

IMPAIRED ACCOUNTABILITY

State of Disappearance in Nepal

**A Brief Assessment of Implementation
of UN WGEID Recommendations**



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Human Rights and Social Justice

Informal Sector Service Centre (INSEC)

P. O. Box 2726, Kathmandu, Nepal

Tel: 4278770 Fax: 4270551

Email: insec@insec.org.np Website: www.inseconline.org

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Published by: Informal Sector Service Centre (INSEC)

Written by: Bidhya Chapagain, Prekshya Ojha and Samjha Shrestha

Printed Copies: 1000

Edited by: Prasannata Wasti

Lay-out/Design by: Gita Mali

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Preface

Enforced or involuntary disappearance is a complex criminal offence that involves violation of a number of fundamental freedoms and basic human rights, including the right to personal freedom and security, the right to have legal remedy, the right against torture or other cruel, inhuman and degrading behaviour, and the right to life as such. The government of Nepal has not created any mechanism as to probe into the cases of serious crimes such as the act of disappearance and to punish the offenders. Such inaction has crippled the lives of hundreds of victims and some thousands of their family members and relatives who are living traumatised life for years. In other words, the victims and their families have been re-victimized by the deepened culture of impunity and the mercy of inaction.

Families of the missing persons, independent experts of the United Nations (UN), the UN Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal), a number of national and international human rights organisations and their networks have been raising concerns over alleged cases of disappearance and culture of impunity in Nepal. The human rights community has been urging the government to, among other things, make a law defining 'disappearance' an act of criminal offence and provide for substance mechanisms to bring the perpetrators to justice, and form a high-level probe commission on disappearance charged with a broader and strong mandate.

In this report, situation of disappearance has been analysed in particular reference to the implementation of recommendations of the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) following the Group's visit to Nepal in December 2004. In addition, the status of national and international mechanisms has also been discussed with particular focus on those providing for human rights of disappeared persons. Various agreements and decisions reached by Seven Party Alliance (SPA), Government of Nepal and Communist Party of Nepal-Maoist (CPN-M), and their commitments, including the Comprehensive Peace Accord, 2006 (CPA), Interim Constitution, 2063 (2007) (IC) and Common Minimum Programme of the Interim Government, 2007 (CMP) vis-à-vis disappeared persons, important decisions given by Nepal's Supreme Court while furnishing verdicts on the cases of disappearance, and other relevant documents are annexed to the report.

A number of recommendations have been made for the government, international community and civil society organisations drawing their attention, among others, to prioritize their actions towards putting an end to impunity and take steps to make public the whereabouts of allegedly disappeared persons and to protect those persons' basic rights and fundamental freedoms. This report is expected to be useful for diverse sectors of individuals and organisations, including the WGEID, that concern with the situation of disappearance in Nepal.

I would like to thank Bidhya Chapagain, Prekshya Ojha and Samjha Shrestha of INSEC Central Office, for their contribution to the report. Their collective efforts in conceptualising, writing and editing the report are highly commendable. Thanks are due to Prashannata Wasti and Gita Mali, both from INSEC Central Office, for their contribution for copy editing and layout/design respectively.

Subodh Raj Pyakurel
Chairperson

Executive Summary

The world's experience shows that the act of disappearance largely takes place at times of armed conflict, political instability and state of emergency. Nepal topped the list of highest number of cases of disappearance in 2004. According to INSEC documentation, whereabouts of 828 persons who were allegedly arrested by the state security forces are still unknown. On the other hand, though the Maoists reject the allegation, INSEC documentation shows that the status of at least 105 persons who were abducted by CPN-M is still unknown.

On an invitation by the government of Nepal, WGEID conducted field mission to Nepal in December 2004 to investigate into the cases of disappearance on the basis of the information that the Working Group had received on those cases. Major objective of the country visit was to discuss with the government of Nepal about the cases of disappearance and to investigate into the situation of disappeared persons in Nepal. Upon completion of the country visit, WGEID recommended the government to take a number of steps to deal with the issue.

The Working Group, during its visit, concluded that the situation of disappearance was widespread in Nepal. The members of the Group drew attention of concerned stakeholders towards the acts of enforced or involuntary disappearance by both the government security forces and the CPN-M. They pointed out that the enforced disappearance was taken as normal act by the conflicting parties due to widespread culture of impunity. The study of the Working Group revealed the fact that the families and relatives of disappeared persons were further subject to intimidation and surveillance by government security forces following their attempt to ask the security agencies of the situation of their near and dear ones.

The Working Group recommended the government to amend the Army Act and make no exception for crimes allegedly committed by security force personnel against civilian population during military operations. Another recommendation was to release full and complete details, including any written judgements, of all army court-martial proceedings. The Working Group recommended for an amendment to Nepalese criminal law to create a specific crime of enforced or involuntary disappearance.

Another point of the Group's recommendation asked the government to make efforts for strengthening the role of the National Human Rights Commission (NHRC) and give the Commission an unhindered access to all places of detention, including all army barracks, without prior notification or permission. Similarly, the WGEID recommended the United Nations Department of Peacekeeping Operations (UNDPKO) to evaluate the future participation of Nepalese security forces in UN peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces. The Working Group suggested UNDPKO to seek cooperation of the Office of the High Commissioner for Human Rights (OHCHR) to review progress in this regard.

The CPA signed by the Government of Nepal and CPN-M has commitment to make public the whereabouts of allegedly disappeared persons. Similarly, the IC has provisioned for formation of an investigation commission to look after the cases of disappearances in time of armed conflict. However, the government has not taken any step to implement these provisions. As the issue of disappearance has been a complex matter of concern, a pragmatic step to implement those commitments are to criminalize the act of disappearance and positive steps by concerned stakeholders, particularly the state to bring perpetrators to justice. The laws, if they are in compliance with the international standard on disappearance, can contribute to end impunity and promote accountability that, at the end, help to develop and practice a just culture in society.

The Supreme Court has given a directive order to the government to bring a law which complies with the International Convention for the Protection of All Persons from Enforced Disappearance, 2006 and defines act of disappearance a criminal offence, and form an all-powerful high-level probe commission to investigate into hundreds of cases of enforced or involuntary disappearance. But, contrary to the court verdict, the government pushed an incomplete proposal of amending the existing Civil Code. This effort of the government was criticized by the victims' families and human rights groups of being a miss-leading and irresponsible action. Families of disappeared persons, UN's independent experts, OHCHR-Nepal and national and international human rights organisations and their networks have been demanding for, among other things, a law on disappearance and a high-level probe commission to deal with the cases and issues of disappearance. However, these concerns have not come to be effective translations into actions by the government. Silent inaction has been complicating the issues involving disappearance and undermining the protection of rights of the victims and their families.

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Section 1: Introduction

This report has been prepared by Informal Sector Service Centre (INSEC) in a context where the status of about a thousand allegedly disappeared persons remains unknown even when the country has become democratic republican state following an election to the Constituent Assembly (CA) after a decade-long armed conflict and a few years of authoritarian rule. The report briefly assesses the status of implementation of recommendations made by WGEID following the Group's mission to Nepal in December 2004.

History of disappearance by state agencies in Nepal can be traced back to 1951. This trend of arbitrary arrest and disappearance of people mounted in the authoritarian *Panchayat* era of 1961 - 1989. Such act could not come to an end even after the restoration of democracy in 1990. Cases of alleged disappearance by the state significantly increased after the CPN-M launched a 'people's war' in 13 February 1996. Police and armed forces of the government largely involved in arbitrarily arresting the people who were "suspected Maoists". They were subjected to suffer torture, inhuman treatments and behaviour and, in many instances, killings in unofficial detention centres. On the other hand, CPN-M was responsible for forceful abduction and disappearance of people. During the armed conflict of 1996 - 2006, hundreds of cases of disappearance remain unanswered. Nepal topped the list of countries with world's highest number of cases of disappearances in 2004. The armed conflict came to a formal end in November 2006 with a signing of a Comprehensive Peace Agreement (CPA) by government and Maoists. However, whereabouts of about a thousand persons remain unknown.

This report presents a brief history of state sponsored disappearances in Nepal, facts and figures of disappearance by state and Maoists, information on WGEID mission, its conclusion and recommendations and status of implementation of such recommendations. Some related documents are annexed to the report. National and international standards against acts of disappearance, commitments of government, political parties and CPN-M for making public the whereabouts of disappeared persons, order of the Supreme Court in relation to enforcing anti-disappearance law and forming a high-level commission on disappearance are also annexed to the report.



Section 2: Background

History of disappearance of persons by state agencies in Nepal began some 57 years back. Since then, acts of disappearance have been taking place on a regular basis; only the difference is that the pattern and intensity varied in number in different time and situation. During the *Panchayat* era, a number of people were disappeared by state security forces, some of them were extra judicially killed, and almost all of them were tortured in detention centres. There was an inborn expectation amongst the people after the 1990 restoration of democracy that the government would take initiatives in putting an end to acts of disappearance. Unfortunately, the state continued to carry out the act of Enforced disappearance even then. Particularly after the outbreak of the armed conflict in 1996, the cases of disappearance increased in an alarming way. Both the state and Maoists turned increasingly violent than ever and they became insensitive to the basic human rights and fundamental freedoms of people. As a result, more than 1,200 persons remained in a state of disappearance by the state security forces for a long time.

On the other hand, the historically rooted culture of impunity came to foster tapping the 'opportunity' of armed conflict. The state remained silent over the crimes of serious human rights violations. No concrete step was taken so far to bring to justice the perpetrators of human rights violations and to further the legal prosecution. Victims received almost no attention and a very scant support from the state. Institutional backing of impunity resulted in subsequent cases of serious human rights violations and failure of state machinery in combating crimes against humanity. No step was taken by the state towards an effective investigation of the cases of disappearances, among others. Incidents of arbitrary arrests and detention and disappearance continued to increase.

A number of human rights mechanisms of the United Nations are raising their concerns over the consequences armed conflict and deepened national crisis in Nepal. However, the authorities did not paid serious attention to such concerns. As a result, international human rights and humanitarian principles and laws continued to be violated.

While intensifying UN concerns over the situation in Nepal, Special Rapporteurs and working groups of a number of thematic Special Procedures of the then Human Rights Commission requested the Government of Nepal to extend them invitations for country visits to carry out field studies. Increased international concerns and requests of the UN human rights mechanisms were the reasons behind government's acceptance for and extension of formal invitations to the Special Procedures to carry out their mission to Nepal.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir carried out her mission to Nepal on 5-14 February 2000 and the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy visited Nepal, in addition to Bangladesh and India during a visit to South Asian countries, between 28 October and 15 November 2000. The WGEID conducted a mission from 6 to 14 December 2004.

Two other Special Procedures visited Nepal to carry out study in the respective themes of their mandate. The Representative of the Secretary-General on the human rights of internally displaced persons undertook a mission from 13 to 22 April 2005 and the Special Rapporteur on the question of torture visited the country from 10 to 16 September 2005. Both of the mandate-holders raised, in their reports, concerns over alarming situation of internal displacement and torture. They were much concerned of the deteriorating human rights situation, weak state institutions and their inability to furnish law enforcement responsibilities in Nepal. All of the above UN Special Procedures pointed out, with serious concern, the lack of accountability of state agencies that had been largely contributing to encourage violations of human rights.



Section 3: Disappearance in Nepal

3.1. Beginning of Act of Disappearance

Acts of disappearing persons by state agencies began with the birth of democracy in 1950, particularly during the protests against the "Delhi Agreement", an agreement between the governments of Nepal and India in 1950 which is criticised by various political parties and individuals of being discriminatory against Nepal on various issues. Whereabouts of Mr Ram Prasad Rai, who was active in protests against Delhi Agreement, was disappeared in 1951. His status is still unknown. Similarly, whereabouts of Mr Sukadev Singh, a resident of Hanumannagar, Saptari District is still unknown. He was arrested from Inaruwa of Saptari District in 1956.

3.2. Disappearance during Panchayat Era

Investigations on the cases of disappearance have established that the acts of disappearance were increased with the advent of an autocratic and partyless *Panchayat* regime in 1960. According to a report of Committee to Find Disappeared Persons during the Restoration of Democracy, at least 27 persons were disappeared by the state during *Panchayat* era (1960-1990) and 7 other persons were disappeared by state security forces following arrests in connection with the Bomb Scandal¹ of 1985. The report has stated that 5 of them have been killed. The Committee submitted its report to the then Prime Minister Mr Krishna Prasad Bhattarai on 21 April 1991. Unfortunately, the report could not come to be implemented.

The report confirmed that 15 persons were disappeared after arrests by security forces. Additional 14 persons were found to be involved in political activities in support of democratic movement but their arrests could not be revealed in times of disappearance. The Committee found that additional 5 persons were killed after arrests. Besides, the Committee received information about 26 other persons on eleventh hour and could not carry out further investigations on those cases.

Whereabouts of Mr Rudra Prasad Bhattarai of the then Gaindathok (now Pakravas VDC-5), Ramechhap District and Mr Kalyan Rai, a resident of Ravi, Panchathar District is still unknown. They were arrested in 1960 and 1961 respectively. Mr Baikuntha Adhikari and Mr Sete Gurung of Dhading District and Mr Dakman Tamang and Mr Pasang Tamang of Panchathar District, who were arrested in 1961, remain disappeared to date. Whereabouts of Mr Harihar Ray Yadav of Sarlahi District is also unknown. He was arrested in 1979. Similarly, whereabouts of Mr Lal Bahadur Ray of Amberpur VDC, Panchathar District is still unknown. The date of his disappearance has not been confirmed. The Committee has stated that the date of his disappearance could be either 1960 or 1961.

Mr Maheshwor Chaulagain and Mr Govinda Prasad Dahal of Sankhuwasabha District, Mr Purna Lal Udas of Bhojpur District, Mr Tikaram Adhikari, Mr Ram Hari Dahal and Mr Pahalman Karki of Okhaldhunga District, Mr Khadga Bahadur Langeli Magar of Sindhuli District, Mr Keshar Bahadur Khadka of Ramechhap District, Mr Shreeharsa Khanal of Chitwan District, Mr Jeet Bahadur Sinjali (Rana) of Syangja District, Mr Harsa Bahadur Pradhan of Lamjung District, Mr Shankar Prasad Sharma (Regmi) of Salyan District, Mr Ganesh Raj Gautam of Banke District and Mr Bal Bhadra Joshi of Baitadi District were also disappeared by the state during *Panchayat* regime. Their status has not been made public though the dates of arrest were not known to the Committee.

¹ A number of cadres of Janabadi Morcha were arrested from the Districts of Jhapa and Mahottari among after the group, led by Ramraja Prasad Singh, detonated bombs at an entrance to Narayanhiti Palace, Panchayat Bhawan and Hotel De L Annapurna with the slogan of establishment of republic state. Seven people died in the explosions.

One of the most serious incidents of disappearance took place in the aftermath of the 1985 Bomb Scandal. The *Panchayat* government arrested hundreds of people suspecting their involvement in a series of bomb blasts at various places, including Kathmandu on and after 20 June 1985. Mr Padma Bahadur Moktan (Padam Lama), Mr Ishwar Chandra Lama (Ishwar Lama), Dr Laxmi Narayan Jha, Mr Satyanaran Jha and Mr Surya Nath Ray (Yadav) of Dhanusa and Mr Dilip Chaudhari and Mr Shaket Chandra Mishra of Saptari districts were arrested by the security forces. Their status remains unknown till today. Disappearance of Mr Maheshwor Chaulagain of Sankhuwasabha District had also occurred around that time.

3.3. Disappearance after Restoration of Democracy

The trend of disappearance could not come to an end even after the restoration of democracy in 1990. During the local elections of 1992, police personnel arrested Mr Bhuwan Lal Thapa Magar of Doramba VDC, Ramechhap District, and made him disappeared from 23 May 1991. The government has not made his status public. Neither has it informed his family members of the details of incident.

Similarly, Mr Prabhakar Subedi, 20, a resident of Butwal Municipality-6, Rupandehi District was arrested by police from Ratnapark, Kathmandu on 25 June 1993 and was disappeared. A student of Pulchowk Engineering Campus, Lalitpur, Mr Subedi was arrested by police in connection with a protest programme organised by the Communist Party of Nepal-UML (CPN-UML) and supported by other communist (left) parties in Kathmandu. He was seriously beaten up and injured by the police. Photographs of Subedi being taken by the police in fainted condition was published in media reports. A case was filed at the Supreme Court on 1 October 1993 regarding the incident; however, five years later, the Court dismissed the case on 1 December 1998. Subedi's whereabouts are still unknown.

3.4. Maoist 'People's War' and Disappearance

Decade of 1996 – 2006 marked the history of Nepal by the largest number of people disappeared by the state as well as by the rebel forces. To add to that image, Nepal became the first in the list of countries with the largest number of disappearances. According to INSEC database, 828 persons were disappeared by the state in different times between 13 February 1996 and 21 November 2006. These dates mark the beginning of the Maoist People's War and the signing of the CPA by the Government of Nepal and CPN-M respectively. At least 105 persons abducted by the Maoists during the armed conflict remain disappeared.

3.4.1. Disappearance by State

The state security forces used all possible means, including killings, arbitrary arrests and torture to curtail the 'People's War'. Thousands of innocent people were victimised in that course. In almost all cases, the arrested persons were taken as Maoists and thus involved in violent activities. Even if they were released by the court as the charges could not be established, those persons were kept under observance by security agencies and intimidated in many situations.

Prior to the launch of the People's War in 1996, the then government which was formed after the first general elections of 1991, had extended brutal and suppressive measures against the cadres of the then United People's Front, Nepal (UPFN), parliamentary front of the CPN-M at that time. Hundreds of cases of arbitrary arrests and torture against UPFN cadres created a state of terror in some of the UPFN dominated districts such as Rolpa, Rukum and Ramechhap. Leaders of the ruling party and police and other administrative bodies of the government were largely active in entrapping UPFN cadres in false criminal charges and getting them arrested and tortured by police.

The UPFN, on 2 November 1993, presented a memorandum to the government demanding an end to brutal acts of administration and state terror, dismissal of false charges against UPFN cadres, and their

immediate release. Citing government's inaction upon those demands and continued government suppressive policy against its cadres, the UPFN, on 4 February 1996, submitted to the government a 40-point demand. The UPFN's demands included dismissal of false charges which they claimed were politically motivated against UPFN cadres, release of political detainees and putting an end to armed police operation, suppression and state terror in various districts. Some of other demands included, among others, conducting impartial investigations on the cases of Mr Dilip Chaudhari, Mr Bhuvan Thapa Magar, Mr Prabhakar Subedi and others who were disappeared from police custody in different times, taking stern punishment against the criminals and providing appropriate compensation to the families of the victims. In the memorandum, UPFN warned the government that the party would be compelled to launch a struggle against the state if their demands were not positively responded by until 17 February 1996. Those demands were not met by the government. Few days before the expiration of the deadline, UPFN (CPN-M as the main party as such) declared the launch of armed struggle against the government from 13 February 1996.

In May 1998, the government launched the 'Kilo Siera Two' police operation to suppress the armed struggle in 'Maoist affected' districts. Armed commando forces were mobilised to contain activities supporting the Maoists. This was the particular period of time when the cases of disappearance carried out by state security forces started to increase in an alarming number.

To take some examples, Mr Nanda Prasad Neupane, 34, of Tripura VDC-2 and Mr Prasad Budha of Sarma VDC-3, Dolpa District were arrested and disappeared by security forces from Ghyar Khola of Ragda VDC, Jajarkot District on 26 May 1998. Similarly, Mr Narshing Dumjan (Tamang), 25, of Arunthakur VDC-7, Sindhuli District was arrested on charge of disobeying police order to come to their close when he was going to his in-law's village on 11 June 1998. He was then tortured while in police control. On 12 June 1998, he was blindfolded, taken up to Chitrenagi of Udaypur District and disappeared by the police. The pattern of disappearance was spread all over the country. Mr Mohan Lal Oli, 32, a teacher by profession, of Mahadevpuri VDC-4, Banke District was arrested on 12 June 1998 at night when he was sleeping in his own house, and then disappeared by police. Mr Ratna Prasad Acharya of Jajarkot, Mr Yagya Bahadur Hamal of Rukum and Mr Basu Chaudhari of Bardiya districts, among others, were also disappeared by the state. Advocate Rajendra Dhakal, a resident of Harmi VDC, Gorkha District and member of the Forum for Protection of Human Rights (FOPHUR), District Chapter, was arrested by police from Jamdi Khola of Khairanitar VDC-6, Tanahu District on 8 January 1999. His status is still unknown. Disappearance by state was not only a pattern seen in various districts outside the capital. A number of people were arrested and disappeared by the security forces even in Kathmandu. Mr Dandapani Neupane, Mr Navin Gautam, Mr Gore Bahadur Purkoti, Mr Milan Nepali, Mr Palsang Lama and Mr Dundu Tiwari were arrested from Tebahal, Bagbazar and other places of Kathmandu on 16 and 21 May 1999 and disappeared by police. Their whereabouts have not yet been made public.

This trend of disappearance accelerated after November 2001 following the imposition of State of Emergency (SoE) for the first time in Nepal and subsequent enforcement of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO). The pattern of disappearance continued until successful *Jana Andolan II* in April 2006.

As many as 15,821 persons were arrested by the state between February 1996 and November 2006, and most of them, besides those taken to police control in connection with the movement for democracy between 2002 and 2006, were arrested in connection with the 'People's War'. Most of them were suspected by security forces as Maoist cadres, supporters or sympathisers. Studies have revealed that torture was very common in Nepali police custodies. And, so was the case with those who were taken to police custody in connection with Maoist war. However, the said number of arrested persons does not necessarily count as the 'disappeared' persons because those disappeared were either arbitrarily arrested by plain clothed security forces or were not recorded as arrested anywhere. They were, in most of the

cases, suspected to be taken to 'unofficial' places to have an easier way to avoid such records. It clearly indicates the level of brutality inflicted upon them by the security forces.

To sum up, the decade of armed conflict was characterised by the worst forms and trends of disappearance in Nepal. The pattern of disappearance by state was seen all over the country and it directly victimised thousands of Nepalese people. State led disappearance added to the painful practices against those subjected to direct violation. Additional burnt of war was inflicted upon families, relatives and near and dear ones of those disappeared by security forces.

3.4.2. Disappearance by Maoists

During the armed conflict, trend of abduction and disappearance of people by CPN-M was also rampant. According to the series of Human Rights Yearbook, an annual INSEC human rights monitor, CPN-M had abducted nine persons in 1998. Until the end of November 2006, the total number of people abducted by CPN-M reached to about. Vast majority of the abducted persons were released after a short time span, however, some of them were killed in Maoist captivity and many others were tortured and injured. Many of those abducted were kept at 'labour camps', and a number of people were forced to work to provide various services to the armed combatants while fighting government security forces and they were taken hostages for a longer period of time. Similarly, many of those abducted persons, after being with the Maoists a long time in Maoists captivity, joined the Maoists for various reasons first, to minimise threat to life, second, to get with an absolute option and third, to be part of 'greater cause'.

Major reasons behind such abductions were to punish the 'government informants' and supporters/sympathisers of other political parties, and get a larger number of people in mass meetings organised by CPN-M. Charges of being enemies of People's War, exploiters of poor people, representatives of bourgeoisie and reactionary forces, and critics of CPN-M were also other reasons the CPN-M used to state while publicising the causes of abductions if they were questioned by human rights defenders, media and other political parties. There are also allegations against CPN-M of abducting a large number of children for the purpose of giving indoctrination, recruiting them as child soldiers and getting their involvement into militia forces.

3.5. Formal End of Armed Conflict and State of Disappearance

The peace process in Nepal moved forward through three crucial milestones, namely, the 12-point understanding reached by SPA and CPN-M in November 2006, the April Movement of 2006 (*Jana Andolan II*), and the establishment of democracy (*Loktantra*) the same month. Earlier, formal talks had taken place in 2001, 2003, and 2005 between the government and CPN-M but all of them ended abruptly without ending the armed conflict. The peace process sped up with the 12-point understanding that was later followed by an 8-point understanding and moved to a formal agreement calling upon the UN to establish its mission to Nepal in 2006. That momentum led to a formal end to the decade-long armed conflict by signing of a CPA by the Government of Nepal and CPN-M on 21 November 2006.

We are approaching to celebrate two years of the CPA and the formal end of the armed conflict. However, whereabouts of more than 900 people are still unknown. According to INSEC database, still the fate of a total of 933 persons from 55 out of 75 districts of Nepal who were disappeared during the conflict are unknown. Among them, 828 were disappeared by the state and 105 were abducted and disappeared by CPN-M. Bardiya, Banke, Dang, Rolpa and Dhading are the five Districts with the largest number of people in an unknown status respectively (See Annex 1 for the districts with the number of people in disappeared status to date). In addition to INSEC, the International Committee of the Red Cross (ICRC) and the National Human Rights Commission (NHRC) have also publicised the number of disappeared persons. According to the ICRC update of April 2008, whereabouts of a total of 1,160 persons which it calls missing are unknown. Similarly, NHRC's update database of mid-May 2008 shows that the whereabouts of 998 persons – 732 disappeared by state and 266 by CPN-M remains unknown.

3.6. Agreements to Investigate Cases of Disappearance

The government, SPA and CPN-M reached on a number of agreements and understandings to investigate cases of disappearances and make public the whereabouts of those disappeared. To name a few, the Ceasefire Code of Conduct, 2006, the decision of the top leaders of SPA and CPN-M, 2006, the CPA, 2006, the IC, 2007, the CMP, 2007, and the 23-point Agreement of the Seven Parties, including the CPN-M, 2007 are key documents that have clear provisions and political commitments, among others, to investigate cases of disappearances; establish a high-level probe commission on disappearance; and provide compensation/relief to the families of disappeared persons (See Annex 4 for such provisions).

3.7. Concern of Supreme Court regarding Disappeared Persons

The Supreme Court of Nepal has taken landmark steps through its decisions on the cases of disappearance. The Supreme Court decision of 1 June 2007 has significant importance in relation to investigation of the cases of disappearance and whereabouts of those disappeared (See Annex 5) for a summary of the Supreme Court Order). Responding to the Habeas Corpus writ petitions filed on behalf of 83 detainees and disappeared persons in different time, the Supreme Court on 1 June 2007 issued a landmark decision, in which it ordered the government to enact a law to criminalise enforced disappearances in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance, 2006; to establish a commission of inquiry on conflict-related disappearances in compliance with international standards; and to prosecute those responsible for disappearances. In the same decision, the Court ordered the government to immediately introduce relief programmes for the families of victims of disappearance.

The Supreme Court ruled about this decision as 83 petitions out of 1,000 cancelled writ petitions which were not informed to the court by security forces after arrests of the concerned persons during the conflict were remaining pending at the court due to technical reason. Though the decision was long overdue, it has been termed as a 'landmark' decision of the Supreme Court regarding the cases of disappearance in Nepal.

The writ petitions were filed on different dates demanding legal action against the concerned officers so as to end the state of impunity including that of resulted from gross and systematic violation of human rights, to make public the names of detainees and to release persons illegally detained by the security forces on different dates.

While issuing an order to the government in this verdict, the Supreme Court has discussed the issues related to citizens disappeared by the security forces after their arrest, the responsibility of the state on missing persons especially during conflict and the role of the judiciary including legal treatment in such condition. The Supreme Court also highlighted the mechanisms to investigate and publicize the condition of allegedly disappeared citizens, effectiveness of the existing legal system to probe the condition of missing persons, punish the culprits and compensate the victims. The court analyzed the possible treatment including investigation about the allegedly disappeared citizens and the issue related to damages and effects on the families of the persons missing. The Supreme Court also discussed on the necessity of establishing an interim mechanism to compensate them.

This verdict has established arrest, detention, torture, disappearance and killings on the basis of situational logical hypothesis breaking all traditional values of proofs. The verdict has also succeed to establish a principle of taking action against offenders by making laws and investigating about persons being claimed as not being detained after arrest, which seems a different practice than traditional Habeas Corpus orders. Likewise, the Court has declared it an act of lying before court while not informing about the arrest of the persons by security forces, the army, responsible army officers and other employees should take the criminal responsibility of all illegal detentions and the ill treatment to detainees at different places including Bhairavnath battalion of Kathmandu.

The verdict has explained that the primary responsibility of the state is to ensure protection of its citizens. The state in any simple or complex situation should responsibly address the issues related to protection of its citizens and the concerned stakeholders with high priority. The verdict concluded that the state cannot evade this responsibility even in any complex and special situation, and thus, it has responsibility to address the issues resulting from the armed conflict of the past.

While explaining international human rights laws, the Court has decided that though Nepal is not a state party to the International Convention for the Protection of All Persons from Enforced Disappearance, 2006, it remains mandatory since it is not a new treaty but a treaty to implement other existing human rights treaties. The court also issued an order to the government to immediately ratify this treaty. Realising the absence of any law defining disappearances as a crime, the court sketched a structure regarding provisions while preparing laws on disappearances, and appealed to the Legislature-Parliament to make laws accordingly. It is yet to be seen as how this verdict will be responded by the current CA, which works as Legislature-Parliament as well.

This verdict has given a new height to the assumption of compensation in the judicial history of Nepal. Now, compensation will be based within Habeas Corpus writ petition for complete justice. Likewise, the court has directed the government to provide economic compensation as grant for not eliminating families of victims from justice in disappearance cases. While delivering the verdict, the court stated that the compensation against illegal detention or killings of disappeared person does not mean to influence the compensation of socialisation of the families of victims. Though the provision to get interim compensation from writ petition was not able to satisfy victims in any form, it has judicially clarified the stand to investigate injustice to families of the victims perpetrated by the state.

Though able to establish the case related to missing persons, prepare structure to make laws and provide interim compensation to victims, this verdict has failed to stop culprits serving the state, ask them not to leave country till the conclusion of investigation and give order to investigate disappearance as a crime against humanity. The verdict has also stressed on the importance of Truth and Reconciliation Commission (TRC) to implement constitutional provision of conflict transformation and to address the incidents by both state and non-state actors to establish peace and security in society. The decision is a significant step towards recognizing the rights of victims of disappearance and their families to truth, justice and reparation. However, it has not yet been implemented by the government.

Earlier, on 9 January 2007, the Supreme Court had given an order to a panel of judges formed by the court in September 2006 for the investigation of whereabouts of 49 missing persons to submit a report on their condition. The persons were allegedly arrested by army personnel from Bhairavnath battalion of Kathmandu in 1999 and 2002. The panel was asked to submit a report within three months.

Responding to a Habeas Corpus writ petitions filed by the Maoist student leaders Lekhnath Neupane, Krishna KC, Himal Sharma and Bina Magar seeking the release of the 49 persons so as to take action against offenders according to the spirit of *Jana Andolan II*, the Supreme Court in September 2006 formed a panel headed by Appellate Court Judge Lokendra Bahadur Mallik to investigate the whereabouts of 49 missing persons.

The panel recommended the government to make a law that defines disappearance as an act of criminal offence and to form a high-level probe commission to investigate into the cases of disappeared persons.

3.8. Persons Whose Status was Made Public by Government

Over the years, families of victims, civil society members, human rights organisations and political parties were demanding for a formation of all powerful mechanism to publicise the status of persons allegedly disappeared by the state and CPN-M during the armed conflict. However, no such commission was formed to particularly deal with the problems of disappeared and make public the whereabouts of missing persons. After a constant public pressure, the government formed a committee

headed by a Joint-Secretary of the Ministry of Home Affairs (MoHA). After a year, the head of the committee was replaced by another Joint-Secretary. The first committee publicised the status of a total of 581 persons. However, hundreds of disappeared persons have not been included in the list.

On 25 May 2006, the government formed another committee to publicise the status of allegedly disappeared persons, which stated that the status of 602 persons was unknown. The committee mentioned that it had information of only 174 persons.

Commitments of the government and the political parties vis-a-vis making public the status of disappeared persons have not been implemented. It is sad to see this reluctance over implementation of the landmark documents of the peace process such as the CPA which has the issues of publicizing the status of disappeared persons as one of the prime concerns of both sides of conflict. The Human Rights and Foreign Affairs Committee of the then House of Representatives (HoR), on 25 July 2006, passed a directive proposal to the government to establish a powerful commission to address the cases of disappearance and deal with issues related to disappearance. However, the direction of the HoR has been put in dust.

Similarly, the Government had announced the establishment of a commission of inquiry into disappeared persons after the Supreme Court ruling in June 2007, however, the initiative was suspended following widespread criticism that the commission as envisaged would not be in accordance with international standards, including those relating to its independence, powers and functions, and to public dissemination of reports (A/HRC/7/68, page 17). It raised concerns over government's intention towards dealing with the cases of disappearance.

3.9. Commitment of Political Parties Regarding Disappeared Persons

CA election manifestos or commitment paper of major political parties state that they would probe into the alleged cases of disappearance, publicise the status of disappeared persons, provide compensation/relief to victims' families and, to further these initiatives, establish a high-level commission. In its Commitment Paper, CPN-M has mentioned that it would ensure, among other things, immediate relief to the families of disappeared persons, formation of a high-level commission to investigate and find truth about those disappeared in course of 'People's War'; punish the guilty on the basis of the report of the commission; and provide free education to the victims' children up to university levels. Similarly, in its CA election manifesto, Nepali Congress (NC) has expressed commitment to provide necessary support to the conflict and violence affected persons and their families. CA election manifesto of CPN-UML states that the party would investigate the cases of disappearance and publicise the status of disappeared persons.

These commitments that have come in the wake of CA elections of April 2008, contribute to reinforce and add on political strength to the previous commitments of the government and the major political parties. However, the implementation of such commitments depends on the way the political parties keep them in their political agenda and in response to the question that whether or not they publicise, through the government, the status of all allegedly disappeared persons.



Section 4: United Nations on Disappearance in Nepal

4.1. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Asma Jahangir conducted a mission to Nepal from 5 to 14 February 2000. Her visit was mainly prompted by continuing reports of alleged extrajudicial killings of unarmed civilians in the context of the confrontation between armed groups of the CPN-M and the Nepalese police. She submitted her report on Mission to Nepal to the UN Commission on Human Rights (CHR) in August 2000. Stating that she was disturbed by the large number of cases of alleged disappearances brought to her attention by several sources in Nepal, the Special Rapporteur recommended that a judicial inquiry at the level of the Supreme Court be set up as a matter of priority to investigate current and past cases of disappearances. "There is an urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses, including extrajudicial executions and disappearances, attributed to the police and other State agents" (E/CN.4/2001/9/Add.2, page 18), the report states. The Special Rapporteur also raised concerns over the increased powers accorded to the police to arrest persons without warrants could result in more cases of unacknowledged detention, which could in turn increase the risk of custodial deaths and disappearances (E/CN.4/2001/9/Add.2, page 16).

Prior to the mission, the Special Rapporteur had received communications expressing concern for the security of a number of persons who were reported missing after having been arrested and taken away by the police. She had also raised concerns that unacknowledged detention increases the risk of extrajudicial executions and death in custody: earlier cases of custodial deaths have been given rise to fears that the disappeared might no longer be alive. During the mission, the Special Rapporteur received lists of missing persons; most of them had been seen being taken away by the police. In some of the cases described to the Special Rapporteur, persons who had been arrested together with missing detainees had lost track of their fellow inmates after having been separated from them and moved to other jails. The report states that the Special Rapporteur had been informed that between 1998 and 1999, the relatives of at least 15 persons who reportedly went missing after having been arrested by the police had filed petitions with the Supreme Court but in all of those cases the police refused to acknowledge arrest of the persons concerned, and the petitioners received no redress.

The Special Rapporteur pointed out that there was growing frustration among members of the legal fraternity due to the growing tendency among government officials of denying their responsibilities. The orders of the Supreme Court were not implemented by the relevant government organs which seriously undermined the authority and credibility of the courts and resulted in reluctance amongst judges to order the authorities (E/CN.4/2001/9/Add.2, page 13).

4.2. Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

The Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin undertook a mission to Nepal from 13 to 22 April 2005 and presented his report to the UN CHR in January 2006. In his report, the Representative of the Secretary-General concerned over the situation of disappearance in Nepal. In particular, the Representative drew attention of the state on violation of rights related to physical security and integrity (e.g. right to life, freedom from torture and cruel and inhuman treatment, assault, arbitrary detention, disappearances, and threats) of persons. He emphasized on the need to address specific needs of internally displaced persons that had to be fulfilled in order to guarantee the protection and assistance of those people (E/CN.4/2006/71/Add.2, page 12).

4.3. Special Rapporteur on Torture

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak undertook a visit to Nepal from 10 to 16 September 2005. In his mission report submitted to the UN CHR, the Special Rapporteur stated that he had received a large number of allegations relating to persons taken involuntarily by security forces and who were being held incommunicado at unknown locations in Nepal. Nowak pointed out that there was an inextricable link between these enforced disappearances and torture (E/CN.4/2006/6/Add.5, page 9).

4.4. Committee against Torture

During the thirty-fifth session held on 7-25 November 2005, the UN Committee against Torture considered the second periodic report of Nepal at its 669th and 672nd meetings of 9 and 10 November 2005. The Committee adopted, at its 687th meeting held on 22 November 2005, the conclusions and recommendations vis-à-vis the state report of Nepal. The Committee was concerned about the prevailing climate of impunity for acts of torture and ill-treatment and the continued allegations of arrests without warrants, extrajudicial killings, deaths in custody and disappearances.

"The State party should send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction. The State party should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the investigation", the Committee's concluding observations state (CAT/C/NPL/CO/2, page 7).

4.5. Child Rights Committee

During the thirty-ninth session, the UN Committee on the Rights of the Child (CRC) considered the second periodic report of Nepal at its 1032nd and 1033rd meetings of 20 May 2005. The Committee adopted, at its 1052nd meeting held on 3 June 2005, the concluding observations. The Committee was highly alarmed by the number of children who were killed in armed conflicts in Nepal. In the Observations, the Committee noted with grave concern the reports of abduction and forcible conscription of children by the armed groups for political indoctrination and for use as combatants, informants, cooks or porters and as human shields. The Committee was concerned about the highly alarming reports of disappearances and arbitrary detention and of Government forces allegedly using children as spies and messengers (CRC/C/15/Add.261, page 19).

4.6. Commission on Human Rights

The CHR in its resolution 2005/78 expressed deep concern about the situation of human rights, continued enforced disappearances and prevailing situation of impunity in Nepal. The Commission also took note of the WGEID on its mission to Nepal (E/CN.4/2005/65/Add.1) and the report of the OHCHR on its activities in Nepal, including technical cooperation (E/CN.4/2005/114). The Commission urged the Government of Nepal to take all necessary measures to prevent and put an end to enforced disappearances and torture, among other things. The Commission also urged the Government to take all appropriate measures to clarify the fate of all cases of persons allegedly victims of enforced disappearance. The Commission encouraged the Government to extend invitations to the special procedures of the Commission to visit Nepal, to cooperate fully with them and implement their relevant recommendations, in particular the recent recommendation of the WGEID, specifically the recommendation to enforce a complete prohibition on incommunicado detentions in military barracks.

4.7. Secretary-General

In his report 'Question of enforced or involuntary disappearance' submitted to the 61st session of the UN General Assembly (GA) on 12 September 2006, the then Secretary-General Kofi Annan raised concerns over the state of disappearance in Nepal, among other countries. In its resolution 59/200 on the question of enforced or involuntary disappearance, the UN GA had requested the Secretary-General to submit to it, at its 61st session, a report on the steps taken to implement the resolution. The report was submitted in accordance with that request.

In the report (A/61/289, page 15), the Secretary-General highlighted that the WGEID visited Nepal from 6 to 14 December 2004 with the purpose to discuss the cases of enforced or involuntary disappearances received and transmitted by the Working Group to the Government of Nepal and to examine the situation of disappearances in Nepal in the light of international human rights standards, especially the Declaration on the Protection of All Persons from Enforced Disappearance. The Secretary-General's report put emphasis on the recommendations made by the WGEID concerning situation of disappearance in Nepal.

4.8. High Commissioner for Human Rights

High Commissioner for Human Rights Luise Arbour, in a report submitted to the UN Human Rights Council (HRC) in February 2008 on the human rights situation and the activities of her Office, including technical cooperation in Nepal, expressed grave concern over the state of disappearance. She noted that hundreds of cases of conflict-related disappearances remained unresolved in Nepal. The cases include almost 200 people who disappeared mostly after arrest by security forces in Bardiya District in 2001 and 2002, and the cases of individuals tortured and disappeared from the (Royal) Nepalese Army Bhairavnath battalion barracks documented in an OHCHR report in May 2006, to which OHCHR has never received a full Government response (A/HRC/7/68, page 16). CPN-M cadres also contributed to creating an environment of fear and intimidation through abuses targeting members of political parties, including killings and disappearance (A/HRC/7/68, page 9).

In her report submitted to the HRC in January 2007, the High Commissioner pointed out that the lack of accountability for past gross human rights violations, including disappearances, by the Nepalese Army remains one of the main concerns of OHCHR (A/HRC/4/97, page 6). The High Commissioner has raised concerns over non-response by the Government of Nepal of OHCHR's report submitted in late May 2006 documenting the arbitrary arrest, torture and disappearance of at least 49 people held by the Bhairavnath Battalion in Maharajgunj, Kathmandu in late 2003 and early 2004. "In September, in addition to the 49 above-mentioned cases, OHCHR submitted some 330 past cases of disappearances to the relevant security forces and to the United Nations Working Group on Enforced and Involuntary Disappearances. The Nepalese Army provided a response on 42 out of 315 cases which it said were clarified" (A/HRC/4/97, page 13), the report highlighted.

The High Commissioner conducted a visit to Nepal from 19 to 24 January 2007 to assess the work of her field office in Nepal, to highlight the critical importance of human rights to the peace process; and to help focus attention on long neglected issues of discrimination which have the potential to impact negatively on the current transition (A/HRC/4/97/Add.1, page 1). In the report prepared after her visit to Nepal, the High Commissioner mentioned of her visit to a village in Bardiya district where the indigenous Tharu community had suffered a large number of disappearances reportedly committed predominantly by State security forces, but also Maoists (A/HRC/4/97/Add.1, page 3).

In a report submitted to UN CHR on 16 February 2006 regarding the human rights situation in Nepal and the activities of Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) the High Commissioner pointed out that from the opening of its office in May 2005, the largest category of complaints received by OHCHR-Nepal had been nearly 300 reports of disappearance of people arrested on suspicion of being members or sympathizers of CPN-M. Most of those were from

previous years, especially 2002 and 2003, and many had already been submitted to the Government by the WGEID. According to the report, in almost all cases, the disappeared persons were reported to have been held in army barracks, a pattern confirmed by former detainees (E/CN.4/2006/107, page 10).

In a report (A/60/359) submitted to the UN GA on 16 September 2005 regarding the human rights situation and the activities of her Office, including technical cooperation, in Nepal, by the High Commissioner raised concerns over the incidents of disappearance. The High Commissioner analysed the impacts of the armed conflict in various sectors, including women, children and human rights defenders and pointed out patterns of disappearance and abduction by the State and the CPN-M.

4.9. Office of the High Commissioner for Human Rights in Nepal

The OHCHR-Nepal has been raising its concerns over the cases and patterns of disappearance right from the beginning of its establishment in Nepal in May 2005. In this course, the OHCHR-Nepal has been working with various stakeholders, including non-governmental organisations, the NHRC, families of disappeared people etc. In particular, the contribution of the Office to capacity building of national institutions and civil society organisations has been of significant importance. The Office has been calling for the government to put an end to impunity and bring to justice those responsible for crimes of disappearance and other grave violations of human rights. However, there has been no significant progress by the government towards this direction. Neither the government has made any progress towards the establishment of transitional justice mechanisms, nor has it taken steps to address impunity (S/2008/454, page 12).

On the occasion of the International Day of the Disappeared on 30 August 2006, OHCHR-Nepal renewed its call to all parties to take steps to clarify the fate or whereabouts of, and establish accountability for the hundreds of Nepali people who disappeared in the context of the armed conflict.

From 1 September 2005 to late January 2006, OHCHR-Nepal was able to establish, including from authorities, the whereabouts of 35 persons (31 were found in custody and 4 confirmed to have been released) (E/CN.4/2006/107, page 10).

In a report submitted to the 62nd Session of the UN CHR on 16 February 2006, the High Commissioner for Human Rights pointed out that there was a marked decline in the number of disappearances reported in 2005 (E/CN.4/2006/107, page 2 and 9). The OHCHR-Nepal drew attention of the state towards the responsibility to clarify a large number of alleged cases of disappearances.

In May 2006, the OHCHR-Nepal publicised a report of its investigations into the arrest, detention, torture and continuing disappearance of individuals arrested by the then Royal Nepal Army (RNA, now the Nepal Army, NA) and held at Maharajgunj barracks in Kathmandu in 2003 on suspicion of being linked to the CPN-M. The report was submitted to the Prime Minister, in his capacity as Minister of Defence, as well as to the Chief of Army Staff. In the report, the OHCHR-Nepal included a list of 49 persons allegedly disappeared by the army in 2003 from the Bhairavnath barrack.

According to a statement to the press by Ian Martin, the then Representative of the High Commissioner for Human Rights in Nepal, on 26 May 2006, the OHCHR-Nepal had initiated investigations into those serious allegations soon after it set up its office in Nepal in May 2005. It did so after dozens of relatives of the disappeared lodged complaints at its office. OHCHR-Nepal conducted more than 50 interviews with the families of the disappeared, with former detainees and with other witnesses and informants regarding their detention and torture. OHCHR's investigations found that most of the hundreds of individuals who were arrested by the RNA in 2003 and detained for varying periods in Maharajgunj barracks were subjected to severe and prolonged ill-treatment and torture, with a principal role played by the Bhairavnath battalion. They had also concluded that at least 49 persons, and probably a significantly higher number, remain disappeared.

"In spite of national and international norms governing detentions of suspected insurgents, including in times of internal armed conflict, these detentions were consistently denied by the RNA and those detained were disappeared. National and international appeals for information and clarification were ignored. Detainees were hidden from inspection. The fundamental guarantee of judicial control over detentions was denied. The only official documentation available regarding any of these detentions was prepared when some of the detainees were eventually transferred to civilian custody following habeas corpus proceedings", the statement said.

The statement presents a brief summary of the report of the OHCHR-Nepal. According to the statement, the report's description of torture and cruel, inhuman or degrading conditions of detention to which detainees were deeply shocking. "OHCHR has documented a sufficient number of cases to conclude that a significant number of detainees were subjected to various methods of torture, including beating with plastic pipes on the lower back, legs, and soles of the feet, submersion in water, and electric shocks. In almost all cases, victims of this torture, including women, were made first to remove their clothing, and were subjected to continuous abusive and degrading language. In addition, there were acts of torture involving sexual humiliation of both male and female detainees. Detainees were repeatedly threatened with execution", the statement reads.

Similarly, office has been calling on the Government to fully implement the Supreme Court's decision, ensure that any commission of inquiry which is established to investigate disappearances meets international human rights standards.



Section 5: Concerns of UN WGEID

5.1. Introduction

Established by the resolution 20 (XXXVI) of the UN CHR on 29 February 1980, the WGEID was the first United Nations human rights thematic mechanism with a global mandate on disappearance. Initially the WGEID had one year mandate which was renewed regularly. Later, it was for two years. The mandate was extended for three years in 2004 by the Commission's resolution 2004/40. In 2007, by its 7th session, the HRC, which replaced the CHR, has continued the mandate of WGEID's mandate and made it for three years. The WGEID is made up of five independent experts. It holds three sessions during a year. In the first three days of the session, the WGEID normally holds individual meetings with interested NGO and Government representatives.

The WGEID's mandate is to assist families in determining the fate and whereabouts of their relatives who, having disappeared, are placed outside the protection of the law. Another mandate is to channel communication between the families of missing persons and governments. Major working methods of the WGEID include, among other things, receiving complaints from relatives of missing persons and human rights organisations and communicating them with concerned governments; issuing Urgent Action to prevent serious violations; and communicating with governments cases of intimidation, persecution or reprisals against relatives of missing persons, witnesses to disappearances or their families, members of organisations of relatives and other non-governmental organisations or individuals concerned with disappearances.

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According to its report submitted to the Seventh Session of the HRC on 10 January 2008 (A/HRC/7/2), the total number of cases transmitted by the WGEID to the world's various governments since its inception is 51,763. The number of cases under active consideration that have not yet been clarified or discontinued stands at 41,257 and concerns 78 States. The Working Group has been able to clarify 2,702 cases over the past five years. Between November 2006 and November 2007, the Working Group transmitted 629 new cases of enforced disappearances to the Governments of 28 countries, including Nepal. Of the newly reported cases, 84 allegedly occurred in 2007.

5.2. WGEID on Nepal

In the last 27 years (1980 – 2007), the WGEID received a total of 531 cases of disappearance and it transmitted them to the Government of Nepal seeking status and clarification. Of the total cases transmitted to the government, 243 were sent through Urgent Actions and 288 through General Actions mechanisms of the Working Group. It has received clarification on 211 cases – 132 by the government and 79 by non-governmental sources. Of the cases submitted by the Working Group, the Government of Nepal is yet to clarify details of at least 320 outstanding cases. Of the cases clarified, 150 persons were at liberty, 59 persons were in detention and one person was dead at the date of clarification. At least 61 women were reportedly disappeared in the cases transmitted to the government. However, the WGEID has not received clarification on 47 of them.

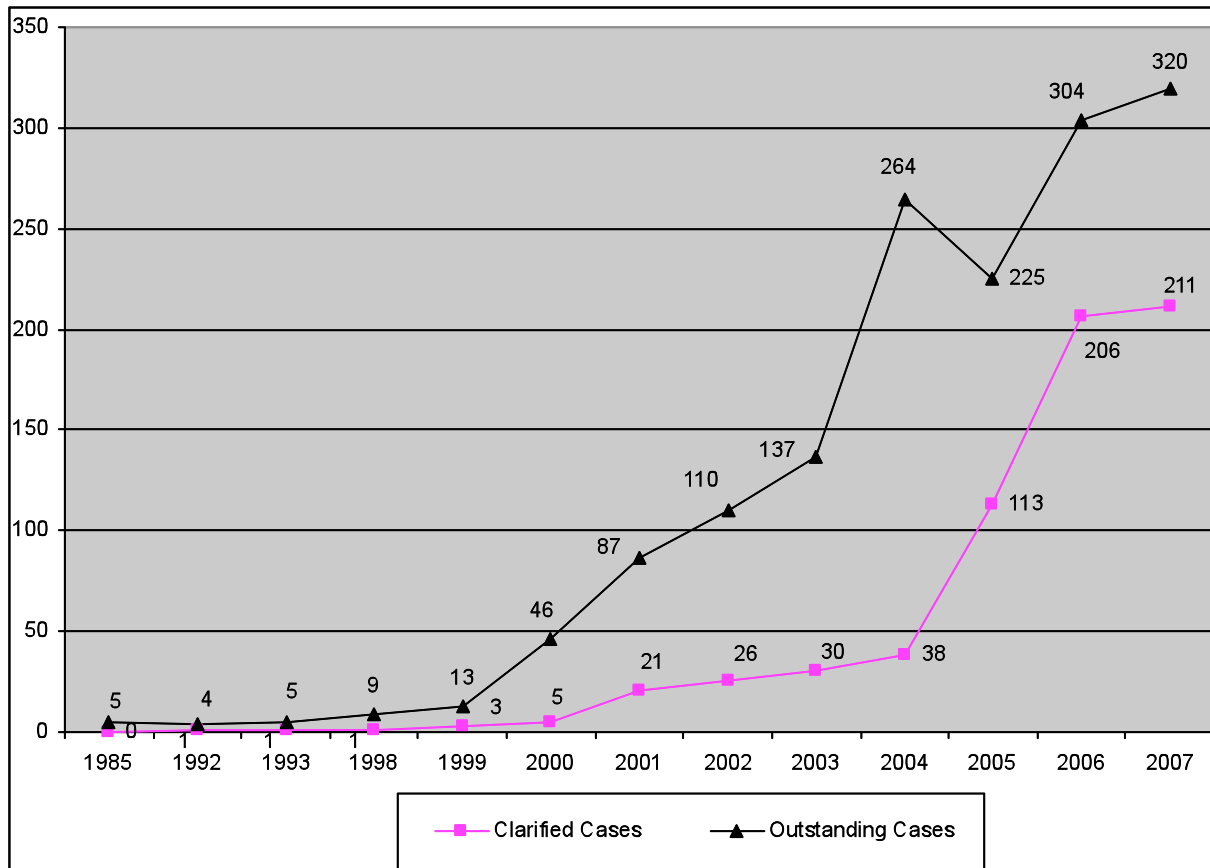
**Nepal: Cases of Enforced or Involuntary Disappearance Reported to WGEID
(1985 – 2007)**

Year	Incidents Occurred	No. of Cases Submitted to Government			Clarification by:		No. of Outstanding Cases	
		Urgent Actions	General Actions	Total	Government	Non-governmental Sources	Of transmitted in the Year	Cumulative from Previous Years
1985	5	5	–	5	–	–	5	5
1986	–	–	–	–	–	–	–	5
1987	–	–	–	–	–	–	–	5
1988	–	–	–	–	–	–	–	5
1989	–	–	–	–	–	–	–	5
1990	–	–	–	–	–	–	–	5
1991	–	–	–	–	–	–	–	5
1992	–	–	–	–	–	1	-1	4
1993	1	1	–	1	–	–	–	5
1994	–	–	–	–	–	–	–	5
1995	–	–	–	–	–	–	–	5
1996	–	–	–	–	–	–	–	5
1997	–	–	–	–	–	–	–	5
1998	34	4	–	4	–	–	4	9
1999	31	6	–	6	2	–	4	13
2000	40	5	30	35	1	1	33	46
2001	42	16	41	57	–	16	41	87
2002	168	24	4	28	–	5	23	110
2003	57	15	16	31	–	4	27	137
2004	117	125	10	135	1	7	127	264
2005	28	30	6	36	50	25	-39	225
2006	8	12	160	172	75	18	79	304
2007	–	–	21	21	3	2	16	320
Total	531	243	288	531	132	79	320	320

Source: WGEID Reports, 1985 – 2008

Only 40% of the WGEID-transmitted cases have been clarified by the government and non-governmental sources. Of the total number of cases' clarifications furnished, 63% were by government and 37% by non-governmental sources. If we do not take account of the cases clarified by non-governmental sources, the government has responded to only 25% of cases of disappearance that were transmitted to the government by the WGEID. The government has not yet responded to the remaining 75% of the cases. It indicates that the Government of Nepal has been largely unable or unwilling to respond to the UN human rights mechanisms and to fulfil its international human rights obligations that includes, among other things, cooperate, at the highest level, with the UN human rights bodies.

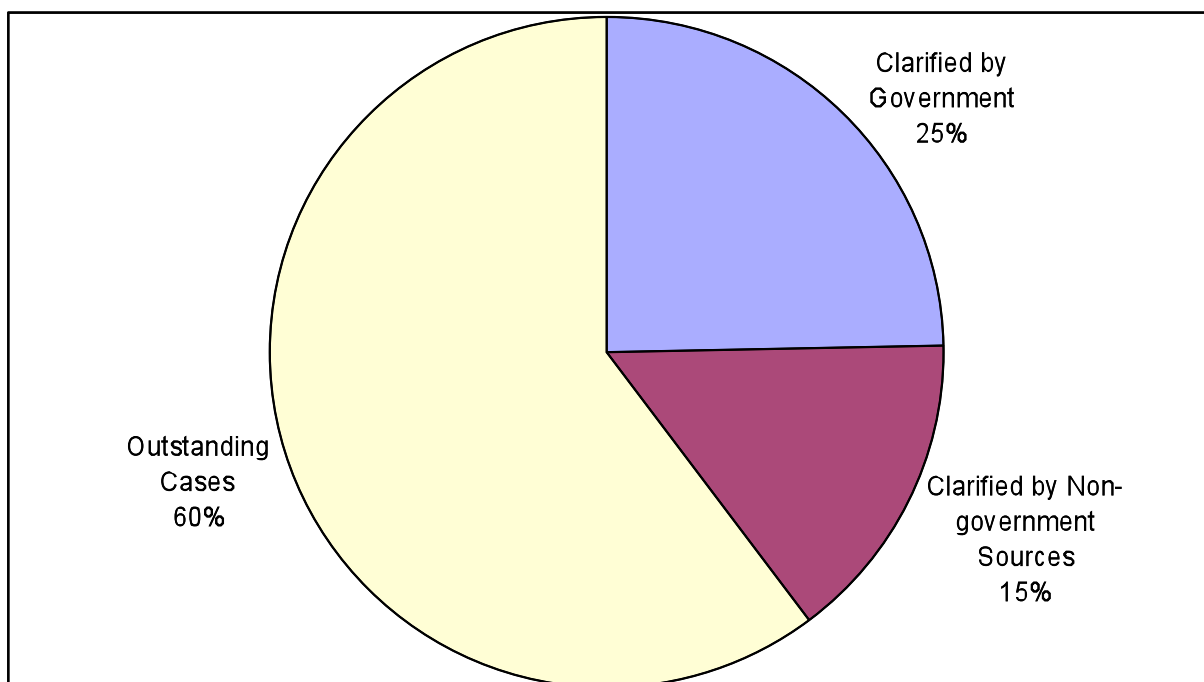
**Nepal: Cumulative Number of Clarified and Outstanding Cases of Enforced or Involuntary Disappearance
(1985 – 2007)**



Source: WGEID Reports, 1985 – 2008

State has obligations to respond to the communication made by UN mechanisms and to be responsive towards upholding human rights in the territory. However, the government seems reluctant over the cases of disappearance and the concerns raised by the WGEID. Therefore, the number of outstanding cases of disappearance reached to 320 at the end of 2007 from 5 in 1985. Those cases have been transmitted to the government by WGEID but the government has not responded accordingly. Such irresponsible nature and reluctant behaviour of the government has contributed to increase the number of outstanding cases each year except in 1992 and 2005.

**Nepal: Percentage of Clarified and Outstanding Cases of Enforced or Involuntary Disappearance
(1985 – 2007)**



Source: WGEID Reports, 1985 – 2008

Largest numbers of the cases reported to the WGEID occurred in 2002 and 2004 with 168 and 117 cases of disappearances respectively. Nepal became first in the world list – in 2003 on the basis of the number cases received by WGEID; and in 2004 and 2005 on the basis of the number of cases transmitted to the government by WGEID. In its annual reports, the Working Group has been expressing grave concern over the alarming situation of disappearance in Nepal.



Section 6: WGEID Mission to Nepal

6.1. Introduction

At the invitation of Government of Nepal, the WGEID carried out a mission to the country from 6 to 14 December 2004. The Working Group was represented by the Chairman-Rapporteur, Stephen J. Toope, and Working Group member Saied Rajaie Khorasani. The purpose of the visit was to discuss the cases of enforced or involuntary disappearance received and transmitted by the Working Group to the Government of Nepal and to examine the situation of disappearances in Nepal in the light of international human rights standards. A significant increase in the number of cases of enforced disappearances reported to the Working Group during the past two years led to the request for a visit. The delegation had held meetings with the then king Gyanendra and other high-level officials from the Government, judiciary and military, as well as with representatives of non-governmental organisations, relatives of the disappeared, and members of the international community in Nepal (E/CN.4/2005/65/Add.1, page 2).

6.2. Conclusion

During the visit, the Working Group was informed by all parties of the damaging effects of the internal conflict in Nepal. The Working Group recognized the extremely difficult situation being faced by the population of Nepal and its authorities. Atrocities committed by the Maoists were frequently mentioned to the Working Group by all interlocutors. While this information is important in order to understand the context of the visit of the Working Group to Nepal, the mandate was restricted to the international human rights law obligations of the State authorities in Nepal. This in no way reduced the urgent need for the Maoists to respect international humanitarian law obligations and the physical integrity of their fellow citizens to reduce their suffering (E/CN.4/2005/65/Add.1, page 2).

The phenomenon of disappearance in Nepal at the time of Working Group's visit was widespread; its use by both the Maoist insurgents and the Nepalese security forces was arbitrary. Perpetrators were shielded by political and legal impunity. Detailed reports that were received from many rural areas suggested that the phenomenon of disappearances was under-acknowledged. The members of WGEID heard consistently from across the country that a culture of silence had sprung up, with villagers too fearful to report disappearances for fear of reprisal from the security forces or the Maoists insurgents. In many cases, relatives who went to army barracks to enquire into the fate of their family members later found themselves caught up in harsh interrogations. Many families saw multiple disappearances (E/CN.4/2005/65/Add.1, page 2). Hundreds of such cases are yet to be clarified by the government, and families of disappeared persons live in traumatized situation.

6.3. Recommendations

With various suggestions to improve the situation, the Working Group, in its report, came up with a set of recommendations that are as follows:

- a. As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance;
- b. The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation;

- c. The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and, furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians;
- d. The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees;
- e. The Supreme Court considers a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court;
- f. The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal;
- g. The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law;
- h. The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition, the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process;
- i. The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission;
- j. The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress.



Section 7: Implementation Status of WGEID Recommendations

7.1. Nepalese criminal law be amended as soon as possible to create a specific crime of enforced or involuntary disappearance,

The Nepal government has disregarded this recommendation made by the working group. There has been no amendment to make enforced disappearance a crime. On 2 June 2007, the Supreme Court had directed the government to form a powerful commission to investigate the whereabouts of the disappeared persons after compiling 83 habeas corpus writs filed on behalf of people detained and disappeared at different times, to draft and implement the law criminalising enforced disappearance and to provide compensation to the families of the victims subjected to enforced disappearance. But the government has failed to abide by the order. Interim Legislature/Parliament has made a welcome provision by incorporating the reparation to the families of the enforced disappeared persons in the Article 33 (q) of the Interim Constitution.

In the course of implementation of the court order, the government had tabled an amendment Bill comprising of “enforcing disappearance” in National Code Chapter 8 (a) and “abducting and taking the body hostage” in 8 (b). The Bill was presented as a provision of National Code and it was also written so. Unfortunately, the provision lacks the modern style and procedural provisions that is required for the law to be in par with international standard. The parliament management committee returned the Bill saying it fails to criminalise enforced disappearance and prosecute those responsible and asked the government to make public the new draft Bill incorporating the said concerns within one month. But it has been over six months since then and there is no sign of such Bill being in the offing.

7.2 The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation

None of the suggestions of the working group was taken up till the armed conflict came to an end. Following the establishment of Loktantra on 24 April 2006, the Nepal government amended the Army Act and it was endorsed unanimously by the Legislature/Parliament on 24 September 2007. As per the amendment, the hearing on human rights violations including killing and rape would be conducted by other (civil) court instead of army court. Section 62 of Army Act 2007 also has special provisions regarding corruption, theft, torture and disappearance. Section 62 (1) mentions that there shall be a committee comprised of the Deputy Attorney General prescribed by the Nepal Government as chairperson, chief of legal section of the Ministry of Defence and representative of Prad Viwak not below the rank of Major as members for the purpose of conducting an investigation and inquiry into the offences provided by Subsection (1).

Likewise, Section 66 (1) of the Army Act, 2007, mentions that except in the event that a person under the jurisdiction of this Act commits offences mentioned in Sections 38 to 65 and those offences are committed by a military personnel against a military personnel, if the person under the jurisdiction of this Act commits homicide or rape the following offences, the cases which arise thereto shall fall under the jurisdiction of other courts. The Act further says "Other court" shall mean other courts established in accordance with prevailing laws except the Court Martial.

The Act provisions that the offences committed by persons under Subsection (1) against citizens of a country in which he has been deployed while engaged with a peace-keeping force of the United Nations shall fall under the jurisdiction of other courts.

But, apparently, amendment of the Act has been limited. Specially, there is no retrospective provision to address the past human rights violation including enforced disappearance when there were more violations including extra-judicial killing occurred then. Action cannot be taken against the army personnel involved in the violation in the past as per this Act. It cannot make the past violators answerable. This is likely to support impunity.

7.3 The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and, furthermore, that the Judge and Attorney General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians

The decisions of the court materials conducted by the army have come out in media but it has not been known of army making public the full text of the decisions. Such texts remain unavailable even when requested by the civil society members and the victim families. Along with this, the army personnel accused of abducting and torturing the civilians have not been prosecuted by the judges and attorney general.

7.4 The Government of Nepal and the security forces of Nepal ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarimal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees

No information on persons detained in undisclosed detention centres and army barracks was provided to the families, NHRC and civil organisations during the conflict. Jails normally paste the names of their inmates. At a time, when hundreds of civilians remain missing, the hope that they might be still in some such undisclosed location is still alive.

Nepal was on the top of list of disappearing persons after arrest on suspicion in the name of security operation. Nine times the government made public the whereabouts of the disappeared persons as per the recommendations by the working group. The government formed two government committees between 2004 and 2006 and both made the whereabouts the disappeared persons separately. The human rights community and the families of the victims had dissatisfaction about the working procedures and findings of the committees.

The first government investigation committee on disappeared persons had the representative of the Ministry of Defence formed in June/July 2004. The committee was formed with the then home secretary Narayan Gopal Malego as coordinator following national and international pressure on increasing trend on disappearance after arrest. Known as Malego Committee, it made public the status of total of 382 persons in five instances. On 11 August 2004, status of 24 disappeared persons and in 14 September 2004, 54 were made public. In the third report on 13 October 2004, 126 names were published, in fourth report on 13 January 2005, there were 116 disappeared persons' status was made public. On the fifth report, Malego Committee made public the whereabouts of 62.

The other committee formed was with Home Ministry's joint-secretary Keshavraj Ghimire as the coordinator on 28 February 2005. The committee made public a total of 199 persons' whereabouts- 60 persons in 7 April 2005, 48 in 3 June 2005 and 91 persons in 15 August 2005.

Making the whereabouts of the persons disappeared after arrest by the security persons remained in the priority list of the post-Loktantra government too. The meeting of council of ministers on 25 May

2006, formed a one member committee comprising of Home Ministry's secretary Baman Prasad Neupane. The committee submitted its report to the parliament sending a letter to foreign relations and human rights committee on 17 July 2006. The report named 602 as still disappeared and the whereabouts of 174 being known.

Some of the names of the reports were repeated and the ones said to be released were yet to come into contact with the families. One Bidur Regmi of Jivanpur VDC-2 in Dhading district, who was arrested from Suraj Arcade of Kathmandu on 13 January 2004 was said to have been released on 16 August 2005 but he remains out of contact till date. Baikuntha Bhujel of the same district, who the report said was released, is still missing. Such instances questioned the credibility of the report. The committee might have published whatever was made available to it. There are certain procedures to find out the whereabouts of the disappeared persons. People remained unaware about the committees' working procedures. None of the committees were found to be adopting any of investigation procedures. Thus the reports were taken as incomplete ones. The families of the victims complained that the one-member committee set up after Loktantra had no clear legal status and the single member committee is incomplete. Exclusion of the victims' families, human rights defenders working for these families and their issues in such committees, lack of consultation with stakeholders were the concerns while the government disregarded the need to coordinate between the committees, and OHCHR-Nepal and NHRC.

During the conflict, the security authority did not provide any reason for the arrest of a person to his/her family members. Such persons became the victims of enforced disappearance. Security persons in plain clothes would not even given their names. They would not reveal where the persons, being arrested in the manner of abduction, were being taken to. There was no need of any warrant and location. INSEC's Nepal Human Rights Yearbooks and reports documented by other national and international organisations substantiate this fact. The family members who reached the security authority after somehow acquiring the whereabouts of the relatives would be told that there was no such person arrested. This prevented the family members of finding out anything about the arrestees. The family members who faced the similar situation are still on the streets demanding to know the truth.

7.5 The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court

There has been no information so far that the Supreme Court has taken action against any personnel for being insincere during the proceeding the court.

7.6 The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal

Despite the recommendation, the then government did not withdraw the TADO. It was not done immediately after the establishment of Loktantra. Terrorist and Destructive Action (Control and Punishment) Ordinance was effected in Nepal in 26 November 2001 when the state of emergency was imposed following talks with the Maoists broke down. In 10 April 2002, the then parliament enacted Terrorist and Destructive Action (Control and Punishment) Act. Two years later, the Act was implemented as an Ordinance in 10 April 2004. The Ordinance was re-enacted in 13 October 2004, 9 April 2005, 2 October 2005 and 27 March 2006. It was annulled on 26 September 2006, about five after the establishment of Loktantra.

7.7 The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law

The government and the security persons have not taken any step to protect or to provide security to the human rights defenders as mentioned in international laws for the threats they might attract due to their work. Instead, they are being targeted by either state or non-state actor involved in the human rights

violations. The government has not yet formulated any legal or organisational mechanism to protect the defenders or minimise the possible threats for their work. In the absence of protection mechanism, the human rights defenders have neither been able to feel secure for their rights nor has the campaign for it has been able to reach to logical conclusion.

During the armed conflict, the government and the security forces' perspective and treatment remained inhuman and unsupportive. Accusing any human rights defender of helping the Maoist "terrorist" directly/indirectly, suspecting them of being Maoist and using suppressing behaviour to some labelling them as being Maoists when the defender demanded state, main responsibility for the respect, protection and promotion of human rights lies with the state. Acknowledging this fact, Nepal has already ratified more than 20 UN conventions. Likewise, Nepal is also a state party to Geneva Conventions. But, the government was repressive and unsupportive to the human rights defenders instead of being sensitive towards fulfilling the responsibilities. The overall situation was taht insecurity instead of providing security to them who were involved in a dangerous task as defending human rights.

Following the assumption of executive power by the then king Gyanendra on 1 February 2005, the human rights were curtailed from freedom to mobility along with freedom of expression. Government was into arbitrary arrest, beatings and threatening the HRDs.

Despite the establishment of Loktantra, official end of the armed conflict, elections of the CA and the formal establishment of Democratic Republic, human rights defenders, are still threatened because of the work they are doing. Even after the establishment of Loktantra, the acts by several armed outfits of Terai are still threats to them. Some groups are inflicting direct attacks at human rights defenders while some are even killing them. Maoists have also continued to target the human rights defenders. INSEC Documentation shows that in 2005, 3286 human rights defenders were victimised by the state and non-state actors, In 2006, the figure was 2,451 and in 2007 the figure was 378. In 2007, eight teachers, three social activists and one journalist were killed.

But, the government has failed at the challenges. The state authorities and bodies have not been able to stop the human rights violations to take action against the perpetrators and to protect the victims and there family members.

The government did not set up any judicial commission to find out the whereabouts of the disappeared persons and make them public during the armed conflict. But, bowing to the increasing pressure to take action regarding the issue, the government announced a 3-member high level probe commission in the coordination of former Supreme Court justice Narendra Neupane on 26 June 2007. The other two members were Nepal Bar Association's former chairperson Sher Bahadur KC and its general secretary Raman Shrestha.

The Commission, formed as per the Investigation Commission Act, was given six month from the start of the work. It was said that the Committee was asked to investigate and research the whereabouts of the civilians disappeared between 24 April 1995 and 5 November 2006. The notion of formulation of law against disappearance as directed by Supreme Court and formation of a powerful commission on the basis of that law was forwarded by human rights community. There has not been even the letter of appointment to the personnel of the committee which faced severe criticism at the announcement of formation. Hence, the committee announced to show government's act rather than to take action for the disappeared persons remains practically dormant.

The government committees' working procedure was not transparent as they failed to include human rights community, civil society, victims' families and organisations. Though the OHCHR-Nepal and other national and international organisations have been expressing concerns about the issue, yet the government did not seem to take it seriously.

7.8 The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition, the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process

No commissioners were appointed for over a year of establishment of Loktantra. The chairperson and the commissioners, appointed for the second tenure during royal regime, resigned on 2063/3/25. The positions remained vacant till 2064/5/30 or 14 months resulting in no possibility of any decision on human rights violation and subsequent recommendations. The delay in appointment of the commissioners had serious effect in its functioning. The Commission could not recommend on any incidents of human rights to the government. The normal work of NHRC resumed following the appointment of its commissioners on 9 July 2007.

According to the NHRC Report *Manavadhikar Ayogka Sifaris ra Karyanwayan 2065 (Status of Recommendations of National Human Rights Commission and Implementation), 2008* among the 11 incidents of disappearance occurred between 2000 and 2006 that the NHRC recommended to the government, two were partially followed while nothing was done to recommendations on nine incidents. Likewise, between the period of September 2007 and April 2008, NHRC decided on 143 cases out of 248 that it had got complaints about while remaining 145 cases were annulled or under proceeding. Major recommendation that was partially followed was that of Krishna KC, where KC was released but no action was taken against the personnel inflicting torture to him. Similarly, in the cases of torture and enforced disappearances of Jitman Basnet and Narayan Prasad Aryal, no recommendation was followed.

7.9 The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission

The NHRC was not found to be prohibited from sudden visit and monitoring of the detention centres. But there were some obstructions for such monitoring after 1 February 2005. NHRC report *Sankatkalma Manavadhikarko to Awastha, 2062* (Human Rights Situation in State of Emergency, 2005) mentions that it faced obstructions time and again from the government while visiting the detention centres. According to the report, the NHRC team heading to detention centres to collect information on human rights status of the detainees and the condition they were kept in were turned back several times. Former NHRC member Prof Kapil Shrestha was denied a meeting with the detainees at Ward Police Office, Baneshwar in Tinkune on 8 April 2006. Likewise, NHRC team was barred from meeting the detainees in Tripureshwar citing ‘order from above’.

7.10 The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress

UN Peacekeeping Operation Department has been taking support of OHCHR for involving the Nepal Army personnel in the mission. The names of the personnel being sent in the mission are sent to OHCHR and OHCHR recommends removing anyone found to be involved in human rights violation including enforced disappearance. There has been no public information on how the recommendations were taken by the government.



Section 8: Conclusion and Recommendations

8.1. Conclusion

The Government of Nepal seems unwilling to establish a credible mechanism to probe into the cases of hundreds of persons who were victimised of enforced or involuntary disappearance during the decade-long armed conflict. Criminalising the act of disappearance and bringing perpetrators to justice could be positive actions in establishing victim-justice. A law against crimes of enforced or involuntary disappearance can contribute to establish justice by putting an end to impunity and promote accountability only if it is in compliance with the international human rights standards. Government's action to make it a reality is a matter of prime concern of the day.

The CPA, IC, and other agreements reached by the government, CPN-M and major political parties expressively provision for establishing a high-level investigation commission on disappearance and making public the status of allegedly disappeared persons. However, no such progress has been taken place so far. A prolonged danger has hovered around the political arena. And, the government seems completely reluctant to progressively take up those commitments. Therefore, the concerns raised by the families of disappeared persons, independent experts of the UN, the OHCHR-Nepal and other national and international organisations have been largely ignored. Implementation of constructive comments and recommendations of those agencies and individuals have been further delayed due to lack of capacity and political will within the government, political parties and the state mechanisms. Even the Supreme Court order vis-à-vis making a law against disappearance and forming a high-level investigation commission has been silently ignored and its implementation has been delayed with a lot of doubts and uncertainty over the realisation of the order. These are the reasons why there has not been any progress to discourage acts of disappearance and establish justice in society. Such an alarming situation has encouraged the culture of impunity and prolonged agonies of victims and their families.

8.2. Recommendations

The still relevant recommendations of WGEID are reinforced in this report. Following actions should be taken by the government to meaningfully address the situation of enforced or involuntary disappearance and to put an end to impunity in the country:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, 2006;
- Establish crime of disappearance and promulgate a law on disappearance in compliance with the International Convention for the Protection of All Persons from Enforced Disappearance, 2006;
- Form a credible and high-level commission to probe into the cases of disappearance, their causes and the status of those allegedly disappeared by the state and parties to the conflict;
- Implement immediately the directive order of the Supreme Court of June 2007 and provide without any discrimination the relief and assistance package to the families of victims;
- Amend the Army Act to provide that army personnel accused of enforced or involuntary disappearance be tried only in civilian courts;
- Release full and complete details, including any written judgements, of all court-martial proceedings undertaken by Nepal Army in the past, and the Judges and Attorney General undertake, in the future, aggressive prosecution of army personnel accused of abducting/disappearing and torturing civilians;
- Keep accessible, complete, accurate and fully up-to-date lists of detainees and share with families of the detainees, civil society organisations, NHRC and others concerned;

- The Supreme Court consider a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court;
- Ensure protection of human rights defenders from persecution for their work, as required under international law;
- Take steps immediately to strengthen the NHRC and to facilitate its work; and give the Commission access to all places of detention, including all army barracks, without prior notification or permission;
- Implement immediately the NHRC's conclusions and recommendations regarding the cases of disappearance and of those allegedly disappeared;
- The UN DPKO evaluate the future participation of Nepali security forces in UN peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepali security forces, and seek the cooperation of the OHCHR to review progress;
- Extend standing invitation to the WGEID for its follow-up mission to Nepal; and
- Implement immediately the provisions of the CPA, IC and 23-point agreement, among other agreements, as to probe into the cases of disappearance and make public the whereabouts of allegedly disappeared persons.

The international community is recommended to the following:

- Urge the Government of Nepal to implement the directive order of the Supreme Court of June 2007;
- Request the government to make NHRC a strong and powerful institution in practice and implement its recommendations effectively;
- Request the government and political parties implement their commitments for finding out the status of disappeared persons;
- Urge the government to fully and effectively implement its national and international commitments for the protection, promotion and fulfilment of human rights;
- Request the government to extend standing invitation to the WGEID for its follow-up mission to Nepal;
- Urge the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, 2006;
- Provide assistance and support to the NHRC and CSOs to enable them to effectively and collectively work on the issues of disappearance.

Recommendations to the civil society are as follows:

- Maintain up-to-date information on the situation of disappeared persons and their families;
- Conduct regular observation/investigation of the cases of disappearance;
- Mobilise voices for effective implementation of the commitments made by the government and political parties;
- Work in cooperation with the families of victims, NHRC, OHCHR-Nepal, WGEID and other stakeholders;
- Launch awareness and education programmes vis-à-vis promotion and protection of rights of the victims and their families;
- Urge the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, 2006 and launch awareness campaigns on the provisions and mechanisms of the Convention.



Section 9: Annexes

Annex 1.

Number of Persons Disappeared by State

S.N.	Districts	By State	By Maoists	S.N.	Districts	By State	By Maoists
1	Bardiya	183	16	29	Morang	6	4
2	Banke	88	15	30	Jhapa	6	
3	Dang	70	5	31	Lalitpur	6	
4	Rolpa	43	18	32	Dailekh	6	
5	Kathmandu	35		33	Rautahat	6	3
6	Dhading	34	4	34	Achham	5	
7	Salyan	27		35	Baglung	4	
8	Rukum	23	6	36	Dolpa	4	
9	Chitwan	23	5	37	Jumla	4	
10	Nuwakot	22	2	38	Bhojpur	3	
11	Gorkha	20		39	Syangja	3	1
12	Surkhet	18	2	40	Pyuthan	3	
13	Kalikot	17		41	Panchathar	2	
14	Kailali	17	1	42	Udaypur	2	
15	Kavre	16		43	Rupendehi	2	
16	Kanchanpur	15		44	Humla	2	
17	Jajarkot	14	3	45	Dadeldhura	1	
18	Kaski	12		46	Myagdi	1	
19	Tanahu	10		47	Taplejung	1	
20	Ramechhap	9	1	48	Sankhuwasabha	1	1
21	Sindhupalchowk	9	3	49	Khotang	1	3
22	Lamjung	8		50	Okhaldhunga	1	
23	Saptari	8		51	Dhanusha	1	1
24	Makawanpur	7		52	Mahottari	1	1
25	Sindhuli	7		53	Rasuwa	1	
26	Siraha	7		54	Ilam		6
27	Sunsari	7		55	Parsa		4
28	Bhaktapur	6			Total s	828	105

Annex 2.

International Standards against Acts of Disappearance and on Protection of People from Disappearance

Annex 2.1. International Convention for the Protection of All Persons from Enforced Disappearance, 2006

(Not yet into force)

International Convention for the Protection of All Persons from Enforced Disappearance

Adopted by UN General Assembly Resolution 61/177 on 20 December 2006

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992 ,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

Have agreed on the following articles:

Part I

Article 1

1. No one shall be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or

groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorisation, support or acquiescence of the State and to bring those responsible to justice.

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:
 - (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
 - (b) A superior who:
 - (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
 - (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
 - (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;
 - (c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.
2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 7

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.
2. Each State Party may establish:
 - (a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

- (b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 8

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:
 - (a) Is of long duration and is proportionate to the extreme seriousness of this offence;
 - (b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.
2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

Article 9

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:
 - (a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is one of its nationals;
 - (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.
3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

Article 10

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.
2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.
3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.
3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.
3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:
 - (a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;
 - (b) Have access, if necessary with the prior authorisation of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.
4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.
2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.
3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.
5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.
6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.
7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.
2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 16

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

Article 17

1. No one shall be held in secret detention.
2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:
 - (a) Establish the conditions under which orders of deprivation of liberty may be given;
 - (b) Indicate those authorities authorized to order the deprivation of liberty;

- (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;
 - (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;
 - (e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorisation from a judicial authority;
 - (f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:
- (a) The identity of the person deprived of liberty;
 - (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
 - (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
 - (d) The authority responsible for supervising the deprivation of liberty;
 - (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
 - (f) Elements relating to the state of health of the person deprived of liberty;
 - (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
 - (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:
- (a) The authority that ordered the deprivation of liberty;
 - (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
 - (c) The authority responsible for supervising the deprivation of liberty;
 - (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
 - (e) The date, time and place of release;
 - (f) Elements relating to the state of health of the person deprived of liberty;

- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.
- 2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

Article 19

- 1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.
- 2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

Article 20

- 1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.
- 2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

Article 22

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

- (a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;
- (b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

- (c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
 - (a) Prevent the involvement of such officials in enforced disappearances;
 - (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
 - (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.
3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.
4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.
5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:
 - (a) Restitution;
 - (b) Rehabilitation;
 - (c) Satisfaction, including restoration of dignity and reputation;
 - (d) Guarantees of non-repetition.
6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.
7. Each State Party shall guarantee the right to form and participate freely in organisations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

- (a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;
 - (b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.
2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.
 3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.
 4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.
 5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

Part II

Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.
4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.
6. The Committee shall establish its own rules of procedure.
7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.
8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.
9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

Article 27

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body - without excluding any possibility - the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

Article 28

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organisations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.
2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.
2. The Secretary-General of the United Nations shall make this report available to all States Parties.
3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.
4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

Article 30

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.
2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:
 - (a) Is not manifestly unfounded;
 - (b) Does not constitute an abuse of the right of submission of such requests;
 - (c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
 - (d) Is not incompatible with the provisions of this Convention; and
 - (e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.
3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.
4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.
2. The Committee shall consider a communication inadmissible where:
 - (a) The communication is anonymous;
 - (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
 - (c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where
 - (d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.
3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.
4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.
2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.
3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.
4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.
5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.
2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

Article 36

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

Part III

Article 37

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 38

1. This Convention is open for signature by all Member States of the United Nations.
2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 39

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

Article 40

The Secretary-General of the United Nations shall notify all States Members of the United Nations and all States which have signed or acceded to this Convention of the following:

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

Article 41

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

Article 42

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organisation of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.
3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 43

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 44

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.
3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.
4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

Article 45

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.

Annex 2.2. Declaration on the Protection of all Persons from Enforced Disappearance, 1992

Declaration on the Protection of all Persons from Enforced Disappearance

General Assembly resolution 47/133 of 18 December 1992

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a

refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 22 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrows caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

Proclaims the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;

Urges that all efforts be made so that the Declaration becomes generally known and respected;

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.
2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.
2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.
2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.
3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying

out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.
3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.
2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.
3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.
2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.
4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.
5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.
6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.
2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.
3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.
4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.
2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.
3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.
2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.
4. For these purpose, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

Annex 2.3. Universal Declaration of Human Rights (UDHR), 1948

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Annex 2.4. International Covenant on Civil and Political Rights (ICCPR), 1966

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Annex 2.5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

Annex 2.6. Common Article 3 of Geneva Conventions, 1949

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Annex 3.

National Standards against Acts of Disappearance and on Protection of People from Disappearance

Annex 3.1. Interim Constitution, 2063 (2007)

Part 3: Fundamental Rights

12. Right to freedom

- (1) Every person shall have the right to live with dignity, and no law which provides for capital punishment shall be made.
- (2) Except as provided for by law no person shall be deprived of his/her personal liberty.
- (3) Every citizen shall have the following freedoms
 - (a) freedom of opinion and expression;
 - (b) freedom to assemble peaceably and without arms;
 - (c) freedom to form political party;
 - (d) freedom to form unions and associations;
 - (e) freedom to move and reside in any part of Nepal; and
 - (f) freedom to engage in any occupation or be engaged in employment, industry and trade.

24. Rights regarding justice

- (1) No person shall be detained without being informed of the ground for such an arrest.
- (2) The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended by his/her legal practitioner.
- (3) Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and the arrested person shall not be detained in custody beyond the said period except on the order of such authority.
- (5) No person accused of any offence shall be assumed to be an offender until proven guilty.
- (8) Every person undergoing trial shall have the right to be informed about the proceedings of the trial.
- (9) Every person shall be entitled to a fair trial by a competent court or judicial authority.

25. Right against preventive detention

- (1) No person shall be held under preventive detention unless there is sufficient ground to believe in the existence of an immediate threat to the sovereignty and integrity of, or the law and order situation in, Nepal.
- (2) If an authority detains a person under preventive detention contrary to law or in bad faith, the person detained is entitled to compensation under the law.

26. Right against torture

- (1) No person who is detained during investigation, or for trial or for any other reason, shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.
- (2) Any such an act pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner determined by law.

Part 4: Responsibilities, Directive Principles and Policies of the State

33. Responsibilities of the State

The State shall have the following responsibilities:

- (q) to provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of persons who were the subject of enforced disappearance during the course of the conflict.

Part 19: Emergency Powers

143. Emergency Powers

- (7) Provided that clauses (1), (2) of article 12 and sub-clauses (c) and (d) of clause (3), Article 13 and 14, clause (2) and (3) of Article 15, Article 16, 17, 18, 20, 21, 22, 23, 24, 26, 29, 30 and 31 and the right to constitutional remedy related to Article 32 and the right to Habeas Corpus shall not be suspended.

Annex 3.2. Civil Liberties Act, 2012 (1955)

Article 3 Equality Before the Law

Subject to current Nepal Law, no citizen shall be denied equality before the law and equal protection of the law.

Article 11 Penalty to be Awarded in Case Offense is Proved

- (1) No person shall be punished for doing anything which is not punishable under current Nepal law or awarded higher punishment than that prescribed in the Nepal law current at the time the offense was committed.
- (2) No person shall be prosecuted or punished more than once for the same offense.
- (3) No person who is charged or any offense shall be compelled to testify against himself

Article 12 Individual Liberty

The life or individual liberty of any person shall not be taken away except in accordance with current Nepal law.

Article 15 Protection in Respect to Arrest

- (1) Except when otherwise provided for in current Nepal law no arrested person-
 - (a) shall be kept under detention without serving him with a notice containing the reason for his arrest as early as possible.
 - (b) shall be deprived of the right to consult legal practitioner or agents of his choice (appointed) according to law and to have his case pleaded by them.
- (2) Except when otherwise provided for in current Nepal law, every person who is arrested and kept under detention shall be produced before the appropriate authority within twenty-four hours, excluding the time required for the journey, and no person shall be kept under detention for a longer period except under the order of such authority.

Annex 3.3. Torture Compensation Act, 2053 (1996)

Preamble

Whereas it is essential to provide for compensation to a person for having been subjected to physical or mental torture or, cruel, inhuman or degrading treatment while in detention for investigation or awaiting trial or for any other reason.

Article 3. Torture not be inflicted

- 1) Torture shall not be inflicted on any person who is in detention for investigation or awaiting trial or for any other reason.

Explanation: For the purpose of this sub-section, the term ‘in detention’ shall include being taken into custody in accordance with the existing law.

- 2) The concerned officer, at the time of detention and release of any person shall have that person’s physical condition examined, as far as possible by a doctor in government service, and, when the doctor is not available, by himself, and shall keep and maintain records thereof.

Annex 3.4. Some Public (Offence and Punishment) Act, 2027 (1970)

Article 3: Power to Arrest

The person arrested shall be produced before the adjudicating authority within 24 hours after making allowance for the time required for journey, and he shall not be kept in detention for a longer period except through an order of such authority.

Annex 3.5. Army Act, 2063 (2006)

61. Offence related to irregular arrest or detention: Committing any of the following acts shall be considered an offence related to irregular arrest or detention:

- a) In arresting any person or holding him in detention but failing to submit the case before the relevant officer for investigation or in delaying the proceeding of a case without reason;
- b) In holding any person in military custody, failing to submit an account making known the appropriate reasons for placement into custody, immediately or as soon as possible or regardless of condition within twenty four hours except in the event of reasonable grounds of those who have the right to place into military custody and the Prad Viwak.

62. Special provisions on offences of corruption, theft, torture and disappearance:

- 1) Committing any acts which are defined an offence of corruption, theft, torture and disappearance by existing law, shall be deemed to have committed offences of corruption, theft, torture and disappearance.
- 2) There shall be a committee comprised of the following for the purpose of conducting an investigation and inquiry into the offences provided by Subsection (1):
 - a) Deputy Attorney General prescribed by the Nepal Government - Chairperson,
 - b) Chief of legal section of the Ministry of Defence -- Member,
 - c) Representative of Prad Viwak not below the rank of Major-- Member.
- 3) The representative mentioned in Clause (c) of Subsection (2) shall be a person who is not involved to the Court Martial of the related case.
- 4) The jurisdiction to try and proceed with cases mentioned under Subsection (1) shall be vested with a Special Court Martial formed in accordance with Subsection (1) of Section 119.
- 5) The committee formed under Subsection (2) shall have the power equivalent to the power conferred by relevant existing laws in relation to an investigating and inquiry officer in respect to those cases.

Annex 4.

Agreements and Understandings to Make Public the Status of Disappeared Persons

Annex 4.1. Ceasefire Code of Conduct, 2063 (2006)

Point No. 17 of the Ceasefire Code of Conduct of 2006 reiterates commitments of the state and CPN-M immediately make public the status of disappeared persons. The Code of Conduct was agreed upon and enforced by the Government of Nepal and the CPN-M during a peace talks held at Gokarna, Kathmandu on 26 May 2006.

Annex 4.2. Decision of Supreme Leaders of SPA and CPN-M, 2063 (2006)

A meeting of the supreme leaders of the SPA and CPN-M on 8 November 2006 agreed, in the Decision No. 1(b) and 4(2), to form a high-level probe commission to investigate into the cases of disappearance and make public the whereabouts of the persons disappeared by both the state and CPN-M in the past, and provide relief to the families of disappeared persons on the basis of report of the high-level probe commission.

Annex 4.3. Comprehensive Peace Agreement, 2063 (2006)

Point No. 5.2.2 of the CPA concluded between the GoN and CPN-M on 21 November 2006 states that both sides agreed to make public the status of the people taken in their custody and to release them within a period of fifteen days. Both sides agreed to make public the information about the real name, surname and address of the people who were disappeared by both sides and who were killed during the war and to inform also the family about it within 60 days from the date on which this Accord has been signed (Point No. 5.2.3). Similarly, the Point No. 7.3.1 of the CPA states that sides respect and protect the right to individual dignity. In this connection, no person including those deprived of their freedom in accordance with the law shall be subjected to torture or any other cruel, inhuman or degrading treatment or punishment. The citizens' right to privacy shall be respected by law. Point No. 7.3.2 states that both sides shall, respecting fully the individual's right to freedom and security, not keep anyone under arbitrary or illegal detention, kidnap or take hostages. Both sides agreed to make public the status of every disappeared person and those held captive and inform the family members, legal advisors and other authorized persons of matters related thereto. Both sides agreed to immediately put and end to activities like taking educational institutions under control and using them, causing teachers and students to be disappeared or taking them under control or abduction (Point No. 7.5.4).

Annex 4.4. Common Minimum Programme of Interim Government, 2063 (2007)

The then Interim Government, in the Point No. B(3) of its Common Minimum Programme (CMP) of April 2007 stated that investigations would be made to find out the status of allegedly disappeared persons during the conflict.

Annex 4.5. 23-Point Agreement by Six Political Parties and CPN-M, 2064 (2007)

A meeting of the top leaders of the seven political parties, including the CPN-M was held on 23 December 2007 at the Prime Minister's residence in Baluwatar, Kathmandu. The meeting reached to the decision, among other things, to form a Commission for the Investigation of the Disappeared by the government within a month (Point 6(a)). Decisions of the meeting are widely known as '23-point agreement'.

Annex 5.

Summary of Supreme Court Directive Order

Directive Order ruled by the Supreme Court to the government of Nepal to immediately investigate all allegations of enforced disappearances with the following instructions:

- (A) The report of the DIT constituted by this court clarifies the events regarding the following persons among the people said to be disappeared. Chakra Bahadur Katuwal died in the custody due to torture. Regarding Rajendra Prasad Dhakal, Bipin Bhandari and Dil Bahadur Rai, their initial point of the arrest by the security forces has been determined as stated above, but their conditions after that have not been clarified till date. In case of Chakra Bahadur Katuwal, it is necessary that due process of prosecution will be adopted, pursuant to existing laws and a writ of mandamus, on his subject, will be issued. It should be issued in the name of the respondent Ministry of Home Affairs, as well as the Government of Nepal. It should order that any agency, official or employee, any other person who was involved in the process, or any other person who was investigated and processed by Departmental action and punishment will be subject to the concerned office chief and employees. This order is also issued to give necessary order to the concerned agency or employees.

Regarding the case of Rajendra Dhakal, Bipin Bhandari and Dil Bahadur Rai, they have been identified by the judicial investigation team as being arrested by security forces. However, their status remained as unknown till date. Officials or employees involved in the process should be prosecuted on the basis of additional research and thereby justice should be provided to the victims. In order to launch immediate prosecution, other measures, such as defining the crime of disappearance, sanctioning the same and providing compensation, should be ensured. If they are not, there is no possibility of obtaining full justice. Therefore, an order is issued in the name of the respondent regarding the necessary action to be taken for prosecuting the erstwhile chief of security agency, as well as other employees who were responsible. The order also regards that the concerned person and victims must be provided compensation on the basis of the law, pursuant to section (B) hereunder. It must be completed as well the additional necessary investigation, as suggested by the report of the DIT constituted by this court.

The conclusion of the DIT is that the mentioned people were arrested by the security force and taken to a certain point and thereafter their status remained unknown. As it is not appropriate for the responsible person to enjoy impunity and unaccountability, a writ of mandamus is issued in the name of respondents including Ministry of Home Affairs, as well as the Government of Nepal. Accordingly to it, immediate Departmental action must be taken against the chief and employees who are identified as responsible by the report of DIT and other necessary inquiry must be done.

- (B) This court has taken note of the petitions by Lekhnath Neupane asking for mandamus, and other cases of habeas corpus where additional investigation is yet to be carried out. Similar demands by other petitioners in similar circumstances have been received claiming of acts of disappearance. Also in this case the petitioners have asked for special provisions.

The written statement regarding the people who are said to be disappeared did not help to determine their status and a formal investigation has not been undertaken yet. Therefore, it is not easy to express a certain opinion on the status of these people. The legal, structural and remedial measures are not sufficient to especially address the effects caused to the disappeared persons and their families. It does not seem that the prevailing legal structure is enough to address the problems.

Therefore, a directive order is hereby issued in the name of the respondent Government of Nepal to address these problems by making the provisions mentioned hereunder.

- i. It is found that there is no law in our country with respect to the address of the series of disappearance occurred during the time of conflict. There is absence of law as well on other matters, such as: arrest, detention, hostage taking, conditions during the time of detention and related measures, rights of the victims, remedies available for them and their families, provisions for effective investigation, etc. Even though there is an Act for carrying out inquiry on a matter of public importance, this Act does not cover the inquiry on matter pertaining to disappearance. In the absence of law, no real, effective and practical investigation can be carried out. Additionally, under the existing criminal law no provision is found to address legal and institutional questions relating to the issue. With the purpose of effectively addressing this problem, it is necessary to establish a law with priority. This law should include the provisions that the act of disappearance is a criminal offence. It should define the act of disappearance pursuant to the definition in the International Convention for the Protection of All Persons from Enforced Disappearance of 2006. It should also incorporate provisions, such as: rights of detainees; liability of those who keep in detention; determination of the place of detention; access of the lawyer and families of the detainees; right to be informed of the reason of detention; judicial remedy; right to remedy for the detainee who is put in illegal detention, or for the concerned persons and their families who have become victim of illegal detention or disappearance; right to compensation; a flexible provision of limitation that does not adversely affect investigation process; complaint hearing agency and its liability with respect to illegal detention or disappearance; provision for the creation of a formal detention centre and provision for putting detained people in such detention centre: right to humanitarian treatment while in detention, descriptions such as length of the detention, condition, name, title, address and other relevant details of the person who is ordered in detention: liability of making arrangements while transferring the detainee: right of the families to know all conditions of the detainee and development of the process, as well as easy access to the same: terms regarding the condition of being released: the provisions regarding the record of his/her mental and physical condition. It is equally important to attract the attention towards international standards. They included that no pardon can be granted with respect to a person who are prosecuted for allegedly being involved in the act of disappearance and to a person who is convicted for the same crime;. For this purpose, the International Convention for the Protection of all Persons from Enforced Disappearance should be adopted as a guideline.
- ii. For the purpose of implementation of the Act made pursuant to here above for the purpose of protection of the persons forcefully disappeared, it is also expedient to provide for an arrangement in the Act for a separate Commission of Inquiry with respect to such disappeared persons. Given that separate powers, skills and procedures are deemed necessary for probing such kinds of problems. It is needed to determine the Criteria for Commission on Enforced Disappearance developed under the guidelines of the United Nations Office of the High Commission for Human Rights.

It is needed to include provisions such as, that: all related incidents are inquired: the jurisdiction of the Commission is clarified: the inquiry does not replace the jurisdiction of the court: the persons nominated for such commission are appropriate and competent for the work: provisions regarding terms of office and conditions of service and facilities are provided: representation of women, lower caste and communities are provided: powers, duties and

functions of the Commission are prescribed in the Act: considering the nature of the problem of inquiry, it could be initiated on the basis of the information received from any source. It is necessary to include provisions such as: the continuity of the inquiry until the status is made clear: security of victims, witness, plaintiff, advocate and investigator assisting in the probe: rights of the victims about recording their statements and raising their concerns and rights to keep their statements confidential: the power of the commission to inspect necessary places, offices, etc. and to question all persons who it deems necessary to inquire. It is also necessary to ensure the availability of means and resources necessary for such Commission in order to accomplish its performance. It is expedient to consider all these matters while enacting the law.

It is expected that the law will be enacted in a wise manner and under legislative power entrusted by sovereign Nepali people. When the mentioned issues will be given expedient scope, all people facing problems will be benefited.

- (C) A directive order is hereby issued in the name of respondents government of Nepal, Ministry of Home Affairs and the Office of the Attorney General. It takes the decisions to enact an Act for the protection of the disappeared persons, which will provide for a Commission of Inquiry for the disclose of the causes of their disappearance and their status. It will be achieved by forming a powerful commission in order to carry out a in-depth and comprehensive inquiry of the mentioned persons and thereby submit the report, A criminal investigation on the basis of the report will be undertaken. Thereby it will be decided to prosecute concerned persons on the basis.
- (D) It will certainly take a long time to complete the mentioned steps. They involve making new law, constituting a Commission of Inquiry, taking report from it, and launching prosecution on that basis. However, considering the complexities of the problem and the imperative to resolve it as soon as possible, the solution would be facilitated only if the Executive and Legislature put this matter on their high priorities. All organs of the State have the obligation to protect the disappeared persons and provide them justice. We consider that it is a natural expectation to be confident about the fact that the responsible organs will play a positive role for a work delineated by the Constitution. It seems necessary that the Government of Nepal takes special initiation to expedite the process of making law.

The persons stated in the petitions and their families can feel the sense of justice only when the mentioned stages are completed. It is imperative to put forward this process with expedient priority.

- (E) As stated in Section (D), the petitioners of this case have been demanding and waiting various kinds of remedies from this court for a long time (some of them since 1999). It is likely to take more time to provide them effective remedy by completing the above mentioned stages. In addition to the effect that the concerned person has to bear due to disappearance, their family members have to continuously face several social, economic and mental sufferings. Factors such as, the time spent for the search of the disappeared person, labour and expenditure, psychological distress, loss of labour productivity and security due to the absence of disappeared person, must be considered for reaching social and economic results. On the one hand, the State has not been able to make public the status of the persons who are said to be disappeared. On the other hand, families of the disappeared persons have been continuously bearing the loss and liability in connection to the incident. As the pain created by this situation will continue until the status of the person who are said to be disappeared becomes evident, it seems essential to address the problem.

The demands of the petitioners can be appropriately addressed and their final status can be clarified in the course of the implementation of the Act as mentioned above. In other words, if the status of concerned person is clarified, and the culprit is also determined, he/she would get the punishment determined by the law. Similarly, when the petitioner is entitled of compensation, he/she may receive it as per the procedures determined by the same law. However, it does not seem possible for the family members who are searching for their loved ones to travel the long road to justice with their own resources and with a distressed mind. This Bench is confident that immediate relief, even if partial, should be provided to them. This will save them from discarding the tiring the path of justice owing to frustration. It will also provide them with support and cooperation in adopting the legitimate path of searching their loved ones.

It is not possible to provide specific legal remedy, such as punishment or compensation, in the situation when the real condition of detainee is not clarified. However, it seems expedient to provide relief as a grant even though in symbolic form in view of the situation at the time of deciding this case. It is grant with the limited purpose of assisting the victim family to bear the liability undertaken by them while seeking access to justice. It will not affect the amount and nature of the remedy to be provided as per the law as to be found by a further investigation.

The incident of violation of right to freedom and security of life is not a matter that can be compensated in monetary or economic terms. However, this court considers the obligation of the State to provide assistance to the victim. This court also considers that the rights would be meaningless in the absence of effective remedy. This court, therefore, in order to respect the right of victims' families to seek remedy, has positively considered the need of providing immediate relief of interim nature.

Accordingly, this order is hereby issued in the name of the Government of Nepal, as well as the Cabinet Secretariat pursuant to Article 100 and 107 (2) of the Interim Constitution of Nepal of 2007. This order provides: to give immediate relief of two hundred thousand rupees (200,000 NRP) for the nearest claimant of Chakra Bahadur Shahi, who is considered to be dead and whose death is verified by the investigation of the DIT constituted by the order of this court; to give two hundred thousand rupees (200,000 NRP) to each member of the families of those who are declared dead; to give Rs 150,000 to each family member of Rajendra Prasad Dhakal, Bipin Bhandari and Dil Bahadur Rai, who have been found by the DIT constituted by this court to be arrested by security forces and disappeared; and to give Rs 100,000 to each family member to the remaining persons stated in the petition, whose status has not been clarified.

A directive order is hereby issued in the name of the Government of Nepal to frame and implement appropriate relief package. It includes the employment without any adverse effect relating to matters mentioned above. It also considers the status of the victims till date and the loss and difficulties that might have to be continuously borne due to the cause of disappearance.

Annex 6.

Government Proposal Presented at the Parliament to Amend Civil Code by Adding Provisions on Disappearance

Bill to provide for amendment to the Country Codes

Whereas it is desirable to amend the Country Code,
Be it enacted by the Parliament-Legislature.

1. Short title and commencement:
 - 1) This Act shall be called the "Country Code (twelfth amendment) Act, 2007".
 - 2) This Act shall come into force at once.
2. Adding the Chapters 8A. and 8B. to Part 4 of the Country Code: The following Chapters 8A. are added to Part 4 of the Country Code:

Chapter 8A.

On causing disappearance

1. No one shall cause or bring about the disappearance of another person.
Explanation: For the purpose of this Chapter, "causing disappearance" means, with respect to a person who has been arrested, detained or taken into custody in any way by a person or security personnel having the authorisation under the law to arrest, carry out an investigation or inquiry or implement laws, the refusal of visits by family members even after the expiry of the period [for the detained person] to be produced before a case hearing authority or concealment regarding where and how such person has been detained, including the deprivation of protection guaranteed in accordance with the law during the period of such custody or detention.
2. If a person has been disappeared by more than one person, or a group of persons with shared interests, the person who arrested, held in detention or took in custody a person who has been disappeared, shall be held responsible as the principal offender for the disappearance. If an offender for a disappearance cannot be identified, the Chief of the office under whose custody or detention such person was held and was disappeared during the period thereof shall be held responsible for the disappearance.
3. If any person causes another person to disappear as provided by this Chapter, the person responsible for such acts shall, taking the period of disappearance and conditions of disappearance into consideration, be imprisoned for up to five years and fined up to fifty thousand rupees.
4. Any person who orders the commission of a disappearance shall be subject to a penalty equal to that for the principal offender for a disappearance.
5. Any person who induces attempts or abets in the commission of a disappearance shall be subject to half of the penalty provided for the principal offender.
6. If a disappeared person has been subjected to physical or mental torture in any form during the period of the disappearance, or has been subjected to any acts which constitutes an offence under the law, the person who arrested, held in detention or custody such person shall, unless proved otherwise, be held responsible for physical or mental torture or such acts. A person responsible for such torture or such acts, if a penalty is provided for by existing law, shall be imposed a penalty in addition to the penalty provided by this Chapter.

7. If any disappeared person is killed during the period of disappearance, the person responsible for causing the disappearance shall be punished according to the Chapter on Murder in addition to the penalty provided by this Act.
8. If a person who had been disappeared is made public or appears [himself] in public afterwards, he shall be provided with compensation at the rate of five hundred rupees per day from the day that he was disappeared to the day that he is made public, and if he has been subjected to physical or mental torture during such period, he shall be provided reasonable compensation for torture by the person responsible for causing his disappearance. If a disappeared person is already dead, such compensation shall be given to his closest heir.

There shall be no time-limit for filing a complaint for the commission of murder after a disappearance. Otherwise, no complaint shall be entertained which is not lodged within six months after the date [a person] was disappeared, was known to have been disappeared, [or] after a disappeared person is released or is made public

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