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NEPAL

Human rights and security

INTRODUCTION

Ten years after the introduction of multi-party democracy and the subsequent coming into force of a Constitution providing increased protection for human rights, Nepal is facing a major challenge in bringing to a halt a worsening human rights situation. The deterioration has taken place over the last four years particularly in the context of the “people’s war” declared by the Communist Party of Nepal (CPN) (Maoist) on 13 February 1996. Grave human rights violations by the police and members of the CPN (Maoist) have since been reported on an almost daily basis. These have included hundreds of extrajudicial executions, dozens of “disappearances” and numerous incidents of torture and arbitrary arrests and detention on the part of the police. Members of the CPN (Maoist) have also been responsible for scores of deliberate killings and abductions of civilians and torture.

Nepal manifested its resolve to uphold human rights in its Constitution and by the ratification of all major human rights treaties. However, the lack of institutionalized human rights protection in the country, a legacy from the era before 1990, is painfully apparent in the current crisis. One of the fundamental challenges, not only for the protection of human rights, but for Nepal’s future stability and development, is to bring the existing legal and administrative provisions fully in line with the principles enshrined in the Constitution and the treaties to which the country is a party.

The authorities have up to now dealt with the “people’s war” largely as a law and order and policing problem. There are worrying signs that the government is set to take a more hardline approach, particularly after it recently put before Parliament a bill to increase the powers of the police to arrest and detain suspects, shoot on sight anyone who “engages in any violent or subversive acts”, impose heavy penalties for various non-violent offences and grant further judicial powers to district administrators rather than courts. The bill is due to be debated at the next session of parliament expected to start in March 2000. In the meantime, the establishment of the National Human Rights Commission (NHRC), one of the measures which could go some way towards institutionalizing human rights protection in the country, has been delayed for more than three years.

BACKGROUND INFORMATION

Although many changes occurred throughout society following the introduction of multi-party democracy in 1990, the civil service and police force have so far not been subject of major reforms. They wield substantial power, often without being subjected to close scrutiny by the legislative or judicial authorities.

Many of today's politicians, including many ministers and the current Prime Minister spent years in prison between 1960 and 1990 because of their opposition to the then *panchayat* (non-party) system of government. They have repeatedly declared their personal commitment to increasing protection for human rights since coming to power. But, it is generally assumed that a lack of experience in governing the country among them and a series of political compromises created space for various power groups from the *panchayat* era, including in the civil service and police, to prevent those responsible for human rights violations prior to the introduction of multi-party democracy being held accountable.

The initial optimism after the introduction of multi-party democracy gradually was replaced by disappointment among human rights organizations. Politically motivated torture and allegations of extrajudicial executions started to recur. The effective impunity granted for human rights violations committed during the *panchayat* era continues to prevail among members of the police particularly.

After four years of government led by the Nepali Congress Party (NCP), political instability ensued when during parliamentary elections in November 1994 no political party managed to secure an overall working majority. This instability combined with widespread corruption, have contributed to a deterioration in the human rights situation in the country over the last few years.

The human rights situation worsened considerably after February 1996 when the Communist Party of Nepal (CPN) (Maoist) launched an armed "people's war" aimed at overthrowing the government and establishing a republic. Continued poverty and corruption are seen as among the main factors behind this conflict. Support for the "people's war" has been particularly strong in the most economically and socially deprived areas of Nepal.

There were hopes that the political situation in the country may have turned a corner in May 1999 when elections resulted in the establishment of a majority government. However, the new government of Prime Minister Krishna Prasad Bhattarai has so far failed to address allegations of widespread extrajudicial executions and torture and an emerging pattern of "disappearances" by police in the context of the "people's war" and instead is looking to adopt security measures similar to those which have been so disastrous for human rights in other parts of South Asia.

This report comments on developments in the field of human rights over the last year or so both in the context of the Maoist "people's war" and routine police work and on a number of underlying structural problems contributing to the apparent deterioration in the human rights situation. It includes findings of an Amnesty International visit to Nepal in November 1999. Six case studies illustrating Amnesty International's concerns have been published separately. Together they will form the basis of discussions with

government officials during a forthcoming visit to Nepal in February 2000 by Amnesty International's Secretary General, Pierre Sané.

RECENT HUMAN RIGHTS ABUSES

Abuses by the CPN (Maoist)

There were reports of 81 deliberate killings of civilians considered by the CPN (Maoist) to be "enemies of the revolution" between November 1998 and November 1999, including alleged police informants. The total number of such deliberate killings reported since the start of the "people's war" is around 200. Many of the victims of such killings are supporters or members of the NCP.

One of the most senior NCP member killed is Thakur Neupane, who was the Nepali Congress district leader of Lamjung district. Armed members of CPN (Maoist) entered his house and shot him dead on 10 November 1999. Another NCP member killed was Tek Bahadur Shahi, who was attacked by members of the CPN (Maoist) armed with *khukuris* (traditional Nepali curved knives) on 27 September 1999 in Achham district. He had earlier received threats, especially at the time he was planning to stand as a candidate in the elections, and had withdrawn his candidature.

Amnesty International -- independent and apolitical

As an international human rights organization, Amnesty International seeks to promote throughout the world the observance of human rights as set out in the Universal Declaration of Human Rights.

Amnesty International is independent of all governments, political ideologies and religious creeds. Its working methods are designed to protect its independence. Its rules require it to be financially self-sufficient and to take no money from governments for its research work. They also ensure that Amnesty International members around the world do not gather, assess or act upon information about human rights abuses in their own country on behalf of the organization.

Amnesty International's research on Nepal is directed from London. It draws on information from a wide range of sources, including lawyers, journalists, development workers and local

Members of other political parties represented in parliament have also become victims of the CPN (Maoist). For instance, on 11 March 1999 eight members of the CPN (United Marxist and Leninist - UML) (the current main opposition party in parliament) were killed and eight others injured during indiscriminate firing by members of the CPN (Maoist) at Harjung in Rolpa district. Among those killed were two 15-year-old boys, Suman Giri and Chaite Punmagar. Eyewitnesses claimed that members of the CPN (Maoist) set fire to the house of one Kamar Rokka and when the members of the CPN (UML) gathered in the house ran outside, scores of CPN (Maoist) members started to fire randomly at them.

Members of the CPN (Maoist) have also abducted a number of people, targeting in particular local NCP politicians and chairmen of local village developments councils (VDCs). On 23 August 1999, Kale Bhandari an active NCP worker and ward chairman of Bijayashwari VDC, Rukum district, was abducted by members of the CPN (Maoist). In November, the Vice-Chairman of Salyan VDC was abducted and was held for several weeks by activists of the CPN (Maoist) until he managed to escape.

There were also reports that “people’s courts” were set up by the CPN (Maoist) in some parts of the country. Some of the punishments, such as beatings, reportedly imposed by these “courts” amounted to cruel, inhuman or degrading punishments.

On the night of 3 January 2000, members of the CPN (Maoist) reportedly summarily executed nine police officers whom they had taken prisoner during an attack on a police station at Rurali VDC, Jumla district.

Widespread reports of possible extrajudicial executions

According to official figures, 436 people were killed by police in the context of the “people’s war” between November 1998 and November 1999. The total number of people reportedly killed by police since the start of the “people’s war” up to November 1999 is 760. On the limited information available to Amnesty International about these incidents of killings, it is estimated that more than half may concern extrajudicial executions.

The authorities invariably claimed those killed were members of the CPN (Maoist). To Amnesty International’s knowledge, they have not acknowledged that any civilians have been killed. In most cases, the government claims the killings occurred during an exchange of fire between members of the CPN (Maoist) and the police. However, there is evidence that the police in many cases have used lethal force in situations where such force was clearly unjustified. These included cases where people had been deliberately killed after they were taken prisoner and others where they had been killed as an alternative to their arrest.

A situation of armed conflict?

Some parties in Nepal argue that the “people’s war” situation should be formally declared by the government to be an “armed conflict”.

Amnesty International does not take a position on whether or not the current situation in Nepal should be declared to be an “armed conflict”. It seeks the observation of minimum humane standards in all situations where law enforcement personnel and an entity opposing them undertake military-style activities on a regular and consistent basis. These principles are contained primarily in Article 3 common to the four Geneva Conventions of 1949 and should be upheld by both police and members of the CPN (Maoist).

These standards include:

- respect for civilians
- prohibition of murder, mutilation and torture
- prohibition of reprisals and summary executions
- prohibition of taking hostages
- need to protect and care for the wounded

There were various contradictory accounts of the circumstances in which seven people, including five girls died at Anekot VDC, Ward No.1, Kavrepalanchok district on 19 March 1999. Some newspapers reported that they had died when a bomb which they had tried to hurl at police hit a wall and exploded among them. Others allege that the police set fire to the house in which the seven people were staying, and shot them one by one as they were running out of the house. Fourteen-year-old Manju Kunwor and 15-year-old Shuvadra Sapkota, were among the girls killed. They were said to have been members of the Cultural Wing of the CPN (Maoist) who had gathered at the house.

During its visit to Nepal in November 1999, Amnesty International collected evidence of several incidents where human rights abuses triggered further abuses. For instance, the killing of Harischandra Shrestha and Bipana Naharki by police at Bakrang VDC, Gorkha district, on 21 April 1999 appears to have prompted the killing in retaliation of Krishna Prasad Aryal by members of the CPN (Maoist) on 1 October 1999. Apparently, Harischandra Shrestha and Bipana Naharki had been unarmed sympathisers of the CPN (Maoist) who had gone to Bakrang to announce a *bandh* (strike). They and a civilian named Ram Bahadur Aryal were killed by police. It is reported that Krishna Prasad Aryal, member of the Nepali Congress and Nepal Red Cross worker was killed six months later because he was thought to have informed the police about Harischandra Shrestha and Bipana Naharki’s presence in the village.

A re-emerging pattern of “disappearances”

A very disturbing pattern of “disappearances” and long-term unacknowledged detention emerged in the context of police operations against suspected members of the CPN (Maoist), especially after the launch of an “intensified security mobilization” operation in May 1998. Amnesty International has evidence of the use by police of secret places of detention and vehicles without numberplates. The total number of “disappearances” recorded by Amnesty International in the context of the “people’s war” is 44, of which 24 took place in 1998 and 20 in 1999. Among them are five women, one lawyer, and six students. The highest numbers were from Kathmandu and Tanahun where a total of nine and seven people respectively were reported to have “disappeared” after arrest by the police.

In one case, Bishnu Pukar Shrestha, a secondary school teacher and member of a human rights organization, was arrested on 2 September 1999 at Satumangal, Kathmandu. Witnesses saw how six men in civilian dress, believed to be police officers, forced him into a Maruti Gypsy jeep with black tinted windows. There were unconfirmed reports that he was held at the "Armed Police Forces Section" situated within the premises of the Maharajgunj Police Training Centre, an unofficial place of detention. Despite action in the Supreme Court, his whereabouts remained unknown as of early February 2000.

Five of seven people who were arrested in Kathmandu in May 1999 and subsequently “disappeared” were reported in local newspapers in August to be illegally held at the Western Region Armed Police Forces Section in Pokhara town, Kaski district. However, relatives have not been able to find them there or in the custody of any other police authority. There have also been reports of prisoners being held incommunicado at the Police Training Centre in Nepalgunj, Mid-Western region.

“Disappearances” are not a new phenomenon in Nepal. The United Nations Working Group on Enforced or Involuntary Disappearances retains as unclarified four cases of “disappearances” reported in mid-1985 under the *panchayat* system as well as the case of Pravakar Subedi, a student who “disappeared” after he was arrested during a demonstration in June 1993 (see also below). A commission of inquiry into the “disappearances” reported in 1985 reportedly concluded that six “disappearances” had been committed but no action was ever taken on its findings. In at least two of the 1985 cases, there were credible reports that the prisoners had been held at the Maharajgunj Police Training Centre. The current *modus operandi* of the police appears to be similar to the one used in 1985.

Torture and death in custody

Many of those arrested in the context of the “people’s war” have complained of torture. Many prisoners were subjected to *falanga* (beatings on the soles of the feet) and *belana* (rolling a weighted stick or other object over the thighs of the prisoner). A woman arrested in November in Ilam district reported how she was hung upside down and given *falanga* in that position. She was also subjected to *belana* and had pins inserted under two of her toe nails. Police also applied electric current to her chest.

Suk Bahadur Lama, a 21-year-old man from Dolakha district who was arrested on a criminal charge, died as a result of torture inflicted for six successive days at Kawasoti Ilaka police post, Nawalparasi district in August 1999. A post-mortem found he had multiple burn injuries on both feet, cauterized abrasions on upper back of trunk, subcutaneous and intramuscular contusions on the back and sides of his trunk, up to middle upper third of both thighs and contusions on both calves and soles. Eight police officers were arrested and charged with his murder. They were released on condition of appearing in court when required, pending the commencement of their trial. According to a letter from the government to Amnesty International, a three member committee coordinated by the Joint Secretary of the Ministry of Home Affairs investigated his death and has recommended departmental action against the police personnel involved in the “heavy handed treatment” [sic] of Suk Bahadur Lama. The family of the deceased has been provided with Rs50,000 financial assistance by the government. This is the first time that the government has provided such assistance.

Arbitrary arrest and detention

According to official sources, more than 5,000 people have been arrested since the declaration of the “people’s war” in February 1996. The total number of political prisoners in custody as of mid-November 1999 was 1,560.

There was widespread abuse of the Public Security Act (PSA), which allows for people to be held in preventive detention for a period up to 90 days to prevent them from taking any action which could have an adverse effect, among others, on the security or order and tranquillity of the country. This period can be extended for another 90 days by the Home Ministry and a further extension 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.

Scores of political activists suspected of being members or sympathetic to the CPN (Maoist) or its front organizations were repeatedly arrested and detained without charge or trial under the PSA despite court orders for their release. Suresh Ale Magar, a lecturer at Kathmandu University and leader of the All Nepal Intellectuals’ Association (Revolutionary), who had filed writ petitions in the Supreme Court challenging the legality of his detention was re-arrested immediately after the Supreme Court ordered his

release on no less than four occasions. After his release on 23 December 1999 he was seen being put into a police van together with Pawan Shrestha, a civil engineer and member of the Newar community. Their whereabouts remained unknown as of early February 2000. On 24 January 2000 relatives of the two men filed *habeas corpus* writs in the Supreme Court to try to establish their whereabouts. The police's blatant disregard for the authority and independence of the judiciary is a particularly disturbing aspect of the current human rights situation in Nepal.

Detainees who claim they have been wrongfully detained under the PSA can, under Section 12A of the Act, file a complaint at the District Court requesting compensation while still in detention or within 35 days of their release. Amnesty International does not know of any cases in recent years where a complaint has been filed or reached a final conclusion.

LEGAL AND INSTITUTIONAL CONCERNS

Protection of the right to life

Although Nepal is party to many international human rights treaties, one of the most fundamental human rights, the right to life, lacks effective protection in existing national legislation. Although the Constitution of 1990 outlawed the death penalty, it failed to explicitly guarantee the right to life. Violations of the right to life cannot therefore be redressed by the Supreme Court.

A number of laws passed before 1990 retained the death penalty as a punishment. In May 1999, the death penalty was finally formally abolished for all crimes after King Birendra Bir Bikram Shah Dev gave royal assent to two legislative amendments repealing provisions for its use for acts such as treason. The death penalty for treason was replaced with a maximum term of 25 years of imprisonment and confiscation of assets. Under the authority of Article 28 of the Constitution, the King is the only authority who can repeal these provisions. Despite the total abolition of the death penalty, no amendment to include the right to life was added to the Constitution.

A pervasive climate of impunity

There is no permanent mechanism in place to investigate independently allegations of extrajudicial executions by the police. Under the Commission of Inquiry Act, 1969 an independent commission can be appointed by the King on the advice of the government. However, this power is very rarely used. In 1990, two commissions were appointed to respectively investigate "loss of life and property" during the movement for the restoration of democracy in early 1990 and "disappearances" which took place under previous governments. The first commission, known as the Mallik Commission (after its

chairman, judge Janardhan Lal Mallik) in its report submitted to the government in late 1990 recommended, among other things, the prosecution of several alleged perpetrators, including the current Inspector General of Police. However, to Amnesty International's knowledge, no action has been taken on these recommendations.

The last time a commission of inquiry was appointed under the above Act was in 1993. A one-man commission headed by former Supreme Court judge Prachand Raj Anil was entrusted with the investigation into the circumstances of the death of the then General Secretary of the CPN (UML), Madan Bhandari and another party member who had died in a jeep accident in May 1993. In a report made public in June, the commission concluded that the accident was not due to any conspiracy, as alleged by the CPN (UML), but had resulted from negligence on the part of the driver. The CPN (UML) disputed these findings and conducted its own investigations. It concluded that there were a number of points left unclarified, raising the suspicion that the two men may have been the victims of a political killing. In the following months, nationwide strikes were called. Finally, an agreement was reached for the setting up of a Commission of Investigation headed by a sitting judge of the Supreme Court to conduct a further inquiry into the death of the two CPN (UML) members. The latter commission is reported to have concluded that there was no conspiracy to murder Madan Bhandari but had recommended that further issues be examined. To Amnesty International's knowledge, no further investigations into the death of Madan Bhandari were initiated.

Lack of independent investigations into violations of the right to life

So far, none of the alleged extrajudicial executions reported in the context of police operations against armed members of the CPN (Maoist) have been subject to an independent investigation. The limited existing legal provisions applicable to the investigation of alleged "encounters" are inadequate and contribute to the prevailing climate of impunity in relation to possible extrajudicial executions. There is a complete lack of accountability in relation to so-called "encounters". Contrary to prevailing provisions for investigations into suspicious deaths in other countries in the region, where a local magistrate or judge is entrusted with these investigations, in Nepali law the investigation of such deaths are in most cases dealt with as an internal police matter. The Chief District Officers (CDOs), the most senior government administrators at local level, who have some authority under the Local Administration Act to regulate the use of lethal force by police (see below) do not appear to use these powers in the case of suspicious deaths reported in the context of the "people's war". In most cases, the bodies are disposed of without a post-mortem.

According to the Inspector General of Police, all reports of "encounter" killings are investigated under provisions of the Police Act, 1955 and if police officers are found to have breached disciplinary rules, they are punished under the Act. The Secretary,

Ministry of Home Affairs stated that in addition, an internal inquiry can be instituted in those cases where there is “public outcry”.

In most cases, the bodies of those killed in “encounters” (true or false) are disposed of on the spot by police, by burial or burning. Current provisions for the performance of post-mortem examinations and the disposal of bodies, require that the body of anyone who has died in suspicious circumstances is brought to the nearest hospital for post-mortem. The police is also required to give the public the opportunity to identify the bodies. However, Amnesty International knows of several cases where the bodies were disposed of within hours of the incident, without any of the above procedures being adhered to. There are reports that police photograph the bodies and take statements from witnesses to ascertain the identity of those killed but these documents are not publicly accessible. It appears that the police is using a *lacuna* in the law to dispose of bodies, thereby minimising the opportunity for any future independent investigation into the allegations of extrajudicial executions.

Habeas corpus: an ineffective remedy in relation to “disappearances”

The filing of *habeas corpus* petitions before Supreme Court and Appellate courts in cases of “disappeared” prisoners has proven to be a largely ineffective remedy.

Relatives of at least 15 persons reported to have “disappeared” after they were arrested by police during 1998 and 1999 have filed *habeas corpus* petitions in the Supreme Court. In all cases, the police have denied that these people were taken into custody. A series of further orders by the court have so far not succeeded in establishing the fate or whereabouts of the arrested persons nor in any redress being given to the victims or their relatives.

In the case of Pravakar Subedi who “disappeared” while participating in demonstrations in June 1993, the court dismissed the petition in early 1999. His brother had seen a photograph in a magazine shortly after his “disappearance” which he believed showed Pravakar Subedi, injured, being carried into custody by four police officers. The Supreme Court dismissed the petition on several grounds, including that it had not been established that the person in the photograph was indeed Pravakar Subedi.

Amnesty International has called upon the Supreme Court of Nepal to follow the practice of various other higher courts in the region (including the Supreme Court of India) where the courts have ordered exemplary costs to be paid to a petitioner as a form of redress by a specified date in cases where the fact that someone was last seen in the custody of the state is proven. The Supreme Court of India also ordered that copies of the proceedings should be forwarded to the relevant authorities for further investigations.

Theelu Ghale, a young businesswoman arrested in Kathmandu in 1993, was reported to have been tortured at Hanuman Dhoka and Bhaktapur police stations. In response to a *habeas corpus* petition filed in the Supreme Court police initially denied that she had been arrested. They later produced her in the Bhaktapur district court on a criminal charge, having falsified her date of arrest. After the Supreme Court ordered an investigation and found that she had been arrested one month before, contempt of court proceedings were initiated against the police officers concerned for providing false information to the court. To Amnesty International's knowledge, these proceedings have not concluded to date.

The Torture Compensation Act: another failed remedy

Victims of torture or their relatives can make claims for compensation under the Torture Compensation Act, enacted by parliament in October 1996. Several cases have since been filed under the Act but to Amnesty International's knowledge none of them have so far resulted in compensation being granted. A case filed for compensation for the death due to torture of Suk Bahadur Lama (see above) was withdrawn after police allegedly bribed his family. The father and brother of Suk Bahadur Lama are believed to have received Rs100,000 from the police officers involved and subsequently withdrew the case on 29 October 1999.

GOVERNMENT RESPONSE TO MAOIST "PEOPLE'S WAR"

Under increasing criticism for not addressing the issues raised by the Maoist "people's war", including from within the NCP, the Minister of Home Affairs in early December 1999 announced an "integrated security plan". It consisted of three programs to address the political, developmental and security aspects of the situation. At the political level, a six-member committee was appointed, chaired by former Prime Minister Sher Bahadur Deuba with a mandate to hold consultations with all political parties and make recommendations to the government.

In August 1999 the government announced that 30 million rupees had been made available in the budget to finance the implementation of the Ganesh Man Singh Peace Campaign aimed at the rehabilitation of Maoist activists who agree to surrender and the payment of relief to victims of abuses by the CPN (Maoist). Under the campaign social utilities destroyed by members of the CPN (Maoist) would also be rebuilt. In November 1999 a task force convened by the Home Minister to implement the Campaign announced that widows of victims who had been killed by members of the CPN (Maoist) would receive an allowance and scholarships would be provided to children in affected families up to secondary level. In each affected district, a committee with the CDO as convener has been formed to implement the measures.

More than 400 people were considered under a scheme encouraging CPN (Maoist) activists to surrender.

In addition to existing district security committees, public security committees have been formed in 59 villages in five of the affected districts by November 1999. The committees are responsible for appointing guards, who, in the event of activity by members of the CPN (Maoist), alert the nearest police station. The guards, although they may apply and obtain a gun license, are not provided with arms by the central government.

Proposed new legislation granting special powers

A bill for the Amendment of Some Nepali Laws relating to the Internal Administration was tabled during the 16th session of Parliament in September 1999. The bill is reportedly due to be debated during the next session expected to start in March 2000. Amnesty International is concerned that several of the provisions in the bill are in breach of Nepal's obligations under the International Covenant on Civil and Political Rights (ICCPR) and other treaties to which the country is a party. Amnesty International is particularly concerned by three of six proposed amendments to Section 6B of the Local Administration Act which, if implemented, would seriously compound the risk of arbitrary arrest and detention, including of prisoners of conscience, and extrajudicial executions by the police as well as violate the right to a fair trial by a competent, independent and impartial tribunal established by law.

First, Amnesty International is concerned by the proposed amendment to Section 6B (1) of the Local Administration Act 2028, widening the current powers of CDOs to declare areas to be "riot-affected" to encompass "areas affected by activities of violence or destruction or riot", thereby apparently authorizing CDOs to take measures to address violence occurring in the context of the Maoist "people's war". Once an area would be declared as such, under Section 6B (1) (a) and (b) respectively of the Local Administration Act, the police will have the authority to:

- arrest without warrant any "suspicious persons" in that area and detain them under the Public Security Act;
- shoot on sight any person who indulges in looting and assault in such area, sets fire to residential houses and shops, destroys public property, or "commits any other violent or subversive act".

The vague and ambiguous definition of what constitutes a "subversive act" in both the Local Administration Act and the bill is contrary to the principle of security of the person as laid down in Article 3 of the Universal Declaration of Human Rights, which is a right declared to apply to all human rights by the Human Rights Committee

(Communication No. 195/95) and therefore can be applied to the right not to be arbitrarily detained. In addition, the United Nations (UN) special rapporteur on the independence of the judiciary has stated that vague and imprecise definitions are contrary to general conditions established by international law (UN document E/CN.4/1998/39/Add.1, para 129).

The arrest and detention without warrant under the Public Security Act (PSA) of any “suspicious person” could be in violation of Article 9 of the ICCPR to which Nepal is a party. In its General Comment 8 on Article 9, the Human Rights Committee stated that “if so-called preventive detention is used, for reasons of public security, it must ... not be arbitrary, and must be based on grounds and procedures established by law..., information of the reasons must be given..., and court control of the detention must be available ... as well as compensation in the case of a breach”. The current provision and its proposed amendment, by failing to clearly define “suspicious persons”, open the way for widespread abuses by the police.

If a state of emergency were to be imposed in the country, Article 4(1) of the ICCPR would allow for derogations of the right to freedom of expression, assembly and association, but these restrictions would only be allowed “to the extent strictly required by the exigencies of the situation”. Nepal has not declared a state of emergency consistent with the requirements of Article 4 of the ICCPR or the requirements of Article 115(2) of its own Constitution, and therefore cannot avail itself of these state of emergency exceptions.

In addition, in relation to the proposed amendment to Section 6B(1) of the Local Administration Act, Amnesty International is concerned by the fact that currently the administrative measure by CDOs to declare certain areas “riot-affected” can be extended for three months solely with the approval of the Home Ministry. But, under the proposed amendment, such a 3-month extension could in the first instance be done purely with the consent of the District Security Committee, a body consisting of the CDO himself, the head of the police and the head of the National Intelligence Department in the district and other representatives of government bodies who attend by invitation. It is also proposed that at the expiry of the three months unlimited further extensions of the declaration can be made with the consent of the Ministry of Home Affairs. At no point does it appear that this administrative measure would be subject to legislative scrutiny. Notwithstanding the possibility of challenging the constitutionality of the proposed bill before the Supreme Court under Article 88 (1) of the Constitution, to Amnesty International’s knowledge, no other tests of the legality of these declarations are provided for in the bill.

Secondly, Amnesty International is concerned by the proposed amendments to Section 6B(5) of the Local Administration Act as set out in Section 3(2)(f) of the bill. This provision proposes to extend the current powers of CDOs to sentence people

arrested under the PSA with penalties up to six years for non-violent offences such as writing or affixing posters or leaflets or participating in a meeting of five or more persons. Currently CDOs have the authority to sentence people to sentences of up to three months, a provision which has been of concern to Amnesty International as a violation of the right to fair trial as guaranteed in Article 14 of the ICCPR. By substantially expanding these powers of CDOs, the bill compounds the violation of Article 14, more particularly the right to trial by a competent, independent and impartial tribunal. CDOs are appointed civil servants and do not have any security of tenure at all; their independence is therefore highly questionable.

Thirdly, Amnesty International is concerned that the proposed amendment to Section 6B(1) as set out above will give official sanction to police to commit extrajudicial executions. This would be in direct violation of Article 6 of the ICCPR which guarantees the right to life and its protection by law and prohibits arbitrary deprivation of life. In its General Comment 6 on Article 6, the Human Rights Committee has stated: “The protection against arbitrary deprivation of life ... is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities”. In Amnesty International’s view, both the current provision and the proposed amendment to Section 6B(1)(b) of the Local Administration Act are in breach of Article 6 of the ICCPR.

Amnesty International has urged the government to ensure that principles on the use of force by law enforcement officials as laid down by the United Nations in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are fully incorporated into Nepali law, particularly this bill. This would help to ensure that, as recommended by the Human Rights Committee, strict controls and limits on the circumstances in which a person may be deprived of his or her life are enforced.

The National Human Rights Commission (NHRC)

Despite the passing of legislation for the establishment of a NHRC in October 1996 (gazetted in January 1997), successive governments have failed to take the first step towards its establishment by appointing the members of the Commission. In July 1999, the Supreme Court ruled in a writ of *mandamus* filed by a group of lawyers that the government should proceed forthwith with establishing the NHRC.

In what was presented as a preparatory step, the government set up a Task Force in November 1999 with a mandate to draft rules and regulations for the functioning of the

Commission and to examine its budgetary and other requirements. The Task Force was expected to report to the government by mid-February 2000.

At a meeting of the Nomination Committee (consisting of Prime Minister, Leader of the Opposition and Chief Justice) on 12 December 1999, a shortlist of possible candidates to be nominated as members of the NHRC was reportedly drawn up. The Chief Secretary of the cabinet, who is responsible for convening the Nomination Committee told Amnesty International that he expected the members of the NHRC to be appointed by the beginning of the Nepali New Year (13 April 2000 in the Gregorian calendar).

Since the inception of the NHRC, Amnesty International has urged for it to be established with regional offices. Given the remoteness of many of the areas from which human rights violations are reported, it is imperative for the effective functioning of the Commission that it establishes offices at the district level or at least at regional level.

According to the Act, the NHRC will have to raise its own funds. While this provision will go some way to ensuring the independence of the Commission, it is essential that it also be given all necessary resources to function effectively.

A THREAT TO HUMAN RIGHTS DEFENDERS

Amid the deteriorating human rights situation, the space for human rights work is narrowing. Members of CPN (Maoist) have threatened local human rights defenders, especially in remote parts of the country. Police have also pressurized human rights organizations to refrain from investigating complaints of human rights violations. A number of lawyers who were defending people charged with Maoist activities or in torture compensation cases reported having received threats from the police. Several human rights groups have said that their ability to operate freely was being undermined by the government. For example, in August 1998 the government made it mandatory for non-governmental organizations to get permission before proposing any projects that involve foreign grants.

A HUMAN RIGHTS MANIFESTO FOR THE FUTURE

The challenge before the government to provide increased human rights protection and create a law enforcement system capable of addressing any reports of human rights violations with greater transparency and accountability is a major one.

As one of the poorest countries in the world, Nepal is faced with serious resource constraints. But the cycle of human rights violations and conflict can pose further costs to the development of the country. At a talk program on 10 December, former Prime Minister Sher Bahadur Deuba is reported to have stated: "What we must realize is that as

terrorism increases, all our budget, including development budget, will be directed to combat the problem, to buy arms and for counter insurgency”.

The Constitution of Nepal recognizes the indivisibility of civil and political rights with economic and social development. This is reflected in the range of human rights treaties to which Nepal has become a party.

Amnesty International recognizes the grave security threat posed by the “people’s war” but urges the government to adopt a holistic strategy to ensure the protection of the full range of human rights, ensuring both access to education, services and economic development and the protection of fundamental rights to life, physical integrity, due legal process and political participation.

Amnesty International is calling on the Government of Nepal to implement the following specific recommendations for the investigation and prevention of human rights violations, in particular extrajudicial executions and torture. It also calls on the leadership of the CPN (Maoist) to give clear orders to their members prohibiting deliberate and arbitrary killings, hostage taking and maiming of civilians.

•**Official condemnation:** The government should publicly state its opposition to extrajudicial executions, incommunicado detention and torture; it should give a clear message to members of the security forces that these violations will not be tolerated and ensure that this is reflected in police training programs.

•**Concern about proposed new police powers:** Amnesty International acknowledges a number of recent initiatives aimed at finding a political solution to the issues surrounding the Maoist “people’s war”, but urges the government to refrain from widening the powers of police to shoot on sight anyone who “engages in any violent or subversive acts” as currently proposed in the “Bill for the Amendment of Some Nepali Laws relating to the Internal Administration”, in clear breach of international treaties to which Nepal is a party.

•**Restraint on use of force:** The government should ensure that the police only use force when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable and only in order to protect life.

•**An end to incommunicado detention and “disappearances”:** The government should end the practice of incommunicado detention and draw up regulations to safeguard the rights of detainees. All detainees should be held in publicly recognized places. They should be brought before a judicial authority promptly after arrest and they should have prompt and regular access to relatives, lawyers and doctors.

•**Elimination of torture:** The government should ensure that the act of torture is an offence under criminal law punishable by appropriate penalties taking into account its grave nature.

•**No impunity:** There should be independent and impartial investigations into all allegations of human rights violations, either by the National Human Rights Commission or a similar independent body; those found responsible should be brought to justice.

•**Adequate compensation and redress:** Victims or their relatives who lodge a case for financial compensation should be protected from threats or intimidation. Victims should be provided with appropriate medical care and rehabilitation.

•**An independent National Human Rights Commission (NHRC):** The NHRC should be established as soon as possible. The NHRC must be fully independent, well resourced and in compliance with international human rights standards.