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公民权利和政治权利，包括酷刑和拘留问题

酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题

特别报告员曼弗雷德·诺瓦克的报告

对尼泊尔的访问\*

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\* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，按提交原文分发，附录亦以原文分发。

## 内 容 提 要

应尼泊尔政府邀请，酷刑问题特别报告员于 2005 年 9 月 10 日至 16 日访问了尼泊尔。特别报告员感谢尼泊尔政府在他访问期间向他提供全力合作。本报告研究尼泊尔酷刑或虐待情况中的法律和事实问题。特别报告员根据他与在押被拘留者和拘留释放者的会晤情况，并以法医证据为佐证，还根据他与政府和军方官员、律师和非政府组织的代表的会晤情况，得出结论：在尼泊尔，警察、武装警察尼泊尔皇家军队有系统地实施酷刑和虐待。政府急需明确无误地表明谴责酷刑和虐待，特别报告员对这种必要性极其明确，因为一些高级警察和军官三番五次告诉他，酷刑在有些情况下可以接受，而且实际上是有系统地实施的。

近几年来，特别报告员及其前任收到了大量来自尼泊尔的酷刑和虐待指称，主要在与尼泊尔共产党(尼共)(毛派)的武装冲突中的酷刑和虐待。他认为政府有义务确保国内居民的安全，并防止今后的暴力袭击；但他强调，这种措施必须遵守国际人权准则，特别要如《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚的公约》所载的那样，绝对禁止酷刑。特别报告员还收到了关于毛派分子实施酷刑的令人震惊的证据以及关于强迫招募妇女和儿童的指称。

宪法与法律关于保障嫌疑人权利的规定与一人在被捕时所实际发生的情况之间有差距，特别报告员对此表示关注。基本要求没有达到，如及时得到律师协助，在被捕 24 小时之内送交法官，或者被捕或递解后立即做体检。被拘留者登记册，既使有，也残缺不全。总之，特别报告员认为，酷刑受害者及其家属对司法系统和法治毫无信心。

据特别报告员说，预防性拘留法，如《公共安全法》和《反破坏条例》等等，给警察和军队以预防为由拘留嫌疑人的全权，有时可连续拘留几个月。实际上，他收到了大量关于保安部队强行抓人并将人禁闭在保密地点的指称。根据特别报告员的经验，就是在羁押的这一最初时期，行刑逼供的情况最可能出现。上述法律以及其他法律所载的正当程序保障，当局虽然经常引用，作为禁止任意拘留和酷刑的有效保障，但实际上，大多是虚有其名；下达预防性拘留令时，大都没有对拘留申请的是非曲直，或者对嫌疑人的身体状况作调查。

对尼泊尔当今普遍的有罪不罚现象，特别报告员深为关注，也特别强调必须对酷刑这种代替对犯罪人刑事惩戒的形式作赔偿。国内法，即 1996 年《酷刑赔偿法》没有按《公约》第一条对酷刑作界定，也没有规定有效的补救措施；它没有规定酷刑应按罪行论处，也没有按酷刑的严重程度量刑。据特别报告员说，尼泊尔法律规定的对犯罪人惩罚的“部门内行为”，如降级、停职、罚款、推迟升级等等，几乎无济于事，因此，任何能想象到的预防或威慑效应实际上都起不到作用。

他访问的设施，其拘留条件普遍很糟，特别是人满为患，卫生情况差。军营中嫌疑人拘留所，有的由车库改建，有的是镀钢棚舍，都令人无法接受。

因此，特别报告员建议政府采取一些措施，以履行它的承诺，防止并制止酷刑行为和其他形式的虐待。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND  
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT, MANFRED NOWAK ON HIS MISSION TO  
NEPAL (10-16 SEPTEMBER 2005)**

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## Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a visit to Nepal from 10 to 16 September 2005, at the invitation of the Government. During the course of the visit, he examined the legal framework and governmental activities relating to the prohibition of torture and other forms of ill-treatment. He also examined the response of the Government to allegations of violations, particularly in relation to inquiry, impunity and prevention. The Special Rapporteur has based his findings on the situation of torture and ill-treatment in Nepal on written information from and interviews with a wide array of sources, including government officials, non-governmental organizations (NGOs), lawyers, victims themselves and witnesses, as well as from on-site inspections of detention facilities. He expresses his appreciation to the Government for providing comments to the report by letter dated 27 December 2005. What follows is the report of his findings, and his conclusions and recommendations.
2. The main purposes of the visit, according to the Special Rapporteur, were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment, to promote preventive mechanisms to eradicate torture and ill-treatment, and to begin a process of cooperation with the Government.
3. The Special Rapporteur notes that Nepal continues to suffer from a decade-long internal armed conflict which was launched by the Communist Party of Nepal (CPN) (Maoist) in February 1996. The conflict has cost an estimated 12,000 lives. Initially, security operations were conducted by the Nepal Police, which was subsequently supported by the establishment of the Armed Police Force (APF). In November 2001 the Royal Nepalese Army (RNA) was mobilized to combat the growing insurgency, and in November 2002 the Nepal Police and APF were placed under the “unified command” of RNA for joint counter-insurgency operations. In 2001 and in 2003 ceasefires were declared and peace talks initiated between the Government and CPN (Maoist), with the last such negotiations breaking down in 2003. In May 2002 the Parliament was dissolved on the recommendation of the Government. In October, King Gyanendra Bir Bikram Shah Dev dismissed the Prime Minister, and from then to February 2005 three successive appointed Prime Ministers either resigned or were dismissed by the King in the absence of a sitting Parliament. On 1 February 2005 King Gyanendra dismissed the Government, citing the failure to hold elections and end the conflict, declared a state of emergency, and suspended some fundamental rights (e.g. freedom of assembly and expression, and rights related to preventive detention). Although the state of emergency ended on 30 April 2005, the King continues to exercise direct rule over the country. It has been announced that municipal elections are being held on 8 February 2006 and parliamentary elections are to be held by April 2007. Expressing sincere hopes for a durable solution to the conflict in the very near future, the Special Rapporteur acknowledged the difficult and dangerous situation prevailing in the country, particularly outside of Kathmandu. He recognized the obligation of the Government to ensure the security of the country’s inhabitants and to prevent future violent attacks. However, he emphasized that measures taken must respect international human rights norms, in particular the absolute prohibition of torture, as contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Nepal has ratified.

4. During the course of the visit, the Special Rapporteur met with officials, including (in chronological order): the Secretary and Joint Secretary of the Office of the Prime Minister and Council of Ministers, Mr. D. Pant and Mr. T. Upreti; the Attorney-General, Mr. P. Ojha; the Minister of Home Affairs, Mr. D. Shahi; the Secretary and Joint Secretary of the Ministry of Home Affairs, Mr. C. Shrestha and Mr. B.G. Bista; the Director General of the Department of Prison Management, Mr. B. Neupelane; the Chief Justice of the Supreme Court, Mr. D. Poudel; the Acting Registrar of the Supreme Court, Mr. R. Timala; the Inspector General of Police, Mr. S. Thapa; and the Additional Inspector General of the Armed Police Force, Mr. R. Thapa. He met senior officials of the Royal Nepalese Army, including Chief of General Staff Lieutenant General R. Katwal and the commanders of the Eastern and Midwestern Divisions of the RNA, Major General P. Malla and Major General C. Gurung. Meetings were held with the Heads of the Human Rights Cells of the Police, the Armed Police and the RNA.

5. The Special Rapporteur met with the Commissioners and staff of the National Human Rights Commission (NHRC), including commissioners R. Rakesh, S. Pathak and S. Silu, and Acting Secretary K. Poudyal.

6. The Special Rapporteur met representatives of the diplomatic corps in Nepal, the International Committee of the Red Cross (ICRC) and the United Nations Country Team (UNCT). He met representatives of the following NGOs: Advocacy Forum, Center for Human Rights and Democratic Studies (CEHURDES), Centre for Victims of Torture (CVICT), Constitutional Lawyer's Forum, Dalit NGO Federation, Feminist Dalit Organization (FEDO), Human Rights Organization of Nepal (HURON), Human Rights and Peace Society (HURPES), Informal Sector Service Centre (INSEC), Nepalese Section of the International Commission of Jurists, Institute of Human Rights Communication, Nepal (IHRICON), Law Associates Nepal, People's Forum for Human Rights and Development (PFHRD), People's Front and Nepal Bar Association.

7. In Kathmandu, the Special Rapporteur visited the Central Prison, Hanuman Dhoka District Police Office, Patan Police Office, Chhauni barracks of the RNA and Sundarijal Investigation Centre, where he interviewed detainees and staff.

8. The Special Rapporteur also travelled to Nepalgunj in the west of the country, where he met with NGOs and the Chief District Officer, Mr. B.K. Adikhari, among others. In Nepalgunj he visited the District Prison of Banke District, the RNA Midwestern Division Headquarters (Pritna), the Chisapani and Kohalpur barracks, the Armed Police Force Tactical Training Centre and the District Police Office.

9. The Special Rapporteur expresses his appreciation to the Government for the full cooperation it provided to him throughout the visit, and looks forward to a long-term process of cooperation with the Government to prevent and combat the practice of torture.

10. He also extends his sincere appreciation for the excellent support provided to him by the United Nations Resident Coordinator, Mr. M. Kahane, and by Ms. H. Sorensen, Ms. R. Shakya and the drivers; the field presence of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal, particularly Mr. I. Martin, Mr. D. Johnson, Ms. C. Covarrubias, Mr. E. Boati, Mr. B. Majekodumni, Ms. N. de Oliveira and Mr. Baivatu; OHCHR, Geneva, particularly Mr. S. Syed; Ms. J. Kozma of the Ludwig Boltzmann Institute of Human Rights; and the interpreters and forensic specialists who accompanied the Special Rapporteur.

## **I. LEGAL FRAMEWORK**

### **International level**

11. Nepal is a party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights, as well as both its Optional Protocols; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. While it has recognized the competence of the Human Rights Committee to consider complaints by individuals of violations of the Covenant, it has not done the same with the Committee against Torture by making the declaration under article 22 of the Convention. Nepal is also a party to the Geneva Conventions of 12 August 1949. According to the 1991 Nepal Treaty Act, if any domestic law is inconsistent with a convention to which Nepal is a party, the convention prevails.

### **National level**

#### *Human rights*

12. Part 3 of the 1990 Constitution enumerates in articles 11 to 23 a number of fundamental rights including equality before the law, freedoms of opinion, expression, assembly, movement, privacy and religion, and due process of the law.

### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

13. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is defined in article 14 (4) of the Constitution: “No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.” Further, section 2 of the 1996 Compensation Relating to Torture Act (CRT) defines torture as “any act which causes torture, whether physical or mental, inflicted upon a person who is in detention for investigation, awaiting trial or for any other reason and this term includes [any] cruel, inhuman or degrading treatment that person is subjected to”.

14. However, neither definition satisfies the requirements of article 1 of the Convention, nor does domestic law make torture a criminal offence in accordance with article 4.<sup>1</sup> According to CRT, the victim may file a claim for compensation in the district court within 35 days of having been subjected to torture or from release from detention, and during the proceedings the alleged perpetrator of torture is defended by the Attorney-General (sects. 5 and 10, respectively). Thus, in terms of justice for acts of torture, victims have only the possibility of compensation, and only “departmental actions” (e.g. demotions, suspensions, fines, delayed promotions, etc.) are foreseen for perpetrators (e.g. in the 1955 Police Act; and sect. 7 of CRT).<sup>2</sup>

### **Safeguards against torture and ill-treatment during arrest and detention**

15. The safeguards for persons during arrest and detention are provided in articles 12 (1), 14 (5) and (6), and 15 (1) of the Constitution, and include: detention only in accordance with the

law; the prohibition of the death penalty; the right to be informed of the grounds for the arrest and to consult and be defended by a lawyer; bringing an arrested person before a judicial authority within 24 hours; the permissibility of pretrial detention only on judicial order; and the impermissibility of preventive detention except in the case of an immediate threat to State sovereignty, integrity or law and order.

16. Other legal safeguards against torture are contained in the 1974 Evidence Act (inadmissibility of statements made under torture); the 1963 Prison Act (examination of the physical condition of the prisoner; rights of prisoners; inspection of prisons by judges and chief district officers); the 1955 Police Act (treatment of arrested or detained persons by the police); and the 1955 Civil Rights Act (right against self-incrimination; notification of reason of arrest; right to a lawyer; being brought before a judge within 24 hours). A critical shortcoming is the absence in the law of a requirement of independent medical examinations upon arrest or transfer of suspects, although CRT, in section 3, empowers the concerned officer, at the time of a person's detention and release, to medically examine the detainee when a government doctor is unavailable, and provides that he shall maintain the medical records and submit one copy to the district court.

## **II. THE SITUATION OF TORTURE AND ILL-TREATMENT**

17. Over the last few years, the Special Rapporteur and his predecessors have received a large number of credible and consistent allegations relating to torture and ill-treatment from Nepal, primarily in the context of the armed conflict. A large number of recent allegations by individuals were brought to the attention of the Special Rapporteur during the course of the mission. On the basis of his interviews with current and former detainees, with the support of forensic medical evidence, and interviews with government and military officials, lawyers and representatives of NGOs, the Special Rapporteur concludes unequivocally that torture and ill-treatment are systematically practised in Nepal by the police, armed police and the RNA primarily to extract confessions and to obtain intelligence in relation to the conflict. That the Government urgently needs to send a clear and unambiguous message condemning torture and ill-treatment was made dramatically clear to the Special Rapporteur when he received repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practised. Some of these admissions were made by officers who had served in United Nations peacekeeping operations abroad, namely the chief and deputy superintendents of Hanuman Dhoka District Police Office, and the commanding officer of the RNA Kohalpur barracks.

18. The methods of torture that he encountered in the cases he examined included beatings with bamboo poles and plastic pipes, kicking with boots, pouring water into the nose, applying electric shocks to the ears, rolling wooden poles over the thighs, trampling on thighs and legs, maintenance of stress positions, binding to a pole and hanging upside down and beating, especially on the soles of the feet, and prolonged periods of being blindfolded or hooded and handcuffed.

19. The Special Rapporteur also received shocking evidence of torture, including mutilation, carried out by the Maoists in order to extort money, punish non-cooperation and intimidate others, as well as allegations of forced recruitment of women and children. Methods of torture



included beatings with sticks on the legs, piercing of legs with metal rods, beatings with rifle butts on ankles, and mutilations such as amputation of toes. In view of the short duration of the mission, the Special Rapporteur was unable to establish direct contacts with representatives of the Maoists and visit detention facilities under their control.

### **Legal safeguards for arrest and detention**

20. Notwithstanding the legal guarantees cited by the Government in its report to the Committee against Torture, the Special Rapporteur found wide disparities between these formal guarantees and what actually happens in practice. Routinely, basic requirements are not respected by the police, armed police or the RNA, such as timely access to a lawyer, bringing suspects before a judge within 24 hours of arrest, or medical examinations upon arrest or transfer. Several examples were brought to the attention of the Special Rapporteur of individuals who were released on the order of the Supreme Court, were immediately apprehended by security forces personnel within the compound of the Court itself and spirited away to barracks to be detained again. The Special Rapporteur also observed that detainee registers are poorly kept, if at all, at police offices and army barracks.

### **Preventive detention**

21. According to the Special Rapporteur, legislation such as the 2004 Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and the 1989 Public Security Act (PSA) effectively provide the police and the military with sweeping powers to detain suspects for preventive reasons, sometimes for months on end. PSA allows for preventive detention for 90 days by order of an administrative officer. It can be extended for 6 months with further authorization from the Home Ministry and another 6 months subject to approval of an Advisory Board; similarly, TADO provides for preventive detention for up to 12 months.

22. The Special Rapporteur has received a large number of allegations relating to persons taken involuntarily by security forces and who are being held incommunicado at unknown locations. There is an inextricable link between these enforced disappearances and torture. The Commission on Human Rights has repeatedly stated that “prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment”.<sup>3</sup> The Human Rights Committee has established that prolonged periods of incommunicado detention in itself constitutes inhuman and degrading treatment for both the detainees and their families.<sup>4</sup> Moreover, in the experience of the Special Rapporteur, it is during this initial period in custody when the risk of torture to extract confessions is highest. Of great concern to the Special Rapporteur is that the right of habeas corpus is denied by virtue of article 14 (7) of the Constitution to any person who is arrested or detained by any law providing for preventive detention, although throughout his meetings with government, police and military officials, he was cited references to due process safeguards contained in preventive detention legislation and the right of the Supreme Court to issue habeas corpus writs with respect to preventive detention (article 88 of the Constitution), which, they argued, were effective in preventing and deterring any case of arbitrary detention or torture. However, from the many victims and lawyers he spoke with, it was plain to the Special Rapporteur that these safeguards are largely illusory in practice; preventive detention is systematically rubber-stamped by the Chief District Officer - the

main civil administrator of the concerned districts, who also performs his duty as the Chief of the District Security Committee, and is authorized under preventive detention laws to issue detention orders - with almost no inquiry into the merits of the request for detention, or the physical condition of the suspect.

### **National mechanisms to investigate human rights abuses**

23. The Special Rapporteur was informed that in 2003 the Government established a Human Rights Promotion Centre in the Prime Minister's Office to coordinate the human rights-related activities of Government. In 2004, the Government established the High-level Human Rights Protection Committee to facilitate human rights monitoring and investigations by the National Human Rights Commission (NHRC). August 2005 saw a reorganization of governmental coordination mechanisms regarding human rights, with the establishment of three bodies: the Human Rights Protection and Promotion National Coordination Committee, chaired by the Minister for Foreign Affairs; the Human Rights Steering Subcommittee, chaired by the Chief Secretary; and the Human Rights Public Relations Committee, chaired by the Attorney-General. While noting the creation of these, the Special Rapporteur nevertheless expresses concern that the establishment of numerous formal high-level policy mechanisms to monitor human rights in the country may lead to needless overlap and inefficiencies and may distract attention and resources from the pressing need of day-to-day human rights promotion and protection work.

24. In 2002 the RNA, APF and the Nepal Police established human rights monitoring mechanisms, or "human rights cells", to investigate human rights abuses by security personnel. During the course of the mission, the Special Rapporteur met with the heads of the various human rights cells. He noted the important role they played in responding to communications transmitted by the special procedures of the Commission on Human Rights, and encouraged them to continue to cooperate and improve the quality of their responses. Nevertheless, taking into account the lack of prosecutions in the face of mounting and credible allegations of torture and other acts of ill-treatment by the police, APF and RNA, in the view of the Special Rapporteur, the effectiveness and impartiality of these cells as internal oversight or investigative mechanisms within the security forces remains to be demonstrated.

25. NHRC was established in 2000 pursuant to the 1997 Human Rights Commission Act. It is mandated, among other things, to conduct inquiries and investigations into human rights violations, ex officio or upon a petition; to visit and observe any authority, jail or institution under the Government and provide recommendations on reform of processes and infrastructure; and to review the provisions on safeguards provided by the Constitution and other law in force, and provide recommendations with a view to bringing them into line with international standards. The Special Rapporteur notes that since the dissolution of Parliament in 2002 and in the absence of a Leader of the Opposition, who is required under the Act to participate in the appointment of the commissioners, concerns have been raised in the human rights community about the lack of a transparent and consultative process in the appointment of commissioners. These concerns were bolstered when new commissioners were appointed by the King in May 2005 upon the expiry of the term of the previous mandate-holders, in the aftermath of the state of emergency and during a period when key partners of the Commission, including a commissioner himself, were under serious threat from the Government. Cognizant of the current

deficiencies in the appointments process, which do not comply with the Paris Principles, the Special Rapporteur shares the view that NHRC is nonetheless a vital institution for promoting and protecting human rights in Nepal, and that the independence and effectiveness of the current Commission should be judged on its performance. To this end, the Special Rapporteur expresses appreciation for the frank discussion he held with the commissioners in relation to torture and ill-treatment in Nepal. Indeed, in a detailed presentation to the Special Rapporteur based on their monitoring and casework, the commissioners were very forthcoming in describing the systematic nature of torture practised by the security forces in Nepal.

### **Impunity**

26. The Special Rapporteur was deeply concerned about the prevailing culture of impunity for torture in Nepal, especially the emphasis on compensation to victims as opposed to criminal sanctions against the perpetrators. Time and again, officials would cite the 1996 Compensation Relating to Torture Act as being an effective preventive and deterrent measure against the practice of torture. However, the Act does not contain a definition of torture in line with article 1 of the Convention, nor does it provide for effective remedies; it does not provide for the criminalization of torture or the imposition of punishment commensurate with the gravity of torture. Moreover, officials would repeatedly cite the 1991 Nepal Treaty Act stating that the provisions of the Convention apply by default in case of inconsistent domestic law, but no evidence exists that its provisions have been invoked in the courts to prosecute perpetrators. In the Government's own report a number of examples, such as suspensions, cautions and demotions, are cited in respect of action taken to prevent torture and punish perpetrators, thereby to demonstrate commitment by the security forces to protecting human rights and humanitarian law standards.<sup>5</sup> In the view of the Special Rapporteur, the sanction of "departmental action" against perpetrators is so grossly inadequate that any preventive or deterrent effect envisaged by the Act is meaningless in practice. Moreover, since CRT came into force, in only one case to date has compensation actually been paid, despite several decisions to award compensation. In general, from the interviews he conducted, the Special Rapporteur found a lack of confidence in the justice system and the rule of law on the part of victims and their families. The Special Rapporteur is of the view that, if the Act does anything, it actually prevents and discourages torture victims from seeking and receiving justice for torture and ill-treatment.

### **Visits**

27. Preventive measures such as regular unannounced visits to all places of detention by independent monitors do not occur because of varying restrictions for security reasons of access to NGOs and the NHRC, although the OHCHR-Nepal so far does have unrestricted access. In April 2005, the ICRC ceased seeking access to detainees held in military facilities after it encountered problems visiting camps and barracks under the authority of the RNA, in accordance with its standard criteria.

## **III. CONDITIONS OF DETENTION**

28. The conditions of detention in the facilities the Special Rapporteur visited were generally poor, especially in terms of overcrowding and sanitation and acknowledges that the lack of adequate resources may be partly to blame. However, the conditions in Hanuman Dhoka Police

Office could only be described as inhuman. Among other things, the cells were filthy, overcrowded - sometimes 12 persons in a cell approximately 3 m x 4 m - poorly ventilated, with no provision for any leisure activities. The detention of several 14-year-old boys among the adults was seriously disturbing to the Special Rapporteur.

29. On the other hand, the Special Rapporteur observed that the conditions in the main prisons for both the male and female wings, such as in the Central Jail in Kathmandu, and in Nepalgunj were relatively satisfactory. Despite the cramped, overcrowded conditions, especially with respect to sleeping quarters, the prisoners had opportunities for leisure activities, including sports, access to a library, work, and the use of cooking facilities, among other things. Moreover, the prisoners had no significant complaints about the treatment within these prisons, nor fear of reprisals for speaking about their experiences.

30. The places of detention of suspects at army barracks were unacceptable. For example, at the RNA Chhauni barracks detainees are kept in a converted garage with inadequate ventilation and lighting, and at the Midwestern Division Headquarters (Pritna), detainees are held in steel-plated boxes in a grassy compound surrounded by razor wire. The Special Rapporteur has received allegations that people are kept for long periods of time in army barracks without proper detention facilities.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

31. **The Special Rapporteur concludes that torture is systematically practised by the police, armed police and Royal Nepalese Army. Legal safeguards are routinely ignored and effectively meaningless. Impunity for acts of torture is the rule, and consequently victims of torture and their families are left without recourse to adequate justice, compensation and rehabilitation.**

32. **By letter dated 27 December 2005, the Government of Nepal objected to these conclusions. It stated that the Government does not tolerate, condone or permit torture; that opinions expressed by some security officials cannot be considered State policy; that it does not allow impunity; that allegations are investigated with all the seriousness that they deserve; and stern action is taken against offenders. In this regard, the Special Rapporteur expresses the sincere hope that security officials who practise, order or condone torture (e.g. the chief and deputy superintendents of Hanuman Dhoka District Police Office, and the commanding officer of the RNA Kohalpur barracks) are held accountable. The Special Rapporteur welcomes the stated commitment of the Government that measures to address torture and impunity will be pursued in a continuous and sustained manner. To this end, he notes that the Government is in the process of drafting legislation regarding the criminalization of torture. He welcomes, as a follow-up to his visit, that the Ministry of Home Affairs has issued a seven-point directive to the Nepal Police and APF concerning the prevention of torture. The Special Rapporteur further welcomes the commitment of the Government to engage with the United Nations to further advance the cause of human rights in the country and, in particular, to consider the recommendations of the Special Rapporteur to consolidate its efforts to prohibit torture.**

33. Accordingly, the Special Rapporteur recommends to the Government of Nepal that:

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted;

(b) The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;

(c) Incommunicado detention be made illegal, and persons held incommunicado released without delay;

(d) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pretrial detention, which should not exceed 48 hours. After this period they should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;

(e) The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer;

(f) All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g. through habeas corpus. Such procedures should function effectively and expeditiously;

(g) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;

(h) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;

(i) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of the Special Rapporteur, the NHRC might be entrusted with this task;

(j) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;

**(k) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation;**

**(l) The declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;**

**(m) The Optional Protocol to the Convention against Torture be ratified and a truly independent monitoring mechanism established to visit all places where persons are deprived of their liberty throughout the country;**

**(n) The appointments to the National Human Rights Commission, in the absence of Parliament, be undertaken through a transparent and broadly consultative process;**

**(o) The Rome Statute of the International Criminal Court be ratified;**

**(p) Police, the armed police and RNA recruits undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;**

**(q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security forces personnel, legal professionals and the judiciary; and**

**(r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.**

**34. The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children.**

**35. The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including OHCHR, including by requesting assistance with the follow-up to the above recommendations.**

### **Notes**

<sup>1</sup> See concluding observations of the Committee against Torture (CAT/C/NPL/CO/2), para. 13. The Committee further expressed concern at the inadequacy of draft criminal code provisions prohibiting torture and ill-treatment cited in the State party report (CAT/C/33/Add.6, para. 66).

<sup>2</sup> See CAT/C/33/Add.6, para. 62.

<sup>3</sup> For example, see Commission resolution 2005/39, para. 9.

<sup>4</sup> See *Quinteros Almeida v. Uruguay*, Communication No. 107/1981, para. 13; *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, para. 5.4; *Mukong v. Cameroon*, Communication No. 458/1991, para. 9.4; *Bozize v. Central African Republic*, Communication No. 428/1990, para. 5.2; *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.5.

<sup>5</sup> CAT/C/33/Add.6, paras. 41-50.

## Appendix

### INDIVIDUAL CASES

By letter dated 3 November 2005, the Special Rapporteur notified the Government of Nepal of allegations by the following persons, whom he interviewed during the mission. While the Special Rapporteur appreciates information provided by the Government by letter dated 27 December 2005 on the individual cases, he regrets that in most instances the information provided related only to the reasons of arrest and places of detention of the persons, and not to the steps taken to investigate the allegations of torture and ill-treatment. The Special Rapporteur appreciates that investigations may be ongoing and requests that relevant information is forwarded to him as it becomes available.

#### A. Kathmandu

##### 1. Hanuman Dhoka District Police Office (visited 12 September 2005)

1. **Ram Badu Sapkota**, aged 41, a retired policeman. On 2 September 2005, he was arrested together with his sister at her home by about six policemen in plain clothes and brought to Hanuman Dhoka District Police Office. He was taken up to the fourth floor where he was blindfolded, handcuffed, and his feet were bound with a belt. He was forced into a crouching position and a large bamboo stick was threaded above his arms and behind his knees. He was hung from this position for 1½ hours, and beaten with a bamboo stick on the soles of the feet and upper arms and legs. He was then forced to jump up and down on a metal grate to improve the circulation in his feet. He was tortured in order to extract information in relation to a case involving suspected Maoists, and was forced to sign a statement. According to the medical examination, two healing contusions were found on his left arm and were consistent with having been produced by a stick-like instrument. Both feet were slightly swollen and tender.

2. **Dal Bahadur Lama**, aged 42, a retired policeman. On 27 August 2005, he was arrested at his home by policemen of the Hanuman Dhoka District Police Office in connection with his alleged association with suspected Maoists. He was not informed how long he was to be detained, nor permitted access to his family or a judge, and at the time of the interview this was still the case. He was taken to the top floor of the police station and beaten over the first five days of his arrest. He identified two of the perpetrators, whose names are known to the Special Rapporteur. He was blindfolded, handcuffed and shackled for about four hours each day, and suspended from a large bamboo stick that was threaded above his arms and behind his knees. On some occasions he was dropped onto the floor in this position. Water was forced into his mouth and he was beaten on the soles of his feet. He had signed a document in which he confessed to disturbing the peace. At the time of the interview he complained of a fever and the loss of movement in two toes of his left foot due to the beatings. According to the medical examination, healing abrasions and scars were found on both wrists, behind each knee, and on both ankles, consistent with the treatment described by the victim. Since he was taken to the detention cell on the first floor, he indicated that he had not been ill-treated. He had not lodged a complaint because he was not confident that it would be addressed, but he did mention the torture to his fellow prisoners.



3. **Asha Lal Tamang**, aged 22. On 12 September 2005, he was apprehended by about five policemen in connection with an alleged motorcycle theft. He was slapped a number of times and beaten with a flat stick, about 1.2 m long, on the left forearm and buttocks. At around 10 a.m. he was brought to the Hanuman Dhoka District Police Office. He was forced to lie face down in the interrogation room and was beaten by two policemen, whom he was able to describe. He was beaten on the face 5-10 times with bamboo sticks when he refused to sign a confession. He was then taken to his aunt's house, where his room was searched. When no evidence was found he was taken to his friend's house, and then was handcuffed and taken back to the police station at around 3 p.m. According to the medical examination, there was an abrasion on his right lower lip and contusions on his right forearm and buttocks. The injuries are consistent with the alleged account.

4. **Binod Baiju**, aged 21. On 6 September 2005, a van and a car full of uniformed police officers arrived at his shop in Jorpati Naya Basti, in search of a thief. He was arrested together with three others, handcuffed and transported by van to Boudha Police Office. In the van he was beaten with sticks on his legs, back and head. When he tried to raise his hands to protect his head, he was struck and sustained an injury on the finger of his left hand. At the police station, beatings by both uniformed and plain-clothes police resumed, with plastic pipes. He indicated that he could identify the perpetrators. He was brought to Hanuman Dhoka District Police Office the following day. According to the medical examination, he had a healing contusion on his upper left leg and a possible fracture of the ring finger on his left hand, consistent with beatings administered with blunt objects. As a result, he complained that he continued to experience pain in his arms and legs.

## **2. Patan (Jawalakhel) Police Office (12 September 2005)**

5. **Suresh Syantan Tamang**, aged 22. On 7 September 2005, some time after 7.45 p.m., he passed out on a bus due to intoxication and was deposited in front of his home. He was brought by two police officers to Imadol Police Office. By the time he arrived there he had regained consciousness and found himself being dragged by his hair along the gravel compound and beaten by the Assistant Sub-Inspector (ASI), who accused him of theft. He was struck three times with a bamboo stick on the back and the left leg, and slapped in the face, while four officers looked on. The beatings lasted for about 20 minutes before a car from the Patan Police Office came to collect him. The ASI had warned him not to tell anyone what had happened. On the way, he was taken to the Patan Hospital, where he was examined by the attending doctor in the presence of a police officer, and did not complain about the beatings. The doctor only recorded that he was drunk and did not provide him with treatment as he was unable to pay for it. The following morning at around 9 a.m., in his statement to the sub-inspector of Patan Police Office, he reported the beating on the previous evening, and was told that he deserved it for being a thief. This was later retracted, and he was told that he was not at fault. On Friday evening he was taken back to the hospital because one of his relatives was able to pay for some medication for his back. On that occasion he reported the beating to the doctor. On 11 September, he was brought before a judge for the first time. In the vehicle on the way to the court he tried to pull up his shirtsleeves to make his injuries visible, but the police officers pulled them down again. He did not tell the judge about the beating because he was afraid of reprisals. He added that the officers in Patan Police Office had treated him well. According to the medical

examination, he had contusions on the right eyelid and on the back of the left thigh, consistent with being beaten with a stick-like instrument, and healing abrasions covering his right shoulder and back, possibly as a result of being dragged along gravel.

6. **Badal Bogati**, aged 24. On 15 August 2005 he was arrested on the street and taken to Patan Police Office. He was interrogated from 11 a.m. to 8 p.m. by Mr. Kule Pathak and Ms. Laxmi, and four other police officers. He was blindfolded, handcuffed, held by the throat, beaten with bamboo sticks on the soles of his feet, kicked in the back with boots, suspended by a bamboo pole fastened behind his knees, as well as beaten with electrical cables and an iron rod and drenched with water. His eyesight was examined at the Patan Hospital but he was unable to pay for the prescribed medication, and he complained to the Special Rapporteur of an inability to concentrate. Nearly one month after his arrest he has not had access to his family, and they had not been notified of his arrest.

7. **Bijaya Thapa Magar**. On about 20 August 2005, he was arrested in connection with an alleged theft, and died in custody around 3 September 2005 as a result of beatings by police officers at Patan Police Office. The Superintendent alleged that he had died of meningitis, and the autopsy report from Patan Hospital was not available at the time.

8. The Government informed that the Nepal Police Human Rights Cell intervened and carried out an investigation. Based on the report of his arrest and also on the medical report, he was not tortured while in detention in the District Police Office, Lalitpur. The autopsy report obtained from Patan Hospital concluded that the cause of death was brain death and sudden cardio-respiratory arrest due to TB meningitis.

### 3. Central Prison, Kathmandu (13 September 2005)

9. **Dil Bahadur Tamang**, aged 19, Banakhu Village Development Committee (VDC), Kavre district. On 24 February 2005, he was arrested by security forces personnel in plain clothes as he was walking along the street in Sundhara, Kathmandu. He was handcuffed and blindfolded and beaten on the street. That evening he was brought to Chhauni army barracks, where he was interrogated by RNA personnel over 15 or 16 days about his alleged involvement with Maoist activities and the whereabouts of other Maoists. When he denied any involvement with or knowledge about them, he was subjected to torture. He was forced to sit on a piece of cardboard with his hands handcuffed behind his back, his feet bound with rope and hooded. He was beaten by two or three persons with large plastic pipes, smaller iron pipes, and sticks. Electric shocks were applied to the pinna of his ears through two bare wires connected to a voltage regulator on the wall. A different level of voltage was used for different parts of the body. He was subjected to beatings and electric shocks for two- to three-hour sessions followed by a short reprieve before the torture resumed. He often lost consciousness because of the torture, and the beatings decreased in frequency over time. He eventually confessed out of fear for his life, and thereafter received treatment for his wounds. He was detained in the barracks for six months before being taken to Hanuman Dhoka District Police Office, and was then transferred to the Central Jail, where he had been for about two months before the Special Rapporteur's visit. He was warned by his interrogators not to reveal his treatment, and only when he arrived at the Central Jail (Bhadracol) did he tell a doctor what had happened. Although he has received medical treatment, particularly for several severely infected wounds on

his back, nothing has been done to investigate his complaint. According to the medical examination, he sustained abrasions on his back, and many of the wounds had developed into cheloid scars, due to infection. The injuries are as a result of repeated impacts from elongated objects, and are consistent with the account alleged. At the time of the visit, he complained of continued pain due to the scarring on his back, and consequent difficulty sleeping. He requires surgical treatment for his scars.

10. **Ms. Bhagwati Shrestha**, aged 17. On 16 April 2005, she was among four girls and two boys who were arrested on suspicion of involvement in Maoist activities. They were taken to a police station, where they were held for about a month and interrogated. Although she was not physically beaten, she was threatened with death and was held blindfolded and handcuffed for the first 10 days, and then just handcuffed for two further weeks. Representatives of the NHRC met her on two occasions, but only in the presence of guards. She was brought to the Central Jail on 16 May.

11. The Government informed that she was with a group of Maoists, who threatened the local people in an attempt to extort money from them. She was beaten by the local people and then handed over to the security forces.

12. **Rimal Babu Shrestha**. On 25 August 2005, he was arrested by police officers in plain clothes in a restaurant in Kathmandu. He was blindfolded and taken by car to an unknown location. That evening he was forced to sit on a bench and was beaten by two or three persons with a pipe for approximately 15-20 minutes, primarily on his arms and legs. For two days he was interrogated and beaten in the police station. He remained there blindfolded for one week before being transferred to Hanuman Dhoka District Police Office.

13. The Government informed that he was not tortured or ill-treated, mentally or physically and was found to have a two-year-old gunshot wound on his arm. There is no complaint reported by him.

14. **Sagar Tamang**, aged 33. In 2003, he was among three people arrested in Kalimati Bazaar by about five policemen in plain clothes. They were taken by car to the RNA Maharajgunj barracks, where they were held in separate rooms. He was blindfolded and handcuffed and all his belongings were confiscated. He was held with up to 150 other detainees in a large hall, with walls 6 or 7 feet high. They were instructed not to move or speak to one another. Five days after he was taken there he was interrogated about his alleged involvement in Maoist activities and related intelligence, and was tortured for about five days. He was held under water and beaten severely with a pipe. He was dragged with a rope tied around his neck. He was given only little food of poor quality and salt water to drink. For about 15 months he was kept blindfolded and handcuffed with his hands behind his back 24 hours a day. After five or six months the detainees were separated and housed in different tents. His handcuffs were only taken off for meals for 10-15 minutes in the morning and evening. When he attempted to take the blindfold off he was beaten on his chest and ears. He was only permitted to take a bath once every three months. He was only allowed to move to go to the toilet. Only occasionally would the detainees be permitted to exercise, if the guards were in a good mood. But sometimes they were not allowed to move for a month or two. Owing to this lack of exercise and beatings, he had to be carried to the toilet by his fellow detainees. For two months he could not walk at

all. He was taken to the hospital twice, where he was given medication which had no effect. As a result of the beatings, he complained of a loss of feeling and movement in his legs, and difficulty hearing. After spending 15 months in the Maharajgunj barracks he was taken with 17 other detainees hooded and handcuffed to the Shivapuri barracks at around 11 or 12 p.m. In heavy rain, they were ordered to stand in line, take the hand of the next person, and walk along a path. While they were walking they were constantly beaten. The two female prisoners who were with them were verbally abused. The detainees walked for approximately 30 minutes without shoes, and were repeatedly beaten on their feet and legs. They did not get anything to drink. When they arrived they had to sit on a cement floor for 15-30 minutes before they were separated into two groups of nine persons and taken to different rooms. They were not allowed to speak, could not bathe for one week, and were given poor quality rice, lentil soup and water. They were kept in the Shivapuri barracks for about 23 days. Because they were not interrogated or tortured, it was thought that they had been moved there to hide them from a human rights NGO. The day after being taken back to the Maharajgunj barracks, he was returned to the Shivapuri barracks with two others, Tara Bhandari and Lahanu Ram Chaudhari. They were kept in separate rooms and interrogated for nine days by an army major, but were not tortured. He was detained in the army barracks without being shown a warrant, his family had not been informed of his detention, and he never saw a judge. The army had detained him for six months under TADO, extended for another six months. He spent approximately 16 months in the barracks and 7 months in the Central Jail, with 5 months remaining. He had not received a visit in the last seven months.

15. The Government informed that no information could be found at present.

16. **Dinesh Shrestha**, aged 25, Naya Bazaar, Kathmandu. On 15 August 2005, at approximately 9 p.m., about 15-20 RNA personnel in plain clothes came to his home, apprehended and blindfolded and took him to the Singha Durbar barracks. He was not informed of the reasons for his arrest. At about 10 p.m. they began interrogating him to obtain intelligence relating to his work as a journalist for the pro-Maoist weekly, *Janadesh*, including the names of other journalists. He was beaten with a 1-m-long plastic pipe filled with water. He was restrained from behind, struck on the chest with a stick, hit in the face and punched all over his body. He was then tied up, hung upside down, his face covered with a mask, and water was poured over his face and into his nose. He was unable to breathe and lost consciousness. This treatment continued for almost two hours. When he revived, he was handcuffed and taken to the Maharajgunj barracks in the early hours of 16 August. At about 7 a.m., the interrogation and torture commenced again. He was beaten by the same people as the night before, but he did not know their names. The beatings continued, and his child and wife threatened with death. That evening he was transferred to Hanuman Dhoka District Police Office and continued to be held blindfolded and handcuffed for two days until a TADO order for six months' detention was signed by a Chief District Officer (he was not brought before the CDO). On 18 August, he was taken to the Central Jail. His sister and parents visited him in jail. He reported that within the jail, he and others were periodically taken to an "investigative committee", a joint committee of the army and the police called the District Security Committee, where prisoners had to recant their involvement with the Maoists. In order to receive rehabilitation, prisoners are given a 21-point action plan, which includes having to write a statement that they would surrender and leave the CPN Maoist party and provide authorities assistance in identifying other Maoists.

17. The Government informed that no information could be found at present.

18. **Sitaram Bhandari**, aged 35, Gopal, Kathmandu. On 1 August 2005, he was arrested by seven RNA personnel in plain clothes, held on the floor of an unmarked jeep, questioned about Maoist activities, and taken to Chhauni (Jagadal) barracks. His head was covered with a hood of a rubber material and laced in the front, which made it difficult to breathe. He was handcuffed with his hands behind his back and taken to an office in the one-storey main office building. In the adjoining corner office, 3 other men and 11 women were also detained. He was tortured during most of his detention. During the first nine days, he was tortured twice a day for 2½-hour sessions, in the morning and in the afternoon. He was hung by a stick behind his knees and above his elbows. Electric wires were wound around his ears and he was given electric shocks for 5-10 minutes until he lost consciousness. He was revived with food and the treatment was resumed. He was ordered to urinate on a heating element and was struck by the hot spray, and he was forced to put his hand in a hot water tank. He was given one minute to go to the toilet located about five doors down from the interrogation room (approximately 30 m away). He was also forced to roll on a floor covered in nettles. Four to five army personnel perpetrated the torture, and a military doctor applied ointment to his hands from time to time. He remained in the same room for nine days, and then was put in the adjacent room for three days where he received food. Thereafter daily torture sessions were reduced to 30 minutes, and involved soldiers stepping on his outstretched legs and beating him on his body, shins and the soles of his feet with plastic pipes and batons. During this period he was forced to sign a statement. On 12 August 2005, he was brought to the Central Jail. He had received a visit from his brother-in-law two days prior to the Special Rapporteur's visit.

19. The Government informed that no information could be found at present.

20. **Birandra Tamang** (or **Bira Tamang**), a 26-year-old farmer, Nanglebhare VDC, Kathmandu district. On 15 July 2005, he was arrested on suspicion of being a Maoist in a shop near his house by around 30 RNA personnel, half of whom were wearing RNA uniforms and the other half in plain clothes. He was taken on foot for two hours to the RNA Jhor Singh Pawa barracks (near Saku). There he was handcuffed and blindfolded, taken to a tent, forced to sit on a bed and interrogated about his alleged involvement in Maoist activities. He was kicked with boots and beaten with sticks in the morning and in the afternoon for sessions lasting between 1 and 1½ hours for a period of seven days. Thereafter he was taken to the Singha Durbar barracks, where he was questioned further for two hours, then blindfolded and taken to the Central Jail on 21 July 2005. He never saw a CDO, though he received a TADO detention order for six months.

21. The Government informed that no information could be found at present.

22. **Bhalsingh Rai**, a 48-year-old farmer, Rakha Bangdel VDC, Khotang district. On 5 June 2005, he was arrested by 18 RNA personnel at his home on suspicion of involvement in Maoist activities. He was blindfolded when he arrived at the outpost of the RNA Okhaldhunga district barracks. He was kept in a bamboo shelter, where he was kicked with boots and beaten with sticks. He was forced to lie on the floor and was trampled on all over his body for almost one hour. He was then taken to another room, where he was handcuffed and given some food. On the second day he was beaten again, blindfolded and handcuffed for the

entire duration. He was detained in the barracks until 16 August, at which time he was taken to the Khotang barracks for two nights, then to the Khotang District Police Office for two more days, and then was taken by helicopter to the Central Jail. He indicated that his son had visited him.

23. **Ms. Parbati (Bimala) Dhungana**, a 30-year-old school cleaner, Balkot VDC, Nuwakot district. On 31 July 2005, at midday, she was arrested on the street in Gausala at the gate of a friend's house by about 10 RNA personnel in plain clothes. She was put in an army vehicle and taken to the RNA Chhauni barracks. She was taken, blindfolded and handcuffed, to an investigation room where six or seven RNA personnel were present, and was interrogated about her alleged involvement in Maoist activities. For the first three days, she was beaten for three hours with an hour's pause between each hour of beating. Electric shocks were applied by wires to the inside of her ears, and she was kicked with boots and beaten with wooden sticks on her hips, legs, toes, feet and back. During each torture session, the same two or three persons beat her while the others looked on. Female RNA personnel visited her from time to time and kicked her with their boots. She was told that "no one knows where you are and we will kill you", and was threatened with rape. She was forced to sign a statement that she was a Maoist and had collected money on their behalf. She never saw a CDO, and was transferred to the Central Jail after 13 days, on 12 August. At the Central Jail she received visits from her cousin and brother. According to the medical examination, she sustained bruises on the right side of her chest, a swollen foot and injuries to her left toe, which are the result of heavy blows and are consistent with the account described. At the time of the visit, she complained of continued pain in her chest and foot.

24. The Government informed that no information could be found at present.

25. **Bhimsen Ghole**, aged 19, Bhedapu VDC, Dolakha district. On about 21 July 2005, on suspicion of being a Maoist area commander, he was arrested in the Gopi Krishna Cinema Hall, Kathmandu, by policemen in civilian clothes, and taken to Ghoshala Police Office. In the station he was forced to lie on the floor and was kicked with boots and beaten for one hour with gun butts and sticks. He was held for one night before being transferred to Hanuman Dhoka District Police Office. There he was questioned by the Deputy Superintendent of Police. He remained there for one week and then was sent to the Central Jail on 29 July. He never saw any judicial authorities.

26. The Government informed that he was not tortured or ill-treated, mentally or physically, during his detention in police custody.

#### **4. Sundarijal Investigation Centre (13 September 2005)**

27. **Keshav Lama Tamang**, aged 35, Sikhar Ambote VDC, Kavre district. On 15 June 2005, he was arrested on suspicion of involvement in Maoist activities in his home village by RNA personnel. He did not see a warrant for his arrest. He was beaten about three times before he was taken to the RNA Bhakunde barracks, Kavre district. He was interrogated there over a period of 12 days; 3 days' interrogation took place in the tent where he was confined, and for 9 days in a special interrogation room. Blindfolded and handcuffed, and in the presence of seven persons, he was beaten with bamboo sticks, especially on his back, and with

an iron pipe on his thighs. With his legs outstretched, he was struck on the soles of his feet. His blindfold was taken off at night, but the handcuffs remained on all the time, removed only for meals and going to the toilet. He was then transferred to Dhulikhel on 26 June, and taken to Sundarijal Prison on 15 July. He did not complain of ill-treatment in Dhulikhel or Sundarijal. He received his first medical check in Dhulikhel. At the time of the interview he complained of difficulty walking because of the beatings on the soles of his feet. According to the medical examination, he sustained abrasions on his lower back, upper left arm and left thigh. His injuries were produced by heavy blows and are consistent with the account and time alleged. There are signs of falanga torture on the soles of his feet, for which he requires medical scans.

28. **Krishna Prasad Gautam**, aged 22. Two years ago, in the RNA Maharajgunj barracks, he was tortured to obtain a confession of involvement in Maoist activities. He was detained for over 4½ months, continuously blindfolded and handcuffed. He was tortured for most of his detention, but it was in the first week of interrogation that he was severely tortured. Among other things, he was buried in a pit of dirt and left for 15-20 minutes; he was repeatedly plunged upside-down into a tank of water; a pin was inserted under the nail of his right thumb and left there overnight. He was hit with pipes, and was not permitted to sleep for more than half an hour at a stretch. As a result of the beatings he became very dizzy, coughed blood, and had difficulty sitting upright and going to the toilet. He eventually confessed. He did not see a doctor until he was brought to Dhulikhel. The prisoners there beat him severely for about a week, leaving him unconscious for three days. Only when a guard at Dhulikhel informed his brother did his family know his whereabouts, 4½ months after his arrest by the RNA. He remained at Dhulikhel for 10 months, and was then transferred to a police station for 65 days. There RNA personnel from the Satru Mardan Gulmi barracks beat him. He was transferred to Sundarijal about 2 months ago before the Special Rapporteur's visit and had no complaints of ill-treatment, though he said that he wanted to be transferred to the Central Jail, Kathmandu, where he would have the possibility of studying. In Dhulikhel his family had been frightened off from visiting him. Although he has written to his family since he arrived at Sundarijal, he has not heard from them.

29. **Dev Raj Luintel**, aged 28, a journalist, Bhimdhunga VDC, Kathmandu district. Around 12 May 2005, he was having a snack in a small store in his village when he heard gunfire, and found himself surrounded by police and RNA personnel from Rajabas. He did not see a warrant, but was arrested on suspicion of being a Maoist commander. He was kicked with boots and beaten unconscious with gun butts. When he regained consciousness, he found himself in the Bhakunde barracks. He had sustained a broken arm and jaw. He was handcuffed and hooded. He was later told that his arm was broken when it was struck with a wrench. He was in the barracks for eight days, and was interrogated and beaten continuously from the third day, including with iron pipes and sticks, and a pin was inserted under the nail of his left little finger. He received no medical treatment. He said that he even wanted to pay for a doctor, but was not allowed to see one. On 19 June 2005, he was taken to Dhulikhel Jail, where he continued to complain of severe pain, and was finally taken to Dhulikhel Hospital on 23 June, 35 days after he sustained his injuries and the only time he was seen by a doctor. X-rays were taken and a cast was put on his left arm. No regular follow-up has been conducted. He was later taken to Sundarijal. He has to pay for his medical treatment himself. He could only eat liquid food through a straw. According to the medical examination, he sustained a complete fracture of

his jaw and left arm, and multiple contusions on his cheeks, arms and back, which were produced by heavy blows and were consistent with the time and account described. At the time of the visit of the Special Rapporteur he was malnourished, exhibited muscular atrophy, and it was apparent that treatment had been delayed. He requires immediate hospitalization.

30. **Funshok Sherpa**, aged 20. On 18 August 2004, he was arrested by plain clothes RNA personnel and taken to the customs office, where he was held for six days and interrogated about his alleged involvement in Maoist activities. He was hung up and beaten, a plank of wood was put on his chest and two people stood on it for 10 minutes, and he was forced to lie on a cold wet cement floor and beaten all over the body for two hours with a pipe, as well as struck on the soles of his feet. In Sundarijal he was not beaten. At the time of the interview he complained of continued chest pain. He indicated that around three years previously he had been forcibly recruited by the Maoists to porter equipment for four or five months until he ran away to Kathmandu. When he returned to his village in Marbin VDC, Sindhupalchowk district, Maoists seized him and took him about 3 km away, where he was beaten and threatened with death for escaping and spying for the Government.

## 5. Other cases

31. **Ms. D.O.**, aged 17, Bardya. In or around September 2004, she was abducted from her home by Maoists and held for almost two months for training and indoctrination before she escaped and returned home. The Maoists went to her house and amputated one of the toes of her left foot, using a small knife, as punishment for running away. She and her stepmother were threatened with further mutilation if medical treatment was sought. However, after three days she was able to go to the health centre. Around the end of December 2004, when she had recovered and returned to secondary school in Goltakuri VDC, Dang district, 6 persons came to her school and abducted 10 female students, including herself. They were blindfolded and taken to Panchakule VDC, where they had to stay overnight in two rooms. The next day the 10 girls were distributed among 10 different groups. She was brought to Fulbari where she was given clothes and sent to Badhir district, Kathmandu, to collect donations for the Maoists. Together with 14 others, she walked through the jungle for seven days. During the night she escaped and sought refuge in a temple and, although she wanted to return home, she was afraid that the Maoists would kill her. On the advice of her brother she approached a police officer to surrender and seek protection. She was detained for one night in Hanuman Dhoka District Police Office where she recounted her story. The officers did not believe her and took her to the police headquarters the next day. She was blindfolded in transit, and at the headquarters her eyes were uncovered and she was taken into a room where she was interrogated and struck repeatedly in the face. This lasted for several hours. She was taken to a cell where she was verbally abused, struck again, told to take off all her clothes and threatened with hot water and stinging nettles. She refused to confess and said that they should shoot her instead. The torturers answered that that would be too easy, and brought out a steel rod with which they threatened to beat her. She was accused of being sent by the Maoists to spy on the police. She was questioned about her acquaintances, Maoist hiding places, and their activities. She was taken by car to show them the place where her group had camped outside of Kathmandu, but was unable to find it, and was returned to police headquarters. There two policemen pushed her head against a wall, forced her to hold her ears and squat repeatedly, and hit her in the face and stomach. Because she was



bleeding from her mouth, her face was swollen and her hearing was impaired, she asked for medical treatment and was taken to the hospital. When she was brought back again to the police headquarters, she refused to eat the food that was provided. She was blindfolded again, and struck with a belt on her legs. She stayed blindfolded for a long period, but was not handcuffed. She remained at the headquarters for about nine days, and was taken back to Hanuman Dhoka District Police Office for about six days. Without a guardian to come and collect her, she remained in detention until a human rights organization was able to have her released. The police had warned her not to tell anyone about the beatings. She was interviewed on 13 September 2005.

32. Ms. **Rupa Pun**, aged 42, a teacher, as well as an activist of the women's committee of the anti-Maoist organization, the People's Front, Damek VDC, Baglung district. On 29 November 2004, at 8 p.m., as she was giving lessons to two teenage students, 60-70 Maoists, men and women, surrounded her home and attempted to forcibly enter it. Using stones, guns and a pick-axe, they entered through a side door. She was apprehended and forced into a room, where she was beaten from her waist to her feet with 1-m-long green sticks approximately 3 cm in diameter. She was held face down on the floor, and four persons rolled sticks all over her body. She was turned over and was trampled on. They proceeded to undress her, removing her trousers. Using a sharpened iron rod, or auger, one man pierced her lower legs, on the shins. They demanded large sums of money, food and shelter. Four persons grabbed her by her arms and legs and threw her onto her bed, where she was hit in the ankle with a rifle butt. Electrical current was applied to the backs of her hands and she lost consciousness for about 30 minutes, at which point her eldest son returned home. The intruders opened fire on him, hitting him in the right hand. He managed to escape but was found and taken away for almost two months. Until the Maoists left for another village at around 10 p.m., villagers feared to intervene. At around 1 a.m., villagers from her previous home in Ward No. 7 took her by stretcher on foot to a health officer and then to the District Hospital, Baglung. Because of the extent of her injuries, she was transferred by minibus to Tribhuvan University Teaching Hospital, Kathmandu, where she received treatment. She was interviewed on 16 September 2005.

## **B. Nepalgunj**

### **1. Central Prison, Nepalgunj (14 September 2005)**

33. **Bal Bahadur Rokkya**, aged 18, Badki VDC, Jumla district. On 22 July 2005, he was arrested by the police and taken to the political crimes office of the District Police Office. There were four persons in the room with him, including the Deputy Sub-Inspector, the Assistant Sub-Inspector, and an officer named Mr. Katanada. He was accused of involvement in Maoist activities and beaten to force him to confess. His hands and feet were bound and a pole was inserted behind his knees and above his arm, and he was suspended upside-down, beaten with a stick and drenched with water for 10- to 15-minute sessions. This treatment was repeated over a period of three days, after which he confessed. On 31 August, he was taken to court and a case was filed against him. After approximately 37 days at the police station he was remanded in pretrial custody in the Central Prison. According to the medical examination, he exhibited abrasion scars on his back, behind his knees and on his left shin. The injuries were produced by heavy blows with elongated objects, and are consistent with the account and time alleged.

34. The Government informed that he was not tortured or ill-treated, mentally or physically, during his detention in police custody. There was no sign of any injuries or wounds on his body.

35. **Nanda Bahadur Karki**, aged 19, a tenth grade student and journalist, Kotandanda VDC, Mugu district. At around 7.15 p.m. on 1 September 2005, he was stopped near the Kohalpur to Surkhet Road and questioned by several police and RNA personnel. After a search of his person revealed copies of the pro-Maoist weekly, *Janadesh*, he was slapped on the face and beaten six times on the back with a stick until it broke. No arrest warrant was shown. He was blindfolded, his hands were bound with rope, and he was taken to Kohalpur barracks, where he was kept overnight in an outdoor shelter. He was taken to the RNA Midwestern Division Headquarters (Pritna) and held in one of three steel-plated boxes (converted from observation posts), within a barbed wire compound. There an officer pressed a gun to his right temple, and another shoved the barrel of a rifle against his chest. He was kicked in the legs with spiked boots. He was shoved back and forth between soldiers in the rain, and questioned about Maoist activities. Over the seven-day period he was held at the Pritna barracks, he was taken every day from his cell and beaten in an open area, as well as subjected to mock executions. He was then transferred to the District Police Office, Nepalgunj, where he was detained for a day, accused of terrorist activities and threatened. Out of fear of further torture, he signed a confession. A case was filed against him, and he was remanded in pretrial detention in the Central Prison. Until the Special Rapporteur visited him, he had had no family visits. According to the medical examination, he was limping, exhibited swelling on his thigh and on the top of his head, and he sustained contusions on the left side of his chest, upper right arm, left knee, shin and ankle. The injuries and scars were produced by heavy blows, consistent with the alleged time and account. He needs immediate hospital treatment. The same day, the Special Rapporteur followed up the information he received with a visit to the District Police Office and met the Superintendent of Police, Mr. Lamichane. Upon inspection of the detention registry, it appeared that the records relating to Mr. Karki upon his transfer from Pritna barracks had been entered retroactively and did not contain information relating to his injuries, that any medical examination had been carried out, or any complaint. The Special Rapporteur was informed by Inspector J.N. Khanal, the officer who registered Mr. Karki, that he observed that the prisoner was not feeling well and was injured on his right arm. As the prisoner did not feel like speaking, he was not questioned further about what had happened to him. The interrogating officer, Sub-Inspector Prem Khadka, was unavailable as he had been sanctioned by departmental action and transferred to police headquarters.

36. Ms. **Sita Negi**, aged 31, Jimnin, Kanchanpur, originally from Baramdev VDC, Kanchanpur district. On 16 August 2004, she was arrested by eight RNA personnel in plain clothes following a Maoist women's gathering in her village. She was beaten and taken to Bhaktapur, Suryadal barracks, where she was kept for three months. For the entire duration she was handcuffed, except during meals and visits to the toilet, and shackled. She was kicked with boots and beaten with sticks, hands, and an iron instrument approximately 1.5 m long, that resembled a hammer. She was hit on her legs and back. Her knees suffered a number of hard blows as did her right hand and her ribs. She was interrogated about her husband's activities and on several occasions threatened with death. For the first seven days in detention she was continuously tortured. She was also taken out into the bright sunlight at midday and left there

between 10 a.m. and 2 p.m., handcuffed and blindfolded. Rotten food and rice mixed with sand were provided for meals. For 22 days she was not permitted to change despite being covered in her own stool and urine; only when the ICRC came to visit was she allowed to bathe. She was threatened with sexual abuse, such as, "Are you ready to give sexual favours to the 40 of us [soldiers]" and, "We will cut your nose off and tell the rest of the town you're a prostitute." After three months she was transferred to Kanchanpur Jail where her blindfold was taken off, followed by six months in Jajarkot Jail, and then taken to the Central Jail on 25 June 2005, where she received some medical treatment. Her knees were X-rayed and fluid was drained from them. She could not walk without a walking stick for a long time. At the time of the interview she complained of loss of mobility and stiffness in her legs, and continued pain in her knees. She reported that she had had no contact with her family. She does not know where her husband is and believes her family is too frightened to see her. According to the medical examination, among other things, her gait was unstable, her right wrist was scarred and dislocated, and there were scars on her back, chest, knees and left shin. The injuries are the consequence of heavy blows, and are consistent with the account and time alleged. She requires hospitalization.

37. Ms. **A.T.**, aged 17. On 1 March 2005, she was arrested on the street by about three RNA personnel, on her way to a health check-up in Nepalgunj, and taken to the RNA Ranjha barracks, where she was held until 18 March. Upon arrest she was immediately blindfolded and handcuffed. For five days, beginning on the second day of her detention, she was interrogated about her alleged involvement in Maoist activities. She was verbally abused, and threatened, including being told, "You have to get married to us." She was beaten with sticks for sessions lasting 15-20 minutes. The beatings stopped when a human rights NGO visited. She has been in the Central Jail since 18 or 19 March. At the time of the interview she had not been brought before a judge. She has continued complaints of pain as a result of the beatings.

38. Ms. **D.C.**, aged 14, Gadariya VDC, Kailali district. On 22 August 2005, at around 3 p.m., she was travelling in a vehicle with six other persons, on her way to a health check-up when the driver drove instead to the armed police station. She was arrested by the APF for reasons unknown to her, blindfolded, then taken to the RNA Kohalpur barracks. At the barracks she was interrogated about her alleged involvement in Maoist activities. Outside in the compound, she was beaten by several RNA personnel on her face, chest and back. She was threatened with electric shocks. She was then taken to a room, where she was blindfolded and beaten again. She was instructed to stand for long periods of time, hold her hands behind her back, and was beaten with fists as well as with a piece of wood. She recalled bleeding from her mouth and losing consciousness. She was then taken to the DPO, Nepalgunj, where she was detained for about eight days before being brought to the Central Jail. At the time of the interview she complained of back pain, feeling faint and dizzy spells. To date she has not been brought before a judge, had any contact from her family, or had a medical examination. She stated that in the official prison records her age was given as 18, although she was only 14.

## 2. Other cases

39. **Bishnu Kumar Argal**, aged 38, Rajana VDC, Banke district. In April 2001, at around 10 p.m. three vans with security forces personnel arrived at his home and took him away, locking his family inside the house. He was immediately blindfolded before he was taken out of

his house and beaten on the street. The hood that was used was lined with plastic on the inside; the outside material was cloth. A rope was attached which was wound around his neck. He reported that it had been extremely hard to breathe. They asked him where the Maoist leaders were and threatened to kill him. Fifty metres from his house, they began to hit him by the roadside with their rifle butts. His arms, legs and torso were stepped on, and they rolled a heavy pole over his thighs. He was taken to the Chisapani barracks. He was taken to a special room for the torture. He identified two of the perpetrators as Captain Ramesh Swar and Major Ajit Thapa. He was beaten unconscious with rifle butts, and a tapered truncheon-like stick the perpetrators referred to as "Kali", approximately an arm's length and covered with rubber bands. He was told that 11 persons had been killed with it and he was going to be the twelfth. He was beaten on the soles of his feet while he was lying on the floor, or lying on his back with his feet up in the air. For almost two months he was tortured continuously, and thereafter only once or twice a week. He was hooded for seven months, 24 hours a day, and as a result, his eyes were damaged. The hood was taken off for 5-10 minutes a day when he was eating or going to the toilet, but his eyes were otherwise always kept covered. He said that one gets used to not getting enough oxygen. He could not see other people directly, but he could make out some of his surroundings when he looked down through the blindfold. His hands were tied with a very tight rope, and unbound for 15 minutes a day. His fingernails grew so long that he could not eat the rice any more, and because his hands were tied behind his back he could not chew off his nails. His feet were also bound for 15-20 days. From time to time he and some fellow prisoners were taken to the jungle where a gun was put in their mouths or against their temples. They would hear gunfire and were told that a co-detainee had just been killed. Sometimes he was locked in the latrine with no ventilation and forced to eat there. When he was not being tortured he was kept in a room approximately 15-20 m<sup>2</sup>. Sometimes he was the only person there, and sometimes he was there together with 50 or 60 others. He had to sleep on the cement floor without a blanket. He slept on his stomach, with his hands tied behind his back. In the morning he had five minutes to go to the toilet. He reported that when some NGOs came to visit, he was given medication to cover his wounds. Some of the other detainees were released when they agreed to sign a paper agreeing to bring another five Maoists to the authorities. Upon his release he was warned not to tell anybody about the torture, otherwise they would "chop him to death with an axe". As a result of the beatings and the lack of movement, he could not walk at that time; he still complains of loss of mobility in his legs. They had taken off the hood and untied his hands. Then they cut his fingernails and hair. He did not know why they did that. At his release he was simply thrown out of the barracks. Because he could not walk and his sight was severely impaired, everything he saw flickered and was blurred, and he just sat outside the barracks. A truck driver picked him up and brought him home to his family. During the entire seven months in detention he had had no contact with his family, although his wife knew that he was held in Chisapani because she had witnessed the arrest, and the RNA kept returning to his house afterwards. His family begged them to release him or to hand over his body if he was dead. The army did not give his family any information as to his whereabouts. He himself knew from the start that he was in Chisapani because it was only 5 or 6 km from his home. For a whole year he had to report back to the barracks and was not allowed to leave his village. He did not lodge a complaint because he was afraid of reprisals. According to the medical examination, he had a dislocated tooth, scars on his left thigh and behind his left knee, and had difficulty

sitting upright. At the time of the interview he complained of generalized pain, weakness in his legs, headaches, visual disturbances, impaired memory and loss of self-worth. His complaints and demeanour are consistent with prolonged physical and mental torture, and he needs psychosocial counselling. He was interviewed on 14 September 2005.

40. The Government reported that no information could be found at present.

41. **Madan Kumar Dhungana**, age 26, Phulwari VDC, Kailali district. On 22 August 2005, he reported that he was on his way to buy something when his bicycle broke down. He accepted a lift from the driver of a jeep. There were two other passengers, a woman and a man suffering from Japanese encephalitis, and he agreed to assist them by accompanying them to Nepalgunj. They were stopped at the APF Tactical Training Facility, Kohalpur, and ordered into the compound. They were taken to the nearby RNA Kohalpur barracks, and when he arrived at the barracks RNA personnel and about 20 or 25 APF personnel pulled him out of the jeep and started punching, kicking, choking and beating him with rifle butts and sticks. An army official ordered the APF to stop. At the barracks he was interrogated about his alleged involvement in Maoist activities. He denied any connection with the Maoists. They told him that his fellow Maoists had forced army personnel to hold their severed penises in their mouths during a Maoist attack in the area. The female passenger was pulled out, verbally abused and slapped in the face. She also denied having any connection with the Maoists. He was ordered to sit on the ground and both he and the woman were blindfolded. He was forced to remain in a headstand for almost two hours before he finally broke down. He was struck with a rifle butt on the toe. They threatened to kill him and to force him to eat meat because he was a strict vegetarian. The woman was severely beaten until she confessed. They ceased beating him when they were satisfied that he was not involved with the Maoists. They were handcuffed and blindfolded throughout the night. For food they were given rice with sand and no water. The next day he was brought to the District Police Office, Nepalgunj, where he remained for three days. He was released with the help of an NGO on the condition that he report back regularly to the DPO. He was interviewed on 14 September 2005.

### **C. Follow-up to previously transmitted communications**

42. Concerning Ms. **Maina Sunawar**, aged 15, and the subject of previously transmitted communications of the Special Rapporteurs on the question of torture; extrajudicial, summary or arbitrary executions; violence against women; and freedom of opinion or expression, and the Special Representative of the Secretary-General on human rights defenders (see E/CN.4/2005/62/Add.1, paras. 1066, 1150 and 1176). According to the information received, on 27 September 2005, a court martial found the perpetrators, Colonel Bobby Khatri, Captain Amit Pun and Captain Sunil Adhikari, responsible for the torture and death of Maina Sunuwar in the RNA Shanti Gate barracks, Dhulikhel. They were sentenced to six months' imprisonment, though they will not spend any time in detention because they had already served this time consigned to their barracks. In addition, the promotion of the two captains would be suspended for one year, while the colonel's promotion would be suspended for two years. The colonel was ordered to pay NRs 50,000 as compensation to the victim's family members, and the captains were ordered to pay NRs 25,000 each. The Government has been ordered to pay NRs 150,000 as compensation.

43. The Special Rapporteur expresses his deep disappointment in this prosecution. Following his recent visit to Nepal he expressed concern about the prevailing culture of impunity, the emphasis on compensation for acts of torture as an alternative to criminalization, and the absence of punishment commensurate with the gravity of torture. He stated that the sanctions of “departmental action”, including delayed promotions, are so grossly inadequate that any preventive or deterrent effect envisaged under the legislation is nullified. The Special Rapporteur requests the Government to comment on the outcome of this case and bring forward proposals on how it plans to fight impunity in the future.

44. The Government informed that it is preparing to make torture a criminal offence in the domestic legal system to fight impunity and torture more effectively in the future.

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