

NEPAL: DEALING WITH A HUMAN RIGHTS CRISIS

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TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	i
I. INTRODUCTION	1
II. THE HUMAN RIGHTS CRISIS	2
A. A CATALOGUE OF ABUSES IN A CLIMATE OF IMPUNITY	3
B. AN UNRESTRAINED AND POLITICISED MILITARY	4
C. LIMITED NATIONAL HUMAN RIGHTS PROTECTION CAPACITY	5
1. The National Human Rights Commission (NHRC)	5
2. The Judiciary	5
3. National Human Rights NGOs	6
D. INEFFECTIVE INTERNATIONAL RESPONSE	7
III. THE ROYAL COUP AND BEYOND	8
A. ARRESTS, DISAPPEARANCES, MILITARY ACTIONS	8
B. CENSORSHIP AND SUSPENSION OF OTHER RIGHTS	9
C. VIGILANTE ACTION: A REVIVAL OF THE VILLAGE MILITIAS PLAN?.....	10
D. PROSPECTS FOR DEMOCRACY AND DEVELOPMENT	11
IV. 2003-2004: A YEAR OF MISSED OPPORTUNITIES	12
A. THE DORAMBA CASE.....	12
B. LEVERAGE ON THE MAOISTS.....	12
C. COMMITMENT PAPER AS FIG-LEAF.....	12
D. TOOTHLESS CHAIR STATEMENT AT THE 2004 COMMISSION ON HUMAN RIGHTS	13
V. WHAT NEEDS TO BE DONE	13
A. ACTION BY THE NEPALI GOVERNMENT	13
B. ACTION BY THE COMMUNIST PARTY OF NEPAL (MAOIST)	14
C. ACTION AT THE COMMISSION ON HUMAN RIGHTS	15
D. OTHER INTERNATIONAL ACTION.....	15
VI. HOW TO GET THERE	16
A. INTERNATIONAL ACTORS AND MECHANISMS	16
B. EFFECTIVE ACTION	18
1. Beyond technical assistance.....	18
2. Towards a successful monitoring operation	19
3. Preconditions for a successful monitoring mission	19
VII. CONCLUSION: HUMAN RIGHTS AND PEACEBUILDING	20
APPENDICES	
A. MAP OF NEPAL	22

NEPAL: DEALING WITH A HUMAN RIGHTS CRISIS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

In the wake of the royal coup of 1 February 2005, Nepal's human rights crisis is spiralling out of control. A year after the international community first formally expressed concern at the 2004 Commission on Human Rights, the Maoists continue to operate outside the law while state security forces act with impunity and without civilian control. The 61st Commission on Human Rights now underway gives Nepal's friends their best opportunity to begin to reverse the trends by establishing a strong UN human rights monitoring mission that could form the core of action towards peace.

Using extortion and coercion, the Maoists are imposing an authoritarian regime on steadily increasing swathes of rural Nepal. State forces are engaged in well documented, systematic violations from extra-judicial executions to illegal detentions, "disappearances" and torture.

By its willingness in recent years to give the royal government the benefit of the doubt and sidestep serious criticism and remedial action, the international community finds itself confronted today with what it fears the most: a no-party state that has decimated democracy, kills people at will in the countryside, forbids freedom of expression or dissent and demands unquestioning support for its unelected leader. It now recognises the gravity of the situation. A joint statement by bilateral donors and the UN in Nepal has warned that "insecurity, armed activity and CPN/M [Maoist] blockades are pushing Nepal toward the abyss of a humanitarian crisis".

The repeated gentle urgings of the past have done nothing to prevent the dismantling of democracy. Apart from the assault on fundamental rights, the royal coup and the royal government's subsequent actions have emboldened the Maoists and made any resolution of the conflict all the more distant. As Crisis Group has warned before, the Maoists are the only party in Nepal's complex conflict with a clear strategy. The king's seizure of absolute power has not brought with it any new strategy that can hope to address the challenge of the insurgency.

Human rights issues have assumed an increased significance, as one of the few available avenues through which the international community might be able to influence the resumption of the peace process. In this context the 61st Commission on Human Rights, meeting from 14 March to 22 April 2005, has a particularly important role.

The priorities are to:

- ❑ secure a strong resolution calling for restoration of basic freedoms and guaranteed protection;
- ❑ ensure that the resolution has robust enforcement mechanisms, and compliance is measurable against clearly defined benchmarks;
- ❑ put in place an effective UN human rights monitoring mission to complement and strengthen national efforts;
- ❑ call for both the government and the Maoists to sign a Human Rights Accord (HRA) as a first confidence-building measure towards a resumed peace process;
- ❑ ensure that any military assistance to the government, as well as new Royal Nepalese Army (RNA) participation in UN peacekeeping operations, is tied to concrete improvements in human rights;
- ❑ use effective human rights monitoring as a means of engaging and exerting leverage on the Maoists; and
- ❑ link human rights efforts to a wider, coordinated international push for peace, with a contact group of key powers and the UN supported by donors working on the development and rights tracks.

This report describes the current human rights crisis, offers practical policy recommendations for tackling it by all relevant players, and explains how such measures would contribute to the longer-term conflict resolution effort.

RECOMMENDATIONS

To the Nepali Government:

1. End the suspension of constitutional rights imposed since 1 February 2005 and:
 - (a) release politicians, human rights defenders, journalists and others from preventive detention;
 - (b) lift the state of emergency; and
 - (c) remove media censorship to allow the reporting of human rights violations and honest war coverage.
2. End the practice of enforced disappearances by security forces, investigate all disappearance cases and prosecute perpetrators.
3. Renounce the use of vigilante groups, village militias and other extrajudicial means to contest the Maoists.
4. Cooperate with the international community to tackle the human rights crisis by:
 - (a) accepting a strong UN-led international human rights monitoring mission;
 - (b) accepting appointment of a Special Rapporteur and issuing a standing invitation to the thematic mechanisms of the UN Commission on Human Rights to visit Nepal;
 - (c) allowing the International Committee of the Red Cross (ICRC) to fulfil its mandate; and
 - (d) encouraging the National Human Rights Commission (NHRC) to accept standing offers of technical assistance from the international community.
5. Take immediate steps to demonstrate concrete commitment to ending the culture of impunity towards human rights abusers by:
 - (a) guaranteeing the independence of the judiciary and ensuring security forces' full cooperation with the courts;
 - (b) prosecuting those responsible for the Doramba killings as demanded by the Office of the UN High Commissioner for Human Rights (OHCHR) in September 2003;
 - (c) investigating and prosecuting in the civilian courts other cases of alleged rights abuses, including gender-based violence;
 - (d) issuing clear instructions to all security forces that any use of torture or other human rights violations will be punished; and
 - (e) recognising that its National Human Rights Action Plan is an insufficient and inappropriate response to the current situation and urgently developing effective measures to address the human rights protection crisis.
6. Strengthen the legal framework for human rights and international humanitarian law by:
 - (a) signing the National Human Rights Commission's Human Rights Accord (HRA);
 - (b) repealing or amending the Public Security Act and Terrorism and Destructive Activities Ordinance;
 - (c) ensuring full compliance with existing commitments under domestic and international law;
 - (d) signing the Additional Protocols to the Geneva Conventions; and
 - (e) signing the Rome Statute on the International Criminal Court.
7. Strengthen the capacity of the National Human Rights Commission by:
 - (a) extending the term of the current Commissioners;
 - (b) ensuring that the Commissioners and other NHRC officers are free to travel and fulfil their mandate;
 - (c) respecting the physical integrity of its offices in Kathmandu, Biratnagar and Nepalgunj so it can protect sensitive information on victims and their relatives; and
 - (d) ensuring that other agencies such as the Human Rights Promotion Centre and the security forces' human rights cells are not used to undermine its work.

To the Communist Party of Nepal (Maoist):

8. Cease human rights violations and adhere in full to international humanitarian law, in particular by:
 - (a) respecting the rights of the civilian population and hors de combat security forces;

- (b) releasing political detainees immediately;
 - (c) halting the intimidation, torture and killing of political workers, journalists, activists and others; and
 - (d) giving and enforcing clear instructions to all cadres on human rights and international humanitarian law.
9. Build confidence and work towards the rapid resumption of the peace process by:
- (a) signing the Human Rights Accord;
 - (b) cooperating with national and international human rights monitors; and
 - (c) developing transparent methods for dealing with rights abuses, including gender-based violence.

To the Member States of the United Nations Commission on Human Rights (CHR):

10. Use the 61st CHR to address Nepal's human rights crisis by:
- (a) establishing an effective international human rights monitoring presence in the country through deployment of a clearly mandated mission of the Office of the High Commissioner for Human Rights (OHCHR) staffed by international monitors and national support staff sufficient to work across Nepal's difficult terrain and led by a head of mission of sufficient UN rank and ability to collate, evaluate and act on the information gathered by monitors;
 - (b) appointing a Special Rapporteur; and
 - (c) encouraging the royal government to issue a standing invitation to the thematic mechanisms of the Commission to visit Nepal.

To the Wider International Community, including CHR Member States, Diplomatic Missions to Nepal, and Bilateral and Multilateral Donors:

11. Use available leverage to end the culture of impunity by:
- (a) preparing to suspend the Royal Nepalese Army from UN peacekeeping operations if it does not improve its record;
 - (b) making human rights protection a condition of military and other assistance; and

- (c) demonstrating that it is prepared, through the UN Security Council, to authorise the International Criminal Court to exercise jurisdiction over exceptionally serious violations of international humanitarian law by either the state or the Maoists unless such violations cease and/or are submitted to fair and impartial domestic investigation and prosecution.
12. Support Nepal's National Human Rights Commission by:
- (a) demanding that the royal government respect its statute in both letter and spirit so it can fulfil its mandate;
 - (b) insisting on the extension of the current Commissioners' terms; and
 - (c) planning, funding and implementing (most probably through the UN) all appropriate assistance it requests.
13. Help build non-governmental human rights capacity by:
- (a) defending and strengthening national human rights NGOs, including women's organisations, and relevant professional associations, such as the Nepal Bar Association and the Federation of Nepali Journalists; and
 - (b) developing practical programs for protecting human rights defenders.

Kathmandu/Brussels, 24 March 2005

NEPAL: DEALING WITH A HUMAN RIGHTS CRISIS

I. INTRODUCTION

Nepal is suffering a worsening human rights crisis as the nine-year-old Maoist (Communist Party of Nepal/Maoist, CPN/M) insurgency intensifies. The royal coup of 1 February 2005, which imposed a state of emergency, has exacerbated an already dire situation.¹ The weeks since 1 February have seen the arrest of hundreds of politicians, human rights defenders, journalists and others; an increase in clashes between rebels and state security forces; blockades by the Maoists² and the continuation of their practices of abductions and extortion; severe press censorship and restrictions on monitoring efforts by the National Human Rights Commission (NHRC); and worrying signs of state-sponsored vigilante action resulting in lynchings, the burning of villages and brutal Maoist retribution. An 18 March 2005 statement by bilateral donors and the UN in Nepal has warned that "insecurity, armed activity and CPN/M blockades are pushing Nepal toward the abyss of a humanitarian crisis".³

As Crisis Group reporting has warned, the king's actions have made any resolution of the conflict much less likely. This analysis is shared by most of Nepal's powerful international friends.⁴ The increasing cycle of rights

violations has undermined both sides' efforts to win popular support, and systemic abuses have sabotaged the Royal Nepalese Army's attempts at a "hearts and minds" campaign. Global concern at the deteriorating situation is virtually unanimous. Governments, multilateral bodies and international non-governmental organisations (NGOs) have amplified the grave worries articulated by Nepali civil society groups and activists.⁵ Past failures to address the human rights crisis have not only allowed a culture of impunity for state security forces but also deprived the international community of potentially the most effective means of exerting serious pressure on the Maoists.

The royal coup has, however, brought opportunities for fresh efforts to develop an effective, coordinated international response to the conflict. Well planned international pressure and assistance could both address the immediate political challenges and build toward a sustainable peace process. Steps to deal with the human rights crisis would also be confidence-building measures -- the essential precursor to a

democratic institutions under a constitutional monarchy", U.S. State Department Spokesman Richard Boucher, State Department daily briefing 25 February, Washington D.C. "The developments in Nepal constitute a serious setback to democracy and bring the monarchy and mainstream political parties in direct confrontation with each other. This can only benefit the forces that not only wish to undermine democracy in Nepal but the institution of democracy as well", Indian Minister of External Affairs K Natwar Singh in a statement to the upper house of parliament, New Delhi, 4 March 2005. "We continue to urge the king to restore representative government and democratic freedoms. These are essential steps towards a sustainable peace process", UK Secretary of State Jack Straw, quoted by Bloomberg News, 23 February 2005.

⁵ "Continued assistance will depend on demonstrated commitment and capacity to implement reforms", World Bank press statement, Washington D.C., 8 March 2005. The Bank suspended a \$70 million loan for a poverty reduction scheme. "...Nepal is descending into an abyss of violence from which there will be no easy return. The rule of law, democracy and human rights: all of these are now stuff of mythology in Nepal", statement by Asian Human Rights Commission, 9 March 2005, <http://www.ahrchk.net/statements/mainfile.php/2005statements/273>. Figures denoted in dollars (\$) in this report refer to U.S. dollars.

¹ See Crisis Group Asia Report N°91, *Nepal: Making a Bad Situation Worse*, 9 February 2005, and Asia Briefing N°36, *Nepal: Responding to the Royal Coup*, 24 February 2005.

² The Communist Party of Nepal (Maoist) is for brevity referred to in this report as "the Maoists".

³ Statement by bilateral donors and the United Nations in Nepal, 18 March 2005. The statement was signed by the Canadian International Development Agency (CIDA), Denmark, the Department for International Development (DfID, UK), the European Commission, GTZ (Germany), SNV (Netherlands), SDC (Switzerland), the U.S. Agency for International Development (USAID), Finland, Norway, and the UN. See also "Nepal 'near humanitarian abyss'", BBC News, http://news.bbc.co.uk/2/hi/south_asia/4360019.stm.

⁴ "We think that the king needs to move quickly to reinstate and protect civil and human rights, to release those who are detained under the state of emergency, and to begin a dialogue with the political parties intended to restore multi-party

negotiated settlement. The 61st Commission on Human Rights (CHR), meeting from 14 March to 22 April 2005, should capitalise on these opportunities.

This policy report outlines the broader political context of human rights in the conflict and details both the steps that should be taken, focusing particularly but not solely on the current CHR meeting, and their place in the peace process. It aims to complement the large body of published reporting by specialist human rights agencies and NGOs. The robust international response to the royal coup has demonstrated that there is a widely shared consensus on the need to help Nepal resolve its conflict. United political will can be effective. The challenge now is to build on the short-term consensus with forward-looking measures directed towards a negotiated long-term settlement.

II. THE HUMAN RIGHTS CRISIS

The human rights situation has deteriorated dramatically since the end of the last ceasefire in August 2003. It is characterised by:

- ❑ serious rights violations committed by both sides, Maoist and state, including for both 2003 and 2004 the highest number of newly reported disappearances in any country;⁶
- ❑ an atmosphere of impunity on both sides, with few restraints on combatants and extremely limited willingness to enforce military discipline in order to achieve observance of international humanitarian law;
- ❑ an increasingly politicised military, which has exerted a stranglehold on peace talks without delivering security from Maoist attacks;
- ❑ weak domestic capacity for monitoring and addressing rights violations; and,
- ❑ an ineffective international response.

The human rights crisis is, like other effects of the conflict, hitting the civilian population hardest. Disregard for human rights has also damaged the credibility and support base of both sides.

The Maoists have targeted teachers, journalists and political workers and have used an array of violent and coercive tactics to intimidate and exploit the civilian population. Their atrocities -- many publicised by the journalists, activists and politicians detained following the royal coup -- have dented what public support the insurgents had. The Maoists may calculate that brutality serves them well at this stage of guerrilla warfare but it undermines their chances of ever earning mainstream acceptability and widespread support. Louise Arbour, UN High Commissioner for Human Rights (UNHCHR), pointed this out during her January 2005 visit to Nepal: "I would warn the leaders of the insurgency not to misread developments in the wider world nor to believe that they can operate outside of the law".⁷

⁶ "Nepali security forces have established themselves as one of the world's worst perpetrators of enforced disappearances ... According to [the] United Nations Working Group on Enforced and Involuntary Disappearances, in 2003 and 2004 Nepal recorded the highest number of new cases of 'disappearances' in the world", statement by Human Rights Watch, New York, 1 March 2005.

⁷ Press statement on the occasion of the visit to Kathmandu (23-26 January 2005) by Ms. Louise Arbour, High Commissioner for Human Rights.

The state, especially if it is to deliver on the repeated promise of a "hearts and minds" campaign, does not have the luxury, legally or strategically, of disregarding its domestic and international responsibilities. Respect for human rights, as many military advisors have sought to remind the RNA, must lie at the core of any effort to restore faith in the state and government. State abuses, ever since the brutality of the police operations in Rolpa which preceded the insurgency, have fuelled popular resentment and played into the hands of the Maoists. There is increasing evidence that many of the several thousand people so far killed by the state, most in the period since the army's deployment in November 2001, were not Maoists or were executed in cold blood.

Widespread detentions and intimidation of democratic politicians and human rights defenders have followed the proclamation on 1 February 2005 with which the King formalised his *de facto* assumption of absolute power. Censorship, restrictions on communication and movement and other measures mean that the full impact of the military takeover is unknown, even in the Kathmandu valley. Information from the 75 districts, many of which are practically cut off from the capital, may not be available for months. The full impact of the period immediately following 1 February will only become clear when measures have been taken to establish accurate monitoring of the situation.

The donor community has repeatedly criticised the government's human rights record, calling for it and the Maoists to sign an HRA as recently as 9 September 2004. That statement, from the major European donors, the European Commission delegation, the U.S. embassy and the Canadian mission to Nepal, asserted that "both sides to the conflict continue to be responsible for gruesome and continuing human rights violations". The European Union (EU) Troika which visited Nepal in December 2004 recalled, "the international community's appeals to both sides of the conflict to urgently sign the human rights accord as a first step towards curtailing the indiscriminate and arbitrary violation of rights".⁸ Unfortunately, there has been little practical pressure for implementation of these appeals. Recent high-level visits, culminating in the UNHCHR's, have emphasised the gravity of the situation. Louise Arbour spoke of the "grave human rights crisis" afflicting Nepal and the "rampant abuse of basic human rights" brought about by the armed conflict.⁹

A. A CATALOGUE OF ABUSES IN A CLIMATE OF IMPUNITY

The main violations of human rights are widespread "disappearances", torture, extrajudicial killings, rapes, illegal and arbitrary detention and severe restrictions on freedom of assembly, speech, association and movement. Many have been thoroughly documented in reports by the major international human rights organisations.¹⁰ The judicial system is dysfunctional. The RNA, which has never been under effective civilian control or oversight, frequently ignores the Supreme Court habeas corpus orders, and there are many documented cases of re-arrest of those released by judicial order.

The U.S. State Department's report on human rights practices emphasised that impunity on both sides remained a problem throughout 2004.¹¹ According to Human Rights Watch, "Both parties have engaged in systematic human rights abuses and violations of international humanitarian law with impunity".¹² Placing Nepal at the top of the list of priorities for the CHR,

¹⁰ Amnesty International's recent reports and statements on Nepal include: "Human rights defenders at risk", 18 November 2004, ACT 30/020/2004; "Nepal: Human rights defenders under threat -- enhanced international protection urgently needed", 19 December 2004, ASA 31/190/2004; "Open letter condemning attacks on civilians, particularly those who criticise Communist Party of Nepal (CPN) (Maoist)", 10 January 2005, ASA 31/003/2005; "Nepal: Killing with impunity", 20 January 2005, ASA 31/001/2005; "Nepal: State of emergency deepens human rights crisis", 1 February 2005, ASA 31/008/2005; "Nepal: A long ignored human rights crisis now on the brink of catastrophe", 18 February 2005, ASA 31/022/2005. All are available at www.amnesty.org. Human Rights Watch reporting includes: "Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights", 10 March 2005; "Clear Culpability: 'Disappearances' by Security Forces in Nepal", 1 March 2005; "Nepal: Civil War Atrocities Follow Royal Takeover", 24 February 2005; "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War", 7 October 2004. All are available at www.hrw.org. International Commission of Jurists reports, including "Nepal: The Rule of Law Abandoned", 17 March 2005, are available at www.icj.org. Asian Human Rights Commission reports are available at www.achrweb.org. For a recent detailed account of human rights abuses, including gender-based violence, especially since 1 February 2005, see, "Situation Update: Human Rights in Nepal", Nepal Coalition of Human Rights Defenders, 22 March 2005.

¹¹ U.S. State Department, "Country Reports on Human Rights Practices 2004: Nepal", 28 February 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41742.htm>.

¹² "Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights", Human Rights Watch, *op. cit.*

⁸ EU Troika press release, Kathmandu, 15 December 2004.

⁹ Press statement, *op. cit.*

Amnesty International's representative at the UN in Geneva, Peter Splinter, reiterated that "Nepal is on the verge of a human rights catastrophe -- basic human rights have been suspended; impunity is rampant. The international community must take immediate and decisive action to pull Nepal back from the verge".¹³ Louise Arbour made the point most effectively:

Regrettably, there is an alarming, and growing, number of cases in which the fundamental rights of the people of Nepal have been abused by agents of the state and in which victims have been unable to obtain redress. A climate of impunity prevails in this country as a result of which the rule of law, the fundamental glue of any society, is being worryingly eroded.¹⁴

This intervention in particular stung the military and led to an indignant rebuttal:

[The] Royal Nepalese Army (RNA) has strongly objected to the term "impunity" used by various human rights organisations including UN High Commissioner for Human Rights Louise Arbour while associating the RNA with the deteriorating human rights situation in the country. RNA Spokesman Brigadier General Deepak Gurung during a regular press briefing in Kathmandu Friday [28 January] claimed that [the] RNA as a constitutional body is "very much conscious of human rights and has never gone beyond the limits of legal boundaries" to carry out its function in defence of the Monarchy, country and the people. "The word impunity is a loosely used word by various sources at various times to tarnish the image of the RNA", added Gurung.¹⁵

The best documented and most significant illustration of RNA impunity is the case of the killing of 21 people in the village of Doramba, Ramechhap district, on 17 August 2003, the very day that the third round of peace talks got underway after a three-month hiatus. The NHRC set up a high-level enquiry team, which included a leading forensic doctor, two former Supreme Court judges and a prominent publisher, to look into the incident which the RNA had tried to portray as two Maoist ambushes. The enquiry found that the 21, most of whom were Maoists or sympathisers, had been detained for several hours before they were marched a

further two hours, then executed, most with shots to the head from close range while their hands were bound.¹⁶

The RNA reluctantly reopened its investigation and on 31 January 2005, hours before the royal coup, announced that the major in charge of the operation would be removed from the army and imprisoned for two years for "excessive use of force".¹⁷ While this is a historic decision -- the first clear case of an RNA officer punished for a human rights violation -- the inadequate sentence, lack of transparency of the military trial and timing make the process very unsatisfactory.

B. AN UNRESTRAINED AND POLITICISED MILITARY

The army will now be under considerable pressure to make good its oft repeated promise that it will defeat the Maoists within six months. Given its clear inability over three years to hurt the ever more powerful Maoist forces, there is a great danger civilians will continue to bear the brunt of government military operations. The RNA fully controls both the national police and the paramilitary Armed Police Force and in effect rules the 75 district headquarters, which have become increasingly militarised, with local military commanders holding sway over the nominal civilian local power, Chief District Officers.

The military's arbitrary detentions have been "legalised" by the Terrorist and Destructive Activities Ordinance (TADO), signed by the government of Prime Minister Deuba in October 2004. Intensified conflict is now to be expected, and the probable result is an increasingly polarised society. Many civilians who are trying to stay out of the conflict will be forced by the security forces into the arms of the Maoists. This will make the search for peace more difficult and the civilian population increasingly vulnerable to violations of their rights.

In mid-2004, the RNA made public its wish to set up a military bank.¹⁸ The army's senior officers already control a sizeable welfare fund based on earnings from UN peacekeeping duties. It runs petrol pumps as a

¹³ "2005 UN Commission on Human Rights: An important opportunity to address human rights violations whenever and wherever they occur", Amnesty International press release, 10 March 2005.

¹⁴ Press statement, op. cit.

¹⁵ "RNA strongly objects to use of 'impunity' against it", www.kantipuronline.com, 28 January 2005.

¹⁶ The NHRC report on Doramba is available at <http://insn.org/index.php?p=303>.

¹⁷ The dismissal was confirmed on 13 February 2005. "Army major sacked over Doramba case", *The Rising Nepal*, 14 February 2005, available at <http://www.gorkhapatra.org.np/pageloader.php?file=2005/02/14/topstories/main7>.

¹⁸ Though the news was reported in the press in August 2004, Minister for Information and Communication Mohammed Mohsin later denied that the government had given permission to the RNA to open a bank. "None of their business", *Nepali Times*, 20 August 2004.

commercial enterprise but its accounts and other activities remain murky, and the army has resisted public scrutiny.¹⁹ The army also has its own schools and hospitals while hundreds, if not thousands, of rank and file soldiers are used as domestic servants by both serving and retired senior officers.²⁰ The international community has largely turned a blind eye to RNA efforts to increase its economic independence. But further moves toward entrenching the military as a state within a state are deeply disturbing, as the experiences of Pakistan and Indonesia indicate.²¹

C. LIMITED NATIONAL HUMAN RIGHTS PROTECTION CAPACITY

State mechanisms for human rights protection are at best dysfunctional and at worst actually designed to fail. Outside of government mechanisms, the human rights movement has been severely weakened by measures since the 1 February coup. Press restrictions and curbs on expression have made it almost impossible to do effective human rights monitoring.

The statutory body for protection of human rights, the National Human Rights Commission (NHRC), is a relatively weak institution that has not received government support since its creation in 2000. It and the International Committee of the Red Cross (ICRC) have been regularly refused unhindered access to detainees, particularly those the RNA holds with dubious legality. The population outside Kathmandu has increasingly turned its back on the judicial system. Measures suspending basic constitutional rights and empowering the security forces in effect make it impossible for Nepalis to carry out human rights defence activities without unacceptable risk.

1. The National Human Rights Commission (NHRC)

The NHRC is the main institutional defender of human rights. Its recent successes in documenting violations, notably the Doramba massacre, have made it the target of official ire, and commissioners have been under considerable pressure. Over the previous eighteen

months, the credibility and capacity of the NHRC had been significantly improved through technical assistance, training and advice on monitoring techniques. However, the limitations imposed since 1 February have severely weakened its capacity to carry out its mandate. It remains, nonetheless, a key partner for donors and any UN monitoring mission. The mandate of the current commissioners expires on 25 May 2005. The international community must ensure that the commissioner appointment process follows the spirit and letter of the founding statute, but without a parliament, there is no legal way for new commissioners to be nominated. Ironically, the NHRC has become a severe irritant to the RNA since the U.S. Congress passed legislation late in 2004 which makes Washington's military aid to Nepal contingent on the army's cooperation with the NHRC.²² The temptation for the regime to end NHRC independence, therefore, is considerable.

2. The Judiciary

While the NHRC is constrained by the government, the judiciary has remained ineffective due partly to its own shortcomings.²³ Even before the royal coup, the RNA routinely ignored writs.²⁴ When they were accepted, as in a few habeas corpus petitions, detainees released by the courts were promptly re-arrested, sometimes within the court compound.²⁵ Given this, it is unsurprising that the courts have been meek about pushing the legal boundaries in the present emergency. A case in point is the Supreme Court's refusal to register cases even under constitutional provisions not suspended by the emergency.²⁶

¹⁹ In August 2003, ex-RNA soldiers held a press conference in Kathmandu claiming massive misuse of the welfare fund by senior officers. "Ex-servicemen accuse RNA of welfare fund misuse", *The Kathmandu Post*, 22 August 2003.

²⁰ Called *pipas*, these RNA personnel are usually recruited from the untouchable castes and assigned as domestic servants and other support staff of RNA officers. They have nominal rights and are rarely promoted through the conventional ranks.

²¹ See, for example, Crisis Group Asia Report N°40, *Pakistan: Transition to Democracy*, 3 October 2002.

²² The amendment to the Foreign Operations Appropriations bill sponsored by Senator Patrick Leahy restricts military aid to Nepal unless the Secretary of State certifies that it is cooperating with the NHRC to resolve all disappearance cases; granting the NHRC unimpeded access to places of detention; and complying promptly with habeas corpus orders issued by Nepal's Supreme Court, including all outstanding orders.

²³ For a comprehensive examination of the urgent legal and judicial challenges facing Nepal see "Nepal: The Rule of Law Abandoned", International Commission of Jurists, 17 March 2005.

²⁴ "Senadvara Sarvocchalai dhantiyo", *Kantipur*, 22 March 2004.

²⁵ "The police and army often refuse to accept court orders to produce detainees, and re-arrest detainees immediately after the courts order their release", "NHRC of Nepal amidst the ruins", Suhas Chakma, *Himal South Asian*, Kathmandu, March–April 2004, available at http://www.himalmag.com/2004/march_april/report_2.htm. Human Rights Watch, "Clear culpability: disappearances by security forces in Nepal", op. cit.

²⁶ The Supreme Court is currently considering writ that raises the question whether it can take up cases under non-

Nepal's judiciary has always been constrained by royal prerogative. Nevertheless, during the partyless Panchayat system from 1960 to 1990, the judiciary won a certain reputation for taking up cases of political detainees and often ruling in their favour. Ironically, the democracy years since 1990 did much to damage the independence of the courts. The seminal case of the period, the dissolution of parliament by a communist prime minister in 1995, led to verdicts that institutionalised horse-trading in parliament and general political instability.²⁷ It also led to the politicisation of the courts. Certain judges were openly seen as tilting towards a particular political party.

Since then, the slide has been relentless. The first emergency rule, imposed in November 2001, allowed the security forces to seize initiative from the judiciary. An RNA official complained in early 2004, "We arrested the Maoists but the courts released them due to lack of proof or other reasons. So what were we to do? We arrested them again from the court compounds".²⁸ The courts have not faced up to the RNA challenge. While Supreme Court justices have reprimanded the RNA a few times, they have rarely followed up with action. In the current climate, there is even less reason to hope that the courts will dare order the RNA to behave.

Much of the reason for this is the judiciary's traditional deference towards the monarchy. Nepal's 1990 constitution bars any cases against the royal family, a point zealously enforced by the courts. Another important reason is a selection method for justices and judges which gives the palace final say. Since the king has shown determination to push his own candidates in other constitutional bodies,²⁹ his shadow looms large over the courts. Just how large is illustrated by another recent case. Before the February coup, the coalition government was in turmoil over the issue of calling

elections or reviving the dissolved House of Representatives.³⁰ The Nepal Bar Association met Chief Justice Govinda Bahadur Shrestha in November 2004 to press for a speedy hearing on reviving parliament. He concurred with the need but nothing happened.³¹ Shrestha retired soon after, and the royal coup made the issue moot. A Bar member says, "the justices are just too afraid of going against the palace's wishes. There were clear indications from the palace not to hear the case".³² In its present state, the judiciary simply lacks the will and wherewithal to protect human rights.

3. National Human Rights NGOs

National human rights NGOs in Nepal are active but relatively weak and inexperienced. Their lack of security awareness has made them particularly vulnerable to the measures adopted since the King's seizure of power. The fact that a number of key human rights defenders have either left the country or gone underground underlines the difficulty citizens have in documenting human rights cases and the need for international monitoring and a significantly expanded presence of the Office of the UN High Commissioner for Human Rights (OHCHR) in Nepal. Human rights defenders in Kathmandu, including journalists, lawyers and NGO workers, have clearly expressed their fears to diplomats and visiting delegations.³³ Some leading human rights defenders have been detained on their return to Nepal and others turned back from the airport.³⁴

Leaders of most mainstream parties remain under house arrest while hundreds of other party cadres and student activists were detained in an attempt to prevent protests at the royal takeover, suggesting that the main target of the new administration is less the Maoists than key politicians, human rights defenders, the media and the Kathmandu intelligentsia. The Deuba government presented no

suspended constitutional provisions. The writ was filed after the Court refused to entertain a petition under the non-suspended article 88(2) of the constitution. It is expected to deliver a verdict on 31 March 2005. "Amicus Curiae concludes debate", *The Kathmandu Post*, 8 March 2005.

²⁷ The Supreme Court verdict restored a dissolved parliament and stated that the legislature cannot be dissolved until all possibilities of forming an alternative government have been exhausted. The decision encouraged deal-making between parties and politicians seeking to lure rivals into supporting attempts to form a new government.

²⁸ Crisis Group interview, Kathmandu, February 2004.

²⁹ King Gyanendra appointed Keshab Raj Rajbhandary as Chief Election Commissioner on 3 December 2003, www.nepalnews.com. The selection was made after the monarch asked for a shortlist of three names to choose from, not the usual one name. Crisis Group interview, December 2003.

³⁰ The House, the elected lower chamber of parliament, was dissolved in May 2002 due to in-fighting within the ruling Nepali Congress party. Since then, Nepal has had no elections, even though the constitution mandates these within six months of dissolution of parliament.

³¹ "CJ willing to hear plea on House revival", *The Himalayan Times*, 25 November 2004.

³² Crisis Group interview, Kathmandu, March 2005.

³³ Federation of Nepalese Journalists president Taranath Dahal has said he fears for his safety in the current climate. Crisis Group interview, Kathmandu, March 2005.

³⁴ The chairman of Child Workers in Nepal, Gauri Pradhan, a leading child rights advocate, was arrested at Kathmandu airport on 17 February 2005 upon his return from Europe. Political scientist and former ambassador to India, Professor Lok Raj Baral, was arrested upon returning from Delhi on 7 February. Prominent editor and publisher Kanak Mani Dixit was arrested on 7 March, two days after returning from India.

practical obstacle to the RNA's prosecution of the war against the Maoists. But the palace and army were angered by the growing international attention reflected in a marked increase in media coverage of human rights violations, a phenomenon they blamed on the media and human rights defenders.³⁵

D. INEFFECTIVE INTERNATIONAL RESPONSE

As in its approach to the conflict as a whole, the international community's policy on human rights in Nepal has failed. Neighbours and donors have always been soft on government human rights abuses because they felt the government was at least a lesser evil than the Maoists. This has left them poorly positioned to say much now that the government's approach is clearly out of control.

Indeed, the palace and military view their present actions as a logical extension of the practices which the international community largely ignored as the political crisis intensified over the last several years, starting with the first time the king dismissed Prime Minister Deuba and assumed executive control, in October 2002. If the Maoists had killed 21 soldiers in cold blood on the first day of the third round of the 2003 peace talks, international outcry would have been justified and likely. The turning of a blind eye to many state abuses and the gentle approach of offering training and technical assistance rather than demanding a change in policy from the top encouraged further deterioration of the situation.

The period since the breakdown of the ceasefire in August 2003, and in particular the twelve months since the 2004 Commission on Human Rights, has been one of missed opportunities.³⁶ International efforts have come too late and on a scale which has proved inadequate to make an impression on the impunity enjoyed by the RNA and the Maoists alike. The Maoists were not tested when they proclaimed themselves ready to accept international human rights monitoring; nor were they tested on their willingness

to participate in peace talks with UN or other international facilitation. Similarly, the government's commitment paper of 26 March 2004 was welcomed by diplomats and used to justify keeping Nepal off the agenda at the 2004 CHR, but there was no effort to monitor and hold the government to its terms.³⁷ At this stage of an increasingly dirty war, it is not justifiable to take either side at its word.

International concern over the human rights situation had grown in the months prior to the royal coup. In December 2004, the UN Working Group on Enforced or Involuntary Disappearances visited and concluded that "the phenomenon of disappearances in Nepal today is widespread: its use by the Maoist insurgents and the Nepalese security forces is arbitrary".³⁸ This was followed by a statement on 24 December by UN Secretary General Kofi Annan calling on the government to protect human rights defenders after reports surfaced of an RNA "hit list", which included leading members of civil society.³⁹

The international community needs to recognise that its previous stance was unsuccessful and adopt a much more realistic approach to the current situation. There is no need to change the frequently reiterated objectives of pressing and assisting both sides to abide by international humanitarian law and human rights norms. But the consistent failure to achieve any progress towards these objectives calls for a fresh start.

³⁵ Crisis Group interviews February 2005. The royal government has also barred rights advocates from travelling outside Kathmandu. NHRC Commissioner Sushil Pyakurel was stopped from flying to Rupandehi on 5 March 2005 to investigate reports of vigilantism in Kapilvastu. Another NHRC commissioner, Kapil Shrestha, was barred from attending the opening of the NHRC's Biratnagar office on 7 February 2005. Former Speaker of Parliament Daman Nath Dhungana was turned back on 10 March 2005 from the airport while trying to board a flight to attend an academic seminar on Nepal in the United States, www.kantipuronline.com.

³⁶ See Section IV below.

³⁷ "His Majesty's Government's commitment on the implementation of Human Rights and International Humanitarian Law" was produced during the 2004 CHR discussions. The five-page document contained 25 commitments, such as the guarantee that, "No-one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances".

³⁸ Advanced edited version of the report of the UN Working Group on Enforced or Involuntary Disappearances visit to Nepal, 6-14 December 2004, paragraph 25, E/CN.4/2005/65/Add.1, 28 January 2005.

³⁹ The Secretary General's statement was cited in "Annan iterates concern and offer on Nepal", *The Himalayan Times*, 25 December 2004.

III. THE ROYAL COUP AND BEYOND

King Gyanendra's dismissal of a coalition government and seizure of complete power have been examined in earlier Crisis Group publications.⁴⁰ The situation remains tense and uncertain. The royal government has been fortunate that the mainstream political parties have not aligned themselves directly with the Maoists yet but many politicians warn that continued assault on political and civil liberties can only hasten that eventuality.⁴¹ There are already signs that the parties are increasingly sympathetic towards the Maoists' main demand of converting Nepal into a republic.⁴² The human rights crisis has further narrowed the democratic middle ground and escalated abuses and threatens to intensify the conflict. Vigilantism by government-backed militias in Kapilvastu district indicates willing disregard of the rule of law by the state. The Maoists have stepped up blockades, strikes and military attacks, while softening their tone towards the political parties and allowing their cadres to work in rural areas.

At the royal government's first press conference, on 17 March 2005, Vice Chairman Peter Giri⁴³ demanded the political parties "comply with the king's call to seek a political way out of the current situation". Toward the Maoists his language was stronger and clearer:

As for the Maoists, Giri ruled out peace talks with them until they disarmed. "We are not in the mood to hold talks with them", he said. "Whatever you term them, they are terrorists". He, however, called on the Maoists to abandon violence and "terrorist" activities and join mainstream politics. "The situation in the country has changed", he said. "They will get no benefit by struggling from the jungles". He said that if they did not do so, the security forces were fully equipped and committed to wiping out the Maoists.⁴⁴

A. ARRESTS, DISAPPEARANCES, MILITARY ACTIONS

At the start of the king's coup on 1 February, security forces began arresting politicians, student leaders and human rights defenders. By the time King Gyanendra spoke over state radio and television, soldiers were guarding sensitive installations and government buildings. The minute the king finished, arrests were intensified. Hundreds of politicians were picked up in the first hours. Human rights defenders were harassed or put under surveillance. By the second day, when Gyanendra announced a council of ministers with himself at its head, it was clear the army was running the country, issuing orders ranging from news censorship to warnings against political protests. RNA headquarters was the centre of activity. "The cabinet is just a façade", said a journalist with close ties to the army.⁴⁵

In the days following, as the Maoists prepared to take advantage, the military was stretched on two fronts: not only conducting a badly-run counterinsurgency campaign but also doing police work, detaining politicians and protestors and keeping Kathmandu's streets free of opposition activity. The result was that the Maoist blockade of the capital beginning 13 February was effective despite RNA escorts of convoys. "Our convoy came under attack from the rebels even though there were RNA vehicles escorting us, foot patrols at every kilometre along the highway and military helicopters overhead", said a journalist who travelled from Gorkha to Kathmandu.⁴⁶

Its military strategy a failure and international condemnation mounting, the RNA turned inwards. Though censorship has made it difficult to know the true extent of rights violations after 1 February, especially outside Kathmandu, a few cases have come to light. A reporter with a prominent publication was abducted in early March in what was first claimed to be a Maoist operation. It later transpired that the reporter was carried off by the security forces.⁴⁷ Protestors in Jhapa were arrested by soldiers and severely tortured in the RNA barracks at Chaarali. In the most egregious violations since the coup, security forces have been implicated in vigilante killings and arson in Kapilvastu district during February. A foreign journalist who visited a few days later reported they had encouraged villagers to kill fellow

⁴⁰ See fn. 1 above.

⁴¹ Crisis Group interviews with Nepali politicians in exile, Delhi, February 2005.

⁴² "Nepal: Political parties compromise with Maoists, vow fight to end", Inter Press Service, Bangkok, 15 March 2005.

⁴³ Veteran royalist politician Tulsi Giri took the name "Peter" when he converted from Hinduism to become a Jehova's Witness.

⁴⁴ "Vice Chairman Giri extends olive branch to parties", 17 March 2005, www.kantipuronline.com.

⁴⁵ Crisis Group interview, Kathmandu, 5 February 2005.

⁴⁶ Crisis Group interview, Delhi, February 2005.

⁴⁷ *Himal Khabarpatrika* reporter J.B. Pun Magar was abducted in Lumbini on 10 March 2005. The magazine later said he was taken away not by Maoists but by security forces. Pun was released the following day after domestic and international criticism of his abduction.

villagers and burn scores of houses of alleged Maoist sympathisers.⁴⁸

The royal government changed tack in early March after it became clear that no major donor country or institution supported its concerted assaults on democracy, civil liberties and human rights. In an effort to placate international opinion, it began releasing prominent detainees.⁴⁹ But arbitrary arrests have continued, and there is concern that disappearances and torture are still employed as well.⁵⁰ Killings of purported Maoist activists have also continued, though in the absence of any independent confirmation the identities of those killed and the circumstances of their deaths cannot be established.⁵¹

B. CENSORSHIP AND SUSPENSION OF OTHER RIGHTS

Emergency rule since 1 February has ended press freedom. FM radio stations have been ordered to desist from broadcasting news altogether.⁵² Print outlets and television stations are monitored by government censors. Though military censors were withdrawn from news organisations after the first few days, stringent guidelines have been issued to discourage independent coverage of political and conflict issues. A senior journalist says, "We can't report anything about the

RNA or Maoists without vetting it with the security forces".⁵³

Even so, because of the international limelight, the press in Kathmandu has been gradually pushing at its boundaries. Authorities have released a few high-profile journalists,⁵⁴ and newspapers and magazines have started reporting on political and conflict issues without consulting censors. On 16 March Kathmandu and district branches of the Federation of Nepali Journalists (FNJ) petitioned the government and local district administration offices to restore freedom of expression.⁵⁵ While this suggests gradual relaxation of censorship, the situation in the districts -- where journalists were squeezed by both the government and Maoists even before the coup -- is much worse. Editors and journalists have been arrested for writing on political issues and also for protesting press restrictions, and several vernacular weeklies and dailies have been shut down.

Reporters Sans Borders (RSF) on 14 March listed Nepal among the countries with the most imprisoned journalists.⁵⁶ "The journalists in the districts face far greater constraints than in Kathmandu. They are the ones facing the brunt of the emergency", another editor says.⁵⁷ Even in Kathmandu, relaxation of censorship is a mirage. The editor of *Kantipur*, the leading Nepali-language daily, was summoned by the district police office on 17 March to answer about news coverage in his paper.

Since 1 February, freedom of association, travel, right to property and other civil liberties except the right to habeas corpus petitions have been suspended. This has affected political gatherings and efforts to probe rights abuses. An NHRC commissioner was stopped at the Kathmandu airport in early March from flying to Rupandehi to investigate allegations of vigilante justice in Kapilvastu district. Former Speaker of Parliament Daman Nath Dhungana was barred from flying to the U.S. Altogether, about 200 politicians, human rights defenders, civil society leaders, intellectuals and journalists have been put on a list barring them from leaving Kathmandu.⁵⁸ Many

⁴⁸ "Nepal backed lynch mob rampage", *The Telegraph*, London, 12 March 2005. Available at <http://insn.org/wp-content/BellKapilvastu.pdf>.

⁴⁹ Dismissed Prime Minister Sher Bahadur Deuba and twenty others were freed on 11 March 2005. Several other prominent politicians were released earlier, but at least three top politicians -- party leaders Girija Prasad Koirala (Nepali Congress), Madhav Nepal (CPN-UML) and Amik Sherchan (Janamorcha) -- remain under house arrest.

⁵⁰ "Government extends house arrest of leaders", *The Kathmandu Post*, 4 March 2005; "Parties stage protest, hundreds arrested", *The Kathmandu Post*, 9 March 2005; "Journalist arrested", *The Kathmandu Post*, 9 March 2005; "Four student leaders arrested", *The Kathmandu Post*, 14 March 2005; "Over 750 protestors arrested nationwide", *The Kathmandu Post*, 15 March 2005; "Channel Nepal scribe arrested", *The Kathmandu Post*, 15 March 2005. See also, "Situation Update: Human Rights in Nepal", op. cit.

⁵¹ An editor of a leading daily newspaper said that his reporters in the district have been ordered to file only news released by the local security forces. They are not allowed to make their own independent investigations. Crisis Group interview, Kathmandu, March 2005.

⁵² The ban on radio station news has jeopardised the livelihood of over 1,000 journalists nationwide. Crisis Group interviews with journalists, Federation of Nepali Journalists (FNJ) officials and radio station operators, Kathmandu, February-March 2005.

⁵³ Crisis Group interview, Kathmandu, February-March 2005.

⁵⁴ FNJ General Secretary Bishnu Nishthuri was released on 26 February 2005 after 21 days in detention, as was Kanak Dixit on the night of 7 March after being detained for five hours.

⁵⁵ *Kantipur*, 17 March 2005.

⁵⁶ "Reporters Sans Frontiers has put Nepal among countries with the largest number of imprisoned journalists. Nine out of 73 jailed journalists are in Nepal", www.kantipuronline.com, 15 March 2005. "FNJ calls for freedom of expression", www.nepalnews.com, 16 March 2005.

⁵⁷ Crisis Group interview, Kathmandu, March 2005.

⁵⁸ Crisis Group interview with police officer, Kathmandu, March 2005.

only learn of this when they are turned away from the airport.

C. VIGILANTE ACTION: A REVIVAL OF THE VILLAGE MILITIAS PLAN?

The government first announced its intention to introduce village militias to counter Maoists in November 2003. Domestic and international outcry -- including from Crisis Group⁵⁹-- over the start of the program in Sudama village of Sarlahi district forced it to shelve the plan. However, the military continued quietly developing the concept. Sporadic reports from eastern Nepal in early 2004 indicated the RNA had armed and trained villagers in Chulachuli and Larumba villages of Ilam district. In Jhapa, Sunsari, Morang, Dhanusha and Dhankuta, local journalists and intellectuals told Crisis Group they knew of RNA encouragement and training for villagers to use armed force to counter the Maoists.⁶⁰ Though the RNA denied it had such a policy, the now well-documented rampage by vigilantes in the Kapilvastu district indicates the government is again backing proxy militias.

From 17 February 2005, mobs beat and burned to death at least 31 supposed Maoists or Maoist sympathisers. Their actions were actively condoned by the local security forces and then lauded by government ministers. In the following weeks, local and international journalists, human rights investigators and others have been able to confirm details. The BBC reported:

At the height of the violence, three government ministers came to address a crowd. Home Affairs Minister Dan Bahadur Shahi says he knew they had beaten twelve men to death. "I encouraged their self-defence system", he told the BBC. "Why shouldn't I, when the Maoists massacred the people and burned their properties?" Recourse to the courts "is not relevant during a war", he continued. "They gathered, found them and killed them. I thought I should praise them".

"Legally what these people are doing is a bad thing. But it was done by the crowd", says Major Sunil Gahle at a makeshift barracks in Ganeshpur village. "The Maoists started their looting and all these bad things, so the people started this type of protection for themselves",

he said, predicting the government might soon distribute firearms to villagers.⁶¹

Maoists subsequently retaliated and killed eleven people who, they claimed, were vigilante leaders. Journalists and rights investigators who travelled to the area after the carnage reported the complicity of security forces in encouraging villagers to use violence against suspected Maoist sympathisers. A confidential report prepared by rights monitors says, "In order to counter Maoist violence, up to now villagers have burnt down over 600 houses in various Village Development Committees of Kapilvastu district and have killed at least 46 persons. Tens of thousands of other villagers have been displaced from their homes to across the border in India".⁶²

The Maoists are not without blame in the incident, which, rights investigators found, started after they abducted two residents of Ganeshpur village. Efforts to release the two spiralled out of control, resulting in widespread arson, looting and murder.

Based on interviews with the Chief District Officer and the RNA major at the Ganeshpur temporary base camp, the investigators concluded that the security forces indirectly aided the vigilantes by marching behind them. They tried to take control over the vigilantes only after they had gone out of control. The violence, mostly carried out by the majority plains community, appears to have targeted villagers from hill communities. The report warns that "there is clear danger that this conflagration could soon lead to further communal violence". Suhas Chakma, director of the Asian Human Rights Commission, stated that, "The lynching of 22 alleged Maoists and burning down of about 700 houses of the alleged Maoists sympathisers in Kapilvastu district from 17 to 23 February 2005 by the RNA and vigilante groups must be investigated by an international commission of inquiry".⁶³

At the royal government's first press conference, Minister for Information and Communications Tanka Dhakal reiterated government support for the vigilantes: "The people have been forced to come out with courageous retaliatory measures for peace. The government supports such people and promises that in areas where people

⁵⁹ See Crisis Group Asia Briefing N°30, *Nepal: Dangerous Plans for Village Militias*, 17 February 2004.

⁶⁰ Crisis Group interviews, 2004.

⁶¹ "Nepal's rising vigilante violence", BBC News, 14 March 2005, available at http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/4346597.stm.

⁶² Unpublished 38-page report by a committee of senior human rights experts.

⁶³ Asian Human Rights Commission Press Release PR/NEP/03/03/05 "War crimes in Nepal", 14 March 2005, available at <http://www.achrweb.org/press/2005/NEP030305.htm>.

have come with retaliatory measures, the government will carry out [an] integrated development package".⁶⁴

Fears over the implications of vigilante action have been widespread ever since the village militia plans were first announced in 2003. Given Nepal's complex caste and ethnic composition and the array of festering grievances harboured by diverse groups, vigilante action could trigger communal and ethnic riots. Villagers armed by the government could easily label personal or political enemies as Maoist sympathisers and take advantage of the lawless environment to pursue their own agendas. The elimination of remaining neutral space would force the population to choose one side or the other; quite possibly they would be targeted by both. As the BBC concluded: "Maoist violence and misdirected counter-violence are taking on a frightening life of their own. And the king's government is encouraging the vigilantes".⁶⁵

D. PROSPECTS FOR DEMOCRACY AND DEVELOPMENT

Most of the international community has spoken with one voice on the immediate challenges for Nepal following 1 February. While the royal coup has been endorsed by Pakistan, North Korea and Cuba, and described as Nepal's internal affair by Russia and China, most other nations have demanded a fast return to democracy. This message has been sent most forcefully by the RNA's principal suppliers of military aid: India, the U.S. and the UK. During U.S. Secretary of State Condoleezza Rice's visit to New Delhi on 16 March 2005, she and Indian Foreign Minister Natwar Singh explicitly agreed to work together to help restore democracy. Secretary Rice said the Nepali government needed get back on a democratic path: "That simply must happen ... it needs to happen very, very soon".⁶⁶

Respect for human rights is at the core not only of the democratic process but also of national development efforts, including those funded by donors. Despite some early mixed signals -- such as the Asian Development Bank's signing of a large loan deal on the day following the coup⁶⁷ -- most donors have issued warnings about

the likely implications of the coup. On 14 March, World Bank Country Director for Nepal Ken Ohashi said that running development projects in the absence of a free press would be difficult and warned that it would hard to speed up development under current circumstances.⁶⁸ This followed a strong World Bank statement on 8 March:

The Board expressed concerns about the security situation in Nepal and the implementability of projects. The Board also raised concerns about the government's ability to continue implementing difficult reforms in the absence of representative mechanisms to build broad-based consensus. But it broadly supported the cautious approach proposed by management. Management noted the Board's concerns and will continue to consult closely with other development partners in assessing the progress that the government makes in reform implementation, as well as issues related to the broader governance environment of the country, including the rule of law and protection of human rights.⁶⁹

Following expressions of concern about the suspension of democratic processes and rights by other European nations, the Finnish embassy in Kathmandu underlined that future assistance was being jeopardised. Addressing a program in the western Baglung district, Chargé d'Affaires Pauli Mustonen reminded his audience that Finland had invested in human rights after the restoration of Nepali democracy in 1990. But he cautioned that Finnish assistance would depend on democratic stability: "Development is impossible in any country without democracy".⁷⁰ Failure to tackle the human rights crisis will not only enable the continuation of abuses but endanger Nepal's development for years to come.

⁶⁴ Press conference, Kathmandu, 17 March 2005.

⁶⁵ "Nepal's rising vigilante violence", BBC News, op. cit

⁶⁶ "Rice lauds India-Pakistan peace", BBC News, 16 March 2005.

⁶⁷ "ADB has pledged \$121 million for Nepal to gear up its development initiatives. The ADB has unveiled this in its country strategy program 2005-09", *The Rising Nepal*, 28 February 2005. However, ADB country director S. Hafeez Rehman stated that, "In view of the recent political and

security developments in Nepal, ADB is reviewing the implications for its operation in Nepal". Indo Asian News Service, 2 March 2005, available at <http://www.eians.com/stories/2005/03/02/02sin.shtml>.

⁶⁸ "Development work not possible without free press: Ohashi", www.katipuronline.com, 15 March 2005.

⁶⁹ World Bank Statement on Nepal: "Continued Assistance Will Depend On Demonstrated Commitment And Capacity To Implement Reforms", News Release No:2005/372/SAR, Washington D.C., 8 March 2005.

⁷⁰ "Finland says aid dependent on democratic stability", www.katipuronline.com, 15 March 2005.

IV. 2003-2004: A YEAR OF MISSED OPPORTUNITIES

Despite significantly increased attention towards the role of human rights in Nepal's crisis, the period since the collapse of the last ceasefire in August 2003 has been one of missed opportunities: failure to insist on the proper prosecution of the Doramba case; slow and misguided use of technical assistance; lack of follow-up on the Chair's statement at the 2004 Commission on Human Rights; and no testing of the Maoists' offers to accept international monitoring. The many internationally-backed initiatives have had no measurable positive impact. They have been too small to challenge impunity or bring the warring parties back to the peace table.

A. THE DORAMBA CASE

The Doramba killings of unarmed Maoists in custody described above gave the authorities a major opportunity to impress on the RNA that the war must be fought according to international law and to begin to end military impunity. The failure to insist on satisfactory prosecution sent the dangerous message that no one need be held accountable even when there was a watertight investigation of a major war crime.

The Doramba massacre was more than just a violation of the law of armed combat: it unambiguously demonstrated that the military had been given licence to derail the peace process. The orders for the mass extrajudicial executions can only have come from a high level. Although the RNA has attributed exclusive responsibility to the major in command, it is clear his actions were sanctioned by superiors: if he had really been a rogue operative sabotaging a sincere effort at talks his punishment would have been swift and harsh.

Doramba illustrated that the military was empowered to use mass executions as a deliberate strategy to undermine peace talks. In combination with the weight of evidence regarding other international humanitarian law violations by the RNA it confirmed that abuses were not a result of indiscipline or poor training but systemic and at the very least acquiesced in by the senior officer corps.

B. LEVERAGE ON THE MAOISTS

In January 2004, the Maoist leadership, stung by Amnesty International's sharp criticism of the movement's human rights record, made a clear

statement that it would accept international human rights monitoring.⁷¹ This was an ideal opportunity for the international community to demand a series of measures, such as signature of the Human Rights Accord (HRA), as proposed by the NHRC in May 2003. But the Maoists were not challenged and tested to deliver on their promise.

Until the HRA or a similar agreement is signed, discourse on human rights will be futile and circular, with the Maoists and the palace exchanging charges and impugning each other's sincerity. Were the government to sign the HRA, it might force the Maoists also to accept concrete, verifiable commitments and face the consequences of non-compliance. UN involvement sanctioned by the HRA would also importantly leave the Maoists with no chance to claim their foot-dragging on peace talks was due to lack of international involvement.

C. COMMITMENT PAPER AS FIG-LEAF

The government's commitment paper of March 2004 was the next missed opportunity. The first version provided to European diplomats was a massive step backwards that redefined and reduced the international standards to which Nepal was already committed.⁷² The final version, the outcome of ten days firm negotiation by EU ambassadors, restated those existing commitments but, as human rights experts warned at the time, the lack of a monitoring mechanism -- the one suggestion the government steadfastly refused -- rendered it meaningless in practical terms. Some governments subsequently used this restatement of commitments as an argument there should be no mention of Nepal at the 2004 Commission on Human Rights.

The inability of the international community to push for reforms and improved protection based on the commitment paper is a clear example of the dangers of assuming goodwill where there is no evidence of genuine commitment to change. The government could have demonstrated such goodwill by taking steps that involved no need for financial or other aid, for example by giving

⁷¹ "Our party has been taking the calls and concerns for peace from the UN, European Union and other international human rights organisations and individuals seriously, we have been welcoming that", Prachanda, whose real name is Pushpa Kamal Dahal, said in a statement today. 'We have also made it clear that we would accept mediation and observation from the UN toward creating an environment whereby people's mandate could be solicited peacefully', *The Kathmandu Post*, 5 February 2004.

⁷² Crisis Group interview with European diplomats and UN staff, March 2004.

clear political backing to the Supreme Court over habeas corpus orders or prosecuting human rights violators.

D. TOOTHLESS CHAIR STATEMENT AT THE 2004 COMMISSION ON HUMAN RIGHTS

In April 2004 the UN Commission on Human Rights took what could have been an important step in the form of the chairman's statement urging the commitment of the government to a monitoring effort of sufficient scale to make an impact on impunity. There was a perfect opportunity to follow up this statement with practical measures at the major donors meeting in Kathmandu in May, the Nepal Development Forum. This did not happen, and it was only in December that the OHCHR finally signed a memorandum of understanding with the government, the details of which have not yet been made public. By the time of the royal coup, there had been no significant increase in the UN's capacity to monitor the human rights situation. It had even failed to appoint a human rights and peace process senior adviser to the NHRC due to wrangling over control of the selection process.

V. WHAT NEEDS TO BE DONE

The overarching goals must be:

- restoration of full civil and political rights, including freedom of association, expression and assembly, and establishment of democratic governance;
- full compliance with international humanitarian law by both armed parties; and,
- rapid resumption of the peace process with international support, using human rights engagement (such as a Human Rights Accord) as a confidence-building measure.

It is crucial that the international community present a coherent, common position on recent events but the primary responsibility for action rests with the armed parties to the conflict, the government and the Maoists. The following sections outline the most important steps they and the international community should take.⁷³

A. ACTION BY THE NEPALI GOVERNMENT

The key measures which should be taken immediately by the royal government require neither great resources nor external technical assistance. The royal government should:

Reverse the suspension of rights since 1 February. The immediate steps include: (i) releasing politicians, human rights defenders, journalists and others currently held in preventive detention; (ii) lifting the state of emergency;⁷⁴ (iii) ending the suspension of constitutional rights; and (iv) removing media censorship to allow reporting of human rights violations and honest war coverage.

End the practice of enforced disappearances by security forces. Competent civilian authorities should investigate all disappearance cases and prosecute those responsible.⁷⁵

⁷³ This is a concise overview. Most of the individual points are addressed in more detail in the many reports by specialist human rights NGOs cited above.

⁷⁴ States have a right to declare emergencies but the current state of emergency in Nepal has been imposed illegally. The manner of its declaration and the derogation from fundamental obligations are in breach of Nepal's domestic law and international conventions. For a detailed explanation, see "Nepal: The Rule of Law Abandoned", International Commission of Jurists, 17 March 2005.

⁷⁵ See "Nepal: Escalating 'disappearances' amid a culture of impunity", Amnesty International, 30 August 2004, available at

Renounce the use of vigilante groups. Recourse to village militias and other extrajudicial means to tackle the Maoists is counterproductive and has already produced gross human rights violations. If the government continues to encourage this, the conflict will intensify and become more intractable.

Cooperate with the international community to tackle the human rights crisis by (i) accepting a strong UN-led international human rights monitoring mission; (ii) accepting appointment of a Special Rapporteur and issuing a standing invitation to the thematic mechanisms of the Commission on Human Rights to visit Nepal;⁷⁶ (iii) allowing the International Committee of the Red Cross (ICRC) to fulfil its mandate; and (iv) encouraging the National Human Rights Commission (NHRC) to accept standing offers of technical assistance.

End the culture of impunity. The royal government can take immediate steps to demonstrate commitment to ending the culture of impunity enjoyed by human rights abusers by (i) guaranteeing the independence of the judiciary and ensuring security forces' full cooperation with the courts; (ii) prosecuting those responsible for the Doramba killings as demanded by the OHCHR in September 2003; (iii) investigating and prosecuting in the civilian courts other cases of alleged rights abuses, including gender-based violence; (iv) issuing clear instructions to all security forces that any torture or other human rights violations will be punished; and (v) recognising that the National Human Rights Action Plan, a collection of "mainstreaming" and awareness-raising measures which has been strongly criticised by experts, is an insufficient and inappropriate response to the current situation and urgently developing effective measures to address the human rights protection crisis.

Strengthen the legal framework for human rights and international humanitarian law by (i) ensuring full compliance with Nepal's existing commitments under domestic and international law;⁷⁷ (ii) repealing or amending the Public Security Act and the

Terrorism and Destructive Activities Ordinance;⁷⁸ (iii) signing the Human Rights Accord (HRA); (iv) signing the Additional Protocols to the Geneva Conventions; and (v) signing the Rome Statute on the International Criminal Court.

Strengthen the capacity of the NHRC. The royal government should ensure that the principal national body responsible for monitoring human rights is able to carry out its responsibilities by (i) extending the term of the current Commissioners; (ii) permitting the Commissioners and other NHRC officers to travel freely and fulfil their mandate effectively; (iii) respecting the physical integrity of the offices in Kathmandu, Biratnagar and Nepalgunj so that the NHRC can protect sensitive information on victims and their relatives; and (iv) ensuring that other agencies such as the Human Rights Promotion Centre and the security forces' human rights cells are not used to undermine the work of the NHRC.⁷⁹

B. ACTION BY THE COMMUNIST PARTY OF NEPAL (MAOIST)

Cease human rights violations and adhere in full to international humanitarian law. The Maoists must in particular (i) respect the rights of the civilian population and hors de combat security forces; (ii) release political detainees immediately; (iii) halt the intimidation, torture and killing of political workers, journalists and others; and (iv) give and enforce clear instructions to all cadres on human rights and international humanitarian law.

Work towards confidence building and rapid resumption of the peace process. The Maoists should (i) sign the Human Rights Accord; (ii) cooperate with national and international human rights monitors; and

<http://web.amnesty.org/library/print/ENGASA311552004> and "Clear Culpability: 'Disappearances' by Security Forces in Nepal", Human Rights Watch, 1 March 2005, available at www.hrw.org.

⁷⁶ On thematic mechanisms see "Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights", Human Rights Watch, 10 March 2005, available at www.hrw.org.

⁷⁷ For example, the International Convention on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination against Women.

⁷⁸ See "Nepal: The Rule of Law Abandoned", International Commission of Jurists, 17 March 2005.

⁷⁹ Human rights cells were established within the armed and civilian police forces in January 2001 and within the RNA in July 2002. A similar cell was established in the Home Ministry in January 2003, and a Human Rights Promotion Centre under the Prime Minister and Council of Ministers' office was established in December 2003. The latter has served primarily as a smokescreen for lack of action and as a rival body to the NHRC. The police and RNA cells have neither prevented rights violations nor addressed the culture of impunity. See "Nepal: Escalating 'disappearances' amid a culture of impunity", Amnesty International, 30 August 2004, available at http://web.amnesty.org/library/print/ENGASA_311552004. On 17 March 2005, the government announced the formation of a further nine-member High-level Committee for Protection of Human Rights headed by the Attorney-General (see Section VI A below).

(iii) develop transparent methods for dealing with rights abuses, including cases of gender-based violence.

C. ACTION AT THE COMMISSION ON HUMAN RIGHTS

The member states of the UN Commission on Human Rights (CHR) should use its 61st session to address Nepal's human rights crisis, recognising that it is too grave for this to be done by technical assistance alone. Whichever CHR mechanism is employed, the Commission should establish an effective international monitoring presence in Nepal by:

- ❑ deploying a clearly mandated mission of the Office of the High Commissioner for Human Rights (OHCHR), adequately staffed by international monitors and national support staff sufficient to work across Nepal's difficult terrain;
- ❑ ensuring that the head of the mission is of sufficient UN rank and ability to collate, evaluate and act on the information gathered by monitors; and
- ❑ ensuring that the mission and its monitors are respected by both armed parties to the conflict and its work is absolutely neutral.

Additionally, the Commission should:

- ❑ appoint a Special Rapporteur;
- ❑ establish viable mechanisms to guarantee human rights improvements; and
- ❑ encourage the government to issue a standing invitation to the thematic mechanisms of the Commission, including the Special Rapporteur on Violence against Women, to visit.

D. OTHER INTERNATIONAL ACTION

The international community as a whole, including CHR member states, diplomatic missions to Nepal, bilateral and multilateral donors should take a range of further measures. As in all armed conflicts, the basic requirement the international community should insist on is ensuring that the ICRC has unhindered access, without prior warning, to all detainees and the ability to interview them confidentially. Other urgent steps include:

Use available leverage to end the culture of impunity.

The international community can use its leverage to bring effective pressure for improvements by: (i) preparing to suspend the RNA from UN peacekeeping operations if it does not improve its record; (ii) making

human rights protection a condition of military and other assistance; and (iii) demonstrating that it is prepared, through the UN Security Council, to authorise the International Criminal Court to exercise jurisdiction over exceptionally serious violations of international humanitarian law by either the state or the Maoists unless such violations cease and/or are submitted to fair and impartial domestic investigation and prosecution.⁸⁰

Support the NHRC. Donors have already played a major role in building the NHRC's capacity and providing political support but this has not been enough, and stronger measures are needed, including: (i) demanding that its statute be respected in both letter and spirit so it can fulfil its mandate; (ii) insisting on the extension of the current Commissioners' term; and (iii) planning, funding and implementing (most probably through the UN) all appropriate assistance it requests.

Help build non-governmental human rights capacity.

The international community has a role to play in defending and strengthening national human rights NGOs, including women's organisations, and relevant professional associations, such as the Nepal Bar Association and the Federation of Nepali Journalists. It should also assist in developing practical programs for protecting human rights defenders.

Support the judicial system. Short-term steps to help strengthen the judiciary include: (i) sending an international mission to assess current capacity and evaluate what it is able to do in light of the suspension of constitutional rights; and (ii) designing immediate measures, including training and infrastructure support, in consultation with the Supreme Court and the Nepal Bar Association.

Address humanitarian concerns. In conjunction with human rights measures, the deteriorating humanitarian situation requires attention. Appropriate immediate actions include: (i) ensuring identification and protection for the increasing numbers of internally displaced persons (IDPs); (ii) recommending that the UN Resident Coordinator in Nepal also be appointed Humanitarian Coordinator; and (iii) ensuring that the UN Office for the Coordination of Humanitarian Affairs (OCHA) has

⁸⁰ UN High Commissioner for Human Rights Louise Arbour raised the possibility of such investigations and prosecutions during her visit to Nepal in January 2005, shortly before the royal coup, Nepal is not a signatory to the Rome Statute establishing the International Criminal Court (ICC) but the Security Council could authorise that Court to exercise jurisdiction similar to what is currently under discussion with respect to the situation in the Darfur area of Sudan. The U.S., which objects to the ICC, has opposed such a referral on Darfur and supports the use of an ad hoc tribunal.

sufficient capacity to respond if the situation worsens dramatically.

Plan longer-term action. Now is the time to start preparing for further action such as: (i) provision of technical assistance as part of a peace process, for example in election monitoring, cantonment of arms, and disarming, demobilising and reintegrating former combatants; (ii) strengthening democratic institutions; and (iii) assisting in security sector reform to ensure a stable transition to a responsible, well trained and democratically controlled military complemented by a clearly separate civilian police force.

VI. HOW TO GET THERE

A. INTERNATIONAL ACTORS AND MECHANISMS

Nepal's allies and donors. Despite significant differences in perspectives and approaches, the major international players share a large common ground on Nepal. The desire to see the conflict resolved with the country stable and able to pursue economic, social and political development is almost universal. Despite initial fears in the Indian press about Nepal "playing the China card" Indian diplomats are not overly concerned: China, too, wishes to see the conflict contained and has consistently been reluctant to become directly involved. Its foreign policy priorities lie elsewhere, and it is unlikely to undermine a reasonable international consensus. European donors have major, longstanding concerns over the human rights situation. The European Union has reassured India and the U.S. that its basic position is in consonance with theirs. India has been the most prominent advocate of democratic rights in the post-coup period. Indications that New Delhi and Washington might look favourably on a CHR resolution have further strengthened the sense of shared purpose. While differences in understanding between various embassies in Kathmandu persist, international actors have much more in common than even they themselves may realise. The prospects for a coherent multilateral approach to the conflict are probably better than ever.⁸¹ The Commission on Human Rights will be one test of the viability of a united front. Beyond that, discussions on formalising a multilateral contact group hold out the possibilities of coordinated action towards a longer-term peace process.⁸²

The United Nations. The UN has a particularly important role to play on human rights, through both the Secretary General's good offices and substantive technical assistance under a CHR mandate. The OHCHR has a unique capacity to manage an effective field monitoring mission. The UN is also widely respected in Nepal across political and civil war divides. There are valid concerns about its ability to mediate the conflict but it will not automatically be preordained to attempt this if it does on-the-ground human rights monitoring, which could in turn form a valuable basis for future humanitarian, ceasefire, election monitoring or other peace building operations.

⁸¹ In the period since 1 February, Crisis Group has interviewed dozens of senior diplomats in Kathmandu, New Delhi, Washington, New York, London, Geneva, Bern, Brussels, Berlin, Copenhagen, Oslo, Stockholm and other capitals.

⁸² See Crisis Group Briefing, *Nepal: Responding to the Royal Coup*, op. cit., for a concise description of contact group options.

The 61st Commission on Human Rights. The annual CHR is the logical forum for a concerted multilateral effort to tackle Nepal's human rights crisis. Lessons learned from the 2004 CHR's failure to halt deterioration in the situation may now be put to good use. The ideal outcome would be for the Nepali government to accept robust international assistance in addressing its challenges.⁸³ In his address at the start of the CHR, Foreign Minister Ramesh Nath Pandey insisted, "we are committed to our human rights obligations even in the extremely difficult situation at present".⁸⁴ Nevertheless, there are consistent indications from Kathmandu that the royal government will resist decisive action. For example, the Director of the Human Rights Promotion Centre in the Prime Minister's Office, Diwakar Pant, has insisted there is no need for a Special Rapporteur.⁸⁵ Officials apparently still hope a combination of token gestures and international indecisiveness may allow them to avoid anything serious. Coordinated international planning for a strong resolution may be the only way forward. The key issues that should inform the debate are:

- **Outcome not promises.** The strongest paper commitments cannot guarantee implementation. Member states will have to consider how to hold a reluctant government to its commitments and help it to fulfil them. A monitoring mission would be a good start.
- **Types of resolution.** Discussion over whether a technical assistance resolution under Agenda Item 19 is more appropriate than a stronger condemnatory resolution under Agenda Item 9 should not take precedence over consideration of the outcome. The current momentum towards an Item 9 resolution is logical and appropriate as long as it delivers a viable monitoring mechanism.⁸⁶
- **Special Rapporteur.** The appointment of a Special Rapporteur has many advantages but in itself would do nothing to address the immediate crisis. In the absence of a strong monitoring mission, it would almost certainly be ineffective. If a Special Rapporteur is to be effective, it can only be as an addition to a field monitoring presence.

Other leverage. The Nepali government is heavily dependent on external political, military, financial and

development support and is therefore relatively easy to lean on.⁸⁷ The Maoists, however, have tended to be more or less immune to outside pressure. Their insurgency is largely funded and sustained domestically so supply lines cannot readily be cut; whatever links there are with Indian rebels do not appear to be essential. Military pressure has proved if anything counterproductive. But the Maoists do not want to be permanent pariahs and wish to keep the door open to becoming a party of government. That creates a possibility to influence their human rights behaviour by making it a test of their good faith and reliability.⁸⁸

The danger of token gestures. The Nepali government is likely to make a number of token gestures during the CHR, timed to create an impression at crucial points in the discussions. Such gestures might include:

- release of certain political leaders, perhaps leaders of the Nepali Congress and CPN-UML parties;⁸⁹
- relaxation of censorship, particularly in the English-language media, which has greater external visibility than domestic influence;
- senior pledges on human rights and multiparty democracy;⁹⁰
- limited disciplinary action against a few low-ranking rights abusers;⁹¹
- assurances that the emergency measures are dramatically improving the security situation;⁹² and

⁸⁷ See Crisis Group Briefing, *Nepal: Responding to the Royal Coup*, op. cit., for discussion of options including smart sanctions and targeted aid freezes.

⁸⁸ See above, Section IV B.

⁸⁹ For example, the vice chairman of the royal government, Peter Giri, stated in the government's first press conference that it was continuously releasing detained political leaders. In response to a question on press censorship, Giri said all the present measures had been taken for security reasons and would be gradually relaxed as the situation eased. "Vice Chairman Giri extends olive branch to parties", op. cit.

⁹⁰ Peter Giri has asserted that the king's stated commitment to multiparty democracy was a sufficient guarantee in itself: "As the king has said that he wants to reenergise democracy, the system is not in danger", *ibid*.

⁹¹ For example, it was announced on 15 March 2005 that an RNA Court of Inquiry had concluded that "some mistakes" led to the "incident" resulting in the death of fifteen-year-old Maina Sunar on 17 February 2004. Given that the "incident" involved the abduction, torture, rape and killing of an innocent schoolgirl, the term "mistake" seems an inappropriate understatement. "RNA admits mistake in Kharelthok incident", 15 March 2005, www.kantipuronline.com.

⁹² For example, Foreign Minister Ramesh Nath Pandey is reported to have briefed some of his counterparts gathered in

⁸³ As outlined in Section V A above.

⁸⁴ "Pandey defends royal move at Geneva meet", www.nepalnews.com, 16 March 2005.

⁸⁵ "There is no need for UN special rapporteur: Official", www.nepalnews.com, 14 March 2005.

⁸⁶ Agenda Item 19 is normally used for technical assistance subjects while Item 9 is normally reserved for condemnatory resolutions.

- offering to accept watered-down benchmarks that restate existing commitments without providing mechanisms for implementation.

There is danger such gestures may be mistaken for genuine change and used to justify allowing the royal government to avoid action. This danger can be readily judged by the experience of the 26 March 2004 commitment paper described above. Already the royal government and RNA show increasing sophistication in their suppression of dissent. Only a few prominent human rights defenders are being detained but others are being subjected to a range of less visible, no less effective harassment and intimidation techniques such as surveillance of homes and offices, threatening phone calls and travel restrictions.⁹³

A new nine-member High-level Committee for Protection of Human Rights under the chairmanship of the Attorney-General has been announced. Minister for Information and Communication Tanka Dhakal explained: "With a view to strengthening the National Human Rights Commission and making it effective, the committee will assist to the commission in monitoring and investigation of human rights".⁹⁴ The way to make the NHRC effective, however, would be to allow it to fulfil its mandate. The new committee's role is obscure and almost certainly obstructionist: while it will "take necessary measures concerning cases of violations of human rights in line with the commitments made in March last year", it "will decide its own scope of work and rules of procedures".⁹⁵

Why only target the government? The other predictable fallback for the royal government will be to ask why disproportionate demands are made on the state. Officials will point out that draft resolutions and non-governmental reports such as this ask more of the government than of the Maoists, even though the insurgents initiated the conflict. The simple response is that the demands are commensurate with the status and responsibilities of the two sides. The Maoists are obliged to adhere to the minimum standards of international law -- a demand reiterated here as in all statements by governments and NGOs. But governments have greater responsibilities. The Maoists would be most happy to have symmetrical demands made of them that would imply a moral and practical equivalency between

themselves and the state. They would see this as a vindication of their claim to be a "new regime" equal to the "old regime". It is by fulfilling its judicial, constitutional and administrative duties that the state can demonstrate moral superiority.

B. EFFECTIVE ACTION

Piecemeal measures to improve the human rights situation, such as those attempted through 2004, are inadequate given the depth of the crisis. Remedial action must be on a scale which reflects the size of the problem if the vast majority of Nepalis, particularly those outside the Kathmandu Valley, are not to be left at the mercy of the Maoists and the RNA.

Government security forces are unable to be present much beyond the confines of the district headquarters. This leaves the civilian population, most of whom owe little allegiance to either the King or the Maoists, prey to rebel extortion and "justice". At the same time, the RNA is likely to continue its practice of killing more civilians than combatants as it comes under pressure to show that, post-1 February, it is making significant gains. In short, it is the civilians who will suffer until a peace process is back on track.

1. Beyond technical assistance

Technical assistance is useful when there is relative political stability and political will to improve human rights protection. It is, however, a wholly inappropriate response to Nepal's acute human rights protection crisis in a context of civil war and political uncertainty. In any case, technical assistance should be based on the needs identified through monitoring. The magnitude of the problem makes tinkering and small initiatives futile. Indeed, many otherwise worthy efforts could unwittingly feed the crisis. Those responsible for violations are quick to point to the existence of any human rights project to deflect attention from their record. They use any technical assistance as a smoke screen, claiming efforts are underway, and time is needed for the results to appear.

The government's National Human Rights Action Plan is unwieldy and at best long-term: it fails to address the immediate protection crisis and is used by the government to distract attention from pressing problems. In early 2004, for example, a Nepali minister meeting a European ambassador to discuss lack of progress on the Doramba case, started by handing over a draft of the Plan, the existence of which, he said, should lead the international community to go easy on specific cases.⁹⁶

Geneva about the current law and security situation, insisting that it "was improving rapidly and in a significant manner". "FM Pandey meets ministers of different countries in Geneva", 17 March 2005, www.nepalnews.com.

⁹³ Crisis Group interviews with human rights defenders, Kathmandu and New Delhi, February-March 2005.

⁹⁴ "Govt. forms human rights committee", 17 March 2005, www.kantipuronline.com.

⁹⁵ Ibid.

⁹⁶ Crisis Group interview with European diplomat, March 2004.

The experience with the March 2004 commitment paper at the 2004 Commission on Human Rights has already been discussed. Unless the scale of the remedy matches the scale of the problem, and unless the remedy creates critical mass in response to the crisis, ineffectual interventions will be used as an alibi to continue widespread violations.

2. Towards a successful monitoring operation

The management, political and technical, of any human rights monitoring operation will be key for its success or failure. The gathering of credible information, a tough task with security implications, is merely the beginning. The objective is to process and then use the information to encourage an end of violations. Therein lies the start to confidence building, a prerequisite if an atmosphere conducive to a genuine peace process is to be created. It is also an important tool with which to prevent sabotage of a renewed process by those on both sides who oppose a move to peace.

Significant improvement in the human rights situation demands a genuine peace process but this can happen only after a significant improvement in the current levels of confidence. Only one major confidence-building measure is on the table: the NHRC's Human Rights Accord. An acceptable equivalent arrangement, if it is not possible to orchestrate signature of this document, might be a combination of the government's March 2004 commitment paper and permission for the OHCHR to deploy a critical mass of human rights observers -- at least fifteen or twenty. However, it would be necessary to get public Maoist support for this monitoring, both to make the effort effective politically and for use as a lever to improve the security situation of those implementing it on the ground.

The task of monitors in remote areas would be to reveal violations that the belligerents wish to keep hidden. For success and credibility, the monitors must have unannounced access to places of detention of both sides. This requires prior commitment by the parties. There is an obvious danger in deploying monitors without Maoist agreement: if they are refused access by the Maoists, they will be forced to remain in the district headquarters and be vulnerable to accusations that they are only monitoring the state security forces. Further, both parties must be conscious that failure to comply with their commitments to a monitoring process would have a political cost at the international level. Above all though, the activities of a monitoring mission have to be seen to be both professionally competent and politically neutral.

The UN's many human rights missions over the past decade show that monitoring has to be carefully adapted

to a specific environment if it is to lead to an improved situation; the cataloguing of violations is the essential first step; processed information must then be presented to the parties to the conflict in such a way that it has a positive impact on their conduct. It is necessary to ensure buy-in from the parties, which in turn raises the political cost of ignoring findings and recommendations of the agreed monitoring body. The sending authority of the mission itself controls several key factors, such as personnel, particularly the leadership; the clarity and feasibility of the mandate; the financial resources; security of the monitors; adequate training to ensure uniformity of procedures and reporting; and the capacity at headquarters to collate and analyse the information. The mission must be able to provide comprehensive nationwide reporting in order to defend itself from the inevitable accusations of partiality as both sides attempt to mitigate the political cost of findings against them.

A human rights monitoring mission must hit the ground running. Any serious impact is likely to occur in the first year, when the stakeholders tend to attribute greatest importance to its findings. A slow build-up of monitoring capacity can be a fatal weakness. Much depends, therefore, on the quality of initial deployment. It is also essential that stakeholders be ready to intervene in the political space which the newly deployed mission will create. Monitors in the field without political guidance, the support of desk officers at headquarters, and a public information campaign about their mission can achieve almost nothing.

3. Preconditions for a successful monitoring mission

There are serious security issues which affect both the mission members, national and international, and all those with whom they have contact, particularly victims and witnesses. While standard security procedures need to be followed, the overwhelming influence on the security of all concerned is political. The parties to the conflict must at a minimum be locked publicly into the project in such a manner that they would incur a political cost locally if they breached their commitment to it. It would be irresponsible to send monitors into a conflict situation without at least a basic commitment by both sides to respect their integrity and allow them to work as their mandate specified

The credibility of a mission can be fatally damaged by flawed information work or failure to achieve an impact. Informants are aware of the risks in cooperating. If there are no results as a result of that cooperation, it will quickly dry up.

VII. CONCLUSION: HUMAN RIGHTS AND PEACEBUILDING

Effective action on human rights, starting with a CHR resolution, can form the base for a peacebuilding process:

- ❑ the human rights dimension is the most significant available confidence-building avenue;
- ❑ human rights pressure offers some potential leverage on the Maoists;
- ❑ multilateral action on human rights complements other political efforts underway and a possible contact group;
- ❑ the human rights dimension is a subject on which major states and the UN can work in concert while retaining distinct roles; and
- ❑ human rights efforts can complement and reinforce a parallel "development track" of confidence building through the existing Basic Operating Guidelines group of major donors.⁹⁷

The crisis of protection clearly parallels the deepening military conflict and will only begin to be mitigated meaningfully by initiation of a genuine peace process. The international human rights response, therefore, should focus on creating a context that will help produce such a peace process. It is widely agreed the failure of the last peace talks (marked by the breakdown of the January 2003 ceasefire on 27 August 2003) was at least in part due to underlying lack of confidence between the parties to the conflict. Human rights activities should be conceived of, and designed as confidence-building measures. A crucial first step would be a joint political statement by the belligerents on human rights measures, along with a means to assess compliance. This can only be achieved by creating a mechanism that provides credible and prompt information on violations, both to dispel rumours and mistrust and to create the possibility of restoring the rule of law. The public needs to be convinced it is possible to move beyond the arbitrary exercise of power by both sides.

At this stage of the conflict, it is important to take initiatives which change the political atmosphere and break with the past practices of both parties. This requires boldness on a scale sufficient to have visible impact. One such move is the monitoring proposed in

⁹⁷ The Basic Operating Guidelines were developed by a consortium of major European donors in collaboration with the UN.

the NHRC's HRA. As High Commissioner for Human Rights Louise Arbour urged:

Chief among [the necessary measures] is the need for both parties to the conflict to sign and implement the Human Rights Accord drawn up by the National Human Rights Commission. This Accord is nothing more than a reiteration of obligations which already bind both the Government and the CPN/Maoist. A failure to sign the Accord by either party calls into question the sincerity of their professed commitment to the welfare of the people of Nepal. Equally, I have no doubt that the signing of the Accord by both parties, coupled with genuine efforts to implement its provisions, will serve to build confidence, which is, in turn, a vital prerequisite for a genuine and lasting peace.⁹⁸

The last round of peace talks, from January to August 2003, was supposedly regulated by a comprehensive 22-point Code of Conduct, which covered most fundamental rights and was considered an indication of mutual good will when it was signed on 13 March 2003.⁹⁹ While the ceasefire was broadly respected until the Doramba massacre of 17 August, the Code of Conduct was constantly violated, in part, at least, due to its lack of precision. Most crucially, though, it had no monitoring mechanism, so breaches carried little political cost. This contributed to the fact that the ceasefire failed to build confidence.

The more the international community appears to accept statements in lieu of concrete measures, the more the Maoists will conclude that mouthing human rights pieties will be enough to open the door to their return to the political mainstream. A softly-softly approach with the government forces in the face of massive violations merely sends a signal to the Maoists that they can get away with the same.

There are indications that the Maoists recognise that their best chance of achieving some of their objectives is to negotiate their way back into the mainstream of Nepali politics. They are, however, aware that their return to democratic politics will require the sanction of the

⁹⁸ Press statement, *op. cit.*

⁹⁹ The 22-point code of conduct signed by the government and Maoists stipulated, among other things, that the RNA would remain in current positions and would not carry out armed searches or arrests of Maoist activists, "Both sides have agreed to refrain from displaying weapons or strength which may terrorize the public and will resist from resorting to violence and other means that may vitiate or derail the peace process", Information and Communication Minister Ramesh Nath Pandey, Agence France-Presse, 13 March 2004.

international community. It is unfortunate that over the past year their offers to accept both international human rights monitoring and UN facilitation in the peace process have been ignored and therefore gone untested. At this stage of an increasingly dirty war, it would be unwise to take the statements of either belligerent at face value but neither can the international community afford to pass over opportunities, however limited. Equally damaging would be to accept the king's current argument that one is either with him or against him. There are other options. If developed coherently, human rights interventions could be an important step towards a peace process.

An effective human rights monitoring effort would need to be preceded by political agreement from the government and the Maoists at least along the lines of the HRA. Political commitment to the improvement of human rights is a pre-requisite for successful progress towards the rule of law. Improved compliance with international humanitarian and human rights law by the belligerents is a necessary step towards peace and meaningful restoration of democracy. Equally, there is little chance of significant improvement in the human rights crisis until there is a renewed peace process. The HRA should be implemented in such a way that it becomes a confidence-building measure and encourages the belligerents to return to the peace table. The end of the conflict and improvement in respect for human rights are inextricably linked.

Without concrete action on human rights and the full enjoyment of democratic rights, a "swift return to democracy" as called for by the major powers with influence in Nepal would be little more than a return to the unsatisfactory status quo ante. Nepal's people would be condemned to further erosion of their rights and gross violations by both armed parties, and resolution of the conflict would be at least as far away as ever.

Kathmandu/Brussels, 24 March 2005

APPENDIX A

MAP OF NEPAL



Courtesy of The General Libraries, The University of Texas at Austin