

# Nepal Monthly Human Rights Briefing Paper

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## Withdrawal of the Maoists' unilateral cease-fire: Where does Nepal go?

### Table of contents

1. OVERVIEW .....	2
2. ATROCITIES BY SECURITY FORCES .....	2
I. EXTRAJUDICIAL KILLINGS.....	2
II. TORTURE .....	6
III. ARBITRARY ARREST AND DETENTION .....	8
IV. RAPE / MOLESTATION .....	12
3. ATROCITIES BY THE MAOISTS .....	12
I. KILLINGS .....	12
II. TORTURE .....	13
III. PADLOCKING OF HOUSES OF SECURITY PERSONNEL .....	13
IV. ABDUCTION .....	14
V. EXTORTION AND LOOTING .....	16
VI. DENIAL OF RIGHT TO EDUCATION.....	17
4. INDEPENDENCE OF JUDICIARY .....	18
A. APPOINTMENT OF FORMER AG AS SC JUDGE .....	18
B. CONTEMPT OF THE COURT THROUGH RE-ARRESTS .....	18
5. MUZZLING OF THE PRESS FREEDOM.....	19
A. ARREST/ SUMMON OF JOURNALISTS .....	20
B. "ONE-DOOR POLICY": FREE MEDIA STILL THE STEP-CHILD OF GOVERNMENT	21
6. DENIAL OF FREEDOM OF PEACEFUL ASSEMBLY .....	21
7. RESTRICTIONS ON NGO ACTIVISTS .....	22
8. PLIGHT OF THE PRISONERS .....	23
9. ACUTE FAMINE IN BAJURA .....	24
10. DENIAL TO ACCESS TO JUSTICE .....	26
11. CONTACT US:.....	27

## 1. Overview

On 2 January 2006, Chairman of the Communist Party of Nepal (Maoist), Prachanda announced the end of the four-month-old unilateral ceasefire declared by the Maoists. Prachanda further stated that their "actions will now be targeted against the royal government only".<sup>1</sup> King Gyanendra refused to reciprocate the cease-fire, thereby ruling out the possibility of the restoration of democracy and resolution of the Maoists crisis.

The incidents of human rights violations, which showed remarkable decrease during the cease-fire period from 2 September 2005 to 2 January 2006, are likely to increase.

The government of Nepal took another illegal measure to try the cases under the Terrorist and Disruptive Activities (Prevention) Ordinance. Under the amendments, all anti-terrorist cases will be heard in-camera and defence lawyers will no longer be provided legal documents. The cardinal principle of jurisprudence – the presumption of innocence and fair trial - has been murdered.<sup>2</sup>

Chairman of the National Human Rights Commission, Justice Nayan Bahadur Khatri in his address on Human Rights Day stated "Sincere activity and response from the government are necessary for the protection of human rights. But the incidence of human rights violation has not decreased, disrespect

for court orders and lack of response to the Maoists' unilateral ceasefire continue, obstructing the people's desire for peace and human rights protection."<sup>3</sup> In a nutshell, the government has no credibility.

The question is whether the Maoists' increased military actions will force King Gyanendra to seek military assistance especially from China and increase geo-political games in the Himalayas. The question is whether the Maoists leaders have such gun power and disciplined cadres to ensure what Prachanda calls to target "the royal government only". These will be the single most important factor in the renewed conflict that has already claimed over 12,000 lives.

## 2. Atrocities by security forces

### *i. Extrajudicial killings*

#### **a. Nagarkot killings – a handiwork of RNA?**

On 14 December 2005 at around 11:25 pm, an off-duty RNA soldier Bashu Dev Thapa allegedly opened indiscriminate firing at a crowd killing 12 persons including himself and injuring 19 other villagers during a religious festival at a temple premises at Chihan Danda in Nagarkot in Bhaktapur district.<sup>4</sup> Although the reasons for the killing have been attributed to a minor scuffle, the complicity of the RNA into the massacre cannot be ruled out. RNA's probe panel headed by Brigadier General Netra

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<sup>1</sup>. Maoists break ceasefire, Kantipur Online, 2 January 2006

<sup>2</sup> . TADO gets more stringent now on, The Kathmandu Post, 2 December 2005

<sup>3</sup> . Govt not sincere over HR: NHRC, The Kathmandu Post, 11 December 2005

<sup>4</sup>. Dozen killed, 19 injured in Nagarkot shootout, Kantipur Online, 15 December 2005

Bahadur Thapa submitted its report on 24 December 2005,<sup>5</sup> but it is yet to make its findings public. NHRC is also investigating the incident.

The government appointed three-member high-level probe panel headed by former Supreme Court judge Top Bahadur Singh, which submitted its report on 2 January 2006, has concluded that Thapa committed suicide by shooting himself after the carnage and that it did not find any evidence of involvement of any other person except Thapa in the incident. The commission merely held weak management of arms in the Nagarkot barracks as being responsible for the incident. According to the judicial commission, Thapa went to the army barrack after the scuffle with the villagers and returned with a Self-Loading Rifle (SLR) belonging to another soldier of the barrack. At the first place, Thapa was allowed to be inside the barrack without even being asked to utter the “password” of the day, which is a rule. He was also very easily allowed to leave the barrack with a gun without fulfilling any formality, despite the fact that he was off-duty on that night.<sup>6</sup>

However, details provided by eyewitnesses and villagers, and other circumstantial evidences such as the post-mortem report of Bashu Dev Thapa seem to contradict the RNA's claim or government appointed Judicial Commission's finding that Bashu Dev Thapa alone killed the villagers or shot himself dead. Some of the key questions

are – how many guns were used in the killings and how many people pulled the triggers?

According to Bhaktapur Hospital sources, where post-mortem of all the deceased including Bashu Dev Thapa was carried out, Thapa succumbed to a bullet that pierced his chest from between his ribs, at the center. It is confirmed that Thapa was carrying an SLR. The SLR, which is a modified model of the Belgian FN FAL rifle, is 1.1 meters in length. Accordingly to security expert Dr Indra Jit Rai, it is physically impossible to shoot oneself at the center of the chest using the SLR. Some eyewitnesses reportedly claimed to have seen Thapa fall on the ground while he was still shooting!<sup>7</sup>

Interestingly, RNA soldiers from the Nagarkot barrack reportedly cleaned up the scene of massacre by early next morning of the incident before the police or civilian authorities could reach there for investigation, thereby eradicating many pieces of vital evidence. Eyewitnesses, including the relative of deceased Dipak Tamang, said that Thapa was still carrying his gun, lying down dead, early morning of 15 December 2005. It is not known whether the RNA personnel recovered the gun from Thapa during their clean-up act. But on 16 December 2005, RNA personnel fished out an SLR from a pool 60 meters below the spot where Thapa had died. Jagat Bahadur Thing, a local, said that army men arrived, went straight to the pool, put a bamboo pole inside it and took out a gun!<sup>8</sup> A fact-finding team of the

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<sup>5</sup>. RNA panel submits report on Nagarkot incident, The Himalayan Times, 26 December 2005

<sup>6</sup>. Weak management of arms responsible for Nagarkot incident: Judicial Commission, Nepal News.com, 5 January 2006

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<sup>7</sup>. The unresolved gun question, Kantipur Online, 18 December 2005

<sup>8</sup>. The unresolved gun question, Kantipur Online, 18 December 2005

Human Rights Organisation of Nepal (HURON) led by its general secretary Baburam Giri has also claimed that Basudev Thapa was “shot dead by other army men” and he did not kill himself. HURON confirmed that RNA personnel covered pools of blood and stains in and around the temple premises with sand and earth and collected all canisters strewn around the temple by 5 am on 15 December 2005 before police or civilian authorities could arrive there. However, they could not remove a bullet that had lodged on a tree.<sup>9</sup>

From day one, the RNA and the government tried to cover up the incident. Although the government appointed a three-member investigation panel on 15 December 2005 and was initially given five days to submit its report but the commission reportedly started its investigation only after three days. The government had to extend the deadline of the probe committee by ten more days.<sup>10</sup> The RNA soldiers allegedly warned eyewitnesses and locals against making statements to the journalists or human rights activists about the incident. On the other hand, the police allegedly refused to register FIR on the massacre.<sup>11</sup> Finally an FIR was filed at Bhaktapur District Police Office (BDPO) on 15 December 2005, alleging homicide.<sup>12</sup>

The government appointed high-level committee has failed to establish the complicity of the RNA and hence has denied justice to the victims. No one will be at all surprised if RNA's probe panel too give a clean chit to the security forces, despite the fact that the complicity of the security forces has been evident by their clean-up act of the scene of massacre.

### **b. Killing of Maoists**

On 2 December 2005, security forces reportedly killed three Maoists in alleged retaliatory firing at Chichire area in Sankhuwasabha district in eastern Nepal. The RNA claimed to have recovered one INSAS rifle including four magazines and 200 rounds of bullets, 19 socket bombs and detonators, among others, from the incident site.<sup>13</sup>

On 3 December 2005, a Maoist Village People's Government chief was killed in “retaliatory” action by security forces at the Takura area of Jajarkot district.<sup>14</sup>

On 5 December 2005, two Maoists were killed in a clash with security forces on a patrol duty in Dhuwankot VDC of Gorkha district. The deceased have been identified as the Maoists' in-charge Prakash Pokharel and chief of the VDC, Shiva Karakheti alias "Biraj". The security forces claimed to have recovered three socket bombs and Maoist literature from the site of the clash.<sup>15</sup>

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9. Thapa didn't commit suicide: Huron, The Himalayan Times, 18 December 2005

10. Government extends deadline of Nagarkot probe committee by 10 days, Nepal News.com, 23 December 2005

11. Nagarkot Carnage: The Aftermath, The Kathmandu Post, 19 December 2005

12. Eyewitnesses puncture one-man theory, The Himalayan Times, 20 December 2005

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13. 3 Maoists, 1 soldier killed in separate incidents, Kantipur Online, 2 December 2005

14. 4 Maoists killed in Nepal violence, The Tribune, 5 December 2005

15. Two Maoists Killed in Clash: RNA, The Himalayan Times, 6 December 2005

On 18 December 2005, a female Maoist cadre was reportedly killed in an alleged encounter with the security forces in Indre Gauda area of Gulmi district. A statement issued by the Directorate of Public Relations of the Royal Nepalese Army (RNA) on 19 December 2005 said the Maoist cadre was shot dead when security forces fired in retaliation to an attack from a group of Maoists. One LMG and 4 magazines, 150 rounds of bullets were recovered from the incident site.<sup>16</sup>

On 23 December 2005, RNA personnel reportedly shot dead a Maoist identified as Manu Prasad Pun at a security check post at Tulsipur in Dang district.<sup>17</sup>

On 26 December 2005, a Maoist identified as Bibash Thapa was killed by the security forces when he threw a hand grenade on the patrolling forces in Shree Gaon area in Dang district. The security forces claimed to have recovered hand grenades and Maoist documents from the deceased.<sup>18</sup>

On 26 December 2005, two Maoists and a security man were reportedly killed in an encounter between security forces and Maoists at Dumla in Gairigaun in Rolpa district. According to the RNA, the encounter ensued after the Maoists attacked the security forces in the area. However, Maoists claimed that two Maoist cadres and six security persons were killed.<sup>19</sup>

On 6 January 2006, security forces killed a Maoist in a clash at Chandranigahapur of Rautahat district along the Mahendra Highway.<sup>20</sup>

### c. Custodial deaths

On 12 December 2005, a detainee identified as Tej Singh Karki (45) of Shrikedar-9 in Baitadi district, reportedly died while undergoing treatment at the Baitadi district hospital. Despite of his illness, he was arrested by a security patrol team along with eleven others<sup>21</sup> from Deulek, Srikot and Srikedar villages on the charges of being Maoists on 11 December 2005. Seven other detainees were freed later on 12 December 2005 in the presence of human rights activists after they were found to be innocent.<sup>22</sup>

On 31 December 2005, a suspected Maoist Debendra Rai reportedly died in army detention in Bhojpur. He was arrested by an RNA patrol team from Sindrang VDC on 29 December 2005 for interrogation.<sup>23</sup> The news of his death was announced by Directorate of Public Relation (DPR) of RNA in a press statement issued on 6 January 2006. The statement said RNA was investigating the cause of his death.<sup>24</sup>

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16. Maoist killed in encounter, Nepal News.com, 19 December 2005

17. One Maoist shot dead, The Himalayan Times, 24 December 2005

18. Maoist killed in clash, Nepal News.com, 27 December 2005

19. Three killed in Rolpa clash, says RNA, The Himalayan Times, 27 December 2005

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20. One Maoist killed in clash, The Himalayan Times, 7 January 2006

21. Maoist suspect dies in detention, The Kathmandu Post, 13 December 2005

22. Forces release 7 of 12 arrested, The Kathmandu Post, 14 December 2005

23. Maoist suspect dies in army barrack, The Kathmandu Post, 7 January 2006

24. RNA investigating death of one suspected Maoist: DPR, Nepal News.com, 6 January 2006

*ii. Torture*

**a. Torture of 18 persons, including school students**

On 2 December 2005, police arrested 18 persons including minor school children and detained them at Tinkune police post on the charges of pelting stones at the motorcade of Crown Prince Paras at New Baneshwor during a clash between the CPN-UML cadres and the pro-palace activists. Those arrested included Arjun Lama, Ujjwol Maskey, Sachin Bhatta and Subas Lama, students of V. S. Niketan school; Surya Prakash Bhatta of Aristo Secondary School, Kailali; Suman Prasad Bhetwal, a student at Orient College, Kathmandu; Shanker Thing Tamang, a child worker at Om Bakery; Binay Aryal, a student of BBS First Year from Kanchanpur; Ramhari Neupane, a sales boy with Himal Media Pvt. Ltd.; Raj Kumar Shrestha, a cleaner with the Bus no. 9536; and four workers with the Variety Food Land, Minbhavan.<sup>25</sup> While 13 of them were released on 4 December 2005, the rest five identified as Binay Aryal, Suman Bhetwal, Surya Prakash Bhatta, Raj Kumar Shrestha and Nawaraj Thapaliya were reportedly charged under the Public Offence Act.<sup>26</sup>

The innocent civilians were arbitrarily arrested without arrest warrants. Four students of V S Niketan School including Sachin Bhatta, 15, a tenth grader, were arrested from Om Sai Bakery at New Baneshwor on the charges of pelting stones at the royal

motorcade when they were going to attend tuition classes. They had taken shelter at the bakery when the clash broke out.<sup>27</sup> Sachin Bhatta and his friends identified themselves as students, but the security personnel "hit us, seized our school bags and asked us which party and union we belonged to". Shanker Thing, 12, a waiter at the Bakery, was also picked up. Due to the arrest, the students missed their school exam on 4 December 2005.<sup>28</sup>

In security custody, the detainees were allegedly severely beaten up. They were allegedly kept in a dark cold cell and denied food for over 24 hours after their arrest. Their parents and relatives were denied access to them. Several detainees alleged they were forced to sign "false testimonies" stating that they had pelted stones.<sup>29</sup>

**b. Other examples of torture**

On 10 December 2005, plainclothes security personnel from Kohalpur camp allegedly mistreated and beat up innocent villagers of Khadakbar VDC in Banke district. The villagers told representatives of the NHRC and CVICT on 12 December 2005 that the soldiers had asked them to show Maoists and threatened to shoot them. They beat up several villagers including 77-year-old Kul Bahadur Oli, who could hardly walk on his own.<sup>30</sup>

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<sup>25</sup>. 13 students, others freed; Kathmandu SP suspended, Nepal News.com, 4 December 2005

<sup>26</sup>. Detainees tortured in police custody, The Kathmandu Post, 5 December 2005

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<sup>27</sup>. Detainees tortured in police custody, The Kathmandu Post, 5 December 2005

<sup>28</sup>. Detainees tortured..., The Kathmandu Post, 5 December 2005

<sup>29</sup>. Detainees tortured..., The Kathmandu Post, 5 December 2005

<sup>30</sup>. Armymen beat innocent, The Kathmandu Post, 13 December 2005

On 16 December 2005, around 200 army personnel entered the premises of the Birendra Multiple Campus, Bharatpur and indiscriminately beat up the students who were demonstrating against the Nagarkot carnage of 14 December 2005. Six students were reportedly injured seriously in the beating. The security forces also picked up six other students from the campus. But the RNA denied any detention from the Birendra Multiple Campus.<sup>31</sup>

On 18 December 2005, a drunken police personnel deputed at the District Police Office (DPO) in Jumla reportedly brutally beat up Priyanka Lama, 16, an innocent girl of Chandannath-8, Kalikholi in Jumla district. The victim had to be rushed to Jumla Hospital following the beating and was reportedly shifted to Nepalgunj in Banke district.

According to the mother of the victim, Chhejam Lama, the policeman kicked the victim with his boots on her sensitive parts till she lost consciousness. DSP Dev Bahadur Bogati said the DPO had identified the culprit and put him in custody.<sup>32</sup>

On 19 December 2005, over a dozen students were injured when police intervened in demonstrations organized by student unions affiliated to the seven-party alliance at various campuses of Kathmandu valley to protest against the Nagarkot killings. At least 17 students were reportedly arrested. However, police claimed that only 15 had been arrested and all have been released.<sup>33</sup>

On 21 December 2005, at least half a dozen students were injured in baton charge by police during demonstration in protest against the Nagarkot killings at Trichandra Multiple Campus at Ghantaghar, Kathmandu. Those injured included president of Free Students Union of the Trichandra Campus, Saroj Thapa.<sup>34</sup> Police again injured four students on 22 December 2005.<sup>35</sup>

On 24 December 2005, an RNA soldier reportedly assaulted and shot at a youth identified as Khadka (Nar) Bahadur Tamang at Simpani check post in Pokhara. According to an eyewitness, when Tamang showed his identity card, the soldier started to slap and kick him for not opening his bag. The soldier then fired at Tamang when he cried for help, injuring him in the thigh. However, the Directorate of Public Relations of the RNA claimed that Tamang had tried to snatch the soldier's gun, causing the latter to fire. Tamang was admitted to Gandaki Hospital.<sup>36</sup>

On 29 December 2005, police entered the Balmeeki Bidyapeeth premises at Exhibition Road in Kathmandu without permission, arrested three student leaders and allegedly beat up teachers, staff and students with batons when a meeting was going on between the students and the administration to settle their ongoing differences mutually. In one of the college rooms, where students and staff were assembled, police fired

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31. Army Men Beat up Students in Bharatpur, The Himalayan Times, 17 December 2005

32. Drunk cop brutally beats girl, The Kathmandu Post, 20 December 2005

33. Dozen students injured in protests, The Kathmandu Post, 20 December 2005

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34. Students, police clash at Trichandra Campus, Nepal News.com, 21 December 2005

35. Four students hurt in clash with cops, The Himalayan Times, 23 December 2005

36. Soldier shoots youth in Pokhara; RNA says it was an act of self defense, Nepal News.com, 25 December 2005

several rounds of teargas shells from a window and slammed the doors from behind, leaving the occupants panting for oxygen. One student is said to have vomited blood due to suffocation.<sup>37</sup> Some of them fainted. At least 17 students and a teacher were reportedly injured in police action. They were admitted to Kathmandu Model Hospital.<sup>38</sup>

On 2 January 2005, armed Royal Nepalese Army (RNA) personnel reportedly entered the Khanddevi Secondary School at Chaurase, Satakhani VDC in Surkhet district and manhandled sixth grader Chudamani Poudel, accusing him of being a Maoist activist. Soldiers also allegedly thrashed Dipak Ghimire, a tenth grader, after dragging him out of the classroom and tortured Bishnu Dhakal, another tenth grader, accusing him of being in the pay of Maoists.<sup>39</sup>

### *iii. Arbitrary Arrest and detention*

#### **a. Examples of Arbitrary Arrest and detention**

On 5 December 2005, security personnel intervened in a public awareness program organized by the seven agitating parties in Tehrathum district, manhandled party cadres and arrested CPN-UML district secretary Bhawani Khapung from the venue. He was released after six hours of detention.<sup>40</sup>

On 10 December 2005, police arrested over 100 people including rights activists, political supporters and students for protesting in a restricted area at Bhotahity demanding restoration of fundamental rights and democracy. Among the arrested included prominent human rights activists Krishna Pahadi, Subodh Pyakurel and Gauri Pradhan, former president of Federation of Nepalese Journalists (FNJ) Taranath Dahal, coordinator of CMDP Devendra Raj Pandey, student leaders Khimlal Bhattarai and Thakur Gaire. All the detained protestors were later released.<sup>41</sup>

On 15 December 2005, security forces arrested former Pyuthan district vice-chairman of ANNISU-R, Bipin Pokharel, from District Hospital at Bijubar VDC in Pyuthan where he was undergoing treatment. Later he was sent to police custody. According to Chief District Officer Dol Raj Dhakal, Pokharel was taken into custody as per the Terrorists and Disruptive Activities (Control and Punishment) Ordinance-2005.<sup>42</sup>

On 16 December 2005, police arrested 120 protestors from Kathmandu and Bhaktapur in the Kathmandu valley during the valleywide shutdown strike called by the opposition alliance of seven political parties in protest against Nagarkot killings of 14 December 2005.<sup>43</sup> Those arrested include

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37. Police raided Balmeeki: Principal, The Kathmandu Post, 31 December 2005

38. 17 students hurt in police baton-charge, The Himalayan Times, 30 December 2005

39. RNA men manhandle school students, Kantipur Online, 2 January 2006

40. UML leader arrested from podium, The Kathmandu Post, 6 December 2005

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41. Over 100 protestors detained, released later, Kantipur Online, 10 December 2005

42. Pokharel in custody, The Kathmandu Post, 17 December 2005

43. Over 100 arrested in Kathmandu valley, dozens injured in clashes, Nepal news.com, 16 December 2005

Kathmandu district secretary of CPN (UML), Rameswore Phuyal.<sup>44</sup>

On 18 December 2005, police arrested over two-dozen students from the premises of Birendra Multiple Campus, Bharatpur and the premises of the Bharatpur municipality office in Chitwan district for protesting against the Nagarkot killings.<sup>45</sup>

On 19 December 2005, police arrested 11 persons, including a human rights defender, in Lahan in Siraha district for waving black flags at Assistant Minister for Education and Sports, Bhuwan Pathak who arrived there to inaugurate the 10th Nationwide Karate and Kick Boxing competition. Those arrested included Satya Narayan Yadav, central member of Democratic National Youth Union, Ashok Yadav, zonal committee member of All Nepal National Free Students' Union (ANNFSU), Sachidananda Choudhary, district president of ANNFSU, Dipendra Choudhary, Free Students' Union president of Lahan Campus, Shailendra Yadav, district member of Nepal Students' Union, Suman Mishra, Parameshwor Shah of NSU and human rights activist, Kamal Yadav.<sup>46</sup>

On 19 December 2005, at least 17 students were reportedly arrested and over a dozen injured when police intervened in demonstrations organized by student unions affiliated to the seven-party alliance at various campuses of Kathmandu valley to protest against the

Nagarkot killings. However, police said only 15 had been arrested and all have been released.<sup>47</sup>

On 25 December 2005, police reportedly arrested 50 persons who were protesting against the Nagarkot killings from different areas, including Damak and Chandragadhi in Jhapa district. Those arrested included Basanta Baniya, district president of the All Nepal National Free Students' Union (ANNFSU).<sup>48</sup>

On 25 December 2005, police reportedly arrested 10 students from Siraha district headquarters for waving black flags at the State Minister for Tourism and Civil Aviation, Yankila Sherpa. Those arrested included Prabhananda Pravakar, Siraha district president of Nepal Students' Union, Sanjay Prasad Yadav and Subhash Yadav.<sup>49</sup>

On 28 December 2005, security forces reportedly arrested two leaders of CPN-UML in Hetauda - UML secretariat member and former vice-president of the district development committee Badri Lamsal and Makawanpur district chairman of Democratic Youth Association Madhav Timilsena and confiscated all publicity materials to foil the mass meeting of the CPN UML slated for 6 January 2006.<sup>50</sup>

On 29 December 2005, police raided the Balmeeki Bidyapeeth premises at

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44. 68 protestors arrested in Valley, Nepal News.com, 16 December 2005

45. Dozens of Students Arrested in Bharatpur, The Himalayan Times, 18 December 2005

46. 11 held for waving black flags at Pathak, The Himalayan Times, 20 December 2005

47. Dozen students injured in protests, The Kathmandu Post, 20 December 2005

48. Police arrest 50 agitators in Jhapa district, The Himalayan Times, 26 December 2005

49. 10 students arrested, The Himalayan Times, 26 December 2005

50. UML activists arrested, Nepal News.com, 29 December 2005

Exhibition Road in Kathmandu without permission from the campus authorities and arrested three student leaders – Bamdev Adhikary, Saroj Khanal and Pradeep Marasini when the students and the campus administration had gathered to discuss peaceful solutions to their problems. On 30 December 2005, Kathmandu District Administration remanded the three student leaders to 10-day custody for "further inquiry". Police were reportedly preparing to charge them under public offense.<sup>51</sup> Again on 4 January 2006, three students were injured and 20 others arrested at the Balmiki Bidhayapeeth premises after plainclothes policemen reportedly entered the premises to break the locks on the campus administration office, locked by the students demanding quality education and resignation of the campus chief, among others.<sup>52</sup> On 5 January 2006, six students were injured and 17 were arrested from the Balmeeki Campus. They were reportedly released in the evening of the same day.<sup>53</sup>

On 5 January 2006, Directorate of Public Relation (DPR) of RNA stated that security forces arrested a member of student wing of Maoist All Nepal National Independent Student Union (Revolutionary) Som Prashad Acharya from Chieuridanda area of Khotang district on 3 January 2006 along with some documents.<sup>54</sup>

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<sup>51</sup>. Police raided Balmeeki: Principal, The Kathmandu Post, 31 December 2005

<sup>52</sup>. Three students injured, 20 arrested in clash at Balmiki Bidhyapeeth, Nepal News.com, 5 January 2006

<sup>53</sup>. 6 Balmeeki students injured, 17 held, freed, The Kathmandu Post, 6 January 2006

<sup>54</sup>. RNA investigating death of one suspected Maoist: DPR, Nepal News.com, 6 January 2006

## **b. Incommunicado Detention**

On 4 January 2006, the NHRC of Nepal in a press released stated that during its surprise visits to two RNA camps in Kathmandu, it has found 14 detainees, who were listed as disappeared, in the custody of RNA. According to NHRC, nine persons including one woman were found in Jagdal Batallion, and five men were found in Mahabir Battalion in Chhauni. Those being held at Jagdal Battalion have been identified as Dutta Bahadur Budha, Harischandra Budha and Bharat Pandey of Jumla district, Balram Chaudhari and Krishna Prasad Mainali of Kailali district, Ganesh Prasad Sharma of Dailekh, Buddhiman Sarki of Dolpa, Chhabisara Sunar of Bardia and Jit Bahadur Thapa of Palpa district. Those being held at Mahabir Battalion have been identified as Hom Prakash Shrestha of Rukum district, Man Bahadur Malla of Salyan, Chakra Bahadur Thapa of Udaypur and Jaya Bahadur Gharti and Kal Bahadur Gharti of Rolpa district. Most of the detainees complained that they haven't been allowed to see their families or contact others outside since their detention.<sup>55</sup>

However, on 6 January 2006, the RNA refuted the NHRC's charge and claimed that "The detention of the people mentioned (by the NHRC) were notified either to the NHRC or the Office of the High Commissioner of Human Rights (OHCHR) and the International Committee of Red Cross (ICRC)."<sup>56</sup>

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<sup>55</sup>. NHRC teams visit RNA barracks; 14 detainees found in two camps, Nepal News.com, 4 January 2005

<sup>56</sup>. RNA denies NHRC's detention charge, The Himalayan Times, 7 January 2006

But the RNA lied and submitted false reports to the Supreme Court on detention of people in their barracks. On 5 January 2006, the SC ordered the RNA and Ministry of Defence to explain why they had submitted false reports in the court on the detention of four students — Ranjit Darnal, Amrit Darnal, Rajendra Chaurel and Pushpa Raj Basnet. The SC issued the order following NHRC's report to the SC that it had found Ranjit, Amrit and Rajendra in the Rajdalgan barracks and Pushpa Raj in the Bhairavnath battalion during surprise visits to the barracks a few days ago. The four had been arrested two years ago but in response to a show cause notice, the Ministry of Defence and RNA had submitted before the SC that the four were not arrested.<sup>57</sup>

### C. Intervention by the court into illegal detention

The court has made some notable intervention in its endeavor to protect the basic rights of the people. The rulings of the court against the RNA have only substantiated the abuses committed by the security forces.

On 12 December 2005, the Supreme Court upheld the Special Court order issued on 14 August 2005 saying that there was no need to detain former general secretary of Nepal Student Union, Gagan Thapa, on a sedition case. The government had slapped sedition case against Thapa for allegedly shouting anti-monarchy slogans in a student rally.<sup>58</sup>

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<sup>57</sup>. Explain your lies to us, apex court orders RNA, MoD, The Himalayan Times, 6 January 2006

<sup>58</sup>. SC upholds Special Court order to free Thapa, The Himalayan Times, 13 December 2005

On 12 December 2005, Beena BK, an eyewitness in the murder of Maina Sunuwar by the Royal Nepalese Army in February 2004, was released by the Supreme Court, which held that her detention was illegal. She had been languishing in army detention for about 22 months under the Terrorist and Disruptive Activities Control and Punishment Ordinance (TADO).<sup>59</sup>

On 5 December 2005, Kaski District Court ordered release of six rape accused if they paid their bail amount. The six persons were among nine youngsters aged 16 to 21 who had allegedly raped a 15-year-old Gurung girl behind SOS Children's Village in Pokhara. Subsequently, two accused Kiran Gurung and Sunil Gurung were released after they submitted Rs 125,000 and Rs 100,000 respectively as bail amount. The District Court ordered for their release on bail despite the fact that they had allegedly pleaded guilty before the police and even the forensic tests confirmed that they were involved in the crime.<sup>60</sup> The family members of the rape victim and Attorney General at Kaski jointly moved the Appellate Court in Pokhara against the District Court's order.<sup>61</sup> On 15 December 2005, the Appellate Court repealed the district court ruling and ordered actions against the six accused.<sup>62</sup>

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<sup>59</sup>. Maina murder witness freed, The Himalayan Times, 13 December 2005

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<http://www.newslinenepal.com/index2.php?option=news&details&sno=714>

<sup>61</sup>. Complaint registered against judge's order, The Kathmandu Post, 8 December 2005

<sup>62</sup>. Appellate court repeals district court ruling, The Kathmandu Post, 17 December 2005

#### iv. Rape / Molestation

On the night of 6 December 2005, assistant sub-inspector (ASI) of the City Police of the Rajbiraj Municipality, Sunil Thapa allegedly tried to rape a 17-year-old girl who was undergoing post-delivery treatment at the Sagarmatha Zonal Hospital in Rajbiraj. According to the victim, the ASI tried to rape her by covering her with a blanket and forcing her mother to sit under the hospital bed. When Manila's husband complained about the ASI with a nurse on duty, the nurse replied that she could do nothing to rescue the patient as she herself was feeling unsafe in the hospital. ASI Thapa was reportedly drunk on duty.<sup>63</sup> Police later arrested ASI Thapa.<sup>64</sup>

### 3. Atrocities by the Maoists

#### i. Killings

On 2 December 2005, a soldier was killed in a Maoist triggered landmine explosion at Jalkini area in Sindhupalchowk district.<sup>65</sup>

On 22 December 2005, the RNA Public Relations Directorate said in a statement that Maoists shot dead two civilians – Shyam Sundas and Judas Sundas at Timma Village in Bhojpur district on 17 December 2005.<sup>66</sup>

On 22 December 2005, the body of Deu Narayan Poudel (21), abducted by the

Maoists along with his parents on 10 November 2005, was recovered by the locals from Hardewa jungle in Baglung. The whereabouts of his parents - Bhakti Bilash Poudel (65) and Jamuna Poudel (53) – were not known.<sup>67</sup>

On 23 December 2005, two porters identified as Phurwa Sherpa, 53, and Darinche Sherpa, 39, were killed in a land mine blast allegedly planted by Maoists at Maiyakhola Bridge in Sanghu VDC in Taplejung district.<sup>68</sup>

On 29 December 2005, RNA's Directorate of Public Relations alleged that a pregnant woman, resident of Chatara VDC-4 in Bajura district, died on 25 December 2005 when she was forced by the Maoists to undergo militia training to use weapons.<sup>69</sup>

On 5 January 2006, three Armed Police Force (APF) personnel were killed and two injured in an attack by Maoists at the Ranjha chowk in Nepalgunj.<sup>70</sup>

On 6 January 2006, three Armed Police Force (APF) personnel were killed and another injured when Maoists opened fire at a security patrol in Bhairahawa in Rupandehi district. The dead have been identified as head constable Ishwar Thapa and constables Ishwor Gurung and Prakash Shrestha. According to eyewitnesses, a group of about 10 rebels had come on motorcycles, fired from point-blank range and looted the arms

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<sup>63</sup>. Topsy Cop Tries to Rape Patient in Hospital, The Himalayan Times, 7 December 2005

<sup>64</sup>. Police sub-inspector arrested for molestation, The Kathmandu Post, 7 December 2005

<sup>65</sup>. 3 Maoists, 1 soldier killed in separate incidents, Kantipur Online, 2 December 2005

<sup>66</sup>. Maoists kill 2 civilians; abduct 400: RNA, Kantipur Online, 22 December 2005

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<sup>67</sup>. Abductee found dead, The Himalayan Times, 25 December 2005

<sup>68</sup>. 2 killed in bomb blast, The Kathmandu Post, 24 December 2005

<sup>69</sup>. Pregnant woman forced into training dies: RNA, Nepal News.com, 29 December 2005

<sup>70</sup>. Three APF personnel killed in Nepalgunj, The Himalayan Times, 6 January 2006

from the policemen before fleeing the scene.<sup>71</sup>

## *ii. Torture*

The Maoists have held nine schoolgirls in their captivity at Kolkhan village of Alital VDC of Dadeldhura district after their abduction. The girls have allegedly been subjected to mental and physical torture by the rebels. They were allegedly being forced to carry heavy loads of stones, dig the soil, cut grass, wash clothes and cook food for the rebel cadres daily and if their orders were not complied they were severely caned and sexually harassed. Some of the detained girls have been identified as Chandra Luhar, 17, of Sirsa Parigaun village, Dhana Bhattarai of the same village, Dambari, 14, of Salaun village, Nirmala, 13, and Sushila – all students of Siddhanath Higher Secondary School. The Maoists have accused them of 'socially unacceptable sexual wrongdoing'. But the local people claimed that the Maoist allegations were baseless and that the entire 'abduction episode' was a part of the rebels' plan to forcefully recruit these girls into their organization.<sup>72</sup>

On 26 December 2005, a girl child identified as Kiran KC (11) was reportedly injured in a bomb explosion allegedly carried out by Maoists in Rukumkot area in Rukum district. The injured child was airlifted by the RNA in

a helicopter from the incident site to the district headquarter Salle for treatment.<sup>73</sup>

On 5 January 2006, three people, including two policemen were injured in Maoists' attack at a police check-post in Mahendranagar.<sup>74</sup>

## *iii. Padlocking of houses of security personnel*

According to Human Rights and Peace Society (HURPES), Maoists have arbitrarily padlocked the houses of innocent people, looted their properties and rendered them shelterless in Okhaldhunga and Ramechhap districts. According to HURPES, innocent villagers, from year-old children to 84 year-olds, are forced to seek refuge at neighbor's haystack due to Maoists' cruelty.<sup>75</sup>

In violation of international standards and humanitarian laws, and the 12-point pact signed with the seven-party alliance in November 2005, Maoists have padlocked the houses of the security personnel and threatened their family members in order to force them to quit their jobs.

On 7 December 2005, Maoists reportedly padlocked the house of 52-year-old farmer Tej Bahadur Budhathoki at Tilpung VDC-3 in Ramechhap

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71. 3 APF men gunned down in Bhairahawa <http://www.kantipuronline.com/kolnews.php?&nid=61830>

72. Maoists enslave schoolgirls, The Kathmandu Post, 10 December 2005

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73. Child injured in explosion, <http://www.rna.mil.np/news.php?newsid=1876&&lan=en>

74. 2 policemen, 1 civilian injured in Maoists' attack, Kantipur Online, 5 January 2006

75. Maoists continue excesses, The Kathmandu Post, 22 December 2005

district. The 52-year-old farmer's son is serving in the Royal Nepalese Army.<sup>76</sup>

Maoists have allegedly padlocked the house of Ek Narayan Shrestha, a Royal Nepalese Army soldier, at Kathjor-6 in Ramechhap district and threatened to loot all their properties if he failed to quit his job.<sup>77</sup>

Although on 20 December 2005, Maoists lifted locks on the houses of some security personnel including Fattha Bahadur Sunuwar, Jeeb Raman Poudel, Som Hari Poudel and Sete Damai of Duragaun VDC in Ramechhap district and allowed their family members to return home,<sup>78</sup> Maoists have reportedly threatened to burn down some 300 houses in Khimti VDC in Ramechhap district on the charges of unlocking the houses of two locals Ganga Bahadur Budhathoki and Khadga Bahadur Budhathoki by the villagers of the VDC on 16 December 2005. The Maoists had padlocked the houses of Ganga Bahadur Budhathoki and Khadga Bahadur Budhathoki on 14 December 2005.<sup>79</sup>

#### *iv. Abduction*

On 1 December 2005, Maoists abducted 60-year-old Ram Singh Dhami, father of Mahendranagar-based reporter of The Himalayan Times, Rabi Dhami from his residence at Hunainath VDC ward no. 1 in Yairichana of Darchula district. He was beaten up and mentally tortured.

The Maoists released him the next day after warning him not to step out of his home. Ram Singh Dhami has reportedly fled to India for security.<sup>80</sup>

On 2 December 2005, Maoists released Ramprasad Dahal, a UNDP staff, whom they had abducted from Sikaicha in Taplejung on 28 November 2005. The rebels also returned audio-visual equipment they had snatched during the incident from KTV cameraman Upendraman Singh and journalist of the Boss magazine Sanchit Lamichhane.<sup>81</sup>

On 8 December 2005, the Maoists reportedly abducted two civilians from Dhawang and Jungkot areas in Rolpa district.<sup>82</sup>

On 9 December 2005, the Maoists freed over 20 cadres of the Nepali Congress after detaining them in Melauli bazaar for 24 hours. Among others, central members of the Nepali Congress, Sunil Kumar Bhandari and Binay Dhoj Chand, were captured while they were about to take part in an awareness campaign organised in Melauli. The detainees were reportedly subjected to physical and mental torture.<sup>83</sup>

On 8 December 2005, the Maoists abducted over 100 Dalits from Mhale, Saplakhu, Kalikhola and Mamankhe VDCs in Taplejung district. A group of 25 armed Maoists reportedly ordered the

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76. Maoists Lock Farmer's House, School, The Himalayan Times, 9 December 2005

77. Maoists padlock soldier's house, The Kathmandu Post, 15 December 2005

78. Locked homes of security men opened, The Himalayan Times, 21 December 2005

79. Locked homes of security men opened, The Himalayan Times, 21 December 2005

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80. THT scribe's father 'abducted, freed', The Himalayan Times, 18 December 2005

81. Maoists release Dahal, The Kathmandu Post, 3 December 2005

82.

<http://www.rna.mil.np/news.php?newsid=1748&&lan=en>

83. Maoists free NC cadres, The Himalayan Times, 10 December 2005

civilians in all age groups – from youths to the elderly – to gather in the premises of Bhanjyang Higher Secondary of Saplakhu VDC and took them away towards Tharpu area of Panchthar district saying that they would be released after a week after attending a district level programme related to the Dalit community.<sup>84</sup>

On 11 December 2005, the Maoists abducted two leaders of the Nepali Congress (Democratic) – district committee Joint Secretary Ghanashyam Bhatta and member Purna Bahadur Bohara from Shrikot VDC-7 in Baitadi district. They were reportedly abducted from a marriage ceremony.<sup>85</sup>

On 12 December 2005, Maoists abducted Thanahang Limbu, a regional member of the District Development Committee of Tehrathum district.<sup>86</sup>

On 12 December 2005, Maoists abducted some teachers from Sunkuda in Bajhang district after brutally beating a teacher.<sup>87</sup>

On the night of 12 December 2005, Bharat Bahadur BK, a civilian, was kidnapped by the Maoists from Tulsipur municipality in Dang district.<sup>88</sup>

On 15 December 2005, Maoists reportedly abducted Shyam Bahadur Tiwari of Chiti area in Lamjung.<sup>89</sup>

On 17 December 2005, Maoists reportedly abducted a teacher from Phulbari village in Dang district.<sup>90</sup>

On 17 December 2005, Maoists reportedly abducted a former British Gurkha soldier, Dan Bahadur Limbu, from Shaula area of Tehrathum district.<sup>91</sup>

On 22 December 2005, the RNA Public Relations Directorate said in a statement that Maoists had abducted at least 400 civilians including children, women and elderly from Tarakhola, Pandav and Adhikari Chowk of Baglung district on 20 December 2005.<sup>92</sup>

On 23 December 2005, Maoists abducted four persons including three technicians identified as Bhairab Lawati, Narendra Bantawa and Soni Lal Chaudhari, and a government nominated Panchthar District Development Committee (DDC) member of area number –4 identified as Narendra Kumar Aangbo from Nangin VDC of Panchthar, where the Nangin village council meeting was being held.<sup>93</sup> On 25 December 2005, Maoists released the

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<sup>84</sup>. Maoists abduct over 100 in Taplejung, Nepal News.com, 11 December 2005

<sup>85</sup>. 2 NC (D) district leaders abducted, Kantipur Online, 13 December 2005

<sup>86</sup>.  
<http://www.rna.mil.np/news.php?newsid=1763&&lan=en>

<sup>87</sup>.<http://www.rna.mil.np/news.php?newsid=1763&&lan=en>

<sup>88</sup>.  
<http://www.rna.mil.np/news.php?newsid=1763&&lan=en>

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<sup>89</sup>. Maoist killed in encounter, Nepal News.com, 19 December 2005

<sup>90</sup>. Maoist killed in encounter, Nepal News.com, 19 December 2005

<sup>91</sup>. Maoist killed in encounter, Nepal News.com, 19 December 2005

<sup>92</sup>. Maoists kill 2 civilians; abduct 400: RNA, Kantipur Online, 22 December 2005

<sup>93</sup>. Maoists abduct 4, The Himalayan Times, 25 December 2005

three technicians on the condition that they would never visit rural areas.<sup>94</sup>

On the night of 25 December 2005, Maoists abducted Raj Kumar Joshi, a government nominated District Development Committee (DDC) member of Panchthar area number-5 from his residence at Jorsar bazaar of Phidim, the district headquarters of Panchthar. The abductee is reportedly an active worker of Rastriya Prajatantra Party.<sup>95</sup>

On 28 December 2005, the Royal Nepalese Army (RNA) reportedly rescued over 1000 civilians who were abducted by the Maoists from various villages including Rukumkot, Shobha, Mahat and Chunwang areas of Rukum district on different occasions.<sup>96</sup>

#### *v. Extortion and looting*

On 4 December 2005, the Royal Nepalese Army alleged that the Maoists were extorting money from foreign trekkers in Ghorepani of Myagdi district. According to Bal Krishna Khadka, chief of Durgadal Battalion of the RNA, the Maoists were charging US \$ 15 per tourist and those who refused to pay were not allowed to move ahead. This way the rebels allegedly collected Rs.150, 000 each day from the foreign tourists.<sup>97</sup>

On 4 December 2005, the Maoists allegedly forcefully collected Rs 1000 from each household in Dhusheni village in Dhading district.<sup>98</sup>

On 5 December 2005, the Maoists allegedly extorted Rs 15,000 from each household in Kitang area in Nuwakot district.<sup>99</sup>

According to a press release by RNA Headquarters of 11 December 2005, the Maoists had allegedly extorted Rs 3,000 from each secondary school, Rs 2,000 each from lower secondary school and Rs 1,000 each from primary school at Lekam area of Darchula district.<sup>100</sup>

On 11 December 2005, the Maoists reportedly robbed the house of Gehendra Darlami, the secretary of Okhreni VDC in Ramechhap district. The Maoists had been forcing him to resign from his post.<sup>101</sup>

On 1 January 2005, Maoists reportedly looted two tractor loads of rice, being transported for the Royal Nepalese Army (RNA) camp at Udayapurgadhi, from Sukaura bazaar in Udayapur district. According to locals, over a hundred Maoists took the looted rice into the forest.<sup>102</sup>

The coordinating committee of Mechi-Koshi regional bureau of CPN (Maoist)

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<sup>94</sup>. Maoists abduct DDC member, The Himalayan Times, 27 December 2005

<sup>95</sup>. Maoists abduct DDC member, The Himalayan Times, 27 December 2005

<sup>96</sup>. 1000 civilians rescued: RNA, Kantipur Online, 30 December 2005

<sup>97</sup>. Maoists extorting tourists in Ghorepani: Army, Kantipur Online, 5 December 2005

<sup>98</sup>. <http://www.rna.mil.np/news.php?newsid=1758&&lan=en>

<sup>99</sup>. <http://www.rna.mil.np/news.php?newsid=1748&&lan=en>

<sup>100</sup>. <http://www.rna.mil.np/news.php?newsid=1748&&lan=en>

<sup>101</sup>. Maoists rob VDC secretary's house, The Kathmandu Post, 13 December 2005

<sup>102</sup>. Maoists loot army's rice, The Kathmandu Post, 2 January 2006

has reportedly demanded Rs 250,000 as donation from human rights activist and lawyer Prakash Nath Uprety. Accordingly to report, Prakash Nath Uprety, who is also Central Member of National Human Rights Foundation, was served a letter signed by one Sainla, the alleged coordinator of the committee. Earlier, one Badal, who identified himself as coordinator of the committee, had demanded all the rice produced and harvested by Uprety this season.<sup>103</sup>

*vi. Denial of right to education*

On 6 December 2005, Maoist-affiliated student wing All Nepal National Independent Students' Union (Revolutionary) locked out Harihar Higher Secondary School in Pokharathok VDC in Arghakhanchi.<sup>104</sup>

On 7 December 2005, the Maoists reportedly locked a community school, Bhadaure Primary School, at Kathjor VDC-2 in the same district in protest against the management transfer of the school to the community. At least 300 students, who were preparing for second terminal examination, have been affected due to the lock-out.<sup>105</sup>

The Maoist affiliated teachers' union called a closure of schools from 11 December 2005 to 15 December 2005 putting forth various demands. Around 50,000 students of 400 schools have been directly affected by the closure. The District Examination Committee

postponed the quarterly examinations till 15 December 2005 due to the closure.<sup>106</sup>

On 11 December 2005, the school management committees of all 23 schools in Dolakha district reportedly jointly decided to hand over the managements back to the government following a Maoist threat. The Maoists had been padlocking 20 community schools in the district since 23 Nov 2005 to force the schools to hand their management back to the government.<sup>107</sup>

On 11 December 2005, Maoist aligned teachers' union All Nepal National Teachers' Organization (ANNTO) called indefinite closure of over 500 schools in Dhading district. The ANNTO demanded that the temporary teachers be posted permanently and annulment of teaching license provision as preconditions to lift the shutdown. Thousands of students in the district have been affected as all the schools continued to remain shut as on 13 December 2005.<sup>108</sup>

On 11 December 2005, Maoists forcefully locked a higher secondary school in Bhaluwai area in Sindhuli district.<sup>109</sup>

As of 16 December 2005, some 150 children had been deprived of primary education after Maoists padlocked six child development centers (CDC) for the

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<sup>103</sup>. Maoists demand Rs 250,000 from activist, The Kathmandu Post, 6 January 2006

<sup>104</sup>. Maoists lock school, The Kathmandu Post, 9 December 2005

<sup>105</sup>. Maoists Lock Farmer's House, School, The Himalayan Times, 9 December 2005

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<sup>106</sup>. Maoist Threat Closes Ramechhap Schools, The Himalayan Times, 11 December 2005

<sup>107</sup>. Maoist threat forces communities to return schools, The Kathmandu Post, 13 December 2005

<sup>108</sup>. Schools shut after Maoist threat in Dhading, Kantipur Online, 13 December 2005

<sup>109</sup>.  
<http://www.rna.mil.np/news.php?newsid=1763&&lan=en>

last three months in the rural areas of Rupendehi district. Gyankunj, Budhajyoti, Udaya, Jhutthur, Dishanirdesh and Santideep CDCs from Amawa, Manmatoriya and Khadgavan VDCs of the district have been padlocked by the rebels.<sup>110</sup>

Maoists have also padlocked administrative department of five schools in Saptari district - Sitapur School, Martigadhi Hariharpur School, Dighwa School, proposed Dharampur School and Rastriya Primary School, Mohanpur. The Maoists Area no 1 in-charge of Saptari, Pradeep reportedly said that they have padlocked the schools' administrations and put forward different demands including transfer of school management from the community to the government, dismissal of resource centres among others.<sup>111</sup>

#### 4. Independence of Judiciary

##### *a. Appointment of former AG as SC judge*

King Gyanendra has sought to further erode the independence of judiciary by appointing alleged royalists as judges in the Supreme Court. On 28 December 2005, Chief Justice Dilip Kumar Paudel, with the consent of the King, appointed former Attorney General Pawan Kumar Ojha, two acting chief judges of Appellate Courts Tahir Ali Ansari and Rajendra Prasad Koirala and senior advocate Bipulendra Chakrawarti as the ad hoc judges in the Supreme Court.<sup>112</sup>

Human Rights activists and Nepal Bar Association (NBA) have expressed serious concerns over selection of judges. Former Attorney General Pawan Kumar Ojha had been controversial after he supported the February 1 royal takeover in the apex court and claimed that the King has authority to issue any kind of order by activating Article 127 of the Constitution. He had also claimed that the King has the power to issue any order, with the capacity of the Hindu Monarch, to protect the country.<sup>113</sup> In protest, Nepal Bar Association, an umbrella organization of the professional lawyers, has decided that it would exclude Chief Justice Dilip Kumar Poudel and Justice Pawan Kumar Ojha from all its functions henceforth.<sup>114</sup>

Surely, if royalists like former Attorney General Ojha are appointed as judges of the Supreme Court, the Supreme Court will not be able to protect the rights of the Nepali people from the onslaught of the autocratic regime of King Gyanendra.

##### *b. Contempt of the Court through re-arrests*

The security forces continued to re-arrest detainees after their release by the court.

On 4 December 2005, Khem Raj Dahal of Hardiya-5 in Saptari district was re-arrested by plainclothes security personnel from the Appellate Court premises in Rajbiraj. His whereabouts

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<sup>110</sup>. CDCs padlocked, The Kathmandu Post, 17 December 2005

<sup>111</sup>. Maoists Padlock Five Schools in Saptari, The Himalayan Times, 23 December 2005

<sup>112</sup>. Four judges appointed at Supreme Court, Nepal News.com, 28 December 2005

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<sup>113</sup>. Rights Activists Criticise SC Judges' Appointments, The Himalayan Times, 30 December 2005

<sup>114</sup>. NBA to exclude CJ Poudel from all its function, Kantipur Online, 3 January 2006

were not known as on 5 December 2005.<sup>115</sup>

On 4 December 2005, the security personnel tried to re-arrest Bina Magar, former chief of the Maoist-affiliated All Nepal National Independent Students' Union (Revolutionary) of Kathmandu district, from the Supreme Court's premises immediately after her release by the Supreme Court (SC) after terming her detention unlawful. Magar was released by the SC at 4 pm but the security personnel kept waiting in front of the court's main gate till around 6: 30 pm. The detainee finally managed to evade re-arrest with the help of lawyers and human rights defenders, including representatives from the Office of the High Commission for Human Rights in Nepal. The security personnel followed her vehicle but they failed to get her. This was the second time the court had ordered for Magar's release. The court had ordered her release some seven months ago, but the order was flouted.<sup>116</sup>

On 19 December 2005, plainclothes security personnel re-arrested former general secretary of the Maoist-affiliated All Nepal National Independent Student Union - Revolutionary, Himal Sharma, from the Supreme Court premises soon after the SC released him. Himal Sharma had been in security custody for two years under TADO. The SC also held that the Appellate Court's decision of 18 December 2005 granting permission to the police to detain Sharma for 25 days more was illegal. Yet, flouting SC order, the security personnel re-arrested

Sharma and in the process of re-arrest, the security personnel beat up human rights activists, lawyers and journalists.<sup>117</sup> On 18 December 2005, while talking to Kantipur Television, Himal Sharma alleged torture in security custody. He said pins were inserted into various parts of his body as a part of torture and showed his swollen fingers to the journalists as evidence.<sup>118</sup> On 20 December 2005, the Kathmandu District Police Office (KDPO) framed charges of murder of colonel Kiran Basnet about two years ago against Himal Sharma and produced him before the Patan Appellate Court. The Appellate Court remanded him to police custody for 20 days for investigations into the colonel's murder. Interestingly, the KDPO told the Appellate Court that Sharma was arrested the previous day when he was walking along Ramshahpath.<sup>119</sup>

## 5. Muzzling of the press freedom

Although on 7 December 2005 the Supreme Court ordered the government to allow Radio Sagarmatha to air the BBC Nepali service broadcast,<sup>120</sup> the government returned all equipments of the radio station only on 14 December 2005. Armed security forces had seized the equipments on 27 November 2005.<sup>121</sup> On 20 December 2005, the government also returned Kantipur FM's radio transmission equipment seized

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<sup>115</sup>. HURFON seeks whereabouts, The Kathmandu Post, 6 December 2005

<sup>116</sup>. Detainee released after high-level suspense, The Kathmandu Post, 5 December 2005

<sup>117</sup>. Cops flout SC order, re-arrest ANNISU-R leader, The Himalayan Times, 20 December 2005

<sup>118</sup>. PAC extends ex-Maoist student leader's remand, Kantipur Online, 18 December 2005

<sup>119</sup>. Fresh charge against ANNISU-R leader, The Himalayan Times, 21 December 2005

<sup>120</sup>. Allow BBC Nepali Service on Radio Sagarmatha: SC, Kantipur Online, 7 December 2005

<sup>121</sup>. Government returns equipment of Radio Sagarmatha, Nepal News.com, 14 December 2005

during a midnight raid on 21 October 2005.<sup>122</sup>

However, the government continues to muzzle the freedom of the press.

*a. Arrest/ summon of journalists*

On 4 December 2005, the central regional administrator in Hetauda, Rabindra Chakrawarti, summoned Santosh Neupane, editor of Hetauda Sandesh, a local daily, and warned him not to publish anything critical about the government. Neupane reportedly gave verbal explanation for five news reports that had been published on various dates in his daily.<sup>123</sup> Chakrabarti and the police questioned the editor for more than eight hours and freed him on condition that he would be available as and when summoned by the administration. In response to a complaint filed by Neupane<sup>124</sup>, on 12 December 2005, the Appellate Court of Hetauda issued a show cause notice to the regional administrator Rabindra Chakrabarti and District Police Office of Hetauda to furnish in writing why they threatened and interrogated journalist Santosh Neupane and asked not to threaten, interrogate and torture the journalist on charge of writing any news.<sup>125</sup>

On 9 December 2005, the local administration of Myagdhi, Baglung and

Parbat districts under Dhaulagiri zone in western region ordered the journalists of the three districts to be present before the Zonal Administration Office (ZAO) along with their license. The summon notice was reportedly issued as per direction of Dhaulagiri Zonal Administrator Ramji Bista.<sup>126</sup> While the journalists of Baglung and Myagdi were summoned at the office on December 15, those from Parbat were asked to present themselves there on December 18. The journalists reportedly defied the order.<sup>127</sup>

On 19 December 2005, the police arrested Rajdhani daily reporter Yam Birahi and manhandled Prakash Acharya, Gorkhapatra daily reporter in separate incidents. According to a statement issued by Federation of Nepalese Journalists (FNJ) on 20 December 2005, Birahi was arrested by the police while he was walking home and detained for hours, whereas Acharya was seriously injured by the riot police on the morning of 19 December 2005 in front of Ratna Rajya Campus while he was returning after taking classes.<sup>128</sup>

On 21 December 2005, a policeman reportedly tried to arrest Ram Bharat Saha, local correspondent of Tarun weekly, accusing him of publishing news items about Zonal Administrator Janak Jangali in the weekly. According to Saha, the policeman had come to his home in Janakpur and asked him to present himself before the 'SP sahib' at

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<sup>122</sup>. Govt returns Kantipur FM's radio equipment, Kantipur Online, 21 December 2005

<sup>123</sup>. Regional administrator grills editor, Kantipur Online, 5 December 2005

<sup>124</sup>. Editor files case against Regional Administrator, Kantipur Online, 11 December 2005

<sup>125</sup>. <http://www.newslinenepal.com/index2.php?option=news&details&sno=775>

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<sup>126</sup>. FNJ urges journalists to defy order of regional administrator, Nepal News.com, 14 December 2005

<sup>127</sup>. Journos defy government order, Nepal News.com, 16 December 2005

<sup>128</sup>. FNJ flays manhandling of journos, The Kathmandu Post, 21 December 2005

the district police office. But he declined to follow him without an arrest warrant.<sup>129</sup>

On 30 December 2005, the RNA in Dailekh reportedly ordered the District Police Office to immediately arrest Bindu Shahi, a member of Federation of Nepalese Journalists (FNJ) and correspondent of Kankrebihar, a vernacular daily.<sup>130</sup>

On 2 January 2005, police beat up and detained journalist Moti Poudel of Kantipur daily and cameraman Kamal Panta of Kantipur Television Network from the premises of Surkhet Appellate Court while they were covering the news of re-arrest of four persons by the plainclothes policemen immediately after their release by the court. Police Inspector Gobindha Pathak of the Regional Police Office allegedly threatened the journalists to put them behind the bars accusing them of helping the Maoists. Police inspector Rajkumar Silwal of District Police Office also snatched Panta's camera and deleted the pictures, stating that he was ordered to do so by 'higher-ups'.<sup>131</sup>

On 4 January 2005, 23-year-old Nagendra Upadhyay, editor of 'New Malika' weekly – a Nepali language newspaper – was released by District Administration of Kailali after detaining him under TADO since July 2005. Federation of Nepali Journalists (FNJ) claimed that one more journalist - Tej Narayan Sapkota, affiliated with

Mahima weekly published from Kathmandu, is being detained at Nakkhu prison in Lalitpur under TADO.<sup>132</sup>

### ***b. "One-Door Policy": Free Media still the step-child of Government***

The government has also continued to discriminate against independent newspapers as regards to providing advertisements. Though the government has reportedly decided to resume providing public welfare advertisement to all the newspapers in the country, according to Minister of State Shrish Shumsher JB Rana, the government advertisements would be provided as per the Government Advertisement One-Door Policy, 2062 BS (GAODP), which provides that only those newspapers which show respect to the monarchy will get government advertisements.<sup>133</sup>

## **6. Denial of freedom of peaceful assembly**

On 10 December 2005, hundreds of civil society members, who were to participate in a mass meeting organized on the occasion of Human Rights Day in Kathmandu, were not allowed to enter the capital through Nagdhunga transit point. Four buses carrying the members of civil society from Dhadhing, Chitwan, Makwanpur, Gorkha, Bara and Parsa were reportedly stopped at Nagdhunga by the security forces deployed there. The buses, reserved by the civil society members, remained stranded at the

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<sup>129</sup>. Cop attempts to arrest journo, The Kathmandu Post, 22 December 2005

<sup>130</sup>. RNA orders journos' arrest, The Kathmandu Post, 4 January 2006

<sup>131</sup>. Kantipur journos assaulted in Surkhet, Kantipur Online, 3 January 2006

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<sup>132</sup>. Editor Upadhyay released in Kailali, Nepal News.com, 4 January 2006

<sup>133</sup>. Govt to resume public welfare adverts to newspapers, The Himalayan Times, 17 December 2005

check point till late in the afternoon, depriving the passengers from participating in the mass meeting held in the capital to mark the Human Rights Day.<sup>134</sup>

On the other hand, the school children were forced to attend functions graced by government officials. On 8 December 2005, thousands of students from several local schools were reportedly forced to attend the inauguration of the 3rd International Taekwondo Championship held at Janta Secondary School in Itahari to cheer the speeches of royal-nominated administrators who addressed the gathering, including Regional Administrator Jagdish Khadka and Zonal Administrator Ran Bahadur Chand. To show a huge audience turn-out, 6th to 10th graders of local Koshi St James, Modern Preparatory and Secondary Boarding schools were reportedly brought at the venue. Janta Secondary School, the program venue, announced the closure of the school till 11 December 2005 and examinations that were to be held on 8 December 2005, as per the yearly school calendar, were reportedly rescheduled to 12 December 2005. The students were instructed in advance to clap and cheer as soon as the administrators made their remarks. The teachers reportedly monitored the students to make sure everyone applauded.<sup>135</sup>

## 7. Restrictions on NGO activists

Despite the fact that the Supreme Court stayed the implementation of the NGO Code of Conduct on 23 November 2005 and the case is pending with the SC,<sup>136</sup> the government continued to target the NGOs.

According to a press release issued on 19 December 2005 by NGO Federation of Nepal, the Food Management Committee (FMC), Jumla, has threatened the NGO workers in Jumla district to deny their basic right to food if they failed to fall in line with the NGO code of conduct. According to NGO Federation of Nepal, the FMC, Jumla had on 28 September 2005 decided to stop providing food to NGO workers. But following strong protests from human rights activists, journalists and NGO workers, it reviewed its decision and in a letter dated 27 November 2005 it informed the NGO workers that they would be provided their share of food quota only if they showed commitment to abide by the Code of Conduct.<sup>137</sup>

On 26 December 2005, the Supreme Court gave continuity to its stay order asking the government not to implement the controversial Code of Conduct for the NGOs until it receives written response from the concerned authorities.<sup>138</sup> But the SC order has only created confusions. On 3 January 2006, member secretary at the SWC, Sharad Sharma, said the interim order of the Supreme Court was automatically lifted as the Ministry for Women, Children and Social Welfare and the SWC

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<sup>134</sup>. Hundreds barred from capital, *The Himalayan Times*, 11 December 2005

<sup>135</sup>. Forced to cheer functionaries, *The Kathmandu Post*, 9 December 2005

<sup>136</sup>. SC stays implementation of NGO code of conduct, *Nepal News.com*, 23 November 2005

<sup>137</sup>. Govt forces NGOs to adhere to code, *The Kathmandu Post*, 20 December 2005

<sup>138</sup>. Apex court continues stay on NGO code, *The Himalayan Times*, 27 December 2005

submitted written reply to the SC.<sup>139</sup> The Social Welfare Council (SWC) has already reportedly questioned the representatives and staffers of four International Non-Government Organisations (INGO) on “irregularities” in the financial sector and for “flouting” their agreement with SWC. According to Sharad Sharma, member secretary at SWC, four INGOs — Netherlands Leprosy Relief, I to I- UK, Rose Club-Korea and Stichting Veldwerk, Netherlands — have been warned to work as per the agreement they had made with the SWC.<sup>140</sup>

It is regretted that the Supreme Court has not come to the rescue of the NGOs.

## 8. Plight of the prisoners

Torture of prisoners in Nepal jails is well known. There is also lack of proper medical treatment for the ailing jail inmates.

On 2 December 2005, the Patan Appellate Court ordered the authorities to treat the ailing Maoist leader Matrika Prasad Yadav as soon as possible. Yadav had complained of problems of his kidney, spinal cord and other ailments when produced in the court.<sup>141</sup>

There have been at least two deaths in custody of the security forces in December 2005. While Tej Singh Karki (45) died on 12 December 2005 due to

illness,<sup>142</sup> another Maoist suspect Debendra Rai died on 31 December 2005 in army detention in Bhojpur. He was arrested by RNA on 29 December 2005 for interrogation.<sup>143</sup>

The inmates of the Panchthar District Jail have been deprived of newspapers since the February 1 royal takeover. Before the takeover, different organisations used to send copies of Kantipur daily, Gorkhapatra daily and Rabi weekly to the inmates for free through the Sarashwoti stationery. Altogether 44 inmates, four of them women, have been living in the jail.<sup>144</sup>

On 14 December 2005, human rights activists, including Gauri Pradhan, chairman of the Human Rights Alliance, were prohibited from meeting inmates who were being incarcerated on the charges of being Maoists at Sadar Jail at Dillibazar. Three prisoners were on hunger strike demanding the scrapping of the Sundarijal Interrogation Centre and calling for the government to make public the whereabouts of the disappeared persons following their arrests by the security forces.<sup>145</sup>

## Children of the convicts

The Prison Act (1962) provides that if both parents are imprisoned and there is no relative to care for the child, the child will be sent to a children's home. But

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<sup>139</sup>. Code of conduct for NGOs to be implemented: SWC, Nepal News.com, 3 January 2006

<sup>140</sup>. 4 INGOs pulled up, The Himalayan Times, 2 January 2006

<sup>141</sup>. Court orders treatment for Maoist leader, The Kathmandu Post, 3 December 2005

<sup>142</sup>. Maoist suspect dies in detention, The Kathmandu Post, 13 December 2005

<sup>143</sup>. Maoist suspect dies in army barrack, The Kathmandu Post, 7 January 2006

<sup>144</sup>. Jailbirds deprived of newspapers, The Himalayan Times, 10 December 2005

<sup>145</sup>. Activists barred from meeting jail inmates on hunger strike, The Himalayan Times, 15 December 2005

many children in Nepal spend their lives in jail with their parents without any crime committed by them (the children) due to the lack of rehabilitation mechanisms. While some children were born inside the jails, some were infants when their mothers were sent behind the bars.

Their condition is deplorable.

As of 7 December 2005, four children have been languishing in Morang district jail. Four-year-old Sanjiv was born after his mother, Sita (37), a murder convict, was raped by a head constable Pradip Shah in Siraha jail. On 15 October 2003, the Rajbiraj Appellate Court had confirmed that Shah was the father of Sanjiv. Sita was transferred to Morang jail from Siraha in 2004. Another convict, Rasid Khatung of Sunsari district, gave birth to a child on 6 June 2005 inside the jail. Kalimaya BK of Shanishare of Jhapa is a murder convict and has been living with her 15-month-old daughter, Asmita, while Gita Rai of Dharan, imprisoned under the Terrorism and Vandalism Act, is in jail with her two-year-old son, Kishan.<sup>146</sup>

15-year-old Mithilesh Yadav, a resident of Shreepur VDC-3, has been languishing in the Jaleswor jail for 14 months on the charge of committing a robbery and murder, though the District Court, Mahottari, had ordered the jail administration to send Yadav into a Children's Home. Yadav was studying in grade 10 at the Shreepur VDC-based Sonfi Secondary School prior to confinement but he had to discontinue his studies. Debiram Bhandari, the jailor at the Jaleswor Jail claimed that the jail

authorities had been writing to the Bhaktpur-based Children's Home, the Home Ministry and the Jail Management Department to admit Yadav at a children's home, but to no avail.<sup>147</sup>

## 9. Acute famine in Bajura

Acute famine in Bajura district and a few neighboring districts have led to mass exodus of people from remote areas into India. Although the rural villages of Bajura district – particularly Sappata, Rungin, Bichha, Wai, Jukot, Kotila, Pandusen, Jagannath, Gotri, Baandh and Kolti VDCs – have reportedly been hit hard by food shortage for a few months, the exodus accelerated during early December 2005.

According to locals of these VDCs, Kolti branch of Nepal Food Corporation (NFC), which is responsible for supplies food grains in the eastern Bajura, had been shut for months and there had been no food supply since July 2005.<sup>148</sup> On 13 December 2005, the chairman of the district development committee (DDC), Gajendra Bahadur Singh, admitted that there had been a severe food shortage for the past two months. A DDC meeting held in the third week of October 2005 had declared Sappata, Jukot, Bai, Bichchhya, Kangin, Badun, Gotri and Jagannath VDCs in the district as famine-hit. The DDC chairman Gajendra Bahadur Singh led a team to the Ministry towards the end of October 2005 and demanded it to send at least 2,000 quintals of food grain to the

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<sup>146</sup>. Four kids languishing in Morang jail, The Himalayan Times, 8 December 2005

<sup>147</sup>. Minor Languishing in Mahottari Jail for 14 Months, The Himalayan Times, 11 December 2005

<sup>148</sup>. Famine Hits Western Nepal

<http://www.newslinenepal.com/index2.php?option=news&details&sno=712>

district. He criticized the government for its apathy.<sup>149</sup>

Although there is no exact figure of those crossing into India, security personnel who have been stationed at the border areas to keep a record of those crossing over into India, said over 1,500 people had crossed the border through the Gaddachowki check post till 7 December 2005.<sup>150</sup> On 4 and 5 December 2005, over 700 villagers, including women and children, of Sappata VDC in Bajura district reportedly crossed into India via Gaddachowki transit point. As many as 300 villagers, including 150 women and children, reportedly fled from Kholikot village. Sixty-seven-year-old Bise Luhar of Kholikot village said he was surviving on water for past 15 days due to lack of food. Schools in some villages, for instance Ratu Mata Secondary School of Kolpat, have been reportedly closed since July 2005.<sup>151</sup>

On 6 December 2005, Deputy General Manager of Nepal Food Corporation, Prabhat Chandra Pandey claimed that there was no food shortage in Bajura district.<sup>152</sup> But the exodus continued to take place and most of the fleeing villagers gave food shortage as the reason for their displacement. The fleeing populace included women, children and elderly.

On 13 December 2005, another group of 30 persons crossed into India through Gaddachowki.<sup>153</sup>

On 17 December 2005, a group of 145 people from Bajura left for India via Gaddachowki and 200 more people had reached Karnali Chisapani to proceed towards India.<sup>154</sup>

Apart from exodus from Bajura district, exodus also took place from mid-western Humla, Jumla and Mugu districts bordering Bajura. At least 400 locals of Humla, Jumla and Mugu reportedly entered India on 9 –10 December 2005. Those arriving at Banbasa in India from the "famine-hit" districts claimed there wasn't any food grains left in the villages.<sup>155</sup>

It is important to note that there was no let-up in exodus even though the NFC had airlifted over 65 quintals of food grains to Kolti Depot on 6 and 7 December 2005. The NFC also promised to supply at least 150 quintals more to the depot.<sup>156</sup> Not surprisingly, a report has claimed that people of Bajura district were not fleeing due to lack of food grains but due to lack of money to purchase food from the government food depots. The government authorities claimed that there were some 1,250

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<sup>149</sup>. Bajura food crisis: DDC chief rues govt apathy, The Himalayan Times, 14 December 2005

<sup>150</sup>. Bajura famine: Hundreds more cross over to India, The Himalayan Times, 8 December 2005

<sup>151</sup>. Famine Hits Western Nepal

<http://www.newslinenepal.com/index2.php?option=news&details&sno=712>

<sup>152</sup>. No food shortage in Bajura: NFC, Nepal News.com, 6 December 2005

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<sup>153</sup> Bajura food crisis: DDC chief rues govt apathy, The Himalayan Times, 14 December 2005

<sup>154</sup>. Famished More People Leave Bajura, The Himalayan Times, 18 December 2005

<sup>155</sup>. After Bajura, Famished Karnali Residents Fleeing to India, The Himalayan Times, 11 December 2005

<sup>156</sup>. NFC airlifts food grains for famished Bajura, The Himalayan Times, 9 December 2005

quintals of food stock in NFC branch office Martadi and Kolti food depot.<sup>157</sup>

Surely, the government of Nepal has failed to protect the fundamental right to food of its citizens.

## 10. Denial to access to justice

### Case 1: Refusal by police to register a case on the suspected murder of Bimala Subedi<sup>158</sup>

On 28 December 2005, police reportedly refused to register a case on the death of Bimala Subedi, a pregnant woman who died after 'consuming poison' in Morang. According to report, Dilli Prasad Koirala, father of the deceased, went to the Morang district police office to file a case against five persons, including his son-in-law, Laxman Subedi, on the charge of murdering his daughter, but the deputy superintendent of police, Sharad Chand allegedly refused to register the case without a witness to the alleged murder. A team of ABC Nepal, Maiti Nepal, journalists, advocate and human rights activists again went to the office to file the case on 29 December 2005, but yet the police refused to register a complaint. This is despite the fact that there was prima facie evidence that Bimala Subedi was tortured by the accused.

The victim's father Koirala alleged that Radhav Subedi, father of Laxman, mother and sister used to beat Bimala up time and again for not bringing dowry. Renuka, sister of Bimala, said her sister

had stayed in her paternal home in Hasandaha village development committee-4 for one-and-a-half years after she was subjected to torture. The family members had even denied food to Bimala and her son. In a complaint lodged at the ABC Nepal on December 2, Bimala had accused Laxman and family members of subjecting her to torture. She went home after the ABC managed to settle the dispute.

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<sup>157</sup> People of Bajura flee to India not because of famine: Report, Nepal News.com, 12 December 2005

<sup>158</sup>. Police refuse to register death case, The Himalayan Times, 30 December 2005

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