

THE OBSERVATORY

for the Protection of Human Rights Defenders

L' OBSERVATOIRE

pour la Protection
des Défenseurs des Droits de l'Homme

EL OBSERVATORIO

para la Protección
de los Defensores de Derechos Humanos

Report

International Mission of Investigation

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the internal armed conflict

Introduction

1. Political Context

2. Human rights defenders operating in a hostile environment

3. Responses to national and international pressure on human rights issues

4. Recommendations

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Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

Introduction

The International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, mandated a mission from March 11-18, 2004, to examine the situation of the organisations and individuals involved in the defence of human rights within the context of the armed conflict in Nepal.

The Observatory delegation consisted of Mr. Eric Sottas, Director of OMCT, and Mr. Michael Anthony, former Urgent Campaigns Programme Manager of OMCT.

During the mission, the Observatory delegation made several contacts with diplomatic representatives, including from the European Union. Representatives of the following associations, among others, were interviewed:

- Advocacy Forum
- the Bheri Environmental Excellence Group (BEE Group)
- Centre for Human Rights and Democratic Studies (CEHURDES)
- Centre for Victims of Torture (CVICT)
- Group for International Solidarity
- Informal Sector Service Centre (INSEC)
- Institute of Human Rights and Democracy
- International Institute for Human Rights Environment and Development (INHURED International)
- the National Human Rights Commission (NHRC)
- the Nepal Bar Association

I. Political context

I.1. The monarchy and the CPN (M) insurrection

Modern Nepal was created in the latter half of the 18th century, when the ruler of the small principality of Gorkha formed a unified country from a number of independent hill states¹. Until

the 1950s, Nepal was a tightly centralised autocracy that was largely isolated from external influence. In early 1959, King Mahendra issued a new constitution and the first democratic election for a national assembly was held. The Nepali Congress Party (NCP), a moderate socialist party, gained a substantial victory in the election. Yet, King Mahendra dismissed the government 18 months after it was formed, declaring parliamentary democracy a failure. He then announced on December 16, 1962, a new constitution, known as the Panchayat Constitution, which inaugurated a system based on a pyramidal structure progressing from the village assembly (*panchayat*) to a national parliament. The new constitution contained a stronger and more explicit statement of royal authority than did previous constitutions and banned all political parties. Until the beginning of 1990, the *panchayat* system dominated Nepal. But from February 18, 1990, the Nepalese rose up in a series of mass demonstrations to demand the restoration of a multiparty democracy, human rights and fundamental freedoms. At least fifty people were killed, and thousands were injured as a result of the force used by the authorities in suppressing the protests. Unable to contain the widespread public agitation and fearing for the survival of his own monarchical status, King Birendra, in power since 1972, lifted the ban on political parties and finally invalidated on April 16 provisions of the 1962 constitution inconsistent with multiparty democracy. The new constitution was proclaimed on November 9, 1990, which legalised political parties, asserted human rights, abolished the *panchayat* system, and vastly reduced the king's powers in a constitutional monarchy. The political parties agreed that the monarchy would remain to enhance political stability and provide an important symbol of national identity. In the 1991 parliamentary elections, the centrist Nepali Congress Party won a slim majority and formed a government, which collapsed in 1994. Following a succession of failed coalition governments, the Congress Party once again won a majority in the 1999 legislative elections. The king and many members of the royal family were killed in June, 2001, by the crown prince,

¹ This historical part is largely inspired from the report edited in September 2002 by the International Bar

Association, "Nepal in crisis: Justice caught in the Cross-fire", on <http://www.ibanet.org/images/downloads/HRINepalJusticeFinal.pdf>.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

who committed suicide. The king's brother, Prince Gyanendra, succeeded to throne.

In February 1996, the Communist Party of Nepal (Maoist) - CPN (M) - declared a 'people's war' with the aim to establish a 'new democracy'. This party is led by far-left politicians who felt excluded from power and initiated an uprising. The extreme tactics adopted by successive governments to repress the movement led to wide scale grave violations of human rights, particularly of local populations in the mid-west of Nepal, which have continued to this day. These abuses and the failure by the State to address them fuel an already strong sense of injustice and provide the CPN (Maoist) with support and momentum.

The CPN (Maoist) has killed, tortured, and harassed hundreds of members of the democratic parties, the independent media and human rights organisations as part of an express policy to undermine State mechanisms. The Maoists have accompanied these attacks with the deliberate destruction of development infrastructure. They have destroyed hydro-electric projects, post offices, medical posts, irrigation schemes, the offices of the village development committees, telephone towers, forest offices, public health posts and other kinds of service delivery infrastructure. To fund their movement, Maoists have robbed banks and cooperatives and extorted from even the poorest. An already fragile rural economy is under enormous stress.

1.2. The Government Response to the CPN(M) – the Rise of the King and the Military in the Political Sphere

The response of the State to the CPN (Maoist) has been to grant increasing and dangerous primacy to a military led solution to the conflict at the direct expense of the rule of law, as well as political and development activity.

In November 2001, following an unprovoked attack on the army barracks in Dang by CPN (Maoist), the then peace talks broke down and a state of emergency was declared. This resulted in the suspension of many fundamental rights, such as freedom of expression and speech, freedom of assembly, freedom against arbitrary detention, right to

privacy and right to constitutional remedies. *Habeas corpus* was preserved. In addition, the King promulgated an Ordinance expanding the Government's powers of arrest and detention². The Ordinance was subsequently adopted by Parliament as the Terrorist and Disruptive Activities (Control and Punishment) Act 2002 (TADA). The then Prime Minister Deuba and all following leaders abdicated security policy to the Royal Nepal Army (RNA). After the state of emergency lapsed in August 2002, the RNA's control of the civilian and armed police was maintained through a unified command structure with no clear civilian oversight.

Despite lip service to an integrated campaign by some officials claiming that counter-insurgency is not just about security efforts, but is also about development and political reform, the government's strategy is not more than a security response, successive regimes continuing to fail to understand that counter-insurgency (just as insurgency) is not just a military exercise

In May 2002, Prime Minister Deuba dissolved parliament in order to re-impose the state of emergency in the face of opposition from those who adhere to the democratic system and who opposed the move, belatedly recognising that it would further buttress the position of the King and the Military. In June 2002 Prime Minister Deuba dismissed all elected local bodies (in both villages and districts), leaving the districts effectively under military authority.

On October 4, 2002, King Gyanendra effectively assumed power when he dismissed the elected government of Prime Minister Deuba, accusing them of incompetence and nominated a government of mostly un-elected officials.

King Gyanendra justified his actions arguing that democratic institutions had been rendered ineffective because of the corruption of politicians and therefore "effective administration" needed to be restored to tackle the conflict. Without the

² The Terrorist and Disruptive Activities Ordinance (TADO), promulgated on November 26, 2001, made legal provisions, as its name suggests, to control terrorist and disruptive activities as well as to provide security to the general public. It declared the Communist Party of Nepal (Maoist) to be a terrorist organisation. It was superseded by the TADA, when it was passed by Parliament in April 2002.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

mechanisms of democracy, King Gyanendra enjoys enormous unchecked power including the ability to appoint and dismiss prime ministers at will. The reluctance of King Gyanendra to return power, and growing concern about the excessive role of the Military has stimulated increasing reaction from the democratic middle forces.

For reasons discussed below, a reaction of the democratic forces took time to emerge. However, a movement in defence of democracy and for a peaceful resolution of the conflict is emerging as people question the legitimacy of the current regimes. In addition to demonstrations tending to represent only the self serving views of disgruntled opposition excluded from power, a "third force" opposing the repression and violence of both the regime and the CPN (Maoist) is growing. The group includes some political parties (at least those excluded from power), human rights defenders, journalists, students, lawyers, other members of civil society and increasingly wide swathes of the general public. These political demonstrations, which began with a few individuals calling for a restoration of rule of law, have now grown to include a greater span of society and have adopted an increasingly republican discourse and a peaceful social reform agenda.

I.3. Overview of the State of Human Rights

Nepal is facing a terrible crisis. Human rights violations and increasingly grave war crimes by the government forces and the CPN (M) are fuelling conflict. According to the Informal Sector Service Centre (INSEC), a human rights non-governmental organisation, since the conflict began in 1996, the CPN (M) has killed 3,469 people, while 6,643 have died at the hands of the security forces. Of the total, 4,141 were civilians, 1,478 were security personnel, about 400 were political workers and over 4,000 were Maoists.

Most independent observers conservatively estimate that at least half of these killings were summary executions, the overwhelming majority of these executions being attributed to the security forces, principally the Royal Nepal Army (RNA). These innocent civilians have been killed by the RNA for their suspected or

perceived involvement with the ongoing CPN (Maoist) uprising.

As William O' Neill, from a UN Human Rights Assessment Mission on behalf of UNDP, put it in March 2004:

"I have worked in Haiti, Rwanda, Burundi, Afghanistan, Sierra Leone, Kosovo, and Nepal ranks among the worst human rights situations I have ever seen."

I.3.a. Government Violations

There is deep concern in Nepal over the behaviour, credibility, legitimacy and role of the RNA. Whereas human rights violations are at the centre of the conflict, the security forces continue to fail to understand the role which they must play in order to ensure a democratic society. Instead of enforcing law and order, the RNA continues to match and often exceeds the CPN (Maoist) brutality. As an expert from the Nepal's National Human Rights Commission (NHRC) puts it: "They are a legitimate force of a democratic country. If they do not observe democratic norms, how can they ask the rebels to?"

- Disappearances

Disappearance is of particular concern. According to the reports of the UN Working Group on Disappearance, during the last two years more people disappeared in Nepal than in any other State. Besides, after its visit to Nepal, on December 14, 2004, the Working Group stated that "Human Rights defenders are widely reported to be under constant threat for their work on disappearances, in particular in the regions of Nepal outside of Kathmandu". On March 19, 2004, NHRC recorded 1,018 cases of disappearances since the year 2000. The vast majority of allegations are related to the actions of the RNA. Moreover, the rate of reported disappearances is rising: by October 14, 2004, disappearances reported to the NHRC had risen to 1,400 persons. Yet, as the Royal Nepal Army states that they "cannot divulge the details of some of the abducted persons for security reasons", most observers contend that the figures produced by the NHRC represent only a fraction of the real numbers.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

- Encounter Killings

While there are almost daily allegations made by human rights organisations, lawyers and media, of summary executions committed by the security forces, the RNA attributes all such cases to merely “encounter killings”, i.e. people who have been killed during military battles. Yet, public killings of innocent civilians by members of the RNA, committed in broad daylight in the capital Kathmandu, raise doubts about the RNA’s claims in the field. These killings, despite overwhelming evidence, have failed to produce serious punitive action. The failure of the RNA to credibly investigate the now numerous allegations of killings, continues to undermine their standing position as rightful defenders of the state.

- Arbitrary arrests and detentions

The RNA holds significant, but unknown, numbers of people in illegal and undisclosed places of detention. Detainees who are released are often subsequently rearrested and prisoners involved in security related detention are routinely moved around detention places to avoid detection by the courts. Detainees are held incommunicado, without access to lawyers, family or the court. These methods are a matter of public record, and torture of such detainees is routine.

More generally, there is no rule of law in the field. Civilians are forced by CPN (Maoist) to provide food and shelter during the night. However, when the security forces arrive to the village in the morning, anyone suspected of having assisted the Maoists, willingly or otherwise is suspected of being a Maoist. Group village punishment and public beating are regularly reported. The security forces frequently carry out actions without uniform and there are increasing reports of security forces dressing up and pretending to be Maoists to entrap villagers.

A measure of growing international concern was expressed on July 15, 2004, when eight independent experts of the United Nations Commission on Human Rights (UNCHR) emphasised their serious concerns regarding the grave human rights situation in Nepal. In their statement, the experts stated that since

the start of 2004 they had transmitted 146 urgent appeals and other communications to the government regarding reported violations of human rights. The appeals concern individuals arrested by security personnel, often on suspicion of supporting or being involved in Maoist activities. “It is reported that these individuals are subsequently taken to undisclosed locations, which puts the detainees at risk of being tortured or of suffering other forms of cruel, inhuman or degrading treatment, including rape”.

I.3.b. Maoist Abuses

CPN (Maoist) has been responsible for widespread and systematic grave human rights abuses, including the killing of democratic opposition members, political opponents and other civilians including teachers and journalists, hostage-taking, torture and increasingly mass abductions of school students and teachers.

INSEC’s reports indicate the brutality of CPN (Maoist) methods. Their Human Rights Yearbook 2004 contains graphic descriptions of Maoist brutality: victims are tortured, beheaded, dismembered, bones crushed and axed. Indeed, the Maoists’ original commitment to social reform has been increasingly replaced by what CK Lal, a prominent social commentator, has described as “a descent into extortion, arson, looting, mutilation of dissenters, and wanton killing”.

I.3.c. Impunity

The key human rights issue is the climate of impunity throughout the country. Impunity is not new to Nepal. Successive governments consistently failed to take any action against perpetrators of grave human rights violations. The current armed conflict has taken the problem to crisis point. As a matter of fact, there is near total impunity for perpetrators from both sides of the conflict. While CPN (Maoist) abuses are beyond any national justice, the security forces have carried out a token number of investigations against their own members, and only after enormous pressure from both international and national actors. These investigations have been deeply flawed, the

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

results slow to surface, and the punishments incompatible with the gravity of the crimes committed. The RNA's failure to investigate human rights violations by their soldiers raises serious questions about its public commitment to accountability. William O' Neill (see above) thus gives the following analysis:

"Even in a case as clear cut as the August 2003 Ramechhap massacre³, only after enormous, unrelenting pressure, and a powerful, detailed report by independent experts including a forensic scientist sponsored by the NHRC, did the RNA grudgingly agree to re-examine charges it had previously and peremptorily dismissed⁴. In March 2004 the RNA announced that it had arrested a Major and several lower-ranking soldiers in the case. The Major will be tried in a secret court-martial; the media and all outside observers, including the NHRC, will be banned from the trial. The RNA consistently maintains that any violations committed by its soldiers do not reflect official policy; "rogue elements" of the army are responsible. Yet the RNA's reluctance to investigate and punish soldiers belies this position. If they are truly aberrations by "rogue elements," operating on their own, outside official orders and policies, then why is it so difficult to take strong action against them? If they violate standing orders, then shouldn't it be easy and quick to discipline soldiers who violate military command and discipline? The inescapable inference is that the RNA's extreme reluctance to punish soldiers indicates a tolerance of, if not real support for, actions taken by soldiers that violate the

laws of war and human rights in this conflict against the Maoists and that these acts reflect the counter-insurgency doctrine of the RNA. The RNA could easily disprove this inference, yet they have failed to do so."

The civilian government, both at the centre and in the districts, exercises little discernible control over the security forces. Domestic remedies including *habeas corpus* are largely impotent. The RNA regularly ignores Supreme Court rulings.

I.4. The Terrorist and Disruptive Activities (Control and Punishment) Act: a risk for human rights defenders

The Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), promulgated in April 2002 during the state of emergency, remains in force and was re-newed by Royal Ordinance in October 2004, granting ever larger discretion to security officials in conducting arrests and detentions. The TADA covers both disruptive acts and acts of terror. Section 3(2) targets persons who: "conspire, cause, compel, commit, instigate, establish, remunerate or publicise acts of terrorism, or harbour persons involved with terrorist and disruptive activities". Such terrorist or disruptive activities include: "damage, destruction, injury, death, kidnapping and threats, and the production, distribution, storage transport, export, import, sale, possession or installation of explosive or poisonous substances, or the assembly and training of persons for these purposes".

Human Rights Features, a joint initiative of the South Asian Human Rights Documentation Centre (SAHRDC) and the Human Rights Documentation Centre (HRDC), underlines the particular dangers of this Act for human rights defenders. Indeed, the inclusion of disruptive activities within the broad definition of terrorist acts allows for the application of the TADA to political acts that, whilst distinct from terrorism, are determined by the State to have a disruptive effect on the operation of the government or public order. The TADA provides that acts covered in Section 3(2) will be defined as any activity that would be committed with an intention to undermine or jeopardise the sovereignty and security of

³ On August 17, 2003, 21 people (19 rebels and two civilians) were shot dead by members of the Royal Nepal Army in the isolated eastern district of Ramechhap. The seven-month ceasefire agreed by both sides collapsed just ten days later. The RNA conducted its own investigation into this incident, and concluded that "the army only retaliated after being attacked first by the rebels". This was later contradicted by the independent investigation conducted by the National Human Rights Commission (NHRC), which concluded that most of them had been shot in the head at close range with their hands tied behind their backs.

⁴ One police officer told us that he warned General Sharma, head of the RNA human rights cell, right after Ramechhap, that "you have a really bad case here, you need to investigate it seriously," but Sharma rejected his advice. An army officer was quoted as saying: "We're fighting a war, we have to tell lies, you understand".

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

Nepal, or committed in a manner to create an environment of public fear. TADA legally provides the State with longstanding impunity. Its Section 20 grants prosecution immunity to members of the security forces “or any other person” for “any act or work performed or attempted to be performed by him in good faith under the Act”.

According to Human Rights Features, the NHRC has observed that “TADA aids and abets those who, under the guise of maintaining ‘law and order’ or ‘security concerns’, continue to violate the human rights of the citizens of Nepal”.

For instance, according to Amnesty International, Pushpa Lal Dhakal, Pushpa Neupane and four other people were reportedly rearrested by security forces on July 25, 2004. They were detained immediately after being released from Jhapa District Court, Chandragadi, Bhadrapur municipality and were at risk of torture or ill-treatment. Pushpa Lal Dhakal had been first arrested on January 13, 2004, and held at Charali Army barracks for ten days, where he was reportedly beaten so badly that several of his ribs were broken. He was then transferred to Chandragadi prison, where he was held under TADA. “Disappearances” were also facilitated by the TADA, under which people were held incommunicado for prolonged periods in secret and illegal detention at army camps. According to Amnesty, Bishnu Pukar Shrestha, a former secondary school teacher and human rights activist, “disappeared” after he was arrested by plain-clothes security forces personnel at his home in Thapatali, Kathmandu, on July 29, 2004. Earlier in the year his name and photograph were included in a list of wanted Maoist leaders shown during an army television broadcast. A cash award was offered to anyone giving information leading to their arrest “dead or alive”. Bishnu Pukar Shrestha, who has always denied membership of the CPN (Maoist), was released on December 16, 2004. He had reportedly been held blindfolded in army custody for nearly five months.

II. Human Rights Defenders Operating in a Hostile Environment

Almost ten years of attacks on the democratic system by the CPN (Maoist) have been buttressed by a deconstruction of the democratic framework that has been carried out by the State since 2001. Henceforth, human rights defenders are left with limited possibilities to use national mechanisms to defend increasingly beleaguered rights. The King’s actions, unwittingly or not, have pushed democratic institutions (the mechanisms that act as a check on abuse and which contribute to guarantee the respect of human rights) into crisis. Many of these key bodies are directly accountable to (and their functioning relies on) a now non-existent House of Representatives. Where institutional arrangements and democratic space have withdrawn, the security forces have increasingly filled that space. The resultant institutional crisis has increasingly led democrats and human rights defenders to dissent. In the polarised environment the security forces have felt free to make ever more direct attacks against individuals who defend human rights and democracy.

Distrust of democrats and human rights defenders is not new. In Nepal, democracy, a human rights culture and the rule of law do not have very strong roots. Many of those who ruled during the Panchayat years remain in positions of both informal and formal power. Besides, as conflict has polarised politics, it has lent increasing strength to an already established and deeply held view of human rights defenders, lawyers and independent journalists as CPN (Maoist) sympathizers and “terrorists” .

What is more, investigations into human rights abuses continue to be perceived as an attack on the war against terror and undermining the morale of the security forces. This view has hardened as the democratic opposition has emerged and has posed an increasing threat to the current regime. Senior security force figures issue public threats that are thinly veiled and close to a direct threat. They are blunt in their views with visiting international human rights missions. Unfortunately, these views have been buttressed by the position of some human rights community members who compromised themselves at early stages in the conflict insofar as they promoted the Maoists as true ‘revolutionaries’.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

The CPN (Maoist) views journalists, human rights defenders and lawyers as part of the old regime. They denounce human rights organisations as tools of "US imperialism", and threaten and harass local staff working for international aid organisations. As a consequence, ten international donors announced in a joint press statement issued on May 10, 2004, that they were suspending work in five districts of mid-western Nepal (Kailali, Jumla, Humla, Mugu and Dolpa districts) because of "serious threats" by local CPN (Maoist) members, including bombs in the offices of NGOs. These donors included the German Technical Cooperation (GTZ), the Swiss Agency for Development and Cooperation (SDC), the Canadian International Development Agency (CIDA), the British Department for International Development (DFID), the Netherlands Development Organisation (SNV), the European Union, the Japan International Cooperation Agency (JICA), the Royal Norwegian Embassy, the Royal Danish Embassy (Danish International Development Agency – DANIDA) and the Embassy of Finland. The agencies said due to increasing Maoist pressure they had been "forced" to stop their projects as they were unable to ensure safety of their staff.

Furthermore, public sympathy for NGOs is low in the country, and it does not rise to defend human rights defenders. Amongst the general public opinion, NGOs are falsely but commonly perceived as being, for the most part, corrupt, poorly managed, divided, donor dependant, and led by Kathmandu centric elite.

II.1. Human Rights Worker and Community Activists Harassed: presentation of cases

On February 13, 2004, Ganesh Chiluwal, head of the Maoists' Victims' Association (MVA), an organisation working for the welfare of victims of Maoist abuses, was shot dead by two armed men, believed to be members of the CPN (Maoist), at the offices of the association in Bagbazar, Kathmandu.

On March 13, 2004, Dhani Ram Tharu, a member of BASE, a well known social activist movement for ex-bonded labourers, was arrested by members of the armed police force.

Locals suggest that the security forces suspect BASE of connections with the CPN (Maoist). On March 16, 2004, Tharu was transferred to Nepalgunj prison. According to the information received, he is being held under TADA's provisions.

On April 17, Dr Bhogendra Sharma, President of the International Rehabilitation Council for Torture Victims (IRCT) and the Centre for Victims of Torture Nepal (CVICT), along with nine staff and executive committee members of CVICT, were arrested in Kathmandu by Nepalese police while monitoring a peaceful demonstration. Eight human rights defenders, including Dr. Sharma, were released on the same day at about 6 p.m. and one CVICT volunteer was detained for a night and was released the next day about 12 a.m.

On June 4, 2004, three security staff members from Anamnagar City Police arrived at the office of the Collective Campaign for Peace (COCAP) at around 10:30 a.m. and arrested the programme coordinator, Mr. Dinesh Prasain, along with a photojournalist, Ms. Usha Titikchu. The officers failed to issue the requested arrest warrants and Mr. Prasain and Ms. Titikchu refused to go with them. The two were then forcibly taken into custody and Mr. Prasain was beaten by a police inspector. Approximately one hour later, advocates for the detainees Mr. Govinda Bandi and Mr. Ramji Sharma visited the place of detention and were told by the police inspector that the order to arrest Mr. Prasain and Ms. Titikchu had come from the Deputy Inspector General (DIG). The DIG stated that the two were to be detained "for their own protection". The Observatory feared that the arrests were intended to prevent the planned protest against the Indian military assistance to the Nepali government, which was to take place during the visit of Indian foreign minister Mr. Natwar Singh in the afternoon of June 4, 2004. The detainees were released on June 5, 2004, at 2.30 p.m.

On June 20, 2004, Madhu Sudhan Dhungel, a member of the Forum for the Protection of Human Rights (FOPHUR), a national human rights organisation, was arrested by security forces at his residence in Kathmandu. According to information received, five persons in plain clothes wearing masks and carrying pistols entered the house. Challenged by

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

Dhungel's family, they refused to show proof of identity but assured them that they were members of the security forces. Dhungel was blindfolded and taken away. Despite a *Habeas corpus* petition on June 28, 2004, his whereabouts remain unknown at the date of publication.

Mr. Chet Prakash Khatri, a human rights defender working in the Binauna Village Development Committee (VDC) of Banke district, was killed on his way home on December 24, 2003, at approximately 3:30 p.m., by a group of unidentified individuals in Sarragaon (Phattepur VDC-7), in the Rapti River, an area close to the Indian border. The victim's body had a mark of a cord on his broken neck and a wound on his chin. Mr. Khatri was working as a facilitator for a Peace Programme launched by INSEC in that area. He was training students and locals on safety measures during conflicts. Mr. Khatri was also working on children rights and was affiliated to the NGO Bheri Environmental Excellence Group (BEE Group). The victim's family filed a complaint with the District Police Office of Nepalgunj in Banke District, yet the government showed its unwillingness to investigate the case. In November 2004, the case was, according to the police, still under investigation.

II.2. Lawyers and the Legal Profession

A particularly alarming aspect of the conflict is the extent and intensity of acts of repression against lawyers, who have disappeared, been arbitrarily detained and tortured because of their work. Many lawyers report very regular indirect and direct threats from the RNA. In the districts, judges are isolated and at risk if they dissent from the local RNA commanders' view. Besides, in CPN (Maoist) areas there is no rule of law and "people's courts" often hand out brutal retribution.

These attacks by both sides leave the basic functions of rule of law unfulfilled. As a consequence, increasing numbers of lawyers are afraid to represent clients suspected of supporting the Maoists as well as to challenge illegal detentions. For instance, according to a report issued by the government's Judicial Council, the workload in 19 hill based district

courts dropped drastically with less than 50 cases recorded in 2003.

Cases

On November 15, 2003, Sujindra Maharjan, a lawyer as well as a member of the Human Rights Organisation of Nepal (HURON), was arrested at his home in Kathmandu by security forces members. According to the information received, the security forces had previously raided the house, as they were looking for another member of the family. A *habeas corpus* petition was made on June 4, 2004. The government has recently admitted that Sujindra Maharjan is being held at Sundarijal Detention Centre in Kathmandu. Before this announcement his family had been unable to locate him.

On January 15, 2004, Mr. Gopi Bahadur Bhandari, another lawyer from Kathmandu, was arrested by five men in civilian dress on 15 January and taken to an undisclosed location. His whereabouts remained unknown until he was released on 10 March. The Army has reportedly written to the Supreme Court denying that he was ever detained.

On January 22, 2004, Mr. Basudev Sigdel, a 38 year old lawyer from Kathmandu, was arrested by three men in civilian dress claiming to be members of the security forces. He was released on March 11.

On February 4, 2004 Jeetaman Basnet, a 28-year-old lawyer and journalist from Kathmandu, was witnessed talking to three people dressed in army uniform outside his house, who then took him away. He was believed to be detained in an army barracks in Maharajgunj, Kathmandu. Relatives informed the NHRC and the Nepal Bar Association (NBA), who are reportedly carrying out inquiries with the authorities. In response to a *habeas corpus* writ lodged by the NBA, the security forces denied his arrest in front of the Supreme Court on March 11, 2004. On October 14, 2004, the statements of the RNA were found to be wholly false when the government published a list of disappeared people, saying that Basnet was among those held in Military detention. After having remained in military detention in Bairab Nath army barracks, he was released by the Nepali army on October 18, 2004.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

II.3. Media and Journalists

When the conflict began in 1996, a large section of the media chose to romanticise the CPN (Maoist) and failed to recognise the threat to freedom of speech and democracy that the CPN (Maoist) posed. When the state of emergency was declared, publishers and editors swung behind the government's position. Compromised, most of the newspapers were unwilling to test the limits of the government's restrictions on press freedom. Furthermore, human rights defenders complained that in this first critical phase of the state of emergency the media allowed the human rights crisis to emerge as they chose to give evidence only of serious human rights abuses committed by the RNA. The media then emerged as fierce critics of both the RNA and the CPN (Maoist), and have since become the target of both movements.

According to the International Federation of Journalists, Nepal is on an equal footing with Iraq in terms of the threat to journalists carrying out their work. Indeed, both sides to the conflict target journalists, who are subjected to harassment, arrest, illegal detention, disappearance, torture and summary execution. Journalists are regularly denounced by the authorities for their pro-CPN (Maoist) "terrorist" bias. Indirect and direct threats are routine. All interviews during the mission with the media revealed high levels of self censorship and fear.

On their side, the CPN (Maoist) regularly denounces journalists as spies. Although they regularly claim the contrary, Maoists do not tolerate freedom of expression in the areas their control, restricting both print and broadcast media under their control. According to the Bar Association of Nepal, at least 103 journalists were detained at the time of the mission. In 2003, Nepal detained more journalists than any other state. Of particular concern to the Observatory has been the mass arrest and beatings of journalists covering or taking part in pro-democracy and human rights demonstrations.

Cases

On December 10, 2003, Nepali security forces detained at least 15 journalists, among whom Ram Krishna Adhikari of the Sanghu

publication and Times FM radio station. Adhikari was apprehended shortly after attending a Human Rights Organisation of Nepal (HURON) meeting. Up to date, the Government has provided no information as to the current whereabouts of the journalists.

On February 20, 2004, security forces killed journalist Padma Raj Devkota in Jumla district, Western Nepal. The authorities said he was killed by a band of six armed CPN (Maoist).

On April 15, 2004, Khadga Bahadur Swar, a journalist for the Nepal Samacharpatra, in Gautambada Village, Jumla district, mid-western region, was arrested from Chandan Nath VDC by a group of 30 security forces members. Swar's reports were often critical of local administration and his arrest is believed to be linked to this work.

On August 11, 2004, Dekendra Raj Thapa, of Radio Nepal, was executed by CPN (M). He had been kidnapped on 26 June. CPN (M) accused Thapa of spying. Thapa was a human rights activist and an adviser to the independent Human Rights and Peace Society (HURPES).

On August 17, 2004, following the killing of Thapa, the CPN (Maoist) issued death threats to nine more journalists.

II.4. National Human Rights Commission

The National Human Rights Commission (NHRC), a statutory body established in June 2000, has been a particular target for denigration and threat by the State.

As other institutions have withered and with only the Supreme Court (in Kathmandu) willing to accept *habeas corpus* petitions against disappearances, the NHRC has increasingly become the focus of hope in terms of dealing with the human rights crisis.

Despite severe management problems and political infighting, the NHRC has consistently maintained impartiality while dealing with abuses by the security forces and the Maoists. In January 2003, at the height of the conflict prior to the ceasefire, the NHRC investigated human rights violations in 35 districts of Nepal.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

On October 22, 2002, it apprised the Prime Minister of human rights violations in the country including illegal detention, extrajudicial killings and use of excessive force in arrest and search operations. On the next day, it condemned the Maoists for attacking unarmed citizens, development infrastructure, cultural heritages, health posts, recruitment of child soldiers and indulging in extortion, appropriation of people's houses and looting foodstuff and medicines. They accused the Maoists of carrying out widespread extortion and the murder of teachers in order to disrupt education.

The momentum of harassment and intimidation was stepped up against the NHRC as government concern increased over negative international reactions to the findings of a NHRC investigation into Ramechhap massacre. On August 17, 2003 the NHRC investigated a massacre of 19 Maoist cadres and two civilians in the district of Ramechhap while the third rounds of talks between the Maoists and the government were underway. The investigation, consisting of credible Nepali citizens and including exhumation of the bodies, concluded that unarmed victims had been killed at close range, with hands tied behind the back. Initially the Royal Nepalese Army attempted to discredit the report with the head of the Army's own human rights cell stating. "There is a big question on how impartially the panel probed into the incident as the whole village was terrorised by the Maoists when the panel reached there for investigation". Since then, members of the NHRC have received increasing numbers of anonymous telephone death threats from people believed to be members of the RNA or supporters loyal to them.

On February 21, 2004, unidentified plain-clothes security forces personnel arrested Lawyer Bal Krishna Devkota at his home in Kathmandu. He was blindfolded and held at an unidentified army barracks for five days where he was questioned about why he had volunteered to join the NHRC investigation team. He was also subjected to other detailed questioning about the activities of the NHRC.

Furthermore, actions against individual activists has been accompanied by institutional attacks. In late 2003, following increasing criticism over

its failure to act over Ramechhap massacre, the government established the National Centre for the Promotion of Human Rights under the Prime Minister's Office. The move was denounced by international human rights groups and the NHRC as an attack on the institution as a means to divert power, status and funds from the NHRC.

The New Delhi based Asian Centre for Human Rights sought the intervention of the United Nations High Commissioner for Human Rights to persuade the Government of Nepal to scrap the establishment of such a centre:

"The National Human Rights Promotion Centre is a direct attempt to undermine the National Human Rights Commission which has been established under a parliamentary Act and has also been critical of violations both by the security forces and armed opposition groups. The National Human Rights Commission is being punished for pointing fingers at the Royal Nepal Army for brutally killing 19 unarmed rebels in Doramba, Ramechhap on August 17, 2003, while the government was engaged in dialogue with the Maoist leadership".

On March 29, 2004, three days after the Government had issued a public "commitment to respect human rights" (see below), the Home Minister accused the NHRC of "(...) preparing one-sided reports sending the message to the public and also to the international community that the RNA is causing atrocities, thereby tarnishing the image of the RNA (...)"

The letter also stated that "while deploying the teams for investigation of complaints against the RNA, the Commission and other organizations have to compulsorily inform the local RNA and include a representative from the RNA in the investigation team". This is just one example of the many attempts by Nepalese government officials and the RNA to control the work of the Commission and undermine its impartiality and independence.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

III. Responses to National and International Pressure on Human Rights Issues

III.1. The HRA, the “March Commitment”, and other specific measures

In late 2003, in recognition of the growing crisis and the failure of either party to the conflict to protect human rights, and equally the realisation that there were no national bodies capable of checking these violations, the NHRC began advocating for an agreement on human rights which became known as the Human Rights Accord (HRA).

The HRA responded to the absence of any existing mechanisms to deal with the violations committed by both sides in the ongoing conflict, and was designed to improve the environment for peace. During the previous round of talks the absence of such monitoring was the source of deep instability to the peace process. This souring of the atmosphere culminated in the Ramachhap massacre. Had a neutral and credible monitoring body been in place to determine the veracity of events it would probably have prevented claim and counter claim weakening good will. The HRA laid out the basic norms expected and equally, for the first time, a potentially workable monitoring and accountability mechanism. Concerned over the impotence of all existing national mechanisms to protect human rights (in part as a result of attacks on human rights defenders), the NHRC also envisaged significant input of technical and monitoring assistance from the United Nations Office of the High Commissioner for Human Rights.

The HRA won widespread support from national civil society, political parties, the media and the international community.

Nonetheless, the government, facing increasing pressure to act on human rights violations and sign the HRA, chose instead to develop a separate set of proposals. On March 26, 2004, the government issued a formal statement entitled “His Majesty’s Government’s commitment to the implementation of Human Rights and International Humanitarian Law”, which contained 26 proposals on human rights.

This comprehensive statement expressed the government’s commitment to protect human rights and included explicit pledges to prevent “disappearances”. The 26 March Commitment also stated that the government will facilitate the NHRC to discharge its duties, including “visiting, observing and inspecting any agency under HMGN [His Majesty’s Government of Nepal] or prison or any other institutions”. It also ensured “free movement of the [NHRC] staff and of its representatives throughout the country and to interview any person or group freely and privately, particularly in places of detention and establishments suspected of being used for detention purposes”. However, the proposals had no provision as to any commitment to investigate and prosecute those responsible for rights violations. Therefore, impunity remained unchallenged in the country.

On April 16, 2004, at the UN Commission on Human Rights in Geneva, as international concern mounted, the Government of Nepal signed a consensual Chairman’s statement on human rights assistance to Nepal, which supported Nepal’s efforts “and those of the Office of the UN High Commissioner for Human Rights (OHCHR) aimed at developing technical assistance and advisory services and to facilitate the necessary external assistance, especially to the National Human Rights Commission”⁵. This statement was adopted during the 60th session of the Commission on Human Rights.

On 1 July, the Home Ministry announced the formation of a five-member committee, for a duration of one month, to investigate the whereabouts of 36 persons alleged to have “disappeared” after arrest by the security forces. The Investigation Commission on Disappearances, consisting of five members - from the Home Ministry, Defence Ministry, Police Headquarters and National Investigation Department – is chaired by the Joint Secretary for Home Affairs, Mr Narayan Gopal Malego and had to submit its report at the end of 30 days. Besides, on July 1, the NHRC was granted access to a military detention centre. The Commission’s initial findings, reported on August 11, 2004, were highly disappointing, as it had only investigated 36 cases of

⁵ See the UN document “Chairperson’s statement - Human rights assistance to Nepal”, OHCHR/STM/CHR/04/3.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

“disappearance” (although it had received the names of 150 persons from the civil society, human rights organisations and families) and clarified the whereabouts of 24 people, some of them being still in the custody of the security forces and some having been released. However, the term of the committee was extended by one month to look for the whereabouts of the remaining 12 persons. On September 12, 2004, the government announced the whereabouts of 12 of CPN (Maoist) members who had disappeared. And on 14 September, information was provided on further 54 cases.

A host of similar initiatives announced by previous governments, that had had no impact, undermined the credibility of these moves from the outset. Justifiably many Nepalese NGOs and members of the international community have expressed doubt on the outcome of such initiatives, as they believed them to be flawed, and ran counter to the evidence of daily repression of human rights.

In light of the continuing practice of human rights violations, it is clear that these commitments are not being kept. Many of these structures remain ineffective or face serious hindrances in carrying out their work. However, they do provide a framework to which the government can be called to account, and which, if implemented, could help to curtail the number of “disappearances”.

An examination of the “March Commitment”, for example, reveals deep flaws. It contained neither serious enforcement nor measures of accountability. The failure to address CPN (Maoist) violations is another serious omission. The document, in the words of one senior human rights lawyer “offered a weak, watered-down version of the HRA.”

In practice these initiatives have amounted to little beyond action in some individual cases. Even these gains have revealed more about the extent of the problem than making a real impact on problems. For instance, in October 2004, the lists issued by the disappearances committee confirmed that the RNA, the Home Ministry and the police had failed to provide the Supreme Court with correct information. The list that was made public by a high level government committee revealed that two

missing lawyers – Jitman Basnet and Sujindra Maharjan - were in fact in army detention. This contradicted the RNA's statement before the Supreme Court on March 11, 2004, that the above-mentioned persons were not held in detention. Commenting on the case, President of the Nepal Bar Association, Shambhu Thapa said, “It's a mockery of the rule of law, and an instance of evasion of law by security agencies”. likewise, the media published on October 13, 2004, reports titled “Supreme Court Duped by RNA”. Royal Nepal Army spokesperson, Deepak Gurung, stated that it was not possible to identify the detainees at the time of arrest and that the army was unaware of their whereabouts at the time when it answered to the Supreme Court.

As these initiatives were announced, the acts of repression against human rights defenders and democratic institutions continued to accelerate. On April 21, 2004, five days after Nepal signed the Chairperson's statement before the UN Commission on Human Rights, 300 to 500 lawyers were arrested during a demonstration, the purpose of which was to protest against the Government's decision to prohibit all demonstrations as well as on ongoing attacks on of human rights defenders and the right to peaceful assembly. The lawyers were not allowed to contact their families nor seek legal representation before being released.

From April 8 to May 3, 2004, there has been a severe crackdown on demonstrations, leading to mass arrests, illegal and incommunicado detentions, ill treatment and violent repression in Kathmandu of hundreds of peaceful demonstrators, who were calling for the reinstatement of an elected government. Demonstrations were notably led by the country's five main opposition political parties. It was estimated that well over 1,000 protesters had been arrested during this period, when the Kathmandu District Administration namely issued, under the Local Administration Act, an order banning public demonstrations and the assembly of more than five persons within the Kathmandu Ring Road and Lalitpur areas. Some of those arrested during the demonstrations continued to be held incommunicado while their detention was denied by the authorities, making their detention illegal and placing them in danger of ‘disappearance’.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

Moreover, widespread donors and bilateral frustration over the lack of progress on the government's "commitment" was expressed in a statement on September 9, 2004, and urged the government to sign the HRA. The Memorandum of Understanding was signed on December 19, 2004, between the Nepalese government and the OHCHR. This memorandum allows for the implementation of the UNCHR Chairman's statement and commits the government to accept international assistance to the National Human Rights Commission (NHRC). Yet, if it provides for UN assistance to the NHRC in monitoring human rights, it leaves key details to be negotiated.

It should also be noted that, on the occasion of her visit to Nepal, the UN High Commissioner for Human Rights, Mrs. Louise Harbour, called on the Nepalese government and Maoist insurgents to sign the Human Rights Accord drawn up by the NHRC, declaring that "a failure by either party [to do so] would call into question the sincerity of their professed commitment to the welfare of the nepalese people"⁶.

III.2. The National Human Rights Action Plan (NHRAP)

On July 14, 2004, the Prime Minister announced the launching of the National Human Rights Action Plan (NHRAP) prepared with the cooperation of the United Nations Development Programme (UNDP).

However, the NHRAP is seriously, if not fatally, flawed. The NHRAP could therefore prove a distraction from the most pressing human rights concerns facing the country. A few examples are demonstrative: the NHRAP makes no mention of CPN (Maoist) violations, it provides no concrete mechanisms for challenging impunity, and it provides no framework nor means to achieve the goals set out in its various headings. Equally of concern is the NHRAP unquestioning support for the Human Rights Cells of the Royal Nepal Army and other doubtful government initiatives described above that the human rights community believe are a smoke screen for further inaction. "Bloated, vague and unrealistic" was the view of the

external UN evaluation. In the issue 210 of the *Nepali Times* (20-26 August 2004), Seira Tamang, one prominent Nepali social commentator, pointedly compared the NHRAP with the Human Rights Accord:

"We cannot afford to have human rights projects which end up being a distraction to the immediate protection crisis, if not an alibi for the continuation of human rights violations. The continually undermined and overlooked Human Rights Accord is the only way to independently measure the commitment of the Maoists and the government to the peace process by 'measuring' their actual behaviour. This has to be made a priority."

As a matter of fact, the role of the UNDP in the development and public support of this plan which is the subject of ongoing controversy, is of particular concern. Before the inception of the project, the UNDP invited independent assessors to evaluate the programme. The UNDP were advised in the strongest terms to rethink the action plan. Yet, UNDP went ahead with the project. During the Observatory mission many of the interviewees including representatives of major donors in Nepal, expressed the concern that the NHRAP could provide a diversion for further government inaction on investigating and punishing perpetrators of human rights violations. Many of the interviewees were concerned that the UN would damage its own credibility with this initiative.

Recommendations

The Observatory for the Protection of Human Rights Defenders calls upon the Nepalese authorities to:

- Immediately sign and implement the Human Rights Accord;
- Ensure that commitments to human rights, enshrined in the March Commitment statement, are implemented; in particular, Paragraph 18 states that "human rights groups, other non-government organisations and human rights activists working for the implementation of the principles of human rights and international humanitarian laws shall be protected";

⁶ See UN press release of January 26, 2005.

Nepal

An appalling situation: Human Rights Defenders increasingly victims of the armed internal conflict

- Implement its commitment to strengthen the National Human Rights Commission (NHRC), including free and unhindered access to all detainees held in all places of detention;
- Immediately release all human rights defenders who are in detention, unless they are charged with a recognisably criminal offence;
- Guarantee the physical and psychological integrity of human rights defenders, and to stop any kind of harassment against them;
- Immediately engage impartial and exhaustive investigations on all cases of violence perpetrated against human rights defenders, in order to identify their authors, to prosecute them and to judge them in conformity with the fair trial guarantees;
- Immediately comply with the instructions of the Supreme Court;
- Publicly affirm the important role human rights defenders play in the construction of the rule of law and democracy, and guarantee the respect for human rights defenders, as laid out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on March 8, 1999, for the promotion and protection of human rights and fundamental freedoms;
- Take immediate measures to stop the use of TADA to prevent legitimate political expression and to harass and arbitrarily detain peaceful protesters, including human rights defenders;
- Provide an effective remedy and reparation for victims of human rights violations, including human rights defenders;
- To invite the Special Representative of the UN Secretary General on the situation of human rights defenders and, more generally, to address a standing invitation to all thematic procedures of the UN Commission on Human Rights.

The Observatory for the Protection of Human Rights Defenders calls upon the CPN (Maoist) to:

- Immediately sign and implement the Human Rights Accord;

- Abide by its public commitments, to abide by fundamental human rights standards and international humanitarian law as laid out in Article 3, common to the four Geneva Conventions;
- Issue immediate instructions to its members to cease all human rights abuses immediately;
- Bring an end to killings, acts of harassment, threats and intimidation of human rights defenders including officials of development agencies;
- Allow the NHRC and human rights defenders full and unhindered access to areas under its control and access to its places of detention;
- Immediately release all human rights defenders and other prisoners who are held in custody;
- Investigate abuses by its forces and take measures to prevent them reoccurring;
- Allow freedom of expression and association in areas under their influence.

The Observatory for the Protection of Human Rights Defenders calls upon the Office of the UN High Commissioner for Human Rights (OHCHR) to:

- Ensure that technical support offered by the OHCHR is delivered promptly;
- Ensure that any agreement reached between OHCHR and the Government of Nepal is in accordance with international human rights treaties and that the programmes, public statements and actions of its country teams reflect the gravity and scale of the human rights violations in Nepal.

The Observatory for the Protection of Human Rights Defenders calls upon the UN Commission on Human Rights to:

- Adopt at its forthcoming session a resolution on the human rights situation in Nepal creating a monitoring mechanism on that situation.

THE OBSERVATORY

for the Protection of Human Rights Defenders

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Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion at a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the Organisation of African Unity, the Council of Europe and the European Union.

The activities of the Observatory are based on the consultation and the cooperation with national, regional, and international non governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria for the examination and admissibility of cases that are communicated to it. It also targets action based interpretations of the definition of "Human Rights Defenders" applied by OMCT and FIDH.

The competence of the Observatory embraces the cases which correspond to the following "operational definition": "Each person victim or risking to be the victim of reprisals, harassment or violations, due to its compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

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