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## @A summary of human rights concerns

### 1. Introduction

The collapse of the government of Prime Minister Marich Man Singh Shrestha in March 1990 and the subsequent lifting of the ban on political parties marked the end of three decades during which political activity was banned and hundreds of government opponents were detained and tortured. Since the coming to power of an interim government in April 1990, succeeded by an elected government in May 1991, hundreds of political prisoners have been released and, as far as Amnesty International is aware, there are currently no prisoners of conscience in Nepal. Reports of torture have also decreased dramatically. However, Amnesty International is concerned that a large number of serious human rights violations, including "disappearances" and extrajudicial executions, committed under previous governments remain unclarified and that those responsible have not yet been brought to justice. It is also concerned about periodic reports of human rights violations under the current government, including torture, politically motivated arrests and extrajudicial killings.

A short-lived experimentation with parliamentary democracy in the 1950s ended in 1960 when the king dissolved parliament and banned political parties. Over the next three decades, widespread human rights violations took place. Hundreds of suspected government opponents were arbitrarily arrested and detained, often without charge or trial. Many suffered torture and ill-treatment, particularly in police custody; and in 1985 several detainees "disappeared" from police custody. There were also persistent allegations of extrajudicial execution. The full extent of human rights violations between 1960 and 1990 remains to be officially clarified. These human rights violations culminated in February to April 1990, with the killing by the security forces of scores of demonstrators and the detention of thousands of opponents of the then *panchayat*<sup>1</sup> (assembly) system of government under which political parties were banned. Hundreds of these detainees were tortured and ill-treated in police custody.

In response to expressions of concern from Amnesty International, successive Nepali government officials repeatedly denied serious human rights violations, and pointed to legal and constitutional safeguards. However, safeguards proved both inadequate and often ineffective and widespread human rights violations continued until the fall of the non-party system in 1990.

On 20 April 1990 a coalition interim government was sworn in, led by Prime Minister Krishna Prasad Bhattarai, a member of the Nepali Congress party, who had spent over nine years in prison because of his opposition to the non-party system. Several other cabinet members had also been detained for their political activities. The interim government was mandated to establish parliamentary democracy under a constitutional monarch and had a stated commitment to protecting human rights. It oversaw the drafting

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<sup>1</sup>Under the previous, non-party system, known as the *panchayat* (assembly) system, elections were held to assemblies at local and national level, but those standing for election were forbidden from joining a political party. The king was head of state and ministers were appointed and removed by the palace, which also controlled the police, the army and the administration, including at the local level.

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and promulgation in November 1990 of a new Constitution which transformed Nepal from an absolute to a constitutional monarchy and provided increased human rights protection. Hundreds of political prisoners were released, including scores who had sustained injuries as a result of torture in police custody. Many were prisoners of conscience, including 32 people who had been detained for the peaceful expression of their religious beliefs.

Amnesty International submitted a memorandum to the interim government (see [Nepal: Memorandum to the Government](#), AI Index 31/10/90) recommending measures to create a structure for long-term and effective protection of human rights. During the interim government's one year in office Amnesty International welcomed the implementation of several of these measures, including increased constitutional human rights protection, the establishment by the government of two independent inquiries into alleged human rights abuses under previous governments, and Nepal's accession in May 1991 to the International Covenant on Civil and Political Rights (ICCPR) and its optional protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Following multi-party elections, held in May 1991, a Nepali Congress government took power led by Prime Minister Girija Prasad Koirala, who reiterated his party's commitment to the protection of human rights as stated in its election manifesto.

Amnesty International recognizes the improved human rights situation in Nepal and the positive steps already taken to provide long-term human rights protection, but remains concerned that there are some areas in which the Constitution may not provide sufficient human rights protection, notably the right to life, the right to freedom of religion and the protection of human rights during a state of emergency. Moreover, Amnesty International believes that constitutional safeguards, while certainly important, do not in themselves guarantee human rights protection: it is essential that the elected government demonstrate its determination to prevent future human rights violations by introducing further legal and procedural measures to provide effective mechanisms for the enforcement of those human rights standards guaranteed in the 1990 Constitution and in international human rights instruments to which Nepal is a party. These further measures should include the establishment of an effective mechanism for investigating allegations of human rights violations.

Finally, Amnesty International believes that the government should fully clarify the serious human rights violations which occurred under both previous and current governments and take action to bring the perpetrators to justice. Two commissions were appointed by the interim government to investigate past human rights violations, but their findings have not yet been acted upon. Human rights violations allegedly committed under the interim and current governments have not, to date, been the subject of independent impartial investigations, and there have been no cases to date in which human rights violators have been brought to justice. Amnesty International believes that the facts about human rights abuses under previous and current governments should be established and made known in full, and that the bringing to justice of those responsible would be an important step in helping to prevent the recurrence of such human rights violations.

## 2. Background

Nepal, with a population of around 19 million, remained closed to the outside world, until the overthrow in 1950 of the hereditary Rana family which had ruled the country for over 100 years. In the 1950s Nepal experimented with a multi-party democratic system under the then head of state King Tribhuvan and his

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successor King Mahendra. In 1959 King Mahendra oversaw the drafting of Nepal's first Constitution, which provided for a party-based parliamentary system. Multi-party elections held in 1959 were won by the Nepali Congress party, but the government was short-lived, and in December 1960 the king revoked the Constitution and dissolved parliament. The prime minister and other politicians were imprisoned and the nascent democratic system was replaced by absolute monarchy. Political parties were banned and a system of non-party rule was established, centred on the king supported by key figures in the army, the police and the administration. The next three decades saw the evolution of a body of laws, such as the Organizations and Associations Control Act (1963), the Treason (Crime and Punishment) Act (1961 plus later amendments; repealed in 1989 and replaced by the Anti-State Crimes and Penalties Act. Both of these Acts are generally known as the State Offences Act) and the Public Security Act (1961, plus later amendments), used to curtail freedom of expression and to imprison government opponents. A massive growth in the bureaucracy and an expanded police force reinforced the repressive apparatus of the state.

Political party members gradually reorganized themselves into underground networks and continued to function despite regular arrest. Over the years, underground opposition continued despite repression, and as Nepal's economy stagnated despite the increasing amounts of foreign aid, the *panchayat* authorities came under growing pressure to make economic and political changes and to improve human rights protection. During the 1980s some modifications were made to legislation, taking account of international human rights standards, but these were largely ineffective. Detention and torture of government opponents continued; the ban on political activity remained; and significant reforms failed to materialise. Opposition to the government and the system gathered momentum, fuelled by persistent rumours of government corruption, misappropriation of aid money by officials, and a growing awareness of the extreme poverty of most Nepalis.<sup>2</sup> Opposition from members of banned political parties was increasingly matched by opposition from the professional classes, including doctors, lawyers, teachers and journalists. Human rights groups became more active, and people who had accepted the system for many years became increasingly critical of the government.

In January 1990 the main political parties began to plan a joint campaign for the restoration of democracy. The aim of the 1990 Movement for the Restoration of Democracy (MRD) was the establishment by peaceful means of a system of multi-party democracy in Nepal, and it gained widespread support throughout the country, including from professional groups who in the past had not openly opposed the non-party *panchayat* regime. A series of nationwide demonstrations and strikes was scheduled to be launched on 19 February 1990. The authorities responded as they had during earlier campaigns in 1979 and 1985 by making mass arrests. Most arrests were made under the Public Security Act (PSA), which at that time allowed up to 18 months' imprisonment without charge or trial. By mid-February, even before the launch of the MRD campaign, over 350 people, including members of banned political parties, lawyers, journalists and students, were detained without charge or trial under the PSA. After the start of the campaign, repression increased with the closing of newspapers, the arrest and torture of hundreds of MRD supporters and the shooting of demonstrators in which at least 63 people are believed to have been killed.

By the end of March, thousands of people were in detention including students, agricultural workers, doctors, nurses and academics, and there were reports from throughout the country of detainees being severely ill-treated and tortured in police custody. Incidents in Chitwan and Dhanusha in which police

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<sup>2</sup>Nepal's rural per capita income is one of the lowest in the world, with many people living outside the monetary economy, scraping a subsistence from the land.

shot dead several demonstrators were followed on 6 and 9 April by incidents in Kathmandu in which security forces opened fire on demonstrators killing a total of at least 45 people. These mass arrests, torture and killings precipitated the fall of the *panchayat* regime and the advent of multi-party democracy under a constitutional monarch.

### 3. Human rights abuses under previous governments

The occurrence under previous governments of widespread and arbitrary arrest, torture, ill-treatment and "disappearance" of detainees remains of concern to Amnesty International for two reasons. First, concern arises because serious human rights violations remain unresolved: the fate of some of the victims has not yet been clarified and the perpetrators have not been brought to justice. Second, Amnesty International is concerned that existing and improved safeguards may yet be insufficient to prevent the recurrence of human rights violations. By describing human rights violations under previous governments, this report aims to highlight the ways in which previous safeguards proved inadequate or ineffective, and thus to indicate areas in which new constitutional and other safeguards should be further strengthened in order to provide effective protection against human rights violations.

Examples of human rights violations given in this section took place either under *panchayat* governments, mostly during the 1980s, or during the 1990 Movement for the Restoration of Democracy during which already established patterns of human rights violations were repeated, probably on a wider scale than ever before in Nepal.

#### 3.1 Arbitrary arrest and detention under previous governments

The *panchayat* Constitution of 1962, in force under previous governments, contained several clauses providing apparent protection against arbitrary arrest and detention. For example, Articles 11(6) and 11(7) stated that:

"No person who is arrested shall be detained in custody without being informed, if practicable, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of 24 hours of such arrest."

Article 11 also guaranteed the right to freedom of expression. However, this apparent protection against arbitrary arrest and detention of prisoners of conscience was rendered ineffective by Article 17 which provided for "restrictions on the exercise of fundamental rights for public good". Thus such protection was deemed to be inapplicable to persons arrested under laws such as the Public Security Act and the Destructive Crimes Act (1985), which permitted detention without trial for specified periods "for the public good". In addition to these two laws, there was a plethora of legislation under which people could be detained and convicted for their peaceful political activities.

During times of political unrest, particularly in 1979, 1985 and 1990, campaigners against the non-party system were subjected to mass arrest and detention; and throughout the 1980s Amnesty International documented a pattern of human rights violations which included frequent arbitrary arrest and detention of

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hundreds of political detainees. Arrests took place even in remote areas, often as a result of information on people's political activity or opinions passed by village administrators to the detaining authorities (usually local government officials). At any one time there was an average of around 200 political detainees in Nepal's prisons and police stations. Most were prisoners of conscience held without charge or trial for periods ranging from one month to several years, or were imprisoned following trials which did not meet international standards for fair trial. Members of banned political parties, trades unions and human rights groups, all of which operated unofficially, were repeatedly arrested under the Public Security Act (PSA) which at that time allowed detention without trial for periods of up to three years.<sup>3</sup> Arrests under the PSA are estimated to have accounted for over 40% of political arrests. Students, agricultural workers, teachers and journalists were regularly arrested for their non-violent beliefs and activities. For example, Bhoj Bahadur Rijal, a schoolteacher in the small village of Salyantar was briefly detained after he raised the question of teachers' pay with the local administrator. Sushil Chandra Amatya and Sitaram Maskey, both teachers and members of a then banned teachers' union, were both arrested in mid-1987 and detained for 18 months under the Public Security Act for their peaceful trade union activities.

Some political detainees spent many years in jail because they had been convicted after unfair trials on charges ranging from treason to murder. Others were repeatedly rearrested, including several detainees who had been held for the maximum three years under the PSA were "released" only to be immediately rearrested as they left the jail premises and further detained, in some cases for several more years. Thus people were effectively detained under the PSA for longer than the legally permitted limit. For example, student Bhola Bohra, arrested under the PSA in January 1984, was not released until May 1989.

During the 1990 Movement for the Restoration of Democracy, over 8,000 democracy campaigners and sympathizers were arrested, including hundreds of students and agricultural workers, lawyers and journalists. Members of Amnesty International were among those detained. Despite provisions in the Police Act requiring the police to keep written records of all detainees in their custody, in some cases the police failed to keep such records, and ignored legal requirements to bring detainees before a court within 24 hours of arrest.

The whereabouts of many of those detained during the MRD campaign were unknown to their families until after their release, because police failed to inform relatives, gave false information, and in some cases did not keep accurate detention records. Some people were held in unacknowledged detention, so that when families inquired at police stations and prisons about their missing relatives, they were often told that their relatives were not held there, only to find after their release that they had in fact been held at one of the places whose personnel had denied the detention. Several Nepali lawyers have told Amnesty International that during the MRD arrests police often made no proper records of the detainees in their custody. One lawyer arrested on 18 February 1990 and detained under the Public Security Act told Amnesty International that, although his name was entered in a police register, he believed this was done only because he was a lawyer and that it was the exception to normal practice at the time. Another lawyer said:

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<sup>3</sup>The PSA was amended in August 1989 and the maximum time permitted for detention without trial was halved from three years to 18 months. In a further amendment enacted by the interim government in April 1991 the maximum detention period was further reduced to one year. However, the clause which stipulates that detentions under the PSA are not subject to judicial review remains.

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"While I was detained my brother and sister came to the Traffic Police headquarters [where he was detained]... They had gone to other police stations to ask whether I was there... When they came to the Traffic Police headquarters, they spoke with a policeman and asked if I was being held there. He was a helpful man, and he came in... and shouted my name. When he found I was there, he went back and told my brother and sister. He need not have done this. It was chaos at that time, and I do not believe he had any written records of who was detained there."

Records of some prisoners' whereabouts were reportedly falsified during 1990, apparently to conceal the fact that prisoners had been held in police custody for longer than the legally permitted maximum.

According to many reports received by Amnesty International, detainees in both police and prison custody have often been held incommunicado, with no effective right to see a lawyer or doctor of their choice, or to be visited by their relatives. It has thus been very difficult to challenge a detention order or to prepare a defence. Where cases came to court, state lawyers and police doctors were often provided but did not always act in the interests of their clients. Moreover, it appears to have been common practice in the past for defendants not to have access to a lawyer during pre-trial detention, but only at the trial stage, often only on the day of the trial. This made it impossible for the accused to have a proper defence. Around 20% of political detainees were convicted under the State Offences Act after trials which did not meet international standards for fair trial. Some people were also detained and convicted on religious grounds, in contravention of the right to freedom of religion (see section 6.5). Trials of political detainees were often delayed so that by the time a case came to court the detainee had already been imprisoned for a longer period than the permitted sentence for the offence.

Hundreds of people detained during the MRD were held incommunicado in unofficial places of detention such as grain warehouses in rural areas and, in Kathmandu, in non-custodial police premises such as the Traffic Police headquarters, the Police Training Centre in Maharajganj and the Mahendra Police Club. Warehouses and non-custodial police premises were also used in 1985 to detain political prisoners, some of whom later "disappeared" (see section 3.4). The use of unofficial places of detention puts detainees at increased risk of torture and ill-treatment. The risk was compounded by the practice, used both during the MRD and during earlier mass arrests, of constantly moving detainees around from place to place, sometimes apparently without written records being kept. For example, several people detained during March 1990 in Chitwan said they were constantly moved between Bharatpur DSP office, and a nearby police training centre, and Hetauda DSP office. They said they were tortured in all three places. It was impossible for relatives of these detainees to establish their whereabouts and impossible for them to obtain proper legal representation and a judicial review of the reasons for their detention. Constitutional provisions for judicial review were frequently ineffective, partly due to the largely passive role of the Supreme Court which was the court of appeal. Moreover, under the PSA there was no such provision, since the Act specifically states that detention cannot be challenged in a court of law.

The procedure of *habeas corpus* did exist under *panchayat* governments, but is known to have been ineffective on many occasions due to the court's inability to elicit cooperation on the part of the detaining authorities who simply denied arresting or continuing to detain the person (see also section 3.4). Amnesty International knows of occasions when, after the issuing of a search warrant by the courts, detainees were made to hide or were transferred in order to avoid their being found in police custody. For example, one lawyer described a case where his client, the wife of a fruit-seller, told him of the arrest two years before of her husband who was still detained without charge. A *habeas corpus* petition was launched, but the

police denied in court that the man was held by them. On the lawyer's insistence, the court then issued a search warrant and a court official was sent to search police premises. The official reported back to the court that he had been unable to find the man and the court took no further action. One month later the man was released, and he told his lawyer that he had in fact been present when the court official had searched the police premises, but that the police had forced him to hide under a bed, threatening him with death if he disobeyed.

### 3.2 Torture under previous governments

Torture was not prohibited by the 1962 Constitution. There were constitutional guarantees against self-incrimination, but this did not prevent torture of detainees in order to extract confessions. There was legal provision for bringing a charge of assault which could have been used against alleged torturers; and the Police Act provides for action to be taken against a police official who "improperly manhandles any person under his charge". However, no successful action is known ever to have been taken against alleged torturers under these or any other provisions.

Nepal has a historical tradition of torture and humiliation of criminals by local authorities. As the country underwent a process of political and social change, punishment by torture was effectively incorporated within the criminal justice system and extended to the growing number of political detainees. Witnesses have testified to the use of routine torture against political and criminal detainees during the 1960s and 1970s, by both police and prison personnel. Army involvement has also been alleged. One doctor, later a human rights activist and a minister in the interim government, described the following incident, which also illustrates the pressure brought to bear on medical personnel in an attempt to ensure their complicity in human rights violations.

"This incident to which I was a witness occurred in Syangja in 1963. The *badahakim* (district governor) sent a police inspector and several officials to the health centre to force me not to certify, or to certify falsely as usual, in a medico-legal case where there was evidence of torture with multiple bruises and contusions all over the body. The victim was tortured by the *badahakim* himself in order to make him confess to compliance in a political case. For some reason he released the victim, who filed a complaint in the court. When I refused to comply with the order of the *badahakim*, he sent many *mandales* (vigilantes) with police to threaten me. They even threatened that I would be shot and disposed of in the jungle, never to be found or recognized by anybody.

As a medical officer serving in nine different districts between 1963 and 1973, I found that the doctors and medical professionals are at constant risk of persecution from the law-enforcing agents, who often try to force them to provide false certificates on their victims. Few doctors could withstand their persecution because they were either arrested and tortured themselves, or were attacked by *mandales* or thugs, or were suspended or dismissed from their services, or transferred to the most difficult or inconvenient places."

Throughout the 1980s Amnesty International documented the regular use of torture, mainly in police custody but also occasionally in prisons. Victims included both political and criminal detainees. Perpetrators of torture included not only police officials but also administrative officials such as Chief District Officers and Zonal Commissioners who ordered detentions and had routine access to police premises to question detainees. The commonest form of torture was repeated and severe beating,

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including on the soles of the feet. There were also regular reports of torture by the insertion of pins or bamboo splinters under finger-nails; by having sensitive areas of the body rubbed with *sisnu* (a type of plant which causes severe skin irritation); by the pouring of obnoxious substances into the mouth; and, particularly during the 1990 MRD, by immersion in tanks of dirty water and near-suffocation. Torture of political prisoners was apparently used, particularly in police custody, both as a deterrent against continued political activity and in an attempt to obtain confessions.

The scale of political arrests and torture is known to have increased at times of political tension. During the thirty years of non-party rule, several campaigns were launched to protest against the ban on political activity, notably in 1979, 1985 and 1990. On each of these occasions the government made mass arrests and the scale and severity of torture reportedly increased. The same individuals were often repeatedly rearrested and tortured. For example, a teacher now aged 37, first arrested and tortured for a short period in 1978, was re-arrested in 1980 and severely tortured in police custody for six weeks. He belonged to a banned left-wing party, and the police wanted him to reveal the names of other party activists. He was kept confined in wooden stocks<sup>4</sup> which held his legs in a spread-eagled position and was beaten until he became unconscious. He was also beaten on the soles of his feet, kicked in the stomach, beaten with stinging nettles, and had his fingers squeezed with pliers. He was again arrested and tortured during the 1990 political upheaval and is still receiving medical treatment for the physical and psychological after-effects of torture.

Torture of political detainees in police custody was widespread between January and April 1990 when thousands of people were detained and interrogated by police after taking part in the Movement for the Restoration of Democracy's campaign for political change. Most detainees at this time were held in harsh conditions in police custody for up to three months, and hundreds were tortured, including several women and children. The minority who were transferred to prison custody generally reported that torture ceased on transfer, although prison conditions may sometimes have been so harsh as to amount to cruel, inhuman and degrading treatment.

An Amnesty International delegation, including a forensic medical doctor, visited Nepal in April 1990 and interviewed over 60 recently released detainees who had been held in police and prison custody in the Kathmandu Valley, Hetauda and Chitwan. All of those interviewed said they had been tortured and ill-treated while in police custody, sometimes on the orders of senior police or government officials (including Chief District Officers, Zonal Commissioners, government ministers and government lawyers); and most had torture-related injuries. The Amnesty International delegation concluded that torture of detainees, particularly by severe beating, sometimes on the soles of the feet and sometimes while suspended upside down, had been widespread in police custody between January and mid-April 1990. Many detainees said that they had been repeatedly removed from severely over-crowded detention rooms, either individually or in groups, to be tortured under interrogation. Scores of victims sustained broken limbs as a result of being repeatedly kicked and beaten with *lathis* (strong bamboo sticks), and some are still receiving medical treatment. Other methods of torture included the insertion of pins and splinters under the finger nails, electric shocks and sleep deprivation. Many detainees said they were made to sleep on a cell floor covered with stinging nettles, or made to stand for several hours in dirty water. Several said they were nearly suffocated by having water poured into the nose while the mouth was forcibly stuffed with cloth; and several others said that they were threatened with death. Torture victims in Chitwan

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<sup>4</sup>The use of fetters and wooden stocks as a form of restraint and punishment was permitted under the 1963 Jail Act until an amendment in 1989 limited the use of fetters to exceptional circumstances such as attempted escape or violence by a detainee. Amnesty International June 1992AI Index: ASA 31/02/92

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included several injured demonstrators arrested from their hospital beds, and a local Red Cross member who was allegedly told by the police: "You are [an] enemy of the police because you give blood to the enemy of the police." Several Red Cross members were detained in Chitwan after helping to provide medical treatment to people injured after police fired on demonstrators.

The following is typical of the scores of testimonies taken by Amnesty International in the wake of the MRD arrests. It was given by a 29-year-old former detainee, employed as a driver in the Hetauda cement factory, who had been arrested after taking a badly injured demonstrator to his house for medical treatment.

"The police arrested me from work and questioned me about the names of local left-wing people and where their meetings were held. They put pins under my toe nails and knifed the soles of my feet and little toe. I was not involved and could not give the information they wanted. I was put in a small room with about 30 others. For three days I had no food, only water. I told the Zonal Commissioner<sup>5</sup> I was innocent. He replied, 'If you tell us who are the left-wing leaders then we will reduce the torture.' One night they tied me up with wire and put me in a truck behind the driver's seat, so that I could not move. The driver was a civilian. I was driven around for hours. Sometimes the truck stopped and the police came and kicked me. I could see nothing except the roof of the vehicle. After that the police started beating me again. They wanted me to sign some statements. I was beaten all down the arms with *lathis* until the *lathis* broke and my fingers were swollen. All my clothes were removed and I was beaten all over. The police threatened to kill me, and they made sexual threats about my wife, saying they would reduce the torture if I gave them permission to rape her. I wrote my signature many times because the torture was so bad. They put water through my nose and covered my mouth at the same time. Then I was charged under the State Offences Act, also with some false criminal charges including murder. I didn't know the charges until I came to court. When they took me to the District Court I asked the judge for a medical examination, so the police took me to hospital. I saw a woman doctor there, but the police were inside the hospital and in the same room as the doctor and I did not get the treatment I needed. I spend a total of 49 days in custody, of which all except four were in police custody. At the trial there were no witnesses and I had no lawyer except the state lawyer who threatened me.

After trial and conviction he was transferred to jail and then released four days later, immediately after the change of government.

Several detainees testified that some members of the police were forced to beat detainees when they clearly did not want to do so. They were apparently threatened by superiors that they too would be beaten if they did not comply.

Throughout the 1990 arrests, as indeed previously, the *panchayat* authorities denied the existence of widespread torture, saying only that isolated incidents might occur.

### 3.3 Ill-treatment under previous governments

Detention conditions in Nepal are generally extremely poor. In part this is a function of the general level of poverty in the country. However, poor conditions (including overcrowding, lack of hygiene, lack of ventilation, lack of adequate nutrition and lack of medical care), particularly in police custody, appear on

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<sup>5</sup>Zonal Commissioners were appointed by central government and had extensive powers, including over the police, administration and courts. The post was abolished by the interim government during 1990.

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occasions to have amounted to deliberately cruel, inhuman and degrading treatment or punishment. This was particularly the case during the Movement for the Restoration of Democracy. For example, a lawyer arrested on 20 March 1990 and detained for two days at Hanuman Dhoka police station in Kathmandu, prior to transfer to Bhadracol prison, described conditions at the police station as follows:

"There was a small room about 6 feet square. The windows were closed and there was no electric light. Twelve persons were in the room. There was nothing on the floor to sit on except a wet and dirty hay mattress. The room was cold and infested with bugs. The detainees had to plead several times before they would be let out of the room to respond to the call of nature. Students detained had been deprived of food and some even of drinking water. When they saw us they looked as if they had at long last found somebody they could turn to for support and protection. The detainees who were under custody for a long time looked pale, sick, dirty and run down. Some students were regularly beaten and tortured and some of them had great difficulty walking because of the physical torture. The toilet was so dirty that one had to literally step on human dung to get to it."

There were many other reports of detainees, including several who had received bullet injuries during demonstrations, being held in appallingly crowded and unhygienic conditions, without access to toilet facilities or adequate medical care.

It is general practice in Nepal for the families of detainees to take food and clothing to the place of detention. During the MRD, when many families simply did not know where their relatives were being held, and where incommunicado detention was frequent, detainees were often entirely dependent on the detaining authorities for food. People held in police custody at this time have told Amnesty International that they were given inadequate amounts of food, which was often contaminated with insects and not properly cooked. Several MRD detainees said they had been denied food and water for up to 48 hours.

Conditions and treatment in prisons at the time of the MRD seem on the whole to have been better than conditions in police custody, and several former detainees have spoken of their relief at being transferred from police to prison custody. However, there were reports, both during the MRD and earlier, of incommunicado detention, lack of proper medical care, overcrowding, refusal of access to toilet facilities and inadequate clothing and nutrition in prison custody.

### 3.4 "Disappearances"

For several years Amnesty International has been concerned about the still-unknown fate of several men arrested in mid-1985, along with hundreds of others, at the time of a *satyagraha* (a non-violent civil disobedience campaign) protesting against government violation of fundamental rights. In 1990 Amnesty International welcomed the establishment by the interim government of a commission of inquiry into these and an unknown number of other "disappearances" reported to have occurred during the thirty years of *panchayat* rule when political parties were banned. The commission's report was submitted to the government in April 1991, and the government has said that it is studying the findings, which have not, as yet, been made public (see section 5 below). Both Amnesty International and the United Nations Working Group on Enforced or Involuntary Disappearances have repeatedly asked successive governments for information about the whereabouts or fate of six of the "disappeared", but to date there has been no clarification.

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According to unofficial sources, at least eight detainees reportedly "disappeared" from police or military custody in the context of the 1985 arrests, and, in view of reports of severe torture under interrogation of those detained at this time, scores of whom were kept in prolonged incommunicado detention, there must be grave concern for their well-being. Amnesty International has been investigating six of these cases over the past several years to find out what happened to the "disappeared", and has collected detailed information on them, including statements of former detainees who report having seen some of the "disappeared" in poor physical condition in police custody in mid-1985; copies of police reports submitted at the trials; and statements from lawyers relating to the cases. This information, some of which was originally published in 1987 in Nepal: A Pattern of Human Rights Violations (Amnesty International index ASA 31/08/87), is summarised below.

### **Background to the "disappearances"**

A *satyagraha* had been announced by the Nepali Congress party and was supported by other political parties as a protest against government violations of fundamental rights. It was interrupted by a series of bomb explosions on 20 and 21 June 1985, in which six people were killed. Arrests, which had begun before the bombings, then increased and by the end of June hundreds of people were being held in incommunicado detention under the Public Security Act, including many apparently arrested because of their previous political activities and associations. On 25 August the Home Minister announced that 1,750 people had been detained for questioning concerning the explosions and that 101 of these were still being held. In August 1985 the Destructive Crimes Act came into force retroactively and 96 people accused of involvement in a violent anti-government campaign were charged and brought to trial under the Act in late 1986 and early 1987, having spent over a year in jail. The Act provided for detention without charge for over six months, for secret trials, and for the death penalty.<sup>6</sup> At the trials, which took place before special courts sitting *in camera* (contrary to Article 14.1 of the ICCPR which provides for the right of public hearings), all defendants were alleged to have been members of an anti-government organization called the People's Front (*Janabadi Morcha*) which had become active in the southern *Tarai* area bordering India. Sixty nine accused were acquitted and 23 were convicted and sentenced to periods between 3 years' and life imprisonment. Four others were tried *in absentia* and sentenced to death.

The convictions were apparently unsafe because, as far as Amnesty International is aware, no eye-witness testimony was presented in court and there were no clear confessions to the charges. Much of the evidence was presented by "government witnesses", that is accused persons not liable to punishment because they gave incriminating evidence against other accused persons. With only one exception (where the accused was apparently caught with a bomb in his possession), there was apparently no incriminating evidence: all the "evidence" of guilt derived from some detainees' statements about their own and others' broad involvement in the People's Front. Several prisoners retracted in court statements they had made to the police, which they claimed had either been made under torture or fabricated by the police.

The trials took place *in camera* under the provisions of the Destructive Crimes Special Control and Punishment Act which became law in late August 1985, after the bombings occurred. They did not meet international standards of fair trial, particularly in respect of retroactive application of law, incommunicado detention without charge for several months, *in camera* trials and the classified status of court proceedings. They also violated Nepal's then Constitution (Article 11.3) in regard to retroactive application of legislation. However, all convictions were upheld by the Supreme Court in 1988. The Act

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<sup>6</sup>The Destructive Crimes Act was repealed in 1990.

was repealed by the interim government in 1990 and all those sentenced were pardoned in June 1991.

The relatives of those who "disappeared" hold out little hope that they are still alive.

**(1) Dr Laxmi Narayan Jha**

Dr Jha, born around 1950, was a medical practitioner in Janakpur, close to the Indian border. He was arrested in late June 1985, after the bomb explosions had occurred. He had reportedly been a vocal spokesman on behalf of his local community, critical of the local administration, and had been detained previously because of this. A number of people witnessed his arrest, at which the Dhanusha District Superintendent of Police (DSP) was reportedly present. He was first held at the DSP's office in Janakpur, where his family visited him, and after about two weeks was reportedly transferred to the Kathmandu DSP office in Hanuman Dhoka, a large police station in the centre of Kathmandu. His family was not able to visit him, but sent food which was initially accepted on his behalf. After a few weeks, the police informed the family that Dr Jha was no longer in their custody, but gave no indication of where he had been sent. Some reports suggest he may have been transferred to Kathmandu's Police Training Centre; others that he was transferred to military custody and detained in the army barracks. One of the defendants acquitted of involvement in the bombings has stated that before his own transferral to another police station he was held in custody at Kathmandu DSP office, Hanuman Dhoka, in mid-July 1985. According to his statement, he saw Dr Jha in detention at Hanuman Dhoka and Dr Jha had been tortured.

In March 1986, Dr Jha's family filed a *habeas corpus* petition; and in mid-March the Supreme Court ordered the district police, the Chief District Officer (CDO) and the Home Ministry to provide information on Dr Jha's whereabouts. Both the police and the CDO replied that Dr Jha was not in their custody and never had been. The Home Ministry made no direct response concerning the whereabouts of Dr Jha, but simply gave a technical answer saying that the petitioner had not shown how the ministry was a party to the infringement of rights of Dr Jha. In July 1986 the Supreme Court ordered the Janakpur police to explain where Dr Jha was, as a result of which the Janakpur police are said to have denied detaining Dr Jha. A police report dated 17 December 1985 named Dr Jha along with some 30 other people (including Padam Lama, Saket Mishra and Satya Narayan Shah - see below) as having been "incriminated" in the bombings by another of the suspects. It further stated that the "surnames and/or addresses" of these people had "not yet been ascertained", and that "proceedings would be instituted" once these details had been established.

The whereabouts or fate of Dr Laxmi Narayan Jha remain unknown.

**(2) Ishwor Bahadur Lama**

**(3) Padam Bahadur Lama**

These two men, both in their early 30s and from Janakpur near the Indian border, were arrested under the Public Security Act in Janakpur in late May or early June 1985, during the *satyagraha* campaign launched by the Nepali Congress party. Both were members of Nepali Congress. They were reportedly taken to a temporary jail in a local warehouse where they were held with other Nepali Congress members until the bombings occurred. After the bombings they were transferred to Jaleshwar jail, in neighbouring Mahottari district, where they were seen by other detained Nepali Congress members. Soon after arrival at Jaleshwar, they were reportedly removed and taken to separate places where they were questioned and

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threatened with death unless they gave information about those involved in the bomb explosions. After interrogation they were returned to Jaleshwar jail and told fellow detainees what had happened to them. Two days after their return they were transferred to the office of the DSP at Hanuman Dhoka, Kathmandu, where they were held with others suspected of involvement in the bomb explosions. On 20 July they were again transferred, this time to the Police Training Centre in Maharajganj, Kathmandu. They were held there until 3 August when they were reportedly seen being taken away by the police. Some reports suggest that they were placed in military custody in Kathmandu army barracks. The whereabouts or fate of both men remain unknown.

**(4) Saket Mishra**

Saket Mishra, a student in his early 20s, was arrested from his father's home in a village near Rajbiraj on the Indian border in June 1985, following the bomb explosions. He is known to have been held for two or three days at the police station in Rajbiraj, after which he was reportedly transferred by night bus to the DSP office at Hanuman Dhoka, Kathmandu. Over the next three months, Saket Mishra is believed to have been transferred repeatedly from one place of detention to another. Several people have said that they saw him in detention at Hanuman Dhoka DSP office at different times during these three months. However, the authorities are said to have denied that he was held there, and his whereabouts after arrest have never been formally established. Several former prisoners say that they saw him in police custody and that he was bleeding from the rectum and unable to move properly. Saket Mishra's name appears in the police report of 17 December 1985, which also named Dr Jha and Satya Narayan Shah. He was included in the list of people whose names and addresses had yet to be established, prior to prosecution. The whereabouts or fate of Saket Mishra remain unknown.

**(5) Satya Narayan Shah**

Satya Narayan Shah, a young man from Janakpur near the Indian border, was arrested by police in Janakpur on 28 June 1985, following the bomb explosions in Kathmandu. According to some reports, Satya Narayan Shah was taken to the office of the District Superintendent of Police at Hanuman Dhoka, Kathmandu, but his whereabouts after arrest have never been clearly established. His name appeared in a police report of 17 December 1985 presented to the special court set up under the Destructive Crimes Act. The report lists 96 people accused of involvement in the June bomb explosions. It contains statements apparently taken from several of the accused, some of whom later appeared in court, and states that 68 of the accused, including Satya Narayan Shah, "appear to have committed" an unspecified offence under the Act. No indication of the detainees' place of detention is given in this document.

In July 1986 Satya Narayan Shah's father filed a *habeas corpus* petition with the Supreme Court and the court issued a notice to the Janakpur Zonal Commissioner requiring him to provide relevant information at the hearing of the petition on 4 August 1986. However, according to the father, he was himself taken into police custody on 27 July, on the orders of the Zonal Commissioner, and was detained incommunicado for five days without food, during which the Zonal Commissioner threatened that he too would be made to "disappear" if he did not withdraw the petition. He withdrew the petition but made a statement to the Supreme Court from which the following is extracted:

"My son, on the threshold of young manhood, has been taken away without trace, and I have no information as to whether he is alive or not. When I petitioned for a writ I was imprisoned so that I almost died and was compelled to endorse a paper whose contents were unknown to me. I was further threatened with being made to disappear unless I failed to attend the hearing of the writ petition and abandoned the case, and since there was no doubt that this honourable court was unable to protect me from the Janakpur Zonal Commissioner, in order to protect my own life and that of my family, whatever might happen to my son, I withdrew from the hearing... I humbly petition that... if the Supreme Court is able to do something in its own capacity in the form of public interest litigation then it should take proceedings itself, or do whatever should be done in accordance with the law. I cannot fight this case at the price of my own life."

No further action was taken by the Supreme Court, and the whereabouts or fate of Satya Narayan Shah

remain unknown.

### **(6) Maheshwor Chaulagain**

Maheshwor Chaulagain, a 25-year-old primary-school teacher, was reportedly arrested by uniformed policemen on 30 June 1985, just after the bombings took place. He was taken to the Sankhuwasabha District Police Office (in Koshi Zone, eastern Nepal) and his family were not allowed to see him. Despite frequent requests to the authorities by the family, no reasons have ever been given for his arrest. Prior to his arrest he had reportedly been active in the banned Nepal National Teachers' Association, several of whose members were detained by the *panchayat* authorities. Maheshwor Chaulagain's name does not appear in police reports available to Amnesty International, and there appears to be no documentary evidence that he was detained in connection with the bombings, although a former prisoner who was questioned about the bombings has claimed that, in July 1985, he saw Maheshwor Chaulagain in detention at the Kathmandu DSP office in Hanuman Dhoka, where many detainees were taken for questioning about the bombings.

In October 1986 the brother of Maheshwor Chaulagain filed a *habeas corpus* petition in the Supreme Court, seeking information about his whereabouts, stating that he had been refused any meetings with his brother since his arrest, and alleging that his brother had been tortured in Sankhuwasabha District Police Station. The court asked the Sankhuwasabha district police and the Home Ministry to provide information about the arrest and detention. The authorities responded by stating that Maheshwor Chaulagain had indeed been arrested, although not on 30 June as the brother claimed, but over a week later on 9 July. The authorities further stated that Maheshwor had been released almost immediately after arrest. The whereabouts or fate of Maheshwor Chaulagain remain unknown.

### 3.5 Extrajudicial or unlawful killings under previous governments

Under successive *panchayat* governments there were periodic reports of extrajudicial executions, including reports of political prisoners being removed from their cells during the night and shot, sometimes in staged encounters. Some killings during curfew were carried out under the authority of the Local Government Act (Article 6A) which gives powers to the security forces to shoot on sight. No official investigations were carried out by *panchayat* governments into any of the killings, and the number and circumstances of these incidents remain unclarified. Two investigation commissions established by the interim government in 1990 (see section 5) reportedly made inquiries into some of these alleged cases of extrajudicial execution. However, their findings, if any, on this subject have not been made public.

The Amnesty International delegation which visited Nepal in April 1990 found *prima facie* evidence that on several occasions police opened fire on peaceful demonstrators and that in a number of cases, demonstrators were shot in the head, shoulders or chest, some from behind. It has not as yet been established whether some of the dead were deliberately targeted victims of extrajudicial execution, as has been alleged, or whether they were the accidental victims of excessive use of force. Nor has it been established whether the killings were carried out spontaneously or on orders from above.

One of the 1990 inquiry commissions, known as the Mallik Commission (see section 5.1), investigated shootings by police during the 1990 Movement for the Restoration of Democracy. However, the commission's findings were reportedly inconclusive and speculation remains about the exact number of

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people killed during demonstrations between February and April 1990, and about whether the MRD killings resulted entirely from shootings by the police, or whether the army also opened fire. In November 1990 the Ministry of Home Affairs reportedly published a "tentative list" of 63 dead and the government is believed to have awarded compensation to the relatives of these victims. The Human Rights Organization of Nepal says it has identified 70 dead, and believes there are probably more. Other estimates suggest that up to 500 may have been killed. Most deaths are said to have occurred in the Kathmandu valley, Chitwan, and Dhanusha districts. The largest number of killings reportedly took place in the capital, Kathmandu, on 6 April 1990 when police opened fire on a large demonstration. According to some reports at the time, an unknown number of bodies was removed from the scene in army trucks, but there has been no confirmation of this. While it has not been possible to obtain copies of *post mortem* reports for those killed, photographs indicate that several people were shot in the chest and the head, indicating that they may have been deliberately targeted.

The establishment of the truth about what happened seems to have been hindered by procedures relating to *post mortems*. In cases of "suspicious death", *post mortem* examinations are carried out by the police, who then hand over the body to the family of the deceased. Thus, bodies of those killed in demonstrations were taken into police custody for *post mortem* examination, usually by police doctors, and there was no possibility of obtaining an independent opinion on the cause of death. Several families who went to police stations anxious to recover the bodies of their relatives for immediate burial in keeping with religious custom have said that police were reluctant to part with the bodies and did so only after long disputes which were extremely distressing to the relatives. Relatives also claimed that police tried to obtain their signatures for receipt of the body without actually handing over the body; and in at least two cases police accompanied families to the burial site and the cremations took place under police guard. Moreover, there were apparently no effective rules to determine where *post mortem* examinations should be performed and in practice they were carried out anywhere chosen by the police, be it in a police hospital, a police station or other premises. Some doctors have told Amnesty International that both before and during the MRD they were pressured by the police to perform *post mortem* examinations in poor conditions with insufficient lighting because the police were apparently in a hurry to complete formalities.

*Post mortem* examinations on people who die in prisons are performed by prison doctors employed by the Home Ministry. There are apparently no provisions for obtaining an independent opinion on the cause of death.

## 4. Human rights violations under the present government

As already stated, there has been a significant reduction in human rights violations since April 1990, accompanied by improved human rights protection. However, occasional incidents of arbitrary arrest and torture continue to be reported. In addition, there has been an emerging pattern of shootings by police in crowd control situations.

### 4.1 Arbitrary arrest and detention

There have been occasional reports of continuing arbitrary arrest and detention of government opponents. Most such arrests occurred during July and August 1990, when hundreds of civil servants were briefly detained in police custody, for periods of up to several weeks, after participating in a largely peaceful campaign for higher wages and against alleged corruption in various government ministries. The

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detainees were members of the Nepal Civil Servants Organization (NCSO), many of whose members support the communist opposition. They were employed in government ministries and services in Kathmandu; others worked in local administration throughout the country. Some union members were arrested in the street, others from their homes and others while taking part in peaceful demonstrations or while staging "pen-down" strikes in their offices. They were held under the 1970 Public Offences and Penalties Act, which deals with offences such as "obstruction to any public servant... through violence or hooliganism". The Act permits detention pending investigation for up to one month on order of the Chief District Officer (a local government official). There were reports that some police officials tried to force several NCSO detainees to sign statements admitting the use of violence. These detainees reportedly denied the use of violence and refused to sign such statements, but were told that the statements would be used against them anyway. In the event, this did not happen because all detainees were released without being brought to trial, although there were reports that several were held for longer than the permitted month.

In August 1990 Amnesty International urged the government to ensure that trade union members were not subjected to arbitrary arrest and imprisonment solely for their non-violent political or trade union activities. The government replied that they had not "resorted to repressive measures to quell the civil servants strike"; that all detainees had been released; and that a pay commission had been formed to study the problems of the administration.

During the dispute between the government and the NCSO, when hundreds of NCSO members were detained in police custody for several weeks, the Mahendra Police Club was again used as an unofficial place of detention, as police stations were unable to accommodate all detainees. On this occasion, however, unlike common practice during the democracy movement, records of all detainees were reportedly kept by the police and made available to human rights groups.

### 4.2 Torture and ill-treatment

Amnesty International has received well-documented reports of torture in police custody in Baglung District, where over 500 people were arrested following the murder of a policeman during a festival on 15 January 1992. Most were released after one or two days, but 10 were kept in police custody for between 30 and 55 days without being allowed to see anyone and, contrary to Article 14.6 of the Constitution, without being brought before a court. All the accused deny any involvement in the murder and eight of them allege that they were arrested because they support opposition parties. One man was apparently detained because he was suspected of hiding his brother who is among 14 other people reportedly still wanted by the police for questioning about the murder. The accused were unable to consult a lawyer and were not told of the exact charges against them until they appeared in court on 9 and 10 March. Following the court appearance, one man was released on bail and the other 9 were remanded to prison custody pending further investigation. All 10 accused allege that they were tortured by the police, including senior police officers, and in two cases the government prosecutor was said to be present while torture was taking place. According to the accused, the objective of the torture was to make the detainees sign false statements drawn up by the police and the government prosecutor.

Torture reportedly took the form of severe beating, including on the soles of the feet while being tied up and suspended from a pole. Three of the detainees allege that they were burned by a torch made of a stick with oiled strips of cloth attached to the end; and two say that they were forced to lie on beds containing

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pins which pierced their bodies. One detainee is believed to have been treated by a doctor while in police custody. After transfer to jail all detainees were seen by a doctor who had gone to the area specifically to investigate reports of torture. He found healing wounds on the feet of three of the detainees, consistent with their allegations that their feet had been beaten and burned.

There have been other occasional, unconfirmed reports of torture of both political and criminal detainees. These have included one case of death in police custody allegedly as a result of severe beating, and a case in which a member of a minority parliamentary party was reportedly arrested on a false charge of arson and tortured in police custody for a three-week period. According to reports, when he appeared in court on 30 December 1991 he reportedly showed the court wounds on the soles of his feet which he alleged had been caused by burning while in police detention.

No investigation is known to have been ordered into any of these allegations, nor is any other official action known to have been taken.

### 4.3 Possible extrajudicial executions

There have been several reports of deaths as a result of shootings by the police, often during crowd control operations. These may have been extrajudicial executions. Victims have included a 19-year-old student shot dead by police in Khotang on 31 July 1991, after he had joined a demonstration protesting at the detention of two local NCSO members. On 3 January 1992, a Tibetan who had crossed the border into Nepal with a group of other Tibetans, apparently on their way to India, was shot dead by police.

The government has said after each of these killings that official inquiries would be held. After the Khotang incident, the government sent two ruling party parliamentarians to investigate and made a statement in parliament on the basis of that investigation. The statement confirmed a statement made by the Home Minister immediately after the incident that the police had acted legitimately in response to a threat to law and order. However, an investigation by the opposition has challenged this finding, suggesting that the police opened fire without provocation. Amnesty International is unaware of the holding of any official, independent inquiries into any of these incidents.

In April 1992 at least seven people died after police in Kathmandu opened fire on demonstrators who were protesting about the government's economic policies. At the time of writing, there was no indication that any investigation would be ordered by the government.

## 5. Official investigations and government accountability

Amnesty International has noted that, in recent years, dramatic political changes in various countries have often been accompanied by an increased awareness of the need to respect human rights. Many countries, like Nepal, have tried to increase promotion and protection of human rights. Nonetheless, patterns of human rights violations are persisting round the world, including in some countries which have acted to try to stop such violations. Amnesty International believes that the phenomenon of impunity, or exemption from punishment, for human rights violators can be a key factor in contributing to continuing violations. In this respect, the recommendations made by Amnesty International to the 43rd session of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in August 1991 are directly relevant to the present situation in Nepal.

"International standards clearly require states to undertake proper investigations into human rights violations and to ensure that those responsible are brought to justice. The adequate investigation of human rights abuses is essential if the full truth is to emerge. Victims, their relatives and society at large all have a vital interest in knowing the truth about past crimes. Similarly, bringing the perpetrators to justice is not only important in respect of the individual case, but also sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable. When investigations are not pursued and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights cloaked by impunity.

"Impunity negates the values of truth and justice and leads to the occurrence of further violations. If this cycle is ever to be broken, Amnesty International believes that all governments, including successor governments, must undertake certain fundamental responsibilities:

"First, there should be thorough investigations into allegations of human rights violations. The object of such investigations should be to determine individual and collective responsibility and to provide a full account of the truth to the victim, their relatives and society. Investigations must be undertaken by impartial institutions, independent of the security forces, and must be granted the necessary authority and resources for their task. The results of such investigations should be made public.

"Second, those responsible for human rights violations must be brought to justice whether they are officials of a past or current government and regardless of whether they are members of the security forces or unofficial paramilitary groups. Alleged perpetrators should be brought to trial and such trials should conclude with a clear verdict of guilt or innocence. Although Amnesty International takes no position on the nature of the sentence, the systematic imposition of penalties that bear little relationship to the seriousness of the offences brings the judicial process into disrepute and does not serve to deter further violations. It is, of course, also important that such trials are conducted in full conformity with internationally recognized standards and that the defendants are not subjected to torture or to the death penalty.

"Third, amnesty laws which have the effect of preventing the emergence of the truth and subsequent accountability before the law should not be acceptable, whether effected by those responsible for the violations or by successor governments. However, Amnesty International takes no position regarding the granting of post-conviction pardons once the truth is known and the judicial process has been completed."

Thus Amnesty International believes that the Government of Nepal has a responsibility to confront and be accountable for serious human rights violations, such as torture, "disappearance" and extrajudicial execution, including those which took place under previous governments, despite the many difficult questions posed by such a policy. The government's objectives should be to establish and make known the truth, and to act on it in such a way as to ensure that perpetrators of human rights violations are brought to justice and the victims and their relatives are adequately compensated. Amnesty International believes that in pursuing such a policy governments can give an unequivocal indication that human rights violations will not be tolerated, thereby to some extent preventing the recurrence of such abuses. Furthermore, investigations to establish the facts and recommend remedies are an essential way of coming to terms with the reality of human rights abuses and modifying the behaviour of the agencies responsible. Investigations of past human rights abuses can provide a starting point for the identification

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and implementation of legal and procedural changes necessary to provide increased human rights protection in future.

Amnesty International welcomed the establishment by the interim government of a commission to investigate "disappearances" under previous governments, and of a separate commission, chaired by regional court judge Janardhan Lal Mallik and known as the Mallik Commission, to investigate "loss of life and property" during the Movement for the Restoration of Democracy (February to April 1990). Both these commissions have now submitted their reports to the government. However, the government has not published the reports in full, and to date has taken no action on the reports, despite an undertaking to do so. Indeed, Amnesty International knows of no cases in which human rights violators have been brought to justice, despite the seriousness of many of the violations. Amnesty International believes that action should be taken to bring to justice those responsible for the serious human rights violations which took place in Nepal under previous governments. This process should include full investigation and publication of the facts on extrajudicial executions, "disappearances" and torture, which should provide the first step in a process of accountability and redress for human rights violations. Similarly, independent and impartial investigations should be carried out into allegations of human rights violations, particularly torture and extrajudicial executions, under the current government with a view to bringing to justice those responsible.

### 5.1 The Mallik Commission

The Mallik Commission was mandated to investigate "loss of life and property" during the democracy movement, including the shootings of demonstrators, and it submitted its report to the government at the end of 1990. The full report has not yet been published, although a copy is available for consultation in the parliamentary library and its general findings have become publicly known. According to press reports, the commission apparently concluded that "about 45 persons were killed and about 2,300 were injured". This figure seems to contradict the figure of 63 dead given by the Home Ministry in November 1990. The Attorney-General has been reported as having said that no action can be taken on the findings of the commission because the commission was unable to identify the exact laws under which action could be taken, and also because it had been unable to identify the individual policemen who fired on demonstrators. Amnesty International believes that if the Attorney-General's statement is true as reported, it only serves to underline the need both for further legal safeguards and for improved investigation procedures, including full protection for witnesses and investigators. Moreover, the organization also believes that, while it is important to identify those who carried out the fatal shootings, the establishment of the full truth must also include determining whether higher authorities were also responsible for the shootings, and identifying any such authorities.

Amnesty International believes the findings of the Mallik Commission should be made public in full and that, if necessary to establish the truth, the government should order further investigation of alleged human rights violations during 1990 to be carried out by an impartial body or bodies with all necessary powers to carry out investigations, including the power to require witnesses to give evidence. In any further investigations, the government should ensure the provision of full protection both for witnesses and investigators.

### 5.2 The "disappearances" commission

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This commission, formed in July 1990, included a senior advocate, the then president of the Nepal Medical Association, and the general secretary of the Forum for the Protection of Human Rights. It asked for information on all "disappearances" during the previous 30 years, and carried out detailed investigations into all cases which were reported to it (including those detailed in section 3.4 of this report). Investigations reportedly included interviews with people who witnessed the "disappeared" being arrested or who saw them during detention. Some security officials and former members of the administration reportedly gave evidence to the commission, while others apparently declined to do so. The commission submitted its report to the government in April 1991, and the government has said that it is studying the report of the commission. However, to Amnesty International's knowledge the government has made no public statement about how the report will be acted on; nor has the report been officially published.

According to informed sources, the report contains a body of evidence implicating the security forces in the torture and "disappearance" of detainees, and suggests that a number of people who were tortured and who "disappeared" following the 1985 bomb explosions were the victims of a centrally coordinated campaign to silence opposition to the government. Amnesty International believes that the report should be published in full and that the government should take action as soon as possible to bring to justice those responsible for previous human rights abuses, thereby demonstrating its total opposition to torture and "disappearance". Such action is particularly important in view of the fact that some officials allegedly implicated in the torture and "disappearance" of detainees remain in positions of authority, responsible for the care of detainees.

### 5.3 Investigation procedures

The International Covenant on Civil and Political Rights to which Nepal is a party requires government to ensure that victims of human rights violations have the right to effective judicial remedy. However, there appears to be no working mechanism by which victims of human rights violations can make their complaint known to the authorities with a view to further investigation and the seeking of compensation for losses and injuries suffered as a result of the violations. In addition to making legal changes to provide for judicial remedy, there is a need for the establishment of a process to enable independent and impartial investigations into all allegations of human rights violations by the government or its agents. Amnesty International believes the government should give urgent consideration to the setting up of a complaints mechanism and procedure for independent and impartial investigation of alleged torture and extrajudicial killing. Such a procedure could provide an important first step towards a process of judicial remedy for victims of human rights violations under previous and current governments.

## 6. Safeguards against human rights violations

The 1990 Constitution provides substantial human rights protection. Torture is prohibited; compensation for torture or wrongful imprisonment is provided for; and Article 88.2 empowers the Supreme Court to issue writs of *habeas corpus*, and to enforce constitutionally guaranteed fundamental rights in the absence of other existing laws for enforcement.

However, there are some areas, notably protection of human rights during states of emergency, the right to life and freedom of religion, in which constitutional human rights protection could be strengthened. Moreover, although the 1990 Constitution undoubtedly represents a significant increase in constitutional human rights protection, there is a marked absence of precedent for implementation of safeguards, and an accompanying lack of mechanisms enabling the implementation of constitutionally guaranteed human rights protection. Article 88.2 notwithstanding, Amnesty International believes that the government should undertake to review remaining laws and procedures which have enabled the detention and torture of political prisoners, or extrajudicial or unlawful killings with impunity, with a view to introducing further legal and procedural safeguards. These should include the establishment of an accessible mechanism by which alleged human rights violations can be fully investigated and establishment of an effective procedure for bringing to justice anyone against whom there is reasonable evidence of involvement in human rights violations. The government should also establish a mechanism for the compensation and rehabilitation of victims of human rights violations.

### 6.1 Safeguards during states of emergency

Amnesty International is concerned that, under Article 115.8 of the Constitution, there is provision for the suspension during a state of emergency of Article 23 which guarantees the "right to proceed in accordance with Article 88" in order to enforce fundamental rights. By thus removing constitutional remedy, Article 115.8 might contribute to the effective suspension during states of emergency of constitutional human rights protection. Such suspension would be contrary to the provisions of Article 4.2 of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a party and according to which there are some rights which are so fundamental that they may never be suspended. These rights include: the right to life; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or

punishment; the introduction of retroactive legislation; and the right to freedom of thought, conscience and religion.

## 6.2 Protection of the right to life

### 1. **The Death Penalty**

There have been no executions in Nepal since 1979. In the mid-1980s there was an increase in the number of offences carrying the death penalty, but since the political changes of 1990 these have been reduced, so that Nepal now retains the death penalty only for exceptional crimes, notably for attacks on the royal family and, under military law, for espionage. Moreover, the 1990 Constitution (Article 12) states that "no law shall be made which provides for capital punishment."

Article 131 of the Constitution further states:

"All laws in force immediately before the commencement of this Constitution shall remain in operation until repealed or amended. Provided that the laws inconsistent with this Constitution shall, in so far as they are inconsistent, *ipso facto* cease to operate after one year from the commencement of this Constitution."

Amnesty International welcomes these move towards abolition of the death penalty. However, in the absence of specific clarification by the government about which legislation has lapsed due to inconsistency with the constitution, provision apparently remains for capital punishment for exceptional crimes. Amnesty International urges that the situation in relation to remaining legislation providing for the death penalty should immediately be clarified by repealing that legislation or amending it to exclude the death penalty.

Amnesty International also urges that Nepal become a party to the Second Optional Protocol to the ICCPR. The Second Optional Protocol is an instrument by which states can demonstrate to the international community their commitment to abolition of the death penalty. It entered into force on 11 July 1991 and is the first human rights instrument of universal scope aiming at the abolition of the death penalty.

### 2. **Extrajudicial Executions**

International standards require governments to take action to prevent extrajudicial executions or other unlawful killings by members of their security forces. In the past three years the United Nations has adopted important new standards in this area, requiring governments to carry out independent inquiries whenever there are reports of extrajudicial executions<sup>7</sup>, and to establish strict limitations on when force and firearms can be used by their security forces<sup>8</sup>. As a general rule, lethal force should only be used

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<sup>7</sup>ECOSOC Resolution 1989/65 of 24 May 1989 adopting the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions. The Principles also require governments to bring to justice those responsible for extrajudicial executions.

<sup>8</sup>Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990, and welcomed by the UN General Assembly in Resolution 45/121 on 14 December 1990. The Principles also require governments to ensure that the unlawful use of force is punished as a criminal offence.

when lives are at stake and as a last resort. Fundamental to these standards is the principle that those who give security personnel the wherewithal to use a gun or other coercive force must give detailed instructions on when force may be used and, indeed, when certain types of force may not be used, for example, not opening fire with live ammunition on a crowd of largely peaceful demonstrators. International standards also attach considerable importance to effective investigations into extrajudicial killings, as into all serious human rights violations.

In addition to investigating all alleged cases of extrajudicial killing, and bringing to justice those responsible (see also sections 3.5 and 5 above), Amnesty International believes that there are several steps which should be taken by the Nepali Government to strengthen safeguards in this area. First: the right to life should be included in the constitution and should be non-derogable under any circumstances. Second, any legislation which concerns the use of force by the security forces (particularly the Police Act and the Local Administration Act which empowers the security forces to shoot on sight) should be reviewed in the light of international standards and amended accordingly. In order further to minimize the risk of such incidents in future, and to facilitate accountability, the government should ensure that lethal force is used in only the most exceptional circumstances when lives are at stake, and that there is a clear and effective chain of command according to which security personnel are permitted to act when using force in crowd control situations. Third: all security personnel should be instructed that extrajudicial executions are crimes and that they are obliged not only to refuse to obey any order to commit such a crime but also to report any such crime to the authorities. Fourth: the government should ensure that all security personnel, both those who give and those who receive orders, are aware of and carry out their responsibilities in international law and under Nepali law. According to these responsibilities, the police must first take a series of measures before using lethal force: an order to the crowd to disperse and the use of *lathis* (sticks), teargas, water and blank fire. Only then may they use live ammunition, and in any event only in life-threatening situations when dealing with a violent demonstration. Regular training on this aspect of their work should be given to the security forces.

Finally, surgeons employed by the police and government have had difficulty in working to international medical and ethical standards, including in the carrying out of *post mortem* examinations. The government should review procedures relating to *post mortems* and ensure that police doctors are fully aware of and able to exercise their professional rights and obligations. The government should also ensure that bereaved families or other concerned individuals, should they wish to do so, are given the option of having a *post mortem* performed by a doctor of their own choice, or of being notified in advance of the *post mortem* so that they may nominate a representative to attend on their behalf.

### 6.3 Safeguards against torture and ill-treatment

#### **1. Constitutional safeguards against torture**

Article 14.4 of the 1990 Constitution states that:

"No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture nor shall he be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in the manner determined by law."

Amnesty International welcomes this prohibition of torture and ill-treatment and provision for

compensation, neither of which were provided for in the previous Constitution. Amnesty International also welcomes the fact that, although it is not clearly stated that the government may not derogate from this article, it is not among the list of articles and clauses which, under Article 115.8, may be suspended during a state of emergency. However, Amnesty International is concerned about the provision under Article 23 for the suspension during states of emergency of constitutional remedy against the violation of fundamental rights, which might contribute to the effective suspension of fundamental rights, including the right not to be tortured.

Article 14.3 of the Constitution states that "No person accused of any offence shall be compelled to be a witness against himself." This provision against self-incrimination should ensure that confessions extracted under torture are not accepted as evidence in a court of law, but are deemed inadmissible.

## **2. Investigation of torture allegations and bringing torturers to justice**

The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, to which Nepal is a party, requires the state to investigate promptly and impartially "whenever there is reasonable ground to believe that an act of torture has been committed" (Article 12), or whenever an individual who alleges torture complains to the state's "competent authorities for the purpose of prosecution" (Article 7.1).

Despite the prohibition of torture in the 1990 Constitution, torture is not defined as a specific criminal offence. The Police Act provides for action including imprisonment to be taken against a police official who "manhandles any person under his charge"; and it would in theory be possible for a victim to bring a charge of assault against an alleged torturer. However, Amnesty International knows of no cases in which criminal proceedings have been initiated either by the government or by an individual against alleged torturers. Moreover, despite the seriousness of alleged torture in the past and its reported recurrence under the present government, there have been no effective investigations of these allegations. Constitutional safeguards, while certainly important, do not in themselves guarantee the cessation of human rights violations: it is also essential for the government to demonstrate its determination to stop torture of detainees by ensuring the investigation and bringing to justice of those allegedly responsible for torture of detainees. Amnesty International believes that, in the apparently continuing absence of a readily accessible and effective legal procedure to this end, the government should give urgent consideration to introducing an official, independent and impartial complaints mechanism as a first point of contact for alleged victims of torture in custody.

In relation to compensation, there has to date been no law of tort in Nepal, and thus no legal means by which compensation can be awarded by the courts, despite the constitutional provision that compensation should be awarded "according to law". The government has reportedly given *ex gratia* compensation to the relatives of an unspecified number of those killed and injured both before and during the 1990 democracy movement. A fund was established under the interim government and has distributed cash payments to victims of human rights violations, or their relatives. Various other relief measures, such as free education have also been given by the government to specific individuals; and the government has reportedly said that the victims of torture in Baglung would receive free medical treatment. While these relief measures are to be welcomed, Amnesty International believes that torture should be made a criminal offence and that full compensation and rehabilitation should be available according to law (as provided for in Article 14.4 of the 1990 constitution) rather than at the discretion of the government of the

day.

#### 6.4 Safeguards against arbitrary arrest and detention

Several positive measures have already been taken, including the repeal of the Destructive Crimes Act (which provided for prolonged detention without trial) and the abolition of the zonal courts which presided over illegal detention and unfair trials of political detainees. The 1990 Constitution (Article 14.5) provides that "No person shall be detained in custody without being informed at the earliest of the grounds of arrest, nor shall he be denied the right to consult or be defended by a legal practitioner of his choice". Article 14.6 further stipulates that detainees shall be produced before a judicial authority within 24 hours of arrest. These provisions are welcome. However, they have not always been complied with. Moreover, the provision under Article 15 that "no person shall be kept under preventive detention without sufficient ground of existence of threat to the sovereignty, tranquillity, indivisibility or public peace and order of the Kingdom of Nepal is very broadly worded and resembles provisions contained in the *panchayat* constitution, which clearly failed to prevent arbitrary arrest and detention. Amnesty International believes that there is a need for further safeguards in order to ensure implementation of the constitutionally guaranteed right against arbitrary arrest and detention.

Amnesty International is concerned that, unless legislation is revised to require the specification of the exact grounds for detention and to provide for effective judicial review, some legislation (such as the Public Security Act and the Public Offences Act) could be used in future, as in the past, to detain people on broadly defined grounds on the order of the local administration or central government. These and all other laws which have been used to detain prisoners of conscience without charge or trial, should be reviewed by the government, in cooperation with the legal profession. The review should also consider the sometimes ineffective functioning of *habeas corpus* and the establishment of a genuinely effective system of judicial review for all detainees, including those detained under the Public Security Act which at present states (Article 11) that no detention under the Act can be questioned in any court of law.

Amnesty International is also concerned that the procedures which facilitated widespread arbitrary arrest, incommunicado detention and torture during 1990 and earlier remain essentially unchanged. Increased safeguards are needed, particularly relating to incommunicado detention. Access to independent doctors and lawyers is not a functioning reality, and every effort should be made to develop this. Further, there should be an obligation on the police to inform family members of a relative's detention and whereabouts. The government should ensure that all police and other personnel in charge of detention of suspects should receive training in the human rights of detainees and in procedures which help to protect those human rights, including detailed and accurate record-keeping and public availability of information on detainees.

Finally, administrative detention authorized by executive government authorities without the intervention of independent judicial bodies, such as provided for under the Public Security Act, should not be used as an alternative to normal prosecution under criminal legislation. All detainees should be brought promptly to trial and should receive a fair trial.

#### 6.5 Safeguards against detention on religious grounds

Nepal is the world's only "Hindu kingdom", so defined in both the 1962 and the 1990 Constitutions.

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Hindus are in the majority, but animist beliefs and other religions including Buddhism, Christianity and Islam, are held by significant minorities, and there has been considerable cross-fertilization between some of these faiths. Under the previous, *panchayat* constitution and under Nepal's legal code, religious proselytizing was prohibited, as was religious conversion of oneself or others, and scores of Christians, as well as some Muslims, were imprisoned for preaching or practising their faith. Amnesty International regarded these people as prisoners of conscience, detained in contravention of rights enshrined in various international human rights instruments, and it therefore welcomed the release by the interim government in June 1990 of all people (31 Christians and one Muslim) then detained on religious grounds, and the dropping of all pending cases.

However, Amnesty International is concerned that prohibition against religious conversion of others remains in the new constitution (Article 19.1) and in the legal code, and that there is a possibility that in the future it may result in the imprisonment of people solely for the non-violent expression of their religious beliefs, contrary to international human rights standards.

## 7. Summary of recommendations

According to the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a party, governments should take certain steps to guarantee the freedom of expression of their citizens, to protect the right to life and to prevent arbitrary arrest and torture. Further steps are laid down in other international human rights instruments, including the Convention Against Torture to which Nepal is a party.

In addition, there is a set of practical and detailed safeguards of universal application which can provide useful guidelines for the shaping of national legislation, and which serve as basic legal and humanitarian concepts to which everybody can refer. These include the United Nations' Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; the Standard Minimum Rules for the Treatment of Prisoners; the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Amnesty International recommends that these are made available to all law enforcement personnel in their own language and are included in regular training programs.

With reference to these covenants and principles, Amnesty International makes the following recommendations to the Nepali Government to increase long-term human rights safeguards. The effective implementation of these safeguards will depend in part on whether lawyers, human rights groups and victims of human rights violations get to know and use them and ultimately on whether the government demonstrates the political will to respect them.

### 7.1 Recommendations relating to the enforcement of safeguards against human rights violations

1. The government should ensure the independent and impartial investigation of all allegations of serious human rights violations, including those which took place under previous governments. The findings of all such investigations should be made public in full.

2. The government should take action to bring to justice anyone against whom there is reasonable evidence of involvement in serious human rights violations such as torture, "disappearance" and extrajudicial execution. The definition of those responsible should include those who may have given orders as well as those who carried out the actions.

3. The government should consider the establishment of an accessible complaints procedure and an independent and impartial mechanism to enable prompt and effective investigation of any future allegations of serious human rights violations such as torture and extrajudicial killing. Specific criteria should be established for the composition, terms of reference and procedure of commissions of inquiry.

4. The government should ensure that all victims of human rights violations have the right to effective judicial remedy.

5. The government should insist on the non-interference of any of its officials or other agents in the judicial process, in order to ensure complete independence of the judiciary.

6. The government should ensure the effective application of existing legal and procedural safeguards in all circumstances. Instructions should be issued that failure to implement legal safeguards will lead to criminal prosecution.

7. The government should ensure that those fundamental human rights which are deemed non-derogable in international law are fully protected in Nepali law. To this end, the government should consider introducing a constitutional amendment to remove Article 23 of the Constitution from the list of clauses which may be suspended during a state of emergency.

8. The government should ensure that the security forces are fully aware of the human rights of citizens, through the establishment of a regular training in international human rights standards and in related Nepali law.

#### 7.2 Recommendations on the prevention of torture

9. As required by the Convention against Torture (Articles 4 and 14) the government should enact legislation which makes torture a criminal offence and gives victims or their families the enforceable right to fair and adequate compensation and rehabilitation.

10. As required by the Convention against Torture (Article 12) the government should ensure impartial investigation whenever there is reasonable ground to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. To this end, the government should give consideration to establishing a complaints mechanism and a formal investigation procedure.

11. The government should ensure the creation of an accessible system of legal aid for victims of torture and other human rights violations, to enable them to sue for compensation in the civil courts.

12. The government should issue immediate instructions that there must be an end to the use of torture and, as required by the Convention against Torture (Article 10), the government should ensure that all personnel involved in the arrest, detention and interrogation of suspects are fully aware of the prohibition of torture and ill-treatment in both Nepali and international law.

13. The government should make it clear that, as stated in Article 2(3) of the Convention against Torture, orders from a superior are no defence or justification for torture. It is important to establish the right to refuse to obey orders without the fear of punishment or dismissal, where those orders involve a violation of human rights. This right to refuse should be specifically incorporated in training programs for all personnel involved in the care of detainees.

14. The government should end the practice of incommunicado detention by ensuring the drawing up of clear and precise regulations to ensure detainees' right of prompt and regular access to independent doctors and lawyers and the right to be visited by their relatives.

15. The government should ensure that doctors and other medical personnel working for the police are regularly informed of international ethical and medical standards relating to medical police work, and of their rights and obligations under these standards. The United Nations' Principles of Medical Ethics

provide useful guidelines.

16.As required by the Convention against Torture (Article 11) the government should keep under systematic review practices related to detention and interrogation, with a view to preventing any cases of torture.

17.Confessions allegedly extracted under torture should not be admissible evidence in the courts.

### 7.3 Recommendations on protection of the right to life

18.The government should consider introducing a constitutional amendment guaranteeing the non-derogable right to life.

19.The government should clarify the constitutional position relating to the death penalty: any remaining legislation which provides for the death penalty should be amended or repealed to exclude the death penalty.

20.The government should give urgent consideration to ratification by Nepal of the Second Optional Protocol to the International Covenant on Civil and Political Rights.

### 7.4 Recommendations on the prevention of extrajudicial killings

21.The government should ensure that independent and impartial inquiries are carried out into all reports of extrajudicial execution or unlawful killing, and that action is taken to bring to justice anyone involved in these crimes.

22.The government should review and amend existing legislation, particularly the Local Administration Act and the Police Act, to ensure that there are strict legal limitations on the use of force and firearms by their security forces, in accordance with international standards.

23.The government should ensure that there is a clear chain of command for the use of force in crowd control situations, and that all persons are aware of their right and duty to defy orders to carry out extrajudicial or unlawful killings (Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, Articles 2 and 3.)

24.The government should issue immediate instructions to the police that the use of lethal force will not be tolerated except in specified exceptional circumstances.

25.The government should ensure the regular training for all security personnel in both national and international laws and procedures designed to prevent extrajudicial and unlawful killings.

26.The government should order a review of *post mortem* procedures in cases of suspicious death; ensure that *post mortem* examinations are carried out independently of anyone implicated in the death; and allow the presence during examination of a medical or other representative of the family of the deceased.

## 7.5 Recommendations on the prevention of arbitrary arrest and detention

27. The government should ensure that arrest and detention are subject to effective judicial control and that arrested persons are informed immediately of the charges against them and of their legal rights.

28. The government should ensure that the constitutional provision for detainees to be brought before a judicial authority within 24 hours of arrest is strictly complied with in all circumstances and that there is an end to the practice of keeping people in pre-trial detention for long periods.

29. The government should ensure that every detainee has the effective right to a judicial review of the reasons for their arrest and detention.

30. There should be a legal obligation on the authorities to inform the family of the detainee promptly after arrest of the whereabouts and legal status of the detainee, and thereafter of any transfers. Under no circumstances should detainees be held in secret, unknown to their families.

31. The government should ensure that detaining authorities in police stations and prisons at all times keep an up-to-date register of all those detained on the premises, including details of transfer or release. Such registers should be regularly inspected by government officials and should be open to public inspection.

32. There should be no use of unofficial places of detention, such as warehouses or non-custodial police premises. All places of detention should be registered as such and should be open to regular inspection by independent authorities, including local human rights groups. Where, in exceptional circumstances, it may become necessary to use unofficial places of detention, the names and whereabouts of these places should immediately be made publicly known, and they should be open to inspection.

33. The government, in cooperation with the legal profession, should review all laws which have in the past permitted arbitrary arrest and detention on broadly defined grounds, notably the Public Security Act, the Public Offences Act and the State Offences Act. Such legislation should be amended, and guidelines issued to detaining authorities, with the aim of ensuring that prisoners of conscience cannot be legally detained.

The review should also cover the past functioning of *habeas corpus* and consider ways in which its effective functioning could be strengthened, in order to ensure that all citizens are treated in accordance with the law.

34. The government should ensure that all detainees have prompt access to a lawyer of their choice and receive a prompt and fair trial according to international standards.

## 7.6 Recommendations on freedom of religion

35. The government should consider amending Article 19.1 of the Constitution to ensure that people cannot be imprisoned for the peaceful exercise of their right to freedom of religion. In the short term, the government should give urgent attention to clarifying the circumstances (for example, bribery or intimidation) under which religious conversion might be considered a crime. There should be

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no restriction on freedom of religion.