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Nepal

Military assistance contributing to grave human rights violations

Introduction

Over the last nine years, there has been growing international concern about increasingly widespread human rights abuses committed by both sides in the escalating armed conflict between the security forces and the Communist Party of Nepal (CPN) (Maoist) after the latter declared a “people’s war” in February 1996.

Governments of countries named in this report, in particular India, the United States of America (USA) and the United Kingdom (UK), have provided substantial levels of arms, training and other military assistance to Nepal throughout this period. The assistance increased after November 2001, when the Royal Nepal Army (RNA) became directly involved in the conflict. In Amnesty International’s view, such assistance has enabled an increase in grave violations of international humanitarian and human rights law.

Reena Rasaili, an 18-year-old student, was reportedly taken from her home in Pokhari Chaur, Kavre district, by a group of security forces personnel at midnight on 12 February 2004. It is reported that Reena was dragged from her house, beaten and interrogated, before being taken to a nearby cowshed by five security forces personnel. At around 5am on 13 February shots were heard from the direction of the cowshed. After the security forces left the village, villagers found Reena’s naked body. She had been shot in the head and chest. Bloodstains on her discarded clothes and underwear indicate that she may have been raped. Following significant media coverage of the case, the RNA launched an investigation, the findings of which were inconclusive. A second RNA investigation has now been initiated, but to date no one has been brought to justice for the killing.

After 1 February 2005, when Nepal’s King Gyanendra Bir Bikram Shah Dev took direct power and imposed a state of emergency, India, Nepal’s main source of military assistance, and UK suspended their military assistance. The USA however did not explicitly suspend its military assistance. It stated that no deliveries were scheduled and that it would review military assistance on a case by case basis. Amnesty International understands that the US authorities subsequently postponed some US military assistance, but not all. On 25 May 2005, the US embassy in Kathmandu clarified that the US had never suspended “non-lethal” military assistance to Nepal. It stated that no lethal assistance had been provided since 1 February 2005 and confirmed that the issue of military assistance to Nepal remained under constant review.

India has also kept its military assistance to Nepal under constant review since the suspension in early February. On 10 May 2005, after much speculation, India’s Ministry of External Affairs announced that supplies that had been in the pipeline would be resumed in

the wake of the lifting of the state of emergency in late April and the release of some political leaders. On 24 May 2005, the Indian government's Cabinet Committee on Security reportedly decided to restrict military assistance to non-lethal supplies that are otherwise commercially available; including jeeps, night vision goggles and bullet-proof jackets. It also decided to keep the issue of military aid under constant review.¹

The UK government is not known to have provided any military assistance since 1 February 2005. In late February 2005 it stated it was carrying out a "full review of [its] policy with regard to the provision of military assistance and equipment to Nepal."² Previously, it had maintained that all military gifts to Nepal were "non-lethal" (see below).

This report describes the kind of military assistance provided by the three key governments mentioned above. It also includes brief references to training provided to the security forces of Nepal, including at places such as the Royal Military Academy at Sandhurst, UK; the Military Academy at Dehra Dun, India; and the Command and General Staff College at Leavenworth, Kansas, USA. In addition, the report addresses briefly the supply of arms by private companies and the role these three governments and others play in providing export licences for such sales.

Amnesty International is appealing to the above three and other relevant governments to suspend or continue to suspend all transfers of arms and related logistical and security supplies to Nepal that can reasonably be expected to facilitate grave human rights violations until effective safeguards are in place to protect civilians from grave human rights abuses. Amnesty International is advocating that this suspension should include transfers of what is claimed to be "non-lethal" equipment, unless it has a strictly humanitarian application and its use is monitored independently.

Amnesty International is also appealing to the United Nations (UN) to verify that Nepalese security forces personnel who are to be deployed in UN peacekeeping operations have not been implicated in human rights violations in Nepal.

Furthermore, the organization is calling on the governments of the Group of Eight (G8) -- who will be meeting at Foreign Minister and Heads of Government level under the presidency of the UK on 23 June and from 6 to 8 July respectively -- to include a discussion on military assistance to Nepal on the meetings' agendas. This appeal forms part of a wider campaign by Amnesty International, Oxfam and other organizations³ urging G8 countries to exercise the highest degree of responsibility in international arms transfers and, specifically, to develop and adopt an Arms Trade Treaty covering the international transfer of all conventional arms with standards based on relevant principles of international law, including international human rights and humanitarian law.

¹ Express News Service, 25 May 2005

² Parliamentary question 160, 21 February 2005, Adam Ingram written response to Clare Short

³ The International Action Network on Small Arms Transfers which has about 600 NGO affiliates

Background

Between 1996 and 2000, the police were responsible for maintaining law and order in the increasingly violent conflict. The army's role was confined to guarding infrastructure such as hydroelectric plants, airstrips and communication towers as well as certain district headquarters. The police were ill-prepared and ill-equipped to conduct counter-insurgency operations. They suffered heavy losses. As the conflict escalated, the government in 2001 created a paramilitary police force, named the Armed Police Force (APF). The human rights record of both the police and the APF was and remains poor.

The year 2001 marked the beginning of the most volatile period in political as well as military terms since the start of the "people's war". The royal massacre on 1 June in which the then King and Queen were killed together with eight other members of the royal family brought in a period of great political instability.

In November 2001 a state of emergency was declared for the first time and the army was deployed on the decision of the then government of Prime Minister Sher Bahadur Deuba. The state of emergency was extended with all-party support in February 2002. However, the government did not win sufficient support to further extend it in May. Parliament was dissolved in May 2002 and King Gyanendra re-imposed the state of emergency for three months on the recommendation of the caretaker government. It was not renewed in August 2002. In June 2002 the government disbanded local elected bodies, replacing them with government appointees. Elections for local bodies were cancelled in August 2002.

In October 2002, King Gyanendra sacked the caretaker Prime Minister Sher Bahadur Deuba on grounds of incompetence and started ruling with a government comprising people known to be loyal to him. Parliamentary elections were indefinitely postponed. Since then, Nepal has been ruled by Royal Ordinances.⁴

There have been two attempts at peace negotiations since the start of the "people's war". In the second part of 2001, the then government of Prime Minister Sher Bahadur Deuba and the CPN (Maoist) held three rounds of talks. Similarly, in 2003, three rounds of peace talks between the government and the CPN (Maoist) took place. On both occasions, negotiations broke down over the political demands of the CPN (Maoist), including the establishment of an interim government, constitutional assembly and a republic. Both in 2001 and 2003, a cease-fire was in force during the time of the negotiations.

A tense stand-off between the King and the mainstream political parties escalated on 1 February 2005 when King Gyanendra seized direct power and took a unilateral decision to impose a state of emergency. He attempted to justify the takeover on the basis of Nepal's

⁴ Under Article 72 of the Nepal Constitution, Ordinances may be promulgated by the King when both Houses of Parliament are not in session if he is satisfied that the "existing circumstances demand an immediate action". They have to be approved by Parliament within 60 days of the commencement of the next session of both Houses or will, *ipso facto*, cease to have effect after six months of their promulgation. Since October 2002, Ordinances have been re-promulgated upon their expiry although there is no explicit constitutional provision allowing for this.

political parties' failure to address the nine-year-old conflict. There were widespread arrests of political activists, human rights defenders, trade unionists and journalists. Many fundamental rights were suspended and strict media censorship was imposed.

On 29 April 2005, the state of emergency was lifted. However, fundamental rights were not fully restored. The government continued to impose restrictions on civil liberties, including freedom of the press, freedom of assembly, and freedom of movement. Widespread violations of human rights in the contexts of both the armed conflict and the suppression of mainstream political activities continue to be reported.

Since the conflict began in 1996, over 12,000 people have been killed, many of them at the hands of Nepal's security forces, in particular the RNA. The restrictions on the media and on human rights organizations have made it increasingly difficult to independently investigate official casualty figures, the circumstances in which people have been killed, and their identities. According to a statement by the RNA spokesperson at a press conference on 5 May 2005, more than 4,000 "Maoists" have been killed by the security forces since August 2003. The CPN (Maoist) were said to have killed 96 civilians and 432 soldiers in the same period. The RNA or other official sources very rarely admit that civilians have been killed by the security forces. Having sought clarification with several army officials on the definition of what constituted a "Maoist", Amnesty International determined that it included people who had or were suspected of having provided shelter, food or money to the CPN (Maoist), whether under coercion or not. In addition to killing civilians suspected of such assistance, the RNA has also repeatedly carried out extrajudicial executions of members of the CPN (Maoist) after they were taken into custody.

There are also grave concerns about "disappearances", torture and widespread arbitrary arrest and detention by the security forces. In 2003 and 2004, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) stated it had received more reports of "disappearances" at the hands of the Nepalese government than from any other country. During a visit to Nepal in December 2004, the WGEID expressed concern at the lack of legal protections for detainees, reports of preventive detention by plain clothes security forces and detention in army barracks, often without detention order, as well as torture and abuse of detainees. It also pointed to the lack of access to places of detention by the National Human Rights Commission (NHRC, a statutory body set up in 2000) and recommended that the NHRC should be given unhindered access to all places of detention, including all army barracks, without prior notification or permission.

Access to detainees has been a longstanding concern of both the NHRC and the International Committee of the Red Cross (ICRC), which first started operating in Nepal in 1999. On 31 May 2005, the ICRC announced that it was suspending its visits to army barracks after the RNA failed to abide by the ICRC's worldwide working modalities for and with detainees. These working modalities require the ICRC among other things to be able to inspect all the premises of a building where a prisoner is kept, meet every detainee, register their names and speak with them in private.

The last few months have seen the emergence of vigilante mob violence – apparently encouraged by the state - which has spread terror among local communities. The establishment of “retaliation committees” in certain districts appears to be part of a wider strategy by the authorities to develop “village defence forces” – armed groups of local people to help fight the Maoists. In one district, Nawalparasi, Amnesty International obtained compelling evidence that new recruits to such groups are being trained by the army in military barracks. The establishment of such forces was initially suggested by the government in 2003 but not openly implemented at the time.

During the cease-fire of 2003, both sides agreed to observe a “Code of Conduct” that contained several human rights provisions, but no effective monitoring mechanism was put in place to enforce them. The NHRC proposed a Human Rights Accord (HRA) to both parties, the objective of which was to bind both sides to a series of concrete human rights commitments with the NHRC as the independent body monitoring compliance.

Throughout the conflict, a consistent failure to hold members of the security forces accountable for their actions and a lack of transparency has created a culture of impunity and increased the vulnerability of the civilian population. In the meantime, the army is growing rapidly to become the strongest element of the state with very little accountability, beyond the role of the King who is Supreme Commander and appoints the Commander in Chief.

Since the King took direct power on 1 February 2005, the closely aligned royal family, palace and other elites and the RNA have exerted increasing power over many aspects of decision-making at the national, regional and district level seemingly without accountability to any civilian authority. The increasing militarization, the lack of political accountability, combined with the weakness of other state institutions, corruption, and a breakdown in the rule of law has helped to create the climate of impunity within which widespread human rights violations are taking place.

Human rights abuses by the CPN (Maoist)

CPN (Maoist) members have been responsible for widespread deliberate killings of civilians, including local government officials, members of political parties, and people who refused to accede to extortion demands or were considered informants. They have abducted thousands of civilians, including large numbers of students and teachers who were forced to take part in “political education” sessions, lasting from a few days to several weeks. They have also abducted, tortured and killed numerous civilians, whom they accused of “spying” and other crimes, and security force personnel whom they had captured. Maoists have regularly staged blockades preventing the free movement of food, medicines and other basic goods. The CPN (Maoist) have endangered civilians by sheltering among them and by launching attacks on the security forces from civilian areas. There is also overwhelming evidence of the recruitment and deployment of children as child soldiers by the CPN (Maoist).

Amnesty International condemns these abuses and has repeatedly called on the CPN (Maoist) to abide by international humanitarian law.

Summary of recent military assistance to Nepal

At the time it was first introduced to the conflict, the army was predominantly equipped with Self Loading Rifles (SLRs) and Light Machine Guns (LMGs). Its strength in November 2001 was 45,000. At the time of writing it is thought to be around 80,000. In addition, there are 46,500 police and 15,000 APF personnel. After the collapse of the cease-fire in August 2003, the latter two were brought under the unified command of the RNA. In 2003, an elite Rangers' Battalion was formed to carry out offensive operations in difficult terrain.

Nepal has no substantial arms industry of its own. It has an ammunition facility and a plastic explosives manufacturing unit. Traditionally, India has been the main source of logistical and weapons' supplies to the RNA. The USA reportedly has been very active in providing military equipment and training, especially after 2001. It for instance armed and trained the APF and the Rangers' Battalion. The UK's assistance has largely been in the form of training and logistical support. Below follows a detailed list of military assistance by all three governments.

India

There is limited public information available regarding the exact nature of military assistance from India to Nepal. The supply of arms to Nepal from India is subject to a number of Memoranda of Understanding (MoUs) between both armies which are not in the public domain.⁵ According to one of the MoUs, Nepal receives a 70% discount on any equipment bought from India.

Among the most commonly used weapons provided by India are the Infantry Small Arms System (INSAS) weapons. INSAS is a 5.56mm rifle. It was used in the past by the Indian army, but, after some difficulties, India allegedly decided to buy other weapons on the world market. The INSAS were subsequently sent to the RNA. It is reported that the RNA currently has about 25,000 with 10,000 more due to be delivered.⁶ India has also provided extensive logistical support, including four Lancer helicopter gunships, two Hindustan Aeronautics Cheetah light utility helicopters, Mine Protected Vehicles (MPVs), jeeps, several trucks, bullet proof jackets, flares and ammunition.

In the immediate aftermath of the King seizing power and the declaration of the state of emergency, India was the first to announce the suspension of military assistance. Amid widespread pressure from Nepal as well as several interest groups in India, the Indian government announced that it would consider the resumption of military assistance. The announcement came after a meeting between King Gyanendra and India's Prime Minister, Manmohan Singh, at the African - Asian Summit in Jakarta, Indonesia, on 23 April 2005. A statement issued at the time indicated that the resumption would be linked to India's

⁵ Some sources maintain that an Arms Treaty signed by both countries in 1965 is still in force. The treaty required Nepal to obtain India's approval for any military assistance it wants to seek from other countries. It was however denounced by Nepal in 1969 and is therefore thought no longer to be in force.

⁶ Navin Singh Khadka, *Alms Race*, Nepali Times, 28 May – 3 June 2004

assessment of the situation in terms of the restoration of constitutional monarchy and multi-party democracy. On 10 May 2005, after much speculation, India's Ministry of External Affairs announced that military-related supplies that had been "in the pipeline" on 1 February 2005 would be resumed in the wake of the lifting of the state of emergency and the release of some political leaders. The Indian Prime Minister later clarified that the supply concerned a number of trucks which had already been on their way to Nepal and had been stopped when the state of emergency had been declared. On 24 May 2005, the Cabinet Committee on Security reportedly decided to restrict military assistance to "non-lethal" supplies that are otherwise commercially available; including jeeps, night vision goggles and bullet-proof jackets. It also decided to keep the issue of military aid under constant review.⁷ According to some sources, the RNA is concerned that it will run out of ammunition which is normally provided by India.

India is also the country that provides the most military training to RNA officers, including at places such as the Defence Services Staff College in Wellington, the Military Academy at Dehra Dun and the Counter Insurgency School at Bharengti, Mizoram. It is thought that the Indian authorities do not check the human rights record of the soldiers selected for training before their admittance.

UK

According to the UK government's reply to questions raised in the UK Parliament concerning arms supplies to Nepal, the UK government has provided as a "gift" the following "non-lethal" equipment to the government of Nepal between 2000 and 2004:⁸

- 2x2 Tonne ultra light dumper trucks (2000)
- 35 Land Rovers (2002)
- 2 Mi17 helicopters (2003)
- Load carrying equipment for MISG (2003)⁹
- Radios and night vision goggles for MISG (2003–04)
- 10 Mk7 bomb disposal wheelbarrows (2003)
- Improvised Explosives Devices (IED) search equipment (2003–04)
- Revolution IED wheelbarrow (2004)
- Infrastructure support and office equipment for RNA Intelligence School (2003–04)
- Infrastructure support for RNA Peacekeeping School (2003-04)

⁷ Express News Service, 25 May 2005

⁸ UK Secretary for Foreign and Commonwealth Affairs reply to questions, *Hansard 8 February 2005 : Column 1459W*

⁹ MISG is an abbreviation used in military aviation meaning "Maintenance Inter-service Support Group"

- English language training facility for RNA Peacekeeping School (2004-05)
- 2 Islander Short Take Off and Landing (STOL) aircraft and associated surveillance equipment (2004)
- Engine spare parts for Ferret Scout Cars (2004)

Although this equipment is described as “non-lethal”, it can be used to help launch military attacks and placed in the wrong hands it could facilitate violations of humanitarian law and human rights violations. For example, the helicopters could be used indirectly for such attacks and in fact helicopters have been used by the RNA to indiscriminately target civilians (see below). The same could be said of the STOL aircraft.

The UK also provides extensive in-country training for RNA, including training in bomb-disposal, intelligence gathering and human rights. Many RNA officers, including the current Commander in Chief, have received training at the Royal Military Academy in Sandhurst, UK. It is not known whether the UK authorities carry out any systematic vetting beforehand.

All assistance from the UK since 2001 has been funded from the Global Conflict Prevention Pool (GCPP). GCPP is a specific funding arrangement for conflict prevention and reduction voted by Parliament. The GCPP is managed jointly by Ministry of Defence (MOD), Foreign and Commonwealth Office, and the Department for International Development.

USA

The USA has many military assistance programs under which Nepal is receiving military equipment and training. The main one is Foreign Military Financing (FMF). Under the FMF program, the US provides grants to foreign governments for US supplied military equipment, training and services. Since 2001, the USA has provided over US\$29m in FMF to Nepal, which has included grants for military equipment and training.¹⁰ According to a US Department of State official, this military assistance included 20,000 M16 assault rifles provided to the RNA.¹¹ The APF and Rangers Battalion of the RNA have also been armed and trained by USA.

In November 2004, the US Congress approved a government-spending bill for the fiscal year 2005, which conditions US military assistance through the FMF program to Nepal

¹⁰ DCSA, “Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts as of September 30, 2003” (“DSCA Facts Book 2003”); website: http://www.dsca.mil/programs/biz-ops/facts_book_2003.pdf; Congressional Budget Justification for FY05 Foreign Operations, February 2004

¹¹ Christina B. Rocca, “U.S. Counterterrorism Policy toward South Asia”, testimony before the U.S. House of International Relations' Subcommittees on Asia and the Pacific, and on International Terrorism, Nonproliferation, and Human Rights, October 29, 2003, http://wwwc.house.gov/international_relations/108/rocc1029.htm (retrieved on May 25, 2005)

on improvements to its human rights record.¹² The US law obliges the government of Nepal to cooperate with the NHRC by granting access to all places of detention, and to resolve all security related cases involving individuals in government custody. The Nepalese government must also show that it is taking effective steps to end torture by its security forces and to prosecute those responsible for human rights violations. According to Amnesty International's assessment, none of these four conditions have been met. For instance, soon after the US congressional approval the Chief of Army Staff in a meeting with the Chief Justice agreed to respect court orders and cooperate with the NHRC.¹³ However, the Nepalese security forces have continued to re-arrest people immediately upon their release from the courts, including the Supreme Court. In addition, they have repeatedly put obstacles in the way of the NHRC's visits to detainees and they have so far shown little commitment to bring to justice those responsible for grave human rights violations. (For more details on how the Nepal government is failing to meet the conditions set out in the US bill, see pages 22-23.) Despite these concerns, the US government has continued to provide some military assistance reportedly funded out of the 2004 budget, rather than the 2005 one, thereby possibly circumventing the four specific human rights conditions imposed for the FMF program in the 2005 bill.

As stated above, the US government reportedly postponed the supply of all arms transfers and "lethal" military training to Nepal after 1 February 2005. It is unclear, however, whether or not training under the International Military Education and Exchange program (IMET), which could include some types of combat training, was postponed. According to the US Department of State's annual foreign military training report for 2005, Nepalese military personnel "take courses on civil affairs, infantry, ranger, and special operations training..."¹⁴

According to the specific language on Nepal passed in the US government-spending bill for the fiscal year 2005, the US Secretary of State may waive the four conditions on the basis of US national security reasons. This is a concern, especially in the context of the Nepal government's assertion that the RNA's operations form part of the global "war on terror". At the time of this writing, the US Secretary of State had not announced a decision on whether or not to deny military assistance for fiscal year 2005. Amnesty International understands that decisions on FMF and IMET assistance from the 2005 budget will be taken soon by the US State Department. In addition, a congressional decision on the budget for military assistance in 2006 is expected by October 2005.

¹² The Library of Congress, "Bill Summary & Status for the 108th Congress," n.d., THOMAS: Legislative Information on the Internet, <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR04818:@@L&summ2=m&#major%20actions> (retrieved on April 14, 2005)

¹³ KOL Report, "Court orders will be followed, says Army Chief", U.S. Press News Articles, November 26, 2004

¹⁴ US Department of State, "Foreign Military Training and DoD Engagement Activities of Interest," 2005, n.d. <http://www.state.gov/t/pm/rls/rpt/fimtrpt/2005/45676.htm> (retrieved on May 26, 2005)

In order for the US Secretary of State to certify that Nepal has met the conditions or provide a national security waiver, she must report to Congress first.¹⁵ The US administration has currently allocated about \$1.5million to Nepal under the FMF program and \$650,000 under the IMET program in the 2005 budget. The US President has also requested \$4million for FMF and \$650,000 for IMET for Nepal for 2006. According to his budget request, the priorities for this funding would be small arms, grenade launchers for the Rangers Battalion, night vision goggles, body armour, secure communication equipment, spare parts for mobility platforms and armour plating.

There is also a provision within US law called the “Leahy Amendment” that precludes any military unit anywhere in the world from receiving US military assistance, if those units are known to have been involved in gross human rights violations. Resulting from this law, any RNA officers selected for training by the USA have to be vetted. However, there is little transparency involved. Amnesty International is aware that one group of soldiers suspected of the killing in custody of Kanchha Kaji Dangol (see below) was denied training by the USA.

In April 2004, the Nepalese press reported joint US – RNA training using EC-130 surveillance aircraft.¹⁶ In September 2004, several Indian media reported that a large Bulgarian registered cargo plane ferrying US military equipment for Nepal was held up at Ahmedabad, India. According to the *Kathmandu Post*, a US spokesperson in Delhi said that the plane contained equipment to support US training for the Nepal police to develop anti-terrorist capacity. The spokesperson is reported to have said that the cargo included “simulated ammunition for the training exercises and arms intended for training and equipping the APF”.¹⁷ After an intervention by the US embassy in India, the cargo plane was released and allowed to continue its delivery to Nepal.

Other countries and private companies

Beyond weapons and logistical support acquired through military assistance, Nepal has also bought some equipment on the international arms market. For instance, on 23 May 2005, a consignment of ammunition allegedly bought in Germany is said to have arrived at Tribhuvan International Airport in Kathmandu.

The international law regime to monitor and control such transfers is very weak and the issue is largely left to national governments.¹⁸ Unfortunately, more often than not, national legislation is inadequate and riddled with loopholes. And even if one country does refuse to supply arms to a particular buyer, there is little to prevent another supplier stepping in to seal the deal. In Europe, the system put in place by the European Union (EU) Code of Conduct for

¹⁵ In some cases, Congress has objected to the issuance of a national security waiver by the Administration such as for Colombia..

¹⁶ *Himalayan Times*, 23 April 2004

¹⁷ *Kathmandu Post*, 30 September 2004

¹⁸ For a list of existing international and regional treaties on arms control, see Amnesty International, *Tracking Lethal Tools - Marking and Tracing Arms and Ammunition: a central piece of the arms control puzzle*, AI Index: ACT 30/022/2004, 1 December 2004, Appendix 3

Arms Exports is proving not fully effective for the protection of human rights.¹⁹ The Code adopted by the European Council in 1998 sets out common minimum standards for the management of, and restraint in, conventional arms transfers by all EU Member States. It is intended to “prevent the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability”. However, in practice, there are numerous reports of mostly secretive exports of military, security and policing equipment, technology and expertise from EU Member States to recipients who have used such items for grave human rights violations or breaches of international humanitarian law.

A growing number of arms companies export their expertise and arms technology which allow weapons to be made under licence in other countries. So, even if the latter countries are engaged in, or export arms to, conflicts in which gross human rights abuses are committed, this practice allows arms exporters to effectively bypass controls prohibiting arms sales. Governments in at least fifteen countries, including France, Germany, Israel, USA, UK and Switzerland, permit companies to license the production of their arms and ammunition in forty-five other countries. Many of these countries have even weaker arms-export controls, greatly increasing the likelihood that the weapons they produce will be used to carry out atrocities, and destroy lives and livelihoods.²⁰

The UK in 2001 granted standard individual export licences for equipment worth £6m to Nepal, including 6,780 assault rifles, 11 semi-automatic pistols, 4 shotguns and 2 sporting rifles, a total of 6,797 small arms.²¹ In addition, the UK government licensed the export to Nepal of components for small arms (including assault rifles), weapons sights and grenade launchers.²² Both transfers are an apparent violation of the EU Code of Conduct on Arms Exports (1998) which requires EU Member States to refuse export licences for equipment where there is a “clear risk” that it could be used for serious human rights violations. Information about the precise companies concerned has been difficult to obtain.

¹⁹ See Amnesty International, “Undermining Global Security: The European Union’s Arms Exports” 2004 (ACT 30/033/2004); a copy of the EU Code of Conduct for Arms Exports, 8 June 1998 can be found at:

[//www.smallarmssurvey.org/source_documents/Regional%20fora/European%20Union/EUCodeofConduct.pdf](http://www.smallarmssurvey.org/source_documents/Regional%20fora/European%20Union/EUCodeofConduct.pdf). EU Member States must also respect other relevant international obligations such as UN arms embargoes and agreements within the OSCE.

²⁰ For more details on these issues, see http://inside.amnestyinternational.be/arms/the_issues/loopholes.htm

²¹ UK Annual Report 2001, p222 states export licence granted for 6780 rifles to Nepal in 2001. Jane's Infantry Weapons 2003-4 states that the H&K G36 assault rifle is in use in Nepal

²² Although these licences may have been granted during a period of cease-fire between July and November 2001, Amnesty International believes that the UK government should have examined them in the context of the ongoing conflict, and should have considered the strong likelihood that such a large consignment of such weapons would be used for gross human rights violations by the Nepalese security forces. Under these conditions, the UK government should have suspended the transfer at least until those responsible for serious violations had been brought to justice and the Nepalese security forces had demonstrated that they can respect basic human rights and humanitarian standards.

In 2002, Germany refused on grounds of human rights to sell rifles to the Nepalese government. There were concerns that the German company involved, Hechler&Koch, which had a long-standing licensed production arrangement with Royal Ordnance, a UK company, had passed on the contract to the latter. This concern arose after reports that Hechler&Koch rifles were being used by the RNA. In the absence of meaningful transparency by the German government concerning arms export deliveries, Amnesty International has not been able to ascertain whether these rifles were exported to Nepal directly or indirectly from Germany and/or the UK.

A couple of months later, the Belgian government agreed to supply Nepal with 5,500 LMGs. This is despite Belgium being subject to the same controls under the EU Code of Conduct. Amnesty International understands that around 3,000 out of 5,500 Minimi LMGs ordered at Fabrique Nationale factory in Herstal, Belgium, were delivered to Nepal. A new export licence would be needed if Belgium were to want to send the remaining 2,500 weapons ordered by Nepal.

Similarly, in South Africa a new law requires that any arms exports have to be approved by an Arms Export Committee to ensure that they will not contribute to any human rights violations or violations of international humanitarian law. However, in 2003, the Committee approved the export of military communication equipment to Nepal.

Exports from India to Nepal have included the Lancer light attack helicopter, which has been produced in India since 1970 under licence from Eurocopter, a French company, and the Advanced Light Helicopter (ALH). The Lancer is equipped with two General Purpose Machine Guns (GPMGs). Between 2003 and September 2004, India has supplied a number of attack helicopters to Nepal which were manufactured by Hindustan Aeronautics Ltd (HAL), in close cooperation with Eurocopter. Whilst France remains the principal EU Member State involved with the production of these helicopters in India, a number of other European companies have also been reported as supplying components or sub-systems for helicopters manufactured by Hindustan Aeronautics. For example, the ALH reportedly contains Italian components for the flight control and the hydraulic system.

The close involvement of France in the production of attack helicopters in India, via licensed production agreements and the incorporation of components or sub-systems from other EU Member States into these helicopters raises serious concerns regarding the application of the EU Code of Conduct. Criterion 7 of the EU Code requires Member States to consider the "risk that... equipment will be diverted within the buyer country or re-exported under undesirable conditions," and to consider "the capability of the recipient country to exert effective export controls." The export of the Lancer and ALH helicopters from India to destinations unlikely to receive direct export licences from EU members such as Nepal suggests that EU Member States are not fully implementing the EU Code. Given the weakening of India's export controls, the continued involvement of EU-based companies in the production of Indian attack helicopters, seriously undermines the credibility of the EU Code and its effectiveness in stopping the proliferation of arms to conflict or human rights crisis zones.

Amnesty International's position on the arms and security trade²³

Amnesty International takes no position on the arms trade *per se*, but is opposed to transfers of any military, security or police (MSP) equipment, technology, personnel or training - and logistical or financial support for such transfers - that can reasonably be assumed to contribute to serious violations of international human rights law or international humanitarian law. Such violations include targeting civilians, indiscriminate killings, "disappearances", torture and ill-treatment. To help prevent such violations, Amnesty International campaigns for effective laws and agreed mechanisms to prohibit any MSP transfers from taking place unless it can reasonably be demonstrated that such transfers will not contribute to serious human rights violations. Amnesty International also campaigns for MSP institutions to establish rigorous systems of accountability and training to prevent such violations.

The international legal framework

A government faced by an armed revolt has the right to proportionally act against those who have taken up arms and to bring persons alleged to have committed crimes to justice. But every government must also uphold international humanitarian and human rights law and standards.

There are clear conventional and customary rules on the conduct of hostilities which outlaw certain means and methods of warfare.²⁴ These rules are designed to protect civilian lives to the maximum extent possible. Since 1964, Nepal has been a High Contracting Party to the Geneva Conventions of 1949, and the minimum rules governing all conflict including "armed conflict not of an international character" are laid out in Article 3 common to all the four Geneva Conventions. Common Article 3 provides for the protection of persons taking no active part in the hostilities. It prohibits, among other things, "*violence to life and person, in particular murder of all kinds*", humiliating and degrading treatment, the taking of hostages and more. The destruction and looting of civilian property and means of livelihoods are also forbidden by the Geneva Conventions.

It is a basic principle of international humanitarian law that persons fighting in armed conflict must, at all times, distinguish between civilians and combatants and between civilian objects and military objectives. The "principle of distinction", as this rule is known, is the cornerstone of international humanitarian law. It is a rule of customary international humanitarian law, binding on all parties to armed conflicts, whether international or non-international. Whereas it is not unlawful to target combatants for attack, specific rules are aimed at protecting civilians and other non-combatants – they must not be the object of attack. Indiscriminate attacks, including attacks on military objectives that are expected to cause

²³ For a general introduction, see Amnesty International and Oxfam, *Shattered Lives: the case for tough international arms controls*, October 2003 (AI Index: ACT 30/003/2003)

²⁴ Rules of customary international law are international rules derived from consistent state practice and consistent consideration by states of these rules as binding on them (*opinio juris*).

excessive loss of civilian lives or damage to civilian objects (the principle of proportionality) are similarly prohibited, as is the use of civilians as “human shields”.

Governments that ratify international human rights treaties have a particular obligation to ensure that the treaties they have ratified are upheld and that the human rights of the population living within the state are protected, respected and fulfilled. Yet the Nepal government has participated in massive violations of international humanitarian and human rights law.

International human rights law is applicable in armed conflicts, alongside international humanitarian law, though its applicability to armed groups is not straightforward. In addition, rules of customary international law apply. Some of these rules pertaining to international humanitarian law and human rights law, including the principles of distinction and proportionality, are generally considered applicable to the conduct of all parties to an armed conflict. As stated above, the CPN (Maoist) have endangered civilians by sheltering among them and by launching attacks from civilian areas. Its members have abducted and killed civilians. In some areas, thousands of villagers have been displaced. Whilst armed opposition groups are not themselves parties to international treaties on the protection of civilians in times of conflict, they are nevertheless bound to observe the laws of war embodied in common Article 3 of the Geneva Conventions and other conventional and customary rules on the conduct of hostilities.

The Rome Statute of the International Criminal Court includes a list of war crimes (when committed in internal armed conflict) in its jurisdiction. These war crimes include *inter alia*: murder of all kinds, mutilation, cruel treatment, torture and hostage taking, committed against those who take no active part in the conflict, intentionally directing attacks against the civilian population or against individual civilians. Furthermore, rape and other forms of sexual violence by combatants in the conduct of armed conflict are recognized as war crimes. The international community, through the Geneva Conventions, the Rome Statute and other international standards, has affirmed that individuals can be held criminally responsible for war crimes and crimes against humanity.

Some incidents of violations of human rights and humanitarian law to support calls for suspension of military assistance

The use of helicopters for unlawful bombing or shooting

The RNA has regularly made use of helicopters with machine guns strapped to the sides to attack groups of suspected Maoists, or Maoists fleeing the scene after combat with the security forces. They have also dropped 81mm mortar bombs from helicopters. Such operations from the air appear to have often disregarded the basic requirement under international humanitarian law to take every precaution to distinguish between civilian persons and objects, and military objectives, or seem to have ignored the principle of

proportionality. In some instances, the bombing or shooting appears to have deliberately targeted civilians and civilian objects.

In one incident at Beni, the headquarters of Myagdi district, a helicopter was used to drop mortar bombs in the aftermath of a Maoist attack in the night of 21 March 2004. In total, 19 civilians were killed during the attack, of which at least 6 were killed by a mortar dropped from an RNA helicopter on the densely populated Beni bazaar.

In a similar incident on 12 April 2004, there was bombing and shooting from a helicopter on Bidhya Mandi High School in Achham district where Maoists were gathered. Seven civilians and 40 Maoists were killed. Among them were at least three children. The use of helicopters to attack mass meetings in the context of this conflict is extremely worrying given that the CPN (Maoist) routinely forces villagers to attend such meetings.

Chandra Bahadur Praja, an 82-year-old man sitting in the sun was killed by shooting from a helicopter at Kaule, Chitwan district, on 5 January 2004. In a press release issued on 8 January, the Ministry of Defence claimed he had been shot dead during an “encounter” between Maoists and the security forces in the village.

After the imposition of the state of emergency and the censorship on 1 February 2005, it has been very difficult to obtain reliable information regarding the human rights situation in remote districts. While there have been continuing reports of shooting and bombing from helicopters by the RNA in which Maoist fighters and civilians (including children) have been killed or injured, it has been difficult for Amnesty International to get confirmation. Amnesty International has learned that a 12-year-old girl, Prem Kumari Wali, was injured in an air strike at Khara, Rukum district, around 7.30pm on 11 April 2005. Similarly, 14-year-old Chudamani Gautam of Khalanga village, Rolpa district, was injured by shooting from a helicopter while returning home after working on a road construction project initiated by the Maoists on 14 April 2005.

In the night of 8 May 2005, 5-year-old Lukhidevi Shah and her 8-year-old brother, Sanjeev Shah, were killed by an 81mm mortar bomb dropped from an RNA helicopter during a Maoist attack on Bandipur army camp in Siraha district. Similarly, Rekha Mukhiya, a 25-year-old pregnant woman and her relative 32-year-old Jogendra Mahara were killed when another mortar bomb hit a house nearby. Two other bombs were dropped but were not known to have killed anyone. Five civilians are also alleged to have died as a result of gunfire from the army barracks. A further 19 civilians were injured. The army camp was situated in a building formerly occupied by the Kamalamai Irrigation Project, in the midst of a *dalit* community. Villagers reported that the Maoists had not permitted them to leave the village and that Maoist fighters were shooting at the army camp from amid the houses.

In all above incidents, it is clear that the international humanitarian law principles of distinction and proportionality were not upheld.

Violations with small arms, light weapons and ammunition

On 17 August 2003, while a cease-fire was in force, the security forces killed one person and took 19 others, including five women, into custody at Doramba, Ramechhap district. They

were apparently unarmed Maoists attending a wedding. The 19 were marched with their hands tied to Dandakateri, where they were alleged to have been summarily executed. An investigation team appointed by the NHRC found that the majority had been shot in the head at close range. The RNA initially claimed that the victims were rebels who had been killed during an ambush. After widespread outcry, the RNA conducted an investigation and instituted a court martial against the Major who had been in charge of the platoon involved. The Major was found to have been responsible for dereliction of duty and was sentenced to two years' imprisonment. The court also demoted a Junior Commissioned Officer involved in the massacre, and recommended that the police take necessary action against an inspector who was part of the team. To Amnesty International's knowledge, to date, no one has been charged with murder and it is not known whether any action was taken against other members of the platoon involved in the killings.

Amnesty International obtained a bullet casing found on the scene of the killings at Dandakateri. It is a 5.56mm NATA round produced by Ordnance Factory, Varangoan, India. According to experts who examined the casing, it was most likely fired from a 5.56mm rifle, thought to have been an Indian manufactured INSAS weapon.

Killings of civilians

Unlawful killings have been a constant feature of the conflict in Nepal and have been carried out by both sides. Security forces have been responsible for extrajudicial executions of civilians and suspected members of the CPN (Maoist) in their custody, as well as the unlawful killing of armed members of the CPN (Maoist) who could have been taken into custody. Among the civilians killed have been many children.²⁵ The CPN (Maoist) have abducted and killed civilians who are associated with political parties or the state, who defy its orders or whom it accuses of certain "crimes", as well as *hors de combat* security forces personnel.

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

For example, on 22 March 2005, three students, Narayan Bahadur Kanauji Magar (aged 17), Tek Bahadur Gaha (aged 15) and Dal Bahadur Darlami (aged 15) were shot and killed by plain clothes security forces personnel near Tansen, Palpa district, while they were collecting money for a religious festival. Following protests from the family and local community the RNA announced an investigation into the killings.

In another typical case reported from Sanichari, Morang district, four civilians were killed by 15 security forces personnel in late January 2005. According to eye-witnesses, the security forces were dressed in civilian clothes but wearing Maoist bandanas. They came running into the village telling villagers they were being chased by the army and asking them to help find a hiding place. Another group of security personnel, this time wearing military

²⁵ See among others, Amnesty International's report: Nepal: Killing with impunity, January 2005 (AI Index: ASA 31/001/2005)

uniforms, then came from the other direction and killed the people escorting the first group. Afterwards, the RNA reportedly came to the village and compelled villagers to sign a statement saying those killed were Maoists killed in an “encounter”. Among the victims was a Nepalese migrant worker who had come home on holiday from Malaysia.

One of the gravest examples of impunity has been the killing of 35 labourers involved in the construction of an airstrip at Suntharali, Kalikot district, on 24 February 2002 apparently in reprisal for a Maoist attack on Mangalsen, the headquarters of nearby Achcham district, in which 56 RNA personnel were killed. The labourers were unarmed and had no connections to the Maoists. To date, no action has been taken against the RNA personnel involved.

The international community’s response to the human rights crisis in Nepal

As the conflict escalated in the late 1990s, Nepal managed largely to escape international criticism. After 11 September 2001, the Nepalese authorities regularly presented its military campaign as a fight against “terrorism” and on that basis received increasing military assistance, particularly from the USA.

It was not until 2004 and 2005 that the crisis in Nepal finally became the subject of discussion at the yearly session of the UN Commission on Human Rights (UNCHR). In 2004, the UNCHR issued a Chairperson’s Statement on the situation in Nepal, and the government made a high-profile 25-point commitment to respect human rights. As concerns mounted, there were a number of visits by UN bodies and diplomatic delegations focusing on human rights. In December 2004, the WGEID and in January 2005, the High Commissioner for Human Rights, Louise Arbour, visited the country.²⁶ The 2005 session of the UNCHR saw much stronger initiatives on Nepal, largely because of the imposition of the state of emergency on 1 February 2005 and the lack of implementation of the 25 commitments made by the government in 2004.

On 20 April 2005, the UNCHR adopted a resolution on Nepal calling on the authorities "to immediately reinstate all civil and political rights; to cease all State of Emergency related and other arbitrary arrests; to lift the far-reaching censorship; to restore freedom of opinion, expression and the press as well as the freedom of association; to immediately release all detained political leaders and activists, human rights defenders, journalists and others; to allow all citizens to enter and exit the country freely and to respect all international and national obligations as well as the 25 points of the commitment of 26 March 2004." It further sets a number of benchmarks, including: the clarification of the fate of all “disappeared”; the amendment of security legislation to bring it in line with international standards; the combating of impunity by prompt, independent and impartial investigations of

²⁶ For the report of the WGEID visit, see UN document, E/CN.4/2005/65/Add.1 of 28 January 2005

all alleged violations of human rights and international humanitarian law and, as appropriate, the initiation of prosecutions through the criminal justice system.²⁷

During the session of the UNCHR of 2005, the Government of Nepal also signed a Memorandum of Understanding with the Office of the High Commissioner for Human Rights (OHCHR) to establish an OHCHR Office in Nepal. According to the agreement, the OHCHR Office in Nepal will monitor the observance of human rights and international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country. Louise Arbour, the High Commissioner for Human Rights, emphasized that "breaking the cycle of serious and systematic abuses will be the first essential step toward achieving peace and reconciliation in Nepal".²⁸ A first group of about twelve human rights monitors and support staff arrived in Nepal in early May. A larger contingent is to be deployed throughout the country in the coming months. According to the UNCHR resolution, the High Commissioner should submit periodic analytical reports on human rights abuses committed by either side of the conflict in Nepal to the UNCHR, the General Assembly and the UN Secretary-General.

Arguments for providing military assistance and Amnesty International's response

As stated above, one of the main arguments put forward by the Government of Nepal to justify its requests for military assistance is that its military operations form part of the "global war against terror". Since 11 September 2001, the USA in particular has responded to the situation in this context.

One of the other main arguments in favour of military assistance is that the RNA is poorly equipped and needs help. Up until its deployment in late 2001, the RNA had been largely a ceremonial force and there was a need for it to be re-orientated towards counter-insurgency operations. In that context, it acquired new basic equipment, communication, night vision and bomb disposal equipment. Amnesty International acknowledged the specific need of the RNA for some of the logistical assistance at the time provided it conducted operations according to international humanitarian law. However, it wishes to point out that some of the apparently logistical assistance provided, such as helicopters, have been used to commit violations of international human rights and humanitarian law, while others, such as STOLS, have the capacity for such misuse, even if the agreement under which they were provided specified their use for non-lethal purposes. In the case of helicopters, for instance, there is sufficient evidence to suggest that these have been used by the RNA to indiscriminately target civilians in breach of international humanitarian law. In addition, it is obvious that foreign governments that have provided such equipment have had difficulties in verifying the end use of such supplies in a systematic way and have not put in place any

²⁷ For the full text of the resolution, see Appendix

²⁸ OHCHR press release, *UN High Commissioner for Human Rights appoints Chief for Nepal Monitoring Operation*, 29 April 2005

stringent monitoring mechanisms, including through independent reporting where possible (see also below).

The US and UK governments also refer to the fact that they provide training in human rights and humanitarian law as part of a wider strategy to improve professionalism in the RNA. The ICRC has been providing humanitarian law training to the security forces. Indeed, it was under heavy international criticism that the RNA agreed to introduce human rights and international humanitarian law training for recruits and officers. However, Amnesty International is not aware of any credible impact assessment of such training having been carried out. The continuing widespread level of both violations and impunity for perpetrators among the security forces suggests that there has been little impact so far. There are also reports that the overall length of training for officers is being reduced from three years to ten months and for recruits from nine to six months due to pressure to deploy.²⁹ This is in itself an ominous sign that newly deployed recruits may be ill-disciplined and more inclined to commit human rights violations. Human rights and humanitarian law training may help reduce human rights abuses but will not stop them as long as the security forces are able to commit violations with impunity.

Amnesty International welcomes initiatives taken by foreign governments to provide training in human rights and international humanitarian law to RNA soldiers and commanders. However, the organization is concerned that the provision of such training may be used as sufficient proof that supplies of arms need not be restricted. Amnesty International would like to point out that there is little use providing such training without establishing adequate systems of accountability and that in any event it is the RNA's actual record in respecting international law that should be the decisive consideration, rather than the training its members have undergone in international law.

An additional argument used by the USA particularly relating to the provision of training is that systems of vetting are in place to screen out those responsible for gross human rights violations. Amnesty International acknowledges the USA's vetting policy but, as stated above, is concerned that there is no or little transparency involved – who exactly is being vetted by whom according to what standards? It is also not clear whether other governments providing training, such as the UK, have similar policies.

The RNA has also argued that it is investigating reports of human rights violations and prosecuting those responsible. Indeed, Human Rights Cells were created in the RNA as well as in the police and APF in response to growing international criticism. However, these have been ineffective and largely cosmetic. For example, in February 2005 the Inspector General of Police provided Amnesty International with information about the number of complaints lodged with the Human Rights Cell established by the police in January 2001 and the actions taken by the police authorities. On examination of the data, Amnesty International found that out of over 1,500 complaints received during 2004 in only 18 cases some level of disciplinary action was taken. In a mere two cases (each concerning rape, including one of a minor), criminal prosecutions were pending. Similarly, information provided by the RNA

²⁹ *Himalayan Times*, 25 April 2004

revealed a disturbing pattern of extremely light punishments imposed by courts martial on members of the RNA accused of serious crimes, including murder and rape. For instance, soldiers who were alleged to have shot dead Kanchha Kaji Dangol in March 2002, supposedly while he tried to escape from their custody were sentenced to three months' imprisonment and their commander was discharged from the army. In many cases, dismissal, demotion, forfeiture of promotion and the granting of compensation appeared to be the only action taken against perpetrators of grave violations of international human rights and humanitarian law.

Another argument for the continued supply of military assistance to Nepal is that conditions are attached to their use. In the US, end use controls are automatic on all arms transfers but there are concerns about the effectiveness of such controls. In relation to Nepal, there are additional conditions imposed by the US 2005 government-spending bill. The USA must cut off military aid to the Nepalese Government and RNA unless conditions set out in the 2005 bill have been met – this is, unless the Secretary of State waves the conditions if she determines and reports to the House and Senate Committees on Appropriations that to provide military aid to Nepal is in the national security interests of the USA. In an interview with *Nepali Times*, 27 May – 2 June 2005, US ambassador to Nepal, James Moriarty confirmed that “non-lethal” military assistance had continued and that “lethal” assistance was kept under review. He pointed to the threat of the RNA running out of ammunition and claimed that NHRC had started to receive better access around March 2005 and that the cooperation with the Supreme Court by the RNA was improving to the extent that there were no writs of *habeas corpus* outstanding. There are concerns that these comments by the ambassador may herald an assessment by the US State Department that the four conditions set in the 2005 appropriation bill are being met (see also above, page 8 and below, page 22 - 23).

The issue of conditionality in relation to military supplies to Nepal has also been debated in the UK Parliament. In May 2004, the UK Ministry of Defence (MOD) noted to the House of Commons that it was providing gifts of “non-lethal” military equipment to the Nepalese Government, using funds from the UK Government’s GCPP. The gifts included two Islander STOL light surveillance aircraft and associated intelligence equipment, 425 high frequency radios and accessories with 10 base stations and 50 repeater stations. The MOD claimed that: “the two short Take off and Landing (STOL) BN2T valued at £2.7M forms part of the surveillance capability. They are unarmed and do not constitute a significant transport capability. We will set out prior to the gift in a letter to the Government of Nepal the conditions on use of these aircraft including that they remain unarmed.”

There is concern however that the implementation of such conditions is hard to verify once the STOL or other equipment involved is in operation. It has to be questioned whether it is possible to have effective end use controls in a country such as Nepal, large parts of which are inaccessible. According to the 2000 Consolidated Criteria on Arms Exports, the UK Government will not export where there is a clear risk that the equipment will be used for internal repression or external aggression. However, military gifts appear not to be subject to an assessment against these criteria. The government has stated with regards to previous gifts to RNA, including two M17 helicopters: “We have no grounds to believe that the aircraft

gifted by the UK have been misused”.³⁰ However, specifically regarding the STOL aircraft referred to above, in practice there is only a “gentlemen’s agreement” between the Commander of the RNA and the UK ambassador which outlines the “understanding” that the helicopters will be used for “non-lethal” purposes.³¹ Without a stricter system of end use monitoring of military supplies there is a real danger that supplies might be used in an offensive way. The Foreign Secretary in response to a query in Parliament in December 2003 following the news that two STOL were to be supplied to Nepal stated the following: “The UK Government is committed to supporting the Government of Nepal and working to end the suffering of the Nepalese people. ... Our non-lethal support aims to enhance RNA capability across a range of military activities”.

The foreign governments that have been supplying military assistance are also arguing that it is essential as the Maoists are also buying weapons. It is correct that they are. But it is not disputed that the RNA is a far superior military power. This has been proven for instance by the fact that while Maoists have successfully attacked several district headquarters, they have not been able to maintain control of them for any length of time. On the other hand, it is also a fact that many weapons delivered to RNA end up in CPN (Maoist) hands. Maoists are said to have INSAS, LMG, SMGs, AK47s, Galil and a GPMG looted from an army barracks in Dang in 2001. This GPMG was subsequently tripod mounted and is utilised for anti-aircraft/helicopter firing. It was photographed in early 2004 at the launch of the “people’s government” in Jajarkot and more recently at Sankhuwasabha in May 2005. One of the most lethal tactics of the Maoists is the planting of bombs (IEDs) along road sides. Explosives used by the Maoists are supplied through the Nepalese diaspora living in northern India. Via the open border, they supply basic explosives from road building and other works projects, which are later packed into pressure cookers or other utensils to make bombs. In June 2004, eleven Maoists were arrested in Bihar, India reportedly after they had gone there to buy arms from some of the Maoist groups based in India. As the conflict intensifies, it is likely that the CPN (Maoist) will become increasingly involved in the regional arms trade.

In addition to the concerns regarding the provision of military assistance set out above, the following arguments are most compelling: more and increasingly sophisticated military assistance increases the risk of civilian casualties when provided to an army functioning in a context of impunity; much transport, logistical and communication equipment such as helicopters and radar devices has potential dual uses (see above) and can equally be used to facilitate grave abuses when in the wrong hands; increasingly sophisticated weapons provide parties to a conflict with a false sense that “the war can be won” - yet given the topography of Nepal and hit-and-run tactics of the Maoists, military observers unanimously agree that neither side will be strong enough to win the war. Instead, there is a real danger that the military assistance provided may prolong and exacerbate the conflict.

³⁰ Hansard, 10 May 2004, Column 130W, Adam Ingram in response to Mr Caton, MP
³¹ <http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040510/text/40510w37.htm>

Assessment of US conditionality for future military aid

In November 2004, the US Congress set four conditions on military assistance to Nepal. Below is Amnesty International's assessment of how these conditions have not been met:

1. Regarding habeas corpus: the security forces continue to blatantly undermine court orders for the release of prisoners who have been unlawfully detained. On 10 March 2005, for instance, the Court of Appeal in Birendranagar, in Surkhet, ordered the release of Lok Prasad Panta, a social worker, after his wife filed a habeas corpus petition on his behalf. Panta was freed, but as he was returning home - accompanied by family members, his lawyer, journalists, and human rights activists - he was stopped by police officers, who took him away in a police van. As of early June 2005, his whereabouts remained unknown and there were grave fears for his safety.
2. The NHRC, which has faced some degree of obstruction from the government since its inception, was unable to carry out many of its core functions after 1 February. In violation of its mandate, NHRC staff and commissioners were repeatedly prevented from visiting those detained following the king's seizure of power, including senior political leaders under house arrest. Some NHRC commissioners were also prevented from travelling outside Kathmandu to carry out their duties. The commissioners were repeatedly denied unimpeded access to all places of detention. The government and security forces also consistently refused to engage with the NHRC or address its concerns. For example, despite the NHRC Chairperson requesting a meeting with the Chief of Army Staff in September 2004, it was not until the US Congress passed a law making military assistance to Nepal dependent on RNA cooperation with the NHRC in November 2004 that the Chief of Army Staff finally agreed to meet the NHRC. However, there was little change in the level of cooperation subsequently. Around the time of the UNCHR in Geneva (mid-March to end of April 2005), the RNA was granting more access to the NHRC. However, once the UNCHR finished, the NHRC once again encountered difficulties in obtaining access to detainees. For instance, it was denied access to detainees held at the Pahara Barracks of the RNA at Tripureshwor on 26 April. On 27 May 2005, after a change in the statutory appointment procedure introduced by Royal Ordinance, the Chairman of the NHRC was reappointed for a further five-year term; the mandate of all other Commissioners was not renewed. There were grave concerns that the process used for these appointments was in breach of the Paris Principles and that they signified a loss of independence and credibility of the NHRC.³²
3. and 4. The government has not taken effective steps to end torture and ill-treatment by the security forces nor to prosecute members of such forces who are responsible

³² The Paris Principles were formulated at a UN-sponsored meeting of representatives of national human rights institutions in 1991 and subsequently endorsed by the UN Commission on Human Rights and UN General Assembly. They are available at www.apf.hreoc.gov.au/un_national/paris_principles/

for gross violations of human rights. The government and military's lack of commitment to ending impunity can be seen most starkly in its slow efforts to prosecute those responsible for the extrajudicial executions of 19 unarmed CPN (Maoist) cadres by RNA soldiers in Doramba village, Ramechhap district, on 17 August 2003. Though the case received wide publicity and was the subject of a detailed investigation by the NHRC, the government stalled prosecution efforts for more than a year, refusing to name publicly those indicted and pursuing the case through closed trials before a military tribunal. The major who commanded these troops was sentenced to just two years' imprisonment – which is typical of the light sentences imposed in the handful of cases against the security forces that have been pursued to date. All prosecutions of army personnel accused of human rights abuses take place through courts martial. This means that the justice process is not transparent, and that victims and their families are not able to hear the evidence. The courts martial also result in much more lenient sentences than would be imposed by civilian courts, even for the most serious crimes.

RNA Deployment in UN forces

The RNA is a major contributor to UN military missions around the world. Since 1958, nearly 40,000 Nepalese soldiers have served in UN missions. In April 2004, the RNA had 2,100 troops deployed on missions, including in Sierra Leone, Congo, East Timor, Kosovo, Ethiopia, Eritrea, Israel and Lebanon. Participation in peacekeeping operations is a significant source of revenue for the government, the RNA and for the participating soldiers. It is seen as a great privilege for individuals to be sent on peacekeeping duties.

Amnesty International has received reports that soldiers who were suspected of involvement in extrajudicial executions have subsequently benefited by being deployed on UN peacekeeping duties. For example, at one stage, Amnesty International was told by army officials that delay in the court martial of soldiers allegedly involved in the killings at Doramba in August 2003 (see above) had been due to the suspects being on UN peacekeeping duties. This practice is one of the factors fuelling the climate of impunity and the widespread disrespect for existing legal remedies among the security forces, including at the higher levels. It has also been manifest in the consistent undermining by the security forces of the remedy of *habeas corpus* (see above).

In a letter to UN Secretary-General, Kofi Annan, of 14 March 2005, Amnesty International requested that any member of the RNA leaving Nepal to serve in UN peacekeeping forces be first thoroughly vetted by the UN to ensure that they have not been involved in human rights violations. In a response of 11 April from the Under-Secretary-General for Peacekeeping Operations, Amnesty International was assured that the UN had discussed this issue with the Nepalese authorities. However, it appeared that the UN had accepted assurances of vetting by relevant Nepalese authorities rather than installing a separate procedure within the Department of Peacekeeping Operations (DPKO).

In an interesting development on 5 May 2005, the RNA announced that it had called back some of its members from UN peacekeeping duty in Congo and had started a probe in

their alleged involvement in sexual abuses while on duty in Africa. "If found guilty, strong action will be taken against the RNA personnel in accordance with the RNA Act," the RNA spokesperson reportedly stated.

Amnesty International continues to seek assurances from DPKO that it will monitor closely assurances received from the Nepalese authorities of investigation and prosecution of alleged perpetrators of human rights violations, including as a means to ensure better respect for human rights in the future. If effective action were to be taken in this regard, it would constitute a significant departure from the long-term practice of widespread impunity and lack of accountability among the Nepal security forces.

Amnesty International recommendations

The easy availability of arms and related supplies and patronage of larger military powers amidst the current climate of impunity, the militarization and erosion of civilian institutions, the breakdown of the rule of law and threat to the Nepalese human rights community all contribute to allowing human rights violations to take place in Nepal on a large scale. In order to halt the abuses, all parties – the government, the military, the palace, the CPN (Maoist) and the international community – must act, among other things, to end impunity and to actively respect and protect human rights. This requires building strong and effective human rights monitoring systems that are respected by all parties, investigating abuses, and ensuring that those reasonably suspected of responsibility for violations are prosecuted in the civilian courts, so that justice is both done and seen to be done. Such action can send an important signal that abuses will no longer be tolerated and help restore the faith of the Nepalese people in the rule of law.

Below follow a number of key recommendations specifically aimed at breaking the cycle of violations and impunity and promoting greater accountability for arms transfers and military assistance to Nepal. These recommendations should be read in conjunction with other more detailed recommendations aimed at improving the human rights situation in Nepal which have been made over recent years by the UN, Amnesty International and other international and national human rights organizations.³³

Amnesty International is calling on the Government of Nepal and the CPN (Maoist):

- To fully and speedily implement the recommendations of the UNCHR as contained in its resolution of 20 April 2005 (see Appendix)
- To cooperate fully with the OHCHR, other UN agencies, the NHRC, national and international non-governmental organizations in all efforts to ensure the rule of law and respect for human rights.

³³ For details of recommendations made by Amnesty International, see <http://web.amnesty.org/library/eng-npl/reports>

Amnesty International is calling on the Government of Nepal:

- To put in place all necessary measures to break the cycle of violations and impunity, including by instituting prompt and impartial investigations into reports of grave human rights violations and bringing those responsible to justice before a civilian court
- To pledge to act promptly on the findings of the OHCHR and implement its recommendations
- To sign and implement a mutually binding Human Rights Accord, in order to ensure respect for human rights at all times during the conflict and to build confidence towards future peace negotiations
- To disband all state-armed village defence groups and ensure that security operations are carried out by law enforcement personnel who have received the necessary training and qualifications and who operate in an official framework which ensures accountability
- To provide the NHRC and ICRC unrestricted access to all detainees
- To demonstrate that all its military personnel receive effective operational training designed to uphold international human rights standards and international humanitarian law.

Amnesty International is calling on the CPN (Maoist):

- To abide by their stated commitments to respect international humanitarian law
- To end all attacks on civilians as well as indiscriminate attacks
- To put an immediate halt to the recruitment and deployment of children in military activities
- To stop countrywide blockades as these have severe impact on civilians, especially poor people
- To pledge commitment to act promptly on the findings of the OHCHR and implement its recommendations
- To investigate abuses by its forces and ensure that those cadres who commit human rights abuses are removed from their posts
- To sign and implement a mutually binding Human Rights Accord, in order to ensure respect for human rights at all times during the conflict and to build confidence towards future peace negotiations.

Amnesty International is calling on the international community:

- To suspend military and security assistance and supplies to Nepal - including “non-lethal” and “dual use” equipment that is in danger of being abused -

until there is clear evidence against agreed benchmarks of a commitment by the Nepal government and security forces to uphold international human rights standards and international humanitarian law, including the full and speedy implementation of the UNCHR resolution of 20 April 2005

- To vet all RNA personnel recommended for training to screen out those responsible for gross human rights violations and fundamental breaches of humanitarian law
- To review the impact of training in human rights and international humanitarian law provided to date and the systems of accountability within which trainees operate
- To fully support the OHCHR monitoring mission.

Amnesty International is calling on the governments of the G8:

- To discuss military and security assistance and supplies to Nepal and urgently review this and the human and other costs of their inadequate arms export policies; make a determined effort with other governments to address the Nepal human rights crisis in a manner that is consistent with relevant principles of international law and specifically to support the observance of human rights and humanitarian principles in the establishment of an effective international Arms Trade Treaty without delay. Given the long lifecycle of most arms and security equipment and technology - and therefore a risk of possible abuse for an extended period - there should be a rigorous interpretation of the basic principle that no military and security exports should be permitted where it is reasonable to assume that these items will contribute to grave human rights abuses or breaches of international humanitarian law.

Amnesty International is calling on the UN:

- To verify that Nepalese troops who are to be deployed in peacekeeping operations have not been implicated in gross and persistent human rights violations in Nepal
- If the conduct of the RNA does not improve, and if the Nepalese authorities do not take effective steps to investigate cases where there are reasonable grounds to believe that RNA personnel have committed or been complicit in human rights violations and take legal or disciplinary action as appropriate, to review whether RNA personnel should continue to be deployed in UN peacekeeping forces.

Appendix: UN Commission on Human Rights Resolution 2005/78

Technical cooperation and advisory services in Nepal

The Commission on Human Rights,

Recalling that Nepal, having ratified six major human rights treaties, has freely accepted the obligation to protect the human rights of the people of Nepal,

Recalling the importance of the implementation of Security Council resolutions 1265 (1999) of 17 September 1999 and 1296 (2000) of 19 April 2000 on the protection of civilians in armed conflict, 1325 (2000) of 31 October 2000 on women and peace and security and 1539 (2004) of 22 April 2004 on children and armed conflict,

Seriously concerned at the growing number of civilian victims of the ongoing conflict since the breakdown of the ceasefire on 27 August 2003,

Deeply concerned about the situation of human rights in Nepal, including violations attributed to the security forces, in particular unlawful killings, all forms of sexual violence, forced displacement and disappearances, and attacks against the physical integrity and safety of political leaders and party activists, human rights defenders, journalists and others and also deeply concerned about the prevailing situation of impunity,

Strongly condemning all acts of violence against civilians and other criminal acts such as attacks against life, physical integrity and personal liberty and safety, including unlawful killings, all forms of sexual violence and extortion, committed by members of the Communist Party of Nepal (Maoist),

Conscious of the fact that the Commission's appeals are mainly directed to the Government of Nepal as it is subject to international obligations; additionally gravely concerned at the serious breaches of humanitarian law committed by members of the Communist Party of Nepal (Maoist), which may constitute war crimes and crimes against humanity,

Recalling His Majesty's Government of Nepal's declaration of commitment on the implementation of human rights and international humanitarian law of 26 March 2004,

Bearing in mind the Chairperson's statement on human rights assistance to Nepal (E/2004/23-E/CN.4/2004/172, para. 716),

Taking note of the efforts of the Government of Nepal in establishing a Human Rights Promotion Centre in the Prime Minister's Office and human rights cells within the security forces,

Taking note of the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Nepal (E/CN.4/2005/65/Add.1) and the report of the

Office of the United Nations High Commissioner for Human Rights on its activities in Nepal, including technical cooperation (E/CN.4/2005/114),

***Expressing its deep concern* about the serious setback to multiparty democracy and the weakening of the rule of law through the royal proclamation and the declaration of a state of emergency of 1 February 2005,**

***Deeply concerned* about the arbitrary arrests and secret detention, in particular of political leaders and activists, human rights defenders, journalists and others, and about continued enforced disappearances, as well as allegations of torture,**

***Welcoming* the signing of the Agreement between the Government with the Office of the High Commissioner concerning the establishment of an office in Nepal on 10 April 2005, while also taking into account actions taken by the Government in some cases of human rights violations,**

***Taking note* of the visit of the Representative of the Secretary-General on human rights of internally displaced persons and the invitation extended to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,**

1. *Calls upon* the Government of Nepal urgently to restore the multiparty democratic institutions enshrined in the Constitution of Nepal and to respect the rule of law without exception;

2. *Requests* the Government of Nepal to bear in mind that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights, in particular the right to life and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, are recognized as non-derogable in all circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations, as stated in general comment No. 29 (2001) on derogations to the Covenant during a state of public emergency of the Human Rights Committee;

3. *Calls upon* the Government of Nepal to reinstate immediately all civil and political rights, to cease all state of emergency-related and other arbitrary arrests, to lift the far-reaching censorship, to restore freedom of opinion, expression and the press as well as the freedom of association, to release immediately all detained political leaders and activists, human rights defenders, journalists and others, to allow all citizens to enter and exit the country freely and to respect all international and national obligations as well as the twenty-five points of the commitment of 26 March 2004, as freely undertaken by Nepal;

4. *Strongly condemns* the repeated practices of members of the Communist Party of Nepal (Maoist), such as:

(a) *Unlawful killings, rape, extortions, forced displacement, mass abduction and forced recruitment and labour targeted at civilians;*

(b) **Persecution and attacks against the life, integrity and safety of political leaders and party members, human rights defenders, journalists, peace activists and others;**

(c) **Attempts to blockade Kathmandu and other urban areas with a view to cutting off supplies of food and other essential supplies to the civilian population;**

5. ***Firmly condemns* the recruitment and use of a large number of children in Maoist forces and urges the members of the Communist Party of Nepal (Maoist) to stop the recruitment of children as well as to demobilize immediately those currently participating in these groups, as set out in Security Council resolution 1539 (2004);**

6. ***Strongly urges* the members of the Communist Party of Nepal (Maoist) to comply with international humanitarian law and to respect the legitimate exercise of all human rights by the people of Nepal as well as immediately and unconditionally to cease and renounce violence, disarm, and enter into negotiations with the genuine intention of rejoining the political process, thereby helping to ensure that the people of Nepal are free to choose their own Government;**

7. ***Calls upon* all parties to the conflict to respect human rights and international humanitarian law, in particular common article 3 of the Geneva Conventions of 12 August 1949, as well as to act in conformity with all other relevant standards relating to the protection of civilians, particularly of women and children, and to allow the safe and unhindered access of humanitarian organizations to those in need of assistance;**

8. ***Urges* the Government of Nepal:**

(a) **To take all necessary measures to prevent and put an end to extrajudicial and summary killings, all forms of sexual violence, enforced disappearances, arbitrary arrests, illegal incommunicado detention as well as torture and other cruel, inhuman or degrading treatment or punishment;**

(b) **To take all appropriate measures to clarify the fate of all cases of persons allegedly victims of enforced disappearance, including, where appropriate, taking into account the work of the national committee and international expert bodies in this field;**

(c) **To ensure that all anti-terrorism and security laws and measures are in accordance with all relevant international norms and standards as well as the Constitution of Nepal;**

(d) **To take appropriate measures to ensure the protection of the civil and political rights of political leaders and activists, human rights defenders, journalists and others;**

(e) **To take appropriate measures to protect women and girls from gender-based violence, as emphasized by the Security Council in resolution 1325 (2000), and to prevent and prosecute traffickers in women and children;**

(f) To take all necessary measures to protect and respect the human rights of refugees, including the principle of non-refoulement;

(g) To combat impunity by ensuring that all allegations of violations of human rights and international humanitarian law are investigated promptly, independently and impartially and, as appropriate, prosecuted through the criminal justice system, in accordance with the Constitution of Nepal and international standards of justice, fairness and due process of law;

(h) To begin urgently a national dialogue with political parties to restore peace, stability, the promotion and protection of human rights and to safeguard democracy;

(i) To request the technical assistance of the international community and the United Nations in planning free and fair local elections, following their announcement;

9. *Calls upon* the Government of Nepal to provide urgent protection and assistance to internally displaced persons, taking account of the particular needs of women and children, to facilitate their safe return, reintegration and resettlement elsewhere in the country, as appropriate, and to develop appropriate policies and legislation in this regard, using the Guiding Principles on Internal Displacement;

10. *Also calls upon* the Government of Nepal to ensure the independence and effectiveness of the judiciary, and therefore urges the Government to safeguard effective judicial remedies, in particular respect of habeas corpus orders, and to comply fully and faithfully with all judicial orders;

11. *Further calls upon* the Government of Nepal:

(a) To ensure continued independence, institutional continuity and stability of the National Human Rights Commission of Nepal in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134 of 20 December 1993 (the Paris Principles) and the Human Rights Commission Act, 2053 (1997);

(b) To ensure full and unimpeded access without prior notice of the National Human Rights Commission of Nepal, the Office of the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross to all persons held in detention, including places of detention under the authority of the Royal Nepalese Army;

(c) To provide necessary support to the National Human Rights Commission of Nepal, including its regional offices, in carrying out its statutory mandate and to ensure the necessary protection by, and cooperation of, governmental entities, including the security forces, to enable the members of the National Human Rights Commission to promote and protect human rights in Nepal;

(d) To support the Office of the High Commissioner in its continued assistance to the National Human Rights Commission;

12. *Welcomes* the efforts of the Government of Nepal to comply with the obligation to submit periodic reports to the respective treaty bodies, in particular under the International Covenant on Civil and Political Rights, and urges the Government to implement their recommendations, particularly the recent recommendations of the Committee on the Elimination of Discrimination against Women of January 2004 and of the Committee on the Elimination of Racial Discrimination of March 2004;

13. *Encourages* the Government of Nepal to extend invitations to the special procedures of the Commission to visit Nepal, to cooperate fully with them and implement their relevant recommendations, in particular the recent recommendation of the Working Group on Enforced or Involuntary Disappearances, specifically the recommendation to enforce a complete prohibition on incommunicado detention in military barracks;

14. *Requests* the High Commissioner, in accordance with the Agreement signed with the Government of Nepal on 10 April 2005, to establish an office in Nepal with the mandate to assist the Nepalese authorities in developing policies and programmes for the promotion and protection of human rights, to monitor the situation of human rights and observance of international humanitarian law, including investigation and verification nationwide through international human rights officers and the establishment of field-based offices staffed with international personnel, to report in accordance with the Agreement and to work in cooperation with other United Nations and other international organizations based in Nepal in this regard;

15. *Calls upon* the Government of Nepal to implement promptly and fully the Agreement with the Office of the High Commissioner and to extend its full cooperation to the office of the High Commissioner in Nepal, to assist the office in the discharge of its mandate and to take all necessary steps to ensure that its officials and experts on mission have free and unlimited access to any persons in Nepal whom they might wish to meet;

16. *Encourages* the international community to assist the Government of Nepal in implementing the present resolution;

17. *Requests* the High Commissioner to submit a report on the human rights situation and the activities of her Office, including technical cooperation, in Nepal to the General Assembly at its sixtieth session and to the Commission at its sixty-second session;

18. *Decides* to continue its consideration of the situation of human rights in Nepal at its sixty-second session under the same agenda item.

59th meeting

20 April 2005

[Adopted without a vote, See chap. XIX, E/CN.4/2005/L.10/Add.1]