

Nepal

Escalating “disappearances” amid a culture of impunity

Introduction

Amnesty International is deeply concerned about the escalating number of “disappearances” occurring in Nepal. These are taking place in the context of counter-insurgency operations by the security forces, in their response to the “people’s war” being fought by the Communist Party of Nepal (CPN) (Maoist) since 1996.

Amnesty International has recorded 622 cases of “disappearance” in Nepal since 1998, over half of which have occurred since the breakdown of the most recent ceasefire on 27 August 2003.¹ This represents an alarming increase in the scale of the problem, with an average of more than one case reported to Amnesty International each day since the ceasefire ended. Amnesty International also receives frequent reports of obstruction by the security forces of efforts by the courts and the National Human Rights Commission (NHRC)² to investigate these cases, signalling a growing culture of impunity for human rights abuses by the state.

In addition to these widespread “disappearances”, Amnesty International has received reports of hundreds of extrajudicial executions, thousands of arbitrary arrests and widespread torture by security forces.

Amnesty International has repeatedly called for human rights safeguards to be implemented in Nepal. In particular, it is vital that the NHRC is strengthened, allowed to operate without interference, and supported in establishing an effective presence within the regions. Amnesty International also presses for the judiciary and rule of law to be respected by all organs of the state.

The CPN (Maoist) has been responsible for thousands of abductions and hostage-takings, as well as killings and torture. Amnesty International has repeatedly called upon its leadership to abide by the principles of international humanitarian law, in particular the provisions of Article 3, common to the four Geneva Conventions of 1949.

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

¹ Numbers of “disappearances” were compiled by Amnesty International on 23 July 2004.

² The National Human Rights Commission was established in 2000 under the Human Rights Commission Act 1997 as an independent and autonomous statutory body. The NHRC is authorized to visit, inspect and observe any authority, jail or organization under His Majesty’s Government.

compensation to relatives, as well as to strengthen the institutional and legal frameworks needed to prevent such abuses from occurring in the future.

This report is also a briefing for the UN Working Group on Enforced and Involuntary Disappearances (WGEID).

Background

Since the CPN (Maoist) declared a “people’s war” in February 1996, aimed at the *de facto* abolition of the constitutional monarchy and establishment of a people’s republic, Nepal has been gripped by a nationwide conflict and human rights crisis in which an estimated 10,000 people have died.³

The conflict has largely taken the form of CPN (Maoist) attacks on army and police posts and personnel, government buildings and other infrastructure. The government initially responded to the conflict as a law and order problem, through deploying large numbers of police. However, on 26 November 2001, a state of emergency was declared under which the Royal Nepal Army (RNA) was deployed throughout the country. The state of emergency lapsed on 28 August 2002, although the RNA remains deployed across Nepal. Government forces have lost control of the majority of the countryside.

There have been three rounds of peace talks between the government and CPN (Maoist). The first was initiated in December 1999 and ended without progress in October 2000. A second round of talks took place following a cease-fire declared on 23 July 2001, but broke down in November over disagreement about the demands of the CPN (Maoist). On 29 January 2003 a new cease-fire was declared and in spring 2003 three rounds of peace talks took place. However, the CPN (Maoist) withdrew from this ceasefire on 27 August 2003, accusing the government of failing to implement earlier agreements and reach an agreement on key demands of the CPN (Maoist), including the establishment of a constituent assembly.

Following the collapse of the 2003 ceasefire, fighting between the security forces and armed members of the CPN (Maoist) resumed with renewed intensity, and there was an escalation in reports of human rights abuses by both sides. These abuses include arbitrary arrest and detention, “disappearances”, extrajudicial executions and torture by the security forces, and killings, torture, abductions and bombings by the CPN (Maoist). In November 2003 the Armed Police Force (APF), Nepal Police and National Investigation Department were all officially placed under the unified command of the army, although in practice joint security force operations had been taking place for some time.

The political situation in Nepal has been highly unstable following the dissolution of parliament and sacking of the elected government by King Gyanendra in October 2002. In May

³ For additional information on the human rights situation in the context of the conflict, refer to *Nepal: A spiralling human rights crisis* (AI Index: ASA 31/016/2002), *Nepal: A deepening human rights crisis* (AI Index: ASA 31/072/2002) and *Nepal: Widespread “disappearances” in the context of armed conflict* (AI Index: ASA 31/045/2003)

2003, the five main political parties⁴ began a campaign against the dismissal of parliament, which reached its peak in April and May 2004 when thousands of people took to the streets of Kathmandu in daily protests. From 8 April until 3 May 2004, public gatherings were prohibited in much of Kathmandu Valley⁵ and thousands of protestors were arrested and held in warehouses and other unofficial locations, in many cases for a number of days. Many protestors were also severely beaten in clashes with police.

In response to these protests the King’s appointee, Prime Minister Surya Bahadur Thapa, stepped down on 7 May 2004. A caretaker government remained in place until early June when Sher Bahadur Deuba, who had been Prime Minister when the King dissolved parliament in 2002, was reappointed to the post and a cabinet was finally formed on 5 July.

The effect of these developments – in particular, the state of emergency and deployment of the military, establishment of a unified command, and continued suspension of the democratic process – has been a significant militarization of political space and increased influence of the military on many aspects of decision making. This, combined with existing weak institutions, corruption, lack of political accountability, and the urgent need for reform of police and judiciary, has helped to create the climate of impunity within which “disappearances” are occurring.

A Pattern of “Disappearances”

During the last six years the conflict in Nepal has been characterised by widespread arbitrary arrests, unacknowledged detentions and “disappearances” at the hands of security forces. Since 1998, 622 cases of “disappearance” have been reported to Amnesty International, while local human rights groups⁶ have recorded 1,264 “disappearances” since the conflict began in 1996. Hundreds of people have also been abducted by the CPN (Maoist).

This pattern first began to emerge during the large-scale police operations in 1998 and 1999, during which Amnesty International recorded 56 “disappearances”. Following the declaration of a state of emergency and deployment of the RNA in November 2001, reports of “disappearance” increased significantly. During the state of emergency, in force from 26 November 2001 to 28 August 2002, Amnesty International recorded over 100 cases of “disappearance”. Thirty-five of these were from a single district – Banke in mid-western Nepal - where many detainees were reportedly held at Chisapani army barracks, a place notorious for torture and ill-treatment.

Lawyer Saligram Sapkota, President of the Banke district Appellate Court branch of the Nepal Bar Association, was arrested by a group of forty soldiers at his home in Nepalgunj at 4am on 12 March 2002. He was taken to Chisapani Army Barracks near Nepalgunj, Banke district. Later the same day, relatives went to the army camp to hand over some clothes for Saligram Sapkota. They reported that he had bruises on his face and body which suggested that

⁴ Nepali Congress (NC), Communist Party of Nepal – United Marxist and Leninist (CPN-UML), Nepal Workers’ and Peasants Party (NWPP), Peoples’ Front Nepal (PFN), and Nepal Sadbhawana Party (NSP)

⁵The area within the Kathmandu ring road was declared ‘Riot Prone’ under the Local Administration Act.

⁶ Informal Sector Service Centre (INSEC), Human Rights Violations Database

he had been tortured. He was held for a total of three months (the first month incommunicado) at the Chisapani army barracks, handcuffed and with a hood over his head, on suspicion of “indirectly supporting the Communist Party of Nepal (CPN) (Maoist)”. During questioning about the whereabouts of the Maoists he was allegedly severely beaten with a bamboo stick covered in rubber and sustained injuries to his left side for which he was not given any medical treatment. He was held in a small room with a tin roof, with no air or light and which became unbearably hot during the day.

It is since the collapse of the ceasefire in August 2003 that the most dramatic increase in “disappearances” has been seen. Of the total 622 cases of “disappearance” recorded by Amnesty International since 1998, 378 of these occurred after 27 August 2003, while the NHRC have received reports of 707 cases of “disappearance” in the same period.

Although “disappearances” are taking place across the country,⁷ the vast majority of recent “disappearances” has been reported from around Kathmandu and other districts in central Nepal, such as Lalitpur, Dhading and Dhanusha.⁸ This may be both because this is the region where the security forces have the greatest control and are most active, and because local people in these areas have greater access to human rights groups to whom they can report “disappearances”. However, it has also been suggested that, in the outlying districts, those suspected of CPN (Maoist) involvement are more likely to be extra-judicially executed by security forces - often in false “encounters” staged by the security forces - than to be detained and “disappeared”.

The most commonly reported pattern is that people suspected of CPN (Maoist) involvement are arrested by unidentified security forces personnel, often dressed in civilian clothes,⁹ and are taken to army barracks, police stations or APF camps, where they are held incommunicado in unacknowledged detention. Many detainees held in army custody report being kept hooded throughout their detention, being subjected to torture, and being threatened not to speak about their detention after release. The practice of holding people in army barracks contravenes the Army Act, which stipulates that military authorities are not authorized to hold persons in detention but must transfer the detainee to civilian authorities within 24 hours of arrest. The Terrorist and Disruptive Activities (Control and Punishment) Act 2002 (TADA) gives the security forces - including the RNA and the APF - powers of arrest, but does not stipulate that the RNA or APF have the authority to keep detainees in their custody.

Those “disappeared” include, farmers, teachers, students, business people, journalists, political activists, juveniles, women and members of ethnic minority groups. Figures suggest that around one third of those who “disappeared” since the end of the ceasefire in August 2003 have eventually been released or located. However, those who eventually are released tend to

⁷ Amnesty International has received reports of “disappearances” from 31 of Nepal’s 75 districts since the end of the ceasefire on 27 August 2003.

⁸ Since the end of the 2003 ceasefire 225 “disappearances” have been reported to Amnesty International from Kathmandu, 29 from Lalitpur, 18 from Dhading, and 16 from Dhanusha.

⁹ In 174 of the 378 cases of “disappearance” reported to Amnesty International since 27 August 2003, the arresting officers have been in civilian clothes.

have been held in incommunicado detention for relatively long periods of time. Among the cases of “disappearance” reported to Amnesty International, the majority of those who were ultimately released were illegally detained for over a month, and in seven cases detainees were held for more than a year.

The CPN (Maoist) have also been responsible for thousands of abductions since the beginning of the conflict. There have been regular reports of the CPN (Maoist) abducting civilians who are believed to be close to government forces, have refused to pay donations to the CPN (Maoist), or have “disobeyed” CPN (Maoist) orders.¹⁰ In addition, both police personnel and civilians have been taken hostage by CPN (Maoist) members and used for ransom or as “bargaining chips” to be exchanged for CPN (Maoist) prisoners. Some of those abducted are eventually released or killed, while the fate of others remains unknown. The NHRC has recorded 206 individual cases of abduction by the CPN (Maoist) since the end of the 2003 ceasefire.

In addition to these individual abductions, CPN (Maoist) members also abduct large groups of people - often hundreds at a time - to attend “political education” sessions that last for a number of days or weeks. Those taken for such sessions are mostly students, teachers and workers and are usually released unharmed.

The Legal Framework

Nepal is a state party to six of the main human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights (ICCPR) that guarantee, among others, fundamental rights for persons deprived of their liberty.¹¹ Nepal has also ratified the four Geneva Conventions of 1949.

As a party to the ICCPR, the Nepali government is obliged to guarantee the right to life, the right to liberty and security of the person, the right to be free from torture or cruel, inhuman or degrading treatment, and the right to recognition as a person before the law. These are fundamental rights that can be violated in instances of “disappearances”.

Furthermore, the United Nations Declaration on the Protection of all Persons from Enforced Disappearance calls on states to adopt and enforce specific safeguards against “disappearances”. It requires states to investigate “disappearances”, bring to justice those responsible and provide redress for the victims and their families. The Declaration emphasises the non-derogable right to be free from “disappearances”, stating in Article 7 that “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability, or other public emergency, may be invoked to justify enforced disappearance”.

¹⁰ For example a number of local government officials have been abducted and killed for not resigning from their posts, as CPN (Maoist) members had demanded.

¹¹ Nepal to date has not ratified the Rome Statute of the International Criminal Court. The Human Rights Chapter of the Rome Statute, in Article 7(i), includes enforced “disappearances” as a crime against humanity.

Nepal’s Constitution of 1990 does contain a number of safeguards against arbitrary arrest and detention. However, arrests have continued to be carried out under laws remaining from the *Panchayat*¹² era, such as the *Sarvajanik Suraksha Ain*, Public Security Act 1989 (PSA) (and its Second Amendment, 1991) and the *Rajya Biruddha Apradh Ra Sayaja Ain*, Anti-State Crimes and Penalties Act 1989 (ASCPA). Several provisions in these laws are in clear breach of the Constitution as well as international treaties to which Nepal is a state party.

Prior to the declaration of the state of emergency in November 2001, the PSA was commonly used to detain those suspected of CPN (Maoist) involvement. The PSA allows for preventive detention for up to 90 days on the orders of a local authority, in order “to maintain sovereignty, integrity or public tranquillity and order”. This period can be extended to six months with the endorsement of the Home Ministry and up to 12 months from the original date of issue with the approval of an Advisory Board established under the Act.

The state of emergency, in force between 26 November 2001 and 18 August 2002, resulted in the suspension of many fundamental rights, including the right not to be arbitrarily detained and the right to constitutional remedy. However, the right to the remedy of *habeas corpus* was not suspended.¹³

The Terrorist and Disruptive Activities Ordinance was promulgated as one of the emergency measures in November 2001, giving the security forces the powers to arrest and detain suspects under a preventive detention order. On 10 April 2002 this Ordinance was replaced by the Terrorist and Disruptive Activities (Punishment and Control) Act 2002 (TADA). The TADA gives security forces the power to arrest without warrant and to detain suspects for up to 60 days in police custody for the purpose of investigation, and for up to 90 days in a place “suitable for human beings” in preventive detention, without being presented before a court. This contravenes constitutional provisions requiring that detainees be produced before a judicial authority within 24 hours of arrest.¹⁴ Moreover, the vagueness on what constitutes an acceptable place of detention for those in preventive detention clearly increases their risk of “disappearance”. The Act also provides for the setting up of special courts to try TADA cases.

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

Although it is only the most senior district level government servants, Chief District Officers (CDOs), that can issue preventive detention orders under Section 9 of the TADA, some

¹² *Panchayat* was the name of the non-party political system under which Nepal was governed between 1962 and 1990.

¹³ Under Article 115 (8) of the Constitution of Nepal it is stated that the right to the remedy of *habeas corpus* is not suspended even at the time of the Proclamation or Order of a State of Emergency.

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

lawyers report that CDOs have simply issued the security forces with blank detention orders signed in advance. This gives the security forces the freedom to detain whoever they wish.

The legal remedy of *habeas corpus* has been quite widely used to address illegal detentions and “disappearances” during the conflict. For example, during the 2001-2002 state of emergency, 72 *habeas corpus* petitions were filed in the Supreme Court, and when the state of emergency lapsed in August 2002, 120 and 105 *habeas corpus* writs were filed in the Nepalgunj and Biratnagar Appellate Courts respectively. While *habeas corpus* has proved effective in some cases of illegal detention, it has had limited utility in cases of “disappearance”, due to a perception by judges that it is the duty of the court only to examine the legality of detention and not to establish a detainee’s whereabouts. However, in the current climate of impunity, with security forces demonstrating disregard for the courts, the effectiveness of *habeas corpus* in Nepal is increasingly being called into question.

Undermining of Legal Remedies and Safeguards

An important factor contributing to the large number of “disappearances” in Nepal is the impunity with which the security forces operate and their disregard for the authority and independence of the judiciary, as well as their consistent obstruction of the National Human Rights Commission (NHRC) in fulfilling its monitoring and investigative duties.

Nepal’s Constitution of 1990 stipulates that it is the duty of the government and all related agencies to assist the courts to ensure justice, as well as to obey, respect and execute the orders and verdicts of the courts. Despite this, the security forces regularly obstruct the courts’ efforts to ascertain the whereabouts of detainees. This includes through denying that they have received court notices in relation to *habeas corpus* writs; denying the arrest or continued detention of those in their custody at court hearings; refusing to comply with court orders for the further investigation of detentions; failing to implement court release orders; and immediately re-arresting, without warrant, those who have been released on the order of a judge.

An example of such obstruction by police can be seen in the case of Manoj Rai, a 15-year-old student, who was reportedly arrested by police in Kathmandu on 27 September 2003 and taken to Hanuman Dhoka District Police Office (DPO), where he was allegedly tortured. On 28 November 2003 lawyers from a local human rights organisation found him being held in unacknowledged detention in Hanuman Dhoka DPO and a *habeas corpus* petition was filed, but the police denied Manoj Rai’s arrest and all knowledge of his whereabouts. However, in December 2003 the NHRC discovered him in a different police station, still being held in unacknowledged detention. Manoj Rai was finally released on 1 January 2004, a day before the date set for a Supreme Court hearing on the case. He was told to report back daily to the police, but went into hiding fearing for his safety.

Another case of obstruction of both the courts and NHRC, which has caused controversy and led to the Supreme Court reprimanding the RNA, is that of Krishna Khatri Chhetri (known as Krishna K.C.), former vice-president of the All Nepal National Independent Student Union (Revolutionary), who was reportedly arrested by plain clothes security forces in Kathmandu on 13 September 2003. A *habeas corpus* petition was initially filed on 23

September 2003, but dismissed on 28 November 2003 as the authorities denied his arrest.¹⁵ However, following reports from a fellow detainee that Krishna K.C. was being held in Bhairabnath Gan army barracks and had been severely tortured, a second *habeas corpus* petition was filed on 20 February 2004, and on 31 May the Supreme Court ordered the NHRC to prepare a report on the arrest and whereabouts of Krishna K.C. The RNA denied detaining Krishna K.C. and refused entry to NHRC representatives when they attempted to visit Bhairabnath Gan barracks on 7 June.

In response to the RNA’s obstruction, on 14 June the Supreme Court ordered the Ministry of Defence to “make necessary and suitable arrangements to implement the apex court’s¹⁶ previous order concerning Krishna K.C.” Despite this, on 1 July, when the NHRC was finally granted a visit to Bhairabnath Gan, the RNA produced three other detainees but claimed that Krishna K.C. was not in their custody. However, the NHRC has since received reliable information that Krishna K.C. remains in the barracks and is in a poor health condition. At the time of writing the whereabouts of Krishna K.C. remain unclarified.

Not only is the risk of “disappearance” increased by the security forces’ lack of cooperation with *habeas corpus* investigations, but also by the common practice of immediate re-arrest of those who are freed by the courts. For example, Tilak Ram Chaudhary, Tika Ram Giri, Mani Ram Chaudhary, Sher Bahadur Oli, Deshu Ram Tharu, Prasanta Tharu and Prakash Pun were all arrested by the RNA during October and November 2003, in the district of Banke. The seven were reportedly detained and tortured at Imangagar Army Barracks, before being transferred to Banke Prison in Nepalgunj, where they were held in unacknowledged detention. A *habeas corpus* petition was filed on 26 January 2004 in the Appellate Court of Nepalgunj, but authorities claimed that the seven were already released and the petition was quashed. On 20 June 2004, following another petition filed on 4 March, the court found the seven to be illegally detained and ordered their release. Fearing re-arrest, on their release the seven took refuge at the office of a local human rights group, which was immediately surrounded by security forces determined to re-arrest them. After a two-day stand off that attracted significant media coverage, the security forces eventually withdrew and allowed the seven to return home.

In a similar incident, on 14 June 2004, Yek Ras Basnet, Khagendra Sambhamfe, Ram Bahadur Ingaram and Tek Bahadur Bista, who had been detained for nine months in prison in Morang district, were released. However, on leaving the judges chamber following their release, the four were immediately re-arrested by plain clothes security personnel and taken away. They were returned to Morang prison on a preventive detention order, under section 9 of the TADA, where they remain in arbitrary detention at the time of writing.

The security forces’ disregard for the courts, combined with the apparent reluctance of judges to issue contempt of court orders to security forces personnel and the climate of fear which can deter witnesses from giving evidence, has contributed to an environment of impunity

¹⁵ Krishna K.C.’s arrest and detention were denied to the Supreme Court by the Ministry of Defence, RNA Headquarters and Bhairabnath Gan barracks.

¹⁶ This refers to the Supreme Court

in which there are minimal checks or restraints on security forces’ conduct. It has also led to an undermining of public faith in judicial remedies, as seen in the fact that, despite the high number of “disappearances” and illegal detentions in 2003, fewer *habeas corpus* cases were registered than in previous years.¹⁷

The systematic obstruction of the work of the NHRC further undermines the safeguards intended to protect detainees from human rights abuses, including “disappearance”. An example of this obstruction was seen during the Kathmandu street protests in April 2004. When NHRC representatives attempted to visit the hundreds of protestors who had been arbitrarily detained by police and held at the Nepal Food Corporation’s depot, Mahendra Police Club and Dashrath Stadium on 11 April, they were initially denied entry and were refused details of the total number of detainees. Likewise, an NHRC team visiting the APF detention centers at Maharajgunj and Halchowk, on 12 April, were denied access to detained protestors. Such actions prevent the NHRC from fulfilling its legal obligations and contravene the Human Rights Commission Act,¹⁸ which empowers the NHRC to visit, inspect and observe any authority, jail or organization under His Majesty’s Government.

The conflict between the government and security forces and the courts and NHRC over access to detainees can be seen in recent orders from both the government and RNA. On 29 March 2004 the Home Ministry wrote to the NHRC informing them that, on the advice of the Ministry of Defence, NHRC teams investigating complaints against the security forces must “include a representative from security forces in the investigation team”. However, this order - which could severely limit the independence and effectiveness of NHRC investigations - has so far not been enforced. Following this, on 23 June, the RNA wrote to the Prime Minister, Chief Justice and Chairman of the NHRC, informing them that RNA units will not grant access to any outsiders without specific orders from “above”. Although it is not clear what is meant by orders from “above”, such a pre-condition could further limit the NHRC’s access to those in detention, placing detainees at greater risk of “disappearance”. Both these orders are in direct contravention of recent government commitments on facilitating the independent work of the NHRC.¹⁹ However, in a more positive development, on 28 June 2004, Chief of Army Staff, General Thapa, informed the Supreme Court that an order had been issued that “from now on, the court’s show cause notices²⁰ must be replied in written form and questions responded by the concerned authorities promptly”. It remains to be seen what practical effect this order will have on security forces’ dealings with the courts, although the continued denials of Krishna K.C.’s detention, for example, do not bode well.

The Nepal Government’s Human Rights Commitments

¹⁷ Human Rights Yearbook 2004, Informal Sector Service Centre (INSEC), 2004.

¹⁸ Section 9 (2) (e).

¹⁹ As given in “His Majesty’s Government’s Commitment on the implementation of Human Rights and International Humanitarian Law”, 26 March 2004.

²⁰ This refers to *habeas corpus* notices.

The disregard for human rights demonstrated by the security forces directly contradicts the Nepali government’s stated commitments to human rights. In addition to human rights protections contained in Nepal’s constitution and international human rights treaties to which it is a party, the government has recently made a number of explicit pledges to protect human rights in the context of the conflict.

During the 2003 cease-fire the government and CPN (Maoist) agreed a 22-point “Code of Conduct” which, among other things, committed both parties to “stop violent and coercive activities and security measures that might ignite fear amongst the general public”, to “refrain from searches, arrests and kidnappings” and to “gradually release prisoners”. However, regular violations of the code, by both sides, continued to be reported.

In response to mounting criticism of its human rights record, the Nepal government established human rights cells within APF and civilian police in January 2001. This was followed by the RNA human rights cell in July 2002 and a similar cell in the Home Ministry, established in January 2003. In addition a Human Rights Promotion Centre under the Prime Minister and Council of Ministers’ office was established in December 2003. Amnesty International has raised numerous cases of reported human rights violations with the APF, police and RNA human rights cells and has been informed that investigations into a number of these cases have been undertaken. By January 2004 the RNA had investigated only eight cases related to human rights abuses, and recommended court martial in just four of these.

On 26 March 2004 the government published “His Majesty’s Government’s Commitment on the implementation of Human Rights and International Humanitarian Law”.²¹ This was a comprehensive statement expressing the government’s commitment to protect human rights and including explicit pledges to prevent “disappearances”. The Commitment stated that “measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances” and “information about the whereabouts of the detainee... shall be made available to the members of his/her family [and] legal practitioner”. It also declared that “any detained person shall be held in an officially recognised place of detention” and that “the injunction issued by the Court, including the writ of *habeas corpus*, shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such rights to remedy shall be punishable by law.”

The 26 March Commitment also stated that the government will facilitate the NHRC to discharge its duties, including “visiting, observing and inspecting any agency under HMGN²² or prison or any other institutions”. It also ensured “free movement of the [NHRC] staff and of its representatives throughout the country and to interview any person or group freely and privately,

²¹ This government commitment was published during the 60th Session of the United National Human Rights Commission, in a response to the widespread concern expressed during the Commission on the human rights situation in Nepal. On 20 April 2004 a “Chairman’s Statement on Human Rights Assistance to Nepal” was adopted by the Human Rights Commission.

²² His Majesty’s Government of Nepal.

particularly in places of detention and establishments suspected of being used for detention purposes”.

In light of the continuing practice of illegal detention in unofficial locations, disregard for court orders on *habeas corpus* writs, impunity for security forces who commit abuses and mislead the courts, and obstruction of NHRC efforts to investigate illegal detention and “disappearance”, it is clear that these commitments are not being kept. However, they do provide a framework to which the government can be called to account, and which, if implemented, could help to curtail the number of “disappearances”.

In July 2004 the government launched a National Human Rights Action Plan (NHRAP), which is a long term strategy for promoting a broad range of human rights. However, some experts have expressed concern that the NHRAP does not address the immediate human rights crisis in the context of the conflict, including the problem of widespread “disappearances”, and could therefore prove a distraction from the most pressing human rights concerns facing the country.

On 21 June 2004, relatives of people who have “disappeared” at the hands of security forces met with Prime Minister Sher Bahadur Deuba and demanded that the government make public the whereabouts of their relatives and provide access to them. On 21 June, 33 relatives of the “disappeared” undertook a week long protest hunger strike, while on 28 June four mothers of the “disappeared” went on an indefinite hunger strike. In response to this pressure the government announced, on 1 July, the establishment of an Investigation Commission on Disappearances, under the Home Ministry, for the duration of one month. The Commission, consisting of five members - from the Home Ministry, Defence Ministry, Police Headquarters and National Investigation Department – is chaired by the Joint Secretary for Home Affairs, Mr Narayan Gopal Malego. The Commission’s initial findings, reported on 11 August, were highly disappointing, as it had only investigated 36 cases of “disappearance” and clarified the whereabouts of 24 people. However, at the time of writing it had been announced that the Commission would continue to sit for a further month. It is hoped that its scope will be broadened to investigate and report on all outstanding cases of disappearance, as well as any patterns that emerge from these investigations.

It is clear that in Nepal there are human rights structures – including the NHRC, human rights cells, the temporary Investigation Commission on Disappearances, as well as highly active civil society organisations – that, if allowed to function effectively, have the potential to address the human rights crisis and help end the widespread practice of “disappearances”. However, many of these continue to remain ineffective or face serious hindrances in carrying out their work. Political will at the highest level – including within the military – is urgently required to ensure that these mechanisms deliver on human rights protection, as they are intended to.

Conclusion and Recommendations

There is no doubt that this widespread pattern of “disappearances” is one of the most pressing human rights issues facing Nepal. It has profound implications, not just for the “disappeared” and their families, but also for the authority of the rule of law, and for the trust of the population in the security forces, courts and government. It must therefore be a matter of highest priority for the international community and the government of Nepal.

After a long period of political instability in Nepal a new government has been formed. This opportunity should be used to take immediate and effective action towards ending human rights abuses by the security forces, including through establishing effective safeguards, ending the culture of impunity and undertaking comprehensive legal and institutional reforms.

In order to bring an end to “disappearances” at the hands of security forces, Amnesty International urges the government of Nepal to take the following measures:

1. End incommunicado detention

- The government should end the practice of incommunicado detention and draw up regulations to safeguard the rights of detainees, including their constitutional right to be produced before a judicial authority within 24 hours of arrest.
- The Royal Nepal Army should hand over detainees to police custody within 24 hours of arrest (or within a reasonable time-frame if arrests take place in a remote location).
- The government should implement the recommendation of the Special Rapporteur on torture that: “Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.”
- Authorities in charge of all places where detainees are held should be required to provide to a competent civilian authority periodically updated lists of detainees in their custody. Registers of detainees should be kept including a central register of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Detention registers should be accessible to interested parties.

2. Strengthen *habeas corpus*

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

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

3. Criminalize and prevent “disappearances”

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

4. Legal procedures and the administration of justice

- The government should, when parliament is reconvened, repeal the Terrorist and Disruptive Activities (Punishment and Control) Act 2002 (TADA) and the Public Security Act (PSA). If these Acts are not repealed, they should be brought into conformity with Nepal’s international treaty obligations.
- Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. All persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a state-appointed lawyer able to provide effective legal assistance.
- In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.
- Legal aid should be made available for relatives of “disappeared” people lodging *habeas corpus* writs.
- There should be an authority for the protection of witnesses and provision for confidentiality where necessary, particularly when testifying against security forces officials.
- Legislation should be enacted to ensure that the victims of “disappearance” and their dependents obtain redress and fair and adequate compensation from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care and the means for the fullest rehabilitation possible.

5. National Human Rights Commission (NHRC)

- The government should give the NHRC all necessary assistance to ensure its independent and effective functioning.
- Existing plans to establish 5 regional level NHRC offices should be implemented without delay and provisions made to ensure these offices are adequately staffed and equipped. The establishment of district level offices, especially in districts where there are frequent reports of human rights abuses, should also be considered.
- The government should cooperate with the NHRC and ensure its organs provide prompt replies to the NHRC inquiries on cases of human rights violations, including “disappearances”.
- The law should be amended to ensure the NHRC has effective powers to investigate all human rights abuses, including those alleged to have been committed by the army.
- The government should adopt the recommendations set out in Amnesty International’s report: *Proposed Standards for National Human Rights Commissions* (AI Index: IOR 40/01/93), including:

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

6. Strengthen Nepal’s human rights commitments

- The government of Nepal should consider inviting members of the WGEID, the UN Special Rapporteur on torture and the UN Special Rapporteur on the independence of the judiciary to visit the country.
- The government of Nepal should consider ratifying the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- The government should immediately implement in full “His Majesty’s Government’s commitment on the implementation of Human Rights and International Humanitarian Law”, of 26 March 2004.