



# Asian Centre for Human Rights

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## **Torture in Nepal: A case for investigation by CAT**

**A shadow report to the UN Committee Against Torture<sup>1</sup>**  
35<sup>th</sup> session, 7-25 November 2005, Palais des Nations

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<sup>1</sup> . This report has been prepared in cooperation with Asian Indigenous and Tribal Peoples Network.

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## I. Overview:

After 11 years, the United Nations Committee Against Torture is scheduled to examine the second periodic report of Nepal (CAT/C/33/Add.6 of 14 January 2005). The first periodic report was examined on 21 May 1994. A compilation of the second, third and fourth periodic reports covering the period from 1996 to 2004 was submitted in May 2004.

Since 1996, Nepal has been caught in serious internal armed conflicts with the Communist Party of Nepal (Maoists). Over 12,000 persons have been killed and gross human rights violations including torture have been perpetrated both by the security forces and the Maoists. However, to ensure brevity of the report and provide information on the prevailing situation, this shadow report contains case studies that mostly took place in 2005.

Since the Royal takeover by King Gyanendra on 1 February 2005, human rights violations such as arbitrary arrest, detention, torture, rape, disappearances and extrajudicial killings have intensified.

The definition of torture under the Compensation Relating to Torture Act of 1996 does not conform to Article 1 of the Convention Against Torture. Under the Act, torture is not defined as a “criminal offence”. Although the government of Nepal urged that under the Nepal Treaty Act of 1991, international treaties ratified by Nepal prevail over the domestic laws and therefore, in practice, there is little awareness on international treaties among the judges! Since the Torture Compensation Act came into force in 1996, according to Special Rapporteur on Torture, Manfred Nowak, compensation has actually been paid out only in one case to date, despite several decisions by the courts to award compensation.<sup>2</sup>

The Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) imposed in October 2004 and the Public Security Act provide the police and the army sweeping powers to detain suspects for preventive reasons for a prolonged period. Detainees are subjected to brutal torture in detention, and the lack of adequate guarantees of the rights of persons deprived of liberty including, *inter alia*, to notify a close relative or third party, to have access to medical assistance, not to be subjected to torture or incriminate oneself are further jeopardised by the immunity granted to the officials under Section 20 of TADO for any activity carried out or attempted to be carried out in good faith.

The security forces have been responsible for excessive use of force against peaceful demonstrators including sexual violence such as alleged biting, beating and poking batons at the sensitive organs of the women demonstrators during arrest as well as under detention. Many women have been raped during counter-insurgency operations and faced other sexual violence especially at the hands of the Royal Nepal Army.

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<sup>2</sup><http://www.unhchr.ch/hurricane/hurricane.nsf/view01/6EA1EC3345D3882BC125707E0038C5DD?opendocument>

The Tibetan refugees have been consistently refouled in clear violation of the Article 3 of the Convention. On 21 January 2005, the government of Nepal closed the Tibetan Refugee Welfare Office, thereby further increasing the risks of the Tibetan refugees.

The prisoners are denied of access to proper healthcare, radio and newspapers<sup>3</sup> and are treated inhumanely. For example, there were as many as 611 prisoners against its total capacity of 200 inmates in Morang jail as of May 2005. At least 80 prisoners were made to sleep in one room, which lacked proper ventilation. The inmates had to wait for at least two hours in queue to get their turn to take bath or to go to the toilet. In Prasi jail, the inmates had to sleep by turn due to lack of space.<sup>4</sup> Inmates in Kharipati Electricity Training Center in Bhaktapur too had no sufficient space to sleep at night, and there was only one toilet to be used by 60 detainees including females.<sup>5</sup>

Hundreds of persons have been held under incommunicado detention as detainees are never produced before the court and many are listed as “disappeared”. The UN Working Group on Disappearances in its report to the 61<sup>st</sup> session of the UN Commission on Human Rights observed that “Nepal was the source of the largest number of urgent-action cases transmitted by the Working Group in 2004”. The Working Group transmitted 136 new cases in addition to 166 old cases that occurred between 1998 and 2003.<sup>6</sup> Yet, the RNA reportedly told the Office of the High Commissioner for Human Rights mission in Nepal that they only have 30 long-term detainees (since 2003-04) in their custody.<sup>7</sup> As the access to the detention centers depend on the whims of the RNA, it not possible to verify the claims of the RNA. Since April 2005, the ICRC had to stop its visit to the detention centres and the ICRC is yet to resume visit to the detention centres.<sup>8</sup>

The government of Nepal has systematically destroyed the national mechanisms which are mandated to protect and promote human rights. On 16 March 2005, the government formed a nine-member high-level Human Rights Committee headed by the Attorney General to undermine the National Human Rights Commission. In May 2005, the government issued an ordinance to amend the appointment procedures of the NHRC and King Gyanendra appointed new members of his choice.

The independence of judiciary has been destroyed through the establishment of the Royal Commission for Corruption Control (RCCC) on 15 February 2005 with the mandate to investigate, prosecute and hand out judgments on cases related to corruption including of the Supreme Court judges. In a written communication to the Supreme Court in September 2005, the RCCC made it clear that the Supreme Court could not examine its

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<sup>3</sup>. Political detainees demand newspapers, Nepal News.com, 23 May 2005

<sup>4</sup>. Congested prisons, Kantipur Online, 2 May 2005

<sup>5</sup>. Detainees falling sick at Kharipati, Kantipur Online, 11 May 2005

<sup>6</sup>. E/CN.4/2005/65 of 23 December 2004

<sup>7</sup>. ‘RNA forcibly used civilian vehicles’, The Kathmandu Post, 20 August 2005

<sup>8</sup>. ICRC yet to resume visit of detention centers, Nepal News.com, 7 September 2005.

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formation and orders.<sup>9</sup> On 26 September 2005, RCCC also asked Supreme Court not to intervene in its decision to jail Sher Bahadur Deuba and Prakash Man Singh, as it is a “political matter”.<sup>10</sup> Therefore, the decision of the RCCC cannot be even subject to judicial review.

The security forces continued to defy the orders of the Supreme Court by re-arresting people immediately following their release by the court, sometimes from the premises of the Supreme Court. At least 41 persons have been re-arrested by the security forces since the royal takeover on 1 February 2005.

The government has been muzzling the press and made human rights defenders defenseless by introducing the “Ordinance Amending Some Nepal Acts related to Media” of 2005 and the Code of Conduct for NGOs. These measures have further increased the risk of torture and other human rights violations given the restrictions under which media and NGOs are constrained to operate.

### **Conclusions and recommendations:**

In its periodic report, the government of Nepal appears to have adopted “diplomacy of acceptance” by acknowledging human rights violations in its territory to beguile the Committee Against Torture. As UN Special Rapporteur, Manfred Nowak stated on 16 September 2005 after a field visit to the country, torture “is systematically practiced in Nepal by the police, armed police and the RNA in order to extract confessions and to obtain intelligence, among other things”.<sup>11</sup>

Nepal is a fit case for investigation by the Committee Against Torture. Asian Centre for Human Rights recommends that Committee Against Torture to take appropriate measures including visit to Nepal under Article 20 of the CAT.

In addition, Asian Centre for Human Rights makes the following recommendations to the Committee Against Torture for possible inclusion into the Final Concluding Observations.

### **Subjects of concern:**

The Committee Against Torture should express concern about the following matters:

- a) While acknowledging the importance of the Torture Compensation Act of 1996, the Committee should regret that:
  - i) The Act does not contain definition of torture as provided under Article 1 of the Convention. This is despite that the fact that the

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<sup>9</sup>. Court can't examine the royal order: RCCC, Nepal News.com, 8 September 2005

<sup>10</sup>. RCCC tells SC: It's political, keep off, The Himalayan Times, 27 September 2005

<sup>11</sup>. <http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>

Committee Against Torture in 1994 urged Nepal “to enact legislation incorporating the definition of torture as contained in the Convention as soon as possible, together with ancillary compensation legislation” (A/49/44, paras. 138-1);

- ii) The Act does not make torture a criminal offence in violation of article 4.1 of the Convention and torture is defined only in “detention” thereby excluding victims who are subjected to torture outside the detention centres;
  - iii) The Act puts the burden on the victims to prove torture;
  - iv) The Act empowers the concerned officer of places of detention to medically examine “at the time of detention and release of any person” when a doctor is not available; and
  - v) The Act provides no protection of witnesses and victims of torture, who can be subject to intimidation and abuse by torturers;
- b) Despite the argument of the government of Nepal that according to the Treaty Act of 1990, international treaties ratified by Nepal prevail over Nepalese law, in practice, it has not been held so;
  - c) Consistent and systematic refoulement of the Tibetan refugees in violation of Article 3 of the Convention that no person can be expelled, returned or extradited to another State where he/she would be in danger of being subjected to torture;
  - d) The closure of the Tibetan Refugee Welfare Office which has further increased the risks of the Tibetan refugees;
  - e) Continuing allegations concerning the use of interrogation methods by the Royal Nepal Army (RNA) and police against suspected Maoist detainees that are prohibited by the Convention;
  - f) The continued use of incommunicado detention and disappearances, and the lack of an independent commission with wide powers and extensive resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their whereabouts and/or remains. Uncertainty about these circumstances causes the families of disappeared persons serious and continuous suffering;
  - g) The length of pre-trial detention in custody, upto to one year under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) of 13 October 2004 and the lack of adequate guarantees of the rights of persons deprived of liberty including, *inter alia*, to notify a close relative or

third party, to have access to medical assistance, not to be subjected to torture or incriminate oneself which is further worsened by the immunity granted to the officials under Section 20 of TADO for any activity carried out or attempted to be carried out in good faith;

- h) Very few prosecutions have taken place against the alleged perpetrators despite the numerous allegations of torture and ill-treatment by law enforcement personnel;
- i) Numerous cases of instances of "extra-judicial killings" and the lack of any investigation;
- j) Excessive use of force by the security forces employed against peaceful pro-democracy demonstrators such as sexual violence against women demonstrators including alleged biting, beating and poking batons at the sensitive organs during arrest as well as under detention;
- k) Allegations of inadequate protection against rape and other forms of sexual violence, which are frequently alleged to be used as forms of torture and ill-treatment;
- l) The increase in acts of intimidation and harassment of the press and human rights defenders through introduction of respectively, the Ordinance Amending Some Nepal Acts related to Media of 2005 and Code of Conduct for NGOs, which seriously impair the freedom of action of individuals and organizations involved in the protection of human rights;
- m) The high number of persons reported to be suffering from the after-effects of torture and other forms of ill-treatment;
- n) The failure of the State party to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture reported to the authorities, as well as to prosecute alleged offenders, as required under articles 12 and 13 of the Convention;
- o) Serious quantitative and qualitative shortcomings in the system of the administration of justice with regard to criminal investigations and guarantees of due legal process;
- p) The lack of respect for the court and judges as exposed from re-arrest of persons including from the premises of the Supreme Court jeopardizes the autonomy and independence of the judiciary;
- q) The insufficient level of guarantees of the independence and impartiality of the National Human Rights Commission of Nepal. The Committee should

express concern that NHRC of Nepal has not been making the reports of its visit to prison public;

- r) Deplorable prison conditions and lack of access to all places of detention by the International Committee of the Red Cross; and
- s) The absence of statistics and other information regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender, ethnic group, geographical region, and type and location of detention and

### **Recommendations:**

Asian Centre for Human Rights makes the following recommendations to the Committee Against Torture for possible inclusion into the Final Concluding Observations:

- a) The Torture Compensation Act should be amended to ensure that definition of torture complies with article 1 of the Convention and that torture is made a criminal offence;
- b) The length of detention under TADO should be reduced in order to ensure its conformity with international human rights standards;
- c) The State party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge, and are ensured prompt access to a lawyer;
- d) The State party should ensure that interrogation methods prohibited by the Convention are not utilized by either the police or the RNA in any circumstances;
- e) The State party should take all necessary effective steps to prevent the crime of torture and other acts of cruel inhuman or degrading treatment or punishment, and institute effective complaint, investigative and prosecution mechanisms relating thereto in view of the numerous allegations of torture and other ill treatment by law enforcement personnel;
- f) The State party should grant effective access to appropriate rehabilitation and compensation measures to all victims of torture and ill-treatment;
- g) The State party should take such legislative measures as are necessary to ensure the exclusion of not merely a confession extracted by torture but also any evidence derived from such confession;
- h) The State party should establish an independent commission to investigate the circumstances of the kidnapping of disappeared persons and to determine what

happened to them, their whereabouts and/or remains. The government has an obligation to spare no effort to find out what really happened in such cases and thus give effect to the legitimate right of the families concerned, provide compensation for the loss or injuries caused and prosecute the persons responsible;

i) The State party should take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Human Rights Commission of Nepal and ensure that its reports including visit to the prisons are published in a timely fashion;

j) The State party should reduce the length of pre-trial detention under the Public Security Act, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any proceedings, except against the torturer;

k) The State party should ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture, in accordance with article 3 of the Convention;

l) The State Party should allow registration and opening of the Tibetan Refugee Welfare Office;

m) The State party should further ensure that media persons and human rights defenders are protected from harassments, threats, and other attacks and that the government should immediately withdraw the Ordinance Amending Some Nepal Acts related to Media” of 2005 and the Code of Conduct for NGOs;

n) The State party should take measures to improve prison conditions and provide access to the ICRC to all places of detention;

o) The State party should intensify human rights education and training activities, in particular concerning the Convention, for the police and RNA and medical doctors; and

p) The State party, in its next periodic report, should provide statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, *inter alia*, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation.

## II. Article 1

### i. Limited definition of Torture:

In its second periodic report (CAT/C/33/Add.6 of 14 January 2005) submitted before the Committee Against Torture, Nepal candidly admits that the definition of torture in clause (a) of section 2 of the Compensation Relating to Torture Act (CRT), 1996 is “not as wide as that required by article 1 of the Convention, in the sense that it only includes the cases of torture while in custody or in detention”. But unfortunately, Nepal has no regrets.

The government argues that according to the Nepal Treaty Act of 1991, international conventions to which Nepal is a party prevail over the domestic law, if the domestic laws were inconsistent with treaties ratified by Nepal. When the constitution of Nepal itself has been thrown out of the window, where is the question of respect for the Nepal Treaty Act?

The Compensation Relating to Torture Act is not only flawed in its definition of torture but also in its application. It excludes torture occurring outside the detention centers and recommends action only if the accused is “government employee who committed the act of torture”.

Under the Torture Compensation Act, torture is not a criminal offence in Nepal, as required under Article 4 of the Convention against Torture. Please see section V.i. “*Torture not a criminal offence*” for further details.

## III. Article 2

In its submission, Nepal has reaffirmed that “The fundamental right to protection from torture is non-derogable and may not be abridged or restricted under any circumstances”. But instead of strengthening the effectiveness of the national mechanisms, the government of Nepal has systematically undermined all the institutions mandated to ensure respect for human rights and fundamental freedoms.

### i. Undermining the NHRC:

On 16 March 2005, the government formed a nine-member high-level Human Rights Committee headed by the Attorney General to undermine the NHRC in the name of promoting human rights. The Human Rights Committee and the NHRC have conflicting mandate.

In another illegal move, King Gyanendra introduced an Ordinance on 18 May 2005 amending section 4(2) of the Human Rights Commission Act to change the composition of the Recommendation Committee. This was to facilitate appointment of new members as the term of then members had expired. On 27 May 2005, while retaining

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Commission's Chairman Nayan Bahadur Khatri, King Gyanendra nominated his people.<sup>12</sup>

The activities of the NHRC members have raised legitimate questions about the integrity of the NHRC.

The NHRC members have been visiting the detention centers. But, the reports of prison visits including the names of the disappeared persons whom they met have not been made public. ACHR is aware that new members of the NHRC met Krishna K C, former vice president of the All Nepal National Independent Students' Union (Revolutionary), in RNA custody. Krishna KC was listed as disappeared after his arrest by the security forces from Kathmandu on 13 September 2003. But the NHRC members did not disclose his details. Finally, he was produced before the Supreme Court and released on 22 September 2005. But he was re-arrested from the Supreme Court premises as soon as he was released.<sup>13</sup> He was brutally tortured in detention. A journalist who was present at the hearing on 22 September 2005 told the Director of Asian Centre for Human Rights that Krishna KC did not look like a person who should be arrested but more a person who should be immediately sent to doctors/hospital because of the torture suffered, which was apparent.<sup>14</sup>

The International Committee of Red Cross (ICRC) had to stop visiting RNA barracks since April 2005 reportedly after it was denied permission to meet detainees in private, as per its international practice.<sup>15</sup> The ICRC is known for maintaining strict confidentiality. If the ICRC, which maintains strict confidentiality, cannot be allowed to visit the prisons/detention centres, how come NHRC, which is supposed to make its reports public, is allowed to visit the detention centres? Obviously, the NHRC has been compromising. The case of Krishna K C is a clear example.

## ii. Undermining the judiciary:

Following the royal coup of 1 February 2005, the judiciary appeared to have succumbed. The Supreme Court even refused to entertain writ petitions on non-suspended rights under the "pretext of emergency". On 21 February 2005, Chief Justice Hari Prasad Sharma publicly defended the rejection of writ petitions saying that the issue was "political". This is despite the fact that during the emergency in 2001-2002, the Supreme Court admitted over 400 writ petitions seeking legal remedy under Article 88 (1) and (2), which is not suspended even during emergency.<sup>16</sup> On 25 February 2005, Supreme Court registrar Shree Prasad Pundit refused 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

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<sup>12</sup>. NHRC chairman's tenure extended, Kantipur Online, 28 May 2005

<sup>13</sup>. SC order has no effect: Krishna KC rearrested, The Himalayan Times, 23 September 2005

<sup>14</sup>. Interview with Director of Asian Centre for Human Rights on 23 September 2005.

<sup>15</sup>. ICRC yet to resume visit of detention centers, Nepal News.com, 7 September 2005

<sup>16</sup>. CJ defends rejection of legal remedy, The Kathmandu Post, 23 February 2005

for the rights guaranteed under Article 11, 88(1) and (2) of the Constitution, citing the suspension of Article 23, which guarantees the right to remedy of fundamental rights.<sup>17</sup>

Lately, judiciary has been trying to find its feet. But, the government and its agencies have been contemptuous of the judiciary.

On 27 May 2005, the Supreme Court had to issue a special stricture to the government asking it to follow court orders as per Articles 95 and 96(1) of the 1990 Constitution.<sup>18</sup> The contempt of the authorities is also evident from the fact that on 27 May 2005 the Supreme Court had to write to the Ministry of Land Management for the 14th time, asking it to send the files of the five-year-old cabinet and ministry-level decisions, as they were required to finalize a land dispute case.<sup>19</sup>

In September 2005, the Supreme Court also repeatedly deferred the hearing on the contempt of court case against Vice Chairman of the Council of Ministers Dr Tulsi Giri.<sup>20</sup> On 20 October 2005, the Supreme Court issued a show cause notice to the Vice-Chairman of the Council of Ministers, Dr Tulsi Giri, as to why he spoke against the apex court and its justices.<sup>21</sup> It remains to be seen whether Dr Giri responds at all and how the apex court deals with it.

The establishment of the Royal Commission for Corruption Control (RCCC) on 15 February 2005 as a judicial body replacing the Commission for the Investigation of Abuse of Authority has further eroded the judicial independence. The RCCC has the power to investigate, prosecute and hand out judgments on cases related to corruption.

The prosecutors of the RCCC can even investigate “the judges of the Supreme Court and office bearers of all constitutional bodies”. The Secretary of the RCCC, Sambhu Bahadur Khadka is a sitting judge of the Kaski District Court. Therefore, a District Court judge can effectively prosecute the Supreme Court judges of the country for alleged corruption charges. It is not aimed to address corruption but to silence all forms of dissent whether by the political leaders or the judges. In a written communication to the Supreme Court in September 2005, the RCCC made it clear that the Supreme Court could not examine its formation and orders.<sup>22</sup>

The security forces continue to re-arrest people including from the premises of the Supreme Court after their release by the court from “illegal” detention. There were re-arrest of as many as 41 persons following their release by the court since the royal takeover on 1 February 2005. The government has openly defended such illegal re-arrests. On 18 May 2005, the Home Minister Dan Bahadur Shahi shot back at the

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

18. SC special stricture to govt to follow orders, The Himalayan Times, 2005

19. SC asks for files for 14th time, The Kathmandu Post, 28 May 2005

20. Giri's case deferred again, The Kathmandu Post, 30 September 2005

21. SC Issues Show Cause Notice to Tulsi Giri, The Himalayan Times, 20 October 2005

22. Court can't examine the royal order: RCCC, Nepal News.com, 8 September 2005

journalists saying, “Did the Supreme Court order not to re-arrest him?” when asked to justify re-arrest of student leader Rajendra Rai.<sup>23</sup>

The following persons were re-arrested from 28 February to 22 September 2005:

1. Gauri Pradhan, CWIN, on 28 February 2005 (status: released)
2. Lok Prasad Pant on 9 March 2005
3. Nirjani Chaudhary on 25 March 2005
4. Bhalakaji Tamang on 31 March 2005
5. Ram Krishna Budha on 20 April 2005
6. Thankur Gaire, ANNFSU activist, on 20 April 2005 (status: released)
7. Rajendra Loniya on 21 April 2005
8. Rekha Chaudhary on 24 April 2005
9. Pradip Poudel, NSU activist, on 26 April 2005 (status: released)
10. Rajan Rai, ANNFSU activist, on 27 April 2005 (status: released)
11. Chandra Bhandari, NSU activist, on 27 April 2005 (status: released)
12. Chiranjivi Nidhi Tiwari, NC activist, on 29 April 2005 (status: released)
13. Krishna Rawat on 11 May 2005
14. Bablu Tamang on 2 June 2005<sup>24</sup>
15. Jaya Prakash Prasad Gupta, former Minister on 5 May 2005<sup>25</sup> (status: released)
16. Gagan Thapa, former General Secretary of NSU on 5 May 2005<sup>26</sup> (status: released)
17. Rajendra Rai, student leader on 16 May 2005<sup>27</sup> (status: released)
18. Ishwor Pokharel, CPN-UML leader on 27 May 2005<sup>28</sup> (status: released)
19. Karna Bahadur Thapa Magar on 8 June 2005<sup>29</sup> (status: released)
20. Nawaraj Subedi, general secretary of Jana Morcha Nepal on 15 June 2005<sup>30</sup> (status: released)
21. Govinda Ghimire, student leader on 22 June 2005<sup>31</sup>
22. Nishan Bishwakarma (24 years) on 24 July 2005<sup>32</sup>
23. Guna Ram Damai on 4 August 2005<sup>33</sup>
24. Raj Kumar Pariyar on 12 August 2005<sup>34</sup>
25. Five persons re-arrested on 30 August 2005 - Badri Rai of Khotang district, Dipak Tamang of Khotang district, Narayan Shrestha of Khotang district, Pokhar Chand of Salyan, Bal Bahadur Singh Thakuri of Jajarkot<sup>35</sup>

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<sup>23</sup>. A dozen leaders released, The Kathmandu Post, 19 May 2005

<sup>24</sup>. <http://www.ahrchk.net/ua/mainfile.php/2005/1134/>

<sup>25</sup>. Thapa, Gupta re-arrested defying court order, Nepal News.com, 6 May 2005

<sup>26</sup>. SC defied again, Gagan re-arrested, The Kathmandu Post, 6 May 2005

<sup>27</sup>. Court frees Rai, police re-arrest, The Himalayan Times, 17 May 2005

<sup>28</sup>. Ishwor Pokharel re-arrested, Nepal News.com, 27 May 2005

<sup>29</sup>. Freed man re-arrested, The Kathmandu Post, 9 June 2005

<sup>30</sup>. Subedi re-arrested; Serchan, Pokhrel released, Kantipur Online, 16 June 2005

<sup>31</sup>. Securitymen defy SC, re-arrest student leader, The Kathmandu Post, 23 June 2005

<sup>32</sup>. Man freed by court rearrested, The Kathmandu Post, 25 July

<sup>33</sup>. Police defy court orders, re-arrest two, The Kathmandu Post, 5 August 2005

<sup>34</sup>. Army blamed for rearrest, torture, The Kathmandu Post, 17 August 2005

26. 11 persons re-arrested on 19 September 2005 – Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami. This group had also been re-arrested earlier on 12 May 2005 and 15 June 2005.<sup>36</sup>
27. Krishna KC on 22 September 2005<sup>37</sup>

### iii. Use of disproportionate force against pro-democracy protestors:

After the Royal takeover, demonstrators by the pro-democracy activists have intensified. The government has been violently suppressing the protests.

On 20 September 2005, representative of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Nepal, Ian Martin, expressed serious concern over “incidents of police throwing stones at demonstrators leading to injuries, the use of teargas guns in close proximity to demonstrators and in the vicinity of hospitals and schools, the arrest of demonstrators on questionable legal grounds, the excessive and indiscriminate use of force by some policemen while taking demonstrators into custody, the failure to facilitate access to medical care for injured demonstrators, as well as threats and injuries to some human rights monitors and members of the press observing the demonstrations”.<sup>38</sup>

Torture is not merely limited to the use of force by resorting to lathi-charge and tear gas shells on the peaceful demonstrators. Women protestors were allegedly bitten, beaten up and poked batons at their sensitive organs, sexually molested and abused by the security forces during arrest as well as under security detention.<sup>39</sup>

Leading medical experts in Nepal have asked the authorities not to use tear gas against demonstrators, as this can cause serious complications like chest pain, cancer and loss in reproductive capability in the long run.<sup>40</sup> Yet, the riot police continued to use tear gas shells not only against demonstrators on the open streets, but also within school and hospital premises.

On 14 September 2005, riot police entered the premises of Miteri Hospital in Bagbazaar while chasing demonstrators and baton charged several innocent people there without asking any question. At least six persons were injured. The situation was such that a doctor emerging from an operation theater had to shoo away the policemen.<sup>41</sup> On the same day, the police also lobbed tear gas shells into the premises of Neptune Boarding School in Bagbazaar while dealing with the pro-democracy agitators. Due to the spread

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<sup>35</sup>. Police defy court order, re-arrest five persons, Nepal News.com, 31 August 2005

<sup>36</sup>. <http://web.amnesty.org/library/Index/ENGASA310762005>

<sup>37</sup>. <http://www.achrweb.org/Review/2005/61-05.htm>

<sup>38</sup>. OHCHR concerned over excessive use of police force, Kantipur Online, 20 September 2005

<sup>39</sup>. Women Protesters Accuse Cops of Sexual Molestation, The Himalayan Times, 22 September 2005

<sup>40</sup>. Tear gas ‘injurious to health:’ Doctors tell govt, Nepal News.com, 7 September 2005

<sup>41</sup>. Police rain batons inside hospital, The Kathmandu Post, 15 September 2005

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of tear gas, 12 students of the school reportedly fell unconscious and several nursery-level children were severely affected. A nursery-level girl reportedly screamed due to the burning sensation in her eyes caused by the gas.<sup>42</sup>

The injury to 82-year-old, Nepali Congress President G P Koirala on 4 September 2005 is another clear example of the use of brute force. The police had broken one of his limbs while affecting his arrest.<sup>43</sup>

On 20 September 2005, police arrested 87 university professors and about 290 political activists in Kathmandu during crackdown on two separate demonstrations demanding democracy and professional freedom. They were released in the evening. CPN-UML leader Rameshwor Phuyal and women leaders Sushma Sharma and Urmila were reportedly injured in police action. Student organizations affiliated with the agitating seven-party alliance accused the police of sexually abusing women demonstrators while arresting them.<sup>44</sup>

On 14 September 2005, 232 demonstrators of the seven-party alliance and student unions were arrested in the capital and were later released. Security forces also resorted to firing tear gas shells and lathi charge upon the agitators. A few agitators including Maheswori Kunwar, Medini Sitaula and Buddha Lama reportedly fell unconscious due to police excesses and they had to be admitted to hospital.<sup>45</sup>

On 13 September 2005, at least 537 leaders and activists of the seven agitating political parties were arrested from pro-democracy demonstrations in central Kathmandu. The arrested leaders included CPN (UML) general secretary Madhav Kumar Nepal, senior leaders Bam Dev Gautam and Amrit Bohora, Nepali Congress leaders Ram Chandra Poudel, Khum Bahadur Khadka and Dr Ram Saran Mahat, People's Front Nepal (PFN) chairman Amik Sherchan and United Left Front chairman CP Mainali. Police also resorted to baton charge on the protesters, injuring dozens of them. Several journalists were also reportedly manhandled while covering the protests.<sup>46</sup>

On 8 September 2005, 88 protestors of the seven-party alliance were arrested from New Road area during pro-democracy protests in Kathmandu. Police used several rounds of tear gas shells and water cannon to disperse demonstrators. About a dozen demonstrators were injured in police action, two of them seriously. The Saptari district representative of INSEC was manhandled and beaten up by a police officer. The officer under the command of DSP Rajendra Shrestha strangled and kicked him.<sup>47</sup>

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<sup>42</sup>. School children rendered unconscious, The Kathmandu Post, 15 September 2005

<sup>43</sup>. Parties stage protest rally; 150 arrested, dozens injured, Kantipur Online, 5 September 2005

<sup>44</sup>. 87 academics, 290 others arrested, The Kathmandu Post, 21 September 2005

<sup>45</sup>. No let-up in demos; 232 held, freed, The Himalayan Times, 15 September 2005

<sup>46</sup>. Over 500 arrested from seven-party protests in Kathmandu, Nepal News.com, 13 September 2005

<sup>47</sup>. 88 protestors arrested from New Road, The Kathmandu Post, 9 September 2005

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On 6 September 2005, at least a dozen journalists including photographer Rosan Rai of The Himalayan Times, Bhimsen Rajbahak of Communication Corner, Kiran Nepal of Himal Media, Bimal Gautam of World News Online, J P Gupta of Disha Nirdesh and Bharat Sahi of Chuli Weekly, were injured in brutal police assault when they were covering the ongoing street protests in New Road area, Kathmandu. It was alleged that plainclothes security personnel disguising themselves as journalists pelted stones at uniformed security personnel thereby inciting the action against the journalists. The journalists reportedly caught one such plainclothes policeman but he managed to escape in a security vehicle.<sup>48</sup>

On 28 August 2005, at least two-dozen people were injured when police intervened in a religious festival 'Gaura' at Tundikhel in Kathmandu. The police prevented the festival despite the fact that its organizers had notified District Administration Office of Kathmandu, District Police Office and Ward Police about the programme.<sup>49</sup>

On 27 August 2005, 16 students (14 in Kathmandu and 2 in Kalaiya, Bara district) were injured in police baton charge during protest against hike in price of petroleum products. Police also arrested six student leaders from the rallies, including three student leaders in Nepalgunj.<sup>50</sup>

On 22 August 2005, students and riot police clashed in different places in the country during protest rallies against hike in petroleum products. Kalyan Gurung, joint general secretary of the Nepal Students' Union of Nepali Congress-Democratic, Balgopal Upadhyay president of Free Students' Union in Ratna Rajya Campus and student activists Ram Kumar Bohra and Bhim Bahadur Thapa were detained from Bishwo Bhasa Campus in Kathmandu. In Rajbiraj, police detained six student leaders including Samir Jha, president of the FSU, Baburam Parajuli, Ramchandra Yadav, Ghanananda Yadav, Akhlesh Kumar Jha and Shekhar Kuam Raut, after forcefully entering Mahendra Bidheswori Multiple Campus.<sup>51</sup> Several people including two journalists were injured in beating by riot police in Kathmandu.<sup>52</sup> In Rajbiraj, police opened fire at agitating students injuring one in the firing.<sup>53</sup>

On 21 August 2005, at least 84 students were injured, 21 seriously, and 32 were arrested in a clash with police during protest against the government's decision to hike the price of petroleum products.<sup>54</sup>

On 12 August 2005, at least 26 students were arrested from Kathmandu and Birgunj as they were trying to enforce 'black out' programme to protest against the RCCC's action

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48. Plainclothes cops incite violence, The Kathmandu Post, 7 September 2005

49. Police intervene in a cultural programme in Kathmandu, Nepalnews.com, 28 August 2005

50. 16 students hurt in clashes with police, Nepalnews.com, 28 August 2005

51. Student protest continues; 10 detained, Kantipur Online, 23 August 2005

52. Scores injured in student protests against fuel price hike, Nepalnews.com, 22 August 2005

53. Police open fire at agitating students in Rajbiraj, Nepalnews.com, 25 August 2005

54. 32 students arrested, 84 injured in clashes, The Kathmandu Post, 22 August 2005

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against former Prime Minister Sher Bahadur Deuba and former minister Prakash man Singh.<sup>55</sup> The National Students Union alleged that detained students in Kathmandu including Ms Bandana Wagle and Ms Maiya Basnet were severely beat up by police.<sup>56</sup>

On 8 August 2005, at least 22 students were injured, four seriously, in police beating during a peaceful protest programme in front of Amrit Science College, Lainchaur, Kathmandu.<sup>57</sup>

On 4 August 2005, two students were injured and half a dozen others arrested in Kathmandu in police intervention during peaceful protest demonstration in front Shankar Dev Campus at Putalisak.<sup>58</sup>

On 1 August 2005, five students, three of them seriously, were injured in police beating near Putalisadak at Shankar Dev Campus. Student activist Chandra Silwal reportedly lost a finger while Subharam Basnet and Ramesh Kunwar sustained injuries. They had to be admitted to Kathmandu Model Hospital.<sup>59</sup>

#### **iv. No distinction between the civilians and combatants:**

The Chief of the Army staff has reportedly laid down several rules to be followed by the Royal Nepal Army (RNA) while dealing with civilians and the Maoists, including that “All reasonable care should be taken to ensure the safety and well being of innocent people during the conduct of military operations.”<sup>60</sup> But in violation of all rules, the security forces do not make any distinction between the civilians and the Maoists.

On 30 April 2005 at around 6 p.m., Royal Nepal Army personnel indiscriminately fired at peaceful gathering of All Nepal National Free Students’ Union (ANNFSU) students at the Janajyoti Multiple Campus in Mahendranagar in Kanchanpur district, seriously injuring three student leaders - central working committee member of the ANNFSU Nara Bahadur Dhama, Kanchanpur district committee secretary Mahesh Panta and Jana Jyoti Multiple Campus Committee member Kiran Chettri.<sup>61</sup> The NHRC of Nepal indicted the RNA personnel of shooting the unarmed students after capturing them even as they kept displaying their student identity cards.<sup>62</sup> The RNA inquiry panel headed by Brigadier General Daman Bahadur Ghale recommended three-month jail to Dilip Tumbahamphe, an RNA soldier involved in the shooting.<sup>63</sup>

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<sup>55</sup>. Students’ blackout, 26 arrested, The Kathmandu Post, 13 August 2005

<sup>56</sup>. Over two dozen student activists detained, Nepalnews.com, 13 August 2005

<sup>57</sup>. Students clash with police, 22 injured, Nepalnews.com, 8 August 2005

<sup>58</sup>. Two students injured, six arrested as police intervene into protests, Nepalnews.com, 4 August 2005

<sup>59</sup>. Students clash with police, five injured, Nepalnews.com 1 August 2005

<sup>60</sup>. [http://www.rna.mil.np/hr/policy\\_statement.php?hdng=Policy%20Statement&pg=1](http://www.rna.mil.np/hr/policy_statement.php?hdng=Policy%20Statement&pg=1)

<sup>61</sup>. Three students injured in army firing, Nepal News.com, 1 May 2005

<sup>62</sup>. ‘Punish guilty securitymen’, The Kathmandu Post, 17 May 2005

<sup>63</sup>. ‘Excessive force’ was used in the Mahendranagar incident: RNA, Nepal News.com, 11 June 2005

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One of the most favourite tactics of the Royal Nepal Army is Tora Bora: armed helicopters fitted with .50 machine guns dropping 81 mm bombs over suspected Maoist hideouts. These cause immense collateral damage besides targeting civilians.<sup>64</sup> While accepting two MI-17 helicopters under Global Conflict Prevention Fund from the United Kingdom in 2003, the Nepal Government had agreed to restrict the use of the choppers to logistical, medical and humanitarian purposes.<sup>65</sup> However, the Royal Nepal Army personnel have consistently used unidentified helicopters for aerial bombings on the civilians.

On 12 April 2004, four civilians were killed and many others including school children were injured when the RNA personnel dropped bombs from helicopters at Bidhya Mandir Higher Secondary School at Binayak, Acham. The Maoists reportedly forced people to participate in a cultural programme organised at the school. According to the eyewitnesses, most victims were children below 15 years. An eight-year-old boy, Meghraj Timilsina of Kuika VDC-7 was admitted in a hospital in Nepalgunj. Both his legs were severely hit by shrapnel.<sup>66</sup> Subsequently, the RNA blocked supplies of food, medicine and stationary supplies to at least 24 Village Development Committees in Acham in clear violation of international human rights and humanitarian laws. The RNA justified its collective punishment of all the civilians as a preventive measure against possible hijacking of the supplies by the Maoists.<sup>67</sup>

#### **v. Illegal arrest and detention under national security laws:**

Hundreds of political leaders, student activists, human rights defenders, journalists, professionals and civilians have been arbitrarily arrested since the Royal takeover of 1 February 2005. Many have been detained under different legislations, including the Public Security Act, Public Offences Act and the Terrorists and Disruptive Activities (Control and Punishment) Ordinance (TADO) of 13 October 2004.

Under the Public Offences Act, persons can be arrested for alleged crimes such as disturbing the peace, vandalism, rioting, and fighting. The Act authorises the Chief District Officer (CDO) to order detentions, to issue search warrants, and to specify fines and other punishments for misdemeanors without judicial review.<sup>68</sup>

Under the Public Security Act (PSA) of 1989 and its second amendment of 1991, a person who allegedly threatens the “sovereignty, integrity or public tranquility and order and amicable relations with other States” can be detained for up to 90 days without charge by order of the Chief District Officer. The police must notify the district court of the detention within 24 hours, and it may order an additional 6 months of detention

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<sup>64</sup>. Polls answer to Nepal impasse, *The Pioneer*, New Delhi, 7 April 2004

<sup>65</sup>. UK donates choppers to Nepal, *The Tribune*, Chandigarh, March 2003

<sup>66</sup>. Dozens of children were hurt in Binayak bombing, *The Kathmandu Post*, Kathmandu, 16 April 2004

<sup>67</sup>. RNA blocks supplies in Achham, *The Kathmandu Post*, Kathmandu, 18 April 2004

<sup>68</sup>. The US State Department's Country Report on Human Rights Practices 2004, <http://www.state.gov/g/drl/rls/hrrpt/1999/440.htm>

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before authorities file official charges. The detention period can be extended to six months by the Ministry of Home Affairs and to 12 months with the approval of an advisory board.

The most draconian is the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) of 2004. After the expiry of the Terrorist and Disruptive Activities (Control and Punishment) Act of 2002, the government introduced the TADO to provide for special powers to check “terrorist and disruptive acts”. The TADA of 2002 provided for preventive detention of up to 90 days “upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act”. In the revised TADO of 2004, it has been extended to six months.

Under Section 9 of the TADO of 2004, the Chief District Officer can detain any suspect upto six months or 180 days, which can be further extended by another six months i.e. 360 days subject to approval from the Ministry of Home Affairs. It provides “In case where there exists appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and destructive act, the Chief District Officer may issue an order to keep him under preventive detention up to 6 months in a humanely place. If there are reasonable grounds to believe that the person has to be prevented from committing any terrorist activities for longer than that, on the approval of His Majesty the Government's Home Ministry, the Chief District Officer can issue additional six months order of preventive detention.”

Detainees are tortured during preventive detention, and de facto impunity enjoyed by the security forces lead to killings or involuntary disappearances of the detainees.

While senior political leaders continue to be targeted by the Royal Commission for Corruption Control (RCCC), middle ranking political leaders have been arrested under the Public Security Act with a view to cripple the democratic movement. Former Prime Minister Sher Bahadur Deuba and former minister Prakash Man Singh have still not been released. On 26 July 2005, the RCCC slapped a two-year jail term on them.<sup>69</sup> While the NHRC has called the RCCC’s judgement unjust,<sup>70</sup> the Supreme Court has served a show cause notice to RCCC.<sup>71</sup> On 26 September 2005, RCCC asked Supreme Court not to intervene in its decision to jail Sher Bahadur Deuba and Prakash Man Singh, as it is a “political matter”.<sup>72</sup>

On 23 August 2005, student leader Govinda Nepali, a central member of All Nepal National Free Students' Union, was arrested from Baglung on the charge of sedition while taking part in protest against petrol-price hike. A special court in Kathmandu sent him to judicial custody for 10 days.<sup>73</sup>

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<sup>69</sup>. Two-year jail, fine for Deuba, Singh, The Himalayan Times, 27 July 2005

<sup>70</sup>. RCCC’s actions unjust: NHRC, The Kathmandu Post, 5 August 2005

<sup>71</sup>. Supreme Court issues show cause notice to RCCC, Nepal News, 18 September 2005

<sup>72</sup>. RCCC tells SC: It’s political, keep off, The Himalayan Times, 27 September 2005

<sup>73</sup>. Student leader arrested on charge of sedition, The Kathmandu Post, 26 August 2005

### **Case 1: Illegal detention of 11 persons under TADO**

On 19 September 2005, 11 detainees were re-arrested immediately after being released by the Kanchanpur District Court in Mahendranagar in western Nepal as per the order of the Supreme Court. They were identified as Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami. This was the third time that the security forces have re-arrested the group defying the order of the court. Earlier, they had been re-arrested on 12 May 2005 and 15 June 2005. The Kanchanpur Appeal Court had released them on the ground that the government had not provided sufficient evidence to justify their preventive detention under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).<sup>74</sup>

This group was arrested on 17 August 2004 while attending a mass meeting held by the Maoists in Kanchanpur district. They were initially held in incommunicado detention at the Surya Dal army barracks in Bhagatpur, Kanchanpur district, and transferred to Kanchanpur prison in November 2004. They were severely tortured in detention.<sup>75</sup>

### **Case 2: Detention of six student leaders under the Public Offence Act**

On 14 July 2005, six student leaders – Pradip Poudel, Narayan Bharati, BP Regmi, Pushpa Shahi and Saroj Thapa of Nepal Students' Union and Thakur Gaire of All Nepal National Free Students' Union were arrested during a protest demonstration at New Baneshwor, Kathmandu against the government's decision to introduce a 'nationalist education system'. On 15 July 2005, Kathmandu District Administration Office charged them under the Public Offence Act and slapped a 10-day jail term.<sup>76</sup> Their detention was further extended to a week.<sup>77</sup> They were released on 9 August 2005 following an order from the Supreme Court, which termed their detention "illegal".<sup>78</sup>

### **Case 3: Illegal arrest of Chandralal Giri under TADO<sup>79</sup>**

On 31 December 2004 at around 3 pm, Chandralal Giri, 22 years of Okhaldhunga Village Development Committee-7 was picked up by six to seven plain clothed security personnel when he was walking in Pulchowk, Lalitpur near the UN headquarters. He was immediately blindfolded and physically assaulted inside the van. Half an hour later, he was dumped into a cold, dark room at an unknown army barrack and questioned about his

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<sup>74</sup>. <http://web.amnesty.org/library/Index/ENGASA310762005>

<sup>75</sup>. <http://web.amnesty.org/library/Index/ENGASA310762005>

<sup>76</sup>. Arrested students charged under Public Offence Act, Kantipur Online, 16 July 2005

<sup>77</sup>. KDAO extends student leaders' custody, Nepalnews.com, 25 July 2005

<sup>78</sup>. SC frees student leaders, The Kathmandu Post, 10 August 2005

<sup>79</sup>. <http://www.ahrchk.net/ua/mainfile.php/2005/1161/>

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relationships with the Maoists. The security personnel tied his hands and legs together with ropes and tortured him by applying electric shock to his head for close to one hour. They also randomly beat Mr Giri with their fists and sticks, targeting his head, chest, back and thighs. He was detained there for one week and subjected to brutal torture. He was kept in handcuff and blindfolded.

After one week Mr Giri was shifted to Shree Jung Barracks, Singh Durbar where he remained for fourteen days. He was brutally tortured there by RNA soldiers.

On 19 January 2005, Mr Giri was transferred to the Central Jail where he was served notice for arrest under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).

On 5 June 2005, a habeas corpus petition was filed with the Supreme Court to release Mr Giri from his illegal detention. The court held that he was illegally detained and ordered for his release from Central Jail on 21 June 2005.

#### **Case 4: Detention of student leader Govinda Ghimire under TADO**

Student leader Govinda Ghimire, 21 years, was arrested on 29 August 2003 from his residence in Chabahil, and was booked under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. On 12 October 2003, the police, army, Home Ministry, Defense Ministry and the district authorities told the Supreme Court that Govind had not been arrested. In response to a habeas corpus writ petition filed by the Advocacy Forum, the Supreme Court on 17 June 2005 ruled that Govind was detained “illegally” and ordered for his immediate release in the presence of the District Judge. Following the Supreme Court, the student leader was released on 22 June 2005. But plainclothes security personnel defied the SC order and re-arrested him at the Kathmandu District Court premises. Mr Ghimire's relatives, lawyers and human rights defenders, who had gone there to receive him, were physically assaulted by the securitymen. The securitymen also barred The Kathmandu Post photographer, Bikas Karki, from taking photographs.<sup>80</sup>

### **IV. Article 3**

#### **i. Refoulement of Tibetan Refugees:**

The government repeatedly violated the principle of “non-refoulement” guaranteed under Article 3 (1) of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment by refouling the Tibetan refugees. Nepal has also failed to ratify the 1951 Convention relating to the Status of Refugees.

The government of Nepal's claim that “Nepal is also providing safe passage to those who are found to be asylum-seekers” and that “HMG/N has pursued the policy that it will not

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<sup>80</sup>. Securitymen defy SC, re-arrest student leader, The Kathmandu Post, 23 June 2005

expel, return or extradite any person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture” are simply false.

Nepal has consistently refouled Tibetan refugees to China in spite of being fully aware that these refugees face imminent risk of torture and extrajudicial executions at the hands of the Chinese authorities. In May 2003, Nepal faced international protest over refoulement of 18 Tibetan refugees. Unlike pre-May 2003 when Nepalese authorities admitted handing over of the Tibetan refugees to the Chinese authorities, they now do not acknowledge such instances of refoulement. The asylum seekers are now charged as “criminals” and “illegal immigrants” and handed over to Chinese authorities.<sup>81</sup>

The risk of the Tibetan refugees has further increased with the support of the government of China to the royal takeover by King Gyanendra. In the light of limited arms embargo imposed by India, the United States and European Union following the Royal takeover, the government of China agreed to provide arms supply of about US\$ 1 million during the visit of Royal Nepal Army Chief, Pyar Jung Thapa in October 2005.<sup>82</sup>

### **Case 1: Closure of the Tibetan Refugee Welfare Office**

On 21 January 2005, the government of Nepal shut down the Tibetan Refugee Welfare Office, without taking into consideration the fate of thousands of Tibetan refugees. The Tibetan Refugee Welfare Office has been helping to ensure the safety and well-being of Tibetans refugees. According to Human Rights Watch, the Tibetan Refugee Welfare Office sheltered some 1,000 Tibetan refugees at the time of its forcible closure. There are nearly 20,000 Tibetan refugees living in various parts of Nepal.<sup>83</sup>

The government issued the notice of closure on the ground that the office was not properly registered under Nepali law. But, Nepali law does not give refugees/asylum seekers in Nepal the right to register associations or institutions in their name. This arbitrary closure order also made things difficult for the United Nations High Commissioner for Refugees, which has worked closely with the Tibetan Refugee Welfare office, to provide protection to the Tibetan asylum seekers in Nepal.<sup>84</sup>

This has heightened the risk of the Tibetan refugees.

### **Case 2: Cases of arrest, detention and possible refoulement in 2005**

On 9 October 2005, a Tibetan refugee identified as Sonam Tsering (18) was sentenced to three years imprisonment in Dilli Bazaar Jail in Kathmandu after he was arrested by the Nepalese police from Swayambunath area in Kathmandu on the night of 7 October 2005. He was holding “Tong Xin Zhang”, a travel permit which allows one to travel till the

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<sup>81</sup>. <http://www.savetibet.org/documents/pdfs/2004RefugeeReport.pdf>

<sup>82</sup>. Rs 70m Chinese aid for RNA, The Kathmandu Post, 26 October 2005

<sup>83</sup>. [hrw.org/english/docs/2005/01/28/nepal10085.htm](http://hrw.org/english/docs/2005/01/28/nepal10085.htm)

<sup>84</sup>. [hrw.org/english/docs/2005/01/28/nepal10085.htm](http://hrw.org/english/docs/2005/01/28/nepal10085.htm)

border. He was handed over to the Immigration Department of the Nepalese Home Ministry. The Immigration Department imposed a monetary penalty of Nepalese Rupees 27,000/- (approximately USD 375) or an imprisonment term of three years. Since Sonam failed to pay the penalty, he was sent to jail. He has been under imminent threat of being deported to China.<sup>85</sup>

On 24 September 2005, another Tibetan exile returnee, Norbu Tsering (25), was arrested at the Nepal-Tibet border while on his way back to his native village in Kyidong (Ch: Jilong Xian) County, Shigatse Prefecture, Tibet Autonomous Region. On 28 September 2005, he was handed over to the Nepalese Immigration Department, which imposed a monetary penalty of Nepalese Rupees 28,651. Failing to pay the monetary penalty, Norbu Tsering was sentenced to three years and three months imprisonment in Dilli Bazaar Jail, Kathmandu. It was feared that he might be handed over to the Chinese authorities.<sup>86</sup>

### **Case 3: Cases of arrest, detention and refoulement in 2004**

In 2004, the Tibetan refugees faced harrowing treatment at the hands of the Nepalese security forces.

On 4 October 2004, at least 27 Tibetan refugees were detained by the Nepalese security forces. These refugees fled from Tibet and entered Nepal via Sagarmatha passage in Namche area. They had been reportedly handed over to the district administration office on 5 October 2004 and were supposed to be handed over to Immigration Department soon.<sup>87</sup>

On 26 and 27 April 2004, Nepal police officials refouled a group of four Tibetan refugees among a group of nine at a checkpoint in Barabise.<sup>88</sup>

In April 2004, six police officers physically abused two Tibetan refugee girls in Lukla (the girls were traveling with 53 other refugees). The girls were beaten with a stick, told to open their clothes, and groped. The refugees were also robbed of \$1,300 (96,200 Nepali Rupees) and other valuables. According to an investigation by Armed Police of Nepal, civilian police perpetrated the abuse.<sup>89</sup>

On 12 January 2004, Nepalese immigration authorities refouled one group of 11 and another group of 4 Tibetan refugees. The security forces had arrested them at Barabise check point and handed them over to the immigration authorities.<sup>90</sup>

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<sup>85</sup>. Press Release, Tibet Information Network, 11 October 2005

<sup>86</sup>. Press Release, Tibet Information Network, 11 October 2005

<sup>87</sup>. <http://www.achrweb.org/press/2004/Oct2004/TIB-061004.htm>

<sup>88</sup>. <http://www.savetibet.org/documents/pdfs/2004RefugeeReport.pdf>

<sup>89</sup>. <http://www.state.gov/g/drl/rls/hrrpt/2004/41742.htm>

<sup>90</sup>. <http://www.savetibet.org/documents/pdfs/2004RefugeeReport.pdf>

## V. Article 4

### i. Torture not a criminal offence:

Article 4 of the Convention against Torture requires each State Party to declare all acts of torture as offences under its criminal law. But torture is not a criminal offence in Nepal. The government of Nepal admits it but has done nothing to amend it. Instead, Nepal gives the excuse that “In the absence of the Parliament, legislation incorporating torture as a crime into domestic law is yet to be enacted”.

The Compensation Relating to Torture Act provides compensation up to maximum of one lakh rupees. But at the same time, section 6(2) empowers the District Court to penalize the complainant if any “malafide intention” of the complaint was discovered by the judge. Thus, the onus lies entirely upon the victim, who is at risk if he/she fails to prove his/her point of allegation.

Offences of torture are not punishable by appropriate penalties based on the gravity of the offence committed. On 1 October 2005, the Ministry of Defense stated that three RNA officers - Colonel Bobby Khatri and Captains Amit Pun and Sunil Adhikari were punished by putting them for six months in solitary confinement in army custody from 14 March 2005 to 9 September 2005, in addition to suspension of their promotion for two years and payment of Rs 100,000 to the victim’s family as compensation. The three army officers were found guilty of torturing and killing of 15-year-old Maina Sunuwar after arresting her on 17 February 2004. Initially the RNA denied of having arrested her.<sup>91</sup>

Is six-month imprisonment in army custody enough for extrajudicial torture and killing of an innocent person?

## VI. Article 11

There is no accountability for torture and practically no review of interrogation rules, methods and practices employed to torture the detainees, despite of enacting several new laws.

### i. Brutal torture in custody:

Torture of detainees is the most serious human rights violation perpetrated against the detainees.

During his recent visit to Nepal from 10 to 16 September 2005, the UN Special Rapporteur on Torture, Manfred Nawak confirmed that the police, armed police and the RNA soldiers brutally torture detainees in order to extract confessions and to obtain

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<sup>91</sup>. MoD dismisses HRW remarks, The Kathmandu Post, 2 October 2005

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intelligence reports. Methods of torture in detention include beatings with bamboo poles and plastic pipes, kicking with boots, electric shock to the ears, rolling rods over the thighs, jumping on thighs and legs, maintenance of stress positions, being bound to a pole and hung upside and beaten, especially on the soles of the feet, and prolonged periods of being blindfolded and handcuffed.

### **Case 1: Custodial torture of Lokendra Khadka**

On 24 July 2005, plainclothes security personnel forcibly took Lokendra Khadka from Kapan and tortured him before he was released on 25 July 2005. As Khadka said, “I was shocked when they blindfolded me and started beating me severely, accusing me of being a Maoist extortionist...My pleading innocence fell on deaf ears. Instead they gave me electric shocks frequently.” His condition was so serious that he could not even stand on his feet. He had to be admitted at Kathmandu Medical College following his release.<sup>92</sup>

### **Case 2: Custodial torture of a newspaper distributor**

On 30 July 2005 at around 6 pm, a young newspaper distributor of Kantipur, Rama Kant Gautam was picked up by security personnel from Mahendrapool in Pokhara and severely beaten on charges of being a Maoist. He was detained in Phulbari army barrack and severely beaten in order to extract confessions that he was a Maoist cadre as well as to provide information about Maoist leaders. The security forces did not pay heed to his plea that he was a newspaper distributor and not associated with Maoists. At night his mask and handcuffs were removed to allow him to eat. He was blindfolded and handcuffed again for the whole night. They even threatened to bury him in a ditch. He was however released on 31 July 2005.<sup>93</sup>

### **Case 3: Torture of NSU leader Shiv Bohora in custody**

On 13 September 2005 at around 3 pm, Shiv Bohora, 23 years, acting president of Nepal Students Union at Mahendra Ratna Campus, was arrested by the police from the campus premises on the charge of pelting stones at police personnel. After the arrest, three policemen beat him with batons, boots and the butts of their rifles inside the police van. He was taken to Kalimati Police Office, and severely beaten due to which he fell unconscious for three hours. At around 6:30 pm, he was shifted to Bir Hospital for treatment. He was however taken back to Kalimati police station, where he was tortured again. Bohora alleged that the police personnel tied his hands on the armrest of the chair and kicked him with their boots. Madhusudhan Khadka, the Inspector in charge of Kalimati police station, also perpetrated torture on him. He was released from custody at 8-30 am on 14 September 2005. Following torture during custody, Shiv Bohora reportedly lost control of his bladder and bowels. The police beating left him with two

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<sup>92</sup>. Innocent man tortured as Maoist, The Kathmandu Post, 26 July 2005

<sup>93</sup>. Thrashed mercilessly for no reason, The Kathmandu Post, 1 August 2005

broken teeth, five stitches on his forehead and seven on his upper lip. He also suffered several bruises on his back, hands and legs.<sup>94</sup>

## **ii. Deplorable conditions of the detention centres/jails:**

Torture apart, the prisoners and political detainees are denied of access to proper healthcare, radio and newspapers.<sup>95</sup> They are also denied access to family members and lawyers. The detention centres/ jails are too overcrowded, and deprived of basic amenities such as adequate food, water, medicine and sanitary toilets.

There were as many as 611 prisoners against its total capacity of 200 inmates in Morang jail as of May 2005. At least 80 prisoners were made to sleep in one room, which lacked proper ventilation. After his release from Morang jail, a former parliamentarian, Lal Babu Pandit said the prison room was so overcrowded that one had to wait for a turn to stand up. The inmates had to wait for at least two hours in queue to get their turn to take bath or to go to the toilet. In Prasi jail, the inmates had to sleep by turn due to lack of space.<sup>96</sup> Inmates in Kharipati Electricity Training Center in Bhaktapur too had no sufficient space to sleep at night, and there was only one toilet to be used by 60 detainees including females.<sup>97</sup>

There are no treatment facilities in detention centres. The death of journalist Mahesh Pahari, 32 years, on the night of 4 October 2005 allegedly due to lack of treatment while being detained in Pokhara is a clear example. He had been suffering from tuberculosis since the last one-and-a-half month but the authorities refused to allow him to be taken to Kathmandu for treatment despite of a recommendation by the regional hospital in Pokhara.<sup>98</sup>

Similarly, Vice Chairman of the People's Front Nepal (PFN) Lila Mani Pokharel<sup>99</sup>, Bimalendra Nidhi<sup>100</sup>, and Nepali Congress central committee leader Ram Chandra Poudel<sup>101</sup> had been denied proper medical facilities. On the night of 5 May 2005, Nepali Congress Rajbiraj district president Ram Kumar Chaudhary, and party workers – Brij Kirshore, Umesh Mishara, Bikeshwar Yadav and Shusil Seva were allegedly beaten up by the security personnel in the Rajbiraj jail for demanding healthy facilities.<sup>102</sup>

On the other hand, the government has no interest in prison reforms. On 17 June 2005, NHRC accused the government of not implementing its recommendations, including

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<sup>94</sup>. Police atrocity in detention, The Kathmandu Post, 15 September 2005

<sup>95</sup>. Political detainees demand newspapers, Nepal News.com, 23 May 2005

<sup>96</sup>. Congested prisons, Kantipur Online, 2 May 2005

<sup>97</sup>. Detainees falling sick at Kharipati, Kantipur Online, 11 May 2005

<sup>98</sup>. Journalist dies in detention, The Kathmandu Post, 6 October 2005

<sup>99</sup>. PFN leader's health worsening, The Kathmandu Post, 28 April 2005

<sup>100</sup>. Detainees send 7-point memo, The Kathmandu Post, 26 May 2005

<sup>101</sup>. Ailing Poudel being kept in company's godown, The Himalayan Times, 14 May 2005

<sup>102</sup>. NC condemns Rajbiraj jail incident, Kantipur Online, 7 May 2005

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reforms in the detention centres, although there is a legal provision to execute its recommendations within the given time frame.<sup>103</sup>

**iii. Denial of access to the ICRC to the detention centres:**

Effective and independent supervision of detention facilities have often been denied. Although time and again, the RNA claimed that there was no restriction on any independent monitoring body to visit people under its custody, restrictions have been imposed on a number of occasions. The International Committee of Red Cross (ICRC) had to stop visiting RNA barracks in April 2005 after failing to meet detainees in private, as per its international practice.<sup>104</sup>

On 8 April 2005, the police denied access to the NHRC team consisting of commissioner Kapil Shrestha to meet the detainees at ward police office at Tinkune, Kathmandu.<sup>105</sup>

On 26 April 2005, security personnel barred a NHRC team of observers from meeting political detainees at Pahara Battalion detention centre at Tripureshwor in Kathmandu, where dozens of political leaders and cadres including Nepali Congress (Democratic) leader and former minister Prakash Man Singh had been kept. Security officers said they were ordered ‘from above’ not to allow human rights observe into the detention centre.<sup>106</sup>

NHRC has been allowed to visit after new members have been appointed by the King.

**VII. Article 12**

**i. Toothless criminal laws: Failure to punish culprits:**

Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. But the domestic criminal laws of Nepal are toothless to deal with the rising torture graph.

Criminal laws of Nepal are seriously flawed. The Torture Compensation Act puts the burden of providing proof on the victim. Article 5 (3) of the Torture Compensation Act further stipulates, “.....Upon receiving such petition the Court may order to have the detainee's physical or mental examination within three days. Upon examination, if treatment is deemed necessary it shall be undertaken by His Majesty's Government”. This hardly makes the government responsible to investigate alleged acts of torture.

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<sup>103</sup>. Govt not keen on implementing recommendations: NHRC, Kantipur Online, 18 June 2005

<sup>104</sup>. ICRC yet to resume visit of detention centers, Nepal News.com, 7 September 2005

<sup>105</sup>. NHRC denied access at detention center, Kantipur Online, 9 April 2005

<sup>106</sup>. NHRC team barred from meeting detainees, Nepalnews.com, 26 April 2005

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The army claimed to have taken action against more than 100 soldiers for committing excesses over the past three years.<sup>107</sup> But without disclosing their names, ranks and company they belong to, nobody can verify the claims of the RNA.

In maximum cases of torture and extrajudicial killings, Nepal has failed to undertake “prompt and impartial investigation”. In any case, an inquiry is ordered after strong public pressure in a few cases. Often, extrajudicial killings are buried in the name of “encounter killings” of “Maoists”.

**a. Extrajudicial killings:**

The security forces have perpetrated extrajudicial killings with virtual impunity. There has been no accountability for the excesses committed by the State or the Maoists.

As mentioned earlier, on 1 October 2005, the Ministry of Defense (MoD) stated that three RNA officers - Colonel Bobby Khatri and Captains Amit Pun and Sunil Adhikari – were put in solitary confinement in army custody for six months from 14 March 2005 to 9 September 2005, in addition to suspension of their promotion and compensation to the victim’s family, as punishment of torture and killing of 15-year-old Maina Sunuwar in their custody in February 2004.<sup>108</sup> The action taken against the guilty RNA officers is totally inadequate and mere eyewash. This, in effect, could serve to encourage the security forces to commit more human rights abuses, if they are given the sense of comfort that they could escape with minor punishment for ghastly crime like extrajudicial killings.

**Case 1: Lynching of alleged Maoist sympathizers at Kapilavastu**

From 17 to 23 February 2005, about 22 alleged Maoists were lynched and about 700 houses of the alleged Maoists sympathisers were burnt in Kapilavastu district by RNA-backed village vigilante groups. The involvement of the State agencies became evident when on 21 February 2005, the state owned Nepal Television telecast a visual where the three ministers, Home Minister, Dan Bahudur Shahi, Minister for Labour, Ramnarayan Shing and Minister for Education, Radhakrishna Mainali were seen encouraging the crowd who were holding baton on their hands to fight with the alleged Maoists.<sup>109</sup>

The flogging of the dead bodies of the alleged Maoists in presence of the RNA personnel was telecast in Indian televisions also. Given the state of censorship and Maoist blockade during that period, how could the TV cameras manage to reach the spot?

The Maoists alleged that a group of 500 soldiers consisting of the RNA, police, criminals and vigilantes went to Sishihawa and Ganeshpur on 15 February 2005 and dragged out

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<sup>107</sup>. Nepalese officers tortured girl, BBC News, 28 September 2005

<sup>108</sup>. MoD dismisses HRW remarks, The Kathmandu Post, 2 October 2005

<sup>109</sup>. A Total Wrong Against Rights in Nepal presented at the Regional Consultation on Peace and Democracy in Nepal, Bangkok, 11–12 March 2005

more than 15 civilians from their houses. They were ruthlessly tortured and killed in the base camp of Armed Police in Krishnanagar. Bishnu Panthi, district convener of All Nepal Trade Union and Yam Bahadur Dala Magar and Jhilkan Yadhav were killed in Krishnanagar base camp on 17 February 2005. Shivaram Gupta, Ram Charitra Pakhi, Abadhram Keber, Shiwa Kahar of Sishihawa Village, Sunder Mourch, Baburam Upadhya, Rajwali Mourch of Ganeshpur village, Sobhai Pasi, Bahu Pasi, Gobere Pasi, Bekaru Pasi of Bhagawanpur were also tortured to death on the same day.<sup>110</sup>

On 5 March 2005, security forces prevented a three-member team of the NHRC – commissioners Dr Gauri Shankar Lal Das and Sushil Pyakurel and head of NHRC’s Protection Division Yagya Prasad Adhikari – from visiting Kapilabastu to investigate the alleged human rights violations.<sup>111</sup>

### **Case 2: Killing of Maoist rebel Bir Bahadur BK after arrest**

On 4 October 2005, human rights activists said that security personnel killed Maoist rebel Bir Bahadur BK after taking him under control in Khochlek. A four-page investigation report concluded that security personnel could have taken Bir Bahadur BK under control after he fell on the ground but they fired three more rounds of bullets at him. Earlier, security forces had claimed that BK was killed in a clash at Deulek VDC in Baitadi district on 19 September 2005.<sup>112</sup>

### **Case 3: Extrajudicial killing of Eknath Subedi and Nabin Singh Paudel**

On 3 October 2005, National Human Rights Commission reported that security personnel killed Maoist cadres Eknath Subedi and Nabin Singh Paudel after taking them under control. Subedi, a member of the trade union close to CPN (Maoist), was killed on 27 August 2005 while Paudel was killed three months before at Pidariguthi of Parsa district. According to NHRC, Subedi was arrested from Nagardaha VDC of Parsa district and shot dead in front of local villagers by the security forces.<sup>113</sup>

### **Case 4: Extrajudicial execution of six Maoists and a civilian in Palpa**

On 2 October 2005, the Civil Society’s Ceasefire Monitoring Committee stated that six Maoists and a civilian were not killed during crossfire on 24 September 2005 in Bahadurpur area of Palpa district, as claimed by the security forces, but by “unprovoked firing” by the security forces. According to the report, three Maoist sentries, three Maoist cadres and an ordinary citizen were killed. The report said that “The army could have cordoned the Maoists and taken legal action, but the army took armed action”.<sup>114</sup>

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<sup>110</sup>. <http://www.achrweb.org/reports/Nepal/Nepal0105.pdf>

<sup>111</sup>. NHRC member prevented from traveling, The Kathmandu Post, 6 March 2005

<sup>112</sup>. ‘Rebel killed under forces’ control’, The Kathmandu Post, 5 October 2005

<sup>113</sup>. Rebels shot dead after arrest: NHRC, The Kathmandu Post, 4 October 2005

<sup>114</sup>. Fact finding mission dismisses RNA claims, Kantipur Online, 3 October 2005

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### **Case 5: Extrajudicial killing of Rama Adhikari**

On 3 July 2005, plain-clothes security personnel shot dead Rama Adhikari, 38 years, in front of her husband at their residence in Taghandubba-7 in Jhapa district, accusing her of having “fed Maoist cadres”.<sup>115</sup> The security forces also threatened to kill the other five members of the family and tried to bury her secretly. Later an officer from the District Police Office asked Devi Prasad, the husband of the deceased, to sign a paper.<sup>116</sup> A fact-finding team consisting of HimRights LifeLine, Insec, CWIN, CVICT and Advocacy Forum also found that Rama Adhikari was summarily executed.<sup>117</sup> The Army has instituted a court of inquiry into the killing of Rama Adhikari.<sup>118</sup>

### **Case 6: Extrajudicial killing of Rupen Rai**

On 2 May 2005 at 10.30 am, 22-year-old Rupen Rai was extrajudicially killed by RNA soldiers at Soyang area of Ilam district. A statement issued by the RNA in Kathmandu claimed that he was a Maoist rebel killed in encounter,<sup>119</sup> but a probe conducted by Human Rights Monitoring Coordination Committee comprising of 10 members from the Informal Sector Service Centre, Child Workers in Nepal, and other human rights organizations, found that “injured Rai could have well been taken into custody after the forces fired at him. However, the security personnel continued firing at him, thereby killing him outright.” According to the report, there was no retaliation from the Maoists’ side.<sup>120</sup>

### **Case 7: Extrajudicial executions of three children by RNA personnel**

On 22 March 2005, three school children – Narayan Bahadur Kanauji Magar, 17 years, of Class IX, Tek Bahadur Gaha, 15 years of Class VIII, and Dal Bahadur Darlami, 15 years of Class VI– were shot dead by plain-clothes security personnel suspecting them to be Maoists. The children were shot at when they were collecting donations from vehicles and passengers plying on the highway, some 19 km northeast of Tansen, the district headquarters of Palpa, to observe ‘Fagu Purnima,’ a festival of colours. The children were in their school uniform. Police claimed that they were killed in encounter. Following protests from the relatives of the deceased and civil society groups, the police reportedly acknowledged that the boys had died “due to bullet injuries”. On 31 March 2005, chief of the Western Divisional Headquarters of RNA, Amar Panta, said that a board of inquiry into the killing of three school students by security personnel had been formed and the probe was underway.<sup>121</sup>

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<sup>115</sup>. Securitymen kill innocent civilian: Locals, The Kathmandu Post, 5 July 2005

<sup>116</sup>. ‘After killing mother, they hid a gun...’, The Kathmandu Post, 7 July 2005

<sup>117</sup>. ‘Rama was summarily executed’, The Kathmandu Post, 18 July 2005

<sup>118</sup>. Army starts probe into Ghatandubba killing, The Kathmandu Post, 23 July 2005

<sup>119</sup>. 4 Maoists killed, The Kathmandu Post, 3 May 2005

<sup>120</sup>. Rights panel says forces had killed a Maoist, The Himalayan Times, 28 May 2005

<sup>121</sup>. Army to probe killing of students, The Kathmandu Post, 1 April 2005

**b. Incommunicado detention and involuntary disappearances:**

Lack of accountability mechanisms and transparency in administration, and impunity enjoyed by the security forces contribute to the major circumstances leading to enforced disappearances.

Article 14 (6) of the Constitution of Nepal states that “Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority”.

But the government often does not acknowledge detention. The RNA reportedly told the Office of the High Commissioner for Human Rights’ (OHCHR) mission in Nepal that they only have 30 long-term detainees (since 2003-04) in their custody.<sup>122</sup> As the access to the detention centers depend on the whims of the RNA, it not possible to verify the claims of the RNA.

The security forces had been consistently denying the detention of Krishna KC, former vice president of the All Nepal National Independent Students’ Union (Revolutionary), after his reported arrest by them on 13 September 2003 from Kathmandu. Despite orders from the Supreme Court to release him, he was kept in incommunicado detention until his release on 22 September 2005 following an order from the Supreme Court, which did not find sufficient ground to prolong his detention. But he was re-arrested by the security forces from the Supreme Court premises after his release.<sup>123</sup>

In another example of state of denial, the Armed Police Force (APF) reportedly gave misleading information about two CPN (Maoist) detainees arrested by them on 5 June 2005 to the OHCHR in Nepal. The Armed Police Force reportedly told the OHCHR that the two individuals were not in their custody; but subsequent enquiries by the OHCHR led to the APF admitting that the two concerned individuals were under APF detention at that time.<sup>124</sup>

On 15 August 2005, a government-formed committee looking into disappearance cases, made public the whereabouts of 90 people arrested by the security agencies. The Committee has so far made the condition of 580 people public.<sup>125</sup> But on 30 August 2005, NHRC said 986 persons were still missing – 888 persons from government custody and 98 after abduction by the Maoists.<sup>126</sup>

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<sup>122</sup>. ‘RNA forcibly used civilian vehicles’, The Kathmandu Post, 20 August 2005

<sup>123</sup>. SC order has no effect: Krishna KC rearrested, The Himalayan Times, 23 September 2005

<sup>124</sup>. ‘RNA forcibly used civilian vehicles’, The Kathmandu Post, 20 August 2005

<sup>125</sup>. Status of 90 Missing Persons Made Public, The Himalayan Times, 15 August 2005

<sup>126</sup>. 986 people still missing: NHRC, Kantipur Online, 31 August 2005

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While the government makes some disappearance cases public, there is no accountability of those security personnel who were responsible for disappearances.

According to NHRC, pregnant Menaka Sapkota, wife of a Maoist cadre and his mother Rupa Sapkota, who were arrested three years ago, by security personnel from Rautahat, were still missing.<sup>127</sup>

In August 2005, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) accused the government of Nepal of harassing families of disappeared persons or human rights defenders for demanding to know about their whereabouts.<sup>128</sup>

### **c. Sexual Abuse by the security forces and the Maoists:**

Sexual abuse against children and women is common in Nepal. Both the security forces and the Maoists are responsible for violations of women rights. Because of the social stigma and intimidation, most rape cases are not reported in Nepal.

#### **Case 1: Rape of minor girl by half a dozen RNA**

On 10 November 2004, half a dozen security personnel allegedly raped a 15-year-old Majhi girl in the dense Charkoshe Jhadi forest of Bharaul village in Sunsari district. The army men allegedly caught hold of her when she had gone to the forest along with her friends. She said, “They chased my friends away and showed me a Rs. 25 note before raping me.” The victim was taken to Biratnagar for medical treatment and reportedly looked pale due to continuous bleeding.<sup>129</sup> According to an NHRC investigation team that visited the place of offence, a police constable allegedly involved in the crime was identified while five Royal Nepalese Army personnel were yet to be identified.<sup>130</sup>

#### **Case 2: Rape of 13-year-old rape victim by police ASI**

On 6 August 2004, a 13-year-old rape victim, who was brought to the police station in Devangunj in Dhankuta district for investigation, was allegedly raped by Assistant Sub-Inspector of police, Sanubabu Rajbanshi inside the police station. The victim was earlier raped at Sunsari’s Amduwa Village Development Committee-3 on 5 August 2004.<sup>131</sup>

#### **Case 3: Rape of Puni Devi Bohora by a Maoist rebel**

On 9 May 2005, *The Kathmandu Post* reported about rape of Puni Devi Bohora, 26, a mother of five children, by a Maoist cadre ‘Suman’ in presence of other Maoists at Shibalunga VDC in Baitadi in far western Nepal on 1 April 2005. According to the

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<sup>127</sup>. Rebels shot dead after arrest: NHRC, *The Kathmandu Post*, 4 October 2005

<sup>128</sup>. UN body raps Nepal govt, *The Kathmandu Post*, 30 August 2005

<sup>129</sup>. Army men accused of raping 15-yr-old, *The Kathmandu Post*, 16 November 2004

<sup>130</sup>. Security forces raped 15-yr-old girl: NHRC, *The Nepal News Com*, 2 December 2004

<sup>131</sup>. Rape victim falls prey to cop’s lust, *The Himalayan Times*, 17 August 2004

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victim, her husband was not at home at that night, when she was raped in the presence of nearly a dozen Maoists, who forcefully intruded into her house despite her refusal. The villagers had communicated to a Maoist leader, Gaurab about the incident. But instead of taking punitive action against the culprit, the Maoist leader charged the victim and villagers of trying to defame his party and comrades. A complaint was also lodged with the district police.<sup>132</sup>

#### **Case 4: Alleged rape of 25 Dalit women by the Maoists in Saptari district**

On 18 August 2005, a group of Maoists allegedly raped 25 Dalit women at gunpoint at Jagatpur village in Saptari district.”<sup>133</sup> The victims were between 22 and 35 years. According to the villagers, the Maoists told them to prepare food and after they had eaten, they forcibly carried the women inside the houses and raped them in front of other family members at gunpoint.<sup>134</sup> The Maoists had also allegedly threatened to destroy their village if they disclosed the incident. However, a press release issued by NHRC on 4 September 2005, after investigating the incident, stated that only one woman had been raped.<sup>135</sup> But there has been no investigation from government agencies to prosecute the culprits.

### **VIII. Article 13**

#### **i. Denial of the right to complain:**

Article 13 of the CAT provides that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

This right has been blatantly violated by Nepal.

#### **Case 1: Refusal to accept FIR on custodial killing of Manoj Basnet**

On 25 August 2005, Manoj Basnet, an employee in the office of Sijuwa VDC, Morang, was killed by the police after capturing him from Dhankute Lodge, Biratnagar. Masked policemen had arrested the victim along with another person identified as Santosh Chaulagain, resident of Sijuwa, on the night of 22 August 2005. Basnet was allegedly beaten until he fell unconscious and was shot dead in the state of unconsciousness in custody. But Armed Police Force (APF) Superintendent at Tankisanwari, Gopal Mishra,

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<sup>132</sup>. Maoist rapes woman, Kantipur Online, 9 May 2005

<sup>133</sup>. Mass rape’ by Nepal Maoists, The Statesman, 24 August 2005

<sup>134</sup>. Maoists rape 25 women in Saptari, Kantipur Online, 23 August 2005

<sup>135</sup>. Only one victimized in Jagatpur: NHRC, The Kathmandu Post, 6 September 2005

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said Basnet was shot while trying to escape. He also said they spared Chaulagain because he had surrendered.<sup>136</sup>

On 30 August 2005, Manoj's father, relatives, lawyers, human rights activists and local journalists went to register a First Information Report (FIR) at the District Police Office in Morang. But the officials refused to register an FIR. Manoj's father Govinda Prasad Basnet reportedly had to send the FIR by post.

In the FIR, victim's father Govinda Prasad Basnet claimed that there were scars on Manoj's genitals and his dead body was swollen and soaked with blood.<sup>137</sup> The allegation that the victim was extrajudicially killed was later corroborated by Human Rights Eastern Regional Probe Committee, whose probe report concluded that Manoj alias Chandra Bahadur Basnet was innocent, but was shot death in detention by a team of security forces including inspector Narodip Basnet, deployed for security of the district jail.<sup>138</sup>

## **IX. Article 14**

### **i. Denial of redress to the victims of torture:**

The victims of torture are denied of redress and an enforceable right to fair and adequate compensation, including rehabilitation.

The only redress a victim of torture can expect in Nepal is compensation, as provided by Compensation Relating to Torture Act. Compensation for the gravest cases of torture can be a maximum of Nepali Rupees 100000 (one lakh). Even in this aspect, the Act has failed miserably and the security forces continue to be given de facto impunity. The failure of the Torture Compensation Act has been best summarized by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, when he said "Thus in practice....if the Act does anything it actually prevents and discourages victims from seeking and receiving justice for torture and ill-treatment."

According to Manfred Nowak, since the Torture Compensation Act came into force, compensation actually been paid out only in one case to date, despite several decisions to award compensation.<sup>139</sup>

## **X. Press is muzzled, defenders defenceless**

Despite the withdrawal of emergency on 29 April 2005, government of Nepal has intensified attacks on the press freedom and activities of the human rights defenders.

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<sup>136</sup>. Security forces kill unconscious youth, The Kathmandu Post, 28 August 2005

<sup>137</sup>. Securitymen kill detainee, The Kathmandu Post, 2 September 2005

<sup>138</sup>. Innocent killed: Rights panel, The Himalayan Times, 2 September 2005

<sup>139</sup>. <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/6EA1EC3345D3882BC125707E0038C5DD?opendocument>

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### a. Muzzling of the freedom of press

On 9 October 2005, King Gyanendra promulgated an anti-press legislation known as “Ordinance Amending Some Nepal Acts related to Media-2062” to tighten his grip on the press. It gives the government the power to revoke journalists’ press accreditation, arrest and prosecute them. The fine for publishing ‘banned’ items has been increased ten fold to Rs 1 lakh and that for publishing, translating and importing items aiding ‘terrorists’ has now been made Rs 5 lakh from the earlier Rs 50,000. The law also bars private radio stations from broadcasting news and makes it a crime to criticize the royal family. The ordinance also restricts an organization or individual from running/operating radio, television and newspapers at the same time. It also prohibits broadcasting centres from broadcasting information from more than one location.<sup>140</sup>

At the mid-night of 21 October 2005, armed policemen stormed into the office of Kantipur FM radio station in Lalitpur and seized satellite equipment used to uplink the FM’s transmission to Bhedetar station in the eastern region. According to a government official, about three dozen armed police, accompanied by technicians, entered the radio station at around 11:15 pm and seized eight pieces of satellite uplinking equipment, including a satellite modem, encoder and digital audio recorder.<sup>141</sup> In August 2004, the Supreme Court had issued stay order on the government ban to allow the FM stations to broadcast news, which was further extended on 7 September 2005.<sup>142</sup> Kantipur FM has moved the Supreme Court again against the government action,<sup>143</sup> but it is unlikely that court order will have any bearing on the government.

Over 2,000 journalists lost their jobs due to continued ban on FM radios.

Journalists have been specific targets of the security forces for their fearless support for democracy. On 19 September 2005, The Kathmandu Post’s Dailekh correspondent, Harihar Singh Rathour, was arrested from his residence in Dailekh. 15 journalists had to flee from Dailkeh district due to fear of arrest and torture.<sup>144</sup>

The journalists also faced brutal assault, intimidation and arrest while covering protest demonstrations. On 6 September 2005, at least five journalists were injured, one of them seriously, when police indiscriminately baton charged them when they were covering a protest rally organised by seven agitating political parties at New Road, Kathmandu. Bharat Shahi, editor of Chuli Sandesh weekly was hit on his head and he fainted due to excessive beating. Eyewitnesses said Shahi was brutally kicked in his private parts by a group of policemen. He was later admitted to Bir Hospital by the police in a serious

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<sup>140</sup>. Gyanendra declares new measures to muzzle media, The Indian Express, 11 October 2005

<sup>141</sup>. Nepali police raid pvt radio station, The Daily Star, 23 October 2005

<sup>142</sup>. SC extends FM radios’ freedom, The Himalayan Times, 8 September 2005

<sup>143</sup>. Kantipur FM moves SC, The Kathmandu Post, 24 October 2005

<sup>144</sup>. Post scribe Rathour arrested, The Kathmandu Post, 20 September 2005

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state.<sup>145</sup> From 30 April 2005 to 20 September 2005 alone, at least 257 journalists were reportedly detained while covering pro-democracy protests.

In a direct move to starve the press, in August 2005, the government introduced Government Advertisement One-Door Policy, 2062 BS (GAODP) that, among others, rules out providing any government advertisements to those newspapers, which do not show respect to the monarchy.<sup>146</sup> Earlier the government had reportedly suspended 4.5 million rupees assistance to the Federation of Nepalese Journalists (FNJ).<sup>147</sup>

On 30 June 2005, the government blocked two websites *www.insn.org* and *www.samudaya.org*, hosted from India and the United States respectively, for their alleged “offensive” content. Both the websites were accused of insulting the monarchy and boosting the morale of Maoists.<sup>148</sup> Nepal government also banned online news service *www.gorkhanews.com* in September 2005.<sup>149</sup>

### **b. Restriction on the freedom of NGOs**

The government has been trying to impede the independence of the human rights defenders and civil society groups in the name of providing more responsible and transparent work culture among the NGO activists. According to reports, the government is all set to introduce a Code of Conduct to regulate and control national and international NGOs in Nepal. The proposed Code of Conduct will be legally binding on the NGOs. The Code of Conduct reportedly has provisions to restrain membership, objectives, programming, functioning and access to funding and affiliation with national and international organizations active in Nepal.<sup>150</sup>

There were 142 international NGOs operating in Nepal as in December 2003.<sup>151</sup>

The government has been restricting the movement of human rights defenders and their right to visit detention centres has often been curtailed. In August 2005, the security forces barred human rights activists and journalists from visiting Pili, Kalikot district, where at least 43 army men and more than two dozen Maoists were killed in a clash. This is despite the fact that the army headquarters in Kathmandu had written to the human right groups requesting them to visit the clash site and also help release the army personnel captured by the Maoist rebels.<sup>152</sup>

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<sup>145</sup>. Five journalists injured in police beating in 7-party protest, Nepal News.com, 6 September 2005

<sup>146</sup> . Journalists flay govt's policy on ads, The Himalayan Times, 13 August 2005

<sup>147</sup>. Govt suspends sanctioned Rs4.5m to FNJ, Kantipur Online, 4 May 2005

<sup>148</sup>. Two websites blocked, Kantipur Online, 2 July 2005

<sup>149</sup>. Govt bans online news service, Nepal News.com, 9 September 2005

<sup>150</sup>. Martin raps govt decision to regulate NGO, Kantipur Online, 6 October 2005

<sup>151</sup>. [http://www.npc.gov.np/events/event\\_files/INGOs\\_Information.doc](http://www.npc.gov.np/events/event_files/INGOs_Information.doc)

<sup>152</sup> . Rights activists, journalists barred from visiting Pili, Nepal News.com, 14 August 2005

On 25 July 2005, 27 human rights activists, journalists and members of civil society groups, including Krishna Pahadi, Padma Ratna Tuladhar, Malla K Sundar and journalists - Kanak Mani Dixit, Shyam Shrestha, Sanjay Santoshi Rai and Purna Basnet were arrested from Bhotahity-Ratna Park intersection for demanding restoration of democracy.<sup>153</sup> They were released later.

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<sup>153</sup>. Pahadi, Tuladhar among 27 protesters held, The Himalayan Times, 26 July 2005