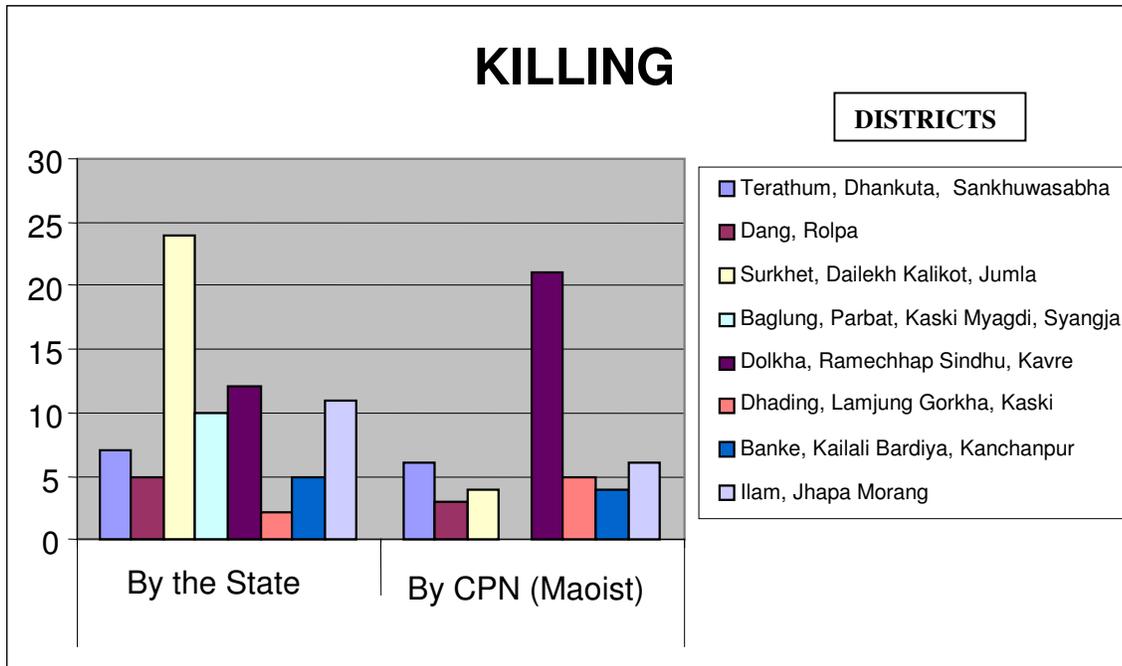
The state of human rights from the commencement of monitoring until the submission of the reports to the Commission is distressing. At certain places and in certain circumstances this situation is grave. When the members of the Commission monitored the headquarters of Arghakhanchi district following the attacks made by the Maoists in the month of Bhadra, there seemed to be a state of anarchy in Arghakhanchi. Some time before the Arghakhanchi incident when the Chairman and the members of the Commission visited some places like Rukum, Rolpa, Siraha, Saptari etc., they had also found incidents of violations of human rights. The Commission had forcefully raised the case concerning the discovery of four unclaimed bodies lying by a river four kilometers away from the city area of Nepalgunj. So many incidents of human rights violations had occurred between the incident in Nepalgunj and the Arghakhanchi incident that it became difficult to decide whether or not a particular incident could be highlighted.

The killing of Maoists by the security forces in the name of terrorism and the killings of the security forces, political workers and the common people, their abduction and the acts of destroying police posts by the Maoists increased day by day. The Maoists destroyed public utilities, development structures and committed infringements of Humanitarian Law along with the infringement of economic, social and cultural rights of the people. At certain places, the excessive and careless use of force by the security forces resulted in the killings of innocent people and suffering of many more. Gradually, the situation deteriorated so much that even the headquarters of some districts slipped into a state of anarchy. Arghakhanchi is a burning example such anarchy. Both the State and CPN (Maoist) are responsible for the emergence of such a predicament. The Table itself indicates the respective share in the violence by the parties. The following paragraphs briefly describe how and to what extent human rights have been violated by each party.

It is important to note that the incidents described below have not been investigated fully. However, the monitoring carried out by the Commission has brought forward evidence that, in the Commission's view, establishes a strong *prima facie* case that violations have occurred and were perpetrated by the parties identified. The Commission is therefore confident that the allegations set out below are justified and that, in the absence of further evidence to the contrary, the identified parties bear responsibility for them.

A. Killing

According to facts made public through various sources, more than seven thousand people have already lost their lives since the armed conflict began. If the latest data were taken into account, this number might be higher. Incidents of deaths of innocent and unarmed people were on the rise as the Maoists increased their activities while the state similarly increased its “search and destroy” campaigns. The offenders were seldom brought to the purview of law. Instead, on average, 10 to 12 people were being killed every day. The Common Article 3 of the Geneva Convention provides protection to the wounded, sick, surrendering combatants and the incapacitated, during internal armed conflicts. Unarmed civilians are fully entitled to human rights and the humanitarian law. However, the monitoring activities have revealed violations of all such conditions and requirements.



i. Killings by the CPN (Maoist)

Forty-nine incidents of murder by the Maoists have been collected from districts that were monitored. Among the victims, there are people belonging to almost all categories and classes. By profession, some of them are political workers, some are teachers, some are farmers as well as incumbent police and army personnel, but most of them are farmers. By caste, mostly Brahmins, Chhetris, Thakuries and Newars and some Rais, Limbus and Magars also fall under the category. With regards to the political workers, they belong particularly to the Nepali Congress and the UML. Viewed from the age perspective, they are people ranging from children 10 years old to 72 year old people. However, most of them are in the 20 to 46 year age group.

Although most of the people killed by the Maoists were accused of spying, killings have also been made on other charges. In a few circumstances it has been found that the Maoists have also killed on the basis of various prejudices after capturing and kidnapping the people and keeping them in their custody for some time. Some of the cases of killings after abduction also include killings after committing rape. The Maoists have also killed those engaged in performing post funeral rites, social workers, innocent farmers, employees and the headmaster of a high school. The Maoists have also resorted to killing simply because someone had been former army personnel and/or if they denied to give any donation to the Maoists.

Based on the gathered information, there are 16 incidents, which do not state any particular reasons for the slayings. There could be undisclosed reasons such as personal animosity and/or failure to give financial or other

types of assistance to the Maoists. Most of those killed are teachers and students. Also, political vendetta, spying and contact with the army and the police appear to be the main reasons for the killings. Former Maoist supporters are killed simply because of surrendering to the police; others are killed because their son was in army or had applied to join in the army.

The method employed in the killings also seems to be significant from the perspective of human rights violations. Killing some one by slitting his/her neck with a *khukuri*² appears to be the common method among the Maoists. There is a widespread belief among the Maoists that using bullets for killing ordinary people is extravagance. The most inhuman and horrible manners of killings were found in cases especially involving those accused of being spies and having contacts with the army and the police.

Followings were some of the methods of killings

- Killing by crushing the feet with stones;
- Killing in the presence of family members;
- Killing by slicing the body into pieces;
- Killing by cutting the vein of throat;
- Killing by hammering nail into some one's feet and making him/her run;
- Killing by breaking hands and feet;
- Killing by chopping ears, tongue, lips, thigh, flesh in the feet etc;
- Killing by cutting one foot and hands and compelling some one to walk.

ii. Killings by State Party

Both the army and the police are included as the State Party. The study teams have largely covered the incidents involving the army. The frequent mention of killings by the army is not unnatural because, with the mobilization of the army in the country, they have played a greater role as compared to the police in the action against the Maoists.

This study includes data from the 35 districts of the country. While it may not cover all incidents, it may represent, in a symbolic manner, the incidents occurring in all regions and communities. Viewed on the basis of caste and age, most of the castes present in the country, such as, Brahmins, Chhetris, local tribes, Dalits etc. are represented in it. Likewise, viewed from a gender perspective this study has gathered data relating to both the sexes. The data shows that the number of females killed by the state party is approximately 10 percent, and even a child aged 12 years is reported to have been killed by the army.

Several people supposedly killed in encounters have been found to be actually killed while in custody and in an unarmed state after surrender, or in the course of surrendering. Examples included the killing of one male in Parbat, one female in Roopandehi, one male in Ramechhap and one male in Kavre. They were all killed by the army during the capture or after taking them into custody. Similarly, 21 people were killed in the course of surrendering in *Terahthum* and 4 in *Sindhupalchowk*.

The people have been killed particularly due to the negligence of the security forces, fear psychosis, retaliation and insensitivity towards the human rights.

The study of the nature of the incidents did not present any basis to believe that some of the incidents took place in actual encounters. In some cases for instance, some victims had been hit by bullets from behind, in the forehead and from close distance. In some cases, only two bullets that had been fired had claimed the lives of two people, which add suspicion to the method of killing. Several questions have been raised about the veracity of encounters, as in some cases, arms and ammunitions were not recovered from the places where encounters

² A traditional Nepali knife

were alleged to have taken place and also due to superficial accounts of the presence of arms and ammunitions in places where encounters were alleged to have taken place.

A number of women were killed while they had gone to fetch water in the wells in the evening and early in the morning. Those looking after their cattle sheds were also killed while clattering tins to frighten away wild animals. Some have been killed while running away from fear caused by the sight of the army. Laborers engaged in the construction of an airport in Kalikot were also killed. People were killed while working in the fields. After the killings, security forces have left the dead bodies behind unattended and coerced the local people to prepare an “on-the-spot statement” describing those casualties as part of encounters. Moreover, the locals also informed the monitoring teams that while taking the dead bodies to the district headquarters for autopsy, water bottles and socket bombs were sometimes hung around the waists of the dead in order to prove that the dead ones were Maoists.

Various details of unlawful killings that were collected by the monitoring teams included the incident in which the army killed a 10-year-old mentally retarded girl, who was running away at the sight of a patrolling army. Her body was sent to the district headquarters for autopsy and had a water bottle hanging in her neck along with a socket bomb around her waist. In Kanchanpur, indiscriminate firing by army squad killed four innocent villagers. In Dailekh, two people were killed after having been kept for two days in a ditch. In Kalikot, one person was made to dig a ditch in which he was compelled to sit and then shot dead. In the same district, four people were forced to carry stones and dig ditches and were then chained, shot, and then buried in the same ditch. Similarly, at *Ramite* in Morang, four people were killed and chained and then left to die in a public place. The villagers informed the monitoring team that no arms and ammunitions and documents were found on the dead.

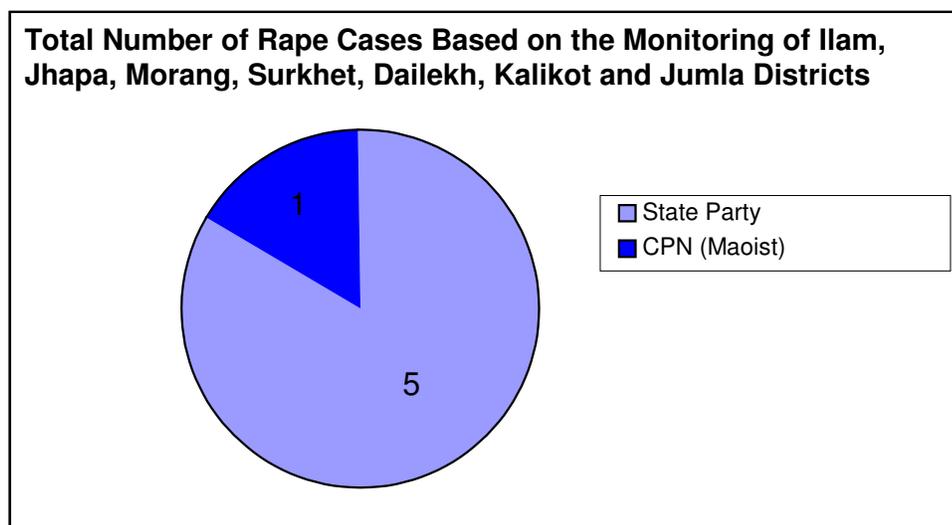
Likewise, some incidents of violations caused by the Police at various places are also worth mentioning here. Due to indiscriminate firing from the police post at Basantpur in Dhankuta, one person staying in a hotel en route to Kathmandu and drinking *tongba*³ was hit by a bullet piercing his stomach. He succumbed to his injury in Dhankuta, while being carried to Dahran for treatment in an ambulance called from Dhankuta. While he was being taken for treatment, the security forces followed him, labeling him a terrorist, and the police also threatened anyone who protected the injured person. The injured person hit by a bullet on the earlier day was not even allowed to have treatment with the knowledge of the police.

Similarly, other examples of killings by the State Party are as follows: killings of the injured Maoists by attacking their shelters; killings after committing gang rape; murder of P.C.O. operator; murder of teachers; murder of a father because his son had joined the Maoists; killings for violating curfew; killings on the charge of having provided food to the Maoists and killings made by the security forces in the guise of the Maoists, etc.

³ A traditional Tibetan alcoholic beverage

B) Rape:

According to the data received by the monitoring team, the incidents of rape committed by both the sides-the security forces and the Non-State Party are as follows:



i. Rape Committed by the State Party:

The incidents of rape committed by the security forces are mostly incidents of gang rape. In several cases, it was found that the army personnel went to various houses, beat and dragged the husbands and the children out of the house and then raped the women inside their houses. Similarly, incidents of arrests followed by the killings of husbands and subsequent raping of their wives were also discovered. It was revealed to the monitoring team that an army squad took two women detained in Dailekh with them to an undisclosed location and then raped them. Their naked bodies were left at the location and the news was dispatched stating that terrorists were killed in an encounter.

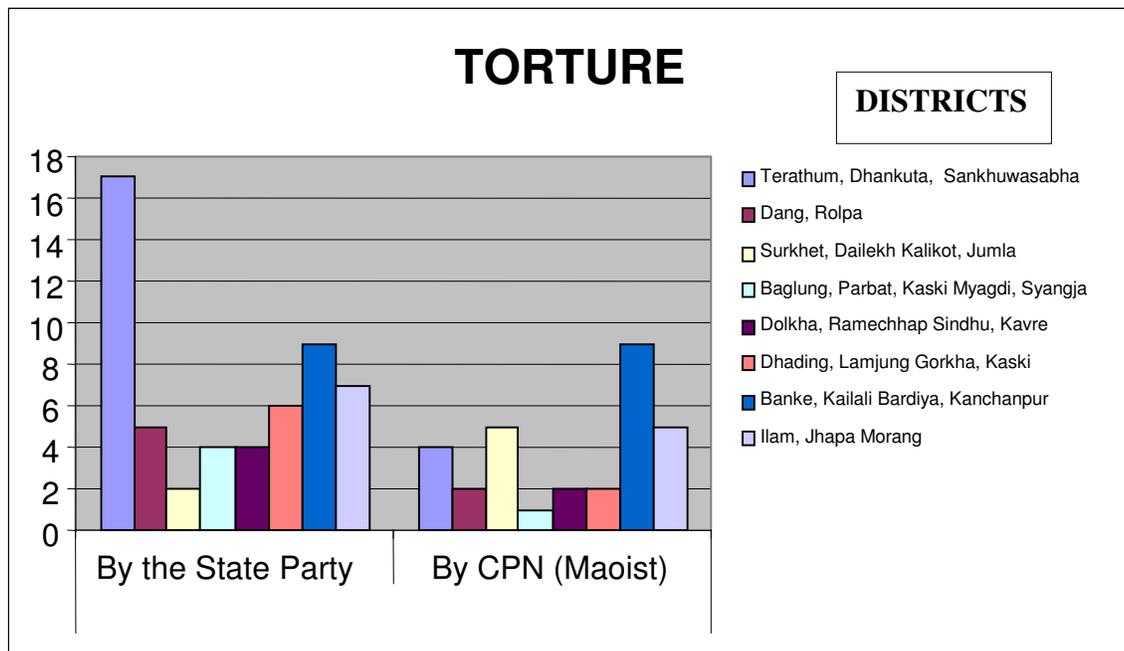
ii. Rape Committed by the CPN (Maoist):

In one of the districts visited by the monitoring teams, two gunmen in masks and black dress entered into a house at one o'clock in the night. While they compelled the parents at gunpoint to sit on a cot, they brought the daughter who was sitting in a corner of the same room and made her take her clothes off. When she refused, the gunmen tore off her clothes and raped her turn by turn. The gunmen broke a box belonging to a family and took away Rs. 20,000. They did all this because of the refusal of the parents to donate one hundred thousand rupees to the Maoists. The mother of the girl suffered serious mental trauma from the incident, which consequently led her to commit suicide by hanging herself a few days later.

Irrespective of whosoever might have committed such rapes, it is a cruel and inhuman act and a grave assault against personal dignity. Such incidents are at a violation of both human rights as well the Common Article 3 of the Geneva Convention.

C. Torture:

This part of the report describes the physical and mental torture such as, battery, mutilations, threats and coercion inflicted by both the state security forces and the Maoists.



i. Torture Inflicted by the State Party:

The data reveals that a large number of people tortured by the security forces and/or the Police are innocent civilians. They are mostly those who had come to the authorities to surrender. Most of such victims have been schoolteachers.

There are some incidents, which have occurred without any reason. The common people had suffered from indiscriminate pains and torture when the security forces happen to be in a "bad mood". Most of the incidents of torture were found to have occurred only on the basis of suspicion. Some of such incidents had take place to secure confession by force. Both the Maoists and the security forces have subjected the people to suffering. While the Maoists are generally suspicious of the people, they also make use of them. On the other hand, the security forces do not understand the compulsions of the local people and treat all as Maoists.

The following are some of the examples:

- In one of the districts visited by the monitoring team, a school teacher was said to have been arrested by the police and was subjected to various types of physical and mental torture in order to compel him to confess that he was a Maoist. When he denied the allegations, he was indiscriminately beaten up. He was stripped naked and a big stone was hung on his testicles, and he was forced to confess that he was a Maoist. He was also sacked from his job. Presently he is detained in prison and his family is under fear from threats.
- It was observed by the monitoring team that some teachers were subjected to physical and mental torture for allegedly putting the Maoist flag in the schools.
- The army entered into a school during the school hours because the Maoists had painted various slogans in the walls of the school. The teachers and peons of the school were publicly lined and the Army personnel forced them to squat like frogs and had beaten them until they were bleeding from the mouth.

- Similarly, in another place, three businessmen were beaten up publicly due to the reason that they had helped the Maoists build a gate. They were severely beaten and forced to set fire in the gate until they had to be rescued by some other army men.
- A doctor was captured and assaulted for having treated the Maoists. He was released only after being humiliated by the army for some time.
- A teacher was abducted at gunpoint in the presence of his family while they were sleeping at night. He was said to have disappeared and after three days the army returned to his house, ransacked it and battered his wife in the vicinity of the village with a gun and a stick, injuring her seriously. They told her that they had already killed her husband and threatened that they would come next time to kill her as well.

Incidents of torture were found to have increased in the process of interrogation and the methods were highly intolerable and inhuman. Irrespective of whether such acts have been committed by the army or the police, it is unlawful to take any one into custody without an arrest warrant and without reason. The army doesn't have any legal authority to interrogate and it cannot ask more than four questions to an arrested person regarding his identification. Some more details violations of authority recorded by the monitoring teams are as follows:

- A young lady who had been taken by her elder brother to the District (Administration) Office to surrender her was immediately taken into custody. She was kept in the army camp blindfolded and attacked indiscriminately on her body with sticks. Her buttocks were laid bare and she was whipped with *sisno-panti*⁴ and her vagina was smeared with chili. She is still detained in prison.
- A woman suffering from typhoid who had come to a certain place for medical treatment was kept in army custody for twenty-two days without an arrest warrant and she was subjected to torture from the army. As a result of regular beatings by stripping her naked and splashing her with cold water, she was unconscious for six days. The reason mentioned for subjecting her to such type of treatment was because her brother belonged to the Maoists and she was not revealing his whereabouts. She is still detained in prison.
- One woman was kept under army and police detention for almost 166 days on charges of for allegedly having participated in attacks. Unable to bear the torture during her custody she had already lost the hope of surviving the ordeal. In course of being tortured, her body was burnt with lighters; pins were nailed into the toes of her feet; some nails were pulled out and she was subjected to electric shocks while urinating. She used to become unconscious when such electric shocks were given.
- Similarly, a lady vegetable vendor was kept in custody for 116 days without any detention letter and subjected to various types of torture. In course of being tortured, nails were struck into the sole of feet and electric shocks were administered while urinating. She used to fall unconscious whenever she was subjected to electric current. She is still under detention in a prison.

There are several instances of the army deceiving the people in the guise of the Maoists. The study team also discovered an incident of deception by the army in under the guise of human rights activists. In one place visited by the monitoring teams, three people were arrested on the charge of having been involved in the construction of a gate, which had been built by the Maoists, and they were kept in detention and were subjected to extreme physical and mental torture of various types. On the fifth day, under blindfolds, the army personnel posing as representatives of the Human Rights Commission subjected them to intense interrogation. In the beginning, the questions were asked in a polite and decent language, but after some time they continued with cruel treatment on the pretext that the detainees were willing to divulge information to the human rights activities and not to the police. The misuse of the name of the Human Rights Commission has thus been documented along with such incidents of torture.

ii. Torture Inflicted by CPN (Maoist)

Most of the incidents of torture are related to murder. There are plenty of incidents of the involvement of the Maoists inflicting merciless and inhuman torture prior to killing people believed to be guilty in the eyes of the Maoists. There are not too many incidents of releasing people after having subjected them to extreme torture. The persons released by the Maoists after subjecting them to physical punishment are considered to have been

⁴ Branches of spiny nettle leaves soaked in water

given only an ordinary warning. However, it causes severe mental torture because the ensuing action taken by the Maoists generally results in murder. Actions taken by the Maoists are particularly in the forms of making some one hold their ears and sit down and stand up, compelling him to apologize publicly, and beatings with bamboo sticks, etc. The incidents of striking with sticks were found to have occurred in fewer numbers since the emergency.

Journalists have also been victims of torture. Some of the notable incidents are mentioned below:

- After rumors were heard of Maoists collecting donations from businessmen in a market, some journalists headed in that area to gather news. The Maoists detained the journalists for a night in the same area and prevented them from moving around. The detained journalists belonged to the National News Agency, Rajdhani, Nepal Samacharpatra, the Gorkhapatra and the Naulo Sandarva Weekly.
- At another place a journalist was captured, assaulted and abused by the Maoists. He was detained and several charges were labeled on him after being taken to their shelter in blindfolds. He later managed to run away and has come to the district headquarters where he is staying at present.
- A 53-year old Sherpa was forced to leave the village, after having been battered on account of his refusal to withdraw his case from the court in which an activist of the Maoists was an adversary. Now he is forced to stay at the district headquarters as a displaced person. He has also been warned by the Maoist not to return to the village.
- A 23-year-old woman was abducted by the Maoists to forcefully induct her into their army, but her husband managed to escape and run away from them.

Activists of the CPN (Maoist) were found to be involved in acts in contravention of the common Article 3 of the Geneva Conventions, in the acts of infringement of the right to life of a person, murder and torture of horrible nature.

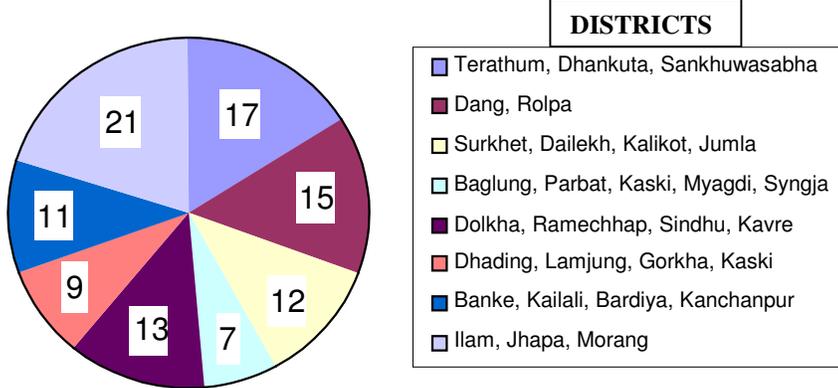
D) Miscellaneous

Disappearances, displacement, damage and destruction, arson, loot, the use of minors, locking up houses of the common people, inflicting injuries and creating terror by the army were some of the other types of incidents documented.

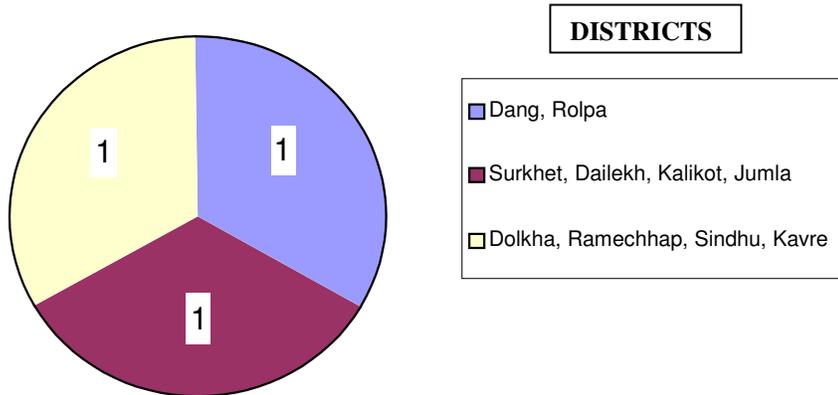
The monitoring teams discovered seven incidents of disappearance by the State forces. The acts of disappearance occurred more frequently during the State of Emergency. The CPN (Maoist) was found to have utilized abduction as a means of serving its interests.

Incidents of displacement due to inability to provide donations to the CPN (Maoist) have been found. Likewise, some persons had also been displaced for the reasons such as having a son enlisted in the army or for worshipping, or for spying. Some people had also been displaced due to edicts of murder issued by CPN (Maoist). Similarly, some incidents relating to locking up houses of the common people by the state and the CPN (Maoist) had been discovered. Incidents involving the use of three minors in combat by the CPN (Maoist) were also observed.

Illegal Detention By the State Party

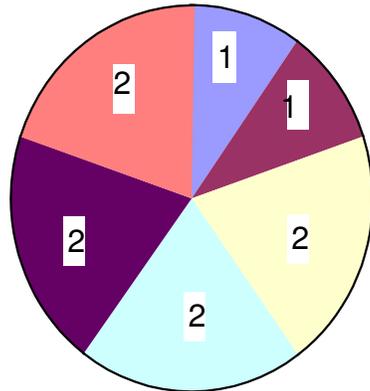


Use of Minors by CPN (Maoist)



Displaced Persons as a result of actions by the State Party

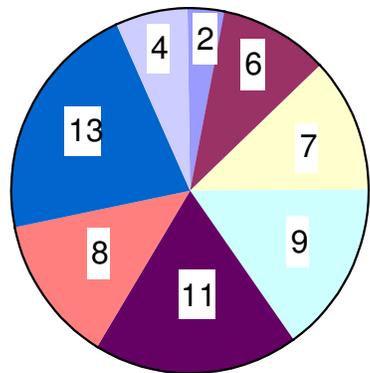
DISTRICTS



- Dang, Rolpa
- Dolkha, Ramechhap, Sindhu, Kavre
- Dhading, Lamjung, Gorkha, Kaski
- Banke, Kailali, Bardiya, Kanchanpur
- Illam, Jhapa, Morang
- Baglung, Parbat, Kaski, Myagdi, Syangja

Displaced Persons as a result of actions by the (CPN (Maoist))

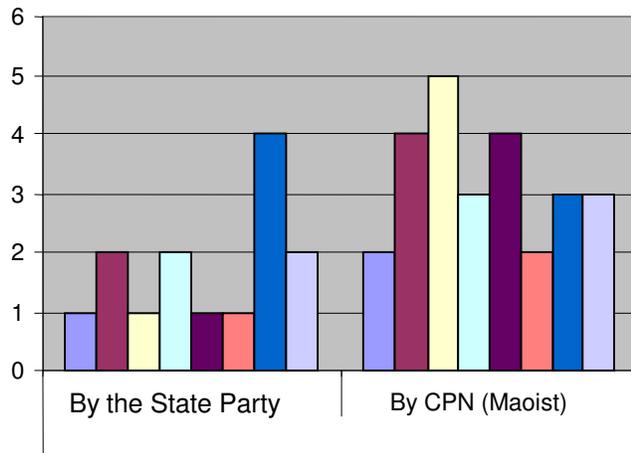
DISTRICTS



- Terathum, Dhankuta, Sankhuwasabha
- Dang, Rolpa
- Surkhet, Dailekh, Kalikot, Jumla
- Baglung, Parbat, Kaski, Myagdi, Syangja
- Dolkha, Ramechhap, Sindhu, Kavre
- Dhading, Lamjung, Gorkha, Kaski
- Banke, Kailali, Bardiya, Kanchanpur
- Illam, Jhapa, Morang

Destruction, Arson and Loot

DISTRICTS



- Terathum, Dhankuta, Sankhuwasabha
- Dang, Rolpa
- Surkhet, Dailekh, Kalikot, Jumla
- Baglung, Parbat, Kaski, Myagdi, Syangja
- Dolkha, Ramechhap, Sindhu, Kavre
- Dhading, Lamjung, Gorkha, Kaski
- Banke, Kailali, Bardiya, Kanchanpur
- Illam, Jhapa, Morang

Recommendations:

The Human Rights Commission recommends the following measures be undertaken by the parties involved in the conflict regarding the issues received and raised in this report:

1. Reports on incidents documented during the monitoring have already been sent to the Royal Nepal Army and the Police for further inquiry and investigation. It is therefore recommended that the concerned agencies send a report to the Commission after investigating such incidents and to initiate the process of taking action against the guilty;
2. Provide training at least in the commanding officers level of the Royal Nepal Army as well as the police in laws related to national security, human rights and International Humanitarian Law;
3. Impart training to the Regional Administrators, the Chief District Officers, the officers of the security agencies stationed in the districts and the people belonging to the bodies entrusted for adjudication of cases about human rights and the Humanitarian Law as well as judicial administration;
4. The series of killings must be halted and legal action should be initiated against all those who violate the law;
5. Unlawful detention cannot be a matter of bargaining. Hence, it is recommended to make public the status of all persons who have been detained or captured and those whose complaints of disappearances that have been lodged with the Commission and the courts;
6. Request human rights organizations to be active in monitoring and thereby provide the reports of such monitoring as complaints to the Commission;
7. Set up a Monitoring Committee in accordance with Section 13(1) of **the Terrorist and Disruptive Activities (Control and Punishment) Act**; to make arrangements for filing cases under this Act in the Special Court; to set up centers for detainees and a transparent system of detention;
8. A halt on all acts of killing; torture; destruction of public infrastructure; extortion, and indiscriminate bombings by the CPN (Maoist);
9. Commence peace initiatives at respective levels through the government; various organs of the state; intellectuals; professional associations; humanitarian organizations; diplomatic missions situated in Nepal and the UN;
10. The Government and non-governmental bodies as well as donor agencies and other concerned agencies are requested to start the necessary initiatives of humanitarian intervention related to the existing problems during the armed conflicts such as, providing access to food grains, medicine and health services; education; assistance for women, minors and those displaced or affected by violence;
11. Allow the International Committee of the Red Cross (ICRC) without any hindrances to inspect the jails, detention centers and camps to address the problem of the people in places affected by the armed conflict; also allow access to providing training and advice about the compliance of international humanitarian laws along with the study of the prevailing humanitarian condition.
12. Effective actions to be taken by the diplomatic bodies situated in Nepal, the international associations and organizations and the UN after assessing the state of human rights in Nepal on the basis of this report;
13. Provide this report as a notice to the Special Rapporteurs and initiate necessary proceedings in the context of Nepal by accepting this report under International Human Rights Instruments.

Conclusion

The armed conflicts currently raging in the country are aggravated by the present state of governance, political confusion and tussle among political parties as well as the strategic plans of the Maoists. Attempts of both parties in the conflict for negotiations and resolution have been limited only to endeavors and rhetoric due to the policy of militarization adopted by both the parties.

The National Human Rights Commission had, in collaboration with the civil society, monitored some of the districts affected by violence for the sake of protection and observance of Humanitarian Law under the difficult circumstances during the State of Emergency and amidst the mobilization of the security forces along with increased occurrences of violent incidents caused by the Maoists.

In course of monitoring the violations and excesses committed by the state and the CPN (Maoist), the monitoring team documented incidents of killings, torture, rape, and violation of the Common Article 3 of the Geneva Convention. The atrocities committed by the CPN (Maoist) in their areas of influence have also been documented and they will be utilized in long-term basis to discourage impunity. The Commission has taken the violation of Common Article 3 seriously.

The Commission has taken serious note of the acts such as taking law into their own hands during the State of Emergency or during the mobilization of force; devaluating national and international commitments made by Nepal; trying to evade accountability; failing to investigate and prosecute the guilty according to the prevailing legal procedure, and seeking to evade the reality by not taking action upon the complaints etc. The Commission has also taken serious note of the violations of human rights and humanitarian law by the Maoists.

The control or suppression of rebellion cannot be made by going beyond the limits of law. A culture of respecting the law and the human rights should be developed. Therefore, it seems to be in the interest of the State Party to evaluate the past to initiate the process of taking action against the guilty and to protect, as a future strategy, basic human rights and humanitarian law. Similarly, a group involved in the abuse of human rights of the people in contravention of humanitarian law cannot claim moral legitimacy; nor can they claim that their actions are meant to lead the state towards greater democracy and justice.

At the time of the publication of this report, the parties in the conflict have declared a ceasefire and have expressed their desire to work towards establishing permanent peace in the country. People have therefore become more optimistic and hopeful that that talks would lead to the resolution of the conflict and bring about an environment of peace whereby everyone would be able to fully exercise all their rights. It is also believed that all parties shall implement the recommendations of the Commission.

Annex-1

An Appeal Made Public by the National Human Rights Commission on December 10 on the Eve of the International Human Rights Day

"Human Rights for Peace"

An Appeal made by the National Human Rights Commission on the Eve of the 54th International Human Rights Day.

Expecting the implementation of the commitment made public by His Majesty's Government about its readiness to hold negotiation with the Non-State Party for establishing peace;

Fully supporting the opinion expressed by all the political parties including major parties like the Nepali Congress and the CPN (UML), that the end of the violence prevailing in the country is possible only through negotiation,

Taking positively the statement made public by the CPN (Maoist) through the press release on December 4, 2002 as indicative of its positive attitude towards the pressure built up by the civil society on the CPN (Maoist) not to resort to political killings and destruction of the physical infrastructure in order to resolve the problem through negotiation;

On the occasion of the 54th anniversary of International Human Rights Day on December 10, the National Human Rights Commission, calling all to reinforce their commitment to human rights makes the following appeal to the government, all political parties, the civil society and other institutions:

To the Government:

- To endeavor to build a more pervasive and stable environment for the developing prospects for negotiations;
- Recognizing the fact that the preservation of human rights is a responsibility of the Government, to immediately release in public all the names of persons held in captivity; respecting the detainees' rights to access law courts, to immediately present them before the courts;
- To immediately transfer those detained in army and police barracks and other secret detention centers to more humane places according to law and to provide public information about it
- To make public the names of the people who have been killed and to provide just compensation in cases when any person without arms or any civilian has been killed;
- To provide an environment of peace for anyone who wishes to live in such an environment
- To immediately halt illegal arrests and torture of citizens;
- To make necessary legal provisions for providing compensation to the victims during the emergency period, and to make the procedure of claims for compensation simple and accessible;
- To provide the most essential services and supply materials to the public and carry out effective implementation of the supply system without any impediments in the educational, health and food supplies sectors;
- To recognize schools and health centers as "Peace Zones" and avoid such areas being adversely affected in any way, and
- To provide for immediate treatment and rehabilitation of those injured and disabled by the violence.

To the CPN (Maoist)

- To remain firmly committed to the public statement made by the party to stop political assassinations and the destruction of physical infrastructure
- To make public immediately the names of its party workers killed in action
- To immediately release those abducted and kept in detained under various pretexts

- To publicly express a commitment not to create any obstacles in the educational, health and food supplies sectors and remain committed to the pledge
- To make a public commitment of its recognition of the educational institutions and the health centers as "Peace Zones"
- To be wary of, investigate, and inform the public of all cases of ill treatment committed against ordinary citizens and
- To increase participation in the development process by accelerating the process of dialogue in the local level with the civil society, political parties and other institutions

To Other Political Parties

- To remain firm in their commitment to seek solution of the problem through negotiation, and to make initiatives for its implementation;
- To proceed further with flexibility for the political solution of the problem;
- To expand participation with all concerned in providing goods and services of basic necessities to the people and also help facilitate dialogue in the local level, and
- To recognize schools and health centers as "Peace Zones", to keep them free from the conflicts

To the Civil Society/ Organizations

- To disseminate the message of resolution of the conflict through dialogue to district, village and household levels
- To work in collaboration with the government and the political parties for the fulfillment of the basic needs of the people;
- To provide necessary services in the affected areas for making arrangements for easy accessibility of the people to education, health and food grains;
- To render its activities with a people-oriented, transparent and politics-free approach, and
- To make all kinds of initiatives for the sake of peaceful resolution of the conflict.

The National Human Rights Commission requests the government and the Maoists for immediate ceasefire of the conflicts, and for making sincere initiatives by all the parties and for the creation of an environment of dialogue for the establishment of peace based on social justice

National Human Rights Commission
 Harihar Bhawan, Lalitpur

Annex 2

The Letter Delivered to Prime Minister Lokendra Bahadur Chand During a Meeting After the Monitoring of the State of Human Rights in 35 Districts by the Commission.

Date: October 21, 2002

Rt. Honorable PM Lokendra Bahadur Chand,
Office of the Prime Minister,
Singhadurbar, Kathmandu,

Re: For Your Attention

Rt. Honorable Prime Minister,

On your appointment as the Prime Minister, we hereby extend our best wishes for your success in discharging your duties.

From a human rights perspective, you are well acquainted with the fact that the country is passing through a difficult predicament. The National Human Rights Commission, set up under Human Rights Commission Act, 1997, would like to draw your attention to a summary of a report of violations of human rights based on human rights monitoring and visits of 35 districts of the country by the Commission along with suggestions for immediate measures to be undertaken by the government in such a difficult situation.

Summary of the Report on Monitoring of Human Rights

1. Unarmed people were found to have been killed in the incidents of fake encounters in different parts of the country;
2. Excesses were found to have been committed in most of the circumstances relating to the capture, search and detention of the people. Several incidents of disappearances after capture were also discovered and facts relating to the presence of people in illegal detention in the Army barracks were found. The persons so detained were not presented before the competent authorities on time in accordance with the law and it was also found that even their kin were not informed about the arrest for a long time;
3. Except in extraordinary circumstances, security agencies did not comply with the law with regards to legal documentation, postmortem, funeral and informing the relatives of the dead people;
4. Excessive use of force was found to have been used during the mobilization of forces in some cases. Unarmed people were targeted and non-compliance to Humanitarian Law was also observed;
5. The administration and the security agencies in different parts of the country, were found to be insensitive to the rights of the people to food, education and health on the pretext that any supplies in the abovementioned sectors could benefit the Maoists;

In this perspective, the National Human Rights Commission requests Rt. Honorable PM to undertake the following measures:

1. To avoid using excessive force in security operations; to prosecute the guilty after investigating the incidents of killings, and to provide compensation to the victims;
2. To prevent any unlawful arrests; to complete the legal process of searches; not to keep people in illegal detention in the Army barracks; to prevent torture; to safeguard the human rights of the people kept in detention and to make public the condition of the people detained so far;

3. To prepare legal documentation of the people killed during security operations and to make arrangements for providing official information about deaths to the families of the deceased people;
4. To set up detention centers in accordance with Section 9 of the Terrorist and Disruptive Activities (Control and Punishment) Act; to constitute monitoring committees in accordance with Section 13(1) and to issue instructions to the Local Administration to file cases without delay against the detainees in the Special Courts designated in accordance with Section 15;
5. The government must make effective arrangements for the supply of food grains and medical treatment and arrangements for regular conduct of schools in the affected areas with the assistance of various international agencies such as UNDP, the World Health Programme, the International Committee of the Red Cross and various NGO's;
6. The Government should declare ceasefire, even for a brief period and take initiatives towards the establishment of peace.

The National Human Rights Commission expects special interest and initiatives to be taken by Rt. Hon'ble Prime Minister in the implementation of the above-mentioned measures.

Very soon, the National Human Rights Commission will be undertaking initiatives in providing assistance for the supply of food grains, education and access to health in the violence affected areas, and the assistance from His Majesty's government is also expected in this regard.

May your tenure be successful in preventing the infringement of human rights and establishment of peace in the country!

Nayan Bahadur Khatri
Chairperson

Annex 3

The Letter Sent to Nepal Communist Party (Maoist) after Monitoring the State of Human Rights in 35 Districts by the Commission

Date: October 23, 2002

Mr. Chairperson,
The Nepal Communist Party (Maoist)

Re: For Your Attention

Dear Mr. Chairperson,

We would like to inform you about on-the-spot monitoring of the state of human rights in 35 violence affected districts of the country which was conducted by the National Human Rights Commission from 4, August, 2002 to 17, October, 2002. On the basis of the conclusions drawn after the monitoring, we would like to draw attention of the CPN (Maoist) to the following facts and the duties to be complied with:

1. In the districts monitored by the Commission, the activists and the military squads of CPN (Maoist) were found to be involved in acts of political assassinations, murder on the charge of espionage, abductions, disappearances, cruel and inhuman types of torture, torture and murder of the captured security personnel, etc;
2. The attacks by the CPN (Maoist) targeted unarmed civilians and the attacks also targeted in the destruction of physical infrastructures related to development and construction along with installations of public utility and cultural heritage sites. In certain cases, the use of excessive force had been observed and the captured security personnel and civilians were found to have been killed in a retaliatory manner;
3. It was also found that the CPN (Maoist) had drafted minors into its military squads, indiscriminately used explosive mines and, at certain places, selected targets in contravention of the rules of engagement;
4. The activists and the military squads of the CPN (Maoist) were found to be involved in extortion by forcibly collecting donations; forcibly using the houses of persons; obstructing the supply of food and looting food stuff, health materials, objects of basic needs of the people and also attacking the health centers;
5. It was found that donations were extorted from teachers and they were killed on the pretext of harboring opposing political thoughts. The environment to exercise the right to education was thus obstructed; and
6. At several places the military squads and the activists of the CPN (Maoist) were found to have ignored and violated the common Article 3 of the Geneva Conventions.

The National Human Rights Commission, therefore, urges the CPN (Maoist) to observe the following:

1. To stop all types of killings; to stop the abductions and murders of the unarmed and retired security personnel as well as those on leave; to halt all types of torture and to stop the killings of the captured persons;
2. To stop the destruction and attacks on infrastructures and objects of public utility; to protect the cultural traditions and heritage;
3. Not to use minors in war; not to make indiscriminate use of explosive mines and to observe the rules of engagement;
4. To observe the guidelines and the principles embodied in the Common Article 3 of the Geneva Conventions at all times. To remind the violators of the Common Article 3 of the Geneva Conventions that they will be brought to justice;
5. To respect the people's right to food, education and health, and to create an environment of providing access, at all places, for the Government and the assistance providing national and International organizations, such as, UNDP, World Health Program, International Committee of the Red Cross and NGOs for the guarantee of those rights;

6. To respect, in all circumstances, a person's right to life and his right to lead a life with one's family without any threat or fear; and
7. To respect the right of the people to have political opinions of their choice and also to respect the citizen's right to free movement.

The National Human Rights Commission reminds the CPN (Maoist) to be wary of the fact that the violations of human rights and the excesses committed in the name of rebellion cannot be approved at any cost, and that such acts may become the subject of action under the criminal law and the International Humanitarian Law.

The Commission welcomes any steps taken by the CPN (Maoist) for the sake of protection of human rights.

Nayan Bahadur Khatri,
Chairperson

Annex-4

The Press Release issued After Dispatching the Letters to the Prime Minister and CPN (Maoist):

Press Release

A team led by Chairperson of the National Human Rights Commission, Mr. Nayan Bahadur Khatri, along with Commissioners Dr. Gauri Shankar Lal Das and Mr. Sushil Pyakurel and Acting Secretary Mr. Kedar Prasad Poudyal, called upon the Prime Minister at his office today. The Members of the Commission drew the attention of the government to the present state of human rights in the country as well as steps required to be taken immediately by the government based on the summary of a report of the monitoring of human rights situation in 35 districts undertaken by the Commission.

The issues submitted before the Prime Minister for his attention are as follows:

1. Cases of deaths of unarmed people in fake encounters were discovered by the monitoring teams in different parts of the country;
2. Excesses were found to have been committed in most of the circumstances relating to the capture, search and detention of the people. Several incidents of disappearances after capture were also discovered and facts relating to the presence of people in illegal detention in the Army barracks were found. The persons so detained were not presented before the competent authorities on time in accordance with the law and it was also found that even their kin were not informed about the arrest for a long time;
3. The security agencies were not found to have complied with the law in regard to the identification, except in the abnormal circumstances, of the people killed during security operations, maintaining the legal records of the people so killed, their postmortem and funeral as well as transmitting the information to their kin;
4. Excessive use of force was found to have been used during the mobilization of forces in some cases. Unarmed people were targeted and non-compliance to Humanitarian Law was also observed; and
5. The administration and the security agencies in different parts of the country, were found to be insensitive to the rights of the people to food, education and health on the pretext that any supplies in the abovementioned sectors could benefit the Maoists.

The Human Rights Commission urges the government to undertake the following measures immediately to protect the human rights in the present circumstances:

1. To avoid using excessive force in security operations; to prosecute the guilty after investigating the incidents of killings, and to provide compensation to the victims;
2. To prevent any unlawful arrests; to complete the legal process of searches; not to keep people in illegal detention in the Army barracks; to prevent torture; to safeguard the human rights of the people kept in detention and to make public the condition of the people detained so far;
3. To prepare legal documentation of the people killed during security operations and to make arrangements for providing official information about deaths to the families of the deceased people;
4. To set up detention centers in accordance with Section 9 of the Terrorist and Disruptive Activities (Control and Punishment) Act; to constitute monitoring committees in accordance with Section 13(1) and to issue instructions to the Local Administration to file cases without delay against the detainees in the Special Courts designated in accordance with Section 15;
5. The government must make effective arrangements for the supply of food grains and medical treatment and arrangements for regular conduct of schools in the affected areas with the assistance of various international agencies such as UNDP, the World Health Program, the International Committee of the Red Cross and various NGO's;
6. The Government should declare ceasefire, even for a brief period and take initiatives towards the establishment of peace.

Kedar Prasad Poudyal
Acting Secretary.

Press Release

Mr. Nayan Bahadur Khatri, Rt. Honorable Chairperson of the Human Rights Commission has, in a letter sent to the chairperson of the CPN (Maoist) has drawn the attention of the CPN (Maoist) to the present state of human rights of the country on the basis of a summary of a report of the Commission based on monitoring the situation of human rights in 35 districts starting from the third week of July, 2002 till 17 October 2002.

The issues raised by the National Human Rights Commission for the attention of the CPN (Maoist) has are as follows:

1. In the districts monitored by the Commission, the activists and the military squads of CPN (Maoist) were found to be involved in acts of political assassinations, murder on the charge of espionage, abductions, disappearances, cruel and inhuman types of torture, torture and murder of the captured security personnel, etc;
2. The attacks by the CPN (Maoist) targeted unarmed civilians and the attacks also targeted in the destruction of physical infrastructures related to development and construction along with installations of public utility and cultural heritage sites. In certain cases, the use of excessive force had been observed and the captured security personnel and civilians were found to have been killed in a retaliatory manner;
3. It was also found that the CPN (Maoist) had drafted minors into its military squads, indiscriminately used explosive mines and, at certain places, selected targets in contravention of the rules of engagement;
4. The activists and the military squads of the CPN (Maoist) were found to be involved in extortion by forcibly collecting donations; forcibly using the houses of persons; obstructing the supply of food and looting food stuff, health materials, objects of basic needs of the people and also attacking the health centers;
5. It was found that donations were extorted from teachers and they were killed on the pretext of harboring opposing political thoughts. The environment to exercise the right to education was thus obstructed; and
6. At several places the military squads and the activists of the CPN (Maoist) were found to have ignored and violated the common Article 3 of the Geneva Conventions.

The National Human Rights Commission urges the CPN (Maoist) to observe the following:

1. To stop all types of killings; to stop the abductions and murders of the unarmed and retired security personnel as well as those on leave; to halt all types of torture and to stop the killings of the captured persons;
2. To stop the destruction and attacks on infrastructures and objects of public utility; to protect the cultural traditions and heritage;
3. Not to use minors in war; not to make indiscriminate use of explosive mines and to observe the rules of engagement;
4. To observe the guidelines and the principles embodied in the Common Article 3 of the Geneva Conventions at all times. To remind the violators of the Common Article 3 of the Geneva Conventions that they will be brought to justice;
5. To respect the people's right to food, education and health, and to create an environment of providing access, at all places, for the Government and the assistance providing national and International organizations, such as, UNDP, World Health Program, International Committee of the Red Cross and NGOs for the guarantee of those rights;
6. To respect, in all circumstances, a person's right to life and his right to lead a life with one's family without any threat or fear; and
7. To respect the right of the people to have political opinions of their choice and also to respect the citizen's right to free movement.

Kedar Prasad Poudyal
Acting Secretary.