



ASIAN HUMAN RIGHTS COMMISSION

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NEPAL: The Human Rights Situation in 2006

Impunity for abuses remains as country undergoes political revolution

Introduction

2006 has been a tumultuous year in Nepal. It began with widespread protests in January in the build up to the first anniversary of King Gyanendra's infamous coup and municipal elections. These protests were met with curfews, mass arrests, increased threats to human rights defenders and violent repression. This took place against a background of continuing armed clashes between State security forces and Maoists insurgents and widespread human rights abuses being perpetrated by both sides. The Maoists also launched lengthy and crippling blockades of the capital, Kathmandu, and other major cities.

On March 19, 2006, representatives of the seven allied opposition political parties and the Maoists announced an agreement to launch another uprising on April 6 against the King. They issued a public Memorandum of Understanding detailing their common stance, which paved the way for future developments. The Maoists also decided to lift the indefinite blockades that had been in place since March 14.

On April 3, the Maoists announced a unilateral ceasefire. On April 6, the uprising led by the Seven Party Alliance (SPA) began and was initially planned to include a four-day general strike and civil disobedience movement, as well as a large public rally in the Kathmandu on April 8. The next days and weeks saw an unprecedented popular uprising including hundreds of thousands of protestors from all walks of life in the capital and elsewhere. This was met by repression during which hundreds were arrested or injured and 20 persons were killed. However, the movement continued to gather momentum and resulted, on April 24, 2006, in the King relinquishing his strangle-hold on absolute power and in his reinstating the House of Representatives that had been dissolved on October 4, 2002. This can be seen as one of the most important days in the country's recent history.

On April 26, the Communist Party of Nepal (Maoist) announced a three-month unilateral cease-fire starting with immediate effect. Following this, Girija Prasad Koirala was nominated as Prime Minister and on April 28 the House of Representatives met for the first time since being reinstated. Central to the demands of the amassed protestors had been the holding of elections to a Constituent Assembly, the establishment of which became the central mandate and duty of the newly formed government. On May 3, the

government reciprocated by announcing a cease-fire of its own and also invited the Maoists for talks. A high-level probe commission was set up to investigate the violent repression that occurred during the April popular uprising.

Since this time the government and the Maoists have been holding talks that on November 8 resulted in a six point agreement that concerned the signing of a peace accord, to bring an end to the decade-long internal conflict in the country, as well as key issues such as arms management, the creation of an interim constitution and government and the holding of elections to the constituent assembly, which among other things, will be tasked with deciding on the future of the monarchy.

All of these events are remarkable and welcomed. They represent an impressive series of political developments that open the way for significant improvements to the human rights situation in Nepal. However, it must be said that many human rights problems remain within the country, and although there has in general been an improvement to the situation, key issues such as impunity and redress for victims have not seen any real improvement. While one cannot expect everything to change so radically all at once, it is vital that judicial reform and the establishment of the rule of law accompany the progress being made at the political level, if sustainable improvement to the human rights situation in the country is to be achieved.

In terms of both the political and the human rights in Nepal during 2006, it is best to view the situation chronologically, which can be split into two distinct periods: before the culmination of the popular uprising on April 24, and the period after this date. Throughout these periods, while much attention has been given to the political developments, the AHRC has continued to document human rights violations, which will be presented in this report.

January 1 to April 24, 2006

The period spanning January 1 to April 24, 2006, can, in retrospect, be seen as the dying throes of a faltering regime under which widespread human rights abuses were the norm. It must be recalled that in previous years, Nepal had the world's worst record concerning forced disappearance, with torture and extra-judicial killings also being widespread and endemic. While human rights organizations had been active in documenting and publicizing these cases in previous years, following the so-called Royal Coup on February 1, 2005, in which King Gyanendra seized absolute control of power, the threats and risks to the lives and liberties of human rights activists since that time made this process even more difficult, resulting in a significant information gap concerning the number of individual cases being reported as compared with the total number being perpetrated. As a result of the worsening situation following the coup, the international community began to apply concerted pressure on the King and his government, which led to the establishment of a field office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in late 2005. This office benefited from having access to places of detention, which it is thought had the effect of reducing the

number of forced disappearances being carried out by the State, despite the ongoing and growing political and insurgent problems within the country.

On November 22, 2005, the seven-party alliance (SPA) and Communist Party of Nepal (Maoist) reached a 12-point agreement that would redefine the Nepali political landscape in the days to come. The Maoists agreed to shun violence in due course and join the political mainstream. Both the parties and the Maoists also agreed to work together to enable Constituent Assembly election, during which the UN or accepted international entities would supervise the weapons of both the rebels and the Royal Nepalese Army.

At the beginning of 2006, the situation in Nepal was very tense, with human rights defenders facing serious threats to their personal security and freedoms for carrying out their work. Despite the OHCHR's monitoring activities, human rights abuses continued to be perpetrated throughout the country, including by the Maoist insurgents. However, the alliance between the SPA and the Maoists provided a common front, based upon which the people of Nepal would begin to express their resistance to the King, his government and the situation of insecurity and gross human rights abuses that reigned in the country.

The January/February uprisings

The first sign of mass popular dissent can be seen in the protest demonstrations that were organized in the run-up to the first anniversary of the Royal Coup, on February 1, and the municipal elections that were to take place on February 8, 2006.

On January 17, 2006, a curfew from 11 pm to 4 am each night and a total and indefinite ban on peaceful demonstrations came into operation. The security forces were reportedly allowed to shoot to kill under this curfew. It is likely that these measures came as a knee-jerk reaction to the recent advances made by the Maoist insurgent forces closer to the capital, Kathmandu, as well as the large number of legitimate, peaceful demonstrations being held in the country in response to the series of clampdowns on fundamental freedoms. Since the royal takeover in early 2005, the situation in Nepal had deteriorated to such levels that ordinary life was no longer possible for its citizens. This led to a massive exodus of Nepalese persons to neighbouring countries and beyond. Those who protested against the atrocities committed by the armed forces were threatened, beaten, arrested and even killed. Domestic institutions, including the courts and the National Human Rights Commission were also not immune to such intimidation and attacks.

The continuous and successful attempts by the Government of Nepal to bring in various draconian laws under ordinances limiting the peoples' freedoms, civil society and the media resulted in a complete clampdown on fundamental freedoms. Further to this, the growing discontent in the country was being fuelled by widespread opposition to the King's plan to hold municipal elections, which were seen as being primarily aimed at duping the international community into thinking that the process of democratization was on track in the country following the coup. The major political parties - that had received the majority of the vote in previous elections - planned to boycott the election and stage

protests against them, as the situation prevailing in the country could not ensure free and fair elections, and the elections were seen as being a ploy by the King, designed to place his cronies in office around the country.

On January 19, 2006, over 100 political leaders and human rights activists were arrested. The homes of a number of prominent human rights defenders were also visited by the security forces. Nepalese Home Minister, Kamal Thapa, said that at least 100 opposition leaders and activists had been detained for security reasons. The targeting of human rights defenders was a particularly worrying development. A number of persons were served with three-month detention orders under the Public Security Act (PSA), following their arrest. PSA permits detention without trial, initially for up to 90 days, to prevent persons from committing actions that "undermine the sovereignty, integrity or public tranquillity and order of the Kingdom." Many persons arrested during this and following days were issued with detention orders under the PSA, which could only be considered as punitive rather than preventive actions.

The crack-down was launched the day before large-scale demonstrations were to be held, to protest against the government's planned municipal elections. Security reasons relating to Maoist insurgents were used to attempt to justify these actions by the State. The Office of the United Nations High Commissioner for Human Rights (OHCHR) in Nepal denounced the government's actions and stated that the alleged suspicion of Maoist infiltration in the planned demonstrations, that had been called by the alliance of seven political parties to denounce the King's arranged municipal elections on February 8, 2006, could not justify the harsh measures being used to clamp down on democratic protests. Land-lines and mobile phones, as well as internet connections, were cut off in Kathmandu and other major cities in the country, in a reminder of the methods used during the royal coup one year earlier.

On January 20, the day of the planned demonstration, the crackdown increased. A curfew was imposed from 8 am and was scheduled to last until 6 pm, which came in addition to the curfew already in force from 9 pm to 4 am. Given that the security forces had allegedly been given the authority to shoot to kill persons during the curfew hours and the continuing disruption of mobile phone services, the planned large-scale pro-democracy rallies were too dangerous to hold in the capital, Kathmandu. At least two dozen demonstrators were arrested at a small rally in Sundhara before the morning curfew began, and the leaders of political parties who had not already been arrested on January 18 and 19, 2006, were placed under house arrest. Over 200 persons were arrested in the Gausala area of Kathmandu.

In the Mid-Western region, students clashed with the security forces in Surkhet, with 6 being injured and over 30 being arrested. In the Western region there were clashes between the police and demonstrators in several places including Nawalparasi, Sangja, Chitwan and Palpa, with further arrests being carried out. UN Secretary General Kofi Annan declared his "dismay" at the developments in Nepal and urged "all sides for calm, the suspension of fighting and the urgent initiation of an inclusive national dialogue." The Indian government, for its part, called these events "regrettable" and of "great concern."

Similar statements were issued by the European Union, the United States, the United Kingdom and Japan.

On January 21, following the disruption of the large-scale demonstrations planned for January 20, thousands of protestors took to the streets of Kathmandu. The demonstrations on that day were held in the New Road and Basantapur areas in central Kathmandu, in defiance of the anti-constitutional, total ban on peaceful demonstrations that the government had launched earlier in the week. The police reportedly intervened to break up the demonstration in the afternoon in Basantapur, as thousands of persons converged on the venue. Dozens of demonstrators were injured along with some policemen in the clashes that ensued. Dozens of leaders and activists, thought to number over 200, were reportedly arrested. The police charged the demonstrators using batons and fired tear-gas shells to disperse the crowd in the New Road and Basantapur areas. The Armed Police Force and the Royal Nepalese Army were also deployed.

Reports indicated that the conditions in which the demonstrators were being detained were for the most part acceptable, although there were reports of inhuman conditions of detention in No. 2 Police Battalion in Maharajgunj, where detainees were being kept in a silo with a corrugated iron roof and only received rice infected with fungus to eat and dirty water to drink. Access to detainees by their families, lawyers, human rights monitors and doctors was not guaranteed to a number of the detainees.

The ban on demonstrations was lifted in many parts of Kathmandu on January 23. However, Ratna Park remained prohibited and was the scene of continuing demonstrations. Dispersals and arrests continued. On January 24, peaceful demonstrators that attempted to enter the prohibited zone were met with police baton charges, with many pro-democracy activists being physically assaulted and injured. Beatings took place even after the police had secured the area. Dozens of demonstrators were arrested. There were no female police personnel deployed to control and arrest female demonstrators – these arrests were conducted by male police personnel. Journalists were also reportedly injured during the police action. Chandra Bishta, a camera-operator for Channel Nepal Television was seriously injured during these events. Bystanders were also reportedly been attacked and abused. Separately, students from the Amrit Science College had been protesting at their campus. They reportedly clashed with police, throwing stones, and were met with a baton charge and tear-gas. The police reportedly chased the students and beat all of them, including those seeking refuge in classrooms and the student union office. Furthermore, seven political leaders in Banke were arrested between 8:30 and 9 am on January 24 at Bageswori Street, Nepalgunj municipality-3, while participating in door-to-door canvassing for people to reject the upcoming municipal elections.

Large-scale demonstrations took place in Birendranagar, Surkhet, involving around four to five thousand participants on January 25. Demonstrations around the country and in Kathmandu continued on January 26 and were met with increasingly violent repression and mass arrests. For example, members of the security forces opened fire on demonstrators in Pokhara. Here, dozens of demonstrators were arrested and more than a dozen including bystanders, workers, journalists and human rights defenders, were

injured when the police and the army opened fire with live ammunition and conducted baton charges against the assembled demonstrators. The security forces had reportedly been using teargas, bricks and stones against the demonstrators, with bricks and stones having been loaded into their vehicles for such use. Tear gas and baton charges were also being used to repress demonstrations elsewhere around the country.

The offices of human rights organisations were also raided - one in Kanchanpur and the other in Udyapur. Over two hundred political activists were arrested during demonstrations around the country during a nationwide general strike that had been called by the SPA on January 26. A number of human rights defenders and journalists were physically assaulted, threatened and/or arrested by the security forces. The security forces in Kathmandu reportedly ill-treated journalists, seized communication equipment from them, prohibited them from moving and threatened some of them following the publication and broadcasting of news related to the demonstrations. The Federation of Nepalese Journalists condemned these acts.

On February 1, 2006 - the first anniversary of the royal coup – the cycle of violence and repression escalated further. An all-day curfew was imposed in many towns around the country. Over 600 persons were arrested while participating in peaceful demonstrations. Those detained included political leaders, professors, writers, teachers, an ex-minister, lawyers, human rights defenders and journalists. Hundreds of demonstrators were injured and many hospitalised as a result of the repressive actions conducted by the security forces, who conducted violent baton charges and used stones, tear gas and water canons against the demonstrators. They even opened fire with live ammunition in some cases, with at least one person, Uddhav Bahadur Singh, having been shot during a demonstration in Surkhet. This protestor was shot in the left leg and was admitted to Surkhet Hospital for treatment. Some of the arrested demonstrators were released the same day, but many more remained in detention, adding to the large number of persons being held following similar arrests during the previous two weeks.

In particular, over 100 lawyers were arrested while participating in the events to mark the one year anniversary of King Gyanendra's royal coup. The lawyers arrested in Kathmandu were all reportedly released on the same day. However, many of those detained in other districts were detained for lengthier periods, with some of their number having received three-month "preventive" detention orders under the draconian Public Security Act. No reasons were given by the authorities for these arrests, and the arrested persons were not provided with detention orders or been charged with any specific offences.

In contrast to and despite the reality of the crisis been played out in the streets, King Gyanendra made a series of claims in a televised speech on February 1st, 2006. He stated that the municipal elections that were set to take place on February 8, 2006 would still go ahead and that they were going to be free and fair elections. However, several election candidates had already resigned and most others had taken up residence in military camps for protection. The security situation and the planned boycott by the majority of political parties could not be deemed to set the stage for fair elections, however, the King seemed

bent on holding these elections at all costs. It is thought that the King was attempting to dupe the international community into thinking that he was committed to democracy by holding these sham elections, in which pro-monarchist candidates would be elected in a fraudulent manner.

Furthermore, the King reportedly stated in relation to the Maoist insurgents that "terrorist activities have narrowed down to just a few sporadic criminal activities." The AHRC received reports that on the previous day, January 31, 2006, over 20 security personnel had been killed and some 200 were missing following a concerted series of attacks by the Maoists. The King had launched the royal coup one year before under the pretext of being able to more effectively tackle the Maoist insurgency. One year later, however, the insurgents had only gained in strength and political influence, notably after the agreement with the SPA, under which they pledged to back the democratic process and put an end to the conflict in the country. The Maoist insurgents also held a unilateral ceasefire in late 2005 and offered to have their forces placed under international supervision. If the King had been interested, in reality, in solving the conflict with the insurgents, he should have reciprocated this cease-fire and entered into talks. Instead, the cease-fire was allowed to run out and when the Maoist attacks resumed, the King used this as a pretext to crack down on the pro-democracy movement.

During the course of the year since February 1, 2005, State institutions, such as the judiciary, the National Human Rights Commission and others, were infiltrated by pro-royalist, unqualified persons in order to undermine the functioning and independence of these bodies, greatly weakening them. Furthermore, the King also appointed pro-royalist regional and zonal administrators, sidelining those persons best suited and qualified for the jobs, further exacerbating the collapse of the rule of law and institutions throughout the country.

Throughout the year, the human rights of the people of Nepal were wantonly sacrificed. Torture remained systematic, forced disappearances remained at extremely high levels, mass arbitrary arrests continued in response to legitimate peaceful demonstrations, political leaders and human rights defenders were targeted. The King became increasingly isolated at both the national and international levels and was directly responsible for the many acts that constitute crimes against humanity being perpetrated in the country. By completely disregarding the reality of the situation the King was digging himself into a deeper hole.

At the time, the AHRC deemed that for this disastrous crisis to be brought to an end, free, fair multi-party all-inclusive elections needed to be held, in order to restore the legislature and democracy in the country. Democratic civilian oversight of the military needed to be put in place. The perpetrators of human rights violations needed to be brought to justice. This required the acts of torture and forced disappearance to be criminalized under the law. The multitude of recommendations made by various international bodies, notably the United Nations, needed to be implemented. One example of immediate action that the AHRC believed could and should be taken was the setting up of a register of all persons being detained in Nepal, with the database being made accessible to the public. The lack

of such records was a causal factor in permitting the levels of torture and forced disappearance witnessed in the country. These issues still need to be dealt with to date.

Against a background of continuing unrest in the build-up to the February 8 municipal elections, one case attracted particular attention. On 4 February 2006, at approximately 12.45pm, police personnel fired on Amrit Aryal, the Nepali Congress Party President of Morang District. Mr. Aryal and Congress Party Activist Kamachya Parajuli were returning home after participating in a peaceful demonstration organised by a group of women leaders and cadres of the seven political parties. On nearing the Sanischare Maisthan, a police officer on a motorcycle fired live ammunition at Mr. Aryal. Mr. Aryal, however, was not hit and continued home. Mr. Aryal was then followed by a police van, and a group of police personnel ordered Mr. Aryal to wait where he was. Members of the police then attempted to apprehend him, but he escaped on his motorbike. Upon nearing Sanischare Maisthat another van appeared and police personnel travelling in the van opened fire at Mr. Aryal, who avoided being hit by entering a narrow avenue down which the van was unable to follow. The premeditated attempted assassination of a member of the political opposition in broad daylight was a serious concern.

On February 7, Home Minister Kamal Thapa issued a press statement informing the public that the security forces had been granted the power to shoot on sight any person who disrupted the elections. The violence and repression again peaked on 8 February 2006, the day of the municipal elections. The security forces opened fire on a group of peaceful demonstrators in Dang. As a result, UML activist, Umesh Thapa, was killed and Krishna Giri was seriously injured. The security forces then arrested more than 300 of the demonstrators. It is also known that security forces fired indiscriminately on other demonstrators who had gathered in other cities around the country.

The arbitrary arrest and detention of demonstrators commenced from early in the morning, including political party activists, journalists and human rights defenders. In Rajbiraj, 28 people that had been arrested in relation to demonstrations held on previous days were released following a decision by the local Appellate Court. However, upon their release, four persons were immediately re-arrested by security forces before they had even left the grounds of the court. The remaining 24 people fled for shelter in the nearby Bar Association's building. The security forces surrounded the building for the entire day, making it impossible for those inside to escape. At 9 pm the security forces warned them that if they did not come out, they would be shot dead. Knowing full well that the security forces would not hesitate in undertaking such action, the persons inside surrendered and were immediately re-arrested.

Concerning the elections themselves, turnout was very low, notably because of the insecurity that reigned and the fact that the seven major political parties of Nepal had boycotted the elections. At each voting station, there was a heavy security forces presence. In some locations a mere 2% of those eligible to vote did so. At best, no more than 30% of people cast their vote at their local polling stations. The government had issued an order making it compulsory for all civil servants and army and police personnel to vote. In several locations, persons were able to vote more than once, as no photo ID

was required. Of the 58 municipalities in 43 districts, the elections were conducted in just 36 municipalities in 28 districts. Out of 4,146 posts available, contested elections were held concerning just 618 posts. 1,682 candidates from small parties and independents contested for the posts of mayor, deputy mayor, ward chairmen, ward members and women members. Candidates were elected unopposed to 1,277 posts. A total of 2,251 posts – around 54% - remained vacant at the end of the election, as no candidates had registered their names in these municipalities. It is clear that these elections cannot be considered as being credible.

Other human rights issues

While much attention was being paid to the uprisings that took place from mid-January to early February, the situation of human rights in Nepal continued to be as it had been for several years – deplorable. The AHRC continued to receive information concerning cases of torture, forced disappearance, extra-judicial killing and the failure of the judicial system and institutions of the rule of law throughout early 2006. The AHRC's partners in Nepal have documented around 800 cases of torture between March 2005 and April 2006 alone. Some examples that illustrate this situation follow:

Case 1

The first case is that of Mr. Nar Bahadur Bista, who was arrested on 1 March, 2006, and subsequently arbitrarily detained and tortured by police personnel from Mahendranagar District Police Office (DPO). Mr. Bista, a 22-year-old male, and permanent resident of Kanchanpur District Mahendranagar Municipality-13, Badaipur was arrested by police personnel from Mahendranagar DPO on March 1 on the charge of murder. However, the police only handed him a detention letter on March 12. He was first remanded by the District Court for three days on March 12, and on March 15 his remand was extended for a further seven days. During his detention Mr. Bista was tortured by personnel from the Mahendranagar DPO to the point that he had difficulty breathing. Two police officers reportedly held him while Police Inspector Deepak Regmi tortured him. Inspector Regmi reportedly told the victim that he would "take 30 years off his life" by beating him and forced him to confess to the crime of murder. Mr. Bista claims to be innocent and was forced to confess due to the torture. As a result, on March 14, Mr. Bista was admitted to the Mahakali Zonal Hospital to receive treatment for the injuries he had sustained. On March 15, he was produced before the court directly from the hospital when he was made to attend. At this point he spoke to a lawyer and claimed to have been beaten on the chest, knees and legs with a stick for two nights.

In a further worrying turn of events, the lawyer that was representing Mr. Bista and had filed an application to the District Court on his behalf, then faced reprisals from the police. Following the filing of the case, it was reported that 10 policemen went in search of the lawyer. The case of Mr. Bista is one example of many, and clearly shows how the use of arbitrary detention and torture to produce forced confessions are used in order to supplant acceptable means of investigation in Nepal. Further to this, the fact that the

lawyer representing the victim was immediately targeted illustrates the conditions under which human rights defenders were working under the King's regime. Furthermore, the impunity with which such acts are committed is also a regrettable hallmark of the way in which human rights abuses have been perpetrated in Nepal. To date, the victim has received no reparation for the torture which has had a damaging effect on his health, leading to his hospitalization and no action has been taken against the perpetrators.

Case 2

Another example of the intensified harassment and attacks to which human rights defenders were being subjected in the early part of 2006 is the case of Kali Bahadur Malla, the Kalikot District Representative of local human rights organization INSEC, and Rabindra Shai, who is the Kalikot District NGO Federation President and a *Dristi Weekly* journalist. At around 6:30 pm on February 13, 2006 an army patrol from Ranadal Gulma in Manma Bazaar approached the two human rights defenders, asking them to identify themselves. Malla and Shai gave details of their roles as an INSEC representative and a journalist respectively, at which point the army personnel began beating them. The army personnel attacked the two victims with the butts of their guns and their boots. Shai was kicked and knocked to the ground, while Malla was hit on the head with the butt of a gun and knocked unconscious for four minutes. Shai sustained minor injuries, but Malla was wounded more seriously during the attack and was taken to the local medical hall for primary treatment, where he received two stitches to the head and one to his chest. This blatant and arbitrary attack is only one of many such incidents involving human rights defenders during the period in question. Perpetrators of such acts enjoyed complete impunity for their actions, which perpetuated a state of significant insecurity and hindered human rights defenders' work.

Case 3

A case which highlights the ingrained culture of impunity, the use of torture and the failings of the judicial system in Nepal, is that of Mr. Hom Bahadur Bagale, a Sub-inspector working as a technical officer at the Central Police Band Gulma (Battalion), in Maharajganj, Kathmandu, which began in late 2002. On November 23, 2002, Mr. Bagale, refused to run a personal errand (collecting some gold from the airport) for his superior Deputy Superintendent of Police (DSP) Khadka Singh Gurung, stating that it was not part of his duties to carry out such tasks. On November 28, 2002 he was sent to Kathmandu District Police Office (KDPO). When he entered Inspector Pokharel's office, the latter reportedly closed the door and assaulted him with a bamboo stick for an hour without saying a word. At that time, Mr. Bagale was wearing his police uniform. After the attack, Inspector Pokharel demanded that Mr. Bagale confess to where he had hidden DSP Gurung's gold. Mr. Bagale was then detained without an arrest warrant.

On November 29, Mr. Bagale, who had been forced to change into civilian clothes, was handcuffed and taken to the office of Superintendent of Police (SP) Kuber Singh Rana, of the KDPO. SP Rana and Inspector Pokharel then reportedly severely beat Mr. Bagale with sticks, before ordering him to roll a heavy cement log onto both of his thighs. Mr.

Bagale fainted numerous times while being tortured. At around 1:00 am, they took the victim to the investigation room, where he was blindfolded and tortured again by another police officer, allegedly Inspector Ganga Panta, for about 15 minutes. At 1:30 am, the police, led by Inspector Panta, forced Mr. Bagale to show them where he lived. They then searched his house and surrounding land but they could not find the gold. Police officers also reportedly threatened members of Mr. Bagale's family with torture if they spoke to anyone about the situation. Mr. Bagale was then taken back to the police station, where he was detained without food or water until November 30, 2002.

On December 2, 2002, the police took Mr. Bagale to the Investigation Branch of the KDPO and ordered him to sign a document which he was not given a chance to read. When he refused to sign it, the police laid him down on the floor and started beating him on the soles of his feet. Beatings continued on December 3 and 4, 2002. On December 5, 2002, the police attempted to transfer Mr. Bagale to the Legal Section of the Police Head Quarters and the Quarter Guard, Armed Police Battalion No. 1, in Naksal, but both of these establishments refused to keep Mr. Bagale in their custody. As a result, the police then brought the victim to his own office in Maharajganj and ordered him not to go outside the station. Meanwhile, a *habeas corpus* petition was filed in the Appellate Court by Mr. Bagale's wife on December 3. On December 4, the court ordered the police to present the victim within 24 hours to the court. However, DSP Gurung stated to the court that the victim was not detained because he had not committed any crime and was currently working in the office. Similarly, SP Rana of the KDPO also told the court that no complaint had been filed against Mr. Bagale by his superiors and that he was therefore not being detained by them.

After being released from custody, Mr. Bagale filed a case for compensation at the Kathmandu District Court on December 31, 2002 (Registered case number: 455). The District Court ruled on July 13, 2004 in favour of the perpetrator. Mr. Bagale registered an appeal against the decision before the Patan Appellate Court on December 6, 2004. Mr. Bagale had also lodged an injunction before the Patan Appellate Court on February 24, 2003 demanding directive, prohibition orders against the perpetrators, but the decision went against him. The court stated that it remained a matter of investigation to be conducted within the police organisation, whether a junior member of the police was obliged to follow his senior's command, if it was for personal purposes. Mr. Bagale subsequently appealed to the Supreme Court to challenge the appellate court's decision. The appeal was lodged on August 2, 2004. The trial date was set for March 5, 2006.

Mr. Bagale has reportedly received countless death threats due to his legal action and has been pressured by his superiors to resign from his post as a police officer. In February 2006, six unidentified men in civilian clothes reportedly went to his house looking for him. His superiors have also threatened him in order to have him withdraw the cases filed at the Patan Appellate Court and the Supreme Court of Nepal. Furthermore, they have threatened to terminate his job as a police officer. Their threats have been reinforced by a letter sent to Mr. Bagale from the legal department of the police station, asking him to either withdraw his two cases or to resign.

As a result of the threats, Mr. Bagale submitted his resignation on March 13, 2006, but the police administration refused to accept it. He believed that the administration was seeking a way to terminate his employment in such a way as to prevent him from receiving his pension. Mr. Bagale has served for 22 years as a police officer and is thus eligible to receive a police pension.

The judicial process has been prolonged for over three years without making any headway. The courts have not conducted any effective enquiry into the incidents in question and Mr. Bagale continues to live under the threat of losing his job, pension and even his life, without protection. Furthermore, when Mr. Bagale tried to lodge a complaint with the Inspector General of Police (IGP) in December 2005 against the alleged perpetrators, his complaint was refused by the secretariat of the IGP. Instead of conducting any investigation, the police administration, including the IGP, have taken action against Mr. Bagale and pressured him to withdraw his cases.

This case shows the extent to which torture was being carried out in Nepal in total impunity, with a lack of investigations, intimidation and a failing judicial system making it practically impossible to gain reparation for even the most serious abuses, even in the case where the victim is a member of the police. Persons from more vulnerable sectors of society have even less chance of being protected from abuses or gaining redress following such treatment.

The AHRC has documented numerous cases of torture during the early part of 2006 and these only represent a fraction of those thought to be being perpetrated in the country. They include the following cases:

Torture by members of the Army

- 14 year-old Aashis Gurung, a permanent resident of Mahendranagar Metropolitan City -5 was arrested on January 26, 2006 and tortured.
- 20 year-old woman Sarmila B.K, arrested and tortured in Pokhara on January 30, 2006.
- 28 year-old Ashok Ghimire, arrested on 31 January 2006 in Ekudol, Lalitpur and tortured.
- 22 year-old Krishna Pd. Tharu, arrested on February 3, 2006 in Bardiya, detained illegally by the Army for 12 days and tortured.
- 17 year-old Pradeep Gharti Magar, arrested at Kohalpur Security Check Post, Banke on February 10, 2006 and tortured.
- 23 year-old Tej Bahadur Pariyar, his wife, 22 year old Basmati Pariyar, and their 14 month-old daughter were arrested February 17, 2006. Both adults were tortured.
- 55 year-old Dashrath Parajuli, arrested on February 24, 2006 in Kohalpur VDC-5 and tortured.
- 26 year-old Nar Bahadur Buda Magar, arrested on February 28, 2006 in Hansapur, Dharapani and tortured.

- 20 year-old Ram Bahadur Tamang alias Lal Bahadur, shot and then arrested and tortured on March 5, 2006 in Lekhanath Municipality- 7 Jayamire.
- 20 year-old Lok Raj Achrya, arrested on March 9, 2006 in Prithivi Narayan Campus, and subjected to death threats and torture.
- 42 year-old Bishow Nath Pulami Magar, arrested on March 20, 2006 in Darbarmarg and tortured.
- 23 year old Amrit Sharki, arrested from Kohalpur Medical College Banke district, where her was receiving medical treatment, on March 20, 2006 and tortured.
- 20 year-old Laxman Thapa, arrested at the Check Post of Joint Security Base Camp, Kushum, Banke district on March 28, 2006 and tortured.
- 20 year-old Ram Kaji Shrestha, arrested on April 18, 2006 in Banastahli, Kathmandu and tortured.
- 26 year-old Bhairab Bahadur Bhandari, arrested on April 18, 2006 in Banastahli, Kathmandu and tortured.
- 30 year-old Ganesh Aer, arrested on April 21, 2006 in Kanchanpur and tortured.

Custodial torture by members of the Police

- 24 year-old Bishnu Lal Joshi, arrested on January 17, 2006 in Titihiriya village, Banke district and tortured.
- Nima Guru arrested in Prithvichowk on January 26, 2006 and tortured.
- Komal Thapa Magar, arrested on 30 January 2006 in Babarmahal, Kathmandu and tortured.
- Jog Bahadur Gurung (studying in class 12 at St. Lowrence College), arrested on 31 January 2006 and tortured (including beatings, burning of hands, piercing of finger-nails).
- Ramesh Magar, arrested on February 18, 2006 in Gaushala and tortured.
- 36 year-old Prem Bhandari, arrested on February 23, 2006 in Ganeshthan Kathmandu and tortured.

In cases of torture by the Army or the Police, when the individual victims were presented before courts following their arrest – normally several days later – the judges in most cases did not ask whether the person had been subjected to torture or ill-treatment during detention and thus failed to take this into consideration or provide protection to these individuals.

Torture by Maoists

- 46 year-old Sarki Ram Danuar, abducted by two armed Maoists in Bhantabari Chock, Triuga Municipality and tortured.
- 42 year-old Binod Khatiwoda, abducted by Maoists in Dharampur VDC-5, Saptari district on March 17, 2006 and subjected to torture and a failed assassination attempt.

- 50 year-old Purna Bahadur Thapa, abducted by six Maoists in Chhiudipuchhakot VDC-8, Dailekh district on April 13, 2006 and tortured resulting in the need to amputate his right leg.

Concerning cases of torture by Maoists, it must be noted that information concerning such cases were particularly difficult to document during the first part of 2006, due to the high risks faced by human rights defenders in doing so. The number of actual cases is thought to be much higher than those cited above.

The April Uprisings – The People's Movement Part 2

While the uprisings that had occurred in January and February 2006 showed rising popular dissent against the situation prevailing in the country and the King's autocratic rule, they cannot be said to have had a tangible impact on the King's power or the activities of the Army, or brought about significant change in the country. However, those that were to follow in April were to bring about a sea-change in the political make-up of the country, causing the King to abandon his autocratic rule and reinstate parliament. This, in turn, paved the way for a series of developments in the second half of the year, aimed at bringing about democracy, as well as a formal end to the conflict that had been raging in the country for over a decade.

The difference between the two uprisings and their impact can perhaps be explained for several reasons: in the January/February uprisings, the protests were organized specifically to protest against two events – the first anniversary of the royal coup on February 1, 2006, and the municipal elections on February 8, 2006. In this sense, they were limited in their scope, notably in terms of duration. Furthermore, this was the first time that the Maoists and the SPA political alliance, along with both sides' supporters, were acting in concert following the agreement reached between the two sides in November 2005. In the April uprisings, the protests were initially planned to be limited in duration – a pro-democracy, anti-monarchy demonstration and four-day general strike - but a groundswell of support that resulted both from widespread fatigue with the situation in the country and from the much publicized repression of the ongoing demonstrations, changed a limited operation into an irresistible movement. In addition, the understanding between the SPA and the Maoists was starting to bear fruit, with the SPA leading the demonstrations with support in various forms coming from the Maoists, including ensuring the freedom of movement of persons outside Kathmandu that wished to travel to the capital in order to take part in the demonstrations.

On April 3, 2006, the Maoist leadership announced that the insurgents would observe a unilateral cease-fire within the Kathmandu valley with effect from that evening, until further notice. This was significant in that it allowed persons to travel in relative safety to the capital to participate in the planned demonstrations.

In the lead-up to the proposed peaceful anti-monarchy demonstration on April 6, that was called by the seven political parties, and which was to begin a four-day general strike, the

police began a crackdown by conducting mass arrests beginning on April 5, 2006. On that day, they arrested approximately one hundred people for planning to defy a ban on public rallies in the capital, Kathmandu. These included political figures, lawyers, journalists, teachers, doctors and political activists, with many having been detained following police raids on their homes.¹ (Please see the documents referred to in the footnotes for greater details concerning these events as they unfolded). The first casualty of this uprising also occurred on this day, when Mr. Darshan Yadav was killed by the security forces.²

On April 6, 2006, over 400 pro-democracy protesters and journalists were arrested in Kathmandu, while dozens of others were injured on the first day of the four-day nationwide general strike. Along with the arrests, curfews were also imposed in Kathmandu and Lalitpur during the night. People were barred from entering the Kathmandu area and the government restricted all gatherings or assemblies in Kathmandu city.

On April 7, 2006, protests continued on the second day of the four-day nationwide strike against King Gyanendra. As of this day, there was a de facto state of emergency in Nepal. Thousands of people had taken to the streets. Parts of the country had been declared 'restricted areas'. However, thousands of demonstrators defied the declaration and flocked to the streets to voice their anger and opposition to the current situation in the country. The difference between these protests and those conducted earlier in the year was that these were totally ignoring curfews and restrictions and were gaining support from all manner of sector of society in Nepal. Even doctors and nurses had joined the protests, after one of their colleagues, Dr. Kedar Narshingh, was taken into custody and assaulted while on his way to hospital on April 6. Others professional groups that joined the demonstrations included bank and telecommunication employees.³

On April 8, against the background of continuing protests, the Government imposed a further curfew in the Kathmandu Valley from 10 am to 9 pm effective immediately until further notice. The local administrations in the Surkhet, Butwal and Chitwan districts issued fresh curfew orders for their respective districts, while the administration in Nepalgunj extended its existing curfew order by four hours.

On April 9, three persons were killed and over 26 protesters injured when security forces opened fire at demonstrators in different parts of the country. The SPA announced further demonstrations for April 10 and the following days, extending the initial protest plans.⁴ Alongside this, the Maoists announced a nationwide campaign, including defying curfew orders, capturing highways and breaking royal statues. The authorities announced a 12-hour curfew in the city of Pokhara.

On April 10, some 70 demonstrators were injured when the security forces fired rubber bullets on the demonstration in Dhangadhi, the district headquarters of Kailali. Daytime

¹ <http://www.ahrchk.net/ua/mainfile.php/2006/1639/>

² <http://www.ahrchk.net/ua/mainfile.php/2006/1648/>

³ <http://www.ahrchk.net/statements/mainfile.php/2006statements/475/>

⁴ <http://www.ahrchk.net/ua/mainfile.php/2006/1654/>

curfews were imposed in Bharatpur in Chitwan district, Pokhara in Kaski district, Butwal in Rupandehi district and Banepa in Kavre district.

In a statement on April 11, 2006, the United Nations Office of the High Commissioner for Human Rights in Nepal qualified the authorities' actions as being an "excessive use of force."

On April 12, as the cycle of demonstrations and repression continued to increase, a protester was killed and 36 others injured when police opened fire in Parasi Bazaar, Maheshpur Chowk and Bhrikuti Chowk in Nawalparasi district. Police repression and excessive use of force also led to the injuring of 30 persons in Syangja, at least 50 persons, including two children, in Dipayal, some ten persons in Sarlahi, more than 30 persons in Gaighat, and at least 28 demonstrators in Chandragadhi.

On April 13, King Gyanendra, in a message to the nation on the occasion of Nepalese New Year's Day, called upon all political parties to enter into a dialogue concerning re-launching a multiparty democracy. Alongside this, however, clashes in the capital led to more than 50 people being seriously injured. Doctors claimed that live rounds were used on demonstrators. The police also reportedly opened fire on protesters in Pokhara, resulting in many injuries, including to two female bystanders. 29 journalists were also arrested in Bhirkutimandap and were detained in Singha Darbar Ward Police Station, with the following individuals being injured during this process: Damodar Dawadi, Surya Prasad Neupane, Amar Nath Dhakal, Deepak Acharya, Punya Bhandari. The journalists reported that they were kicked and punched while in detention.⁵

On April 14, the leaders of the SPA rejected the King's offer for dialogue with political parties. On April 16, the SPA decided to no longer pay taxes to the government and called on the people of Nepal to boycott any products and services of businesses and industries belonging to the royal family.

On April 17, one person was killed and several others were injured when the security forces opened fire at demonstrators in Nijgadh, Bara district. In Kathmandu, police action in the Chabahil-Chuchepati area left 62 persons injured. In Kalaiya, 24 persons were injured. In Birgunj, over a dozen persons were injured. In Itahari, the security forces opened fire on demonstrators, injuring 24. In Nepalgunj, 20 demonstrators were also injured.

On April 18, another protestor was killed and over 70 were injured during a police baton-charge in Nepalgunj. In Pokhara, at least 36 demonstrators were injured when security forces opened fire at a rally in Savagriha Chowk.

On April 19, in a further escalation of the violence being perpetrated by the authorities, four protestors were killed and over a hundred injured when the security forces opened fired on protestors at Chandragadhi in the Jhapa district. The demonstrations were now

⁵ <http://www.ahrchk.net/ua/mainfile.php/2006/1659/>

entering their third week and were of an ever-increasing size and scope. Thousands of people had been arrested and the number of persons killed was rising dramatically. Many demonstrators and bystanders were being targeted indiscriminately and with excessive, disproportionate force by the security forces, including the firing of rubber bullets, the use of baton charges and live ammunition being fired into crowds. Torture of detainees had also been reported, notably in Morang prison, and access to detainees by lawyers and doctors was being denied in numerous detention facilities. Inadequate and overcrowded facilities were also of serious concern, as were the restrictions being placed on the media, including attacks upon journalists trying to cover these events.

The indefinite strike and widespread determined protests included the "usual suspects": political opposition groups, members of civil society and students. However, in addition, a range of groups and individuals, including Supreme Court staff, lawyers, doctors, engineers, disabled persons groups, tourism workers, journalists, teachers, civil servants, and others not usually known to participate in such actions, were now also engaged in the demonstrations and were also being met with indiscriminate and disproportionate force on several occasions. The arguments claiming that opposition to the authorities was only coming from marginal groups were being exposed as baseless. The prolonged crisis was by now leading to a shortage of vital supplies, most notably food, in much of the country. In an interview with the BBC, the UN High Commissioner on Human Rights, Louise Arbour, intimated that Nepal may be referred to the UN Security Council. The King and his government were becoming totally isolated from the international community, as numerous States, including the US, UN, EU, Japan, Switzerland and even Nepal's traditional supporters India and China were becoming more vocal in denouncing the authorities' actions and were calling for reconciliation between the King and the political parties. Ms. Arbour expressed "shock" at the use of excessive force in Nepal. The US State Department stated that the King's direct rule had "failed in every regard".

On April 20, three persons were killed and over 50 injured when the security forces opened fire on a demonstration in the Kalanki area of Kathmandu. Over 36 protestors were injured in Patan when they clashed with riot police. Close to seven thousand people reportedly defied curfew orders in the Bansbari area and reached the Ring Road where the police fired teargas to disperse them. Separately, Indian Prime Minister Manmohan Singh's Special Envoy, Karan Singh, met with King Gyanendra at the Narayanhiti Royal Palace in Kathmandu concerning a resolution to the grave and escalating crisis in the country. The size of the demonstrations in the capital and around the country continued to grow, as media coverage of the repression led to an ever-growing support-base for the generally peaceful demonstrations. Despite the violent repression, the movement was gaining unprecedented momentum.

On April 21, in a televised address, King Gyanendra announced that he would hand the political power he had assumed 14 months before back to the people and asked the Seven-Party Alliance (SPA) to name a new Prime Minister. The SPA rejected the offer as being inadequate, while the Maoists stated that they would not accept anything less than the establishment of a Constituent Assembly. Central to the demands of the demonstrators was the creation of a constituent assembly that would re-write the

constitution of Nepal through a democratic process and enable the abolition of the monarchy through popular consent.⁶

On April 22, over 200 demonstrators were wounded when the security forces opened fire on them at different locations in Kathmandu. In Pokhara, nearly one hundred thousand people joined in SPA-led demonstrations, while other massive rallies were organised in other western district headquarters including Baglung Bazaar, Beni, Kusma, Damauli and Gorkha.

On April 23, the SPA announced another wave of nationwide protests, aiming to bring two million people to demonstrate in Kathmandu on April 25.

On April 24, in a televised address to the nation, King Gyanendra announced that he was effectively stepping aside and restoring the House of Representatives that had been dissolved on October 4, 2002. Welcoming this proclamation, Nepali Congress General Secretary Ram Chandra Poudel stated that the seven parties would now move ahead "upholding the spirit of the demonstrators and the SPA's roadmap based on the 12-point understanding with Maoists". The SPA then withdrew its nationwide indefinite general strike. However, the Maoists initially rejected the proclamation, although they later accepted to join talks with the new government.

The April uprisings, which included hundreds of thousands of demonstrators over 19 days, have been called the "Janaandolan Bhag 2," which in Nepali means the "People's Movement Part 2." They were a truly significant historical event. For an absolute monarch to be swept from power through the concerted efforts of a popular, peaceful pro-democracy movement is a rare event in Asia. As shall be described later in this report, within six months, the monarchy was to be stripped of its assets and its constitutional powers. The movement was known as "Part 2," as it was seen as being a continuation of the popular movement that occurred in 1989, following which then-King Birendra declared a multi-party political system in Nepal. Progress to full democracy had, however, not been attained during this first attempt and the decade-long conflict between the Maoists and the authorities prevented further positive developments in this regard. It is hoped that full democracy – or Lok Tantra as it is known in Nepali - will be reached as a result of the latest movement.

This movement came at a cost, however, with 20 persons having died, hundreds having been injured as the result of beatings, shootings or torture and thousands having been arrested. Those killed have been identified as follow:

1. **Dasharnlal Yadav**, 50, a permanent resident of Malekpur VDC, Saptari district, who died during the course of treatment at Sagarmatha Zonal Hospital, Rajbiraj on April 5, 2006.
2. **Debilal Poudel**, 25, a permanent resident of Bichari Chautara VDC-9, Syanja district, who was shot dead on April 7, 2006 while he was attending a

⁶ <http://www.ahrchk.net/statements/mainfile.php/2006statements/493/>

- demonstration by eight student unions at Butwal, Rupendehi district. He was president of Nepal Pragatishil Student Union.
3. **Bhimsen Dahal**, 34, a permanent resident at Ugrachandi Nala VDC, Kavrepalanchowk district, who was shot dead by Nepal Army personnel at Pokhara on April 8, 2006. He ran a cyber-cafe in Pokhara.
 4. **Tulsi Kshetri**, a married woman and permanent resident of Bharatpur of Chitwan district, who was shot dead on April 9, 2006 by security personnel while she was sitting on the roof of her home, watching the demonstrations.
 5. **Shiba Hari Kunwar**, 22, a permanent resident of Walting VDC-7, Banepa district, who was shot dead on April 9, 2006 by the security forces during a demonstration in Kavrepalanchowk district.
 6. **Bishnu Pande**, 32, a permanent resident of Swathi VDC-5, Nawalparasi district, who was shot dead on April 12, 2006 in Nawalparasi district by Nepal Army personnel while he was demonstrating. He was an active member of the CPN-UML party.
 7. **Hiralal Gautam**, 25, a resident of Nijghad VDC-2, Bara district, who was shot dead on April 17, 2006 by the security forces of Nijgadh, Bara. He was an active member of CPN-UML.
 8. **Mohammad Tahir Ansari**, 72, a permanent resident of Mathiya-1, Rautahat district, who succumbed to his injuries on April 22, 2006, having been injured several days before by a tear gas shell in a demonstration in Ratnapark, Kathmandu.
 9. **Setu B.K**, 55, a permanent resident Bageshwori VDC, Banke district, who died on April 18, 2006 as the result of injuries sustained from a tear gas shell during a demonstration in Nepalganj, Banke district.
 10. **Rajan Giri**, a 12th grade student and permanent resident of Arjundhara VDC-6, Jhapa district, who was shot dead on April 19, 2006 in Chandragadhi, Jhapa district by Nepal Army personnel. He was a member of the student wing of the Nepali Congress party.
 11. **Suraj Bishwas**, 26, a permanent resident of Bhadrapur VDC-9, Jhapa district, who was shot dead on April 19, 2006 in Chandragadhi, Jhapa district, during a demonstration. He was a supporter of the Nepali Congress party.
 12. **Deepak Kami**, 21, a permanent resident of Necha VDC, Solukhumbu district, who was shot dead on April 20, 2006 in Kalanki, Kathmandu district by the armed police forces. He was a member of the Janamorcha Nepal party.
 13. **Basudev Ghimire**, a permanent resident of Amabhanjyan VDC-3, Makwanpur district, who was shot dead on April 20, 2006 by the security forces during a demonstration in Kalanki, Kathmandu. He was a member of the Nepali Congress party.
 14. **Sagun Tamrakar**, 18, permanent resident of Panauti Manucipality-7, Kavre district, who was shot dead on April 20, 2006 at Kalanki, Kathmandu during the demonstration.
 15. **Yamlal Lamichhane**, 55, a resident of Gulariya Municipality, Bardia district, who died during the course of treatment for injuries sustained in a demonstration in Lakhanau, India on April 21, 2006.

16. **Gobinda Natha Sharma**, 53, a resident of Kushma, Parbat district, who died on April 25, 2006, after being injured by bullets on April 21. He was injured while watching a demonstration from the roof of his house.
17. **Pradhumna Khadka**, 32, a resident of Suchatar VDC-4, Kathmandu district, who died on May 7, 2006, as the result of bullet injuries sustained in Kalanki, Kathmandu on April 22, 2006. He was an active member of the Nepali Congress party.
18. **Mohammad Jahagir**, an Indian citizen, who died on April 22, 2006 during the course of treatment. He was shot and injured in Tripureshwor, Kathmandu.
19. **Anil Kumar Lama**, a resident of Vidur Municipality-7, Nuwakot district, who died on May 6, 2006 having been injured by a tear gas shell in Tripushor, Kathmandu. He was an active member of CPN-UML.
20. **Chandra Bayalkoti [Sarki]**, a permanent resident of Bidur Municipality-7, Nuwakot district, who died on May 6, 2006 after being injured by a tear gas shell on April 22, 2006 in Bhotahiti, Kathmandu. He was an active member of CPN-UML.

April 25 onwards – the beginning of a new era?

The period that began following the King's having relinquished absolute power and reinstated parliament was greeted as being a new dawn for Nepal, and raised hopes that the antagonist elements within the country would be able to resolve the internal conflict that had led to the death of an estimated 13,000 people and many more thousands being subjected to gross human rights violations. The situation of human rights, including the issues of ongoing violations by State-agents and Maoists, as well as the issue of impunity for past abuses, will be detailed. Here, we shall see in this section of the report how the various political developments have brought the country closer to the creation of a lasting peace, as well as the challenges that remain ahead. It is worth noting that the AHRC has continued to document a significant number of human rights violations by both State-agents and the Maoist insurgent forces, throughout the period from April 24 to the date of this report's publication.

Following the successful conclusion of the popular pro-democracy uprisings on April 24, King Gyanendra appointed Nepali Congress president Girija Prasad Koirala as the new Prime Minister on April 27, and the reinstated House of Representatives (HoR) held its first meeting on April 28. The new Prime Minister then formed a seven-member Cabinet. While representing a significant landmark in itself, the reinstatement of parliament can only be seen as a step towards the fulfilment of the key demands of the people's movement. The people's demands centred on the creation of a truly democratic system in Nepal, through the holding of elections to a Constituent Assembly, which would be all inclusive, and lead to the re-writing of the country's constitution and a decision on the fate of the monarchy. An end to the conflict and the abuses and injustice in the country was also an underlying theme of the protests.

Proper constitutional arrangements and the development of forms of governance capable of battling Nepal's long standing problems, along with the cessation of hostilities remained the key hurdles at this point. The AHRC released a statement following these events highlighting the need for the following issues to be addressed in a timely manner: the rapid formation of an inclusive interim government; the establishment of effective civilian control over the military; the disarmament and inclusion in the political mainstream of the Maoists; the holding of elections to a Constituent Assembly; the drafting of a new constitution; and the formation of State institutions that would engender the rule of law and enable the bringing to justice of all perpetrators of gross human rights violations, both during the repression of demonstrations in April and throughout the years of violence that preceded these events.

The rapid formation of an inclusive interim government: in order for changes to continue with the required momentum, it was suggested that an interim government be formed. The members of this body would be tasked with ensuring that key required developments, notably the elections to the Constituent Assembly, proceed with all speed, abandoning any petty party line considerations or intransigent ideological dogma in favour of progress towards the commonly held aims of the people of Nepal.

The establishment of effective civilian control over the military: in order to ensure the continuation of the cease-fire, the strengthening of the democratic political mainstream in the country and the possibility of bringing the Maoists into fruitful negotiations, full control of the military needed to be handed over from the King to the government. Without reforms to the military and further safeguards, security would remain precarious and there were signs that the Maoists may drag out the process of peace negotiations and joining the political mainstream.

The disarmament and inclusion in the political mainstream of the Maoist insurgents: of paramount importance for a durable peace, and intrinsically connected with reforms to the military, was the need for the well-monitored disarmament of the Maoist insurgents. The Maoists had previously intimated that they were open to monitoring by the United Nations, and this body seemed best able to effectively monitor the insurgent's disarmament. Without disarmament, any political process and elections would be being conducted under a climate of fear, which is unacceptable. As a prerequisite for their participation within the political mainstream, the Maoists had to disarm. This process should be formalized as a result of the peace process negotiations that were to be held in the near future. Any obstacles to this process created by the Maoists should be seen as efforts to sabotage the demands of the people of Nepal concerning the holding of a Constituent Assembly.

A future for Nepal based on peace, security of the person and the enjoyment of human rights: the recent political developments had resulted from the frustrations and suffering of the people of Nepal and their needs for lasting peace and the respect for human rights. The eradication of torture, forced disappearances and extra-judicial executions would be key indicators concerning the success with which all political forces were meeting their demands.

One suggestion to enable the battle against impunity was the setting up of a high-level commission, through legislation, armed with the mandates of investigation and prosecution. The jurisdiction of this commission would be to investigate and prosecute all persons who used excessive force during the repression of the 19-day April uprisings. Following this, the commission should ensure the prosecution of all persons who have violated human rights since King Gyanendra's coup on February 1, 2005. Subsequently it should turn its attention to all perpetrators dating back to October 4, 2002, when King Gyanendra dismissed the democratic parliament, before turning to the beginning of the Maoist armed insurgency over a decade ago. The Commission should also ensure the implementation of findings made by the Malik commission, which has identified perpetrators of abuses during the repression of the first people's democracy movement in 1990. This Commission should be established without delay and follow a clear time line to address these issues. It should be designed to integrate support from the UN Office of the High Commissioner for Human Rights and other human rights bodies in Nepal.⁷

As we shall see, over the coming weeks and months many of these issues were addressed, although the final point concerning the bringing to justice of all perpetrators of grave abuses remained untouched at the time of writing of this report.

The Maoists had announced a unilateral cease-fire for three months with immediate effect on April 26, 2006. In its second meeting on April 30, the HoR unanimously passed a proposal concerning the holding of elections to a Constituent Assembly. On May 3, 2006, the government announced a cease-fire of its own and invited the Maoists for talks. Prime Minister Koirala stated that the Maoists would be included in an interim Government in the future and that they could take part in elections to a Constituent Assembly.

The government also revoked the municipal elections that had been conducted on February 8, 2006 as well as all appointments to the District Development Committees, and cancelled the appointment of regional and zonal administrators by the erstwhile royal government. On May 7, the Cabinet annulled all appointments made by different governments since October 4, 2002. This was a key step in undoing some of the damage done by the King, who placed royalist and for the most part incompetent cronies in positions of power throughout the country. Many of Nepal's State institutions, including the judiciary, police and prosecution, will require significant personnel replacements over time, in order to enable them to represent and deliver upon the requirements of the new realities in the country.

On May 5, the government formed a five-member judicial committee, headed by former Supreme Court judge Krishna Jung Rayamajhi, which was mandated to investigate the royal regime's violent suppression of the April 2006 mass movement. While this move was welcomed, the AHRC was concerned that investigations into past abuses would be restricted to those committed during the uprising. The issue of impunity, which remains a major challenge to the establishment of a country based on solid foundations of justice,

⁷ <http://www.ahrchk.net/statements/mainfile.php/2006statements/527/>

requires that this issue be taken up more thoroughly and include all human rights violations perpetrated by all actors since the beginning of the conflict over one decade ago. The failure to address this issue, and to trade justice for political expediency, will not enable solid foundations and institutions of the rule of law to flourish in the country, opening the possibility of a return to such abuses in the future.

On May 12, the authorities arrested five ex-ministers, including: former Home Minister Kamal Thapa; former Foreign Minister Ramesh Nath Pandey; former State Minister for Information and Communication Shrish SJB Rana, former Local Development Minister Tanka Dhakal and former State Minister for Health Nikshya SJB Rana. The government also suspended three service chiefs, Nepal Police Chief Shyam Bhakta Thapa, Armed Police Force (APF) Chief Shahbir Thapa and the Chief of the National Investigation Department.

On May 18, the HoR adopted a proposal depriving the King of privileges enjoyed by him and declared the reinstated HoR as “supreme.” With the adoption of the House of Representative's Proclamation, the Nepalese people achieved another victory towards the establishment of a truly democratic State. Included in the proclamation resolution, which was approved by a unanimous verbal vote in the 205-member house, are several landmark reforms that, if implemented, would significantly alter the country's political landscape, in line with the demands made by the people's movement.

As part of the reforms, the government declared Nepal a secular state and stripped the King of a great number of powers, most notably by transferring the authority over the military from the palace to the civilian government. His Majesty's Government is now called the Government of Nepal; the Royal Nepal Army is now called the Nepalese Army. The AHRC at this point in particular welcomed the transferral of control over the military, as it has been a significant actor in many of the numerous and widespread violations of human rights over recent years. The perpetrators of these violations, however, continue to enjoy impunity to date

The proclamation effectively transformed the once all-powerful King into a figurehead: as a result the HoR has the right to make, amend and nullify laws regarding the succession to throne; the activities of the monarchy will be questionable either in the HoR or in courts, removing the King's legal immunity; and, the monarchy's private property and income will be taxed as per the law. Such fundamental changes would have been difficult to imagine as little as two months prior to this proclamation.

Included in the proclamation are the following key elements: the task of the formulation of laws and the establishment by the HoR of "the procedures for moving on the path of Constituent Assembly"; the inconsistent legal arrangements of the Constitution of the Kingdom of Nepal-1990 and other prevailing laws will be nullified to the extent of inconsistency, with a committee formed within the HoR to ensure this; all of the executive rights of Nepal as a State shall rest on the Council of Ministers; the Council of Ministers shall be responsible to the HoR; the administration, army, police and all the

executive organs shall be under the purview of the government, which is responsible to the HoR.

One element that was missing from the proclamation was the issue of judicial reform. The AHRC highlighted the importance of dealing with the issues of justice throughout all processes, including the Constituent Assembly, in a statement at the time, of which the key points are reproduced here:

Strong institutions of justice are needed in the country as an integral part of the country's governance, with its citizens able on all occasions to rely on the courts for the protection of their rights, even in cases against the authorities. The future development of the constitution and other laws must transform the judicial branch and the other arms of justice, such as the policing and prosecution systems. That there has been much to be desired in the Nepalese judicial system is beyond doubt. Now that the pressures from an authoritarian monarchy limiting the independence of the judiciary have been eased, Nepal is in a position to address some of these problems. To do so, it is not enough to state that the judiciary is independent. The future constitution should provide for more detailed safeguards and procedures to ensure this independence. Among these, procedures should be established for the citizens to have speedier resort to justice. Delayed justice can subvert all the achievements produced by the recent historic political developments.

In the area of the protection and promotion of human rights, legal procedures need to be created for individuals to enjoy facilitated access to the highest courts of the country to complain and to obtain redress concerning human rights issues. It should be possible to make direct petitions to the courts in the event of illegal arrest, detention, torture and every other serious violation of rights. To prevent the possibility of disappearances in the future, legal access should be made available without obstacle or condition in cases of habeas corpus. The speedy disposal of such cases should also be ensured. The government should immediately take all necessary measures to ensure that a complete and publicly available register of detainees is established that includes all persons being detained in the country. Furthermore, an independent witness protection programme is essential for the functioning of the legal process, most notably concerning cases of human rights abuse.

The government should also make a clear pledge to take all necessary measures to implement all relevant recommendations made by international bodies, notably the various United Nations human rights special procedures and treaty monitoring bodies. As Nepal is a signatory to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), there must be constitutional provisions enabling the implementation of the judgments of the Human Rights Committee through the Nepalese courts.

The protection of individual freedoms in the future will very much depend on the creation of a modern policing system in the country. Much of the complications about human rights in countries in South Asia, including Nepal, have arisen from the fact that modernised police forces capable of carrying out investigations into crimes without

relying on forced confessions have not yet been created. A people-friendly law enforcement agency is indispensable if the democratic movement's achievements are to be consolidated. In the HoR proclamation, steps have been envisaged for the democratic control of the armed forces. The test in practice as to the efficacy of these reforms will be whether legal redress will be available to any future victims of violations by the armed forces.

An independent institution of prosecution, which is not subjected to any party politics, is also essential in ensuring the rule of law. Looking into the past mistakes and limitations in this area, and looking into more advanced prosecutorial systems would be a productive exercise for lawyers, judges and others who wish to contribute to the development of such an institution.

An important test of a democratic society is the way in which it deals with its 'weaker' sections. Centuries of absolute monarchy have forcibly maintained very strict boundaries within Nepalese society, dividing it along caste lines. In this era of change in Nepal there is a significant opportunity to consign the horrors of caste discrimination to the past. The careful development of constitutional provisions to this effect will be required if the elimination of caste and all other forms of discrimination are to be enabled. A modern democratic Nepal also requires specific attention to be given to ensuring gender equality and in order to undo discrimination against women. Special attention must also be made to protect the rights of children, particularly those from under-privileged and poorer sections of society.⁸

On May 25, 2006, representatives of the Government and the Maoists met at Gokarna and held the first round of peace talks. A 25-point Cease-fire Code of Conduct was announced to pave the way for elections to the Constituent Assembly.

On June 12, 2006, the government decided to withdraw all cases filed under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) as part of the concessions being made to the Maoists. On June 13, the government released 240 Maoists from prisons around the country. The AHRC had previously denounced the TADO as being a major source of illegal arrests, torture and disappearances. Section 9 of the TADO provided that if there are grounds to believe that the person might commit terrorist activities if not prevented from doing so, he or she could be detained preventively for a maximum period of one year. The wording used in this provision enabled loose interpretation and therefore abuse by the security forces. The burden of proof of innocence was on the person accused of terrorist activities. The power to detain persons for a year without judicial scrutiny enabled the practice of torture to flourish in Nepal.⁹ The withdrawal of cases under TADO is therefore welcomed by the AHRC, as is the fact that the TADO was repealed by the Cabinet of the Government of Nepal following the April uprisings.

⁸ <http://www.ahrchk.net/statements/mainfile.php/2006statements/547/>

⁹ www.ahrchk.net/hrday2005/pdf/Dec102005-IHRD.pdf, pp. 71-72.

On June 15, the government and the Maoists held the second round of peace talks in Kathmandu, and decided to constitute a 31-member Ceasefire and Code of Conduct National Monitoring Committee, headed by human rights activist Dr Devendra Raj Pandey for the implementation and monitoring of the 12-point understanding between the SPA and the Maoists as well as the 25-point Ceasefire Code of Conduct. Both sides also agreed to an eight-point agenda which included framing an interim statute, an interim government, declaring the date for an election to a constituent assembly and dissolving the revived House of Representatives and the Maoists' People's Governments. Both the sides also agreed to request the United Nations' assistance in managing and monitoring both sides' armed forces, to ensure free and fair elections to a Constituent Assembly.

On June 18, following a Supreme Court order, the government released two former Ministers of the royal cabinet, Kamal Thapa and Tanka Dhakal. The three other Ministers that had been arrested following the April uprisings had been released on June 4.

On June 28, the high level judicial commission constituted to investigate the suppression of the people's movement summoned four persons to record their statements at the commission's office in Kathmandu: former Chief of the Royal Nepalese Army, Satchit Shumsher Rana; former Law Minister Nirajan Thapa; former Additional Inspector General of the Armed Police Force Raviraj Thapa; and former Additional Inspector General of the Nepal Police Krishna Basnet. The commission had alleged that these persons had played a key role in the excessive use of force and suppression of the peoples' movement in April.

On July 1, 2006, Deputy Prime Minister and Minister for Foreign Affairs, K.P. Sharma Oli, called on the Maoists to immediately stop the practice of extortion from civilians and the use of the so-called People's Courts, which are a cause of a great number of human rights violations. On July 3, the Maoist leadership directed all the party's district committees to halt the use of People's Courts in major cities, including Kathmandu, and to only accept voluntary public donations in a bid to promote "dialogue, peace and progress." As we shall see later, the Maoist courts and the issue of extortion have led to continuing human rights violations in the country in the latter half of the year.

On August 9, the government and Maoists reached a five-point agreement concerning the assistance of the United Nations with regard to the peace process and the holding of free and fair elections to a Constituent Assembly.

On August 25, the Interim Constitution Drafting Committee (ICDC) submitted a draft Interim Constitution to the government and Maoists' peace negotiating teams.

On September 25, the government and Maoists decided to hold summit talks on September 28 to finalize the interim constitution and immediately start the arms management process. However, by October 8, the second round of talks between the government and Maoists had failed to reach any agreement on the crucial issues of the future of the monarchy, the structure of the interim legislature and the modalities of arms management. On October 10, both sides agreed that an election to the Constituent

Assembly should be held by the second week of June 2007. On October 15, the summit talks between the government and the Maoists were adjourned for an indefinite period after they failed to reach any further agreement. At the time it was feared that an impasse had been reached.

However, on November 8, the seven-party alliance government and the Communist Party of Nepal-Maoists reached an historic agreement to end the decade-old conflict and restore lasting peace through a six-point agreement. In a statement, sections of which are reproduced below, the AHRC welcomed the agreement reached between the Seven Party Alliance (SPA) political parties and the Maoist insurgents, which paves the way for an end to the decade-long conflict in Nepal and the establishment of peace, security and development, as well as the rule of law, justice, and the enjoyment of human rights in the country. The six-point agreement included provisions that were expected to lead to the signing of a comprehensive peace accord on November 16, which would mark the end to the armed conflict between the Maoist insurgents and the government of Nepal. The agreement also addressed key issues such as arms management, the monarchy, an interim parliament, an interim government and Constituent Assembly elections.

One of the major barriers to the advancement of negotiations to implement the core demands of the people of Nepal stemming from the popular uprisings in April, 2006, had been the issue of arms management. The holding of Constituent Assembly elections, which has been the key demand of the pro-democracy movement, could only have the chance of being held in a free and fair environment if the Maoists and the Nepalese armed forces accepted to have their arms placed under a system of monitoring – otherwise the elections risked being conducted at gun-point. Under the November 8 agreement, all of the Maoist armed insurgents were to be placed in seven main cantonment areas - in Ilam, Sindhuli, Kavre, Palpa, Rolpa, Surkhet and Kailali districts - and 21 smaller ones by November 21, 2006. By November 24, 2006, all of their arms were to be kept under lock and key, with the Maoists retaining the key, but with United Nations monitoring systems ensuring that any attempts to remove them will sound alarms. An equal amount of Nepalese Army weapons would also be secured in such a manner.

According to media reports, under the agreement, the parties agreed to promulgate an interim constitution by November 21, with the King to have no constitutional rights under its provisions. This development could not have been foreseen only seven months previously and is testimony to the scale of achievements in Nepal in recent months. Furthermore, an interim parliament was to be formed by November 26, 2006, with an interim government to be formed by December 1, 2006. Both of these bodies are to include the Maoists, which is an essential step in ensuring that any differences are dealt with within the political system rather than through armed conflict, as has been the case in recent years. The National Assembly would be dissolved once the existing parliament declares the announcement of the interim legislature and interim constitution. Crucially, in terms of ongoing human rights violations, all of the Maoists' so-called people's governments and people's courts would also be dissolved along with the announcement of the interim constitution and legislature. The AHRC has continued to receive grave

allegations of human rights committed by the Maoists since the popular pro-democracy movement took place in April this year, including sentences being handed out to individuals by the People's Courts – these so-called courts fail to reach the internationally accepted standards of fair trial. Numerous individuals have been sent to labour camps as punishment by these courts, with reports of them being subjected to serious ill-treatment and torture as a result. In light of this, the AHRC also urges all parties to ensure that these labour camps are immediately dismantled, under close UN supervision.

Under the agreement, there will be a total of 330 members of the interim parliament, with the Nepali Congress (NC), CPN-UML, Nepali Congress-Democratic (NC-D), Rastriya Prajatantra Party (RPP), People's Front Nepal (PFN), Nepal Majdoor and Kisan Party (NMKP) and Nepal Sadbhavana Party (NSP) retaining the number of seats they have in the existing parliament. Including the Upper House, the NC, UML, NC-D, RPP, PFN and NMKP currently have 75, 73, 8, 5, 1 and 5 seats respectively. The Maoists will have 73 seats in the interim parliament. The remaining 48 seats will reportedly be divided among the SPA, Maoists, smaller parties and members of civil society, with this distribution to be finalized at a later date.

The Constituent Assembly will hold its first meeting by the second week of June, 2007, and will prioritize the issue of the future of the monarchy, which will be decided by a majority of the assembly. The Constituent Assembly will include 425 members and operate under a mixed proportional and geographical representation system, comprising 204 and 205 members under the respective systems. A further 16 members will be appointed by the council of ministers. Any Nepali citizen aged 18 or over will be eligible to vote in the Constituent Assembly election, which will be monitored by the UN. In the interim, the King will have no role in the country. The monarchy's assets will be nationalized and be managed by the government as a trust.

Furthermore, a high-level commission will be formed to recommend the restructuring of the State to ensure inclusive, democratic and progressive institutions and systems, in order to bring an end to class, ethnic, linguistic, cultural, religious and regional discrimination. This presents an opportunity to bring an end to the plight of the Dalits and other minorities in Nepal that must be grasped. Furthermore, the agreement reportedly contains provisions to ensure that relief and compensation are provided with regard to those killed or displaced during the conflict. The establishment of a high-level Truth and Reconciliation Commission is also planned.

It must be noted that at the date of publication of this report, only one of the developments planned in the November 8 agreement had in fact taken place: on November 22, Prime Minister Koirala and Prachanda, the leader of the Maoists, signed a Comprehensive Peace Accord, which brought an end to the bloody decade-long conflict that had cost the lives of some 13,000 individuals and severely affected countless thousands more. The relationship between the SPA and the Maoists had achieved in the six months since the April uprisings what the monarchy and previous governments had failed to achieve in over 10 years. This accord resulted from the November 8 six-point agreement, which had initially planned for this accord to be signed on November 16. It is

therefore likely that many of the dates mentioned in the six-point agreement may also suffer from such delays. However, it is vital that the momentum be kept up and that the road-map concerning the disarmament, cantonment, creation of an interim government and eventually the holding of Constituent Assembly elections.

The end of the armed conflict is a vital and momentous step in ensuring that peace, security and the enjoyment of human rights have a chance of becoming an every-day reality in Nepal. There is much hope that this will now be possible, although, at the time of writing of this report many significant steps contained in the November 8 agreement remained to be completed, as mentioned above. As stated at the beginning of this report, 2006 has been a tumultuous year in Nepal. It is rare that any country undergoes such rapid, positive change in such a short period of time. It is hoped that the momentum will not be lost and that all actors will work together in the coming months to ensure effective arms management, and smooth political transition to free and fair elections to the Constituent Assembly and beyond.

Important human rights issues

Continuing human rights violation by both State-agents and Maoists

In the period following the April uprisings, it was hoped that the progress that was occurring on the political front would be replicated concerning the human rights situation in the country. While it is true that in many ways the situation has improved, for example concerning the number of forced disappearances being recorded or the threats to human rights defenders from the State, there remain a considerable number of cases of torture, extra-judicial killing and impunity being witnessed in the country, that continue to cause serious concern. In particular, the number of human rights violations being committed by Maoists is of serious concern. The number of cases of this nature reaching the AHRC has increased, although this is likely as the result of the fact that since April it has become easier to document cases in parts of the country under Maoist control.

The AHRC has received numerous cases of the use of torture by both State-agents and by the Maoists. Some examples follow, although these only represent a small portion of the total number of cases of violations thought to have occurred during this period.

Ongoing human rights violations by the Maoists

Since the April uprisings, the Maoists have continued killing, abducting, collecting involuntary donations and torturing a significant number of persons. Hundreds of people have reportedly been abducted and tortured by the Maoists since the peace process can be seen as formally having started, on May 25, 2006. Many ongoing violations, including torture, stem from the type of "justice" being handed out by the Maoists through the People's Courts system, which cannot be recognized as a legitimate form of justice

dispensation. In addition, the Maoists, who have been engaged in extracting forced donations from the people living in areas under Maoist control - which represented most of the country during this period - also started collecting parallel taxes in the Nepal-India boarder of the Eastern region. They collected taxes at the Sugar Mills gate, which is at the entrance to the Biratnagar customs between the two countries. They have also been preparing to collect taxes from customs posts in Sunsari and Saptari districts. This is important to note, because violence is often associated with the process of extracting money from persons, including torture and killings.

The Maoists have also continued with the forced recruitment of youths, with reports surfacing in mid-September of the establishment of a "recruiting centre" in Sindhiyatol, Motipur VDC-5, where some 450 youths were reportedly recruited and placed into political and military training programmes. The total number of persons, notably juveniles, being recruited, either forcible or voluntarily (as a result of potentially untenable promises of remuneration) is thought to have increased significantly towards the end of the year.

On September 11, 2006, the United Nations Office of the High Commissioner for Human Rights (OHCHR)-Nepal had called on the Maoist rebels to fulfil their commitments expressed in the past and to stop human rights abuses. "The concerns include issues relating to the rights to life (killings and deaths of persons abducted), to liberty and security (abductions), and to physical integrity (ill-treatment and torture), as well as the rights of the child and of internally displaced persons (IDPs)," the statement said, adding that, "Children must not be recruited into or involved in armed groups of any kind, including militias, and they must not be intimidated into joining political activities.

Also on September 11, 2006, the National Human Rights Commission (NHRC) asked the rebels to immediately disclose the status of 152 named disappeared individuals. On the following day, September 12, the Prime Minister also called on the Maoists to reveal the whereabouts of disappeared people, adding that the government would make public the whereabouts of those disappeared at the hands of the State only after the Maoists disclose details of those they have disappeared. The AHRC urges the government to release these details unconditionally, and urges the Maoists to do the same.

As a result of the November 8 agreement between the Maoists and the SPA, and the Comprehensive Peace Accord that followed on November 22, it is hoped that violations by Maoists will decrease. This will be possible if the cantonment of Maoists forces is implemented, the arms management process works as planned, promises to dismantle the People's Courts are kept, and forced donations of money are halted. Beyond the need for a cessation of ongoing violations, a key requirement for the establishment of the rule of law and the enjoyment of human rights is the investigation and prosecution of persons responsible for past violations. With the Maoists in the process of joining the government of Nepal, they should also be accountable under the State's mechanisms and jurisdiction, and should therefore comply and collaborate fully with any independent investigations that are tasked with looking into allegations of past human rights violations. A new system cannot be successfully be built on weak foundations, and the culture of impunity

that has prevailed in the country during the years of internal conflict must be removed. Political progress at the expense of justice only leaves the door open for the resurgence of past practices. Now that the issues of peace and security appear to be heading towards a satisfactory conclusion, the issue of impunity remains the greatest obstacle to a truly positive and sustainable transformation of Nepal. Examples of violations allegedly perpetrated by Maoists that have occurred since April 2006 are included below.

Cases of violations by the Maoists

On May 12, 2006, just a matter of days after the cease-fire announcement, Maoists tortured Prem Bahadur Thokar to death. The 40 year-old farmer from Jagatpur VDC-6, Nayabasti, Chitwan district was accused of having defamed the Maoists party and of carrying out unwanted activities in their name.

On June 10, 2006, 19 year-old Grade 10 student, Bishnu Lama, from Thulo Pakhar VDC-3, Sindhupalchowk district was abducted by Maoists. His dead body was found buried in a jungle in Ningale VDC, Sindhupalchowk six days after his abduction. When locals demonstrated against the Maoists, the Maoist commander accepted the "mistake" and made a public apology, although no action was taken against the perpetrators. There are many such cases of killings that have taken place after the cease-fire with no action having been taken to punish those responsible. These glaring injustices need to be addressed if any semblance of normal life is going to be created in the country.

Also on June 10, 2006, 58 year-old Ause Tamata, a resident of Taranga VDC-6, Surkhet district was abducted by Maoist Surkhet Area In charge Govinda as part of a People's Court investigation, on the charge of raping his own daughter-in-law. He was beaten for at least two hours with sticks, and was punched and kicked all over his body. Finally, he was sent to a Maoist labour camp in Taranga VDC-5, Surkhet district for 3 years, after he confessed to having raped her. This case shows how the People's Court system makes use of torture to extract confessions and hands out sentences based on flawed, summary and violent procedures.

Prem Bahadur Thokar, a 40-year-old farmer, former Maoist, and resident of Jagatpur VDC-6, Nayabasti, Chitwan district was killed by Maoists on May 12, 2006. Two Maoists abducted him from his home at around 3 pm, beat him with belts and sticks for more than half an hour, before taking him to Krishnachowk, in Jagatpur VDC for punishment in public. He died in Krishnachowk at around 6 pm. He had reportedly been accused by villagers of being involved in violence and forcibly collecting donations. Maoist district leaders have said that they wanted to warn him by punishing him; however he died as a result of the treatment. The Maoists apologized for his death and stated that the Maoists who had been involved in the incident had been taken to a labour camp as punishment.

On May 22, 2006, at around 7 am, a group of about 40-50 plain-clothed armed Maoists under the command of the Maoist Deputy Chief of the District People's Government, Mr.

Rajendra Patel, alias Prajwa,¹ attacked the Sahani brothers' home in Basanpatti VDC-6, Basanpatti, Rautahat district. The brothers were beaten, their hands tied, and they were marched around the village while being beaten before being abducted. The Maoists also fired multiple bullets at their mother, Anarkali Sahani, when she tried to prevent them from taking her sons. She was taken to hospital as a result of the attack. The brothers were taken to the primary school in Inaruwa VDC-3, Rautahat district, where they were beaten, having been accused of being robbers and rapists. They were finally hacked to death at around 8 pm that evening. Their bodies were found on the bank of the Bakaiya River on May 27, 2006. On May 23, the Maoists organized a press conference in Chandranigapur, during which they acknowledged having abducted the Sahani brothers, but denied having killed them, claiming that the villagers had done so. It is believed that the brothers may have been targeted as the younger one, Birbasan Sahani, was an ex-policeman.

Santa Bahadur B.K, a 24-year-old labourer and resident of Ishaneshor VDC-1, Lamjung district, was abducted by two Maoist cadres on September 6, 2006, at about 6:30 pm, from his home. The Maoists abducted him, saying that they had some work for him to do and that he would be released soon. After the abduction, they took him to Ram Krishna Pariyar's home in Ishaneshor VDC-2, Laxmi Bazaar, Lamjung District and tortured him, having accused him of being involved in a robbery in the village. His hands were tied behind his back and he was beaten with sticks on his thighs, legs, hands and other parts of his body. He was found dead by villagers during the following day. The Maoists have also accepted that Santa Bahadur died as a result of torture during investigation and have promised to punish those responsible.

All of these cases show that Maoist "justice" has been summary and violent. Persons accused of crimes, based on mere hearsay, are tortured into admitting these crimes and are punished as a result. Torture is used both as a method of interrogation and of punishment and often results in death. The Maoists even accept that they use torture and publicly regret any deaths, but in most cases do nothing to punish the perpetrators. When perpetrators are punished, they may also become the victims of rights violations, which cannot be viewed as an acceptable solution to the problem. All allegations of human rights violations by the Maoists since the beginning of their activities must be investigated by the State, with the full cooperation of the Maoists, as part of the process of building a new Nepal.

Violations committed by the State

The AHRC has also received many cases of grave violations of human rights by State-agents following the April uprisings, which gave rise to the creation of a government on the back of a groundswell of pro-democracy support. If this government and the Seven Party Alliance are to retain credibility as the representatives of this movement, they should ensure that they eradicate such violations.

Mr. Manoj Das's custodial torture

It is alleged that Mr. Manoj Das was tortured by the police and died while in detention at the Janasewa Ward Police Office, Kathmandu, following his arrest on October 15, 2006. There are serious concerns that this death will not be fully or effectively investigated and that the alleged perpetrators of the torture that preceded Mr. Manoj Das' death will go unpunished. Mr. Manoj Das was reportedly arrested along with Mr. Arun Das on October 15 on the charge of robbery, having been accused of stealing 24,000 rupees from Ms. Binita Neupane, a staff-member of the Bank of Kathmandu, while she was at work. The police arrested them following evidence of this act allegedly provided by CCTV video recordings in the bank. Sagar Das and Rohit Das were also reportedly arrested on the same day with the help of information provided by Manoj and Arun Das. Police Inspector Nanti Raj Gurung of Janasewa Ward Police Station, Kathmandu, has stated that Manoj Das was interrogated and tortured at his command. It is believed that Mr. Arun Das also underwent similar treatment. This admission shows the extent to which the use of torture and impunity have become ingrained in the policing system in the country. Police Inspector Nanti Raj Gurung has clearly stated that he had instructed Assistant Police Inspector Narayan Pandit and police junior Surendra Adhikari to beat Manoj Das with a plastic pipe on the soles of his feet for around 10 minutes and then make him jump up and down on his feet for around half an hour.

When questioned about Mr. Manoj Das' custodial death, District Superintendent of Police (DSP) Sharad Kumar Oli of the District Police Office, Kathmandu, also revealed that the victim was tortured during interrogation, but claimed that he had died as the result of being weakened by a heavy case of diarrhoea. DSP Oli further stated that the victim had gone to the toilet due to his illness, and had later been found unconscious inside the toilet. According to these claims, he was immediately taken to Bir Hospital, where the doctors declared him dead. Mr. Manoj Das is alleged to have been suffering from heart disease, for which he was taking medication. After the incident, the Police Headquarters in Naxal, Kathmandu formed a three-member probe team to investigate the case. Given that there have been clear admissions of torture by members of the police concerning this case, it is hoped that the investigation will lead to the prosecution of anyone found to have been responsible for these acts.¹⁰

Mr. Bacha Ram Chaudari's extra-judicial killing

32-year-old carpenter Bacha Ram Chaudari, a permanent resident of Rayapur Village Development Committee (VDC)-9, Rayapur, Saptari District, Nepal, was reportedly shot dead by police junior Ram Abatar Yadav of Area Police Station Rupani, Saptari on October 7, 2006, while he was returning home from Rupani Chock, Rayapur VDC.

Police junior Ram Abtar Yadav attempted to detain Bacha Ram Chaudari at Rayapur VDC-8. Bacha Ram Chaudari was then dragged along the ground by Ram Abatar Yadav.

¹⁰ <http://www.ahrchk.net/ua/mainfile.php/2006/2033/>

The policeman reportedly threatened to shoot and kill Bacha Ram Chaudari. The victim managed to get free and attempted to escape, but was then allegedly shot in the back by Ram Abatar Yadav and fell to the ground having been hit twice. The policeman then kicked him several times while he was lying injured on the floor. The police claim that they were attempting to detain the victim because he was engaged in smuggling timber, but eyewitnesses and his family members deny that he was engaged in such activities. The police reportedly left the scene once they had shot Bacha Ram Chaudari.

Police junior Ram Abatar Yadav was on patrol in Rayapur VDC-8 along with other two security personnel, but was alone at the time of incident. The police have claimed that he opened fire upon Bacha Ram Chaudari in self-defence, as a response to an attack by the victim. Eyewitnesses claim that Bacha Ram Chaudari was unarmed. According to the information received, the victim was later taken to Sagarmatha Zonal Hospital, Rajbiraj in a police van, before being transferred to B. P. Koirela Memorial Hospital Dharan, where he died.

After the incident, local villagers demonstrated concerning the killing, calling for compensation to be provided to the victim's family and for proper action to be taken against the perpetrator. The Chief District Officer and Senior Superintendent of Police (SSP) of the District Police Office have given assurances that they would provide one million rupees as compensation to the family, but the family has not received anything to date. Members of the District Police Office have stated that the alleged perpetrator, Ram Abtar Yadav, has been suspended from his functions and that a probe committee has been formed under the coordination of Deputy Superintendent of Police (DSP) Pradip Shrestha. This is welcomed, although there are concerns that the probe committee's activities will not lead to the effective investigation or successful prosecution of the alleged perpetrator in this case. These concerns are based upon the fact that impunity for human rights violations, including extra-judicial killings, forced disappearance and torture, is rampant and remains one of the major challenges in the country.¹¹

The ongoing disappearance of Maina Sunawar

Maina Sunawar was 15 years old when members of the Nepalese armed forces arbitrarily arrested her. Since this date - February 17, 2004 – her whereabouts have remained unknown, although recently, evidence suggests that she is buried in or near the Birendra Peace Operations Training Centre in Panchkhal, but the army continues to block investigations. This case highlights many aspects of the human rights situation in Nepal in recent years, as well as the ongoing problem of impunity and lack of justice that continues to plague the country.

All the evidence indicates that Maina Sunawar was tortured to death by members of the military, who subsequently sought to deny her arrest and cover up her death. More recently, three members of the military were tried by a military court, but they have only

¹¹ <http://www.ahrchk.net/ua/mainfile.php/2006/2057/>

received derisory punishment. As with other cases of violations of civilians' rights by members of the military in Nepal, they need to be investigated by the police and brought to trial before a civil court, if there is any chance of justice being achieved. Attempts by the police to investigate the case and to retrieve Maina's body are currently being blocked by the army. Furthermore, the United Nations Office of the High Commissioner for Human Rights (OHCHR) office in Nepal's investigation is also thought to have been hampered due to the army's non-cooperation and the government's indifference.

It is thought that Maina was detained because the military were searching for her mother, Devi Sunuwar, who reportedly witnessed the killing of two young girls, one of whom had been gang-raped, by members of the security forces in Pokharichauri, Kavre District, Nepal.

Her family members have sought her in vain in numerous detention centres. They have since been forced to leave their village, having received threats from members of the security forces. Initially, as is the way in many such cases, the military denied holding Maina. Reports surfaced indicating that she had been tortured to death in detention. She was reportedly beaten, dunked in water and subjected to repeated electric shocks, leading to her death. Following these reports, the military claimed that Maina had been killed while trying to escape from custody, and that they had returned her body to her family following a post-mortem examination. Her family has not received her body and there has been no evidence of any post-mortem examination having been conducted, according to AHRC's sources.

The "Court of Inquiry Board" (CIB) of a military court that was investigating this case has concluded that a covert military team from the Birendra Peace Operations Training Centre in Panchkhal had arrested Maina on February 17, 2004 and that she had been killed by members of the army, as the result of severe torture. The CIB has indicated that Training Centre Chief Colonel Babi Khatri, Captains Niranjana Basnet, Sunil Adhikari, Amit Pun, Sergeant Major Khadak Bahadur Khatri, and soldiers Dil Bahadur Basnet and Shrikrishna Thapa were present during Maina's interrogation and torture. The CIB also stated that the military, notably Babi Khatri, had taken steps to cover up her death by torture. He reportedly ordered Amit Pun to shoot a bullet into the back of Maina's dead body, to make it look like she had been shot while trying to escape. Furthermore, Babi Khatri reportedly ordered Amit Pun to bury Maina's body secretly and Niranjana Basnet to summon the police to prepare a report.

According to the information received, Amit Pun then ordered a member of the military called Surendra to dig a pit to the north-east of the officers' mess, some 50 to 60 metres outside of the 'concertina' barbed-wire. It is reported that Amit Pun took a photograph of Maina's body just before she was buried in the pit. For his part, Niranjana Basnet allegedly ensured that a false report was prepared by the Panchkhal Police Office concerning Maina's death.

On September 27, 2005, the media in Nepal reported that Colonel Babi Khatri, Captains Niranjana Basnet and Sunil Adhikari had been 'found guilty of not following the proper

procedures when Maina was found dead in custody' and sentenced to six-month prison sentences. Colonel Khatri also reportedly had to pay Rupees 50,000 (approximately US\$ 670) to the victim's family and had any promotion blocked for two years. Captains Ameet Pun and Sunil Adhikari were each to pay Rupees 25,000 and had any promotions blocked for one year. Due to a lack of transparency of the military justice system, the AHRC and its sources have not been able to ascertain whether these persons have actually served any of their prison sentences. Regardless of this, the punishment given to these persons for having tortured a 15-year old girl to death is derisory and scandalous, both in terms of the length of imprisonment terms and of the amount of compensation. The family members have reportedly refused to accept this compensation and have the case closed, and are instead seeking justice through the civil courts. The fact that the alleged perpetrators remain in service in the military, with their prospects for promotion only slightly dented despite the grave nature of their crimes, is an indicator of the protection under which members of the armed forces can operate.

The AHRC released a statement on August 31, 2006 concerning the machinery of impunity in Nepal.¹² One of the issues raised is that cases of violations of civilians' human rights by military personnel should be tried in Nepal's civil courts, as military courts lack transparency or credibility and participate in perpetuating impunity or protection for members of the military, notably concerning human rights violations. It is vital in this case that the alleged perpetrators in question be tried for murder before an independent, impartial court and that, if found guilty, they receive punishment that is proportional to their crimes, in line with international standards. Adequate compensation must also be awarded to the victim's family for their loss.

As part of the trial before a civil court, further investigations are required. A First Information Report (FIR) has been lodged concerning this case demanding the criminal prosecution of the perpetrators. The police are required to investigate the case and then send their findings to the public prosecutor, who then takes the case before the courts. It is reported that the military are blocking the police's attempts to investigate these events. This is typical of the majority of all such cases, and represents a significant barrier to justice in the country. For example, the military are reportedly obstructing attempts to exhume Maina's body. The exhumation and subsequent examination of her body are vital to the police investigation, following which her body should, at long last, be returned to her family. The Nepal Army must facilitate this process without delay or obstruction. It is understood that the victim's family and local NGOs have requested the assistance of the OHCHR in this process, but the latter is not able to intervene as it has not received any support from the government in this regard, such as commitments to support them in their investigations and an invitation for them to participate in the exhumation of the body. The government of Nepal must immediately invite the OHCHR to be included in the exhumation and investigation process, or stand accused of connivance in perpetuating impunity.¹³

¹² <http://www.ahrchk.net/statements/mainfile.php/2006statements/714/>

¹³ <http://www.ahrchk.net/ua/mainfile.php/2006/1947/>

Six persons protesting a rape killed and 50 injured by the security forces

The day after the historic conclusion of the April uprisings, members of the armed forces indiscriminately opened fire on a crowd of three thousand civilian protestors, killing six and injuring 50 others, following an incident of gang-rape and killing by security personnel based in the Morang District, Nepal.

On 25 April, 2006 at 8.30 pm, Sapana Gurung was reportedly dragged from her home to the nearby Nepal Telecommunications Office, Pashuhat Chauri by three security officers. At the time, 15 security personnel were stationed at the office as part of a patrolling mission under the command of Army Captain Pralhad Magar. At around 9.25 pm it was reported that villagers heard gunfire. Sapana was later found dead around 100 meters from her home. Medical reports filed by the B.P. Koirala Memorial Hospital declared that Sapana was shot after being gang-raped. The armed forces have denied the rape allegations, claiming that Sapana was killed when she failed to obey orders to halt given by an army patrol.

On April 26, a crowd comprising approximately three thousand people gathered at the Sub Police Station at Belbar-3, Morang district, to protest against the security forces' actions and demanding compensation for the victim's family and for the perpetrators to be punished. Tensions built as the protestors allegedly began chanting slogans, throwing rocks and setting logs on fire in front of the police station.

A delegation of six human rights activists representing the victim were just beginning to conduct a fact finding mission when members of the armed forces opened fire indiscriminately at the crowd, resulting in six deaths and 50 injuries.

The Army captain in charge at the time has attempted to justify the brutal repression by claiming that Maoist infiltrators were present in the crowd and were planning a raid. This claim has often been made by the security forces to justify the repression of demonstrations. Regardless of whether this is true or not, it cannot justify the indiscriminate shooting of civilians. Among the 50 injured, 39 were admitted to hospital with bullet wounds.¹⁴

Tackling disappearances

While the number of disappearances being perpetrated in Nepal has decreased over recent months compared with the last few years – in 2003 and 2004 the country had the world's worst record for this grave practice, according to the UN – many persons remain disappeared and the perpetrators of these crimes typically enjoy total impunity. The whereabouts of all persons disappeared by the State or the Maoists need to be immediately disclosed.

¹⁴ <http://www.ahrchk.net/ua/mainfile.php/2006/1736/>

There is also a need for Nepal to sign the new UN Convention for the Protection of All Persons Against Enforced Disappearances and to enact a law criminalizing disappearance. The act of kidnapping can be brought to court under the normal criminal law in Nepal, however there is no law concerning forced disappearances that would permit such cases to be investigated and perpetrators to be prosecuted for their actions. The National Human Rights Commission (NHRC) shows that 532 people are still believed to be missing as the result of disappearances committed by the State.

The government has formed two committees in order to look into disappearance cases. Prior to the April uprising, a committee presided by the then-Vice Secretary of the Home Ministry, Narayan Gopal Malego, published 8 reports, altogether making public the whereabouts of 472 people. Following the April people's movement, the new government formed a one-member committee under the Joint Secretary of the Home Ministry, Baman Prasad Neupane. This has disclosed 174 people's whereabouts in a report.

It is important to note that the committee only disclosed the information concerning the disappeared based on information from the security forces, but did not itself carry out any investigations into how, why, where or by whom these persons were disappeared. The chances of having those responsible punished or adequate reparation being provided to the families of the victims seem very slim under such circumstances. Prompt, thorough and independent investigations are required into all of these cases, and all persons who are still alive should be immediately released.

On November 8, 2006, as part of the historical agreement, the seven political party and Maoists agreed to form a high level commission to investigate and publicize the whereabouts of those disappeared by the State and the Maoists. The AHRC will monitor this body closely, as this will likely represent an important test-case concerning both sides' willingness and capacity to credibly address past violations. It is feared that neither side are truly willing to break the cycle of impunity, which is perhaps the most significant human rights concern in Nepal today.

Impunity

The AHRC is of the view that only by tackling impunity will a just, secure and sustainable future for Nepal be able to emerge. It is essential that justice is done and seen to be done in order for real healing within Nepal's society to be made possible. While promises of compensation to those affected by the conflict are welcomed, this should not be used to wipe the slate clean without accountability having been established. The punishment of any and all perpetrators of human rights violations is central to the establishment of a society based on the rule of law. Democracy without the rule of law and justice does not guarantee the development of a secure society or the enjoyment of human rights. In order to ensure that these rights are respected in future, a deterrent concerning such abuses must be established, and there is only one way in which this can be done – through the punishment of persons proven to have committed crimes through a

fair and transparent judicial system. The establishment of strong institutions of the rule of law, notably the police, and the separation of powers between the executive, legislative and judicial branches of government, must be guaranteed as a pre-requisite to the formation of Nepal's new governance systems, if they are to be guarded against corruption and are to stand the test of time.

All parties are also urged to ensure that prompt and impartial investigations by the relevant State-institutions are launched into all allegations of human rights violations by any and all actors in the country, and to cooperate fully with such efforts. All of these steps are vital in ensuring peace, democracy, the protection of human rights and a society based on justice and non-discrimination in Nepal.

From a human rights perspective, the issue of transitional justice and impunity remains to be dealt with. While the recently-signed peace accord details the release of prisoners, the protection of people from future abuses, and information being released about the disappeared, reforms to the institutions of the rule of law and the establishment of justice for past abuses is being ignored at present. Now that there is peace, this remains one of the main challenges that the country faces.

A 31-member "Code of Conduct Monitoring" team was formed under the coordination of Dr. Birendra Mishra, including the leaders of the seven political parties, the Maoists, human rights defenders and civil society, but it has not been working effectively to date.

The High-level Probe Commission

Following the events in April 2006, on May 5, 2006, the government formed a five-member High Level Probe Commission (HLPC) under the coordination of former Supreme Court Justice Krishna Jung Rayamajhi, mandated to investigate the human rights violations and atrocities committed under the royal regime, between the coup on February 1, 2005 and the suppression of the April uprisings. The government formed the HLPC using powers provided by Sub-section (2) of section 3 of the Commission of Inquiry Act, 2026 (1969 A.D.) After its formation, the HLPC has interrogated hundreds of persons, including ministers, vice-chairmen, security chiefs, administrators and royal advisors alleged role in suppressing the April Movement. 20 people were killed and over five thousand injured as the result of the excessive use of force by the security forces during the popular uprising. The HLPC sent a set of questions to King Gyanendra on October 12, with a one week dead-line, seeking explanations concerning his role in these events, but no replies have been returned to date. The probe commission has now reportedly completed its investigations, however the final report has not been made public yet, despite having been sent to government. Some 202 persons have been named in the report as having been responsible for abuses, but there is fear that the government is trying to cover-up the findings, as it is resisting calls for the report to be made public.

The HLPC includes: Krishna Jung Rayamajhi, former Supreme Court justice (Chairman); Harihar Birahi, former chairperson of the Nepal Press Federation; Ram Prasad Shrestha,

former vice president of the Nepal Bar Association; Ram Kumar Shrestha, advocate; and Dr. Kiran Shrestha, general secretary of the Nepal Doctors Association

It has as its responsibilities and duties to:

- Investigate the facts concerning incidents of suppression of the people's movement, the destruction of property, the misuse of State funds, abuses of power and authority, and human rights violations that took place between February 1, 2005 and April 24, 2006;
- Find out who is responsible for deciding, ordering or planning the abuses and evaluating the extend of the violations;
- Submit a final report with advice, findings and recommendations to the government of Nepal concerning cases that the commission has investigated.

On November 15, the local press stated that the HLPC is implicating King Gyanendra in the atrocities committed during the April movement and for the embezzlement of State resources. According to sources, the King, as then-Chairman of the Council of Ministers, should take the responsibility for atrocities committed during the movement. However, the commission hasn't recommended any action against the King in its probe report, according to the media.

The source also said the commission had recommended murder charges against Kamal Thapa, the then-Home Minister, notably concerning the killings in Dang and Kailai districts, where witnesses said that security personnel opened fire under his direct order. The report and its findings must be made public immediately, or the government will lose any credibility it has concerning the fight against impunity.

Appointment of alleged human rights violator as Army Chief

One case that underlines the continuing climate of impunity is the appointment of a known gross human rights violator to the post of Army Chief. Army Lieutenant General Rukmangat Katuwal was appointed as army Chief of Staff of Nepal on September 10, 2006, by Prime Minister Girija Prasad Koirala. Mr. Katuwal, who was set to retire before this appointment took effect, stands accused of being responsible for a plethora of human rights abuses. It is alleged that gross violations of human rights and humanitarian law were perpetrated while Mr. Katuwal was the regional army chief in Nepalganj, in command of the Mid-Western Divisional Headquarters, from 29 December 2003 to 10 September 2004. During his tenure, the mid-western part of the country experienced systematic and gross violations of human rights. Mr. Katuwal was, at the time, under investigation for abuses committed during the popular pro-democracy uprisings in Nepal in April, 2006.

The signal that this appointment sends out to past or potential human rights violators is that impunity still prevails in Nepal, despite the hopes that the political changes had brought about. Ironically, the Prime Minister of the government that was established

following the democratic uprisings has appointed Mr. Katuwal, who is accused of having suppressed this movement.

The allegations against Mr. Katuwal include the use of torture, the launching of aerial attacks that resulted in the killing of civilians, extra-judicial executions of Maoist insurgents as well as civilians, the burning down of houses, forced disappearances, death threats to journalists attempting to cover the incidents, as well as the killing of one journalist. In several instances, the killing of civilians is blamed on "crossfire" or encounter incidents.

An example that illustrates the grave nature of the alleged abuses is the case of 18-year-old girl Junkiri Thapa of Kalika VDC-4, who was reportedly arrested by the security forces on March 17, 2004, in Padnaha VDC-9, Bardiya District. She was reportedly forced to carry a spade to a local nursery and to dig a pit in the ground. She was then executed and buried in the pit that she had been forced to dig.

Mr. Katuwal was under investigation by a High Level Probe Commission mentioned above. The High Level Probe Commission was only investigating Mr. Rukmangat Katuwal's role with regard to abuses that occurred during the April 2006 popular uprising. It has been alleged that he had played a key role in ordering the suppression of demonstrations and the human rights abuses that accompanied the security forces' actions at that time. The commission in question does not have the mandate to investigate the numerous allegations of other grave human rights violations for which Mr. Katuwal is reportedly responsible, as they occurred before February 1, 2005.

In appointing a person who is under investigation for abuses of human rights, notably against the recent pro-democracy movement, as well being accused of many more abuses in the past, the government is effectively sanctioning the grave and widespread abuses that mar Nepal's past. It has also failed to create a deterrent for future violations. It is vital that the authorities immediately remove Mr. Katuwal from the position of Army Chief.¹⁵

Blanket impunity under the new Army Act

The appointment of Mr. Katuwal is an example of a wider trend that indicates that impunity is being entrenched in the new system currently being created in Nepal. Another key example of this are the provisions contained within the proposed draft to amend the existing Army Act that was presented earlier this year. Unfortunately, the proposed draft was accepted by the government and the House of Representatives passed the new Army Act on September 22, 2006. Many of the provisions in this act are contrary to human rights principles and practices, and as such must be removed, as they continue to ensure, or even expand, the blanket impunity currently being enjoyed by members of the security forces. The provisions in question are to be found in Sections 13, 21, 54, 58, 61, 62, 90, 93, 105, and 110 of the document that has now replaced the 1959 Army Act.

¹⁵ <http://www.ahrchk.net/statements/mainfile.php/2006statements/731/>

Under Section 21 of the Army Act, despite whatever other laws prevail in Nepal, any member of the security forces cannot be prosecuted in any court for any actions taken while 'fulfilling his duty', even if he has caused the death of or severe injuries to another person. This amendment to the 1959 Army Act will ensure and reinforce the impunity with which members of the security forces can act. Similarly, Section 26 ensures that there cannot be an appeal against decisions by military courts, as it precludes the citizens of Nepal from having the right to seek justice in civil courts and challenge unsatisfactory decisions made by the military courts and authorities. Under Section 71 (2), military courts are to be held in closed hearings unless otherwise ordered by the court, which will lead to the continuing lack of transparency of the armed forces and their actions.

In addition, Section 13 of the Army Act deals with the disqualification of persons from serving in the military, but it fails to include necessary human rights record safeguards. Any appointment to a position within the military, from officer to Army Chief, should be dependent on the individual's human rights record and should be subject to a "No Objection Letter" from the National Human Rights Commission. Furthermore, the appointment of the Army Chief should only be made following parliamentary approval. Any armed forces personnel involved in corruption should be investigated and punished by the Commission for Investigation of Abuse of Authority (CIAA). The establishment of a public audit system is urgently required in order to ensure accountability and transparency with regard to the financial activities of the military. The other Sections listed above also provide further barriers to justice and reinforce impunity and must therefore be removed from the Army Act, despite its recently having been passed by the House of Representatives.

Inhuman treatment and other violations of human rights by military personnel involving civilians should be exclusively tried in civilian courts. This will help combat partiality and impunity. Military courts should only be involved in internal military matters. Military obstruction to investigations by civil authorities should be punished, with a new law required to deal with such issues.

Prior to the popular uprisings in April 2006, there were increasing questions being raised concerning the participation of Nepal Army personnel in UN peacekeeping forces. Unless the provisions that engender impunity within the amended Army Act are removed and unless the perpetrators of human rights violations are brought to justice, Nepal Army personnel should no longer be able to serve in international peacekeeping forces.¹⁶

The need to dismantle vigilante groups

Groups of vigilantes have been formed and armed by the King of Nepal in recent years. Known as village defence forces, these groups were allegedly created to protect villagers from Maoist attacks and armed robbers. However, as has been shown in other similar

¹⁶ <http://www.ahrchk.net/statements/mainfile.php/2006statements/714/>

situations around the world, the arming of poorly- or un-trained civilians in order to carry out functions that the State should be responsible for, leads to human rights violations, as these vigilante groups take the law into their own hands and commit abuses themselves, including looting, rapes, destruction of houses, and other violent acts. Vigilantes have been most active in the Terai plains region of Nepal, notably in Kapilvastu, Rupendehi, Siraha, Jhapa, and Nawalparasi districts. Despite the ongoing political changes in the country, including the planned Maoist arms management plans, it appears as if these groups have not returned their arms yet and continue to abuse civilians. In the newspapers it has been said that some have returned weapons to the government, however it seems that a significant number have still not handed over weapons to date. There has been international criticism of the formation of these groups, and it is now vital that they be immediately and completely disarmed and disbanded, as they continue to pose a threat to human rights, peace and security in the country.

The urgent need for such action is best illustrated by the case of the death of a three year old child as the result of a sword injury to the head. Armed vigilantes from the village defence forces killed the three-year old son of Dharma Raj Barai, a Maoist cadre, and also injured two more of his children on June 1, 2006 in Phulika VDC-3, Kapilvastu district. Dharma Raj is allegedly a Maoists' Ward Chairperson of Ward No. 3, Phulika VDC. At around midnight, vigilantes identified as Ram Milan Kharbinad (Jalalu), Chhotai and Pappu reportedly went to Dharma Raj Barai's home and attacked his family members with swords. Dharma Raj had reportedly gone to Kathmandu to participate in a Maoists' Speech Program scheduled for June 2. When the vigilantes didn't find Dharma Raj at his home, they attacked his three children indiscriminately with swords, badly injuring three-year old boy Manjit in the head, who later died from his injuries. Dharma Raj's 18 year-old daughter received injuries to her hands and his five-year old son received injuries to the forehead and may lose the use of an eye. An eight-year old boy was reportedly also slapped several times. The vigilantes reportedly fired a gun in the air before leaving the home at around 1 a.m. Manjit Barai died at 2 p.m. and the other injured children were taken to Taulihawa Hospital for treatment the next morning. The security forces from DPO Kapilvastu reportedly took the child's dead body for a post-mortem.

The AHRC has been informed of numerous other attacks by vigilante groups, including the burning down of the home of 56-year old farmer Hanuman Prasad Barai Jaiswal, a resident of Maharajgunj VDC-7, Majha Bargadi in Kapilvastu district. The attack was reportedly carried out by 300 to 400 vigilantes and members of the security forces on February 20, 2005, due to his son having allegedly joined the Maoists. In another case, Netra Lal Bhattarai, 46, a shopkeeper and a resident of Nandanagar VDC-9, Kalikanagar of Kapilvastu District was reportedly killed by vigilantes at Labani Bazaar on February 23, 2005 while purchasing goods for his shop at the bazaar. He was allegedly killed for being a Maoist. Members of the Kapilvastu District Police Office reportedly buried his body without his wife being able to see it. The next day, the vigilantes also burnt down his house.¹⁷

¹⁷ <http://www.ahrchk.net/ua/mainfile.php/2006/1780/>

Conclusions

As has been illustrated at length above, 2006 has been a landmark year in Nepal that has included vast popular demonstrations against the King and his government, which finally led to the government's demise and the creation of a new platform upon which progress toward peace, security and human rights could be built. During the period since the April uprisings, Nepal has been under a state of political flux, with difficult questions and situations being addressed step by step. By the end of the year, a Comprehensive Peace Accord had been signed between the Seven Party Alliance and the Maoists, bringing an end to a bloody decade-long war that claimed the lives of over 13,000 and seriously affected many more. The Maoists are in the process of being disarmed and brought into the political mainstream. If all parties stick to the commitments made as part of various agreements, notably that reached on November 8, then there is reason to hope that the country is heading into a period of sustained democratic development and peace. It is rare to see such sweeping changes in the course of one year, and full credit must be given to the people of Nepal and those actors that have made this all happen.

However, from a human rights perspective, much remains to be done. Violations continue to be committed by all sides, and this will remain the case until the culture of impunity that has accompanied the widespread abuses of the past, continues in the country. In order to ensure that impunity is dismantled, justice cannot be sacrificed on the altar of political expediency. Any and all allegations of human rights abuses committed by all sides need to be effectively investigated and prosecuted in line with Nepal's law and international obligations. Where laws are missing, they must be created. To enable this to be most effective, the institutions of the rule of law must be strengthened to allow them to cope with this sizeable task. Investigations and prosecutions need to be commenced without further delay, as these institutions can develop as they go, through practical experience, as long as there are no undue political restrictions to their actions. It is vital that an effective, credible and well resourced system of witness protection be created; otherwise the investigation and prosecution of alleged perpetrators will fail. In ensuring that persons responsible for human rights violations are made accountable, Nepal can ensure that there is a deterrent against future violations and that victims are provided with adequate reparation, which will enable a more peaceful, less fractured society to emerge. The only way to move beyond past grievances is for justice to be done. By sweeping such grievances under the carpet, in order to side-step difficult issues that may threaten ongoing political progress, there may be short-term gains, but ultimately, the door will remain open to a return to violence and insecurity, as those that profited from such a situation will remain protected, and may opt to re-offend in the future.

While there has been significant political progress during this year, many of the recommendations that the AHRC produced last year as part of its 2005 annual report¹⁸ remain to be implemented. It is hoped that the new political dynamics in Nepal will enable

¹⁸ www.ahrchk.net/hrday2005/pdf/Dec102005-IHRD.pdf

this implementation to now begin in earnest, although there remain significant doubts as to the Maoists and the SPA's willingness to address impunity at present.

Recommendations

The AHRC urges all parties engaged in the process of bringing about a democratic government in Nepal to:

- **Ensure that all aspects of the November 8 agreement are implemented without hindrance and in a timely manner, enabling arms management, the dismantling of the Maoist People's Courts, an end to violence and the holding of free and fair elections to a Constituent Assembly;**
- **In particular, guarantee the rights of minorities, such as Dalits and women, both in terms of protection from abuse and of participation in the ongoing political developments;**
- **Publicly condemn the practices of torture and forced disappearances and ensure that such practices are immediately halted and that the whereabouts of all disappeared persons are identified without delay;**
- **Adopt legislation criminalizing torture and forced disappearances, and amend the Torture Compensation Act to bring them in line with international laws and standards;**
- **Ensure that all sections of the Army Act (passed by the House of Representatives on September 22, 2006) that consolidate impunity are removed and that the Act is brought in line with international standards;**
- **Create independent, competent bodies for investigating all allegations of arbitrary arrest, illegal and/or incommunicado detention, torture, custodial sexual violence or death, forced disappearance and summary or extrajudicial killings, and ensure that all sides cooperate fully with such investigations. Such investigations should not be limited to recent events, but should cover all allegations spanning back to the beginning of the Maoist uprisings over a decade ago;**
- **Ensure that all findings by the High-Level Probe Commission (and all subsequent investigations) are immediately made public, and that all necessary actions are taken against persons found to be responsible for abuses, regardless of their rank or status;**
- **Take legislative and administrative measures in order to ensure that witness protection is provided to all persons involved in the investigation and prosecution of human rights cases;**
- **Issue orders to the police, armed forces and Maoists to comply immediately and without exception to court orders, including those pertaining to habeas corpus writs;**
- **Immediately transfer all State-detainees to legally designated places of detention;**

- **Ensure that all persons being detained illegally, both by the State or by Maoists, are immediately released;**
- **Ensure that all detainees have access to family members, legal representation, and access to medical examinations (in the latter case, particularly at the time of arrest and release);**
- **Ensure that accessible and accurate lists are kept of all arrests and persons in detention;**
- **Abolish all statutes of limitations for complaints of acts of torture and other grave violations, such as rape;**
- **Ensure that all allegations of violations of civilians' human rights committed by the armed forces and Maoists are tried by independent, impartial and competent civilian courts;**
- **Ensure that punishments for acts of torture and disappearance are commensurate with the gravity of the offence and in line with international standards;**
- **Ensure that adequate compensation is awarded to victims or their families, and in a timely manner;**
- **Support the work of the NHRC, ensuring that its recommendations are fully implemented;**
- **Ensure that all recommendations made by UN Treaty Monitoring bodies, Special Procedures and the OHCHR's field office in the country are fully implemented, and that access is guaranteed to all international and regional human rights institutions and organisations.**

December 21, 2006