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Nepal: Impending Humanitarian Crisis US, UK and India must not play foul

**(The 5th weekly briefing paper on the key human rights concerns in
Nepal from 4-9 March 2005)**

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1. Overview

On 14 March 2005, the United Nations Commission on Human Rights will commence its 61st session. As King Gyanendra refuses to relax any measures, international community must censure Nepal.

The United States and the United Kingdom have reportedly been mulling as to whether to sponsor a resolution on the situation of human rights in Nepal under agenda item 9 of the CHR. The United States is concerned that the Maoists may come to power and “the humanitarian ramifications of such a regime would be immense, reminiscent of the nightmare brought upon Cambodia by Pol Pot”.¹ The United Kingdom reportedly shares the views of the US. Both have reportedly been opposing a country resolution on Nepal. India has no positive track record at the Commission on Human Rights and it might sponsor a resolution only as a last resort.

While the Maoists have been responsible for gross violations of humanitarian laws, creating phobia about a “Pol Pot” regime must not be at the cost of condoning the crimes being committed by King Gyandendra. As the Chairman of the Council of Minister, His Majesty can be held responsible for all the abuses.

International community especially the United States and United Kingdom must realise that Nepal is neither Cambodia nor do we live in a cold war era. However, inability to convince King Gyanendra to listen to reason may indeed make Nepal another “Killing Fields” akin to Cambodia. The Royal Nepal Army claimed that it has killed at least 30 Maoist rebels near the western town of Sandhikharka on 4 March 2005.² The reports of dozens of Maoists being killed raises fear – more so when its own National Human Rights Commission was prevented on 5 March 2005 from visiting Kapilvastu district to investigate the human rights violations of the alleged supporters of the Maoists in.³ With complete ban on reporting on any news, interview, information, article and opinion published or disseminated through media that supports terrorism and subversive activities i.e. the Maoists, the gross human rights violations by the security forces cannot be verified. Terming anybody killed as Maoists is an easy excuse.

The impending humanitarian crisis must be stopped.

The United States and United Kingdom must also take note of an unexpected visitor to Kathmandu - Cuba’s Deputy Minister for Foreign Affairs, Abelardo Morento. The expertise of the Cuban on procedural issues is quite universally accepted and they might have offered a few tips to the Nepalese counter parts to block any resolution against Nepal at the 61st session of the CHR.

¹ . Statement of Donald Camp, Deputy Assistant Secretary of State before the U.S. House of Representatives Committee on International Relations in Washington D. C. on 2 March 2005.

² . http://news.bbc.co.uk/1/hi/world/south_asia/4325015.stm

³ . NHRC member prevented from traveling, The Kathmandu Post, 6 March 2005

2. Recommendations for a draft resolution on the situation of human rights in Nepal

It is essential that a resolution on the situation of human rights in Nepal be adopted at the 61st session of the Commission on Human Rights. While the States continue to debate whether to sponsor a resolution under agenda item 17 on technical cooperation or item 9 on country situations, there is no denying about the need to monitor human rights violations both by the security forces and the Maoists.

Asian Centre for Human Rights recommends the following elements for a draft resolution on the situation of human rights in Nepal

A resolution on the situation of human rights of Nepal should express concerns on:

- i. Declaration of emergency on 1 February 2005 and increase of systematic violation of human rights, including civil, political, economic, social and cultural rights, of the people of Nepal;
- ii. The continued house arrest of political leaders, mass arrest of political activists and peaceful demonstrators and their incomunicado detention and arrest of human rights defenders, journalists, student leaders, academics, women rights activists, trade unionists etc;
- iii. The imposition of censorship on media freedom, in particular, the ban on “any interview, article, news, notice, view or personal opinion that goes against the letter and spirit of the Royal Proclamation of 1 February 2005 and that directly or indirectly supports destruction and terrorism”; the mis-sue of the Press and Publication Act-2048 BS and National Broadcasting Act-2049 BS; the ban on broadcasting of news by FM radios and subsequent loss of jobs by journalists working with FM radio; and suspension of giving of advertisements to newspapers from the Ministry of Information and Communications under the Lok Kalyankari Kosh (Public Welfare Fund) and disbursement of promised funds to the Federation of Nepalese Journalists;
- iv. Severe restrictions on the freedom of association and assembly, especially the ban on any meeting, conference, workshop or interaction programme which “undermine the Kingdom’s sovereignty and integrity, disturb the law and order of the country or cause any adverse effect on the current state of emergency”

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- v. Illegal ban on the freedom of movement and confinement of the political activists, human rights defenders, journalists, academics in the particular areas such as Kathmandu valley;
 - vi. Climate of impunity and extrajudicial executions especially the lynching of the alleged supporters of the Maoists in Kapilabastu district in mid February 2005 and continuing use of torture, burning down of houses with the backing of the Royal Nepal Army;
 - vii. Restrictions on the freedom on movement of the members of the National Human Rights Commission of Nepal who sought to investigate allegations of human rights violations in Kapilabastu district;
 - viii. The widespread mis-use of the Public Safety Act and Terrorist and Disruptive Activities Prevention Ordinance,
 - ix. Wide disrespect for the rule of law by the Royal Nepal Army and other security forces as reflected from their blunt denial after arrest of suspects, innocents etc;
 - x. The lack of independence of judiciary and the power given to the Royal Commission on Corruption Control to investigate the judges of the Supreme Court as a means to erode the independence of judiciary;
 - xi. Poor conditions of detention and violations of the rights to an adequate standard of living, such as food, and to medical care;
 - xii. Increase violations of human rights by the vigilante groups;
 - xiii. Human rights violations suffered in particular by persons belonging to ethnic nationalities, women and children;
 - xiv. Lack of assistance for the internally displaced persons in Nepal and the flow of migrants/asylum seekers and refugees to neighbouring India; and
 - xv. The order of the Department of Transportation Management to nullify the registration of public vehicles and cancel the license of the drivers who do not ply on the highways during the blockade/bandh called by the Maoists;
 - xvi. Arbitrary arrest, re-arrest of released detainees, and incommunicado detention especially in army barracks

throughout the country under no legal authority, including the Terrorist and Disruptive Activities Ordinance (TADO) and denial of access to the National Human Rights Commission and International Committee of the Red Cross to the army barracks across the country;

The resolution on the situation of human rights on Nepal should **call on** the Government of Nepal to:

- a. Immediately withdraw emergency, restore multi-party democracy and take measures for formation of a national unity government of the democratic forces;
- b. Release unconditionally and immediately all political prisoners, journalists, media persons, student leaders, human rights activists, trade unionists and women rights activists;
- c. Put an end to impunity and ensure, as it is duty-bound to do, that those responsible for human rights violations and grave breaches of international humanitarian law are brought to justice and immediately order an inquiry into the lynching of the alleged supporters of the Maoists with the backing of the Royal Nepal Army and the vigilante groups;
- d. Cooperate fully with the Office of the High Commissioner for Human Rights for implementation of the technical cooperation agreement signed on 13 December 2004;
- e. Put an immediate end to the recruitment and use of vigilante groups;
- f. End the systematic enforced disappearances in Nepal through implementation of the recommendations given by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1) after its field visit to Nepal;
- g. Take immediate action to eradicate the practice of extrajudicial executions by ensuring compliance with the UN principles on United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989)
- h. Immediately ensure safe and unhindered access to all parts of Nepal for the United Nations and international humanitarian organisations and to cooperate fully with all sectors of society,

to ensure the provision of humanitarian assistance and to guarantee that it actually reaches the most vulnerable groups of the population;

- i. Provide the necessary protection and assistance to internally displaced persons and provide humanitarian assistance;
- j. Fulfil its obligations to restore the independence of the judiciary and due process of law, and to take further steps to reform the system of the administration of justice;
- k. Consider as a matter of high priority becoming party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- l. Appoint members of the National Human Rights Commission consistent with Article 3 of the Human Rights Act; and
- m. Withdraw the order of the Department of Transportation Management to nullify the registration of public vehicles and cancel the license of the drivers that do not ply the highways during the blockade called by the Maoists; and
- n. Pursue through dialogue and peaceful means the immediate suspension and permanent end of conflict with the Maoists;

The resolution on the situation of human rights on Nepal should also call on the Maoists to:

- i. Respect human rights and international humanitarian law, in particular, as applicable to them, the Geneva Conventions of 12 August 1949 for the protection of victims of war and the Additional Protocols thereto of 1977, the Hague Convention of 18 October 1907 concerning the Laws and Customs of War on Land, the Convention on the Prevention and Punishment of the Crime of Genocide and other relevant provisions of international humanitarian and human rights law, and in particular to respect the rights of women and children and to ensure the safety of all civilians;
- ii. Immediately stop recruitment and use of child soldiers;
- iii. Stop indiscriminate killings of the civilian populations including the members of the Maoist Victims Association, targeting of hospitals and schools and other public properties in areas held by

the Maoists, and extortion of exorbitant “taxes” through coercion, intimidation and physical violence;

- iv. Stop trial by incompetent courts for crimes inappropriately punishable by death;
- v. Stop violent imposition of the blockade;
- vi. Allow free and secure access to areas under their control in order to permit investigations of violations of human rights and international human rights law;

The resolution on the situation of human rights on Nepal must decide to:

- (a) Appoint a Special Rapporteur on the situation of human rights in Nepal and to submit an interim report to the General Assembly at its 60th session;
- (b) Appoint a Special Envoy of the Secretary General to facilitate peace process with the Maoists;
- (c) Submit a report on the implementation of the Memorandum of Understanding signed with the Office of the United Nations High Commissioner for Human Rights on 13 December 2004; and
- (d) Continue consideration of this question at its sixty-second session.

2. Repression on the political activists

King Gyanendra refuses to stop repression on political activists, human rights activists, student leaders, trade union activists etc. Hundreds of political activists have been arrested on 8 March 2005 after the five party alliance of the Nepali Congress, CPN-UML, Nepali Congress-D, Jana Morcha Nepal and NSP-A began its protest. The protests were held in Chitwan, Dhangadhi, Pokhara, Ilam, Siraha, Saptari, Biratnagar, Janakpur, Dhankuta, Rupandehi, Rautahat, Jhapa, Banke, Nawalparasi, Sunasari and Bardiya.

Earlier, on 4 March 2006, the government of Nepal extended the house-arrest-term of six senior political leaders by two months, including those of Nepali Congress President Girija Prasad Koirala, Nepali Congress (Democratic) President Sher Bahadur Deuba, CPN-UML General Secretary Madhav Kumar Nepal, UML Standing Committee member Bharat Mohan Adhikari, Peoples’ Front of Nepals Chairman Amik Sherchan and NC (Democratic) central leader Purna Bahadur Khadka.⁴ The government had already provided three-month detention orders to most of the 450 leaders and cadres detained on

⁴ Govt extends house arrest of leaders, The Kathmandu Post, 4 March 2005

various dates since February 1.⁵ On 4 March 2005, Nepal Bar Association (NBA) demanded that the government immediately release former Law Minister Nilamber Acharya, Ganeshdutta Bhatta, a lecturer at Nepal Law Campus, Kathmandu, and advocates Kalyan KC, Kamal Khatri, Nanda Ram Bhandari, Indra Pokharel, Indra Sapkota and Rameswor Subedi, a Pyuthan-based lawyer, along with all detainees, who continue to be detained in the aftermath of the Royal Proclamation of 1 February 2005.⁶

On 2 March 2005, more than 12 student activists of five students' unions having allegiance to Nepali Congress, CPN-UML, Nepali Congress-D, People's Front Nepal and Nepal Sadhbhawana Party (Anandevi faction) were arrested by the police from various campuses in Kathmandu valley for staging protest demonstrations demanding early restoration of peace and democracy. Those detained from Pashupati Campus have been identified as Suraj Khada, Chandra Mani Khatiwada, Arjun Shahjan, Ravi Bista and Dolraj Sharma. The identity of student leaders apprehended from other campuses including Trichandra Campus could not be verified.⁷

On 2 March 2005, the Supreme Court directed the government to present Professor Saubhagya Karki and student leader Chaau En Laai Shrestha before the court in 3 days. The direction was issued following the filing of a writ petition demanding their release. They were arrested in early February 2005.⁸

Of the 31 CPN-UML activists arrested for demanding early restoration of democracy in Kaski on 1 March 2005, four activists identified as Rabindra Adhikari, Sri Nath Baral, Man Bahadur GC and Rajiv Pahari were reportedly sent for three months jail under Public Safety Act. The rest were released.⁹

On 2 March 2005, District Administration Office, Kathmandu, released Ms Manju Bhattarai, leader of Trade Union Congress, on bail of Rs 6,000. She was arrested on February 1 and had been detained under the Public Offense and Punishment Act.¹⁰

On 3 March 2005, at least 7 Nepali Congress cadres were arrested by police in Kathmandu. Central committee member of NC, Baldev Sharma Majgainya was reportedly arrested from his residence in Kathmandu. Six other party workers identified as Ram Chandra Khadka, Lokesh Dhakal, Jhapat Bhandari, Keshav Chalise, Rajendra Wagle and Vedraj Lama were arrested at 2:30 p.m. from Ason where they were holding a public demonstration.¹¹

About a dozen of CPN-UML cadres including former Members of Parliament Kamal Koirala and Rajendra Lohani, General Secretary of All Nepal National Free Students

⁵. Ibid

⁶. Release former minister Acharya, NBA demands, The Nepal News.com, 5 March 2005

⁷. 12 students arrested from various Valley campuses, Kantipur Online, 3 March 2005

⁸. SC issues notice to govt., Kantipur Online, 3 March 2005

⁹. DAO releases Trade Union leader, The Kathmandu Post, 3 March 2005

¹⁰. Ibid

¹¹. Majgainya among NC cadres arrested, Kantipur Online, 4 March 2005

Union Thakur Gaire and Kathmandu district Committee member of the party Bashanta Manandhar were also arrested on 3 March 2005 after police intervened at a protest rally in Kathmandu. Police rounded them up when the rally they were taking out reached near Ason. Saroj Kafle and Pradip Humagain, student leaders affiliated with Nepal Students Union were arrested when they took the rally to Baneshwor after police intervened at Ason.¹²

In a raid on 4 March 2005, the security forces reportedly arrested the CPN (Maoist) district leaders- In-charge of Dhanusha, Sarlahi and Saptari, Surya Nath Yadav alias Subash, Saptari district secretary, Ashok Mandal alias Amar and Sudan Rai, a member of the cultural group of the rebel party were arrested from a house at Kachanahi area, Saptari district. Security forces claimed to have recovered a Chinese pistol, bullets and cordless phones from the Maoist leaders. Security forces also reportedly arrested Birbal Yadav and Dharma Nath Yadav, two district leaders of Terai National People's Front, a Terai-based underground insurgent group, in Sarlahi.¹³

On 6 March 2005, security forces detained four student leaders belonging to mainstream political parties from various parts of Kathmandu. While Indu Sharma, the president of Nepali Congress aligned Nepal Students Union (NSU), Govinda Gautam and Madhu Mishra were arrested from Saraswati Campus Unit, central member of the NSU Asta Kumar Sahi was detained from his house at Bagbazaar in the afternoon.¹⁴

On 7 March 2005, a division bench of the Supreme Court comprising Justices Dilip Kumar Paudel and Rajendra Kumar Bhandari ordered the government authorities including the Home Ministry, the Police Headquarters and the Kathmandu District Administration Office to clarify why student leaders — Om Prasad Aryal, Jyoti Sharma, Dipak Rai, Lochan KC, Mahesh Devkota and Dilliram Bohara — were arrested. The bench also ordered the authorities to produce their decisions over the issue. The student leaders were arrested on February 1.¹⁵

On 8 March 2005, over 200 political activists including senior party leaders, former members of parliament and party central working committee members, were arrested for defying orders issued under the state of emergency in Kathmandu, Pokhara, Tanahun, Chitwan and Dhangadhi.¹⁶ Nearly two dozen activists including CPN (UML) leader Ms Bidya Bhandari, Nepali Congress (Democratic) leaders and former ministers Tek Bahadur Chokhyal, Mrs Bhim Kumari Budha Magar and former lawmaker Krishna Kishore Sharma Ghimire were arrested by police while demonstrating in Ason-Bhotahity area in Kathmandu in the afternoon.¹⁷ Other arrested included former ministers Khem Raj Bhatta Mayalu of NC (D), former state minister Sushila Swar of NC (D), former assistant minister Bachaspati Devkota, Chandra Bhandari, Govinda Kandel, Amia Raj Yadav,

¹². Over dozen protesters arrested, The Kathmandu Post, 5 March 2005

¹³. Three Maoist district leaders arrested, The Nepal News, 8 March 2005

¹⁴. Student leaders detained, The Kantipuronline, 7 March 2005

¹⁵. SC order to govt, The Himalayan times, 8 March 2005

¹⁶. Over 100 held for defying Emergency orders, The Himalayan Times, 9 March 2005

¹⁷. Over 200 protesters held, The Nepal News.com, 9 March 2005

Nirmal Kumar Pudasaini, Khagendra Bhandari, leaders of the NC (D) Rudra Mani Bhandari, Dirga Raj Bhat, Ganesh Shahi, Badri Chaulagain, Damber Kumari Bhatta and a few student leaders.¹⁸

Over 130 political activists including former lawmaker, Anand Dhungana, were detained in the southern town of Janakpur,¹⁹ 35 demonstrators in Tanahun, 22 in Pokhara,²⁰ 7 in Dhangadi and 28 in Narayangad in Chitwan²¹ while taking part in a peaceful demonstrations.

Telephone lines of about two dozens leaders still remain cut off, including those of Nepali Congress President Girija Prasad Koirala, CPN-UML General Secretary Madhav Kumar Nepal, People's Front Nepal leader Amik Sherchan, Nepal Workers and Peasants Party Chairman Narayan Man Bijukchhe, Youth leaders Binod Kayastha, Gokarna Bista and Gagan Thapa, Kathmandu NC leaders Tirtha Ram Dangol, Bhimsen Das Pradhan, Bhaktapur NC leader Lekhanath Neupane, WPP leader Prem Suwal, PFN leaders Lila Mani Pokharel and Ghanashyam Poudel.²² Hundreds of political activists remain under house arrest or in prisons under the Public Safety Act.

3. Valley detention for the NHRC members

The government of Nepal has virtually detained most of the human rights defenders and political activists by arbitrarily imposing restriction on their movement outside the Kathmandu Valley.

On 3 March 2005, former Speaker and member of the 1990 Constitution Drafting Committee, Daman Nath Dhungana moved the Supreme Court questioning the legality of travel restriction imposed on him by the authorities. The Supreme Court administration, however, rejected the petition citing the suspension of Article 23 that guarantees right to constitutional remedy in the ongoing State of Emergency. Senior Advocate himself, Dhungana was scheduled to leave for the United States on March 8 to deliver a guest lecture at a university based in California²³.

On 5 March 2005, security forces barred a team of the National Human Rights Commission (NHRC) Sushil Pyakurel, Dr Gauri Shankar Lal Das and head of NHRC's Protection Division Yagya Prasad Adhikari – scheduled to fly to Bhairahawa. The NHRC team returned from the Tribhuvan International Airport after the security personnel prevented Pyakurel stating that he was not allowed to go out of the Kathmandu valley. The team was scheduled to visit Kapilvastu district to investigate the clashes between the locals and Maoists in the district where a group of allegedly anti-Maoist

¹⁸. Over 100 held for defying Emergency orders, The Himalayan Times, 9 March 2005

¹⁹. Over 200 protesters held, The Nepal News.com, 9 March 2005

²⁰. Parties stage protests, hundreds arrested, The Kathmandu Post, 9 March 2005

²¹. Hundreds arrested on first day of five-party protests, The Kantipur online.com, 9 March 2005

²². Phone lines of leaders cut, The Kathmandu Post, 24 February 2005

²³. Dhungana moves Supreme Court, The Kathmandu Post, 4 March 2005

villagers had torched about 200 houses of alleged Maoists some two weeks ago. The NHRC team was prevented despite the fact that it had already informed the Home Ministry and all concerned authorities about the team's visit to Kapilvastu.²⁴

4. Muzzling the press freedom: Cut the advertisement

The press freedom continues to remain under complete suspension.

In a move to further tighten its grip over the media, the Royal government of Nepal on 3 March 2005 reportedly suspended giving of advertisements to newspapers from the Ministry of Information and Communications under the Lok Kalyankari Kosh (Public Welfare Fund), and disbursement of promised money to the Federation of Nepalese Journalists (FNJ). Vernacular weeklies and newspapers published from outside Kathmandu Valley have been most affected by this decision. The decision of suspension is said to be clear contradiction of decision of the erstwhile government on the matter. Unveiling an 11-points media policy on 12 October 2004, the erstwhile government had doubled subsidies provided as advertisement to weeklies and mofussil papers. It was Rs 12,000 for Grade "A" papers, Rs 8,000 for Grade "B" papers, Rs. 6,000 for Grade "C" and Rs 4,000 for Grade "D" papers each month. Amounts were fixed for daily newspapers accordingly.²⁵

Editor of *Budhabar* weekly, Surya Thapa, was summoned by the CDO of Kathmandu to seek explanation regarding a news item, "Five parties unite against authoritarianism," on 7 March 2005. Thapa faces a fine of Rs ten thousand and/or a jail sentence of up to one year, according to the Printing and Publication Act 2046 B. S., if he is found guilty for publishing prohibited matters.²⁶

On 3 March 2005, local administration of the eastern hilly district of Panchthar detained Lavadev Dhungana, president of the Panchthar district unit of the Federation of Nepalese Journalists (FNJ). Dhungana, who is also the correspondent of the state-owned Nepal Television and Rajdhani daily in the district was taken into custody from the district headquarter, Phidim. Chief district officer of Panchthar, Janardan Sharma Adhikary reportedly stated that Dhungana was detained "as he was involved in activities that disrupted public security." He had reported about the arrest of the student leaders.²⁷

At around 7.45 pm on 7 March 2005, editor of Himal Southasian and publisher of Himal Khabarpatrika, Kanak Mani Dixit was arrested by plainclothes policemen who had been waiting at his home at Patandhoka and took him away saying the "Superintendent of Police wants to talk to you." He was released at around midnight on 7 March 2005.²⁸

²⁴ . NHRC member prevented from traveling, The Kathmandu Post, 6 March 2005

²⁵ . Govt suspends advert subsidies to media, The Kathmandu Post, 4 March 2005

²⁶ . Budhabar editor faces up to a year in jail, The Nepal News.com, 7 March 2005

²⁷ . Journo detained, The Himalayan times, 5 March 2005

²⁸ . Editor Dixit released, The Nepal News.com, 8 March 2005

According to Dixit, police inquired him about his recent Delhi sojourn and if he had met or tried to meet Maoist leaders there.²⁹

Taking advantage of emergency, many government officials are settling personal scores. 73-year-old Narayan Prasad Sharma, editor and publisher of *Naya Yugbodh* daily had to approach the Appellate Court in Tulsipur before he could resume publishing his 28-year-old popular daily from 2 March 2005. The editor had filed a writ petition in the Appellate Court in Tulsipur, Dang, after Chief District Officer of Dang, Shiva Prasad Nepal, ordered in writing not to publish the daily until further notice immediately after the declaration of the state of emergency on February 1. The court then issued an interim order on 28 February 2005 asking the local administration “not to obstruct the legal right of the publisher until the court delivers final judgment.” According to Sharma, the CDO had personal grudges against the daily as it had exposed his involvement in corruption scam prior to the Feb. 1 developments³⁰.

On 8 March 2005, police arrested Rishiram Pokhrel, editor of local weekly bulletin *Tanahu Aawaj*, at the district headquarters Damauli while participating in a peaceful rally demanding the restoration of democracy.³¹ Police also detained Ashish Sarraf ‘Nikki,’ a photojournalist while he was taking pictures of the demonstration in Janakpur.³²

5. Lack of independence of judiciary

On 2 March 2005, the Supreme Court (SC) stated that the provision of the right to remedy regarding non-suspended rights during the state of emergency is a serious constitutional issue and that it will decide on it only after conducting a hearing of a full bench comprising the maximum number of justices. A single bench of justice Ram Nagina Singh, responding to separate pleas filed at the Supreme Court challenging the rejection order passed by the SC registrar Shree Prasad Pundit last week, issued the order. The Registrar had earlier rejected to accept writ petitions — *Harka Man Shrestha vs Land Reform Ministry*, *Dambar Singh Gadai vs Ilam Municipality*, and *Kiran Kumar Shrestha vs Ministry of Health* — seeking the Supreme Court’s order to the authorities for the rights guaranteed under Article 11, 88(1) and (2) of the Constitution.³³

On 4 March 2005, Vice Chairman of the Council of Ministers Kirtinidhi Bishta said certain fundamental rights suspended under the state of emergency would be restored soon.³⁴ On the other hand, contrary to his earlier public statement regarding non-suspended rights guaranteed by the 1990 Constitution, Attorney General Pawan Kumar Ojha on 7 March 2005 stated that the Supreme Court could not provide the right to legal remedy during a state of emergency. He said the people did not have the right to seek remedy for the non-suspended rights because of the suspension of Article 23, which

²⁹. Ibid

³⁰. 73-year-old editor knocks the court to bring out his publication, *Nepalnews.com*, 3 March 2005

³¹. Journalist arrested, *The Kathmandu Post*, 9 March 2005

³². Over 200 protesters held, *The Nepal News.com*, 9 March 2005

³³. SC to conduct full bench hearing on non-suspended rights, *The Himalayan Times*, 3 March 2005

³⁴. ‘Suspended rights will be restored soon’, *The Kathmandu Post*, 5 March 2005

guarantees the right to seek remedy. According to Ojha, the SC cannot exercise its extraordinary jurisdiction under Article 88 for the protection of the people's rights during a state of emergency.³⁵

6. Extrajudicial killings by the RNA

The RNA continues to claim heavy casualties on the side of the Maoists. The claims are unverifiable given complete censorship and restrictions on freedom of movement.

On 1 March 2005, two Maoist rebels were reportedly killed during gunfight with RNA personnel at two different places of encounter. While one was killed at Baidare area of Bhojpur, the other rebel was gunned down at Aruwang area of Arghakhanchi district. The RNA also claimed to have recovered 11 more bodies of Maoist rebels killed in clashes with security forces in Toraiyapur area of Gurgauli VDC in Kailali district on 28 February 2005. Among those killed included two Maoist commanders identified as 'Nabin' and 'Sangharsha'³⁶.

According to the DPR of RNA on 6 March 2005, Maoist cadre Prashant Gurung was killed in retaliatory action of the unified command after about six Maoists attacked its patrolling team near Pokhara sub-metropolitan office in Kaski district two others- Rajendra Sharma and Darpana, alias Kalpana, were killed in another security operation at Babiyabirta area of Morang district on 5 March 2005.³⁷

In an alleged encounter with the RNA personnel, three Maoists rebels who have been identified as Devendra Prasad Choudhary alias Pradeep, Tajmul Ansari alias Mallu and Ashok Kumar Pandey alias Pappu were killed on 6 March 2005.³⁸ Three women Maoists were reportedly killed in security action at Rampur VDC on 7 March 2005.³⁹

On 8 March 2005, in a statement the RNA claimed that the security forces shot dead Kamala and Mina, two alleged Maoists at Buka area and Asha, another Maoist at Motipur area of Dang district on 7 March 2005.⁴⁰

Vigilante groups

On 6 March 2005, Madhesi Tigers – a vigilante group reportedly set ablaze and robbed houses of Devendra Patel of Bishrampur VDC-8, district member of the Maoists. They had earlier burnt down the house of one Rakesh on 3 March 2005. The Madhesi Tigers has been involved in atrocities. They also destroyed the house, grains and tractor of Ramsinhasan Shah, former Village Development Committee Chairman. The group

³⁵. Attorney General does a U-turn, The Himalayan Times, 8 March 2005

³⁶. Two rebels killed, more bodies found, The Kathmandu Post, 3 March 2005

³⁷. Three Maoists killed, The Himalayan Times, 7 March 2005

³⁸. Three Maoists killed, The Nepal News.com, 8 March 2005

³⁹. Six Maoists killed, The Kantipuronline, 8 March 2005

⁴⁰. 5 rebels killed, The Kathmandu Post, 9 March 2005

severely beat Nagendra Patel, erstwhile vice-chair of Ramauli Bairiya VDC and looted cash Rs 30,000.⁴¹

7. Atrocities by the Maoists

The Maoists continue to be responsible for gross violations of international humanitarian laws.

On the night of 6 March 2005, Maoists reportedly killed five alleged members of an anti-Maoist retaliation group at Kudarmatewa village in Kapilvastu district. A group of heavily armed Maoists had attacked the villagers who they claimed were involved in recent spate of anti-Maoist violence. The villagers were killed on the spot. Earlier, the rebels had killed seven villagers charging them of similar accusations.⁴²

While Rameswor Subedi, chief of the Sworgadwari Multiple Campus in the mid-western district of Pyuthan was reportedly released by the Maoists on 3 March 2005, a group of Maoists have abducted 43-year-old dairy entrepreneur, Dilli Prasad Upadhyay, from Narayan municipality in another mid-western district of Dailekh. The rebels reportedly manhandled Upadhyay while abducting him from his house.⁴³ Nisha Bhetwal, whose father, Bishnu Prasad Bhetwal was abducted by the Maoist on 17 January 2005 appealed on 5 March 2005 to the rebels to release her father. Since then, the family has not reportedly heard about his whereabouts. A middle-class furniture trader, Bishnu Prasad Bhetwal was the sole breadwinner of his six-member family.⁴⁴ On 6 March 2005, the bruised dead body of Pahuna Tharu of Gadhi VDC, who was employed as a Game Scout at Royal Bardiya National Park (RBNP) was found inside the park. Tharu was earlier abducted by the Maoists.⁴⁵

Over 100 of suspected Maoists reportedly set ablaze more than half-a-dozen government offices based at the headquarters of Argakhachi district including the RNA's West-division at Pokhara on the night of 3 March 2005. Many government offices such as the District Administration Office, District Irrigation Office, District Education Office, District Development Committee, District Land Revenue Office, District post office, District Drinking Water Office etc. suffered damages in the attack.⁴⁶

8. Action against the Maoists by the Government of India

India has tightened its borders with Nepal.

⁴¹ <http://insn.org/index.php?cat=5>

⁴² Maoists kill five villagers in Kapilvastu, The Nepal News.com, 8 March 2005

⁴³ Campus chief released, dairy entrepreneur abducted, The Nepal News.com, 5 March 2005

⁴⁴ Daughter appeals for father's release, The Kantipuronline, 6 March 2005

⁴⁵ RBNP employee killed, The Kathmandu Post, 7 March 2005

⁴⁶ Maoists attack Sandhikharka, The Kathmandu Post, 5 March 2005

On 1 March 2005, four armed Maoists were arrested by India's Special Services Bureau (SSB) at Laukahi in Baharaich district in Bihar. The Maoists were arrested while attempting to flee to India following fierce clashes with the Nepali security forces on 28 February 2005 in Kailali district. One AK-47 rifle, two SLRs, one .303 rifle and one socket bomb have reportedly been recovered from their possession⁴⁷.

On the same day i.e. 1 March 2005, a joint team of Bihar Police Force and Special Services Bureau (SSB) arrested three Maoists when they were traveling in an Indian jeep at Jayanagar of Madhubani district in Bihar. Those arrested have been identified as Jit Mohan Ray of Dang, Santosh Kumar Yadav of Dhanusha and Thakur Ghimire Sharma of Okhaldhunga. During interrogation, the Maoists allegedly revealed that there is regular link between Nepali Maoists and Bihar's Maoists.⁴⁸

⁴⁷. Indian police arrest four armed Maoists, Kantipur Online, 3 March 2005

⁴⁸. Three more Maoists arrested in India, Kantipur Online, 4 March 2005