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Nepal

Widespread “disappearances” in the context of armed conflict

1. Introduction

Amnesty International is concerned about a widespread pattern of “disappearances”¹ by security forces as part of their counter-insurgency operations against members and supporters of the Communist Party of Nepal (CPN) (Maoist), which declared a “people’s war” in February 1996.

To date, Amnesty International has recorded over 250 cases of “disappearance” throughout the country. Fourteen cases were reported in 1998 during an “intensified security mobilization”, a police operation involving the transfer of armed police units from Kathmandu to districts affected by the “people’s war”. As security operations intensified, a further 80 cases were reported during 1999 and 2001. Following the declaration of a state of emergency on 26 November 2001 and the deployment of the army, over 100 cases were reported in the context of joint security forces operations in the period up to 28 August 2002. A further 35 cases were reported between August 2002 and January 2003, when a cease-fire came into force. Following the collapse of the seven month cease-fire in August 2003, Amnesty International has received reports of 20 more cases of “disappearance”.

Amnesty International has repeatedly called for human rights safeguards to be adopted, in particular a Human Rights Accord, which would give the National Human Rights Commission (NHRC) a mandate to set up five regional offices to monitor human rights with technical assistance provided by the United Nations (UN).

In addition to reports of more than 250 “disappearances”, hundreds of alleged extrajudicial executions, thousands of arbitrary arrests and numerous reports of torture, have taken place in the context of the “people’s war”. Weak institutions, corruption, a lack of accountability and effective reform of the police and judiciary have helped perpetuate a climate of impunity.

The CPN (Maoist) has been responsible for scores of abductions and kidnappings and Amnesty International has called upon the leadership to abide by the principles of international humanitarian law, in particular the provisions of Article 3, common to the four Geneva Conventions of 1949.

¹ A “disappearance” is a deprivation of liberty of a person, perpetrated by agents of the state or by persons or groups acting with the authorization, support or acquiescence of the state, followed by an absence of information regarding the deprivation or refusal to acknowledge it, or by the refusal to provide information on the fate or whereabouts of the “disappeared” person or the concealment thereof.

Amnesty International is calling upon the government to investigate and clarify the fate and whereabouts of the “disappeared”, pay compensation to the relatives and bring perpetrators to justice.

Amnesty International is urging the government to invite the UN Working Group on Enforced or Involuntary Disappearances (WGEID) and the UN Special Rapporteur on torture to the country as a matter of urgency to advise the government on how to bring a halt to a pattern of human rights abuses, including “disappearances”.

2. Background

Over the past decade, political and economic instability have helped foster the conditions for a Maoist insurgency aimed at the *de facto* abolition of the constitutional monarchy and the establishment of a people’s republic. Support for the ideologies expressed by the CPN (Maoist) has surfaced from the most economically and socially deprived areas of Nepal, notably the mid-western region.²

Following the launch of the “people’s war”, the authorities responded to attacks by armed Maoists on police posts, government buildings and other infrastructure, by dealing with the ensuing violence as a law and order problem and deploying large numbers of police units.

From 1998 onwards, as fighting between the police and the Maoists intensified, a pattern of widespread arbitrary arrests and “disappearances” by the state emerged. Those arrested and “disappeared” throughout the country included farmers, students, teachers, lawyers, political activists, juveniles and members of different ethnic groups.

The human rights crisis worsened following the declaration of a state of emergency on 26 November 2001, when the Royal Nepal Army (RNA) was deployed. Scores of people arrested by the security forces “disappeared” for weeks or even months without access to their relatives, lawyers, or doctors; some were thought to have been killed in custody. The state of emergency lapsed on 28 August 2002 and was not renewed.

There have so far been three rounds of peace talks between the government and CPN (Maoist) aimed at finding a solution to the seven year old Maoist “people’s war”. A first attempt was initiated by the Consensus Seeking Committee, set up in December 1999, and chaired by former Prime Minister Sher Bahadur Deuba. Among the conditions for talks set by the leadership of the CPN (Maoist) was a demand for an inquiry into the whereabouts of CPN (Maoist) members and supporters who had “disappeared”. However, the mandate of the Consensus Seeking Committee was not extended when it expired on 16 October 2000. A second round of talks took place following a cease-fire declared on 23 July 2001, but broke down over disagreement about the political demands of the CPN (Maoist), including the formation of an interim government, elections to a constituent assembly and establishment of a republic.

² For background to the “people’s war” and details of Amnesty International’s concerns, refer to *Nepal: A spiralling human rights crisis* (AI Index: ASA 31/016/2002) and *Nepal: A deepening human rights crisis* (AI Index: ASA 31/072/2002).

On 29 January 2003 a new cease-fire between both sides was declared and on 13 March the parties agreed to observe a 22-point “Code of Conduct” which, among other things, committed them to “stop violent and coercive activities and security measures that might ignite fear amongst the general public”, to “refrain from searches, arrests and kidnappings” and to “gradually release prisoners”. However, no human rights monitoring mechanism was put in place and cease-fire violations by both sides continued to be reported on a regular basis.

Three rounds of peace talks took place on 27 April, 9 May and 17 to 19 August 2003 but the process collapsed on 27 August when the CPN (Maoist) stated they were withdrawing from the cease-fire because agreements reached during the second round of talks in May had not been implemented and because the government would not agree to its demands, including setting up a constituent assembly. Fighting between the security forces and armed members of the CPN (Maoist) resumed with an escalation in reports of human rights abuses by both sides.

3. Legal framework

In the early 1990’s Nepal signed up to six main human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights (ICCPR).³

Nepal’s Constitution of 1990 contains a number of welcome safeguards against arbitrary arrest and detention. However, arrests have continued to be carried out under laws which are largely remnants from the *Panchayat*⁴ era, such as the *Sarvajanik Suraksha Ain*, Public Security Act 1989 (PSA) (and its Second Amendment, 1991) and the *Rajya Biruddha Apradh Ra Sayaja Ain*, Anti-State Crimes and Penalties Act 1989 (ASCPA). Several provisions in these laws are in clear breach of the Constitution as well as international treaties, such as the ICCPR, to which Nepal is a state party.

Prior to the declaration of the state of emergency in November 2001, the PSA was widely used to detain people suspected by the government of involvement with, or membership of, the CPN (Maoist). The PSA allows for people to be held in preventive detention for up to 90 days on the orders of a local authority, which is normally the Chief District Officer (CDO), “to maintain sovereignty, integrity or public tranquility and order” of the country. This period can be extended to six months with the endorsement of the Home Ministry. A further extension of up to 12 months from the original date of issue can be obtained subject to the approval of an Advisory Board established under the Act.

In addition to these wide powers given to police and CDOs to arrest and detain, the Ministry of Home Affairs is designated in the Act as the authority to which detainees can appeal in the first instance. Few detainees use this procedure because it is ineffective. Instead, they file a *habeas corpus* petition in one of the Appellate Courts or the Supreme Court.

³ Nepal to date has not ratified the Rome Statute of the International Criminal Court. The Human Rights Chapter of the Rome Statute, in Article 7(i), includes enforced “disappearances” as a crime against humanity.

⁴ *Panchayat* was the name of the non-party political system under which Nepal was governed between 1962 and 1990.

However, owing to a lack of access to legal counsel in the early stages of their detention, detainees find it difficult to file such petitions.

When the state of emergency was declared on 26 November 2001, it resulted in the suspension of many fundamental rights, such as freedom of thought, opinion and expression, the freedom of peaceful assembly, the right not to be arbitrarily detained and the right to constitutional remedy. However, the right to the remedy of *habeas corpus* was not suspended.⁵

The Terrorist and Disruptive Activities Ordinance (TADO) was promulgated as one of the emergency measures in November 2001, giving the security forces the powers to arrest and detain suspects under a preventive detention order. In the two months after the promulgation of TADO, according to government figures, more than 5,000 people were arrested, about half of whom were later released. Approximately 1,200 people were reportedly held in preventive detention and about 1,000 were held on suspicion of involvement in “terrorist and disruptive crimes”. The whereabouts of many of those held under TADO were not made public.

On 10 April 2002 the Terrorist and Disruptive Activities (Punishment and Control) Act 2002 (TADA) became law, replacing the Ordinance of the same name. The Act gives security forces power to arrest without warrant and detain suspects in police custody for up to 60 days for the purpose of investigation and up to 90 days in preventive detention, without being presented before a court. The Act also provides for the setting up of special courts to try TADA cases. Detainees held under the TADA are often held incommunicado for weeks or even months, without access to their relatives or a lawyer.

Most of those arrested under TADA have been held in unacknowledged detention without being produced before a court or judicial authority, in contravention of provisions in the Constitution of Nepal requiring that every accused should be produced before a judicial authority within 24 hours of arrest.⁶ According to figures obtained from the Home Ministry in July 2003, out of 1000 people detained under TADA, 400 had been released. None of those arrested and detained under preventive detention orders of the TADA were presented before a judicial authority.⁷

⁵ Under Article 115 (8) of the Constitution of Nepal it is stated that the right to the remedy of *habeas corpus* is not suspended even at the time of the Proclamation or Order of a State of Emergency.

⁶ According to Article 14 (6) of the Constitution, a person who is arrested and detained has to be produced before a judicial authority within 24 hours of arrest, excluding the period of the journey to the authority. This right cannot be suspended during a state of emergency.

⁷ Principle 32 (2) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that “the proceedings [to challenge the lawfulness of detention, which includes the writ of *habeas corpus*] shall be simple and expeditious . . . The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority”.

4. A pattern of “disappearances” emerges

“Disappearances” are not a new phenomenon in Nepal. Several “disappearances” were reported in mid-1985 in the context of a civil disobedience campaign against the government resulting in a series of bomb explosions in the capital. The WGEID retains four unclarified cases from this period. A commission of inquiry into the “disappearances” reported in 1985, established by the government, concluded that six “disappearances” had been committed during that period, but no action was ever taken on the findings. In at least two of the 1985 cases, there were credible reports that the prisoners had been held at the Police Training Academy in Maharajgunj, Kathmandu, an unofficial place of detention.⁸

A disturbing pattern of “disappearances” and long-term unacknowledged detention emerged following the launch of a large-scale police operation on 26 May 1998, referred to by the authorities as “an intensified security mobilization”, in the districts most affected by the “people’s war” including Rukum, Rolpa, Jajarkot, Salyan in Mid-Western Region, Gorkha in Western Region and Sindhuli in Central Region. The aim was to “flush out” armed activists of the CPN (Maoist) and crack down on people suspected to be supporters or active members. Human rights groups reported that “disappearance” cases rose during the police operations during 1998 and 1999 and Amnesty International recorded 56 “disappearances”.

4.1 Cases of unresolved “disappearances” from 1998 and 1999

Mohan Lal Oli, a teacher and supporter of the Communist Party of Nepal-United Marxist Leninist (CPN-UML), who was arrested by eight armed police in uniform on 12 June 1998. Eye-witnesses saw him being dragged from his house in Mahadevpuri Village Development Committee (VDC), Banke district, dressed only in his undergarments, towards the main road. There he was put into a police van and taken away. Onlookers heard shots and shouts of “Long Live the Maoists”. Relatives suspect police shouted this in order to cover up their identity. When relatives lodged a complaint, constables at the police post said they were not responsible and suggested that he had been abducted by members of the CPN (Maoist). On further inquiry the Deputy Superintendent of Police at the District Police Office (DPO) denied that Mohan Lal Oli had been taken into custody and CDO said he had no knowledge of his arrest. The “disappearance” of Mohan Lal Oli was also raised in parliament and with the NHRC.

Mohan Lal Oli

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⁸ According to Article 10 (1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance, adopted on 18 December 1992, “Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention”.

Rajendra Dhakal, aged 31, a lawyer and human rights defender, was arrested by police on 8 January 1999 from Jamdi, Khairanitar, in Tanahun district, Western Region. He was a member of the Nepal Bar Association, and Chairman of the Gorkha district branch of the Forum for the Protection of Human Rights (FOPHUR), a national human rights organization. The police had obtained a warrant for the arrest of Rajendra Dhakal from the district court in June 1998 in connection with his alleged involvement in the killing of an assistant sub-inspector of police and the robbery of arms and explosives, suspected to have been carried out by members of the CPN (Maoist) in Gorkha district in the context of the Maoist “people’s war”. Also arrested with him were two teachers from the village, Prem Bahadur Thapa and Naya Datta Adhikari. All three were taken to the Bel Chautara area police office, a distance of about ten kilometres. On arrival the two teachers were separated from Rajendra Dhakal who was put into a cell on his own. Prem Bahaudr Thapa and Naya Adhikari were released two days later. The whereabouts of Rajendra Dhakal, last seen by the two teachers at the Bel Chautara area police office, remain unknown.

4.2 Unofficial places of detention

There is strong evidence that the *modus operandi* used by the police from 1998 onwards was similar to the one used in the mid-1980’s, notably keeping detainees in unofficial places of detention. Such places include the Mahendra Police Club in central Kathmandu, the office of the Deputy Superintendent of Police (DSP) at Hanuman Dhoka DPO in Kathmandu, the “Anti-Terrorist Unit” in the premises of the National Police Academy in Maharajgunj, Kathmandu, and the Regional Police Training Centres in Kakani near Kathmandu, in Pokhara, Kaski district, in Nepalgunj, Banke district and in Biratnagar, Morang district.

Some of those later reported as “disappeared” were seen being arrested by police officers in plain clothes and then taken away in unmarked vehicles with covered number plates. The police unit allegedly responsible for these covert operations in urban areas was the “Anti-Terrorist Unit”, a unit functioning under the Directorate of Operations at Police Headquarters.

Several people arrested in Kathmandu in May 1999 on suspicion of being supporters or active members of the CPN (Maoist) were reportedly held at an unofficial place of detention. They included Gore Bahadur Purkoti and Palshang Lama who were arrested on 16 May 1999 and Milan Nepali, Dandapani Neupane, Kamala Sharma and Navin Gautam, who were arrested on 21 May 1999. A report in a local newspaper in August 1999 alleged that the detainees were illegally held at the Western Region Armed Police Forces Section in Pokhara town, Kaski district. Relatives made inquiries but were unable to locate them there or in any other police custody. They remain “disappeared”.

4.3 Arrests and “disappearances” by the security forces during the state of emergency

During the state of emergency, in force from 26 November 2001 to 28 August 2002, there was an alarming rise in reports of “disappearance” and Amnesty International recorded over 100 cases of “disappearance” from this period.

Joint operations by the army, Armed Police Force (APF)⁹ and civilian police were conducted under the unified control of the army. Hundreds of prisoners arrested by the joint security forces were reportedly held in illegal detention at army barracks, APF camps and police custodies throughout the country and were denied the right to communicate with their families or lawyers, or have access to a doctor. Some were held for weeks or even months and some are presumed to have died in custody.

The highest number of “disappearances” (35) recorded by Amnesty International from any one district during this period was in Banke district where detainees were reported to have been held at the Chisapani army camp, a place notorious for torture and ill-treatment.

Under regulations specified in the Army Act, the military authorities are not authorized to hold persons in detention but must transfer the detainee to the custody of the civilian authorities within 24 hours of arrest. When questioned by an Amnesty International delegation in September 2002, the army authorities denied holding detainees in their custody beyond the legally permitted period. They said that after interrogation detainees are handed over to the police who bring formal charges against them or release them.

Those who are transferred to police custody or prison are given a detention order under the TADA, or are charged under other legislation such as the Arms and Ammunition Act. However, hundreds of suspected Maoist supporters arrested under preventive detention orders of the TADA have reportedly spent more than one year in detention without being taken to court. In many cases, the security forces have used a loophole in the TADA to repeatedly issue new detention orders, even if the maximum detention periods of 90 or 60 days’ detention, as specified in the Act, have expired.

Only CDOs, the highest government servants at district level, can issue preventive detention orders when “there exist appropriate grounds to believe that a person has to be stopped from doing anything that may cause a terrorist and destructive act” and “at a place suitable for human beings”, under Section 9 of the TADA. This wording suggests that CDOs need to scrutinize the issuing of each detention order and specify where someone is to be detained. However, according to lawyers, many CDOs have issued the police with blank detention orders signed in advance. In other words, the security forces were given a free hand to decide who to detain.

⁹ A bill to establish the Armed Police Force (APF) became law on 22 August 2001, following approval by the King, as part of the emergency response to the conflict. It provided for the creation of a unit of up to 15,000 police officers trained in the use of sophisticated weapons.

4.4 Cases of “disappearance” reported during the state of emergency

The following cases illustrate the role of the army in “disappearances” during the state of emergency (26 November 2001 to 28 August 2002) and the loopholes in the TADA exploited to prolong preventive detention in unofficial detention centres.

Pramod Kumar Shrestha was arrested on 9 May 2002 in Banke district while working on a timber contract. A man believed to be a plainclothes police officer reportedly came to his home and said the police had called him to the area police office in Kohalpur. When he did not return home that night, relatives went to the area police office. They were told that the army had taken Pramod Kumar Shrestha away for questioning and would release him later. They went to the army barracks at Chisapani and to the office of the CDO to make inquiries, but were not given any information. Since the authorities would not confirm the arrest and detention of Pramod Kumar Shrestha, he was considered to have “disappeared”. He was held incommunicado at the army barracks for three months until his release on 20 August 2002. He was reportedly subjected to torture and ill-treatment while held at the barracks, including being buried in a hole in the ground, blindfolded and beaten with a *lathi* (long bamboo stick).

Bharat Sigdel, a 30-year-old journalist working for *Janadisha Weekly*, a publication viewed as ideologically close to the CPN (Maoist), was reportedly arrested by six police officers in civilian clothes on 19 May 2002 from his residence in Battisputali, Kathmandu. Two others, Atindra Neupane and Lal Bahadur Chalauni, were arrested with him. All three were blindfolded and handcuffed and taken in a police van to an unknown destination, which the detainees later found out was the Mahendra Police Club, an unofficial place of detention. . The detainees were ordered to give the police information about the Maoist leaders. Bharat Sigdel was tortured for 48 hours continuously at the Mahendra Police Club, where he alleges he was beaten with a plastic pipe and wooden sticks on his back, thighs, ribs and soles of the feet (known as *falanga*). He fell unconscious on several occasions and was brought round with water sprinkled on his face. He was transferred two days later to the *Jana Sewa* Police Office, a branch of the DPO in Kathmandu, where his blindfold was removed and he was given food for the first time since his arrest. During the following two months he was moved around between three different police custodies including the Romeo Hall, in the Maharajgunj Police Training Academy, another unofficial place of detention. He was reportedly held there with 60 other detainees arrested from different locations in the Kathmandu valley.

For two months Bharat Sigdel’s whereabouts were unknown, until on 17 July 2002 he was taken to Hanuman Dhoka DPO and issued with a preventive detention order under the TADA by the Deputy CDO. He had been handcuffed for 53 days. He was transferred to Central Jail. On 14 October 2002 an order was issued for his release, but instead of being released, he was brought back to Hanuman Dhoka DPO where he was issued with a new detention order under the TADA, dated 24 October 2002 and sent back to Central Jail. A release order was again issued on 21 January 2003, but he was taken before the Appellate Court which issued a remand extension for a further 20 days. He was eventually released on bail on 25 March 2003.

Ram Prasad Pokhrel, a 31 year old social worker from Kohalpur VDC, Banke district, was arrested on 26 December 2001 by APF personnel from the roadside in Mahadevpuri VDC, Dhakeri, Banke district. When relatives inquired at the local APF camp in Shamshergunj, officers confirmed his arrest, and said he had been handed over to the Maheswari Bahini APF camp headquarters in Nepalgunj. When relatives inquired there ten days later, officers denied he was detained there any longer and said he had been handed over to the army at Chisapani army barracks, Banke district. When relatives inquired at the Chisapani army camp, the Captain there told them that Ram Prasad Pokhrel “is no more” and offered to send a photo of the dead body. However, no photo was ever sent to the relatives and Ram Prasad Pokhrel’s fate and whereabouts remain unclarified

Bipin Bhandari, a 22-year-old student of the Amrit Science Campus, Lainchaur, Kathmandu, was arrested by police in Kathmandu on 17 June 2002, along with three others, Dil Bahadur Rai, Ramhari Rupakheti and Kavi Gautam. Kavi Gautam was later released. Police who had come looking for Bipin at his house two months prior to his arrest, had alleged that he was a member of the All Nepal National Independent Students’ Union (Revolutionary), a sister organization of the CPN (Maoist), which had been banned by the government under the state of emergency.

Relatives reported the students’ arrests to the NHRC and the Nepal Bar Association who raised the cases with the authorities. The authorities denied the arrests.

On 19 June 2002 relatives of Bipin Bhandari lodged a *habeas corpus* petition on his behalf in the Supreme Court. At a hearing of the petition on 21 April 2003, the Supreme Court requested the NHRC, which had been investigating the report that the students had been detained, to present its findings. At a further hearing on 4 July 2003, the NHRC informed the court that they had contact with a witness who was with Bipin Bhandari in detention. The Supreme Court directed the NHRC to take a statement from the witness to present in court. The case remains pending.

Bipin Bhandari

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Unofficial information received in April 2003 indicated that Bipin Bhandari, Dil Bahadur Rai and another student, Navin Rai, might be detained at the premises of the Para Battalion of the RNA in Maharajgunj, Kathmandu. The authorities have not responded to a request for confirmation of their whereabouts and they remain “disappeared”.

4.5 “Disappearances” following the breakdown of the 2003 cease-fire

Following the breakdown of the cease-fire on 27 August 2003, and the resumption of hostilities, there have been reports of at least 20 “disappearances”, the majority in the Kathmandu valley, as plain-clothed security forces personnel have resumed their counter-insurgency operations against those they suspect of being members or supporters of the CPN (Maoist). They include journalists, students, political activists, business people, lawyers and teachers.

Shantha Shrestha, a 68-year-old women’s activist, was arrested from her home in Kathmandu on 31 August 2003, and was released after 19 days in army custody. She had been held blindfold in incommunicado detention at Chhauni army barracks in Kathmandu, where she was interrogated on several occasions.

Shubhashankar Kandel, managing editor of weekly newspaper *Janadharana* (People’s Opinion), was arrested on 9 September from his home in Balaju Banasthali in Kathmandu valley. He was held incommunicado in army custody for 23 days until his release on 1 October.

Neither Shantha Shrestha nor Shubhashankar Kandel had been presented before a judicial authority.

Balaram Sharma (also known as Purna Biram), a writer and poet, and **Ram Hari Chaulagain**, a journalist working for a weekly newspaper called *Sanghu* (Bridge), were both reportedly arrested in Kathmandu on 29 August 2003 by plain-clothed security personnel.

Students **Prakash Chandra Lohani**, **Pradeep Adhikari**, **Nirmala Bhandari** and student leaders, **Krishna Khatri Chhetri** (known as Krishna K. C.) and **Lokendra Dhvaj Khand**, were reportedly arrested from different locations in Kathmandu by plain-clothed security personnel between 27 August and 22 September 2003.

Kiran Usa Pun (also known as Navin Bivas), a free-lance writer and journalist and Vice-President of the Central Committee of the Indigenous Journalists Union (IJU), was reportedly arrested on 21 September 2003 from his rented room in Kirtipur, Kathmandu.

Arrests and “disappearances” have also been reported from districts outside Kathmandu. **Sobhit Yadav**, a member of the *Madheshi* Liberation Front, an organization representing some sections of the community living in the Terai region in southern Nepal, was reportedly arrested from his home in Barmijhiya VDC, Dhanusha district, on 29 August 2003. A local administrator from Raniyapur VDC, Banke district, **Mophiuddin Khan**, was reportedly arrested at a checkpoint from a bus he was travelling on at Bhalugang, Dang district, by a group APF personnel.

At the time of writing, despite appeals to the authorities, the whereabouts of these ten “disappeared” people remain unknown.

5. Abductions by the CPN (Maoist)

The abduction of scores of civilians and police personnel by the CPN (Maoist) and the linking of their release to certain conditions became common practice from mid-2001 onwards.

Those who have been abducted include prisoners held for ransom, members of political parties and people abducted as “bargaining chips” who could be exchanged for Maoist detainees in the custody of the government authorities. Often, the conditions in relation to the release of prisoners have been conveyed to the authorities via the family of the abducted person, the media or local human rights activists.

By the end of December 2002, the NHRC had recorded 72 cases of reported abductions by the CPN (Maoist) which had not been clarified or resolved.

Following the declaration of the cease-fire on 29 January 2003, the signing of a 22-point Code of Conduct on 13 March committed both sides to the gradual release of prisoners and others in their custody. However, reports of abductions by the Maoists continued. Some included members of political parties, including the Nepali Congress Party (NC), and the Communist Party of Nepal-United Marxist Leninist (CPN-UML). They also included teachers and others who refused to pay donations to the CPN (Maoist). According to statistics compiled by human rights groups, between the cease-fire declaration and 17 June 2003, the Maoists abducted 199 people, of whom 74 were released, but 125 remained unaccounted for.

Two CPN-UML members – Man Bahadur Malla and Kal Bahadur Malla - were abducted by the Maoists between 22 and 28 June 2003 from Jubitha VDC, Kalikot district, while on their way to attend a conference in Jumla district. When Tularaj Bista and Til Bahadur Shahi, local CPN-UML leaders, went to visit the Maoists to request their release, they too were abducted. Following pressure from the NHRC, the central leadership of the CPN-UML and other human rights groups, all four were released in mid-August 2003. According to reports they were severely tortured while in the custody of the Maoists, who broke their arms and legs.

6. The legal remedy of *habeas corpus*

Article 9 (4) of the ICCPR states:

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

According to Article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly in 1992:

“Each state shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced “disappearance” in any territory under its jurisdiction.”

Furthermore, the Declaration in Article 13 (6) urges that:

“An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced “disappearance” remains unclarified.”

Habeas corpus petitions have been filed in the Supreme Court and Appellate Courts¹⁰ by many of the relatives of people who “disappeared” after arrest by the security forces, but have proved effective only in cases of illegal detention. This is due to a perception by the judges that it is the duty of the court only to examine the legality of detention. *Habeas corpus* petitions have thus been generally ineffective in establishing the whereabouts of those who are “disappeared” where evidence of their arrest and detention is lacking; such cases are often dismissed or remain pending.

In practice, *habeas corpus* is not enforced by an officer of the court as prescribed in law. A large proportion of *habeas corpus* orders that are issued are ignored by the police or other authorities. In response to writs of *habeas corpus*, the police or other authorities such as the Home Ministry, have failed to cooperate with the courts at various levels and have often repeatedly flatly denied the arrest and detention of the person concerned. Many witnesses are afraid to go and present their evidence in court and are unable to travel the distances involved in order to do so. Decisions are therefore frequently postponed and remain pending in court for years.

Relatives of at least 15 persons reported to have “disappeared” after they were arrested by the police in 1998 and 1999 filed *habeas corpus* petitions in the Supreme Court. In all cases the police denied that these people were taken into custody. Several were later released, but at least half are still “disappeared” and *habeas corpus* petitions on their behalf remain pending in the courts.

One of these cases is that of Rajendra Dhakal (see above) whose relatives lodged a writ of *habeas corpus* on his behalf in the Supreme Court on 21 January 1999. The Supreme Court ordered an inquiry by an officer of the court but the authorities replied by stating that Rajendra Dhakal had not been found in custody. There have been 15 hearings of the case, the last of which was on 16 May 2003, but no conclusion has been reached because the authorities continue to deny that he was arrested.

The disregard or delay in implementation of court release orders has been commonplace. In several well documented cases, detainees have been released on the orders of the judge following a *habeas corpus* hearing, only to be immediately re-arrested by police without warrant from the court premises or environs. The police’s blatant disregard for the authority and independence

Rajendra Dhakal

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¹⁰ There are 16 Appellate Courts and 75 district courts in Nepal, although not all these courts are functioning. *Habeas corpus* petitions can be filed in the Supreme Court and the Appellate Courts.

of the judiciary has become a particularly disturbing aspect of the human rights situation in Nepal.

During the 2001-2002 state of emergency, 72 *habeas corpus* petitions were filed in the Supreme Court, some of which are still proceeding. When the state of emergency lapsed in August 2002, many more petitions were filed, including 120 and 105 *habeas corpus* writs in the Nepalgunj and Biratnagar Appellate Courts respectively. However, only those people who were arrested and handed over to the civilian authorities had been released.

In cases where the prisoner was reported to be held by the army, the civilian authorities appear to consider themselves powerless to act. The judiciary has largely avoided confronting the practice of military detention, even though there is no legal ground for such military detention in law. The problem is that detainees held in military custody are not brought before the judiciary. When a *habeas corpus* petition is filed on behalf of people believed to be held in military detention, inquiries are made to the civilian CDO, who usually denies any knowledge of the detainee’s whereabouts.

During the state of emergency many lawyers were afraid of filing *habeas corpus* writs on behalf of people who had been arrested on suspicion of being members or supporters of the CPN (Maoist) for fear of being arrested themselves under the TADA for “supporting terrorism”. There are several cases of lawyers who were detained and held incommunicado because they had given legal representation to suspected Maoists. In some cases, their family members were also threatened. Upon release their movements were restricted and they were forced to report to the authorities on a regular basis.

There have been cases where the authorities have formally denied detaining someone, in response to a question from the Supreme Court, while at the same time allowing the relatives of the person access to them in custody, as in the case of Raman Kumar Shrestha.

Raman Kumar Shrestha, a lawyer, was arrested by army personnel on 23 August 2002, on his way to his office in Bagbazar, Kathmandu. It is believed his arrest was on account of his work as a lawyer in a Legal Relief Centre defending victims of social or political injustice. His whereabouts remained unknown for several weeks following his arrest. A *habeas corpus* petition was filed on his behalf in the Supreme Court on 28 August. He was reported to have been held in army custody at the Chhauni army barracks in Kathmandu. Despite the fact that Raman Kumar Shrestha’s relatives were permitted to see him while in detention at the army barracks, the authorities continued to deny that he was in custody in their response to the Supreme Court. Raman Kumar Shrestha was released on the orders of the Supreme Court on 4 October 2002.

One of the factors influencing this situation is that, despite provisions in the Supreme Court and Appellate Court rules, judges are not very proactive in issuing contempt of court orders, when faced with information provided by the authorities which later proves to be incorrect. This has meant that members of the security forces who lie to the courts during *habeas corpus* hearings, have generally escaped sanction.

There is no legal basis in Nepali law for compensation to be granted by the courts in relation to “disappearances”. Amnesty International has called upon the Supreme Court of

Nepal to follow the practice elsewhere in South Asia where the courts have ordered damages to be paid to the family of a “disappeared” prisoner, as a form of redress by a specified date, in cases where it has been proven that someone who has “disappeared” was last seen in the custody of the state. It has also urged the court to forward copies of cases to the Attorney General for further investigation with a view to prosecute those responsible for the “disappearance”. To date, the court authorities have not acted on these recommendations.

For *habeas corpus* to become an effective remedy, the Supreme Court should use its power to enforce fundamental rights, in accordance with provisions in the Constitution of Nepal. *Habeas corpus* should be enforceable by a proper officer of the court, as provided in law, but currently not in practice. Officials failing to comply with such orders should be subject to orders in the nature of contempt of court. An independent authority should be able to call upon the CDO to provide details of all persons held longer than twenty-four hours and for the release on application to a local district court of persons held longer than twenty-four hours. The power to hear *habeas corpus* cases should also vest in the District Courts, as well as the Supreme Court and the Appellate Courts, in order to make this remedy more widely available. In the case of detainees held by the army, an independent authority, or the Attorney General, should exercise power to oblige the CDO or police to answer the court’s inquiry, subject to powers in the nature of contempt of court. There should also be an authority for the protection of witnesses and provision for confidentiality where necessary, particularly when testifying against government or military officials. There should also be widespread provision of legal aid.¹¹

7. Action by Amnesty International

Amnesty International has, on a number of occasions, inquired about steps the government has taken to investigate reports of “disappearances” and what action, if any, has been taken against security forces personnel alleged to be responsible.

Government officials have repeatedly denied that the security forces have been responsible for “disappearances”. They maintain that those said to have been arrested and “disappeared” were Maoists who had gone underground or left the country, or they were people who had been killed by the Maoists because they were informants or “enemies of the revolution”. However, when representatives of human rights organizations met the then Prime Minister in early 2000 to inquire about seven people who “disappeared” in Kathmandu in 1999 (see case of Milan Nepal above) he told them that “they are already dead”.

Clarifying the fate or whereabouts of the “disappeared” gained political significance in October 2000 when the Maoist leadership put this forward as a condition for entering into dialogue with the government over a possible solution to the conflict. A list of 73 people who had “disappeared” was submitted by the Maoists to the government at that time.

¹¹ Some of these recommendations are taken from a report by the International Commission of Jurists (ICJ) entitled *Nepal Human Rights and the Administration of Justice: Obligations Unfulfilled* published on 26 June 2003.

On 6 March 2001 the government published a list of 294 detainees being held on charges associated with their activities as members or sympathizers of the CPN (Maoist). The list contained the names of 282 people in custody for their involvement in “terrorist activities” and 12 others said to have been held in “solitary confinement”. Among the 12 were three suspected Maoists who had been reported “disappeared” for several months. The official acknowledgement that people were held in solitary confinement, clearly in violation of the Constitution of Nepal, was in itself remarkable.

The publication of the list was said by the government to be a response to the demand of the Maoist leadership for clarification of the fate of the 73 named “disappeared”. However, the leadership of the CPN (Maoist) later said that the government was not sincere as the list of 294 contained only three of the 73 people they had listed and that the whereabouts of the other 291 prisoners had been known to their relatives anyway.

After the second round of peace talks between the government and representatives of the CPN (Maoist) on 9 May 2003, the Maoists made a further round of talks conditional on a number of demands including the clarification of the status and whereabouts of several hundred Maoists who they claimed were in unacknowledged detention. They had handed over a list of 322 cases to the Home Ministry.

In response to mounting criticism of its human rights record, the government announced the establishment of human rights cells within the Armed Police Force (APF) and the civilian police in January 2001. This was followed by the RNA human rights cell in July 2002 and a similar cell in the Home Ministry, established in January 2003. In November 2002 Amnesty International wrote to the heads of the human rights cells of the RNA, APF and civilian police raising numerous cases of reported human rights violations, including over 20 cases of “disappearance”, urging that they be investigated and requesting information on the findings, including any action taken.

According to figures provided to Amnesty International by the security forces in July 2003, the APF have investigated 22 cases of complaints, including the cases which Amnesty International had raised with them in November 2002, which had been forwarded to the Home Ministry. The human rights cell at Police Headquarters had investigated 15 cases. However, to date Amnesty International has not received any formal reply or clarification about the cases it raised in its letters of 6 November 2002 to the army and police human rights cells.

In a Kathmandu Post article dated 14 July 2003, it was reported that a military court had sentenced two soldiers to periods of imprisonment for human rights violations in Bardiya and Kathmandu districts. The report also mentioned that the RNA human rights cell was carrying out investigation into ten cases of human rights violations. Amnesty International has requested the RNA human rights cell for information but has not to date received any reply.

According to the Home Ministry, in July 2003, it was in the process of checking the list of 322 cases of “disappearance” against its central register of TADA detainees. The results have not, to date, been made public.

8. Action by the National Human Rights Commission (NHRC)

The NHRC was established in June 2000, after sustained pressure from local and international human rights organizations. Over the last three years, with the assistance of the international community, it has tried to address the deteriorating human rights situation in the country by sending fact-finding teams to 35 districts to verify reports of human rights abuses. Reports on the findings have been submitted to the authorities and the Maoist leadership and the NHRC has also made recommendations to the government for the prevention of killings, “disappearances” and arbitrary arrests and detention.

In March 2002, the NHRC formed a five-member committee to investigate “disappearances” which had occurred since the beginning of the “people’s war”. It has received reports of “disappearances” in sixteen districts. The Annual Report of the NHRC, released in December 2002, showed that between July 2001 and July 2002, the highest number of cases of human rights violations reported to it (106) was that of “disappearances”.

The total number of cases of “disappearance” reported to the NHRC by the end of December 2002 was 321, of which 249 were people arrested by the state and 72 were people abducted by the Maoists.

Observers have commented that the NHRC lacks the power to compel testimony and its decisions and conclusions are non-binding; its recommendations, therefore, are frequently ignored by the authorities. NHRC officials themselves complain that they encounter serious difficulties, when families report that a relative had been arrested and “disappeared”, because the authorities fail to reply in substance to their inquiries.

The NHRC has no jurisdiction over the army which is answerable only to the King and the National Security Council (NSC).¹²

In May 2003 the NHRC drafted a Human Rights Accord which provided for human rights monitoring through five regional NHRC offices with technical assistance to be provided by the United Nations (UN). The Accord was presented to both the government and representatives of the CPN (Maoist) with a request for them to sign up to it. Article 4 of the Accord includes the provision that:

“Everyone has the right to liberty. Nobody will be arbitrarily deprived of his or her liberty. The Parties shall undertake measures to prevent illegal or arbitrary detentions. No one shall be held incommunicado or in secret detention. Forced “disappearances” and kidnappings are prohibited. Anyone deprived of liberty shall be held in a recognized place of detention.”

Amnesty International has appealed on several occasions to the government to provide more resources to the NHRC and has supported the initiative to set up five NHRC regional offices to monitor human rights.

¹² The NSC is comprised of the King, Prime Minister, Defence Minister and Commander-in-Chief of the army. When Surya Bahadur Thapa was appointed Prime Minister on 4 June 2003, he retained the Defence Ministry portfolio.

9. Action by the UN Working Group on Enforced or Involuntary Disappearances (WGEID)

Between 1998 and August 2002, Amnesty International submitted 199 cases of “disappearances”, reported in the context of the “people’s war”, to the WGEID, 108 of which were communicated to the Government of Nepal by late 2001. According to the report of the Working Group to the UN Commission on Human Rights (UNCHR) of 2002, there were 87 outstanding cases; only three of which had been clarified on the basis of information provided by the government.

According to the report of Working Group of 2003, the highest number of cases of enforced or involuntary “disappearance” it had received during the year allegedly occurred in Nepal. It had received complaints of 28 new cases, 14 of which had occurred in 2002. During the same period the Working Group clarified five cases, including the case of three teachers from *Jeevan Jyoti* Secondary School, Gorkha district, who had reportedly been arrested by a joint group of army and police personnel in December 2001. Of the 24 additional cases reported to the Working Group, 12 had been arrested by the army and 12 by the police. The Working Group reported that it had clarified 26 cases but that it retained 110 outstanding cases where it was unable to report on the fate and whereabouts of the persons concerned. The Working Group expressed its deep concern that “disappearances” continued in such alarming numbers during 2002.

In July 2003, Amnesty International submitted a further 47 “disappearance” cases to the WGEID, of which 11 were forwarded to the Nepal government for clarification.

10. Conclusions

Amnesty International recognises the grave security threat posed by the “people’s war” in Nepal from 1996 onwards but believes this can never be a justification for grave human rights violations. The organization is concerned about the high number of “disappearances” – over 250 – which it has recorded from the country in that context.

Amnesty International urges both parties to the conflict to sign the Human Rights Accord which would allow for the monitoring of human rights violations in the country.

The organization calls upon the government of Nepal to implement the recommendations of the WGEID and urges it to abide by the UN Declaration on the Protection of All Persons from Enforced Disappearances and the recommendations of the Special Rapporteur on torture. It also calls upon the government to implement Amnesty International’s more specific recommendations outlined below and the general recommendations outlined in Amnesty International’s 14 Points for the Prevention of “Disappearances” (see Appendix).

Amnesty International also calls upon the leadership of the CPN (Maoist) to uphold minimum humane standards applicable to the situation in Nepal, including those contained in Article 3, common to the four Geneva Conventions of 1949, which should be upheld by both the security forces and members of the CPN (Maoist).

10.1 Recommendations to the government

1. End incommunicado detention

- The government should end the practice of incommunicado detention and draw up regulations to safeguard the rights of detainees, including their constitutional right to be produced before a judicial authority within 24 hours of arrest. They should have prompt and regular access to lawyers, relatives and doctors.
- The Royal Nepal Army should hand over detainees to police custody within 24 hours of arrest (or within a reasonable time-frame if arrests take place in a remote location).
- The government should implement the recommendation of the Special Rapporteur on torture that:

“Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.”

- In order to facilitate the search for missing persons, all authorities in charge of places where detainees are held (such as army camps, police stations, police posts and prisons), should be required to provide to a competent civilian authority periodically updated lists of detainees in their custody. Registers of detainees should be kept, including a central register of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Detention registers should be accessible to interested parties.

2. Strengthen *habeas corpus*

- *Habeas corpus* must be enforceable by a proper officer of the court and failure to comply should be subject to a court order in the nature of contempt.
- Re-arrests following release of a person after a *habeas corpus* hearing should be subject to particular scrutiny; the judge hearing a case of a person who has been released following a *habeas corpus* petition should take account of any history of unlawful detention and be particularly vigilant as to patterns of possible abuse.
- An independent authority should be able to call upon the CDO to provide details of all persons held longer than twenty-four hours and for the release on application to a local district court of persons held longer than twenty-four hours.

- In the case of detainees held by the army, an independent authority, or the Attorney General, should exercise power to oblige the CDO or police to answer the court’s inquiry, subject to powers in the nature of contempt.
- District Courts – in addition to the Supreme Court and Appellate Courts – should be empowered to hear *habeas corpus* cases.

3. Criminalize and prevent “disappearances”

- The government should consider making “disappearance” a criminal offence under Nepali law.
- The government should ensure the independent and impartial investigation by the NHRC or a similar independent body of all allegations of serious human rights violations including “disappearances”.
- The government should remove all legal obstacles and create effective systems to ensure security personnel are held criminally accountable for human rights violations, including “disappearances”, committed by them. The definition of those responsible should include those who may have given orders as well as those who carried out the actions.
- All persons detained in military custody should be immediately either released or handed over to the custody of the police or, where appropriate, to the CDO, who should then decide whether to charge the detainee with a recognizably criminal offence or release the detainee.

4. Legal procedures and the administration of justice

- The government should, when parliament is reconvened, repeal the Terrorist and Disruptive Activities (Punishment and Control) Act 2002 (TADA) and the Public Security Act (PSA) which give wide powers to the security forces to hold detainees in preventive detention without charge or trial. If these Acts are not repealed, they should be brought into conformity with Nepal’s international treaty obligations.
- Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. All persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a state-appointed lawyer able to provide effective legal assistance.
- In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.
- Legal aid should be made available for relatives of “disappeared” people lodging *habeas corpus* writs and those claiming compensation for torture.
- There should be an authority for the protection of witnesses and provision for confidentiality where necessary, particularly when testifying against security forces officials.

- Legislation should be enacted to ensure that the victims of “disappearance” and their dependents obtain redress and fair and adequate compensation from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care and the means for the fullest rehabilitation possible.

5. National Human Rights Commission (NHRC)

- The government should give the NHRC all necessary assistance to ensure its independent and effective functioning. Offices of the NHRC should be established at district or at least at the regional level, with priority for those areas where most human rights abuses are reported.
- The government should cooperate with the NHRC and ensure that prompt replies to the NHRC regarding inquiries on cases of human rights violations, including “disappearances”, are made a priority.
- The law should be amended to ensure the NHRC has effective powers to investigate all human rights abuses, including those alleged to have been committed by the army.
- The government should adopt the recommendations set out in Amnesty International’s report: *Proposed Standards for National Human Rights Commissions* (AI Index: IOR 40/01/93), including:

“The result of the Commission’s investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice. The government should ensure that any prosecutions for human-rights related offences are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in the human rights violations.”

6. Strengthen Nepal’s international human rights commitments

- The government of Nepal should consider inviting members of the WGEID, the UN Special Rapporteur on torture and the UN Special Rapporteur on the independence of the judiciary to visit the country.
- The government of Nepal should consider ratifying the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹³

¹³ On 18 December 2002, the UN General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Protocol), which establishes the first international instrument enabling visits to places of detention to be carried out worldwide.

10.2 Recommendations the CPN (Maoist)

- Amnesty International calls upon the CPN (Maoist) to at all times abide by the principles of Article 3, common to the four Geneva Conventions of 1949, which promotes respect for civilians in times of conflict and in particular prohibits the taking of hostages.
- Amnesty International calls upon the CPN (Maoist) to sign the Human Rights Accord, drawn up by the NHRC, which would provide for human rights monitoring in the country.

Appendix 1: Amnesty International's 14-Point Program for the Prevention of "Disappearances"

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied. "Disappearances" cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned "disappearances" as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people "disappear" each year across the globe, and countless others remain "disappeared". Urgent action is needed to stop "disappearances", to clarify the fate of the "disappeared" and to bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of "Disappearances". It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop "disappearances" and to work for their eradication worldwide.

1 Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances". They should make clear to all members of the police, military and other security forces that "disappearances" will not be tolerated under any circumstances.

2 Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearances" by those under their command should be held criminally responsible for these acts.

3 Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4 Mechanism for locating and protecting prisoners

Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.

5 No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to

relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.

6 Authorization of arrest and detention

Arrest and detention should be carried out only by officials who are authorized by law to do so. Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event. Governments should establish rules setting forth which officials are authorized to order an arrest or detention. Any deviation from established procedures which contributes to a "disappearance" should be punished by appropriate sanctions.

7 Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8 Prohibition in law

Governments should ensure that the commission of a "disappearance" is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9 Individual responsibility

The prohibition of "disappearances" should be reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance".

10 Investigation

Governments should ensure that all complaints and reports of "disappearances" are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Officials suspected of responsibility for "disappearances" should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.

11 Prosecution

Governments should ensure that those responsible for "disappearances" are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much

time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.

12 Compensation and rehabilitation

Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

13 Ratification of human rights treaties and implementation of international standards
All governments should ratify international treaties containing safeguards and remedies against "disappearances", including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of All Persons from Enforced Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14 International responsibility

Governments should use all available channels to intercede with the governments of countries where "disappearances" have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate "disappearances". No one should be forcibly returned to a country where he or she risks being made to "disappear".

(This 14-Point Program was adopted by Amnesty International in December 1992 as part of the organization's worldwide campaign for the eradication of "disappearances".)