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COMMISSION  
OF JURISTS

**NEPAL:  
THE RULE OF LAW ABANDONED**

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## SUMMARY

Nepal is in the midst of a dire human rights and rule of law crisis that requires urgent action by the authorities in Nepal and the international community. By assuming direct power on 1 February 2005, suspending almost all rights in a new state of emergency and removing most of the last democratic checks and balances on the Army, King Gyanendra has effectively decreed an end to the rule of law in Nepal. The King's far-reaching action has added a new layer of human rights violations to the existing patterns of gross and systematic violations suffered by the Nepali people at the hands of both the government security forces and the Maoist insurgents.

The assault on human rights, the Constitution and democratic institutions will not bring stability to Nepal or help to resolve its deep conflict, militarily or politically. The Maoist forces, responsible for widespread abuses against civilians, have been emboldened by the Royal takeover. They have refused to negotiate with the King. Instead, they are seeking an alliance with the besieged mainstream political parties and the conflict appears set to deepen.

International reaction to the King's *coup* and its alarming human rights consequences must remain robust to convince the King that the path chosen is unacceptable. As time passes, the international community must not accept as normal an unconstitutional and arbitrary rule that abuses human rights. At the UN Commission on Human Rights that meets in Geneva in March/April, states should act decisively on Nepal, set out the urgent human rights measures they expect to be taken, and appoint a special rapporteur to monitor human rights in the country.

This report reflects the findings of a mission to Nepal led by the Secretary-General of the ICJ from 22 to 30 November 2004 and developments until the beginning of March 2005.

It sets out urgent human rights measures that can and must be taken by the King and his Government and by the Maoists, to begin to address the longstanding gross and systematic abuses, to begin to reverse some of the damage done by the 1 February Royal takeover, and start building confidence for peace. The report recommends the following actions in the following areas:

The King and his Government should:

- Revoke the suspension of fundamental rights and freedoms;
- Take immediate measures to protect human rights defenders, lawyers and journalists and permit them freely to carry out their work;
- Take immediate measures to end arbitrary, secret and unlawful detentions;
- Repeal or amend anti-terrorism and public security laws;
- End impunity for serious human rights violations;
- Comply fully with judicial orders, including *habeas corpus*;
- Maintain the independence of the National Human Rights Commission (NHRC) and cooperate fully with it;
- Sign and implement the NHRC Human Rights Accord.

The CPN (Maoist) should:

- End abductions and forced recruitment of civilians;
- Desist from using children in combat or support operations;
- Cooperate fully with the NHRC;
- Allow human rights defenders, lawyers and journalists freely to perform their work;
- Hold accountable those in its ranks for acts constituting war crimes;

- Sign and implement the NHRC Human Rights Accord.

The King should immediately revoke the state of emergency and suspension of freedom of opinion and expression, peaceful assembly, association, press and publication; freedom from preventive detention; right to information, right to privacy, and right to a constitutional remedy. Under international law, the Government may not suspend these rights summarily because such suspension is clearly not strictly necessary to preserve the life of Nepal.

Since 1 February, human rights defenders have been arrested, gone into hiding or exile, or been compelled to end or restrict their activities. The Government has failed to respect and protect freedoms of expression, assembly, association, and movement. It should cease making human rights defenders lawyers and journalists the target of threats, persecution or harassment.

Practices of widespread arbitrary detention have become systematic, with detainees held for prolonged periods secretly and without charge in Army barracks and denied access to family, lawyers and medical treatment. The Government should end this practice and release immediately all political leaders, student activists, members of political parties, human rights defenders, journalists and lawyers arbitrarily detained since 1 February 2004. The Government should act urgently to resolve all cases of enforced disappearances and should grant access to all places of detention to the International Committee of the Red Cross and the National Human Rights Commission (NHRC).

Many persons detained under the Terrorist and Disruptive Activities Ordinance (TADO) and the Public Security Act (PSA) are not remotely connected with terrorist activity or with the Maoist insurgency, but are held in connection with the lawful exercise of fundamental rights. The Government should immediately repeal or amend these laws to reduce substantially the period of time for preventive detention; to provide for immediate and subsequently periodic judicial oversight of each detention; and to ensure that only strictly defined criminal conduct is covered.

The Government fails to comply fully, faithfully and immediately with judicial orders, including writs of *habeas corpus*. It should do so and should stop the practice of “revolving door” detention and release. The judiciary should scrupulously implement the writ of *habeas corpus* and other constitutional remedies to post 1 February detentions and violations, and should issue contempt citations in cases where the detaining authorities refuse to respect a court order.

Nepal has experienced an explosion of serious violations of human rights, including more than one thousand cases of enforced disappearances. The incidence of unlawful killings has also risen rapidly and the practice of torture continues to be both widespread and systematic. The Government should end impunity for these serious human rights violations by investigating them and prosecuting those responsible in open and transparent proceedings by civilian, not military, authorities. The Government should pay reparations to the victims.

The Government must stop undermining the work of the NHRC, lift travel restrictions on its members and give it full and unhindered access to all areas of the country and to all places of detention. The Government should strengthen and maintain the independence of the NHRC, including by extending the terms of the present members in May 2005.

The Communist Party of Nepal (CPN Maoist) is responsible for numerous unlawful killings outside of combat operations, as well as acts of torture and mutilation of its victims. The Maoists should comply with their international humanitarian law obligations by ending the practice of unlawful killing of civilians or captured, wounded or surrendered combatants and ending abductions and forced recruitment of civilians, including children. The Maoists should cooperate fully with the NHRC and should permit human rights defenders, lawyers and journalists freely to carry out their work. Maoist commanders should hold accountable any individuals among their ranks for violations of international humanitarian law amounting to war crimes.

The Human Rights Accord proposed by the NHRC, which would commit the Government and Maoists to take practical measures to improve the human rights situation, would serve to establish mutually reciprocal human rights commitments. Both parties should sign and implement the Accord as a confidence building measure towards peace talks.

### **Nine Urgent Measures to Restore the Rule of Law and Build Confidence for Peace in Nepal**

#### **1. The King should immediately revoke the state of emergency and the suspension of articles in the Constitution concerning fundamental rights and freedoms.**

- The independent print and electronic press should be allowed to operate freely and unhindered by censorship or official intimidation.
- Lawful political activities, including those involving the exercise of freedom of assembly, should be restored.
- The exercise of freedom of association should be restored.
- The writ of constitutional remedy should be restored.

#### **2. The King's Government should take measures to protect human rights defenders, lawyers and journalists and to permit them freely to carry out their work.**

- The Government should cease making human rights defenders the target of threats, persecution or harassment, especially by members of the security forces.
- Government officials at the highest level should make clear publicly that human rights defenders serve an essential public function and should commit to ensuring their protection.
- Any human rights defender detained in connection with the lawful exercise of rights, freedoms or professional responsibilities, or any lawyer detained for association with his or her client should be immediately released.

- The Government should respect scrupulously the principles set forth in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).

#### **3. The Government should take immediate measures to end the practice of arbitrary, secret, and unlawful detentions by the security forces.**

- The Government should release immediately all political leaders, student activists, members of political parties, human rights defenders, journalists and lawyers arbitrarily detained since 1 February 2004.
- The Government should systematically review the cases of all other persons held without charge in any place of detention, with a view to releasing them or charging them with a recognisable crime under law.
- The Government should end the practice of detention beyond 24 hours by the Royal Nepalese Army (RNA). The Government should bring all detainees presently held in military detention, with the exception of military personnel charged with disciplinary offences, under civilian administration.
- The military detaining authorities should keep comprehensive and updated records on all persons under their custody. The records should contain personal details of the detainees sufficient to allow for identification, the date of arrest, the reason for arrest, factual circumstances surrounding the arrest, medical conditions and treatment, and a record of the chain of custody.
- Family members of the detainees should be notified immediately upon arrest and the detainee should be able to contact a legal representative and have access to family members and medical treatment.

- The Government should act expeditiously to resolve all cases of enforced disappearances recorded by the UN Working Group on Disappearances, the National Human Rights Commission, NGOs and the families of individual victims and their legal representatives.
- The Government should grant access to all places of detention to the International Committee of the Red Cross and the National Human Rights Commission.

**4. The Government should immediately repeal or amend offending provisions of the Terrorist and Disruptive Activities Ordinance (TADO) and the Public Security Act (PSA) to bring them into conformity with international standards and the laws of Nepal.**

- All the provisions of TADO and PSA should be reviewed by a credible independent authority, in consultation with legal experts, to assess its compatibility with domestic and international legal standards; and the Government should accept the recommendations of this body pursuant to such a review. The National Human Rights Commission could perform this function if the terms of its present membership are renewed in May 2005.
- If TADO and the PSA are retained, they must at the very least be amended to reduce the period of time allowable for preventive detention with a view to charge or release; to provide for immediate and subsequently periodic judicial oversight of each detention; and, for TADO, to adapt the definition of disruptive and terrorist acts so that it pertains only to conduct that amounts to an existing crime.

**5. The Government should comply fully and faithfully and immediately with all judicial orders, including writs of *habeas corpus*, which should be made a more effective remedy. The Supreme Court and appellate courts should be more resolute in issuing**

***habeas corpus* orders in respect of persons detained without charge, including those held following the 1 February emergency decree.**

- The judiciary should shed any ambivalence in applying the remedy of *habeas corpus* to post 1 February detentions. It should issue contempt of court orders in cases where the detaining authorities refuse to respect an order granting *habeas corpus*, or where a detainee is rearrested shortly upon a court-ordered release.
- The judiciary should continue to accept petitions for constitutional rights violations, at the very least regarding those rights that have not been suspended.
- The Government should back up any contempt order with appropriate legal action against any authority held in contempt by the court.
- In cases in which Government officials have denied holding persons in detention, the NHRC should be requested to visit the place of detention and be granted access without hindrance or precondition to all areas of a place of detention.

**6. The Government should take immediate steps to end impunity for serious violations of human rights, including by investigating the violations and prosecuting those responsible for their commission.**

- The Government should establish an independent authority with powers co-extensive with the Attorney General to prosecute serious human rights violations.
- In the immediate term, civilian government authorities should solicit and investigate complaints of human rights violations, including extrajudicial killings and torture. Prosecutions should be carried out in open and transparent proceedings. Military authorities should not investigate and prosecute cases of serious human rights viola-

tions against civilians. Complaints, reports and other information forwarded from the National Human Rights Commission should be considered as a matter of priority. Cases submitted by the NHRC should be pursued, or else a response should be given detailing the reasons for failure to act.

- Torture should be made a specific crime under national law, as required under the UN Convention against Torture.
- Judges confronted by a *prima facie* indication of torture or inhuman or degrading treatment should exercise the power to order an independent investigation.

**7. The Government should act to maintain the independence of the National Human Rights Commission and cooperate fully with it as the principal institution of human rights protection in Nepal.**

- The Government should cooperate fully with the NHRC, including by removing all travel restrictions placed on its Members since 1 February and giving it full and unhindered access to all areas of the country and to all places of detention.
- The Government should act immediately to address cases of human rights violations presented to it by the NHRC and should generally accept the results of findings of NHRC investigations.
- The Government should augment the capacity of the NHRC, if it retains its independence, by allowing for en-

hanced services from the Office of the UN High Commissioner for Human Rights so as to provide all the advice and support the NHRC needs to do effective protection work throughout the country.

- The Government should extend the terms of the present members of the NHRC upon their expiry in May 2005.

**8. The Communist Party of Nepal (CPN Maoist) should comply with their international humanitarian law obligations, including by ending the practice of unlawful killing of civilians or captured, wounded or surrendered combatants.**

- The Maoists should end abductions and forced recruitment of civilians.
- The Maoists should desist from using children in any combat or support operations.
- The Maoists should cooperate fully with the NHRC.
- The Maoists should permit human rights defenders, lawyers and journalists freely to carry out their work.
- Maoist commanders should hold accountable any individuals among their ranks for violations of international humanitarian law amounting to war crimes.

**9. The Government and the CPN (Maoist) should sign and implement the NHRC Human Rights Accord as a substantial confidence building measure in advance of peace talks.**

## INTRODUCTION

Nepal is in the midst of a dire human rights and rule of law crisis that requires urgent action by the authorities in Nepal and the international community. By assuming direct power on 1 February 2005, suspending almost all rights in a new state of emergency and removing most of the last democratic checks and balances on the Army, King Gyanendra has effectively decreed an end to the rule of law in Nepal. The King's far-reaching action will not bring stability to Nepal nor help to resolve its deep conflict, militarily or politically. Instead, it has added a new layer of human rights violations to the existing patterns of gross and systematic violations suffered by the Nepali people at the hands of both the government security forces and the Maoist insurgents.

This report sets out nine urgent human rights measures that can and must be taken by the King and his Government and by the Maoists, to begin to address the longstanding gross and systematic abuses, to reverse some of the damage done to the rule of law by the 1 February Royal takeover and to chart a human rights path towards peace. The report reflects the findings of a mission to Nepal led by the Secretary-General of the ICJ from 22 to 30 November 2004 and developments until the beginning of March 2005.<sup>1</sup> The November mission confirmed the drastic deterioration in the human rights situation since the ICJ's last mission in 2003.

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<sup>1</sup> The Mission was led by ICJ Secretary-General Nicholas Howen, who was accompanied by international jurist and human rights expert Periathamby Rajanayaga and ICJ Legal Adviser Ian Seiderman. The Mission visited Kathmandu and the districts of Sindu Palchok and Kavre. The delegation met with government ministers and law officers as well as Supreme Court and other senior judges and lawyers, victims, and human rights defenders from several districts.

## THE PRESENT CRISIS

The Communist Party of Nepal (CPN-Maoist) have continued to wage an armed insurgency, which they began in 1996, by employing brutal tactics and committing widespread abuses against civilians, including torture and arbitrary killings. The Maoists have engaged in a pattern of forcible recruitment of civilians and use of children in combat or support operations. Since 1 February, they have attacked a number of non-military targets, including schools and medical facilities, in an effort to enforce economic blockades and strike actions that they have sought to impose on the country at large.

The King and his Government, for their part, have comprehensively closed off the remaining avenues by which Nepalis might exercise fundamental human rights and freedoms: The independent press is shut down or functions under conditions of severe censorship. Political activists, including leaders from the major political parties, are either held under arrest or otherwise barred from engaging in any political activity. Human rights defenders and other civil society representatives have fled the country, gone into hiding, or are prevented by law or out of fear, from fulfilling their professional responsibilities. The authority of most state civilian institutions has been diminished, while the Royal Nepalese Army, responsible for many of the worst human rights abuses, has increased its own power and is now unaccountable, even nominally, to any civilian authority, and is unhampered by constitutional restraints.

The 1 February seizure of power by the King, far from threatening the Maoists, has instead seemed to embolden them, prompting them to seek a united front with the mainstream political parties, which are now denied the opportunity to pursue their objectives freely and openly. The Maoists have taken cynical advantage of the Royal takeover, by making it clear that they will not negotiate with the King. The effect of the King's *coup* is therefore likely to be a deepening

of the armed conflict. Most analysts consider that military victory is well beyond the grasp of either side.

### **Deterioration in Human Rights and the Rule of Law in the Lead-up to 1 February**

King Gyanendra's tenure since replacing his brother, who was killed in 2001, has been marked by an incremental increase in repressive measures and an ever freer hand given to the Royal Nepalese Army (RNA) to act without restraint against real and perceived enemies. Following the collapse of peace talks in 2001, a nationwide emergency was declared, the RNA was for the first time engaged to battle the Maoist insurgency and the King announced the first Terrorist and Anti-Disruptive Activities Ordinance (TADO) that led to serious human rights violations. Once the RNA was activated, the scale and intensity of human rights abuses on the part of the Government escalated. In turn, the Maoists employed ever more abusive tactics, including forced recruitment of civilians to swell their ranks and authoritarian control at the village level that encompassed an increasing proportion of Nepal's countryside.

In October 2002 the Parliament was dissolved. The King thereafter appointed several successive short-lived governments consisting of ministers from among the political parties. He constituted the governments through dubious legal means, by invoking article 127 of the Constitution, which allows the King to issue necessary orders to remove "any difficulty aris[ing] in connection with the implementation of the Constitution."<sup>2</sup> Although these governments were weak and hardly representative, they were a nominal civilian check on the power of the security forces and an alternative voice to the King.

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<sup>2</sup> It should be noted, however, that the provision also requires that such orders must be laid before Parliament, which of course had been dissolved.

A pattern of serious human rights violations on the part of the RNA followed: prolonged and secret detention of people in Army barracks, without charge, lawyers, or judicial oversight; summary executions in phantom “encounters”; disdain of judicial orders; and almost total impunity. These patterns were observed and described by the ICJ following its first Mission to Nepal in January-February 2003.<sup>3</sup>

The ICJ again visited Nepal from 22-30 November 2004 to assess the developments in the state of human rights and the rule of law in Nepal and to discuss with the Government, judiciary and civil society effective means to address the spiralling crisis. The mission team observed a drastic deterioration in the overall human rights situation. The most serious forms of human rights violations, including enforced disappearances, extra-judicial killings, torture, and prolonged arbitrary, secret and incommunicado detention were clearly on the rise. The climate for human rights defenders was becoming inhospitable and the space for the exercise of democratic and fundamental freedoms was narrowing.

### **The Deteriorating Situation since 1 February 2005**

On 1 February 2005 at 10:00, King Gyanendra appeared on television to announce to the people of Nepal and to the world that he had dismissed the Government of Sher Bahadur Deuba and that His Majesty henceforth would be assuming direct power: “I have exercised the rights given to the crown under the present Constitution and dissolved the Government for the larger interests of the people, country and protection of sovereignty.” The King’s next move was to decree a state of emergency and to suspend key provisions of the Constitution of Nepal, including many of those guaranteeing fundamental human rights and freedoms. A waive of repressive measures have followed,

with the King appointing a cabinet of loyalists from outside of the political parties, some of whom have a long track record of opposition to multi-parliamentary democracy.<sup>4</sup>

Following its 2003 mission, the ICJ concluded that Nepal was “perilously close to slipping from a constitutional to an absolute monarchy.”<sup>5</sup> Regrettably, that slippage has completed its course. King Gyanendra now governs as an absolute ruler, without constitutional or other legal restraints. The Government is rapidly reversing the achievements of the popular movement that included a nascent parliamentary democracy, political pluralism, and an active human rights community. The King has damaged the Constitution, dispensing with most of the provisions which provide for democratic and parliamentary governance and the guarantees of fundamental human rights. Most institutions of state, save the Royal Nepalese Army, have been undermined or weakened. A once vibrant civil society has been brought to its knees.

The consequences of the King’s assumption of direct rule have become rapidly clear as reports of abuses and repressive measures are received. The RNA has conducted a sweep of arrests of hundreds of political leaders, student activists, journalists, and human rights defenders.<sup>6</sup> Many persons vulnerable as targets of this crackdown have gone into hiding or, in some cases, exile. Organized political protest has either ceased or is met with a sharp and hard response. Leading human rights defenders, including Krishna Pahadi, founding chairman of

<sup>3</sup> See the International Commission of Jurists, *Human Rights and the Administration of Justice: Obligations Unfulfilled*, [http://www.icj.org/news.php3?id\\_article=2950&lang=en](http://www.icj.org/news.php3?id_article=2950&lang=en)

<sup>4</sup> Tulsi Giri, a former prime minister from the Panchayat era and staunch opponent of the democratic reforms supported by former King Birendra, was appointed to the top post of Vice-Chairman of the Council of Ministers. Kritinidhi Bista, another former Prime Minister from the Panchayat era, was also appointed as Vice-Chairman. King Gyanendra himself is heading the Council.

<sup>5</sup> International Commission of Jurists, *Human Rights and the Administration of Justice: Obligations Unfulfilled*, [http://www.icj.org/news.php3?id\\_article=2950&lang=en](http://www.icj.org/news.php3?id_article=2950&lang=en)

<sup>6</sup> *Nepal’s Royal Coup: Making a Bad Situation Worse*, International Crisis Group. In Pokhara, a number of students were arrested and beaten by soldiers at a protest and at least 150 persons were arrested from Prithivi Narayan University hostel and some were allegedly tortured at Fulbari Barracks.

the Human Rights and Peace Society, have been arrested. Gauri Pradhan, President of Child Workers in Nepal Concern Center, was arrested on 17 February at the airport in Kathmandu where he arrived after attending a pre-sessional meeting of the United Nations Committee on the Rights of the Child, detained for 11 days, released by court order, rearrested, and released again. Leaders and activists of all of the major political parties have been arrested or placed under restrictions, including the two factions of the Nepal Congress Party (NC and NC-D), the Communist Party of Nepal (United Marxist-Leninist), Nepal Goodwill Party (Sadbhavana), People's Front Nepal (PFN) and even the Royalist Rashtriya Prajatantra Party (RPP). Student leaders of the All Nepal National Free Students Union (ANNFSU) have also been detained.

The Nepali press, once free and vibrant, now operates under strict censorship.<sup>7</sup> A number of newspapers have reportedly been closed by the Government, including the Yugodh daily and Gaunghar weekly from Dang District, the Blast Time Daily of Dharan District, and several daily papers from Gulmi and Kavrepalanchowk. The District Administration in Nepalgunj submitted orders to the media which, among other strictures, forbids the media from publishing material critical of the Royal Family or adversely affecting the country's "sovereignty, unity, peace and security".<sup>8</sup> Information on casualties to Maoists may be published, but information of civilian casualties or about the activities of political parties is not allowed. A number of journalists were reported arrested, including Bishnu Nisthuri, the General Secretary of the Federation of Nepalese Journalists.<sup>9</sup>

The judiciary of Nepal and its independence have been critically weakened, with the Supreme Court initially reluctant to accept *habeas corpus* writs and the Chief Justice

refusing to accept writ petitions even in respect of non-suspended portions of the Constitution on the grounds that they were "political". Lawyers were reported to have been warned not to file *habeas corpus* petitions for persons detained under the Public Security Act. The former President of the Nepal Bar Association, Sindhu Path Pyakurel, was arrested and detained for several days.

### Nepal's Legal Obligations and Political Commitments go Unfulfilled

Nepal is a party to six major international human right treaties<sup>10</sup> and has a modern Constitution, which enshrines most of the fundamental human rights and freedoms found in international standards. The evaluation of the ICJ, following both its 2003 and 2004 missions, has been that many of these key international human rights obligations, as well as the implementation of constitutional protections, have gone unfulfilled. Chief among these are denial of right to life, freedom from torture and other cruel, inhuman or degrading treatment, freedom from arbitrary detention, the right to a fair trial by an independent and impartial tribunal established by law and the right to an effective judicial remedy for the violation of rights. The events of 1 February have ushered in a new wave of systematic rights violations, through the means of an unlawful and summary suspension of constitutional rights. Freedom of the press, freedom of expression, and the rights to association and assembly have been nearly obliterated. The crackdown on human rights defenders and the weakening of the judiciary have made nearly impossible the enforcement of the remaining rights not suspended. All of the denial of fundamental rights are enabled and exacerbated by a near total atmosphere of impunity for officials responsible for serious human rights violations.

<sup>7</sup> See the Mission Report of the International Federation of Journalists, *Coups, Kings and Censorship*, 3 March 2005.

<sup>8</sup> *Media Dos and Don'ts* Order issued to media in Nepalgunj by the District Administrative Office on 7 February 2005.

<sup>9</sup> On 22 February, Reporters without Borders issued an appeal for the release of 11 journalists detained in Nepal.

<sup>10</sup> The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, the Convention against Torture, and the Convention on the Rights of the Child.

In addition to its legal obligations, Nepal has made detailed formal commitments to the people of Nepal and to the international community to uphold its human rights. On 26 March 2004, in the midst of the 60<sup>th</sup> session of the United Nations Commission on Human Rights (CHR), the Government of then-Prime Minister Surya Bahadur Thapa issued a 25-point Statement of Human Rights Commitment, by which Nepal undertook to respect a wide range of human rights.<sup>11</sup> (See Annex.) While the Government pledged nothing new—the Commitment was a restatement of existing obligations under international treaties and the Constitution of Nepal—it was intended as a political signal that Nepal would be taking rights more seriously. These Commitments, undertaken by a previous Government also appointed by the King, were made not only on behalf of the Government of the day, but also of the Nepali state. The present Government remains accountable to the people of Nepal for their implementation. It remains similarly accountable to the international community, to whom it pledged to abide by the Commitments in accepting the Statement of the Chairperson of the UN Commission on Human Rights in April 2004.<sup>12</sup>

### **International Reaction to the 1 February Royal Takeover**

The reaction from the international community to what has been characterised as a royal *coup d'état*, has been uncharacteristically robust. India, the United States and the United Kingdom, which provide Nepal with considerable quantities of military assistance, each have been outspokenly critical of the course taken by the King. The Indian Foreign Ministry has made unusually blunt remarks, including that the “developments constitute a serious setback to the cause of democracy in Nepal,”<sup>13</sup> and India has

frozen military aid.<sup>14</sup> The United Kingdom has similarly suspended a shipment of a package of military assistance.<sup>15</sup>

The United States, also said to be considering a similar moratorium on military assistance,<sup>16</sup> has called on the King “to restore and protect civil and human rights and promptly release the political and student leaders and human rights activists that have been detained under the state of emergency, and move toward the restoration of multi-party democratic institutions under a constitutional monarchy.”<sup>17</sup> The EU has twice issued statements condemning the move and noted that “continued non-compliance with international human rights and humanitarian law have serious implications for Nepal’s standing in the international community.”<sup>18</sup> The UN Secretary General,<sup>19</sup> the UN High Commissioner

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<sup>11</sup> *His Majesty’s Government’s Commitment on the Implementation of Human Rights and International Humanitarian Law*, (hereinafter “Commitment”) (Announced by Rt. Hon. Prime Minister Surya Bahadur Thapa on March 26, 2004).

<sup>12</sup> Chairperson’s Statement, Human Rights Assistance to Nepal, UN DOC OHCHR/STM/CHR/04/3.

<sup>13</sup> AFX news service 1 Feb 2005.

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<sup>14</sup> *India to suspend military aid to Nepal but rejects direct army intervention*, South Asia Tribune, 7 February 2005. On 25 February, the Indian President expressed his grave concern to Parliament regarding the dissolution of multi-party democracy and the declaration of emergency.

<sup>15</sup> [http://news.bbc.co.uk/2/hi/south\\_asia/4289765.stm](http://news.bbc.co.uk/2/hi/south_asia/4289765.stm)

<sup>16</sup> *U.S. may cut off military aid to Nepal*, Anwar Iqbal, UPI, 17 February 2005.

<sup>17</sup> United States State Department Daily Briefings of 3 February 2005. The UK also denounced the move, with Foreign Minister Douglas Alexander warning that the King’s “action will increase the risk of instability in Nepal, undermining the institutions of democracy and constitutional monarch in the country.”

<sup>18</sup> *Declaration by the Presidency on behalf of the European Union on the developments in Nepal*, [http://europa.eu.int/comm/press\\_room/index\\_en.htm](http://europa.eu.int/comm/press_room/index_en.htm). On 25 February, The European Union issued a Declaration expressing deep concern and asserting that there is a “clear and real danger that intensified conflict and the restriction on democratic freedoms will lead to levels of human rights abuse rising.” *Declaration by the European Union on the situation in Nepal*, <http://ue.eu.int/Newsroom>

<sup>19</sup> The Secretary-General described the “actions as a serious setback for the country” and called for steps to “be taken immediately to restore democratic freedoms and institutions.” [www.un.org/News/Press/docs/2005/sgsm9701.doc.htm](http://www.un.org/News/Press/docs/2005/sgsm9701.doc.htm). On 8 February, in a strongly-worded statement, nine human rights experts of the UN Commission on Human Rights expressed “particular concern with regard to the wave of arrests and detentions following the Royal Proclamation on 1 February 2005 of the state of emergency and the King’s takeover.”

for Human Rights,<sup>20</sup> the International Labour Organization (ILO),<sup>21</sup> the Inter-Parliamentary Union,<sup>22</sup> the International Confederation of Free Trade Unions (ICFTU),<sup>23</sup> the Nepal Bar Association,<sup>24</sup> the International Federation of Journalists<sup>25</sup> and the Federation of Nepalese Journalists,<sup>26</sup> all strongly condemned the *coup*. On 13 February, ambassadors from the EU and the United States were recalled for consultation, a move usually associated with nations in an adversarial posture towards one another.<sup>27</sup> The World Bank suspended 70 million dollars of support on the basis of slow implementation of reform measures, but the move was widely seen as a response to the 1 February developments.<sup>28</sup>

The International Monetary Fund was said to be contemplating a similar suspension.

Serious and sustained engagement and pressure by the international community, including suspension of most forms of military assistance and concerted diplomatic action, is essential if Nepal is to emerge from its human rights crisis and begin restoration of the rule of law.<sup>29</sup>

### **The UN Commission on Human Rights Must Act in March-April 2005**

It is essential that the United Nations Commission on Human Rights take robust action on Nepal at its 61st session, to be held in Geneva from 14 March to 22 April 2005. That action should consist of the adoption of a resolution containing 1) a strong condemnation of the violations and abuses committed by the King's Government and abuses by the CPN Maoists; 2) benchmarks, similar to those set out in this report below, that the Commission expects both sides to achieve to improve the human rights situation; and 3) UN monitoring, by appointing a special rapporteur on human rights in Nepal. It will be up to the 53 member states of the Commission, as well as the NGO community, to ensure that the Commission fulfils its responsibility to act.

At the upcoming session, the resolve of the Commission to act must not be diverted by any hollow gestures by the King. The situation in Nepal is one that squarely falls for consideration under the item on the agenda of the Commission dealing with country-specific human rights violations (item 9 of the Commission's agenda). The situation is not a matter of technical assistance (item 19), which has become impossible by the intolerable obstacles placed upon human rights defenders, including the members of the National Human Rights Commission. What is needed now is credible international monitoring, a part of which should appropriately be taken by a special rapporteur reporting to the

<sup>20</sup> Describing Nepal as "in the midst of a human rights crisis", High Commissioner Louise Arbour on 1 February called on the King to reinstall democratic institutions and to allow civil society, including human rights defenders to carry out their work. [www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom](http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom)

<sup>21</sup> ILO Director-General, Juan Somavia, urged the Government to "take all necessary steps to ensure the personal safety of the trade union leaders and members of the unions concerned."

<sup>22</sup> IPU Condemns Manipulations of Constitutional rule in Nepal and Togo, Geneva 10 February 2005, no. 201, [www.ipu.org](http://www.ipu.org)

<sup>23</sup> The ICFTU representing 148 million workers in 150 countries and territories, noting that the leaders of affiliate Nepal Trade Union Congress, have had to go into hiding, characterized the King's actions as "flagrant violations of internationally recognised fundamental labour rights." [www.global-unions.org](http://www.global-unions.org).

<sup>24</sup> On 1 February, Madhav Baskota, Secretary of the Nepal Bar Association issued a statement saying that the Royal Proclamation "has taken away the rights, provision, meaning the values bestowed upon the people by the Constitution of Nepal."

<sup>25</sup> International Federation of Journalists, *Coups, Kings and Censorship*, 3 March 2005.

<sup>26</sup> In a statement, Tara Nath Dahal, the President, characterised it as "a coup against democracy and people's rights" and that the lives of ordinary civilians as well as national values are in grave danger." "Press censorship and the presence of the army in media houses have begun. Now there is no free press and it has effectively been killed."

<sup>27</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/4263877.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4263877.stm)

<sup>28</sup> *WB postpones Nepal aid package after failure in reform*, AFP, 2 March 2005.

<sup>29</sup> See the range of policies proposed by the International Crisis Group in its policy briefing. *Nepal: Responding to the Royal Coup*, Asia Briefing No. 36, 24 February 2005.

Commission, but which will also require the expanded field presence of the UN Office of the High Commissioner for Human Rights.

### **The Government and Maoists Must take Immediate Measures to End the Crisis**

The ICJ considers that for Nepal to emerge from its present crisis, the King and his Government must, at a minimum, take certain key steps essential to restore the democratic governance, human rights and fundamental free-

doms and the rule of law to Nepal. These measures are urgent for the viability of a future constitutional order, whatever political arrangements are ultimately adopted. They are indispensable to protect the well-being of the people of Nepal. Given the strong international opprobrium the King's action has elicited, as described above, it is time for all players concerned with the development of Nepal to use whatever means available to press for the implementation of these steps. The following pages of this report set out the nine urgent measures.

## NINE URGENT MEASURES TO RESTORE THE RULE OF LAW AND BUILD CONFIDENCE FOR PEACE IN NEPAL

**1. The King should immediately revoke the state of emergency and the suspension of articles in the Constitution concerning fundamental rights and freedoms.**

- **The independent print and electronic press should be allowed to operate freely and unhindered by censorship or official intimidation.**
- **Lawful political activities, including those involving the exercise of freedom of assembly, should be restored.**
- **The exercise of freedom of association should be restored.**
- **The writ of constitutional remedy should be restored.**

Following the announcement that he had taken direct power, King Gyanendra proclaimed a state of emergency and suspended most of the constitutional provisions which protect fundamental rights and freedoms: Freedom of opinion and expression, freedom of peaceful assembly, freedom to form unions and associations, freedom of press and publication, freedom from preventive detention, right to information, right to privacy, and right to a constitutional remedy.<sup>30</sup>

The impact of the emergency has been felt immediately. Communications to the outside world were severed for the first week following the emergency, and, although landlines and internet connections have been re-established, as of this writing mobile phone services remained suspended. The Government has prohibited all “direct or indirect” criticism of security forces, as well as any meeting which would “undermine the Kingdom’s sovereignty and integrity, disturb the law and order of the country or cause any adverse affect on the current state of emer-

gency.”<sup>31</sup> The Government has also imposed a six-month ban on “any interview, article, news, notice, view or personal opinion that goes against the letter and spirit” of the emergency Proclamation “and that directly or indirectly supports destruction and terrorism.”<sup>32</sup> The editors of major newspapers have received warnings from representatives of the Palace, the print and electronic media have been subject to censorship, including detailed sets of instructions as to permissible methods and content, and radio stations have ceased broadcasting news programs. Organized protest has been met with sweeping arrests.

### Legal Basis

In invoking a legal basis for his course of action of 1 February, the King relied upon article 115 of the Nepal Constitution, which allows for a declaration of a state of emergency “if a grave crisis arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray.” Once a state of emergency is declared, the Government is permitted to suspend certain constitutional rights, and King Gyanendra has curtailed the full range.

The Government is not legally entitled simply to suspend a range of rights in a wholesale and summary manner, as it has done. Under the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a party, there are stringent tests to be met for the abridgment of rights. Article 4 provides that “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating

<sup>30</sup> Constitution of Nepal, articles 12(2)(a), 12(2)(b), 12(2)(c), 13(1), 15, 16, 22 and 23.

<sup>31</sup> *Nepal: Break the Suspended Animation*, Asian Centre for Human Rights.

<sup>32</sup> <http://www.nepalitimes.com/issue233/headline.htm>

from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.”<sup>33</sup> Obligations to respect certain rights, including freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to life, can never be suspended. Under Nepal’s Treaty Act (1990), the provisions of the ICCPR are incorporated as part of Nepal’s domestic law. Under the ICCPR, every measure taken under a state of emergency must be temporary and necessary to preserve the life of the nation and proportionate to the threat being met. The UN Human Rights Committee, which supervises implementation of the ICCPR, has made clear that each specific measure must be required by the exigencies of the situation.<sup>34</sup> “The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes...for States parties...a duty to conduct a careful analysis under each article of the [ICCPR] based on an objective assessment of the actual situation.”<sup>35</sup>

Even if it is assumed that the Maoist insurgency constitutes a threat to the life of the nation and that it is necessary for the RNA to confront this threat through predominately military means, it is not possible to accept that the comprehensive suspension of fundamental rights is an essential element to that end. Sweeping press censorship, the prohibition of all political activity and assembly by political opposition parties that are not part of the insurgency, and the suspension of trade union activity, are at best grossly disproportionate, and arguably even unrelated, to any program aimed to preserve the life of the nation.

Indeed, a significant amount of the energy of the security forces has now been directed, not toward confronting the insurgency, but rather at restricting and monitoring communications, policing the streets, censoring the press, and supervising the custody of non-violent detainees held without charge. In other words, military

resources have been diverted away from counterinsurgency and towards enforcing the suppression of rights. Such efforts, far from preserving the life of the nation, are serving to choke off its democratic oxygen.

It is also clear that the suspension of article 23 of the Constitution, providing for the right to a constitutional remedy, contravenes Nepal’s obligations under the ICCPR.<sup>36</sup> As the UN Human Rights Committee has affirmed, the principle that states are required to provide an effective remedy to all rights, and that judicial safeguards in respect of non-derogable rights, such as freedom from torture, must never be subject to measures that would circumvent their protection.<sup>37</sup>

## **2. The Government should take measures to protect human rights defenders, lawyers and journalists and to permit them freely to carry out their work.**

- **The Government should cease making human rights defenders the target of threats, persecution or harassment, especially by members of the security forces.**
- **Government officials at the highest level should make clear publicly that human rights defenders serve an essential public function and should commit to ensuring their protection.**
- **Any human rights defender detained in connection with the lawful exercise of rights, freedoms or professional responsibilities, or any lawyer detained for association with his or her client should be immediately released.**
- **The Government should respect scrupulously the principles set forth in the United Nations Declaration on the Right and Responsibility of**

<sup>33</sup> In addition, any derogating measures may not be “inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

<sup>34</sup> ICCPR General Comment 29 on States of Emergency (Article 4) CCPR/C/21/Rev.1/Add.11, paras. 4 and 5.

<sup>35</sup> ICCPR General Comment 29, para. 6.

<sup>36</sup> Under article 115 of the Constitution, the remedy of *habeas corpus* may not be suspended, and that particular remedy remains in effect under the emergency proclamation.

<sup>37</sup> General Comment 29, paras. 14-15.

**Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).**

Human Rights defenders have come under particular attack following the 1 February *coup*. Many have been arrested, gone into hiding or exile, or have been compelled to end or restrict their human rights work. The Government and security forces have been maintaining a list<sup>38</sup> of human rights defenders to be kept under close surveillance and whose movements are to be severely restricted. They are not able to travel freely within Nepal or to travel abroad.

Among those who have been detained are Sindhu Nath Pyakurel, the immediate past President of the Nepal Bar Association, Krishna Pahadi, founding Chairman of the Human Rights and Peace Society (HURPES), and Sukharam Maharajan, a Vice President of Human Rights Organisation of Nepal (HURON).<sup>39</sup> On 17 February, Gauri Pradhan, founding president of the Child Workers in Nepal Concerned Centre (CWIN) was arrested at the international airport in Kathmandu, where he had arrived after participating in child rights meetings in Geneva and the Netherlands, including before the UN. He was then subjected to “revolving door” justice, whereby he was released on 28 February pursuant to a writ of *habeas corpus*, rearrested immediately upon release, and released again later that night after a period in police custody.

In spite of the overall human rights crisis, Nepal has successfully nurtured a vibrant and effective civil society throughout the years of conflict, including a substantial number of human rights defenders. Prior to the 1 February *coup*, human rights defenders had come under

ever increasing pressure, particularly in the latter half of 2004. Individuals and organisations, including lawyers and journalists,<sup>40</sup> actively engaged in human rights work have been arbitrarily arrested, tortured, threatened and have been obstructed in carrying out lawful activities. Lawyers representing alleged Maoists or taking on sensitive human rights briefs have also been the target of persecution and harassment and detention by the RNA.

**Breach of Legal Standards and Commitment**

Most human rights defenders in Nepal pursue activities lawfully in the exercise of fundamental rights and freedoms. The Government has an obligation, under the ICCPR and the Constitution, to respect and protect freedoms of expression, assembly, association, and movement.<sup>41</sup> While these rights have been suspended by the King, as noted above, their sweeping abrogation is unlawful; acts taken by the government must be necessary and proportionate to preserving the life of the nation. The UN Declaration on Human Rights Defenders grants a right of protection to human rights defenders and requires the State “to take all necessary measures” to ensure such protection “against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of rights.”<sup>42</sup>

The United Nations Principles on the Role of Lawyers provide that lawyers shall not be identified with their clients or their clients’ causes as a result of the discharge of their

<sup>38</sup> The ICJ has reliable information as to the identity of some 19 persons on the list. The actual number is said to be higher.

<sup>39</sup> See ICJ press release of 3 February 2005 (*Hundreds Detained in Nepal*) and 11 February 2005 (*Human Rights Defenders Detained in Nepal*) [www.icj.org](http://www.icj.org); Himalayan News Service, 14 February. Sindhu Nath Pyakurel was released on 14 February.

<sup>40</sup> In its 2004 Annual Report, Reporters without Borders (*Reporters sans frontières*) noted that more journalists had been arrested the previous year in Nepal than in any other country in the world. See [www.rsf.org/rubrique.php?id\\_rubrique=20](http://www.rsf.org/rubrique.php?id_rubrique=20)

<sup>41</sup> ICCPR art.19, Nepal Constitution; art. 12(a) (freedom of expression); ICCPR, art.21, Const. 12(b) (freedom of assembly); ICCPR art. 22, Const. art.12 (c) (freedom of association); ICCPR art. 12, Const. art 12(d) (freedom of movement).

<sup>42</sup> Declaration, article 12. The Declaration was adopted in 1999 by the UN General Assembly (A/Res/53/144 of 8 March 1999).

professional functions.<sup>43</sup> The right of all persons deprived of their liberty or subject to criminal proceedings to legal representation is also undermined by threats or attacks on lawyers, as many lawyers are fearful of accepting clients alleged to be Maoists or associated with Maoist activity.

In its Commitment of 26 March 2004, the Government pledged that “human rights groups, other non-governmental organisations and human rights activists working for the implementation of the principles of human rights and international humanitarian law shall be protected.”<sup>44</sup> Human rights defenders have become increasingly vulnerable throughout Nepal, but especially outside of the Kathmandu valley. Some defenders with whom the ICJ spoke feared for their safety, and cases have arisen where defenders were compelled to leave Nepal following threats from the security forces. On 31 December 2004, head of the Directorate of Public Relations of the RNA, Brigadier General Dipak Kumar Gurung issued a public warning to human rights defenders not to criticise the security forces and asserted that such comments stemmed from Maoist propaganda.<sup>45</sup> The RNA must renounce statements of this nature, which are clearly aimed at chilling the activity of human rights defenders.

### **3. The Government should take immediate measures to end the practice of arbitrary, secret, and unlawful detentions by the security forces.**

- **The Government should release immediately all political leaders, student activists, members of political parties, human rights defenders, journalists and lawyers arbitrarily detained since 1 February 2004.**
- **The Government should systematically review the cases of all other persons held without charge in any place of detention, with a view to releasing them or charging them with a recognisable crime under law.**

- **The Government should end the practice of detention beyond 24 hours by the Royal Nepalese Army (RNA). The Government should bring all detainees presently held in military detention, with the exception of military personnel charged with disciplinary offences, under civilian administration.**
- **The military detaining authorities should keep comprehensive and updated records on all persons under their custody. The records should contain personal details of the detainees sufficient to allow for identification, the date of arrest, the reason for arrest, factual circumstances surrounding the arrest, medical conditions and treatment, and a record of the chain of custody.**
- **Family members of the detainees should be notified immediately upon arrest and the detainee should be able to contact a legal representative and have access to family members and medical treatment.**
- **The Government should act expeditiously to resolve all cases of enforced disappearances recorded by the UN Working Group on Disappearances, the National Human Rights Commission, NGOs and the families of individual victims and their legal representatives.**
- **The Government should grant access to all places of detention to the International Committee of the Red Cross and the National Human Rights Commission.**

*Ganeshp Autam, aged 31, from Lampantar VDC-3, Pangeli, Sindhuli district, a health worker, and secretary of the Village Committee of the United Marxist-Leninist political party, was arrested on 4 February 2004 while performing medical work. He was arrested on suspicion of providing medical treatment to Maoists and has since disappeared.*

The ICJ has confirmed that government practices involving widespread arbitrary detention, as described in its 2003 mission report, have continued and intensified and have become sys-

<sup>43</sup> Articles 16 and 18. The Principles were endorsed by the UN General Assembly in Resolution 45/166 of 18 December 1990.

<sup>44</sup> Commitment, para. 18.

<sup>45</sup> Himalayan News Service, 1 January 2005.

tematic. In cases of arrest carried out by any authority under the Unified Command of the security forces (comprising the Royal Nepalese Army (RNA), Armed Police Forces (APF) and the Police), detainees are typically held for prolonged periods without charge in army barracks, military camps or other unofficial places of detention. The detentions are often unacknowledged and the families and legal representatives of the detainees generally are not informed of the arrest. When the families and legal representatives of detainees visit military places of detention, they are usually denied access or officials deny that detainees are being held at all. Detainees are routinely subject to torture or cruel, inhuman or degrading treatment, while in custody.

While the reasons for arrest vary, it is clear that in respect of a substantial proportion of detainees, the Government does not have *prima facie* evidence of any criminal wrongdoing, which is one reason that prosecutions of persons held in RNA detention are rare. Many detainees are arrested primarily for political reasons, such as for being associated with persons identified as Maoists or “leftists”. A number of cases have been reported of lawyers or human rights defenders, detained in connection with the clients they represent.

Since the *coup* of 1 February, political leaders, student activists, human rights defenders and lawyers have been detained without a basis in criminal law, often for exercising fundamental rights and freedoms. Sources from the major political parties contend that more than 1000 persons have been arbitrarily detained since the emergency, although the Government has admitted to detaining only close to one hundred persons. Among those detained were human rights defenders Sindhu Nath Pyakurel, Krishna Pahadi, Sukharam Maharajan, Gauri Pradhan (see above) and Bishnu Nisthuri, General Secretary of the Federation of Nepalese Journalists (FNJ).<sup>46</sup> On 18 February, the annual “National Democracy Day”, more than 100 activists from the major political parties were detained for engaging in peaceful demonstrations in support of restoration of democracy.<sup>47</sup>

### Breach of Legal Standards and Commitment

Nepal is bound by article 9 of the ICCPR, which forbids arbitrary detention and provides for a number of basic safeguards, including the right to be brought promptly before a judicial authority. The Constitution of Nepal also prohibits any deprivation of liberty except in accordance with law (article 12(1)), and requires that detainees be brought before a judicial authority within 24 hours (art.12 (6)). Under the Constitution, this right cannot be suspended (i.e. is non-derogable) in times of emergency (article 115). With respect to some, but by no means all detainees, the security forces have sought to apply the provisions of the Terrorism and Disruptive Activities Ordinance (TADO) (see section 4 below) to circumvent these constraints.

While the right against preventive detention (article 15) was suspended by the King’s 1 February emergency decree, this proscription was already weak, owing to a far-reaching limitation clause within the terms of article 15 itself allowing for a security exception. The emergency decree did not therefore have a significant effect on the legal consequences of the detention practices of the RNA. Whether the right against preventive detention is diminished through limitation in article 15 itself or under the emergency derogation, any preventive detention must be proportionate, time limited, and subject to frequent judicial supervision, in accordance with international standards. The right to seek the remedy of *habeas corpus* can never be suspended and this right was expressly exempted from suspension under the King’s decree.

In its Commitment of March 26, 2004, the Government of Nepal reaffirmed that “no one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances.”<sup>48</sup> The Government further pledged itself to inform all detainees of the reason for arrest and to disclose to family members and lawyers the whereabouts of detainees.<sup>49</sup> The Government

<sup>46</sup> Himalayan News Service, 14 February 2005.

<sup>47</sup> www.Nepalnews.com, 19 February 2005.

<sup>48</sup> Commitment, para. 3.

<sup>49</sup> Commitment, para. 4.

undertook to hold persons only in officially recognized places of detention and to maintain registers with the names of all persons detained and the dates of entry, discharge or transfer.<sup>50</sup>

The Government has widely breached its domestic law, international legal obligations and the Commitments it announced to the Nepali people and international community in March 2004. In contrast to its posture during the ICJ's visit in early 2003, the Government of Sher Bahadur Deuba in late 2004 acknowledged that persons are held in custody in Army barracks. While this new candour is welcome, it remains that neither the RNA nor the APF has any legal authority to hold persons in custody. Under the Army Act, the RNA is required to release or transfer all arrested persons to civilian authorities within 24 hours of detention. Some Government and RNA personnel acknowledged to the ICJ that the military detentions lack a legal basis, but sought to justify the practice of detaining in army barracks by noting the provision under TADA/TADO (see discussion below) that detainees are to be kept in a place "suitable for human beings." They maintain that in such districts where ordinary detention facilities are inadequate or non-existent, the barracks serve as the most humane way to hold detainees.

The ICJ is unconvinced by this justification. Whatever the merits or credibility of the Government's contention regarding conditions in a particular place of detention, the deficiency in the first instance is not only in the nature of the physical premises, but in the identity and competencies of the authorities responsible for their administration. The RNA and APF have no competency, legal or actual, to administer detention facilities. By employing military and security staff as effective prison warders, the Government has created an environment in which detainees are at risk of serious abuse. Indeed, most persons held in military custody have allegedly suffered torture or cruel, inhuman or degrading treatment.

A modest step has been taken to address the problem of army detentions with the opening of the civilian-run Sunarijal Detention Centre.

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<sup>50</sup> Commitment, paras. 6 and 4.

While this step is welcome, it should be noted that this Centre houses only a small percentage of persons taken into RNA custody, mostly in the Kathmandu valley.

It is impossible to determine with any precision the number of detainees presently held in custody by the RNA, for the very reason that so many are held under a shroud of secrecy. Such secrecy has been maintained in respect of both persons detained post-1 February and those taken into custody previously. In spite of the promises made by the Government on 26 March 2004, there does not appear to be any central register presently maintained by the RNA of persons under its jurisdiction. As among units and regiments, commanders do not seem to operate in a uniform manner, with some keeping proper and full registration records, others maintaining more informal or incomplete accounts, and still others failing to keep records at all. In addition, the majority of the detentions are not publicized or acknowledged and in many instances security forces have concealed the presence of detainees from family members. The ICJ heard of instances where it was known, through reliable testimony of released detainees, or from information leaked by military personnel, or from letters penned by the detainees themselves, that certain persons were being held by the RNA. Yet the security forces would continue to insist to family members, lawyers and even judges that the person was not being kept in military custody.

### Disappearances

Given the scale and magnitude of unacknowledged detentions, it is not surprising that the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID) has received more complaints of disappearance from Nepal than from any other country in the world,<sup>51</sup> prompting the WGEID to visit the country from 6-14 December 2004.<sup>52</sup> In its report,

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<sup>51</sup> The Chairman of the WGEID has registered some 267 cases. As of 23 July 2004, Amnesty International had documented 622 cases. The NHRC has recorded at least 1600 cases.

<sup>52</sup> See the Press Release issued by the WGEID on their visit: [www.unhchr.ch/hurricane/hurricane.nsf/view01/EC0E26503958D6B1C1256F6A005B28CF?opendocument](http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EC0E26503958D6B1C1256F6A005B28CF?opendocument)

the WGEID paints an alarming picture: “The phenomenon of disappearance in Nepal today is widespread; its use by both the Maoist insurgents and the Nepalese security forces is arbitrary. Perpetrators are shielded by political and legal impunity.”<sup>53</sup>

While the numbers, as reported by the WGEID, the National Human Rights Commission, Amnesty International,<sup>54</sup> and Human Rights Watch<sup>55</sup> are alarming, the true extent of the violations is far greater, as many disappearances have never been reported.<sup>56</sup> Officials to whom the ICJ spoke generally tried to downplay the scale of disappearances. The ICJ heard a variety of evasive explanations as to the magnitude of numbers of reported cases: Detainees were said frequently to give false names to detaining officials; others were alleged to have joined the Maoists; still others were reported to have gone intentionally into hiding from the Maoists and had not informed their families for their own protection. While there may be some such cases among the missing, those complained of and reliably documented largely are cases in which a person was known to have been in the custody of an official, the authorities deny holding the person, and the person’s subsequent whereabouts are undetermined.

The Government in July 2004 established an Investigative Commission on Disappearances to review cases of the disappeared, but its results have been sparse to date, and few observers consider the Commission to have the authority or will to penetrate obfuscation by the RNA. Indeed the Commission consists solely of members from within the security services or ministries. As of its fourth report issued on 13 December 2004, the Commission had provided

highly limited information on some 320 persons, but many of these persons had long been released and not among those whose whereabouts and fate were being sought by families, lawyers and human rights organisations. It is not clear whether this Commission has remained operative since the 1 February emergency was decreed.

**4. The Government should immediately repeal or amend offending provisions of the Terrorist and Disruptive Activities Ordinance (TADO) and the Public Security Act (PSA) to bring them into conformity with international standards and the laws of Nepal.**

- **All the provisions of TADO and PSA should be reviewed by a credible independent authority, in consultation with legal experts, to assess their compatibility with domestic and international legal standards; and the Government should accept the recommendations of this body pursuant to such a review. The National Human Rights Commission could perform this function if the terms of its present membership are renewed in May 2005.**
- **If TADO and the PSA are retained, they must at the very least be amended to reduce the period of time allowable for preventive detention with a view to charge or release; to provide for immediate and subsequently periodic judicial oversight of each detention; and, for TADO, to adapt the definition of disruptive and terrorist acts so that it pertains only to conduct that amounts to an existing crime.**

*Chail Bihari Loniya, aged 40, a farmer from Banke District Hirminiya, VDC 1, was reported arrested on 1 August 2004 by officers from the District Police Office on a public offence charge. He was released on 27 August after paying bail, but was immediately rearrested after leaving the office of the Chief District Officer (CDO), where he had made the payment. The CDO then ordered his preventive detention for three months under the Public Security Act. The Appellate Court in Nepalgunj ordered his*

<sup>53</sup> UN Doc E/CN.4/2005/65/Add.1 of 28 January 2005.

<sup>54</sup> *Nepal: Escalating “Disappearances” amid a culture of impunity*, AI Report 30 August 2004, ASA 31/155/2004, <http://web.amnesty.org/library/Index/ENGASA311552004?open&of=ENG-NPL>

<sup>55</sup> *Clear Culpability: “Disappearances” by the Security Forces in Nepal*, Human Rights Watch Report released on 1 March 2005, <http://hrw.org/reports/2005/nepal0205/>

<sup>56</sup> As the WGEID observes, “the phenomenon of disappearances is under-acknowledged...a culture of secrecy has sprung up, with villagers too fearful to report disappearances for fear of reprisal....” UN Doc E/CN.4/2005/65/Add.1, p.2.

*release on 23 October, pursuant to a writ of habeas corpus filed by his wife. The next day when he was to be released, his wife witnessed ten police officers remove him from the prison and take him to an unknown location. A group of international observers asked the superintendent of Police, Gyanadroj Baidya what had happened, and were reportedly told that the detainee had been rearrested and would not be released even if so ordered by the court. When asked on what legal basis he was holding the detainee and why he was not being criminally charged, the Superintendent told them that he did not follow the due process of law, because its procedures were too lengthy. The whereabouts of the detainee are unknown.*

The Government has exploited the turmoil and instability of the civil conflict to justify counter-terrorism measures that effectively short-circuit the lawful administration of justice in Nepal. In particular, the adoption and implementation of the TADO, as well as the abusive invocation of the PSA,<sup>57</sup> has provided legal cover for unlawful government conduct that undermines fundamental human rights.

The promulgation of the TADO clearly flies in the face of the Government's Commitment that "any anti-terrorist legislation will be in line with established international human rights norms."<sup>58</sup> Many political leaders, within both the then-ruling coalition and the opposition expressed strong misgivings about TADO at the time of its re-promulgation in October 2004, seeing the ordinance as not only repressive, but also ineffective.<sup>59</sup> Notwithstanding the general consensus of the NHRC, human rights organisations, and much of the Nepal Bar, the strategy of successive governments seems to consist not in bringing its conduct into conformity with the law, but rather to alter the existing law to permit the prohibited conduct. One astonishing official justification voiced to the ICJ was that extended detention under TADO should be seen as a humane alternative to summary execution or enforced disappearance.

The PSA has served as an alternative means to TADO for police and security forces to hold persons for prolonged periods without charge. The PSA allows for the use of preventive detention for 90 days by order of the Chief District Officer (CDO) or six months on authority of the Home Ministry "to maintain sovereignty, integrity or public tranquillity and order." By approval of an advisory board, the detention may be extended to one year. The PSA does not set out any criminal offences, and officials therefore consider themselves free to invoke it to detain persons whose alleged conduct does not meet the definition of terrorist or disruptive activity under TADO.<sup>60</sup>

### **TADO is Unlawful**

As noted above, the suspension of the constitutional right against preventive detention did not substantially change the legal consequences, owing to the already broad limitation clause in the constitutional proscription. However, even preventive detention requires enabling laws, which must themselves be consistent with Nepal's constitution and international obligations.

The TADO was promulgated in October 2004 as a successor law to the Disruptive (Control and Punishment) Act (TADA) of 2002. The ICJ, in common with many human rights organisations and the NHRC had repeatedly and consistently called for the repeal or amendment of TADA, most critically because it allowed for preventive detention periods of up to 90 days for vaguely defined conduct not necessarily tantamount to criminal activity. Rather than address the concerns of the legal and the human rights community, the Government imposed a law more draconian than its predecessor, allowing for the preventive detention of persons without trial for up to six months on the order of the Chief District Officer (CDO) and an additional six months on authority of the Home Minister.

<sup>57</sup> The Public Security Act (1989) derives from the Panchyat era.

<sup>58</sup> Commitment 20 of 26 March 2004.

<sup>59</sup> *Opposition Parties, Rights Groups Condemn TADO*, Nepalnews.com 19 October 04.

<sup>60</sup> Although the analysis below focuses on the more commonly invoked TADO, many of the deficiencies of TADO are also applicable to the PSA: disproportionate periodicity of detention, lack of judicial supervision, vagueness of definition.

TADO on its face contains provisions incompatible with Nepal's international law obligations. Chief among these are the preventive detention provisions. To the extent that some form of preventive or administration detention may be permissible, any such measures must be undertaken as a lawful derogation of ICCPR article 9 pursuant to a declared state of emergency.

While a state of emergency is presently in effect and the right against preventive detention has been suspended, TADO both on its face and as applied remains unlawful.<sup>61</sup> The Treaty Act (1990) provides that international treaties are directly incorporated as the law of the land of Nepal.<sup>62</sup> The ICCPR requires that all detentions require judicial supervision and that the duration of any detention must be restricted in time. Even if the Emergency Proclamation and the accompanying derogations were to be considered as lawful, the government's powers under TADO are far too broad to be a strictly necessary and proportionate derogation under the terms of the ICCPR (article 4). The detention of large numbers of persons without judicial review or criminal charge cannot be considered a necessary element in the preservation of the life of the nation. As the United Nations Human Rights Committee has confirmed, the right to access the courts must be available at all times, and most elements of a fair trial, including the presumption of innocence must always be guaranteed.<sup>63</sup>

<sup>61</sup> The present state of emergency is the second experienced by Nepal. During the emergency from 26 November 2001 to 28 August 2002, the first TADO was promulgated. That emergency, while declared, was deficient because the Government failed to provide notification to the UN of its intent to derogate from ICCPR.

<sup>62</sup> Nepal's Constitution (article 14 (7)) does provide that in respect of instances of preventive detention, the requirement to bring the detained to a judicial authority within 24 hours or be thereafter detained without charge may not be applicable. However, by virtue of the Treaty Act, these provisions cannot be interpreted in a manner inconsistent with the ICCPR.

<sup>63</sup> UN Human Rights Committee General Comment No. 29 on States of Emergency (Article 4), CCPR/C2/Rev.1/Add.11, paras.15-16.

### **TADO is Unlawfully Implemented**

The ICJ has determined that even the limitations on government powers explicitly set out in the TADO are routinely flouted in practice. In many cases, detentions justified by the security forces as falling within the TADO have never been undertaken pursuant to a signed order from a security official, usually the Chief District Officer (CDO). The ICJ has learned of a common practice whereby CDOs reportedly pass to Army commanders pre-signed detention orders, on which the commander subsequently enters the name of persons he happens to have in custody. The prevalence of this practice was confirmed by the WGEID during its visit.<sup>64</sup> In those cases where the CDO issues orders in respect of named individuals, the CDO rarely conducts a meaningful review of the circumstances or justification underlying the detention. In some districts, members of the Unified Command may hold meetings with the CDO ostensibly to advise on the status of detainees, but at which the CDO invariably acquiesces to the dictates of the security forces. Indeed, there appears to be virtually no accountability to the CDO or Home Ministry and therefore no civilian oversight of the military.

The ICJ has learned that a large number of persons detained under TADO are not remotely connected with terrorist activity or with the Maoist insurgency. In many instances, their detention has been taken pursuant to the lawful exercise of fundamental rights, including freedom of expression, freedom of association, in contravention of Nepal's obligation under the ICCPR, its own Constitution<sup>65</sup> and its Commitments.<sup>66</sup>

### **Vagueness of Definition**

The ICJ considers that the definition of terrorist and disruptive activities contained in TADO is overly broad and vague. The principle

<sup>64</sup> E/CN.4/2005/65/Add.1, para 47.

<sup>65</sup> Constitution of Nepal, article 12(2).

<sup>66</sup> Commitment, paras. 15 and 16.

*nullum crimen sine lege* (no crime without law), one of the cardinal foundations of any legal system, requires that the definition of criminal offences must be precise, unequivocal and unambiguous and criminal sanction must not be applied retroactively. The definitions contained in TADO are riddled with difficulties in this respect. For instance, under the terms of TADO, one who destroys or plans to destroy any property, regardless of terror-related motive, may be deemed a terrorist and detained preventively (article 3 (1)). The government may also declare individuals or associations “terrorist” (article 7(2)), which has adverse international legal implications for those so named.<sup>67</sup>

**5. The Government should comply fully and faithfully and immediately with all judicial orders, including writs of *habeas corpus*, which should be made a more effective remedy. The Supreme Court and appellate courts should be more resolute in issuing *habeas corpus* orders in respect of persons detained without charge, including those held following the 1 February emergency decree.**

- **The judiciary should shed any ambivalence in applying the remedy of *habeas corpus* to post 1 February detentions. It should issue contempt of court orders in cases where the detaining authorities refuse to respect an order granting *habeas corpus*, or where a detainee is rearrested shortly upon a court-ordered release.**
- **The judiciary should continue to accept petitions for constitutional rights violations, at the very least regarding those rights that have not been suspended.**

- **The Government should back up any contempt order with appropriate legal action against any authority held in contempt by the court.**
- **In cases in which Government officials have denied holding persons in detention, the NHRC should be requested to visit the place of detention and be granted access without hindrance or precondition to all areas of a place of detention.**

*Yuvaraj Chaulagain, aged 34, from Pokhari Chauri VDC, in Kavre Palanchowk was arrested by security personnel in Kathmandu on 3 September 2003. Pursuant to a writ of habeas corpus filed by his wife, the Supreme Court held the detention to be unlawful and ordered his release on 24 September 2004. His wife and a number of human rights defenders, including an officer from the Nepal Bar Association, went to the Central Jail two days later to witness the release, but were told by the prison officer that, in order to evade the release order, a Lieutenant Santhos Pudel from the RNA had taken custody of the detainee and removed him to an unknown location.*

In cases involving arbitrary detention or enforced disappearances, the only recourse victims and their families have is to apply for a writ of *habeas corpus*. The right to petition has not been suspended under the Emergency, as article 115 of the Constitution provides that this right may never be suspended.

It is especially in times of emergency that the role of an independent judiciary is most essential to safeguarding fundamental human rights. The Supreme Court and appellate courts with the competency to grant the remedy of *habeas corpus* and remedies for the breach of fundamental rights stand as the last barrier between the individual and the near-absolute authority of the King’s Government. The courts must not abdicate this indispensable check on that authority; they must urgently, expeditiously and faithfully act upon all *habeas corpus* petitions that come before them.

<sup>67</sup> UN Security Council Resolution 1373 (2001) requires all states to take a range of sanctions regarding persons identified as terrorists.

Some alarming developments have emerged regarding the independent role of the judiciary following the emergency. The Kathmandu Post reported on 8 February that the Supreme Court was reluctant to issue *habeas corpus* orders against the King. One Court official was said to be waiting for a directive on how to consider *habeas corpus* cases, a Supreme Court Justice was quoted as saying: “We have no idea what to do...So we are trying to avoid *habeas corpus* under one pretext or another.”<sup>68</sup> Since those early days following the emergency, the courts have begun to act again on *habeas corpus* petitions, such as in above-mentioned case of human rights defender Gauri Pradhan, but the ICJ has received indications that the judiciary is approaching such cases inconsistently and with hesitance.

The judiciary has also failed since the emergency to issue orders or writs regarding constitutional rights that have not been suspended by the emergency. Without the availability of such remedies, the enjoyment of these rights is largely illusory. In response to an appeal by the Nepal Bar Association for the Supreme Court to accept the petitions, the Chief Justice, Hari Prasad Sharma, reportedly dismissed the question as a “political matter”.<sup>69</sup>

Before 1 February, the Supreme Court and Appellate Courts had become increasingly more inclined to grant *habeas corpus* in relation to the hundreds of petitions that came before them.<sup>70</sup> The Government, however, has regularly defied the court or implements *habeas corpus* orders in bad faith. There have been a number of reported cases of the Government erroneously denying to the Court that it is holding persons in detention. Another impediment to the effective application of the *habeas corpus* remedy is the

practice of “revolving door” detention and release, a practice said to be particularly acute in the districts outside of Kathmandu.

Several hundred writs of *habeas corpus* have been made in the Kathmandu valley alone since the armed conflict began. Such writs may only be granted by the Supreme Court and by the 16 Appellate Courts, leaving the population in outlying districts effectively without access to this remedy.<sup>71</sup> In addition, people taken into custody by the security forces typically are not informed of their rights, such as the right to counsel or to challenge the legality of the arrest. Those detained outside of the Kathmandu valley or regional cities usually do not have the means or opportunity to contact a lawyer to exercise such a right. In some areas of the country, there are effectively no functioning courts as a result of the conflict.

Just over two months prior to the emergency decree, the Supreme Court Chief Justice confirmed to the ICJ, during its visit in November 2004, that there were very serious problems in the execution of judicial orders, and referred particularly to serious threats to the independence of the Appellate Courts. One Court official attributed these problems to one of “confusion” by Army officials who needed to be educated regarding their legal responsibilities. This difficulty, persisting nearly four years into the onset of a flux of *habeas corpus* petitions involving army conduct, demonstrates a clear lack of will by the RNA to bind itself to the rule of law. Also during the visit of the ICJ, the then-Chief Justice of the Supreme Court Govinda Bahadur Shrestha met with the Chief of the Army Staff, Pyar Jung Thapa, and secured a commitment that the RNA would respect court orders, including *habeas corpus*. The fact that the Chief Justice considered it necessary to arrange such a meeting starkly evidences that even before 1 February, the Court was having great difficulties in enforcing its writ.

<sup>68</sup> *SC in dilemma over habeas corpus cases*, Kathmandu Post, 8 February 2005.

<sup>69</sup> *NBA's plea politically motivated*, Kathmandu Post 20 February 2005; *CJ says Rights Issue is Political* Himalayan Times, 20 February 2005.

<sup>70</sup> At a meeting with the then-Chief Justice of the Supreme Court (Govinda Bahadur Shrestha), the ICJ was informed that more than 900 *habeas corpus* cases had been filed in the Supreme Court alone since 2001, with 176 cases having been filed from July to November 2004.

<sup>71</sup> The ICJ has received information according to which the Supreme Court Chief Justices and some associates are advocating a strategic reorganisation plan which would reduce the number of appellate courts and possibly restrict *habeas corpus* competencies to the Supreme Court.

### **Breach of Legal Standard and Commitment**

Nepal is obligated under the ICCPR to grant judicial access to detainees so that they may challenge the lawfulness of detention (article 9 (4)). This right has been recognised by the United Nations Human Rights Committee<sup>72</sup> and under the Constitution of Nepal<sup>73</sup> to be available at all times. In its Commitment Statement, the Government promised that “for the effective judicial remedy, the orders issued by the Court, including the writ of *habeas corpus* shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such right to remedy shall be punishable by law.”<sup>74</sup> Failure to carry out a lawfully executed judicial order also constitutes a direct attack on judicial independence.<sup>75</sup>

The practice of rearrest after a court-ordered release pursuant to a *habeas corpus* petition plainly contravenes the principle that remedies under law must not only be available, but also must be made effective. Neither the detaining authorities, nor indeed the Courts themselves, discharge their core professional responsibilities when they engage or acquiesce in such practices.

Owing to the recurring nature of the problem, the ICJ believes that the judiciary, as the primary guardian of human rights, must urgently take significantly more robust measures to enforce its orders and to preserve its integrity. The appropriate judicial response to the repeated and flagrant flouting of judicial orders is to issue an order of contempt which remains effective

until compliance is secured. In cases where the government response to a *habeas corpus* order is a blanket denial that a person is in custody in the face of reliable testimony to the contrary, the court should order an investigation into the whereabouts of the person, including, where necessary, a search of the Army barracks or relevant place of detention. The remedy of *habeas corpus* depends not only on judging the legality of the detention, but also on the Government’s positive obligation to bring a detainee physically before the court.

### **6. The Government must take immediate steps to end impunity for serious violations of human rights, including by investigating the violations and prosecuting those responsible for their commission.**

- **The Government should establish an independent authority with powers to prosecute serious human rights violations.**
- **In the immediate term, civilian government authorities should solicit and investigate complaints of human rights violations, including extrajudicial killings and torture. Prosecutions should be carried out in open and transparent proceedings. Military authorities should not investigate and prosecute cases of serious human rights violations against civilians. Complaints, reports and other information forwarded from the National Human Rights Commission should be considered as a matter of priority. Cases submitted by the NHRC should be pursued, or else a response should be given detailing the reasons for failure to act.**
- **Torture should be made a specific crime under national law, as required under the UN Convention against Torture.**
- **Judges confronted by a *prima facie* indication of torture or inhuman or degrading treatment should exercise the power to order an independent investigation.**

<sup>72</sup> See UN Human Rights Committee General Comment No. 29 on States of Emergency (Article 4), CCPR/C2/Rev.1/Add.11, paras. 15-16.

<sup>73</sup> Articles 23, 88 and 115(8).

<sup>74</sup> Commitment, para. 10.

<sup>75</sup> Article 4 of the UN Basic Principles on the Independence of the Judiciary provides that “[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.”

*Suresh Raut Kurmi, aged 18 and Kishori Raut Kurmi, aged 31, both bricklayers, from Raghunathpur VDC-4, Bara district were allegedly extra-judicially executed on 12 February 2004. Some 13 members of the security forces, dressed to look like Maoists, with red scarves and Maoist inscription, were said to have entered the village. The two labourers fled, apparently assuming their pursuers were Maoists. Suresh Raut Kurmi was shot once in his leg and twice in the back. Kishori Raut Kurmi was shot in the leg, twice in the head and in the chest. A number of villagers, including the sister of one of the victims, were allegedly forced to drag the victims' bodies and to dig a hole in which they were to be placed. Before burying the bodies, the security forces removed their own red headscarves, placed them on the heads of the slain victims, and photographed them, so as to claim that the victims had been Maoists.*

Since the armed forces were brought in to combat the Maoist insurgency in November 2001, Nepal has experienced an explosion of gross and serious violations of human rights. In addition to the more than one thousand reported cases of enforced disappearances mentioned above, the incidence of unlawful killings has risen rapidly. The practice of torture continues to be both widespread and systematic. The Royal Nepalese Army has grown increasingly less accountable to civilian and judicial authority. In the 1 February *coup* the King swept away the last vestiges of democratic civilian authority over the security forces.

### **Extrajudicial Killings and Torture**

The number of unlawful killings reported since the engagement of the RNA is staggering. Since the outbreak of the conflict in 1996, some 11,146 persons, mostly civilians, have reportedly been killed (7258 by Government forces and 3888 by Maoists).<sup>76</sup> While some deaths represent casualties from combat between the army and the Maoists, a significant proportion clearly

constitute unlawful killings of civilians or captured Maoists. Many of the persons killed by the security forces are officially reported to have died in what are euphemistically termed "encounters". However, many of these instances are cases in which a suspected Maoist has been captured and summarily executed, sometimes after a period of detention and interrogation.<sup>77</sup>

A stark representation of prevailing impunity for extrajudicial killings is the notorious Doramba incident, which involved the summary execution of 19 unarmed persons by RNA forces on 17 August 2003.<sup>78</sup> The RNA immediately claimed the victims were killed in an armed exchange and subsequently, following repeated expressions of diplomatic and international concern, conducted an investigation, after which it maintained its conclusion that the majority of the victims were killed in combat. This conclusion squarely contradicted the results of an independent investigation of the National Human Rights Commission, which had sent a five-person team of experts to investigate. The case was kept alive by sustained international and domestic pressure. On 31 January 2005, the day before the Emergency was declared, it was announced following a closed-door court martial proceeding, that the commander of the security team implicated, Major Ram Mani Pokherel, had been dismissed from service and sentenced to two years' imprisonment. Another junior commissioned officer was demoted one rank.<sup>79</sup> While this first conviction of an officer for a major human rights violation is welcome, the sentence handed down was inappropriately light given the gravity of the offence.

The practice of torture and cruel, inhuman or degrading treatment by the units comprising the unified command-RNA, APF and Police - is both widespread and systematic. Before the RNA involved itself in 2001 in carrying out

<sup>76</sup> figure is provided by the Informal Sector Service Centre (INSEC), a leading Nepalese human rights non-government organisation, which documents human rights violations cases throughout Nepal. [www.inseconline.org](http://www.inseconline.org)

<sup>77</sup> This practice is described and documented in the January 2005 report by Amnesty International. See *Nepal: Killing with Impunity*, ASA 31/001/2005.

<sup>78</sup> The nineteen victims consisted of 17 captured combatants and two civilians. The NHRC sent a five-person team of independent experts headed by former Supreme Court Justice Krishna Jung Rayamajhi.

<sup>79</sup> Himalayan News Service, 31 January 2005.

detention and interrogation, torture was a serious problem in Nepal in ordinary criminal cases, especially to extract “confessions” for use in prosecutions before the ordinary courts. However, the practices involving the RNA and APF serve different ends, as these military forces carry out few detentions with a view to instituting criminal charges and preparing for trial. Rather, the principle objectives appear to be the gathering of intelligence in relation to the Maoist insurgency or opposition political activity, or as a means of informal punishment or intimidation.

### **Breach of Legal Standards and Commitment**

The extrajudicial executions of detainees and unlawful killings in the course of combat operations constitute clear violations of international human rights law and humanitarian law.<sup>80</sup> Such acts are also carried out in violation of the Commitment undertaken by the Government to respect the right to life in all circumstances.<sup>81</sup> The Government further pledged “to implement and respect the provisions of the Geneva Convention in particular common article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities.”<sup>82</sup> Similarly, the practice of torture and ill-treatment breaches multiple human rights obligations and the Commitment.<sup>83</sup>

### **Failure to Investigate and Prosecute**

The Government of Nepal has a solemn legal obligation to investigate serious human rights violations and to prosecute those respon-

sible for violations amounting to criminal acts.<sup>84</sup> The Government is also obligated to compensate victims and their families for such violations, under international obligations, and, more specifically under Nepal’s Torture Compensation Act. In addition, article 23 of the Nepal Constitution provides a right to a constitutional remedy to enforce fundamental human rights set out in the Constitution. The Government in its Commitment pledged to “hold accountable those responsible” for violations of the rights guaranteed in the Commitment and to “establish an appropriate mechanism for dealing with past human rights and international humanitarian law violations”.<sup>85</sup> The Government also promised that a High Level Human Rights Protection Committee would act to oversee the functioning of relevant governmental authorities in “investigation into human rights violations and prosecution of those responsible.”<sup>86</sup>

In spite of the voluminous, well-documented cases detailed by the NHRC, the Nepal Bar Association, and human rights organisations, coupled with the firm legal obligation and pronounced commitment discouragingly few prosecutions have been undertaken against the security forces for abuse. The overwhelming failure to fulfil an essential public function has served to fuel a loss of confidence among the population in the capacity and willingness of the Government to protect personal security.

This dereliction of government responsibility flows principally from the fact that the RNA and its partner security forces are not accountable to civilian authority. While the accountability deficit had long persisted *de facto*, the Home Ministry did at least maintain a nominal oversight competency in respect of the armed forces. The assumption of direct power by the King, combined with the wholesale suspension of most Constitutional checks on the power of the RNA and the emasculation of the judiciary, has removed almost all of the last vestiges of RNA accountability. In addition, neither the CDOs,

<sup>80</sup> ICCPR article 6; Geneva Conventions, common article 3.

<sup>81</sup> Commitment, para. 2.

<sup>82</sup> The specific acts prohibited under common article 3(1) are violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

<sup>83</sup> ICCPR, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 2; Constitution of Nepal, article 14 (4).

<sup>84</sup> ICCPR, article 2, CAT articles 2, 4, and 12. The United Nations Declaration on the Protection of all Persons from Enforced Disappearances also mandates investigation, prosecution and reparation in respect of the crime of causing disappearance.

<sup>85</sup> Commitment, paras, 25 and 21.

<sup>86</sup> Commitment, para. 23 (a).

responsible for executive administration at the district level, nor the police, where they still operate, consider themselves empowered to take action against the RNA, even if they have legal authority to do so. The former Attorney General made it clear in discussions with the ICJ that his Office would not initiate investigations or receive private complaints, but rather would act only upon referral from the CDOs. The one independent authority that might be able to act, the Commissioner for the Investigation of Abuse of Authority (CIAA), does not consider his brief to extend to the RNA.

The Government has wholly failed to implement the mechanisms promised in the Commitment. While a poorly resourced Governmental Human Rights Promotion Centre was established under the Office of the Prime Minister in 2003, this initiative appears to be a hollow gesture and the unit has accomplished little of note to date. The RNA and its similarly lacklustre Human Rights Cell,<sup>87</sup> have pointed to a number of prosecutions of military personnel, but most of these actions did not target serious human rights violations. The very few genuine human rights cases are conducted through court martial, rather than civilian judiciary trials, and the punishment, if any, meted out is light (See below on NHRC).

### **7. The Government should act to maintain the independence of the National Human Rights Commission and cooperate fully with it as the principal institution of human rights protection in Nepal.**

- **The Government should cooperate fully with the NHRC, including by removing all travel restrictions placed on its Members since 1 February and giving it full and unhindered access to all areas of the country and to all places of detention.**

- **The Government should act immediately to address cases of human rights violations presented to it by the NHRC and should generally accept the results of findings of NHRC investigations.**
- **The Government should augment the capacity of the NHRC, if it retains its independence, by allowing for enhanced services from the Office of the UN High Commissioner for Human Rights so as to provide all the advice and support the NHRC needs to do effective protection work throughout the country.**
- **The Government should extend the terms of the present members of the NHRC upon their expiry in May 2005.**

The National Human Rights Commission of Nepal (NHRC) is an independent national human rights institution that works largely in conformity with the Paris Principles relating to national human rights institutions.<sup>88</sup> While during its mission in early 2003 the ICJ was disappointed with its tepid performance, the NHRC has since developed into a competent and committed monitoring body, which, within the limits of its present capacity, conducts real investigations and evaluates individual complaints.

Since 1 February the NHRC has faced major impediments to its ability to function, with Commission members placed under surveillance and restricted from travelling within Nepal. On 5 March 2005, security officials at the airport in Kathmandu prevented a three-person team of the NHRC from boarding a flight for Bhairahawa.<sup>89</sup> In February, a member had not been allowed to travel to Biratnagar, where the NHRC was to open a new office.

<sup>87</sup> The RNA, the AFP and the Police have each established Human Rights Cells within their respective units. These units unsurprisingly have been ineffective; security forces responsible for widespread abuses are seldom in a position to be self-regulating. The RNA Cell has, through the Chief of the Army Staff, issued Directives on Procedures and Treatment of Detainees, but these rules are unsatisfactory in content and poorly enforced.

<sup>88</sup> Principles relating to the Status of National Institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993, A/RES/48/134.

<sup>89</sup> *NHRC team barred from leaving Kathmandu*, Nepalnews.com, 5 March 2005.

The Government in its Commitment promised to “provide the necessary facilitation to the NHRC” to carry out 14 key activities, including investigation of complaints, inspecting any Government agency or prison, and setting up its monitoring body to verify human rights violations.<sup>90</sup>

The Government has patently failed to support the NHRC, and in many instances has obstructed or undermined its work, in contravention of UN General Assembly Resolution 48/134,<sup>91</sup> which aims at protecting the independence of national institutions. The fruit of much of the work of the NHRC goes to spoil, as Government institutions take little heed either of findings in individual cases or more general recommendations. The Government has also failed to cooperate with the NHRC in its investigations, for example by denying them access to places of detention, or by removing detainees from their purview.

The first full-blown NHRC investigation was carried out into the Doramba killings, described above. The Government’s response was to cast aspersions on the investigation. For example, the Army Advocate General Brigadier BA Sharma remarked that “the RNA is surprised how biased the NHRC...have been while monitoring human rights violations...how can I teach my soldiers that the NHRC is an independent human watchdog body?”<sup>92</sup>

One indication of the fragility of the position of the NHRC is that the United States, which has given strong military and diplomatic support to the Government, has adopted legislation in November 2004, which conditions United States military aid on the Government cooperation with the NHRC; including by helping it “to identify and resolve all security related cases involving individuals in government custody” and granting it “unimpeded access to all places of detention.”<sup>93</sup> The European Union Troika

visiting Nepal in December 2004, stressed the importance of the “continued independence, effectiveness and legitimacy of the NHRC” and insisted that “the NHRC be given free and unhindered access to all places of detention without the need for prior notice.”<sup>94</sup>

A further obstacle to the NHRC’s continued functioning as an independent institution relates to the tenure of its membership. The terms of the present five members of the NHRC expire in May 2005. Under the enabling law of the NHRC,<sup>95</sup> the King appoints the Commissioners upon recommendation of a Committee composed of the Prime Minister, the leader of the opposition and the Chief Justice. No such recommendation is possible now because with direct rule by the King and a dissolved Parliament there is no Prime Minister and no leader of the opposition. Under these circumstances, the only acceptable option is to extend the terms of the present membership until such time as a properly constituted Parliament is restored. The King and his Government has neither the constitutional authority nor the political legitimacy to impose a new slate of NHRC members. Any irregular appointment scheme would necessarily undermine the legitimacy and independence of the institution. Any fresh selection of membership would be perceived as political appointments and set a precedent for the future politicization of the NHRC. The result could be a loss of public confidence and also make it more difficult for the NHRC to gain access to Maoist-held territory, lest the members be viewed as Government surrogates.

The Chairperson’s Statement pronounced at the UN Human Rights Commission meeting in April 2004 welcomed the Government’s commitment to sign a Memorandum of Understanding (MOU) between the Office of the High Commissioner for Human Rights and His Majesty’s Government to provide assistance to the NHRC including in carrying out its

<sup>90</sup> Commitment, Para. 24.

<sup>91</sup> A/RES/48/134, adopting the Paris Principles.

<sup>92</sup> Himalayan Times, 25 August 2003.

<sup>93</sup> On December 8, 2004, the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005*, was signed into law by President Bush.

<sup>94</sup> EU Troika Press Release, Kathmandu 15 December 2004, Council of the European Union, 15858/04 (Presse 352), <http://ue.eu.int/Newsroom>.

<sup>95</sup> Human Rights Commission Act of 1997.

monitoring and investigative functions.<sup>96</sup> However, it was not until 13 December 2004 that the MOU was signed. The MOU envisioned a pioneering approach to UN human rights monitoring and assistance, involving joint partnership between Nepalese and international human rights workers to conduct robust monitoring in five regions of Nepal. The arrangement agreed before the emergency would have placed a single mid-level international adviser in each region. This approach is now entirely inappropriate to meet the magnitude of the present crisis. NHRC members and support staff, as well as non-governmental Nepali human rights defenders, are now effectively prevented by the Government from functioning. Therefore, a far more substantial international monitoring presence is essential. While it will be up to the High Commissioner to make her own assessment, it appears that what is required is a full-fledged monitoring operation throughout Nepal, under the supervision of high-level OHCHR officials.

**8. The Communist Party of Nepal (CPN Maoist) should comply with international humanitarian law, including by ending the practice of unlawful killing of civilians or captured, wounded or surrendered combatants.**

- **The Maoists should end abductions and forced recruitment of civilians.**
- **The Maoists should desist from using children in any combat or support operations.**
- **The Maoists should cooperate fully with the NHRC.**
- **The Maoists should permit human rights defenders, lawyers and journalists freely to carry out their work.**
- **Maoist commanders should hold accountable any individuals among their ranks for violations of international humanitarian law amounting to war crimes.**

*On 4 March 2004, Phatta B. Shrestha, a farmer, aged 18, from Kapilkot VDC-6, Sindhuli District, was reportedly abducted from his home by several Maoists. He was accused by his captors of being a spy for the RNA. He was allegedly subjected to torture, which involved multiple knife cuts. He was then killed by bullet to the stomach.*

The Maoists have increasingly used violence to control the populations in areas under their control and authority. The Maoists are responsible for numerous unlawful killings, many of which are executions, or targeted assassinations occurring outside of combat operations. Common targets of killings include state agents, such as local officials, including those from the Village Development Committees (VDCs), performing their functions independently of Maoist administrators; people suspected of serving as informants or agents of the government; people refusing to pay “taxes” to Maoist administrators; and people engaging in lawful political activity or organisations. The Maoists have also targeted human rights defenders who have documented, publicized or campaigned against Maoists abuses or political authority.

In some instances, the killings are preceded by acts of torture or mutilation of the victims. Torture and killings are frequently carried out for public display, as a means of setting an example to the civilian population. For instance, the ICJ learned of a case in Sindhupalchok of a woman executed by the Maoists on suspicion of being a Government informant whose body was left in the road for two days with instructions that it was not to be removed.

Since 1 February, serious Maoist abuses have continued unabated. On 13 February, the Maoists called an economic blockade which prevented traffic from moving freely. Critically, food, medical and other essential supplies could not be delivered. Such blockades severely impair the access of many persons to food, health care and education. The Maoists have reportedly resorted to brutal measures to enforce the blockade, including by setting fire to an ambu-

<sup>96</sup> Chairperson’s Statement, Human Rights Assistance to Nepal, UN DOC OHCHR/STM/CHR/04/3.

lance.<sup>97</sup> There are also reports of the destruction of a number of schools in reaction to defiance of Maoist calls for an educational strike.<sup>98</sup>

In an interview published on 17 December 2004,<sup>99</sup> Chairman Prachanda characterized most of the Maoists killings outside of the battlefield context as directed against spies and informants and done “for the safety or protection of the people and people’s war.” He conceded that there had been a few “unfortunate incidents” of wrongful killings, but that the party had taken action against the guilty. Chairman Prachanda’s assurances notwithstanding, it is clear that the abuses are systematic and part of the *modus operandi* of the Maoist commanders at the highest levels, not simply the result of a few ill-disciplined cadres. Because of their lack of transparency and the difficulty of gaining independent access to Maoist-controlled areas, it is difficult to amass reliable information about the nature of any disciplinary action taken against Maoist cadres. In some areas, the Maoists were said to operate “people’s tribunals”, but the composition, jurisdictional remit, and procedures of such bodies reportedly vary widely from area to area. From the scant information available, such tribunals do not seem to carry the attributes of an independent and impartial tribunal, or the appropriate judicial guarantees within the meaning of Geneva Convention common article 3.

The ICJ is convinced by reliable testimony that the Maoists have recruited children under 18 years of age, some as young as 12, for use in combat or military support operations. While some reports indicate that the youngest recruits are not typically employed in active combat, they often take part in onerous supporting tasks, such as portering, and sometimes carrying dangerous materiel, such as grenades. The Maoist leadership has denied that it uses children under 18 in combat operations, but its statements in this regard have been inconsistent.

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<sup>97</sup> *Maoists Bomb an Ambulance*, Nepalnews.com, 23 February 2005.

<sup>98</sup> *Rebels Destroy Six Schools*, Kathmandu Post, 20 February 2005.

<sup>99</sup> *Mohan Bikram’s sole-agenda politics is to serve the reactionaries: Prachanda*, Samay Magazine.

### **Breach of Legal Standards and Commitment**

The Communist Party of Nepal (CPN-Maoist), since launching its armed insurgency in 1996, has engaged in wide scale abuses, many of which have targeted the civilian population. As a non-state actor, the legal obligations of the Maoists are not identical to those of the Government. Nonetheless, the conduct giving rise to the most serious abuses is proscribed under international humanitarian law, in particular in article 3 common to the Geneva Conventions and customary international law governing international armed conflict. Common article 3 prohibits the killing of civilians or combatants who have been captured or laid down their arms, and torture, mutilation and cruel treatment.<sup>100</sup> Customary international law, including rules codified in the statute of the International Criminal Court, clearly prohibit attacks against civilians, and displacement of the civilian population.<sup>101</sup> In addition, under the Optional Protocol to the UN Convention on the Rights of the Child, to which Nepal is a party, “armed groups, distinct from the armed forces of a State, should not under any circumstances, recruit or use in hostilities persons under the age of 18 years.”<sup>102</sup>

The Maoists have not issued an official detailed commitment analogous to the 26 March 2004 statement by the Government. Nonetheless, in more than one pronouncement, the Maoists have professed their commitment to abide by humanitarian norms. CPN (Maoist) Chairman Prachanda, in a statement of 16 March 2004, affirmed that the Maoists were “committed to the fundamental norms of human rights and Geneva Conventions” and also remained committed not only to the Geneva Conventions but also to “international declarations in relation to human rights.”<sup>103</sup>

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<sup>100</sup> See fn 18.

<sup>101</sup> Article 8(2)(e), Rome Statute of the International Criminal Court, UN Doc A/Conf.183/9, <http://www.icc-cpi.int/about/officialjournal/legalinstruments.html>

<sup>102</sup> Article 4, paragraph 1.

<sup>103</sup> See [http://cpnm.org/new/English/statements/apcal\\_16march04.htm](http://cpnm.org/new/English/statements/apcal_16march04.htm)

An improvement in the human rights situation will enhance the prospects for a peaceful resolution to the conflict. Responsibility for generating such improvement rests equally with the Maoists as it does with the Government. If the Maoists are to claim any credibility, they must be serious about holding accountable individuals who violate international humanitarian law, especially in relation to acts that amount to war crimes. In that regard, the Maoists should cooperate closely with the NHRC in its efforts to monitor and investigate violations.

**9. The Government and the CPN (Maoist) should sign and implement the NHRC Human Rights Accord as a substantial confidence building measure in advance of peace talks.**

During the course of the failed last round of peace negotiations, from January to August 2003, the National Human Rights Commission drafted and proposed to the parties a Human Rights Accord (HRA), the objective of which is to bind both the government and the CPN (Maoists) to a series of concrete human rights commitments. Importantly, it allowed for robust NHRC monitoring. The latest draft to be presented by the NHRC is a simplified version of the early draft and lacking in some of the detailed monitoring provisions of the early draft.

The HRA commits the Parties “to immediately take such steps as necessary to ensure the respect and protection of” the right to life, right to personal integrity, right to liberty and security, right to liberty of movement, right to freedom of opinion, expression, association, assembly and the exercise of political rights; right to work, right to food, right to health, right to education, and women and children’s rights. The NHRC has also asked the parties to the conflict to ensure its free movement throughout the country as well as security, including that of any person providing information to NHRC.

Regarding implementation and monitoring compliance, the agreement reaffirms the statutory role of the NHRC and gives it the authority to initiate investigation, pronounce on violations, assess remedies, and report publicly in respect of the HRA. The Parties undertake to ensure free movement and security, to provide timely information and to “give proper consideration to the recommendations set out by the NHRC.” The

general competencies are a pale shadow of the more detailed monitoring competencies contained in the earlier draft. For it to be effective, the NHRC will have to take an expansive view of its own statutory functions and the joint project with the OHCHR will have to be effective.

The substantive portions of the HRA largely reaffirm many of Nepal’s existing legal human rights obligations and the Commitments. However, it would be the first time that the Maoists have formally agreed to similar commitments.<sup>104</sup> The primary contribution that the HRA would bring to the human rights situation in Nepal is the establishment of mutually reciprocal commitments and reinforcement of the role of the NHRC as an independent body monitoring compliance of both sides in equal measure. The HRA would not only make a positive contribution to the human rights situation, but would also help to create an atmosphere more conducive to successful peace negotiations. One NHRC member characterized the benefits of the HRA: “it will help restore people’s dignity and bring justice to war victims, thereby increasing the possibility of enhancing confidence between both parties. As a result they will cooperate on rights front, even in conflict.”<sup>105</sup>

The Government has previously indicated that it was not willing to sign an agreement which might signal that the state and the Maoists were on equal political footing. Some proponents of the HRA have proposed that each party might sign separated agreements with the NHRC, rather than concluding an accord mutually opposable to one another. The ICJ fears that this arrangement could blunt the positive confidence building aspect of the HRA, unless it were clearly affirmed by both parties that the obligations are mutual as between them. In this respect it would also be important to retain the provision in the HRA that requires each party to “appoint liaison officers to ensure the smooth communication between each other and with the NHRC.”

<sup>104</sup> During the cease-fire from January-August 2003, the Government and Maoists did agree a Code of Conduct, but the 22-point provisions were not rights-based, and the agreement has been moribund since the breakdown of the cease-fire.

<sup>105</sup> *Rights accord can limit violence, says NHRC*, The Himalayan Times, 29 December 2004.

## ANNEX

### **His Majesty's Government's Commitment on the Implementation of Human Rights And International Humanitarian Law**

*(Announced by Rt. Hon Prime Minister Surya Bahadur Thapa on March 26, 2004)*

*Reiterating* the provision of the Constitution of the Kingdom of Nepal 1990 on desire and aspiration of the Nepali people for the creation of a society that promotes fraternity and unity among the people based on freedom and equality and that safeguards fundamental human rights of every Nepali citizen,

*Reaffirming* the priority of His Majesty's Government for the fulfilment of its obligations and responsibilities in accordance with the international human rights and humanitarian laws,

His Majesty's Government (HMG) reaffirms its commitments as follows:

1. Human rights protection will be guaranteed without prejudice to race, colour, gender, ethnicity, language, religion, political or other ideologies, social origin, disability, property, birth or on any other grounds.

2. Every person shall have the right to life, dignity and security. Right to life shall be respected under all circumstances. For this purpose, immediate instructions shall be issued to implement and respect the provisions of the Geneva Conventions in particular Common Article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities.

3. No one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances.

4. A detainee shall be informed of the reason for the arrest. No one shall be arrested during the night except in accordance with the prevailing laws. Information about the whereabouts of the detainee and his/her transfer shall be made available to the members of his/her family, legal practitioner and the person eligible to receive such information.

Every place of detention will maintain a register containing the name of every person detained and the dates of entry, discharge or transfer.

5. Right to unhindered legal defence shall be honoured and protected. The detainee shall be allowed to speak with the family, legal practitioner and any other person within prescribed legal provisions. The accused shall have the right to present himself/herself during the hearing of the case. He/she shall have the right to defend by himself/herself or by the legal practitioner of his or her own choosing. He/she shall have the right to seek counsel from such practitioner openly and secretly.

6. Any detainee shall be held in an officially recognized place of detention. Detained persons shall be kept in humane conditions and provided with adequate food, drinking water, appropriate shelter, clothing, health and sanitation facilities and security.

7. The accused shall have the right to be tried in the court that has all the attributes for conducting free and fair proceedings within a reasonable period of time in accordance with law.

8. The accused held in detention shall not be subject to torture or to cruel, inhuman or degrading treatment or punishment. Any person so treated shall be provided with the compensation stipulated by the law and any person responsible for such treatment shall be prosecuted and punished according to the law.

9. While releasing from detention, the dignity and rights of the person shall be guaranteed providing credible evidence of the release from detention.

10. For the effective judicial remedy, the orders issued by the Court, including the writ of habeas corpus shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such rights to remedy shall be punishable by law.

11. No person shall be prosecuted and punished more than once for the same offence. For the dispensation of justice, only the competent court complying with all judicial proceedings shall have the right to pronounce the verdict in accordance with law.

12. Every person shall have the right to freedom of movement and the choice of domicile. The right of the displaced persons to return to their homes or to the places of their choice shall be ensured.

13. The arrangement relating to the supply of human necessities of all types including food and medicines shall be ensured throughout the Kingdom.

14. Recognizing the educational institutions as the “Zone of Peace”, no activities shall be allowed within such premises that disrupt education or peace.

15. Every person shall have the right to freedom of opinion, expression and religion. Such rights shall also include right to faith in the religion of one’s choice or belief through worshipping and observance. Every person shall have the right to express opinion without hindrance in accordance with the prevailing laws. Such rights shall include right to seek, receive and disseminate all kinds of information.

16. Every person shall have the right to form associations with others in accordance with the law. Right to peaceful assembly without arms shall be unhindered. Every citizen shall have the right to participate in the public activities by himself/herself or by the independently elected representative.

17. Women and children shall enjoy the rights of special protection. The rights of women and children shall be fully protected and international laws such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women shall be respected. The mechanism to examine ways to end such discrimination shall be strengthened.

18. Human rights groups, other non-government organizations and human rights activists working for the implementation of the principles of human rights and international humanitarian laws shall be protected.

19. Additional training to the security agencies on human rights and international humanitarian laws will be continued.

20. Any anti-terrorist legislation will be in line with established international human rights norms.

21. HMG will establish an appropriate mechanism for dealing with past human rights and international humanitarian laws violations and to review the necessary measures.

22. HMG assures full cooperation to establish the fate and whereabouts of reported missing persons. HMG will continue to provide cooperation to the ICRC, including the access to all places of detention.

23. A High Level Human Rights Protection Committee shall be constituted to facilitate human rights monitoring and investigations by the National Human Rights Commission (NHRC) and to help implement its recommendations. This committee will oversee the functioning of relevant government authorities in the following aspects:

- a. Investigation into human rights violations and prosecution of those responsible;
- b. Observance of laws applicable to detention;
- c. Protection of human rights of all persons coming into contact with the security forces;

- d. Immediate release of those subject to arbitrary or illegal detention;
- e. Giving immediate effect to the orders and decision of the judiciary;
- f. Taking necessary legal action against those who are responsible for human rights violations;
- g. Recommend compensation for the victims.

24. HMG will provide necessary facilitation to the National Human Rights Commission (NHRC) in discharge of the following activities:

a. Investigating on violations and discouragement of human rights on the basis of complaints and through its own or any other sources, and carrying out such investigations through its own mechanism or through any agency of HMG or any other official or persons;

b. Investigating on neglect of any person or institution for preventing violations of human rights, and informing or warning any agency with regard to the legal provisions on human rights;

c. Visiting, observing and inspecting any agency under HMG or prison or any other institutions, and recommending to HMG any measures required for improvement in the physical or other facilities at prisons for protection of human rights;

d. Suggesting necessary measures for review and implementation of legal provisions for effective implementation of human rights;

e. Suggesting measures to HMG for effective implementation of international instruments on human rights, including for reports to be submitted in accordance with these instruments;

f. Conducting research on human rights-related subjects, disseminating and conducting education on human rights promotion, and encouraging non-governmental organizations working in the human rights-related fields;

g. Reviewing the current human rights situation in the country;

h. Setting up its monitoring body to determine whether the human rights commitments are being respected and to verify any violations, in particular attention to the right to life, integrity and security of the person, to individual liberty, to due process of law, to freedom of expression, movement of association and to the situation of the most vulnerable groups of society, including children, internally displaced persons and any groups subject to discrimination;

i. Strengthening of its capacity at the central level and to increase its outreach at the regional levels;

j. Ensuring free movement of the staff and of its representatives throughout the country and to interview any person or group freely and privately, particularly in places of detention and establishments suspected of being used for detention purposes;

k. Ensuring the security of the staff/representatives of the NHRC or individuals who provide relevant information or evidence;

l. Responding promptly to any requests for information or suggestions for measure to improve the protection of human rights;

m. Passing, if appropriate, the cases considered by the NHRC to relevant national legal structures when there is basis of criminal investigation and prosecution;

n. Facilitating substantial external assistance, including through the UN, to the NHRC to develop its institutional capacity and human resource development to carry out its mandate including monitoring and investigations in an independent, impartial and credible fashion.

25. HMG will adopt the necessary measures for the prevention of violations of the rights and guarantees contained in this document and to hold accountable those responsible for any such violations.



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