



**ЭКОНОМИЧЕСКИЙ
И СОЦИАЛЬНЫЙ СОВЕТ**

Distr.
GENERAL

E/CN.4/2005/65/Add.1
28 January 2005

RUSSIAN
Original: ENGLISH

КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
Шестьдесят первая сессия
Пункт 11 b) предварительной повестки дня

**ГРАЖДАНСКИЕ И ПОЛИТИЧЕСКИЕ ПРАВА, ВКЛЮЧАЯ ВОПРОСЫ:
ИСЧЕЗНОВЕНИЙ И КАЗНЕЙ БЕЗ НАДЛЕЖАЩЕГО СУДЕБНОГО
РАЗБИРАТЕЛЬСТВА**

Вопрос о насильственных или недобровольных исчезновениях

Доклад Рабочей группы по насильственным или недобровольным исчезновениям

Добавление

Миссия в Непал* **

6-14 декабря 2004 года

* Резюме доклада об этой миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на том языке, на котором он был представлен.

** Настоящий доклад был представлен с опозданием вследствие сроков проведения миссии.

Резюме

По приглашению правительства Непала Рабочая группа по насильственным или недобровольным исчезновениям посетила страну 6-14 декабря 2004 года. Рабочая группа была представлена Председателем-докладчиком Стивенем Дж. Тупе и членом Рабочей группы Сайедом Раджайе Хорасани. Цель поездки заключалась в том, чтобы обсудить сообщения о случаях недобровольного или насильственного исчезновения, которые были получены и препровождены Рабочей группой правительству Непала, и проанализировать положение с исчезновениями лиц в Непале с учетом международных стандартов в области прав человека. Просьба об организации поездки была обусловлена значительным увеличением числа случаев насильственных исчезновений, о которых было сообщено Рабочей группе за последние два года.

Делегация встретила с Его Величеством королем Гьянендра Бир Бикрамом Шах Девом и другими высокопоставленными должностными лицами правительства, судебных органов и военными, а также с представителями неправительственных организаций, родственниками исчезнувших лиц и представителями международного сообщества в Непале.

Все стороны информировали Рабочую группу о пагубных последствиях внутреннего конфликта в Непале. Рабочая группа отметила крайне сложную ситуацию, в которой находится население Непала и его власти. Все участники, с которыми встречались представители Рабочей группы, неоднократно говорили о жестокостях маоистов. Хотя эта информация имеет важное значение для понимания условий, в которых проходила миссия Рабочей группы в Непал, ее мандат ограничен международными правовыми обязательствами государственных органов Непала в сфере прав человека. Вместе с тем это никоим образом не умаляет насущную необходимость соблюдения маоистами международных обязательств по гуманитарному праву и обеспечения физической неприкосновенности своих сограждан, с тем чтобы уменьшить их страдания.

Исчезновения в Непале сегодня широко распространены; применение этой практики повстанцами из числа маоистов и сотрудниками непальских сил безопасности носит произвольный характер. Виновные пользуются политической и правовой безнаказанностью. Подробные сообщения, полученные из многих сельских районов, свидетельствуют о том, что масштабы этого явления недооцениваются. При этом почти повсеместно говорится о своего рода обстановке всеобщего страха, когда деревенские жители панически боятся сообщать об исчезновениях из-за возможных репрессий со стороны сил безопасности или повстанцев из числа маоистов. Во многих случаях родственники, которые идут в расположение армейских подразделений для того, чтобы

узнать о судьбе своих родных, сами подвергаются допросам с пристрастием. Во многих семьях исчезли по несколько человек.

б. Рабочая группа рекомендует следующее:

а) как можно скорее внести поправки в уголовное законодательство Непала, с тем чтобы квалифицировать в нем насильственное или недобровольное исчезновение в качестве отдельного преступления;

б) изменить Закон об армии, включив в него положения о том, чтобы сотрудники сил безопасности, обвиняемые в насильственном или недобровольном исчезновении гражданских лиц, судились только гражданскими судами; эту поправку также следует распространить на убийства и изнасилования гражданских лиц, совершенные сотрудниками сил безопасности; кроме того, не должно делаться никаких поблажек в связи с преступлениями, предположительно совершенными сотрудниками сил безопасности в отношении гражданских лиц в ходе военных операций;

в) вооруженным силам следует обнародовать всеобъемлющие и полные данные, включая любые письменные решения о любых военных трибуналах за последние два года, и придерживаться этой практики в будущем; Генеральному судье-адвокату следует обеспечивать более строгое судебное преследование военнослужащих, обвиняемых в соответствии с существующим законодательством в похищении или пытках гражданских лиц;

г) правительству Непала и силам безопасности Непала - обеспечить составление общедоступных, полных, точных и постоянно обновляемых списков задержанных лиц, обеспечивая к ним доступ семей задержанных и гражданских властей, включая Национальную комиссию по правам человека. В этих списках должна содержаться информация о задержанных лицах, находящихся в официальных центрах содержания под стражей (например, в Сундариджале) и в неофициальных местах содержания под стражей, таких, как места расположения армейских частей. Эти списки должны составляться на местном уровне и включаться в национальный регистр, в котором должны указываться фамилии и места содержания под стражей всех задержанных;

д) Верховному суду необходимо рассмотреть вопрос о более активном применении своих неотъемлемых карательных полномочий в целях привлечения к ответственности и наказания должностных лиц, дающих ложные показания в суде;

f) правительству Непала следует незамедлительно отменить Указ о пресечении террористической и подрывной деятельности и наказании за нее;

g) правительству и силам безопасности следует обеспечить защиту правозащитников от преследований, как того требует международное право;

h) правительству следует прилагать все усилия для укрепления роли Комиссии по правам человека и содействия ее работе; кроме того, правительству следует добиваться преемственности деятельности членов Комиссии даже в отсутствие процедуры регулярных парламентских назначений;

i) Национальной комиссии по правам человека следует предоставить беспрепятственный доступ ко всем местам содержания под стражей, включая все расположения армейских частей, без предварительного уведомления или получения разрешения;

j) Департаменту операций по поддержанию мира Организации Объединенных Наций следует проанализировать возможность будущего участия непальских сил безопасности в миссиях по поддержанию мира Организации Объединенных Наций, оценив целесообразность такого участия с учетом прогресса, достигнутого в деле сокращения количества исчезновений и других случаев нарушений прав человека по вине непальских сил безопасности, и заручиться содействием Верховного комиссара по правам человека с целью обзора достигнутого прогресса.

Annex

**REPORT SUBMITTED BY THE WORKING GROUP ON ENFORCED
OR INVOLUNTARY DISAPPEARANCES ON THE MISSION TO NEPAL
6-14 DECEMBER 2004**

CONTENTS

| | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| Introduction | 1 - 6 | 5 |
| I. GENERAL OBSERVATIONS | 7 - 14 | 6 |
| A. Purpose of the visit | 7 - 9 | 6 |
| B. Background | 10 - 14 | 7 |
| C. Political and constitutional context | 15 - 24 | 8 |
| II. THE PHENOMENON OF DISAPPEARANCES IN NEPAL TODAY | 25- 31 | 11 |
| III. LEGAL AND INSTITUTIONAL STEPS TO REDUCE DISAPPEARANCES | 32 - 55 | 13 |
| A. The crime of disappearance: ending impunity | 33 - 36 | 13 |
| B. Constitutional protections of fundamental rights | 37 - 39 | 14 |
| C. Lists of detainees, habeas corpus and judicial independence | 40 - 44 | 15 |
| D. Terrorist and disruptive activities (control and punishment) ordinance | 45 - 50 | 16 |
| E. Protection of human rights defenders | 51 | 18 |
| F. The National Human Rights Commission | 52 - 53 | 18 |
| G. Human rights and participation in United Nations peacekeeping operations | 54 - 55 | 18 |
| IV. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS | 56 - 58 | 19 |
| Appendix His Majesty's Government's commitment on the implementation of human rights and international humanitarian law | | 22 |

Introduction

1. At the invitation of the Government of Nepal, the Working Group on Enforced or Involuntary Disappearances visited the country from 6 to 14 December 2004. The Working Group was represented by the Chairman-Rapporteur, Stephen J. Toope, and Working Group member, Saied Rajaie Khorasani. The purpose of the visit was to discuss the cases of enforced or involuntary disappearance received and transmitted by the Working Group to the Government of Nepal and to examine the situation of disappearances in Nepal in the light of international human rights standards, especially the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in resolution 47/133 of 18 December 1992. A significant increase in the number of cases of enforced disappearances reported to the Working Group during the past two years led to the request for a visit.

2. The delegation held meetings with His Majesty King Gyanendra Bir Bikram Shah Dev, as well as with the Prime Minister, the Chief Justice of the Supreme Court, the Foreign Minister, the Chief of the Army Staff, the Chief of Staff of the Royal Nepalese Army, the Judge Advocate General of the Royal Nepalese Army, the Attorney-General, the Inspector General of Police, members and the Secretary of the National Human Rights Commission, the National Director of the National Human Rights Promotion Centre of the Office of the Prime Minister, the Chair of the Investigative Commission on Disappearances, representatives of many non-governmental human rights organizations from across Nepal, relatives of the disappeared, the Nepal Bar Association, legal experts, journalists, and representatives of the international community in Nepal. Owing to time constraints, the Working Group held all meetings in Kathmandu. However, funding was provided for non-governmental organization (NGO) representatives from the regions to travel to meet with the delegation to present their concerns. The Working Group received written information from numerous NGOs during the visit. The delegation also visited the Kathmandu Central Jail and the Sundarijal Detention Centre. At the end of the visit, the delegation held a press conference in Kathmandu.

3. During the visit to the Kathmandu Central Jail and the Sundarijal Detention Centre, requests to meet with specific detainees who had been the subject of cases of disappearance submitted to the Working Group were granted. This contributed to the clarification of the whereabouts of the persons concerned. In addition, the Royal Nepalese Army provided new information that could lead to the clarification of 52 cases under consideration by the Working Group. The Working Group was also provided with copies of press releases concerning the four reports of the Investigative Commission on Disappearances.

4. The Working Group was informed by all parties of the damaging effects of the internal conflict in Nepal. The Working Group recognized the extremely difficult situation faced by the population of Nepal and by its State authorities. Atrocities committed by the Maoists were frequently mentioned to the Working Group by all interlocutors. While this information is important in order to understand the context of the visit of the Working Group to Nepal, the mandate is restricted to the international human rights law obligations of the State authorities in Nepal. This in no way reduces the urgent need for the Maoists to respect international humanitarian law obligations and the physical integrity of their fellow citizens, to reduce their suffering.

5. The delegation expressed its gratitude and recognition of the full cooperation of the Nepalese authorities in ensuring that all meetings requested were held and that all discussions took place in an open and constructive manner. The delegation expressed its appreciation for the assistance of the Government of Nepal in providing information towards the potential clarification of cases.

6. The delegation would also like to thank the United Nations Resident Coordinator and the United Nations Development Programme (UNDP) office in Nepal for the excellent logistical and organizational support provided in connection with the mission. The Working Group was also deeply impressed by the level of professionalism and commitment exhibited by members of Nepalese civil society, and expresses its thanks to those NGOs with which it met.

I. GENERAL OBSERVATIONS

A. Purpose of the visit

7. The dramatic rise in the number of enforced or involuntary disappearances and other human rights violations in Nepal have raised concern in Nepal and among the international community during the last two years. The human rights situation in Nepal has been deteriorating since the start of the conflict between the Government and the Communist Party of Nepal (Maoist) (CPN-M) in 1996. However, a rapid escalation in the number of disappearances followed the breakdown of a ceasefire agreement on 27 August 2003. In addition to enforced or involuntary disappearances, there has been an increasing number of reports of alleged extrajudicial executions, arbitrary arrests and torture.

8. After the breakdown of the ceasefire in August 2003, the Acting High Commissioner for Human Rights, as well as independent experts of the Commission on Human Rights, made several public statements regarding the situation in Nepal. They expressed their profound concern over the worsening human rights situation in Nepal due to the intensification of the conflict. In a statement on 14 July 2004, eight independent experts, including the Chair of the Working Group, indicated that since the beginning of 2004, they had transmitted 146 urgent appeals and other communications to the Government of Nepal regarding reported human rights violations. At the sixtieth session of the Commission in 2004, in a Chairman's statement on human rights assistance to Nepal, the Commission expressed its concern at the human rights situation since the collapse of the ceasefire in August 2003, and at the growing number of civilian victims as a result of continuing violence.

9. The majority of the 267 outstanding cases of disappearances reported to the Working Group occurred between 1998 and 2004 in the context of counter-insurgency operations launched by security forces against members and supporters of the CPN-M. Since the breakdown of the ceasefire in August 2003, the Working Group has transmitted more than 150 cases to the Government of Nepal. The cases of disappearances were reported to have been carried out by security forces personnel, often in civilian dress. Profiles of the reported victims included women, students, businessmen, farmers, workers, a writer, a government employee, journalists and human rights defenders.

B. Background

10. Nepal is situated in the south of Asia between China and India. The total area is 147,181 km² and the population is 25.7 million, with a 2.23 per cent growth rate. With 42 per cent of its population living below the poverty line and a per capita income of US\$ 230, Nepal is among the poorest and least developed countries in the world. Twenty-six per cent of women are literate, compared with 62 per cent of men. Agriculture and tourism have been the mainstays of the economy. Financial support from the international community has become more important following the decline in tourism due to the internal conflict.

11. Following the end of the Rana regime in 1951, Nepal had an elected multiparty parliament. In 1960 King Mahendra Bir Bikram Shah Dev suspended parliament and introduced the “partyless” Panchayat system. After many years in illegal opposition, in 1989 political parties led a movement to restore democracy, which eventually resulted in abolishing Panchayat rule, and multiparty democracy was restored in 1990. Since then, Nepal has seen 14 changes of Government and ongoing political instability. In May 2002, King Gyanendra Bir Bikram Shah Dev, at the recommendation of Prime Minister Sher Bahadur Deuba, dissolved the House of Representatives and scheduled elections for 13 November 2002. The Prime Minister recommended to the King to put off the elections by a year because of the Maoist violence. In October 2002, the King issued an order under article 127 of the Constitution relieving Prime Minister Deuba of his post for his “incompetence” in not being able to conduct general elections on the stipulated date, and dismissing the Council of Ministers. Since that time, the political situation has become increasingly unstable. Elections have not been held, reportedly because of the internal security problem caused by the insurgency. In May 2003, the five main political parties¹ began a campaign for the reinstatement of the parliament. In April and May 2004 thousands of people took to the streets of Kathmandu in daily protests. In response to these protests, Prime Minister Surya Bahadur Thapa resigned on 7 May 2004. Sher Bahadur Deuba was reappointed to the post of the Prime Minister on 3 June 2004. A coalition Government, consisting of several leading political parties, was finally formed on 5 July 2004. Elections have not yet been held and the parliament remains dissolved. Given the intensified conflict between the security personnel and the CPN-M and the weak civilian authorities, much depends upon dealing with the insurgency at a political level, and in reaching a political compromise that allows for the full implementation of the democratic Constitution. Otherwise, the country’s future remains uncertain.

12. The CPN-M declared its so-called “people’s war” in February 1996. Since then, the armed conflict in Nepal has resulted in many human rights violations, including enforced disappearances allegedly carried out by Nepalese security forces. Atrocities committed by the Maoists are also widely reported. While the Government had deployed the police in response to the insurgency early in the conflict, it launched an intensified security operation in 1998. Three rounds of peace talks between the Government and the CPN-M took place from December 1999 to 2003 and ended without reaching an agreement. The CPN-M unilaterally left the second round of peace talks in November 2001, and a state of emergency was declared. The Royal Nepal Army (RNA) was then deployed throughout the country and the controversial Terrorist and Disruptive Activities Ordinance was issued. According to the Constitution, the RNA can be mobilized only after the King’s approval on the recommendation of the National Security

Council, comprised of the Prime Minister, the Defence Minister and the Chief of Army Staff of the RNA. Since the breakdown of the ceasefire in August 2003, fighting between the two parties has resumed with renewed intensity and there has been an escalation in reports of human rights violations in Nepal. In November 2003, the Armed Police Force, the Nepal Police and the National Investigation Department were placed under the unified command of the RNA. The effects of the Maoist insurgency have reached all regions of the country.

13. Nepal is party to six of the seven major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In March 2002, the Government of Nepal sent a notification to the Secretary-General of the United Nations derogating from its obligations in accordance with article 4 (3) of ICCPR. In November 2002, the Government notified the United Nations that the state of emergency had been lifted. Nepal has not made a further declaration of derogation under ICCPR. The Human Rights Committee in its concluding observations on Nepal's periodic report in 1994 stated that article 115 of the Constitution would permit derogations contravening the State party's obligations under article 4 (2) of ICCPR (CCPR/C/79/Add.42, para.9). Nepal has also ratified the four Geneva Conventions of 12 August 1949. Nepal has not issued a standing invitation to the special procedures of the Commission on Human Rights. Under the Nepal Treaties Act 2047 (1990), in cases where there is a divergence between national law and international treaties to which Nepal is a party, the provisions of the treaty are to be applied. However, this does not include the Constitution.

14. Under the UNDP coordinated project, "The capacity development of the National Human Rights Commission of Nepal", the Office of the High Commissioner for Human Rights (OHCHR) provides technical assistance and two international advisers to the National Human Rights Commission of Nepal. The post of OHCHR Senior Human Rights Adviser was created in March 2003 following a request for support from the United Nations Resident Coordinator to the United Nations Country Team (UNCT). An Inter-Agency Working Group on Protection was established in August 2004, which is led by the Senior Human Rights Adviser, in order to analyse protection information, develop a comprehensive protection strategy and provide recommendations to the Resident Coordinator and UNCT on appropriate responses and interventions. A memorandum of understanding between the OHCHR and the Government of Nepal concerning technical assistance to the National Human Rights Commission was signed in December 2004.

C. Political and constitutional context

15. Nepal is a Hindu kingdom and a constitutional monarchy. Under the Constitution of 1990, the parliament consists of a House of Representatives and a National Council. Executive powers are vested in the King and the Council of Ministers. The direction, supervision, and conduct of the general administration of the country are the responsibility of the Council of Ministers. While the King has a duty to protect and abide by the Constitution, the Constitution also states that no question shall be raised in any court about any act performed by the King, and the King remains the supreme commander of the Royal Nepal Army and the National Defence Council. The King can declare a state of emergency, during which fundamental rights, with the exception of the right of habeas corpus, may be suspended. Under article 127 of the Constitution, if any

difficulty arises in connection with the implementation of the Constitution, the King may issue necessary orders to remove such difficulty and such orders shall be laid before parliament.

16. The 1990 Constitution contains several provisions for the protection and promotion of human rights. Article 25, paragraph 4, affirms that one of the main responsibilities of the State is to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquillity and order in the society. Part 3 (arts. 11-23) guarantees a range of fundamental rights including press and publication rights, rights regarding criminal justice and the right not to be held in preventive detention, and the right to a constitutional remedy. Article 14, paragraph 6, states that a person arrested or detained in custody shall be produced before a judicial authority within 24 hours after arrest. Part 12 of the Constitution establishes the Commission for the Investigation of Abuse of Authority (CIAA), which may conduct inquiries into or investigations of improper conduct or corruption by a person holding any public office, except officials in relation to whom the Constitution separately provides for such action and officials who are to be prosecuted under the Army Act. The Chief Commissioner and other commissioners of the CIAA are appointed by the King on the recommendation of the Constitutional Council.

17. The judicial system of Nepal consists of the Supreme Court, 11 courts of appeal and 75 district courts. The King appoints the Chief Justice upon recommendation of the Constitutional Council and other judges upon recommendation of the Judicial Council. Under the Constitution, Nepal's judiciary has the right of judicial review and is legally separate from the executive and legislative branches. The Supreme Court has the power of judicial review to adjudicate the constitutionality of any law upon a petition by a citizen, and the power to issue orders and settle disputes concerning the enforcement of fundamental rights.

18. The National Human Rights Commission (NHRC) was established in 2000 as an independent and autonomous statutory body under the Human Rights Commission Act 1997. The main functions of the NHRC include conducting inquiries and investigations into cases of human rights violations, reviewing provisions of the Constitution and other prevailing laws for the protection of human rights, studying international human rights instruments and making necessary recommendations for the effective implementation of such provisions.

19. The NHRC has taken initiatives for the peaceful solution of the conflict between the Government and the CPN-M. A draft Human Rights Accord was developed by the Commission after consultations with the Government and the CPN-M, but the document remains unsigned. The NHRC issued a list of recommendations to both the Government and the CPN-M on minimum immediate steps for human rights protection, on 10 March 2004 and 27 May 2004.

20. In November 2004, the NHRC set up a team to work on the issues of disappearances under the Protection Unit. They receive individual complaints and carry out follow-up, investigations and visits to detention centres or military barracks. However, they cannot visit detention facilities without prior notification. The NHRC reportedly has received reports of more than 1,600 cases of enforced disappearances.

21. The Prime Minister established the Investigative Commission on Disappearances on 1 July 2004 to determine the status of reported disappearances. The Commission was established

following demands by relatives on hunger strikes and in accordance with the Government's "commitment on the implementation of human rights and international humanitarian law" of 26 March 2004 (see paragraph 23). The Commission, consisting of representatives of the Police, the Armed Police, the Defence Ministry, the National Investigation Department and the Home Ministry, is chaired by the Joint Secretary for Home Affairs. The Commission has issued four reports with information about the status of 320 persons: 24 people in the August report, 54 people in the September report, 126 people in the October report, and 116 people in the December report. The mandate of the Commission has been renewed three times for short periods. Following its fourth report, issued on 13 December 2004, the mandate of the Commission was extended for two months.

22. A Human Rights Promotion Centre was established in the Office of the Prime Minister in 2003. The Centre coordinates a wide range of human rights-related activities of the Government.

23. On 26 March 2004, then Prime Minister Surya Bahadur Thapa announced a 25-point "commitment on the implementation of human rights and international humanitarian law" (appendix), which contains detailed and concrete steps to protect and prevent human rights violations in the context of the Maoist conflict. The commitment includes provisions for the protection of human rights without discrimination (para. 1); for the respect and protection of a wide array of civil and political rights, including the right to life (para. 2), freedom from torture and other ill-treatment (para. 8), fair trial rights (paras. 3-11), freedom of expression (para. 15) and the rights of women and children (para. 17); for working, together with the International Committee of the Red Cross, to establish the fate and whereabouts of reported missing persons (para. 22); for the respect of norms of international humanitarian law (preamble, paras. 3, 21); for the protection of human rights defenders (para. 18), for cooperation with international organizations such as the ICRC and the United Nations in the fields of international human rights and humanitarian law; and for strengthening of the NHRC (para. 24).

24. A Human Rights Cell was established on 8 July 2002 in the RNA headquarters to monitor, record and investigate any human rights violations by the security forces. The RNA subsequently set up human rights cells in every division and brigade headquarters. Human rights cells were established in the Police and the Armed Police Forces in 2001. The RNA disseminated directives from the Chief of Staff of the Army related to human rights in August 2003. The directives require security personnel to inform detainees of the reason for their arrest and make information about the whereabouts of detainees available to family members or relatives. It also states that terrorist detainees should be treated humanely and that "a legal procedure" should be initiated at the earliest possible time. Furthermore, any army personnel who violate the Army Act by a violation of human rights will be tried and punished by a court-martial under the Army Act of 1959, which contains specific provisions for the protection of human rights. In cases of murder or rape of civilians, army personnel may be tried by a civilian court. While the RNA has taken disciplinary action against soldiers for 39 human rights abuse cases, no cases of alleged violations by army personnel have been brought to civilian courts. Under the Constitution, article 118 states that the King "shall operate and use the Royal Army on the recommendation of the National Defence Council". The members of the National Defence Council include the Prime Minister as Chairman, and the Defence Minister

and Commander-in-Chief of the Army. It is evident that civilian control over the military has traditionally been limited.

II. THE PHENOMENON OF DISAPPEARANCES IN NEPAL TODAY

25. The phenomenon of disappearance in Nepal today is widespread; its use by both the Maoist insurgents and the Nepalese security forces is arbitrary. Perpetrators are shielded by political and legal impunity. The Working Group currently has 267 cases before it from Nepal. More than 150 of these cases arose as urgent actions within the last year. What is more, reportedly, the NHRC currently has 1,619 cases to investigate: 1,234 cases attributed to the security forces, 331 attributed to the Maoists, and 54 where the responsible persons are unidentified. Even more worrisome, the phenomenon has grown exponentially in the last few years, from dozens of cases before the NHRC in 2000/01 to more than 600 lodged in 2003/04. Even the internal Government-appointed Investigative Commission on Disappearances, chaired by Mr. Malego, acknowledges that more than 1,000 cases have been brought to its attention, though it is suggested that some of these cases are duplicates.

26. Many government officials argue that the number of disappearances is greatly exaggerated. It is suggested repeatedly that because names are complicated in Nepal, many cases are duplicates filed under different names. It is also suggested that many disappeared people have simply fled the country, particularly to India across the open border agreed to in the 1951 Delhi Accord. Although these issues may be relevant in a small number of cases, the Working Group is convinced that they do not speak to the overall pattern of disappearances in Nepal. It is important to stress that in every case before the Working Group witnesses had seen security forces personnel detain the victim. The Working Group is not concerned with people who simply choose to walk across borders for reasons of safety or economics; the disappeared to whom the Working Group refers were taken away by force. Detailed reports that were received from many rural areas suggest that, if anything, the phenomenon of disappearance is under-acknowledged. The delegation heard consistently from around the country that a culture of silence has sprung up, with villagers too fearful to report disappearances for fear of reprisal from the security forces or the Maoists insurgents. In many cases, relatives who go to army barracks to inquire into the fate of their family members later find themselves caught up in harsh interrogations. Some families have had multiple disappearances.

27. In many of the cases attributed to the security forces, and especially to the army, a clear pattern has emerged. A person suspected of Maoist sympathies, or simply of having contact with Maoists, is seized by a large group of known military personnel out on patrol. He or she is blindfolded and his or her hands tied behind the back. The victim is put into a military vehicle and taken away. The security forces often appear in plain clothes so that no personal names and/or unit names are visible. Very commonly, the victim is later seen being driven around in an army vehicle, reportedly to point out the homes of other "suspects". In almost all cases, the victim is held incommunicado in army barracks, with no access to family or legal counsel. The Working Group heard many reports of physical abuse and torture of persons detained in army custody. Indeed, the Working Group saw credible physical evidence of such torture, and detailed descriptions that were consistent from one victim to another. Patterns include beatings with plastic pipes and sensory deprivation, including the blindfolding of victims for the entire period of incommunicado detention, often lasting months.

28. In meeting with many relatives of the disappeared, the Working Group was reminded that families are also defined as victims of disappearances under international standards. In Nepal, the vast majority of the disappeared are men. Women are frequently left with small children and no means of support. The social, economic, legal and psychological effects are devastating for families. The Working Group was told of similar consequences that face those people who are released from military or police detention after being suspected of being a Maoist, though they may never have been tried, or even charged. They are tainted by mere suspicion, and may find it difficult to integrate back into their communities.

29. Maoist forces have also committed hundreds of acts of disappearance. The Working Group heard deeply troubling reports from human rights activists from across Nepal that the Maoists are more likely to kill perceived opponents outright than to make them disappear. Yet the Maoists do systematically kidnap children to serve as soldiers. Because these children are forcibly taken from their families and are brought into armed units that take them away from their homes, many of the children disappear.

30. There is no doubt that the underlying cause of most disappearances perpetrated by the security forces and the Maoist insurgents is the civil conflict raging throughout the Nepalese countryside. Unless and until political efforts to resolve the conflict are successful, it is likely that disappearances and other gross human rights violations will continue. Nonetheless, in this report, the Working Group makes concrete recommendations that could go some way towards reducing the number of disappearances even in the absence of political resolution of the internal conflict.

31. The Working Group's recommendations are directed to Nepalese authorities because it is the State of Nepal that is subject to international obligations within the purview of the United Nations system of human rights protection, of which the Working Group is one element. This fact in no way reduces the urgent need for the Maoists to respect international humanitarian law obligations and the physical integrity of their fellow citizens, to reduce their suffering. Nor does this mean that the Working Group is unaware of the gross abuses of Maoist forces, or that it is unsympathetic to the complex security challenges facing Nepal. The Working Group is convinced, however, that the Nepalese authorities - civilian and military - do not want to be equated with the Maoist insurgents. Indeed, the commitment of 26 March 2004 makes that abundantly clear. Moreover, it cannot be emphasized too strongly that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked by a State to justify enforced disappearances.

III. LEGAL AND INSTITUTIONAL STEPS TO REDUCE DISAPPEARANCES

32. The Working Group welcomes efforts undertaken by the Government and the army to address the issue of disappearances, including the signing of the memorandum of understanding with OHCHR to support the important work of the NHRC, the work of the Investigative Commission on Disappearances, cooperation by the army in providing information on the whereabouts of some disappeared persons, and the opening of the civilian-run Sundarijal Detention Centre where some detainees formerly held in army barracks have been transferred and where they may be visited by their families. During its visit to Nepal, the Working Group received concrete information from the army that could lead to the clarification of 57 cases,

obviously a positive development. Nonetheless, disappearances continue unabated, and further legal and institutional action is urgently needed by both Government and the security forces to address this grave situation.

A. The crime of disappearance: ending impunity

33. There is no specific provision in the Nepalese Penal Code creating a crime of enforced or involuntary disappearance. There is such a provision in proposed reforms to the Penal Code, but in the absence of a sitting parliament there is little likelihood that such a provision will be enacted in the short term. Nonetheless, the Working Group recommends that:

As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance.

34. Once a crime of disappearance is created, a further problem must be addressed. In all countries, whenever security forces personnel are accused of serious crimes against civilians, the legitimacy of the legal process is strongly determined by whether the adjudication of guilt falls within the jurisdiction of military or of civilian courts. Military courts should have restrictive jurisdiction relating primarily to military offences, such as dereliction of duty, or to offences where the accused and the victim are both within the military. As soon as parliament sits again, the Working Group recommends that:

The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation.

35. In addition, the civilian authorities of Nepal must work hard, in close cooperation with the Royal Nepal Army, the Armed Police Force and the Nepal Police, to address what was described to the Working Group time and again as a “culture of impunity” for human rights abuses by the security forces of Nepal. Although the Army Act currently provides for parallel civilian or military jurisdiction over army personnel accused of murder during times of military operations, under which would be included extrajudicial killings of civilians in army custody, not a single prosecution has been launched in the civil courts since the breakdown of the ceasefire between the Maoists and the Government in August 2003, even though a large number of such killings have been credibly reported. Some police officers have been punished for human rights violations. Reportedly, 39 military courts-martial have been held. In specific cases, however, the facts made public after these courts-martial are significantly at variance with eyewitness accounts of the circumstances of the disappearance, which undermines the credibility of the military court process in the eyes of the public. Moreover, the number of prosecutions and disciplinary actions involving the police and army is small in comparison with the scale of disappearances in the country. The Working Group recommends that:

The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and

furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians.

36. The Nepalese people should not give up hope that justice may come to perpetrators of disappearances. Aside from existing Nepalese mechanisms, international law, which may be invoked many years after the initial disappearance, has been used by national courts asserting universal jurisdiction over past cases, and by international tribunals. The crime of enforced or involuntary disappearance is considered a continuing crime, from the moment a person is disappeared until his or her whereabouts or fate is revealed.

B. Constitutional protections of fundamental rights

37. Under article 14, paragraph 7, of the Nepalese Constitution, preventive detention is implicitly authorized. However, under article 15, paragraph 1, “[n]o person shall be held under preventive detention unless there is sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal”. This provision has been carefully drafted to ensure that mere suspicion of a possible threat at some point in the future cannot be a lawful ground for preventive detention. Moreover, article 14, paragraph 5, of the Constitution, which applies to persons held in preventive detention, states that they have a right to be informed of the grounds of their arrest and to “consult and be defended by a legal practitioner”.

38. These constitutional provisions generally accord² with Nepal’s international obligations under the International Covenant on Civil and Political Rights (ICCPR), which Nepal ratified in 1991. In paragraph 4 of general comment No. 8, the Human Rights Committee interpreted the ICCPR provisions to apply to preventive detention as follows:

“... if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law, information of the reasons must be given, and court control of the detention must be available as well as compensation in the case of a breach” (references deleted).

39. Yet these rights are being systematically denied in Nepal today. Hundreds of people are being held incommunicado in army barracks throughout the country without knowing why they are being held, and without any access to legal counsel. Detention also appears to be highly arbitrary, without a basis in any solid evidence of threat in many, if not most, cases. What is more, relatives of detainees are denied any information about the whereabouts of their family members. These cases amount to disappearance, a continuing crime according to the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133 of 18 December 1992), as long as the fate and whereabouts of the victim remain unknown.

C. Lists of detainees, habeas corpus and judicial independence

40. Human rights defenders in Nepal have tried to use the writ of habeas corpus to address the problem of disappearances. Obviously, this remedy is only relevant to persons unlawfully and secretly detained by the security forces, and is of no use to combat disappearances allegedly perpetrated by the Maoist insurgents. Even in relation to the security forces, however, habeas corpus has been only marginally successful. The most obvious problem is that there are no accessible, accurate and fully up-to-date lists of persons held in detention by the army in barracks across the country. Because there are no accessible official lists of detainees, experience from around the world suggests that the chances of torture and other abuse are significantly heightened. The Working Group therefore recommends that:

The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees.

41. In most cases of detention by security forces in Nepal, knowledge of the whereabouts of a person seized by the army or other security forces comes only through rumour, testimony of released detainees, or leaks from security personnel to families of the disappeared. So applications for habeas corpus are inevitably speculative, and without a foundation of solid information. This implies that success of the writ is entirely dependent upon the admission of the security forces that the person is in their custody. Only then can the Government even be asked to show cause why the person should remain in detention.

42. A central difficulty in these habeas corpus cases is that the Nepalese law on perjury is defective. Although “witnesses” can be liable for perjury, government officials are not considered to be witnesses. This means that such officials, including security forces personnel, are not constrained by any legal provision to tell the whole truth. In a number of notorious cases the army has flatly denied before the Supreme Court that a particular person is in detention, only to reverse that position later when forced to do so by revelations in the media, in political debate, and even in official documents issued by other branches of the public authority. Such cases undermine the power and dignity of the judiciary, a very troubling phenomenon, especially in the absence of a functioning parliament. In Nepal today, the judiciary is one of the only remaining counterbalances to the power of the army.

43. A similar attack on judicial power arises in cases where the Supreme Court grants a habeas corpus application and orders the release of a detained person, only to find that the person is re-arrested immediately upon release. Such a case occurred during the visit of the Working Group to Nepal, but credible reports by numerous lawyers suggest that the practice is widespread. The Working Group recommends that:

The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court.

44. Although it is sometimes said that judges in Nepal are frightened to challenge the army, the Working Group was reminded that the judiciary, and especially the Supreme Court, has worked hard to carve out an independent role since the establishment of democracy. That role is more important now than ever before for the people of Nepal. It is also said that some judges may be afraid of reprisals by the Maoists for actions taken in court. If that is so, it may be wise to consider the creation of so-called “faceless courts”, as an exceptional measure until a political accommodation is reached to end, or at least significantly weaken, the insurgency.

D. Terrorist and disruptive activities (control and punishment) ordinance

45. One of the main legal concerns of human rights advocates in Nepal and of international observers is the existence and application of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance of 2004 (TADO). The Ordinance replaced an Act of the same name, passed in 2002, which criminalized certain “terrorist and disruptive acts” and established “special powers to check” terrorist and disruptive acts, including widely extended rights of search and seizure and of the lawful use of force by security personnel. In addition, and most controversially, the former Act provided for preventive detention “upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act”. The detention was limited to 90 days. Given the sweeping powers granted in the Act, it was appropriately made subject to a two-year sunset clause. With the suspension of parliament in May of 2002, the Act was transformed into an Ordinance issued by the executive authority, and the period of lawful preventive detention was extended for up to one year. Preventive detention orders under TADO must be issued by a civilian authority, the “security officer”, who, in most cases, is defined as the Chief District Officer (CDO).

46. Government officials claim that TADO should be seen in a positive light. It was stated expressly by a number of senior government figures that allowing detention for up to one year would reduce the number of disappearances and extrajudicial killings. This argument is worrisome. It supposes that the security forces will engage in such acts unless they are given more “flexibility” in detaining suspects without any need to adduce proof of immediate danger to society. This is contrary to the Nepalese Constitution, which stipulates, as noted above, that preventive detention cannot be authorized “unless there is sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal”. It would seem that rather than watering down this important protection, it would be better to exert proper disciplinary control over the security forces to limit disappearances and killings.

47. In any event, even the small degree of civilian control that is provided for in TADO, through the requirement of action by the CDO, is in practice largely illusory. In many cases, the CDO is not a truly independent force in the countryside. His security is so threatened by the Maoist insurgents that he is totally dependent upon the army for his safety. Credible reports suggest that CDOs sign detention orders under TADO without any serious consideration of the necessity of the detention. Indeed, some may sign blank orders to be filled out by security forces personnel without supervision. Moreover, the constitutional and international law right of access to legal counsel is systematically denied.

48. It is also argued by lawyers and human rights activists that TADO has added to the general culture of impunity. Because detentions can now be ordered for a full year without any judicial scrutiny, and because in practice there is no effective civilian control over the issuance of the orders, security personnel can act without careful consideration to detain people with no proven link to terrorist or disruptive activities. Mere suspicion can and does extend all too easily to innocent people. Security forces are also reaffirmed in the presumption that their judgement is unquestionable.

49. It is suggested that TADO at least requires the creation of up-to-date lists of detainees in the office of the CDO, thereby allowing for some external scrutiny. In practice, even this possible benefit is of little relevance. Very few detainees are actually held under TADO. While the Working Group was in Nepal, it was told by the Government and the army that the number of TADO detainees stood at 47. Some of these people are held in army barracks which, by any reasonable interpretation, do not qualify as humane places of detention, as required by TADO itself. Nonetheless, the vague definition of what is a legal place of detention has been used by the military to justify detention in barracks, resulting in a denial of access to lawyers and relatives. Many, many more people are held incommunicado at army barracks under absolutely no legal authority.

50. TADO does not appear to be effective. Reportedly, fewer than 100 prosecutions have been launched under its terms. Relatively few people are held in preventive detention under its provisions. Yet its negative psychological effect is great. It adds to the culture of impunity that encourages abuses by the security forces, and it adds to the deep insecurity felt by many innocent Nepalese. The Working Group recommends that:

The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal.

E. Protection of human rights defenders

51. Human rights defenders are widely reported to be under constant threat for their work on disappearances, in particular in the regions of Nepal outside Kathmandu. One human rights defender who works on disappearances reported having an army officer come to his office and point a gun at his head. In accordance with the mandate of the Working Group, it will continue to follow such threats against human rights workers closely and with great concern. In addition, the Working Group will raise the issue of threats to human rights defenders in Nepal with the Special Representative of the Secretary-General on the situation of human rights defenders. The Working Group recommends that:

The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law.

F. The National Human Rights Commission

52. In its relatively short life, the National Human Rights Commission has emerged as a crucial tool for combating human rights violations in Nepal, including disappearances. The NHRC has established a special unit to focus upon disappearances, and has built up important

contacts with families of the disappeared and with civil society organizations working in this area. Nonetheless, the NHRC remains fragile. Its staff is young, and requires both more training and clear political support. The terms of all members of the Commission will soon expire. It is imperative that the work of the NHRC continue in an uninterrupted fashion. The Working Group recommends that:

The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition that the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process.

53. The National Human Rights Commission has the authority to visit places of detention, but is prevented from visiting detainees in army barracks without prior notification. Progress on an agreement for cooperation between the NHRC and the Royal Nepalese Army, which took place during the Working Group's visit, is welcome and its implementation will be watched closely. The Working Group recommends that:

The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission.

G. Human rights and participation in United Nations peacekeeping operations

54. The Working Group was informed by army commanders of the high percentage of the Nepalese armed forces who had served in United Nations peacekeeping operations, and their pride in that service. Yet, the Working Group heard concerns from civil society and the international community in Nepal regarding the Royal Nepalese Army's reported human rights abuses and their future participation in such operations. It is important to recall that a basic premise of all United Nations peacekeeping is that the fundamental principles and rules of international humanitarian law are applicable to military forces under United Nations command and that military forces under United Nations command must make a clear distinction between civilians and combatants and direct military operations only against combatants and military objectives³.

55. Moreover, the United Nations Code of Personal Conduct for Blue Helmets⁴ stipulates clearly that all peacekeeping personnel should "*respect and regard the human rights of all*". And "not act in revenge or with malice, in particular when dealing with prisoners, detainees or people in your custody" (rule 5, emphasis added). It would seem odd, at the very least, for security personnel known to have committed widespread human rights abuses to be engaged in such missions. The Working Group recommends that:

The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress.

IV. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

56. **The Working Group is deeply concerned about the large number of disappearances occurring in Nepal at the hands of Maoist insurgents and the security forces of the State. Although the resolution of the underlying political conflict is the best means to guarantee a reduction in human rights and humanitarian law violations, including disappearances, the Working Group is of the view that certain steps should be taken immediately to reduce the number of disappearances in Nepal. In addition, every effort must be made by the Government and the security forces to protect human rights defenders from harassment and threat.**

57. **The Nepalese State, including its security forces, does not want to be viewed as the moral equivalent of the Maoist insurgents. That is why the Government's commitment on the implementation of human rights and international humanitarian law of 26 March 2004 is so important - and why it must be fulfilled. In recent weeks, women have risen up in various parts of the country to demand an end to the abuses of the Maoist insurgents. The Government and the security forces are here presented with a remarkable opportunity to show themselves to be the defenders of the Nepalese people. Defenders do not commit disappearances. They do not detain arbitrarily and in secret. They do not torture.**

58. **The Working Group therefore recommends that:**

(a) **As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance;**

(b) **The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation;**

(c) **The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and, furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians;**

(d) **The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees;**

(e) **The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court;**

(f) The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal;

(g) The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law;

(h) The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition, the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process;

(i) The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission;

(j) The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress

Notes

¹ Nepali Congress (NC), Communist Party of Nepal - United Marxist and Leninist (CPN-UML), Nepal Workers and Peasants Party (NWPP), Peoples' Front Nepal (PFN) and Nepal Sadbhavana Party (NSP).

² It is arguable that article 14, paragraph 7 of the Constitution, which eliminates the rights of access to a judge within 24 hours in the case of preventive detention, is not in accord with ICCPR, at least as interpreted in general comment No. 8 of the Human Rights Committee.

³ (Secretary-General's Bulletin on observance by United Nations forces of international humanitarian law, ST/SGB/1999/13 (6 August 1999), para. 5.1; and *Handbook on United Nations Multidimensional Peacekeeping Operations* (2003), p. 58.)

⁴ Available at www.un.org/Depts/dpko/training.

Appendix

HIS MAJESTY'S GOVERNMENT'S COMMITMENT ON THE IMPLEMENTATION OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW*

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

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

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

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

1. Human rights protection will be guaranteed without prejudice to race, colour, gender, ethnicity, language, religion, political or other ideologies, social origin, disability, property, birth or on any other grounds;
2. Every person shall have the right to life, dignity and security. Right to life shall be respected under all circumstances. For this purpose, immediate instructions shall be issued to implement and respect the provisions of the Geneva Conventions in particular Common Article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities;
3. No one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances;
4. A detainee shall be informed of the reason for the arrest. No one shall be arrested during the night except in accordance with the prevailing laws. Information about the whereabouts of the detainee and his/her transfer shall be made available to the members of his/her family, legal practitioner and the person eligible to receive such information. Every place of detention will maintain a register containing the name of every person detained and the dates of entry, discharge or transfer;
5. Right to unhindered legal defence shall be honoured and protected. The detainee shall be allowed to speak with the family, legal practitioner and any other person within prescribed legal provisions. The accused shall have the right to present himself/herself during the hearing of the case. He/she shall have the right to defend by himself/herself or by the legal practitioner of his or her own choosing. He/she shall have the right to seek counsel from such practitioner openly and secretly;

* Unofficial translation from the Ministry for Foreign Affairs of Nepal.

6. Any detainee shall be held in an officially recognized place of detention. Detained persons shall be kept in humane conditions and provided with adequate food, drinking water, appropriate shelter, clothing, health and sanitation facilities and security;
7. The accused shall have the right to be tried in the court that has all the attributes for conducting free and fair proceedings within a reasonable period of time in accordance with law;
8. The accused held in detention shall not be subject to torture or to cruel, inhuman or degrading treatment or punishment. Any person so treated shall be provided with the compensation stipulated by the law and any person responsible for such treatment shall be prosecuted and punished according to the law;
9. While releasing from detention, the dignity and rights of the person shall be guaranteed providing credible evidence of the release from detention;
10. For the effective judicial remedy, the orders issued by the Court, including the writ of habeas corpus shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such rights to remedy shall be punishable by law;
11. No person shall be prosecuted and punished more than once for the same offence. For the dispensation of justice, only the competent court complying with all judicial proceedings shall have the right to pronounce the verdict in accordance with law;
12. Every person shall have the right to freedom of movement and the choice of domicile. The right of the displaced persons to return to their homes or to the places of their choice shall be ensured;
13. The arrangement relating to the supply of human necessities of all types including food and medicines shall be ensured throughout the Kingdom;
14. Recognizing the educational institutions as the “Zone of Peace”, no activities shall be allowed within such premises that disrupt education or peace;
15. Every person shall have the right to freedom of opinion, expression and religion. Such rights shall also include right to faith in the religion of one’s choice or belief through worshipping and observance. Every person shall have the right to express opinion without hindrance in accordance with the prevailing laws. Such rights shall include the right to seek, receive and disseminate all kinds of information;
16. Every person shall have the right to form associations with others in accordance with the law. Right to peaceful assembly without arms shall be unhindered. Every citizen shall have the right to participate in the public activities by himself/herself or by the independently elected representative;
17. Women and children shall enjoy the rights of special protection. The rights of women and children shall be fully protected and international laws such as the Convention on the

Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women shall be respected. The mechanism to examine ways to end such discrimination shall be strengthened;

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

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

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

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

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

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

- (a) Investigation into human rights violations and prosecution of those responsible;
- (b) Observance of laws applicable to detention;
- (c) Protection of human rights of all persons coming into contact with the security forces;
- (d) Immediate release of those subject to arbitrary or illegal detention;
- (e) Giving immediate effect to the orders and decision of the judiciary;
- (f) Taking necessary legal action against those who are responsible for human rights violations;
- (g) Recommend compensation for the victims;

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

- (a) Investigating on violations and discouragement of human rights on the basis of complaints and through its own or any other sources, and carrying out such investigations through its own mechanism or through any agency of HMG or any other official or persons;
- (b) Investigating on neglect of any person or institution for preventing violations of human rights, and informing or warning any agency with regard to the legal provisions on human rights;
- (c) Visiting, observing and inspecting any agency under HMG or prison or any other institutions, and recommending to HMG any measures required for improvement in the physical or other facilities at prisons for protection of human rights;
- (d) Suggesting necessary measures for review and implementation of legal provisions for effective implementation of human rights;
- (e) Suggesting measures to HMG for effective implementation of international instruments on human rights, including for reports to be submitted in accordance with these instruments;
- (f) Conducting research on human rights-related subjects, disseminating and conducting education on human rights promotion, and encouraging non-governmental organizations working in the human rights-related fields;
- (g) Reviewing the current human rights situation in the country;
- (h) Setting up its monitoring body to determine whether the human rights commitments are being respected and to verify any violations, in particular attention to the right to life, integrity and security of the person, to individual liberty, to due process of law, to freedom of expression, movement of association and to the situation of the most vulnerable groups of society, including children, internally displaced persons and any groups subject to discrimination;
- (i) Strengthening of its capacity at the central level and to increase its outreach at the regional levels;
- (j) Ensuring free movement of the staff and of its representatives throughout the country and to interview any person or group freely and privately, particularly in places of detention and establishments suspected of being used for detention purposes;
- (k) Ensuring the security of the staff/representatives of the NHRC or individuals who provide relevant information or evidence;
- (l) Responding promptly to any requests for information or suggestions for measures to improve the protection of human rights;
- (m) Passing, if appropriate, the cases considered by the NHRC to relevant national legal structures when there is basis of criminal investigation and prosecution;

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

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