

- Prime Minister Sher Bahadur Deuba

**JANUARY 2002**

## errors

27 police personnel killed in Maoists attack in Soli

On Sunday night's attack, the

The rebels also looted some

The high-ranking military commander identified himself as Kumar and asked for our free because of 'Rising Nepal' a village, who lived near the district administration office told The Rising Nepal in a telephone conversation.

CLT's Rongrong P. Caland  
and her army must have been  
injured and they have been ordered  
to Karimnagar. But on

**IT A STAFF REPORTER**  
Californians, Dec. 10:  
"Time Magazine Staff Writer  
is today said that the paper  
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terrorist acts are

...Nov. 29 (RSS):  
His Majesty the King has, on the recommendation of the Council of Ministers, already promulgated the Terrorist and Disruptive Activities (prevention and control) Ordinance 2001 with the objective of protecting the people from violence, terrorism and murder. Other persons who are deemed culpable by the ordinance, there is no restriction on their freedom to hold assembly peacefully without weapons, freedom of movement and freedom of movement across the Kingdom of Nepal. The acts which are prohibited by clause 3 of the ordinance are terrorism, terrorist and disruptive acts and crimes have been clearly defined. The ordinance is aimed at preventing terrorist and disruptive

**DEUBA:**  
Leaders support  
govt move

## DEUBA: Leaders support govt move

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**The  
Constitution  
of  
The Kingdom of Nepal  
2047 (1990)**

PART 18  
EMERGENCY POWER

115. Emergency Power : (1) If a grave emergency regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether arising from external aggression, armed rebellion or internal disorder or disarray, His Majesty may, by Proclamation, declare that a State of Emergency in respect of the Kingdom of Nepal or of any specific part thereof exists.

(2) Every Proclamation of clause (1) above shall be laid before the House of Representatives within 30 days from the date of issue.

(3) If a Proclamation is issued pursuant to clause 2 of this section of the House of Representatives, such Proclamation shall not be subject to review by the courts.

# 45 DAYS OF

# STATE OF EMERGENCY



*Children injured in a bomb blast  
left by Maoists in Kalikot on  
2 Jan. 2002*



**RANJU MALLA, AGE-4**



**URMILA DAMAI, AGE-7  
NABINA BHANDARI, AGE - 5**



**SURAKSHA SHAHI, AGE - 7**

**Injured victims beaten by  
Maoists in Bardiya on  
31 Dec. 2001**



**LAUTAN THARU, AGE - 35**



**RAJ BAHADUR ADHIKARI, AGE 35**





## **INFORMAL** **South Asian Solidarity**

January 2002

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We are grateful to MR KRISHNA PD. UPADHYAYA and MR MUKUNDA RAJ KATTEL, Former Directors of INSEC and Editors of this publication for their contribution. We also wish them all the success in their new jobs respectively in Anti-Slavery International (ASI), London and Child Workers in Asia (CWA), Bangkok.

Meanwhile, the effect of the state of emergency is prevailed to this publication too. Our Former Director Mukunda Raj Kattel had set this issue to publish in its usual form. But due to the present situation, we have to give priority on the way we are doing.



# **FORTY-FIVE DAYS OF THE CRISIS**

**F**orty-five days have elapsed from declaration of the state of emergency. There is no doubt to say that all the steps taken in the present situation are as per the Constitution, which is also taken as one of the important achievements of the Peoples' Movement of 1990. The government as well as the Chief of the State who declared the state of emergency also expressed their opinion that the present political crisis has originated from the compelling circumstances. Therefore, it is essential for us to trace out ways to respect the vision of establishing "...the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal..." as enshrined in the preamble of the present Constitution.

We must be aware on the possibility of getting into a situation of confusion and disorder due to the control on the flow of information. Effort on providing suggestion to the government, after monitoring the incidences occurred during the state of emergency, has been continually done by us. state of emergency has been declared with a claim of strengthening democracy. In the present context, it has been very difficult to derive the meaning of democracy in Nepal. But we should not forget the truth that democracy can treat itself. It can also heal itself. Overuse and misuse of democracy can cause a severe problem to a country. We now feel similar situation is occurring in Nepal. Main thing is that no person should be victimised in the name of protecting democracy. In the present context, both the government and the Maoists are saying that they are involved in guarantying peace and security to the people, which has been per se a dilemma. The Maoists in whatever way they say they follow International Humanitarian Laws are not doing so. Recently they have killed a teacher in Lamjung in a very brutal manner. Similar incidents occurred in Khotang and Surkhet districts. The government on the other hand is also not using power in an appropriate way. It seems there is lack of handling the power for achieving the objective of the state of emergency. Our attempt in this issue is to highlight such incidents of grave human rights violation. Our concern is also about the persons who are displaced due to conflict, especially those who are marginalised and innocent including women and children. Meanwhile, INSEC dared to organise a symposium on 'Civil Rights during the State of Emergency.' The detail report is included in this issue.

We need the continued support from our well wishers and supporters for the solidarity on disseminating the information on human rights situation.

INSEC's own reporting and monitoring mechanisms are the major source of information for preparing this issue. Specifically, the Human Rights Yearbook Centre, Regional Offices and the Human Rights Yearbook Representatives working at the grassroots, in all the 75 districts of Nepal have contributed sincerely.

We have analysed the information through human rights perspective. In this process we have considered the UDHR, Geneva Conventions, provisions of the Constitution of the Kingdom of Nepal, 1990 including all the human rights instruments that Nepal have ratified so far.

We expect this issue will be able to reflect the real picture of the last 'forty-five days' of the present crisis.



# What Leaders Say on State of Emergency



**T**he state of emergency is not applicable to the political parties, the organisations affiliated to it and the civil society that follow the constitution and the legal provisions. We are investigating those who violate the Constitution and not those who follow it.

**Prime Minister Sher Bahadur Deuba**

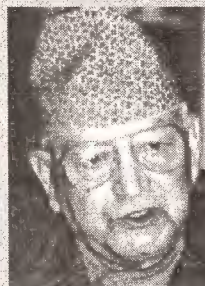
*After the presentation of the memorandum by 13 parties including the chief opposition party on the 11<sup>th</sup> of December*



**A**t present, an operation has started, causing unnecessary problems to the people. The government is not paying attention to the fact on how to behave with the reporters. It has come to our hearings that the government mechanism is acting as if they are taking revenge unnecessarily. If the government is trying to control terrorism and terrorist activities, then they have to earn the faith of majority. No one should be treated as an enemy. But if the government harasses on the publication of information that helps the government itself, it is not good. The government should dare facing criticism and accepting remarks. It must encourage criticism and remarks made against wrong and immoral matters. We cannot diminish the enemies of the civilians by ending democracy. We cannot control the people who betray the goodness of the people. We must use a far sighted method, use a clear system and present clear character to really win the civilian and the civil society.

**Madhav Kumar Nepal**

*Leader of the Chief Opposition Party*



**T**he state is really in an emergency. In this context, the declaration of the State of Emergency has been made. It is not an easy task to bring the state back to its original form from ....

(We hear that innocent people are also victimised in the operation. What do you think?)

At present, we have not received any authentic information regarding this issue. It is yet to wait.

**Surya Bahadur Thapa**

*Rajdhani Daily, December 30*



**T**hree days after the interruption in the peace talk, the attacks by Maoists in Dang, Syanjha and Surkhet could not have been planned in one day. It has already been proved that the operation has been continuously carried on from a long time back. Therefore the state of emergency is a situation led by the circumstance. No one's right should be violated and innocent people should not be victimised in the operation in the name of state of emergency. It is our opinion that no one should be violated by any form of prejudice. The Nepali Congress in power should be aware that the power is not abused. We have faced that problem during the time of Panchayaat-there was a great movement when people were taken into custody on the charge against the state. Nepali Congress is aware of the fact that the innocent people do not suffer and get abused during the state of emergency which is declared against the Maoists. There is a rumour that there is Congressization, but it should not be that way. We have set up a high level monitoring committee to understand the present condition of the state. We are exchanging news and views with the government. Using the authority given by the Constitution, the state of emergency has been declared. The party has been alerting the government that there should be no violation from the government's side.

**Arjun Narshing KC**

*Spokesperson of the Nepali Congress, Budhabaar Saptahik December 2*



# ON FORTY FIVE DAYS OF STATE OF EMERGENCY

January 11, 2002



Speaker of the House of Representatives Tara Nath Ranabhat expressing his views in connection with the state of emergency stated that there is not only the necessity of the prohibition on terrorism but the control of the root cause of corruption as well. Mr Ranabhat was addressing the meeting of the Nepali Congress District Working Committee, Nuwakot.



Jhala Nath Khanal, Standing Committee Member of CPN (UML) said that the state of emergency is itself a bad fortune for the democratic development. He said that if the government does not improve its behaviour, the country would have to face a tragic consequence.



Arjunnarsingh KC, Spokesperson of the Nepali Congress Party commenting on the killings of some innocent people by the security personnel said that the state of emergency has not been fully targeted to its purpose. Mr KC, expressing view of the party said that the government would provision the Sub Article 7 of the Article 115 as defined in the Constitution of the Kingdom of Nepal, 1990.



Rabindra Nath Sharma, Central Member of RPP, expressed doubt on the effective implementation of the state of emergency due to the internal conflict of the Nepali Congress.



Radha Krishna Mainali, Standing Committee Member of CPN (ML) expressed that if the political parties do not reach the grassroots at this hour the country will have to face the army regime. He said that only the army and the Maoists are reaching the people. So the state of emergency will not bring an expected result in such situation.

An interaction programme was organised by the Public Councelling Taskforce of High Level Monitoring Committee of the Nepali Congress among the representatives of different political parties. According to Benup Raj Prasai, Co-ordinator of the committee, the leaders of Nepali Congress and CPN (UML) expressed worry on the killings of the innocent people by the security personnel in the name of 'terrorists.'



**O**n 13 January 2002 18-member delegation of 17 human rights organisations met Prime Minister Sher Bahadur Deuba in his residence at Baluwatar and presented a memorandum.

## **Memorandum to the Prime Minister by the Human Rights Community**

On the occasion, discussion on different issues like the violence resumed by the Maoists after the 23<sup>rd</sup> of November 2001, and the counter attack by the government after declaring the state of emergency and promulgating the Terrorist and Disruptive Activities, Control and Punishment Ordinance (TADO), 2001 were made.

The Prime Minister was informed on the misbehaves of the security personnel on the innocent citizens, and torture and victimisation of the human rights defenders in the operation. On the same occasion, an ineffectual attempt made by the security personnel in civil dress to take General Secretary of INSEC Subodh Raj Pyakurel to an

unspecified place was raised with prime concern.

The Prime Minister repeated his commitment on playing a responsible role and requested all the concerned to perform their respective duties accordingly.

The following proposals were put forth by the delegates on the occasion:

1. A separate national mechanism should be formed under the direct command of the Prime Minister so that he could receive reliable and timely information.
2. The human rights activists should get opportunity to make a field visit in order to

monitor the situation of human rights.

3. Arrangements for direct access of human rights community with the Prime Minister should be made.
4. Human rights community should take initiation for the peace process.

Prime Minister Deuba expressed his deep sorrow on the incident, supported all the proposals and expressed his commitment to make such an endeavour a success. He also urged the human rights community to go ahead without any hesitation and inform directly to the secretariat of the Security Council, if any problem arises.

## **URGENT INFORMATION**

*INSEC had issued an urgent information in connection with the incident occurred at INSEC premises on 11 January 2002. The detail of the information is as follows :*

**T**his is for the kind attention of all our well wishers and friends of the entire human rights community all over the world about the incident that occurred at INSEC Central Office on 11 January 2002.

We are amazed by the mysterious behaviour shown at INSEC office Kalanki by six persons in civil dress, who called themselves security personnel. They were seen at the INSEC central office from around 3:30 to 6:00pm. They inquired whether our General Secretary Subodh Raj Pyakurel was in, only at about 4:00pm. When they were invited in the room by the general secretary, they refused and said, "we shall wait here". Earlier they were roaming around the INSEC

premises for some time. A private plate vehicle brought by them was parked in a nearby corner.

At about 5 O'clock the general secretary asked reason for their waiting. They requested him to go to the security office. But the general secretary told them that he had no time to go at that time. They did not express their motive authentically. But, they insisted to take him to an unspecified place. They did not tell anything about the purpose of taking him. Then the general secretary said, "It takes at least an hour to finish my business. So where is your security office?" But they did not say any thing about it. Meanwhile, INSEC circulated the incident, which was occurring in its premises, to

different organisations and persons including Honourable Kapil Shrestha, Member of the National Human Rights Commission and other political personalities. Then different human rights activists came to the INSEC office. At about 6.15pm, they had disappeared suddenly.

The concern INSEC is raising about the violation of human rights during state of emergency is known to all. In this context, we have taken yesterday's incident as an attempt to harass the role INSEC is playing for the protection and promotion of human rights and social justice. Moreover, we take it as a threat to the entire human rights movement in Nepal.

12 Janury, 2002



# VIEWS OF POLITICAL PARTIES ON THE STATE OF EMERGENCY

- **November 27:** Communist Party of Nepal (MASAL) releasing a press note stated that the achievements of the People's Movement, 1990 would no longer exist and dictatorship would be potential if the present situation continues.

- **November 28:** Rastriya Prajatantra Party holding an emergency meeting decided that the declaration of the state of emergency and the promulgation of the ordinance (TADO) were in accordance with the Constitution of the Kingdom of Nepal, 1990. In a statement published after the meeting it was stated that the violent activities of the Maoists have badly hurt the nation's security, sovereignty and democracy.

- **November 29:** The Central Committee Meeting of the Communist Party of Nepal (UML) concluded that the present situation of the country was liable mainly due to the Maoist's activities. The fundamental rights of the people should not be suspended for long. It was also stated that one decade long regime of Nepali Congress is also responsible for the

present critical situation. The inability of the congress party to establish peace and security in the country is still visible. The meeting also requested the entire public to be aware on the possibility of taking advantage by the selfish.

- **December 3:** An all opposition party meeting was organised by Madhav Kumar Nepal, General Secretary, CPN (UML) and Leader of the Main Opposition Party in the House of Representatives at Singhadurbar. Representatives from Rastriya Prajatantra Party, CPN (ML), CPN (Unified), United People's Front Nepal, CPN (Marxist), National People's Front, Green Nepal Party, Nepal Praja Parishad, Nepal Sadbhawana Party, RPP (Nationalist), CPN (MALEMA), Nepal Labour and Peasants Party and nominated MP Ramesh Nath Pandey had attended the meeting. The meeting focused on ending the state of emergency as soon as possible. It was also decided to visit the Prime Minister in order to share the concept developed in the meeting.
- **December 4:** CPN (MASAL) issuing a press statement expressed worry on the present

situation stating that the main task is to end the state of emergency. In the statement it was also mentioned that some innocent and those who were not directly taking part in the "People's War" were also killed.

- **December 4:** The Central Committee meeting of CPN (ML) analysing the situation of the state of emergency concluded that Maoists' anarchical and disruptive activities were the responsible factors for the present situation. The meeting also requested the government to put an end to the present situation and not to impose its effect upon the public.
- **December 9:** The joint meeting of the Working Committee Members and Nepali Congress MPs organised by the Central Committee of Nepali Congress showed a full support to the declaration of the state of the emergency which was in accordance with the present Constitution of the country. The meeting further decided to instruct the government to be aware on the operation against innocent and armless public.
- **December 9:** The National Working Committee meeting



of the Nepal Sadhbhawana Party concluded that the CPN (Maoist) is fully responsible for the present chaos. The meeting also formed a five member supervisory team under the co-ordination of Durga Prasad Chaudhari.

- **December 10:** An opposition party meeting of the MPs was organised by Madhav Kumar Nepal, General Secretary, CPN (UML) and Leader of the Main Opposition Party in the House of Representatives at Singha Durbar. The meeting decided to handover a memorandum to the Prime Minister making a context of the declaration of the state of emergency.
- **December 11:** A memorandum was presented to the Prime Minister by the opposition parties. In the memorandum it was stated that the government did not formally and authentically explain anything regarding the objectives, limitations, and rational of the state of emergency. It was also demanded that the present state of emergency, which makes the people weak, should be ended as soon as possible. Including different lists from the respective parties, it was

also requested to establish the press freedom in accordance with the Constitution. The memorandum stressed on organising all-party meetings in the district level by the government. A total of 12 parties including the CPN (UML) had the representation in the memorandum.

- **December 13:** National People's Front in a statement stated that the press freedom was suppressed after the declaration of the state of emergency. It further stated that several innocent citizens were killed in the name of emergency and some leftists were arrested with out any reason. The party also demanded to end the state of emergency.
- **December 16:** The emergency meeting of the Unified People's Front Nepal concluded that the country was plunging into the civil war. In a statement issued on the 17 of December it was further stated that Nepali Congress Party ruling for the longest period is responsible for the present situation. In the statement it was also stated to end the state of emergency and take back the ordinance.

- **December 23:** In Kathmandu District, an all party meeting was organised under the chairmanship of Prime Minister Sher Bahadur Dubea in his office at Singhadurbar. Almost all the opposition parties were present in the meeting to focus on stopping the misuse of the state of emergency. The government was ready to setup necessary mechanism and formulate code of conduct in order to implement the opposition parties' suggestions.

- **December 24:** Nepali Congress President Girija Prasad Koirala organised an all party meeting. The meeting reached a conclusion to fix agenda for the solution of the present state under the umbrella of "National consensus among all the Political parties and broad democratic unity". The meeting also concluded that if the present situation is not solved through the support of all the political parties by identifying the problem, it will be to late to protect the achievements of the People's Movement 1990.

'Security personnel' denotes police or armed police or the Royal Nepalese Army or any individual deputed by His Majesty's Government to prevent or control the terrorist and disruptive activities .

- TADO, 2001



# INSEC APPEAL

**I**nformal Sector Service Centre (INSEC), highlighting some of the incidents of serious human rights violations in the country has appealed to the various political parties for their strong steps to make an environment for protecting the basic rights of the people. The full text is as follows:

11 January 2002

We, through this appeal, would like to draw attention of your respected party on the incidents of the grave violation of human rights in the different districts of Nepal after the declaration of the state of emergency and the Promulgation of the Terrorist and Disruptive Activities, Control and Punishment Ordinance (TADO). We are concerned that your party must be aware on certain fundamental rights as provisioned in the Constitution of the Kingdom of Nepal, 1990 which are not suspendable even in the period of the state of emergency. There is no doubt that incidents of the human rights violations in Nepal are increasing, which may further aggravate the crisis.

After the end of the present state of emergency, declared in a difficult circumstance, your party will be certainly evaluated for the commitment showed towards the protection of human rights. If the state has really started a decisive operation against violence, the responsibilities of the political parties should be increased to a greater extent.

We believe that your party will actively involve in the control of such activities of grave human rights violation.

Some of the typical incidents of grave human rights violation by the state have been mentioned here under for your kind information:

■ In Rolpa District, 5 citizens including Bali Ram Thapa, aged 36 of Khumel-4; Man Bahadur Gurung, aged 65, of Khumel-5; Phursi Roka, aged 12 of Khumel-4; Dil Bahadur Gharti, aged 28 of Khumel-6; and, Gayatri Gurung, aged 60 of Khumel-6 were shot dead by the security personnel through a helicopter gunshot at Meldhara, Khumel VDC-4. The people were gathering there to observe a religious festival Baraha Pooja in Meldhara. In the same incident, 7 others including Man Bahadur Gharti, Tija Pun, Gyanendra Gharti, Kirte Damai, Balu Gharti (Pujari), Nara Bahadur Gharti and Shyam Kale Thapa were injured seriously.

■ In Morang District, the police notified that three 'terrorists' were killed in an operation at the jungle of Kanepokhari.

On 9th Dec. the police cremated the three corpses, in the same pyre, at the bank of the Singhiya River, without their identification. The corpses were full of blood clots when they were brought for post-mortem in the Koshi Zonal Hospital on the same day.

In this connection, suspicion that those 3 deceased could be from the Sunderpur VDC came out in an all party meeting held on 17th Dec. Tanka Bahadur Thapa and Bharat Shrestha of Ward No.3 and Paltan Singh alias Ashok Rai of Ward No.6, Bhoj Raj Phuyal of Ward No.2 were arrested on 7th and 4th Dec. respectively. The question on whereabouts of those persons was raised in the meeting.

On 17 Dec. a delegation also met the Chief District Officer(CDO) in Biratnagar, the district headquarters and demanded to publicise the information on those missing.



But, CDO Dolakh Bahadur Gurung expressed his ignorance on this matter.

The relatives of those deceased requested the National Human Rights Commission of Nepal (NHRC) for the investigation of those disappeared persons. Secretary of FOHREN, an INSEC affiliated HR Organisation, Advocate Tul Bahadur Shrestha took initiation in this matter.

■ In Sankhuwasava District, Chhabilal Tamang, aged 40, Vice-chairman of Wana VDC-9 including Kamal Bhandari, aged 36, Mitra Bhandari, aged 34 and Birkha Raj Magar, aged 17, of the same place were manhandled and beaten by the security personnel in their own houses on 8 January 2002 at 5.30am. The patrolling security personnel brought all the victims to the barrack. Then, victims Kamal, Mitra and Birkha Raj were tied to an iron rod; and Chhabilal, next victim, was forced to punish them all. They all were released at 5 pm.

The victims after being released cried for help in the open place near Pokhari Bazar. The local representatives, INSEC representatives and other locals gathered there. Bishnu Pokhrel, INSEC District Representative took photograph of the victims.

Then the security personnel called Kiran Shakya, Mayor of Khandbari Municipality

for the necessary investigation. After then the security personnel gathered near the residence of Bishnu Pokhrel. Till, 9<sup>th</sup> of January, the security personnel were hunting for Mr Pokhrel. During the day they saw him heading towards the District Police Office. They caught him and took to the police office by beating severely. In front of the office the police in a group of 10-15 attacked him again. After taking him to the DSP (Deputy Superintendent of Police deputed as District Chief of the Police) the reel was seized and he was released warning him not to repeat it from then on wards.

■ Kush Raj Shahi, INSEC District Representative of Kalikot District was threatened by DSP Deepak Bahadur Thapa of Kalikot District Police Office saying that the human rights activists should be careful in transmitting news or else they have no security there. The DSP had threatened him like that while Mr Shahi was querying him of the incident about a teacher's arrest by them on 4 December 2001. From such behaviour from the security personnel it is clear that the security personnel are discouraging the human rights activists in the matters of observing the human rights situation.

■ In Okhaldhunga District, Kul Bahadur Khatiwada, aged 35 and Thakur Raj Khatri, aged 30 of Harkapur VDC, after reaching the District

Administration Office for surrendering, were arrested by the security personnel and taken to the barrack, according to the family members of the victims. After that they were taken to the police office. Their whereabouts is still unknown after 25 December. Mr Khatiwada's wife Hira Khatiwada and Mr Khatri's brother Shiva Bahadur Khatri sent letter to the INSEC office for making an attempt to their whereabouts.

■ In Myagdi District, a child Dalle Nepali, aged 14 was killed in an operation by security personnel. It was said he was involved in the Maoist activities; but his family refused it. The victim had been taken to the health camp at Beni Bazaar by his father. After that they had stayed in a house of their relatives at Katuwachautari. The news was published in the Kantipur national daily on 10 January. Because of this, Lal Prasad Sharma, District Reporter of the Kantipur was arrested by the police on the same day.

By the above examples, it is clear that the concerned authorities of the government are not serious in the matters of protection of human rights in the country. The government must start a suitable step for the protection and reestablishment of human rights in the country. We are concerned that your authority will play a major role in such issues.



# PETITION TO NATIONAL HUMAN RIGHTS COMMISSION BY HR COMMUNITY

*Seventeen Human Rights organisations filed a petition to NHRC for the protection of Human Rights of the people in Nepal. The text is as follows :*

January 8 2002

It is already known to the knowledge of the respected Commission about the violent activities of the Maoists after the 23<sup>rd</sup> of November 2001, and the counter attack by the government for security. In the present situation of the state of emergency, the fundamental rights of the people have been suspended. We, therefore, urge the National Human Rights Commission to be more active and responsible.

We believe that the Commission has direct access to the government, institutions and others for taking information on the present situation.

We, therefore, would like to draw attention of the Commission on the followings for initiating necessary steps for the protection of human rights, humanitarian laws and constitutional rights as a leading and responsible organisation:

- The violence from Maoist side though less in number is equally worsening the situation.
- In the name of operation by both Maoist and security authorities, the innocent civilians have to

live under fear and threat. As for example, such a situation is there in 52 districts like Rolpa, S a n a k h u w a s a v a , Dhanusha, Dang, Gorkha, Morang and Bardiya.

- The state has not provisioned any appropriate shelter for the prisoners nor has managed treatment for the injured. Moreover, the arrested persons are not given warrant. The number of killings is informed to have reached 750 but the number of the injured has not been disclosed yet.
- The arrested people from both Maoist and government sides have been disappeared; some of them have also been found killed.
- The International Humanitarian Law during war and the rules of the Hague Convention have been violated by both parties.
- No necessary measures and appropriate set-ups have been formed for record and identification of the killed people.
- No alternative measures have been set up for the displaced people due to

operation by the security personnel.

- The international humanitarian laws have been violated by the 'long range firing and helicopter gunshot.' Similarly, the Maoists are placing ambush for the security personnel in which the ambulances have been the victims of it.
- An environment of co-ordinating the local representatives and other civil societies in order to take the necessary help from them has not been created by the government.
- No persons - the relatives of the victims, human rights activists, media personnel and others - are allowed to make the field visit and meet the victims.
- A provision for submitting applications of the surrender cases has not been made by the authority at any time. This has resulted in abduction of the persons on the way to surrender by the Maoists. As for example, such an incident occurred in Nuwakot district on December 9, 2002.



- The surrendering persons and other arrested persons have been found to be ill-treated like blindfolding and giving torture publicly, which are against the international humanitarian laws. A similar incident was occurred in Sankhuwasava district.

- No monitoring and supervision has been made by the concerned authorities in the prisons and other custodies in order to improve and manage their conditions.

- Treatment of the arrested/injured persons as per the law has been lacking.

In this respect, we would also like to draw attention of the government, Maoists and civil society on the following issues:

#### REQUEST TO THE GOVERNMENT

- The government has greater responsibility at the present situation of the state of emergency and after promulgation of the ordinance (TADO). It should, therefore, form a national-level network immediately in order to receive complaints and suggestions by the civil society.

- A civil protection committee should be formed for the protection and treatment of the women, expecting mothers, children, elders, sick and injured and others in the district, area and local level.

- The proposed civil protection committee should be taken as the reliable authority in the matters of opposing the

violence and terrorism, protecting the civilians and safeguarding the humanitarian law. These committees should have a direct and influential access to the national level network.

- The cremation of the unidentified dead should be made in the presence of the civil society. As such, there should be a provision for protecting the corpus for a longer duration for its identification.

- No hindrance should be made for making field visits in the operation areas to the human rights activists, the media persons, and the political parties and civil society. For the collection of such reports a committee should be formed.

- The arrested persons should be given warrant immediately. Its one replica should be noticed publicly. While giving *gherau* of a house, community and the like, the information of the diseased, killed and other effects should be published immediately.

- The state of emergency should be shortened by initiating peace talks with the Maoists.

- Preparation for protecting the innocent civilians, the arrested, treating the injured should be made prior to the operation. The Royal Nepalese Army should be cautious of its popularity and fame in the international level.

- His Majesty's Government, as a State

Party to the Convention on International Civil and Political Rights, Convention against Torture, and Geneva Convention should not violate these. At present the Article 3 of the Geneva Convention should be reminded to the security personnel and law enforcing authorities, specifically.

- A network in the central, regional and local level under the co-ordination of an expert in the related field should be formed under the command of the Prime Minister in order to receive information from the human rights community.

- The children should not be declared the terrorists. Rather they should be protected and convinced if they are involved in such activities. Children should not be involved in the armed conflicts.

- The series of killing in the name of escaping should be stopped at once.

#### REQUEST TO THE MAOISTS

- The Maoists have to take a major responsibility of the incidents occurred after the 23<sup>rd</sup> of November 2001.

- The Maoists have been involved in war in the name of "Revolutionary People's Army" by wearing uniforms in specified ranks. They have wanted the government to respect the Geneva Convention. They say the persons abducted by them have been handed over in



the presence of the International Red Cross personnel by respecting the Geneva Convention. So they are morally high contracting parties. But they have been attacking on the armless police/army and other civilians as well as the ambulances, which per se contradicts their commitment. They should, therefore, realise this truth and should be committed to the full respect of their ethics.

- CPN (Maoist) by abandoning violence should be committed to the peace talks as per the Constitution.
- The abducted persons by the Maoists should be released immediately. Information on victims and injured should be publicised immediately. No hindrance should be made to the human rights activist and media persons.
- The basic needs of the public like drinking water, education, health and other infrastructure should not be obstructed at any rate.

#### REQUEST TO THE CIVIL SOCIETY

- There should be an attempt to have a close link

with the local administration in order to assist the government for the protection of the innocent civilians.

- Protection should not be given to the persons involved in the violent and terrorist activities.
- A watchdog role should be maintained for the operational activities of the government and security personnel. The local administration should be informed of the incident if found to be unlawful.
- A monitoring and helping committee should be formed representing human rights communities, political organisations, media persons, and others. Such committee should help to protect the basic needs of the people like drinking water, education, health and others in order to promote their prestige and play a leading role for their protection.
- Similarly, the regular monitoring of the human rights situation and updating of the human rights violation in the local area should be commenced in order to

submit them to the National Human Rights Commission and the Office of the Prime Minister as well as other related authorities.

- Such committee, if necessary, by taking permission of the concerned should go on fact-finding mission and prepare report.

We would like to draw attention of the respected Commission in the matters of the applicability of the Convention on International Civil and Political Rights, the Geneva Convention and the Humanitarian Laws, the Constitution of the Kingdom of Nepal, 1990 and the Terrorist and Disruptive Activities, Control and Punishment Ordinance (TADO), 2001. We would also like to know whether the unsuspendable articles and other laws have been seized. We think the respected Commission will pay due attention in such matters.

We also urge the respected Commission for playing a leading role to initiate a network for monitoring the treatment of the government to the injured, arrested and surrendering persons at any time.

#### APPLICANTS :

SN	Name of the Organisations	SN	Name of the Organisation
1.	Concern-Nepal	2.	Rafhaj, Nepal
3.	People's Right Concern Campaign	4.	Human Rights and Peace Society Forum
5.	Human Rights and Documentation Centre	6.	CWISH
7.	Forum of Women law and Development	8.	CVICT
9.	Prisoners' Assistance Mission	10.	CWIN
11.	Woman Rehabilitation Centre	12.	INSEC
13.	INHURED International	14.	Himrights
15.	All Nepal Women's Association	16.	Women Welfare Society
17.	R R N		



# PETITION TO NHRC BY INSEC

***INSEC had submitted a petition to the NHRC on January 9, 2002 in connection with the incident occurred in Sankhuwasava district.***

***The full text is as follows :***

January 9, 2002

We have felt that the situation of human rights is deteriorating day by day after the declaration of the state of emergency.

Incidents of indiscriminate killings, arrests and inhumane tortures are increasing day by day. It has already come to the notice of the National Human Rights Commission that the incidents of arbitrary arrests and other inhumane tortures have been increased in Sankhuwasava District. We would like to draw attention of the Commission regarding the incident of Sankhuwasava District that a similar attention letter has been registered in this Commission by 17 human rights organisations on 8 January 2002. We would like to reiterate the incident occurred in Sankhuwasava District.

## THE INCIDENT

In Sankhuwasava District, Chhabilal Tamang, aged 40, Vice-chairman of Wana VDC including Kamal Bhandari, aged 36, Mitra Bhandari, aged 34 and Birkha Raj Magar, aged 17, of the same place were beaten by the security personnel in their houses on 8 January 2002 at 5.30am. The patrolling security personnel brought all the victims to the barrack. Then, victims Kamal, Mitra and Birkha Raj were tied to an iron rod; and Chhabilal next victim was forced to punish them all. They all were released at 5 pm.

Mitra Bhandari's clothes were torn due to beating of the security personnel.

Likewise, Kamal Bhandari was beaten severely.

The victims were blindfolded while taking to district headquarters. The security personnel were beating Chhabilal on the way. When reaching Khandbari Barrack, they told Chhabilal that he was innocent and further ordered him to beat his friends with an iron rod 10 times each.

The victims after being released cried for help in the open place near Pokhari Bazar. The local representatives, INSEC representative and other locals gathered there. Bishnu Pokhrel, INSEC District Representative took photograph of the victims.

Then the security personnel called Kiran Shakya, Mayor of Khandbari Municipality and said, "Why did you ask the human rights activists to take photograph?" After then the security personnel gathered near the residence of Bishnu Pokhrel. Till today, the security personnel are hunting for Mr Pokhrel and his whereabouts is still unknown.

We would, therefore, like to cordially request the respected Commission to kindly take necessary steps for the protection of the human rights activists like Bishnu Pokhrel. We would also like to draw attention of the National Human Rights Commission for taking necessary steps in order not to repeat similar incidents in future.



# CONSTITUTIONAL PROVISION ON STATE OF EMERGENCY

## 11. Right to Equality

- (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
- (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.
- (3) The State shall not discriminate citizens among citizens on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these:

Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.

- (4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.
- (5) No discrimination in regard to remuneration shall be made between men and women- for the same work.

## 12. Right to Freedom

- (1) No person shall be deprived of his personal liberty save in accordance with law, and no law shall be made which provides for capital punishment.
- (2) All citizens shall have the following freedoms:
  - (a) freedom of opinion and expression;
  - (b) freedom to assemble peacefully and without arms;
  - (c) freedom to form unions and associations;
  - (d) freedom to move throughout the Kingdom and reside in any part thereof; and
  - (e) freedom to practice any profession, or to carry on any occupation, industry or trade:

Provided that –

- (1) nothing in sub clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine

the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality;

- (2) nothing in sub clause(b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal;
- (3) nothing in sub clause (c) shall be deemed To prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, which may instigate violence, or which may be contrary to public morality;
- (4) nothing in sub clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities;
- (5) nothing in sub clause (e) shall be deemed to prevent the making of Laws to impose restrictions on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services; or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

## 13. Press and Publication Right:

- (1) No news item, article or other reading material shall be censored:

Provided that nothing shall prevent the making of laws to impose reasonable restrictions on any act



which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality.

- (2) No press shall be closed or seized for printing any news item, article or other reading material.
- (3) The, registration of a newspaper or periodical shall not be cancelled merely for publishing any news item, article or other reading material.

#### **14. Right Regarding Criminal Justice:**

- (1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed By the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted or punished for the same offence in a court of law more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.
- (4) No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.
- (5) No person who is arrested shall be detained in custody without being informed' as soon as may be, of the grounds for such arrest, nor shall be denied the rights to consult and be defended by a legal practitioner of his choice.

**Explanation:** For the purpose of this clause, the words "legal practitioner" shall mean any person who is authorised by law to represent any person in any court.

- (6) Every Person who is arrested and detained in custody 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 no such person shall be detained in custody beyond the said period except on the

order of such authority.

- (7) Nothing in clauses (5) and (6) shall apply to a citizen of an enemy state, and nothing in clause (6) shall apply to any person who is arrested or detained under any law providing for preventive detention.

#### **15 Right Against Preventive Detention:**

- (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law- and order situation of the Kingdom of Nepal.
- (2) Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the right to be compensated in a manner as prescribed by law.

#### **16. Right to Information:**

Every citizen shall have the right to demand and receive information on any matter of public importance:

Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

#### **17. Right to Property:**

- (1) All citizens shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of, property.
- (2) The State shall not, except in the public interest, requisition, acquire or create any encumbrance on the property of any person.
- (3) The basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State in the public Interest, shall be as prescribed by law.

#### **18. Cultural and Educational Right:**

- (1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture.
- (2) Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

#### **19. Right to Religion:**

- (1) Every person shall have the freedom to profess and practice his own religion as handed down

to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to another.

- (2) Every religious denomination shall have the right to: maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

#### **20. Right against Exploitation:**

- (1) Traffic in human beings,

slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law:

Provided that nothing herein shall be a bar to providing by law for compulsory service for public purposes.

- (2) No minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work.

#### **21. Right against Exile:**

No citizen shall be exiled.

#### **22. Right to Privacy:**

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

#### **23. Right to Constitutional Remedy:**

The right to proceed, in the manner set forth in Article 88 for the enforcement of the rights conferred by this Part is guaranteed.

(Source: Constitution of Kingdom of Nepal, 1990)

### **ARTICLE 12**

#### **Right to Freedom**

Sub-article (2)

- a) freedom to opinion and expression;
- b) freedom to assemble peacefully and without arms;
- d) freedom to move throughout the Kingdom and reside in any part thereof;

### **ARTICLE 13**

#### **Press and Publication Right**

Sub-article (1) No news item, article or other reading material shall be censored.

### **ARTICLE 15**

#### **Right against Preventive Detention**

1. No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal.
2. Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the

right to be compensated in a manner as prescribed by law.

### **ARTICLE 16**

#### **Right to Information**

Every citizen shall have the right to demand and receive information on any matter of public importance. Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by the law.

### **ARTICLE 17**

#### **Right to property**

1. All citizens shall, subject to the existing law, have the right to acquire, own, sell and otherwise dispose of, property.
2. The state shall not, except in the public interest, requisition, acquire or create

encumbrance on, the property of any person.

3. The basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the state in the public interest, shall be as prescribed by law.

#### **RIGHT TO PRIVACY**

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

#### **RIGHT TO CONSTITUTIONAL REMEDY**

The right to proceed in the manner set forth in Article 88 for the enforcement of the rights conferred by this part is guaranteed.

(Source: The Constitution of the Government of Nepal, 1990)

## **FUNDAMENTAL RIGHTS SUSPENDED AFTER THE DECLARATION OF THE STATE OF EMERGENCY**



# INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS

Approved by the General Assembly of the UNO on 16 December 1966 asserted accession by the Government of Nepal on 14 May 1991.

## CHAPTER 2, ARTICLE 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent

strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communications shall be made, through the same intermediary, on the date on which it terminates such derogation.

**Note:** While declaring the state of emergency restricting the fundamental rights in Nepal the procedure, as per the International Convention on Civil and Political Rights, has not yet been publicized as accomplished.

## Total No. of Victim Killed by State and Maoist in Connection with "People's War" (13 Feb 1996 – 23 Jan 2002)

OCCUPATION	By State	By Maoist	Total
AGRI	333	152	485
TEACHER	14	19	33
POLITICAL	1195	127	1322
POLICE		489	489
GENERAL PEOPLE	57	34	91
STUDENT	58	18	76
CIVIL SERVANT	7	16	23
SOCIAL WORKER	3		3
BUSINESS	5	8	13
WORKER	9	9	18
HEALTH WORKER	1		1
ARMY	1	38	39
<b>TOTAL</b>	<b>1683</b>	<b>910</b>	<b>2593</b>

Source : Human Rights Yearbook, Informal Sector Service Centre (INSEC)

# TERRORIST AND DISRUPTIVE ACTIVITIES (CONTROL AND PUNISHMENT) ORDINANCE 2001

(Unofficial translation)

## Preamble:

As there is a necessity to make legal provision in relation to the control of the terrorist and disruptive activities in order to maintain the peace and order in the kingdom of Nepal and for the security of the common people and given that the parliament session is not on now,

His Majesty King Gyanendra Bir Bikram Shahdev has, in accordance with the Article 72 of the Constitution of the Kingdom of Nepal, 1990, promulgated this ordinance.

## 1. Short title and commencement:

- (i) This ordinance shall be called the "Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2001.
- (ii) This ordinance shall come into force immediately.

## 2. Definition:

Unless otherwise meant with reference to the subject or context, in this ordinance-

- (a) 'weapons' denote rifle, gun, artillery, pistol, revolver or any other means or instrument of similar type or spear, knife, Khukuri or log or other risky weapons with or without blade and this word shall denote the batons and stones too.
- (b) 'arms and ammunition' (*Kharkhajana*) denotes smoky signals (fog signal), fuse, gunpowder, cape, cannon ball, *chharra* (small bullets that go to many directions when fired), detonator, catridge and similar types of other arms and ammunition.
- (c) 'Bomb' denotes grenade made of any material or instrument, used in military or

non-military purpose, made to self-explode or explode with the help of any other means, or any other types of weapon with explosive materials or any other material which self-explodes or helps to make explosions.

- (d) 'Explosive material' denotes any material that causes damage by explosion like TNT, ematol, barotol, pantolight, RDX, torpekas, plastic explosives, dynamite, gun-powder, nitro glycerin, jelegnite, stamite, selsite, guncotton, blasting powder, mercury or fulyunet of other metals or if not of these types any other material produced or used with a purpose of causing effect through explosion.
- (e) 'Poisonous material' denotes any poison or any solid or liquid substance with such poison mixed, and this word shall also include poisonous smoke or gas of any kind.
- (f) 'Security personnel' denotes police or armed police or the Royal Nepalese Army or any individual deputed by His Majesty's Government to prevent or control the terrorist and disruptive activities .
- (g) 'Terrorist and disruptive activities' denotes such terrorist and disruptive activities as mentioned in clause 3.
- (h) 'Terrorist' denotes any individual or group involved in terrorist and disruptive activities as per the clause 3.
- (i) 'Accomplice' denotes the following persons:



- (i) any individual in contact or involved with any individual or group engaged in terrorist and disruptive activities ,
- (ii) any individual providing information or helping in providing information to any individual or group involved in terrorist and disruptive activities or any individual passing, publishing or distributing information about any individual or group involved in terrorist and disruptive activities,
- (iii) any individual giving direct or indirect financial or any other type of help to the individual or group involved in terrorist and disruptive activities .
- (j) 'Property' denotes any movable and immovable government or public or private property inside or outside the Kingdom of Nepal.
- (k) 'Informer' denotes any individual providing or helping to provide information to His Majesty's Government about terrorist and disruptive activities and explosive materials.
- (l) 'Security officer' denotes Chief District Officer or any gazetted officer of His Majesty's Government as designated by it by publishing a notice in the Nepal Gazette.
- (m) 'Order' denotes any order issued by His Majesty's Government or the security officer.

### 3. Terrorist and disruptive crime:

(i) If somebody carries out the following acts, that shall be considered as the terrorist and disruptive crimes:

- (a) With a motive to disturbing or assaulting the sovereignty, integrity of the Kingdom of Nepal or the security or peace and order of its any part, or any diplomatic agency, or property in foreign country, causing damage to the property of any place by using any type of weapons, bomb, explosive materials or any other instrument or object or vandalizing such property or planning for such acts or any acts of taking life, causing bodily mutilation or causing injury or causing arson in such places or causing any physical or mental damage, or an act of

taking life or causing bodily mutilation or other damages by mixing poison in the daily consumption goods or by using poison at public places or creating terror to the general public or commuters or gathering of people by carrying out any acts mentioned above, or

- (b) With a motive as mentioned in section (a), taking life of anyone, causing bodily mutilation, causing injury by using the materials as mentioned in the section (a) or by threatening to use such materials or by not using such materials but using or threatening to use other materials or means, or forcibly treating anyone at any place or in any type of vehicle or terrorizing by giving threat of causing harm or abducting a person with or without such vehicle from such place or vehicle, or terrorizing by such acts, or
- (c) With a motive as mentioned in section (a) and (b), producing, distributing, collecting, trafficking or import-exporting, selling, carrying, fixing any type of weapons or bomb or explosive materials or poisonous materials or helping in such acts, or
- (d) With a motive as mentioned in section (a) and (b), carrying out acts like gathering people, providing training,
- (e) Any other acts causing an atmosphere of fear and terror in the public life,
- (f) With motives mentioned in the clauses and sub-clauses, acts of extorting cash and kind, robbing property.
- (ii) If someone commits or conspires to commit terrorist and disruptive activities or encourages or compels somebody to commit such acts, or gathers more than one person to commit or get such acts committed, or sets up any gang or group to commit such acts or makes arrangements to commit such acts or get such acts committed or participates in such acts by taking or not taking remuneration or publicizes or gets such acts publicized or creates obstructions to the government communications system or gives shelter to the person involved in terrorist and disruptive activities or hides

him/her, such acts shall also be considered as the terrorist and disruptive crime

- (iii) Any individual committing or helping to commit the acts as mentioned in sub-clause (i) and (ii) shall be prosecuted and punished as per this ordinance.

#### **4. Use of the ordinance outside the region:**

Even if an individual remaining outside the country commits the crime of terrorist and disruptive activities targeting the Kingdom of Nepal or Nepali citizen or any property of the Kingdom of Nepal, the individual shall be prosecuted and punished as per this ordinance assuming such acts as equivalent to have been committed by remaining inside the country.

#### **5. Special authority to prevent terrorist and disruptive activities :**

Whatsoever is provided for in prevailing laws, an order can be issued to commit any or all of the following acts through out or in any part of the Kingdom by His Majesty's Government and in the region designated to him/her by the security officer:

- (a) arresting without warrant an individual suspected of involved in terrorist and disruptive activities ,
- (b) carrying out a search without any notice at any time on any person's house, shop, go-down, vehicle or any other place if there is a suspicion that unlawful weapons, arms and ammunition, bomb or explosive materials have been kept or any individual related with the terrorist has been hiding.
- (c) Carrying out a search of anyone's body and belongings with him/her or the goods used by him/her or the vehicle at any places or on the way for the purpose of preventing terrorist and disruptive activities ,
- (d) Using necessary force or weapons if any resistance put while arresting as per section (a) or carrying out a search as per section (b) and (c) or while taking any other action,
- (e) Using necessary force or weapons if a situation appears that a person who is carrying out or who has carried out terrorist and disruptive act can run away or can not be arrested,
- (f) Using necessary force or weapons to prevent harm, risk or other damages on the hostages while rescuing them from the person committing terrorist and disruptive activities from the forcibly captured vehicle or airplane or ship or any other vehicle or rescuing such vehicle or airplane or ship or any other vehicle
- (g) Using necessary force and weapons if any individual or group attacks with or with out arms any security personnel involved in discharging the duty or acting for work,
- (h) Using necessary force or weapons if any individual or group with arms threatens or attempts to threaten any security personnel on duty with a motive of causing physical harm to him/her,
- (i) Using necessary force or weapons if any individual or group, with a motive of causing physical harm, throws stones or any other objects at the individuals in need of the protection of security personnel or general public being protected by the security personnel, civil servants deputed on government work or government property or at the security personnel,
- (j) Using necessary force or weapons if an encounter with armed individual or group takes place or while carrying out the designated work any armed or unarmed individual or group creates obstructions to the security personnel,
- (k) Using necessary force or weapons on the individual or group carrying arms with a motive to commit terrorist and disruptive activities , on the place of weapon storage or the area of holding training,
- (l) The security personnel to take control of any weapon lying with armed individual or group and to keep in possession such weapons or unarm the carrier of such weapons as necessary,
- (m) Carrying out a vigilance on any suspected individual or place or if required, arresting such person or effecting a lock-out or blockade,
- (n) Freezing for certain time the bank account or passport of a person suspected of involved in terrorist and disruptive activities.



#### **6. Right to take up property:**

His Majesty's Government or the security officer can take private or public vehicles, food materials or any other goods, objects or property with a provision to give appropriate compensation or return later.

#### **7. Right to declare terror-affected zone or terrorist:**

- (i) His Majesty's Government can declare the area affected by terrorist and disruptive activities or with such possibility as the terror-affected zone.
- (ii) In the terror-affected zone declared as per sub-clause (i) or in case of a countrywide emergency declared, His Majesty's Government can issue an order of control on freedom of expression, press and publication, or on transportation and communication system in any part of the country.
- (iii) His Majesty's Government can declare as terrorist any individual, organisation or group involved in crimes punishable under this ordinance.
- (iv) Whatsoever provision is made in this clause, in case of the declaration or the order of the state of emergency as per the Constitution of the Kingdom of Nepal, 1990, it shall be *ipso facto* presumed to have been declared as the terror-affected zone.

#### **8. Right to declare prohibition on carrying weapons and arms and ammunition:**

- (i) Whatsoever is provided for in the prevailing laws, His Majesty's Government can issue an order in the terror-affected zone as per clause 7 or in case of the declaration or order of the state of emergency as per the Constitution of the Kingdom of Nepal, 1990, prohibiting for a specified time to carry the licensed weapons or arms and ammunition possessed in accordance with the law or to deposit such weapon or arms and ammunition at the stipulated place for a specified period.
- (ii) The weapons or arms and ammunition in possession with any individual in defiance

with the order made as per sub-clause (i) shall be ceased.

#### **9. Right to keep in preventive detention:**

- (i) The security officer can issue an order to keep a person in a preventive detention at particular place for up to 90 days if there is reasonable ground to believe that s/he should be stopped from committing such acts that could amount to terrorist and disruptive activities.
- (ii) If it is deemed that the person should be kept beyond the 90 days as provided for in sub-clause (i), the security officer can keep the person in preventive detention for additional 90 days with the permission of the Home Ministry, His Majesty's Government.

#### **10. Penalty/Punishment:**

- (i) If any terrorist and disruptive activity considered as crime as per this ordinance had claimed any life, the person who committed or got other person commit such crime or the main conspirator and the person ordering such crime shall be handed down life imprisonment with confiscation of all property.
- (ii) If any crime stipulated in this ordinance had been committed but no one was killed, then the person committing or getting other person commit such crime or the main conspirator and the person ordering such crime shall be handed down life imprisonment.
- (iii) If someone commits or encourages or compels somebody to commit such crimes as mentioned in this ordinance or gathers more than one person or sets up any group to commit or get such acts committed or makes arrangements to commit such acts or get such acts committed or participates in such acts by taking or not taking remuneration, or with a motive to commit such acts produces or distributes or possesses or traffics or export-imports or engages in exchange of any kind of weapons, bomb, explosive materials or poisonous materials or gets involved in publicity or provides shelter to or hides the person involved in such acts, then s/he shall be handed down an imprisonment

of five to 10 years depending on the magnitude of the crime.

- (iv) If any property has been damaged by the person committing terrorist and disruptive act, then the damage shall be compensated by confiscating the property s/he is entitled to receive as his patrimony. While making such compensation if the total amount of compensation can not be recovered from his/her property, then for the remaining amount, s/he shall be handed down an imprisonment period equivalent to the period for not paying the penalty as per prevailing laws
- (v) Any accomplice to the crime punishable under this ordinance shall be handed down half the punishment as to that of the one handed down to the perpetrator
- (vi) If anyone deliberately puts up resistance during a search made as per section (b) and (c) of the clause 5, s/he shall be eligible for an imprisonment up to one year and a penalty up to ten thousand rupees or the both.

#### **11. Keeping in custody during the trial:**

In a situation of the declaration or order of emergency as per the Constitution of the Kingdom of Nepal, 1990, any accused of the crime under this ordinance shall normally be kept in detention while being tried.

#### **12. Right to hold gatherings and use the freedom of thought and expression:**

In the terror-affected zone declared as per clause 7 or in a state of the declaration or order of emergency as per the Constitution of the Kingdom of Nepal, 1990, there shall be no restriction on gathering peacefully without arms, using the freedom of thought and expression or commuting in any part of the Kingdom of Nepal not in contrary to this ordinance.

#### **13. Coordination Committee:**

- (i) To maintain coordination among the Royal Nepalese Army, Nepal Police, Armed Police and other necessary government agencies in order to prevent or control terrorist and disruptive activities in the designated area, a Coordination Committee shall be set up consisting up the Royal Nepalese Army,

Nepal Police, Armed Police and the chief of other necessary government agencies including the National Investigation and the related regional administrator or the Chief District Officer as the coordinator.

- (ii) The Coordination Committee set up as per sub-clause (i) shall manage its procedure itself.

#### **14. Confiscation:**

- (i) If anyone commits the crime as mentioned in this ordinance and had used any property, equipment or instrument to commit such crime, such objects shall be confiscated.

But if such property, equipment or vehicle had been used without the consent of the owner, they shall not be confiscated.

- (ii) Any means of publicity, weapons, cash and kind used to commit or to support in committing such acts as considered crime as per clause 3 shall be confiscated.
- (iii) If anyone is found to have committed an act considered crime as per this ordinance by remaining outside the country, his/her movable and immovable property inside the Kingdom of Nepal shall be confiscated in addition to the punishment handed down as per clause 10.

#### **15. Judicial authority and appeal:**

- (i) The authority to try a case on the crime under this ordinance shall lie with the court constituted or designated by His Majesty's Government by publishing a notice in the Nepal Gazette.
- (ii) The court set up as per sub-clause (i), shall adopt a procedure as per the Special Court Act 2031 while hearing and deciding on a case.
- (iii) An appeal can be made at the Supreme Court on the verdict or the final order given by the court set up as per sub-clause (i).

#### **16. Government to be plaintiff:**

His Majesty's Government shall be plaintiff in the cases under this ordinance and such cases shall be considered to be falling under Appendix 1 of the Act Relating to Government Cases.



### **17. Special procedure:**

- (i) Whatsoever is provided for in the prevailing laws, if anyone committing an act considered as terrorist and disruptive crime as per this ordinance absconds, as far as possible a 15-day warrant has to be issued in order to arrest him/her with his/her description. There shall not be any obstruction to take action as per this ordinance if the person could not be traced out or arrested within that period.
- (ii) Any individual, civil servant or security personnel can be used as informer in the group involved in terrorist and disruptive activities and the individual, civil servant or security personnel shall not receive any punishment as per the prevailing laws on the ground that s/he had been involved in the group.
- (iii) The identity of the informer shall be kept secret.
- (iv) Whatsoever is provided for in the prevailing laws, if any accused involved in a case made under this ordinance provides important matters or evidences or provides direct support in finding out the main perpetrator who is the real leader, in a way that is deemed plausible by His Majesty's Government, police personnel or other officers, such accused can be made a government witness and if so, s/he shall not receive any punishment as per prevailing laws.  
  
But if the person gives a false written statement or produces the artificial evidences or without any appropriate reason found to have acted in spite of enmity, such person shall be considered as equivalent to the accused and the authority looking after the case can hand down punishment if any punishment has been claimed.
- (v) Whatsoever is provided for in the prevailing laws, anyone accused of being involved in the crime under this ordinance can be kept in police custody for investigation for up to 90 days from the date of arrest with the approval of the authority looking after the case.

### **18. Control on means of communication:**

His Majesty's Government can control the means of communication like letters, telephone or fax of the individual or group involved in terrorist and disruptive activities.

### **19. Provision about medical expenses or punishment:**

- (i) His Majesty's Government shall provide reasonable medical expenses or compensation if the security personnel or police deputed in controlling and investigating terrorist and disruptive activities is killed or sustains bodily mutilation.
- (ii) His Majesty's Government shall decide about the arrangement of required medical treatment of the person affected by or fallen victim of the terrorist and disruptive activities and about the relief facilities given to such person.

### **20. Protection on good intention:**

Any officer or individual shall not be made subject to punishment for the acts done with good intention or for the efforts to act with good intention in accordance with the rules formulated under this ordinance.

### **21. No time limit:**

There shall not be any time limit in filing a case under this ordinance.

### **22. Award:**

His Majesty's Government can make an award as it considers appropriate to the person arresting or helping to arrest the person playing main role in committing or getting committed the terrorist and disruptive activities.

### **23. Delegation of authority:**

His Majesty's Government can delegate some of the authorities as conferred to it by this ordinance to any officer and can take back such delegated authority as required.

### **24. Right to formulate rules:**

His Majesty's Government can formulate necessary rules for the implementation of the purposes of this ordinance.

### **25. Protection:**

In the matters provided for in this ordinance shall be implemented as per this ordinance and the rest shall be implemented as per the prevailing laws. +

# CIVIL RIGHTS DURING THE STATE OF EMERGENCY

On the 26<sup>th</sup> of December after a month had passed since the declaration of the state of emergency, INSEC organised an interaction programme in Kathmandu on, "Civil Rights during the State of Emergency." Different Human rights activists, reporters, lawyers, members of the parliament, intellectuals and 62 other people from the civil society participated in the programme.

Subodh Raj Pyakurel, General Secretary of INSEC initiated the programme by welcoming all the participants. Mr Pyakurel stated that people must be clarified about the significance of the state of emergency and that they were not yet notified whether the government had followed the procedures of civil and political rights of the UN while suspending the fundamental rights.

Talking about the people abducted by the Maoists, he said they were handed over to the ICRC. ICRC has taken the arrested people by signing up in the presence of INSEC. Apart

- Ministry of Defence has stated that the number of people who have surrendered is 6560 whereas according to a record of INSEC, it is 3386.
- Ministry of Defence has stated that the number of people arrested is 2971 whereas according to the record of INSEC, it is 901.
- Ministry of Defence has stated that the number of people who are killed is 305 where as according to a record of INSEC, it is 561.
- As the government is unable to provide adequate protection to the surrendering people, the condition of being abducted by the Maoists is increasing.
- In the existing prisons, there are already more than 1000 prisoners, beyond the capacity in 2000.

from this, the Maoists have declared that they have formed their army and government in a systematic way. The Maoists are fighting with the government with their combatant dress in a declared way. Therefore

according to the Geneva Convention or the Hague Convention of 1907, the CPN Maoists are seen as the high contracting party. Taking the Geneva Convention its base, the Maoists have been claiming of following it. But the Maoists have violated the Geneva Conventions in mass scale.

Requesting the people to question the government whether it has fulfilled its responsibilities toward the civilians, he went on saying that the injured in the affected areas are not receiving any treatment





and that there were no medical personnel in that area.

Mr Pyakurel revealed, prior to the declaration of the state of emergency, taking an issue of publishing an article regarding the Maoists, Jyoti Adhikari, a reporter from Tehrathum has been pressurised to provide the source of the previous article until now. He also said that co-editor of Blast Daily, a publication from Dharan has been also arrested.

Stating the rationale of the programme, Mr Pyakurel said the programme was organised in order to assess the grave violation of Human Rights informing everyone that the conclusion of this programme would be presented to the government.

Hari Phuyal, Member of INSEC and Advocate starting his turn raised a major question that there is no relation of activating the sub-article 1 of Article 115 and Article 118 as provisioned in the Constitution of the Kingdom of Nepal, 1990. When sub-article 7 of Article 115 was activated there is no use of activating Article 72 for promulgating Terrorist and Disruptive Activities, Control and Punishment Ordinance (TADO), 2001. He said the ordinance can continue even after the end of the state of emergency. According to International Convention on Civil and Political Rights, some of the rights cannot be suspended even in the state of emergency. The Constitution protects the right to life, which has been violated by the present provision. Mr Phuyal further said Nepal is a State Party to the International Convention on Civil and Political Rights So His Majesty's Government had to

inform the UN for declaration of the state of emergency.

Mr Phuyal argued the treatment mechanism has not been functioning as per the ordinance provisioned in the Article 17.5. There is no record of the arrested people and the possibility of the disappearance is more potential.

Mr Phuyal continued even though His Majesty's Government has published the information about the people killed in the course of "Cordon and Search Operation" by the security personnel, the information of the injured has not been given so far. Similarly, some innocent people are being killed in fake encounters. It has also been informed that only those people have been killed who have tried to escape from the security circle. Mr Phuyal argued, "Why aren't they treated but killed only?" Giving an example of the violation of the Geneva Convention by the Maoists, he went on saying that in Salleri of Solokhumbhu district, after abducting 27 police personnel, the Maoist tied their hands and killed. Similarly, in Simletar of Salyaan

district, 12 police were abducted and killed later.

Stating the responsibility of the Supreme Court at this juncture Mr Phuyal said it has right to supervise and monitor the custody. As such, he requested all the concerned to use this right in a joint effort by Human Rights Commission and Supreme Court. Mr Phuyal said at the present situation, it is not relevant to talk about Human Rights of the people who are combatants and are dead in the fight but about those who are still fighting. His argument was that these people should not be tortured and their right to life should be protected.

From the floor on this issue, Former Health Minister and Human Rights Activist Dr Mathura Prasad Shrestha, Chairman of Nepal Human Rights Organisation, Sudip Pathak, Director of INHURAD International Dr Gopal Krishna Siwakoti, Co-ordinator of CVICT Dr Bhogendra Sharma, Member of the Parliament and Co-ordinator of CPN (UML)





abduction cannot be violated in any condition. He expressed the necessity of monitoring the situation of these provisions. Talking about international conventions, he said when a war starts and the provisions of the national laws are suspended, in such conditions, the provisions of the International Humanitarian Laws activate. Giving example of Shree Lanka, he said even in a condition when there is

**Emergency Monitoring**  
Committee Rajendra Pandey had participated. Dr Mathura Prasad Shrestha said according to the Geneva Convention, the doctors have certain rights. It is an international rule to provide treatment without any discrimination. It is also a right of a doctor not to reveal the secret of his patient. No doctors can be arrested in lieu of treating any body. He said Jeetendra Mahaseth, a surgeon working in Nepal Medical College, was arrested by the security personnel and kept in the barrack. Mr Shrestha expressing surprise on the notice issued by the Ministry of Health said that it is against the "Helsinki Ethical Treaty". According to the treaty no actions shall be taken on doctors by any other law.

Participating in the discussion, Sudip Pathak said the state of emergency has been declared by the executives to protect the Constitution, using Article 35 (2) of the Constitution. But His Majesty's Government of Nepal has not been able to clarify with enough arguments.

He said the government should provide actual information to ICRC, reporters and other representatives including Human Rights activists about the incidents occurred during the period of the state of emergency. He further stressed that list of the people arrested has not been publicised so far. According to the ordinance, all the people who are arrested should be brought to the court.

Opposing long range firing and helicopter gunshot, he reminded their organisation has asked to publish the number of people killed in an operation from the helicopter with their identification. He said they had asked the security personnel where they had found the training spots of the Maoists. Now the security personnel are asking them why they had asked.

Dr Gopal Krishna Siwakoti said according to Article 12 of the ordinance, freedom of opinion still remains in the other areas. The UN Treaties are as dynamic as the national laws. In the Constitution too, it is mentioned the condition that right to life, right against torture and right against

a war demanding a free state in Shree Lanka, the army operation is confined to certain areas.

Illustrating situations of some of the countries, Dr Siwakoti said because of the incidents that occurred in Rwanda in 1994, the activists have been asked to be present in the international court. He felt doubt whether a similar situation might happen in Nepal too.

Dr Bhogendra Sharma said the state has approved most of the international conventions but at the present condition when the civil rights have been violated, we don't have any mechanism. He further said at present more than 97 per cent of rape cases are not in the condition to be reported. No one has been able to experience that there is a civil government in the country. Therefore, a secure and reliable mechanism must be set up.

Talking about the arrested civilians, MP Rajendra Pandey said the question we face at the present condition is how to save the innocent people who are arrested. The arrested people are tortured terribly and killed in the



name of investigation. In the ground of anger and envy, many incidents of filed cases without any investigation are coming out. The general people who do not know anything about curfew are the victims of it. The person returning home from the market after selling fruits has been shot dead. The people returning from attending a ritual function in a relative's house are being killed. But the government announces these incidents as the killing of "terrorists" and the remaining members are declared as the family of the Maoists.

Talking about the surrendering cases, Mr Pandey added in some districts this might have been done sincerely, but in some districts, the surrendering persons have been covered into a sack and taken around the market, beaten and then arrested.

Giving clarification, Advocate Hari Phuyal stressed the importance of the discussion regarding the rational of the application of Article 118 and 72 when Article 115 was being applied. He said the people supporting the Maoists are being arrested. If this continues, then the people in favour of the democracy can also be arrested.

Saying that Civil Society has to come ahead to try the legal treatment for the incidents of grave human rights violation, he inquired whether the security personnel have to comply with the laws.

After then, Executive Director of Nepal Redcross

Society Tirtha Raj Wanta initiating discussion on the relevance of International Humanitarian Laws and the Second Protocol of Geneva Convention and common clause three said that International Humanitarian Laws activate during the time of state of emergency and War. He said the government of Nepal has ratified the four covenants of Geneva Convention in 1964; but has not signed up its additional protocol 1 and 2 of 1977. He argued in a state of signing the 4 covenants, there is no meaning of reserving for the 2 protocols. He stressed on the protection of medical unit and transportation during the time of war. As such, he reiterated the need on signing up the protocol. He also expressed ignorance about the Maoists that they have informed the Swiss Federal Government (Deposited Party) for complying with the Geneva Convention. After then, he argued that the Geneva Convention is applicable in Nepal as the government is saying that this is

the time of armed conflict. He stressed on the need of raising voice for activating the common article 3 of the Geneva Convention.

Reiterating the weakness of the government, he informed everyone that his organisation requested information from all the Red Cross branches on the situation of the district and whether there is any need of humanitarian support. He further said that ICRC has repeatedly requested the government not to misuse the Red Cross Sign, which is still being ignored.

Participants, from the floor to talk on the issue, were Raghu Nath Adhikari, Human Rights Activist of ALLIANCE, Arjun Karki, President of the RRN, Sujita Shakya Member of the Working Committee of INSEC, Tapan Bose, General Secretary of SAFHR, Gauri Pradhan Chairman of CWIN, Intellectual Kalyan Dev Bhattarai, and Dr Gopal Krishna Siwakoti and Sudip Pathak.



Raghu Nath Adhikari put a question regarding the issue on what to do with the burnt corpses. Arjun Karki brought out another question if both the parties are bound to accept the Geneva Convention after informing the Swiss Federal Government. Clarifying this statement, Mr Wanta said that as Nepal is the State Party, it does not have to inform the Swiss Federal Government but it is necessary for the other party to do it.

Sujita Shakya said in the war-affected areas the common people are affected more. The people of that area are told to go elsewhere. In this situation, She asked whether His Majesty's Government must do something for the protection of these people. Mr Wanta replied there has been a talk that the Home Ministry is going to help these affected people but as ICRC did not have enough resources, they are not able to provide assistance.

Dr Gopal Krishna Siwakoti said the rebellion party cannot deposit or sign in the international level. It is the legal liability of His Majesty's Government to comply with the Geneva Convention, and just a moral liability for the nonstate party. He said as the nonstate party is torturing the people, but the State cannot do so. Tapan Bose questioned as common Article 3 of Geneva Convention is accepted equal to the International Customary Law, the violation of the

rights by any party is considered a crime. Talking about the case of Nepal, Mr Bose said that the army has no right to arrest people as the present state of emergency is declared by the democratic government.

Mr Wanta added, as Nepal is a State Party to 4 conventions, Customary Law would be definitely applied here. Accordingly, people should not be killed in any condition. He indicated the relevance of common Article 3 to this issue.

Then Sudip Pathak informed among the 22 applications received by the Human Rights Organisations of Nepal, most of them state the trouble they have to bear from the administration because they are relatives of the Maoists.

In the same context, Gauri Pradhan put up a question how we freely sort out the way the government has treated the injured. He further said that a few days back, the Ministry of Health

had instructed that the medical personnel had to inform the government before treating any injured person. He felt doubt on receiving correct information regarding right to medical facility and treatment for the injured according to the international law.

Mr Wanta replied according to the Geneva Convention, the State Party has a liability to inform its entire people about the provisions stated in the convention. But the government has not done anything except publishing the Geneva Convention in 1993. He further said ICRC has been conducting a programme every year in the Staff College. There has not been enough circulation and publication of the Geneva Convention.

In the end Kalyan Dev Bhattarai requested all the concerned to be specific on the practical way to solution rather than discussing on the principles.





Radheshyam Adhikari, MP and Former President of the Nepal Bar Association brought out the topic as how to protect the fundamental rights during the state of emergency.

He said when we talk about protecting the fundamental rights, we must understand it is the fundamental rights given by the Constitution of the Kingdom of Nepal, 1990.

Currently most of them are suspended. He gave emphasis on safeguarding the remaining fundamental rights.

The participants from the floor were Advocate Ramesh Badal, MP and President of MP's Foreign Affairs and Human Rights Committee of the parliament, Advocate Dinesh Tripathi, Gopal Nath Yogi, President of NGO Federation, Banke, Advocate Kedar Koirala and Human Rights Activist Dr Mathura Prasad Shrestha.

Mr Badal said some articles of the fundamental rights of the Constitution still exist. He said according to Article 88, Article 23 must exist for the entrance. Any right that has no remedy is not a right at all. It must be notified that Article 23 will not be applied for the suspended rights but applied only for the remaining rights. At present, many people are not going to the court believing that after the end of the state of emergency, the same case taken to the court again will cause problem.

Som Prasad Pandey said it has not come to the notice from any source in which way the people arrested



are being tortured. He further said some reporters have been heard to be threatened for broadcasting some news. Talking about the rights he said even though our rights are not being suspended, it is difficult to bring them into practice. He requested all to bring out a concrete solution regarding this matter.

Dinesh Tripathi stated even though other rights are suspended, the court could contribute from its part by using Article 88 (1) to protect the citizens' rights. He said according to our Constitution, the rule of law and Human Rights cannot be suspended in any condition. The court can play its part in this concern. The security personnel are arresting the people and keeping them under their control, which is a very serious matter. At present, the security personnel are talking about "Search and Destroy Operation" but he viewed the army can not get the right to destroy when the right to live still exists. As such he said Human Rights Commission should give necessary instructions. He also requested the Bar Association to pay attention to it.

Showing the importance of a mechanism for the civil society from centre to the district levels, Gopal Nath Yogi said in a law firm of Nepalgunj, among the four working members, three were arrested in lieu of making underground to their friend. He said that the lawyers themselves are afraid to talk about this and the reporters are not willing to write on this matter. Later, after a talk with the CDO along with the Human Rights activists, they were released in the evening.

Kedar Koirala put up a question whether "Search and Destroy Operation" by the army be filed in the court as a case against right to life. He explained in the situation when all authorities and the mechanisms are mentally inclined towards the despotic character, if the human rights activists like us do not make the people aware of the present situation then still more people will be victimised. We have to set up a mechanism to put pressure to follow the articles that are not suspended.

Dr Mathura Prasad Shrestha added in the situation when all authorities and the mechanisms are mentally inclined towards the

despotic character, if the human rights activists like us do not make the people aware of the present situation then still more people will suffer. We have to setup a mechanism to put pressure to follow the articles that are not suspended.

Giving clarification, Radheshyam Adhikari expressed his view as stated by Ramesh Badal, with the help of the Article 88 (1) and (2) we can go for the legal remedy. He said it is not necessary to look at the Article 72 in connection with the state of emergency but it is the Article 115 (7) that should come along with the state of emergency. The state of emergency can end but the ordinance may remain as it is.

Daman Nath Dhungana, Former Speaker and Convenor of the Government-Maoists talk spoke about the Human Rights conferred by the Government of Nepal in regard to the state of emergency. He stated organising this programme after the completion of one month of the state of emergency is relevant. He said the state is falling in the midst of weapons. The important question is how we come out of this crisis. He added the state of emergency has not been approved by the MPs but decided and implemented by the ruling party. The ordinance has been brought in with a different perspective. This has been brought with the motive to continue even when the state of emergency ends. At present, the government has threatened the people to treat them as the



supporters of the Maoists if they oppose its decision. But the civil society is not a party that joins the politics and that deals with the murder and violence. He said the present government is scared of the civil society. He further explained that the state must support the armless party and facilitate to fulfil its duties. The people are definitely not supporting the killing and violence of the government. They are the supporters of democracy. The reaction of the people in a month's period shows that the rational for the state of emergency has ceased. The people have approved the actions of the constitutional government peacefully in favour of the democracy, he stated. The civil society must make the Prime Minister responsible for it. It is high time to restrain the ordinance. The Human Rights Commission should play a vital role to stop this kind of injustice. The Commission has to work on this. We must not let the civil government turn into a government ruled by the army. Whatever is happening now, we must not say anything to the army,

administration and the police but talk to the elected Prime Minister.

In the same context, Chairman of National Human Rights Commission Right Honourable Naiyan Bahadur Khatri extending remarks on the issue said whatever is going on, it is done in a legal way. Civil administration is being conducted in a systematic way. "Cordon and Search" and "Search and Destroy" is one of the processes. There may be a way or process to end the state of emergency. He expressed the confidence that at the present condition, there is everything, rules are there, law is there but there is no dedication to make this work a success. No rights have been restrained, just suspended for a certain period. After the completion of three months, the government has set a system where the incidents regarding the violation of the human rights occurred during the state of emergency, will be heard legally. He questioned, "Why are we in a hurry right now? He continued in the present condition, the Prime Minister of the state of emergency has the equal rights



as that of the Prime Minister of the Civil government. The state of emergency is applied so that the Prime Minister can take help from the army to establish law and order in the state. At the time of state of emergency, only necessary force must be used. Finally he believed that the problems regarding the issues raised above would be solved by the table talk.

From the floor, Kalyan Dev Bhattarai, Shyam Shrestha, Secretary of the Movement for the Protection of the Democratic Rights, Arjun Karki and Sudip Pathak put forth different questions in connection with the expression made by Mr Khatri.

After hearing these all, Mr Khatri clarified that if the government tries to control the matter in coercive manner, then it will not be forgiven.

Senior Reporter P Kharel spoke about the role of the press for the protection of the right to information during the state of emergency. He said that in a country where there are four hundred reporters, the real fact does not come out, nor is there any follow up of the news. This shows the weakness of the media people. Even the government media is not accountable, the private media must not fall back. Reporters must maintain their ethics and social liabilities. At the general condition, anyone can work but we can identify a genuine person during the state of emergency, Mr Kharel said. He also urged the media persons not to be frightened in the present situation because media is such a force that was not scared even during the Panchayat regime. He expressed worry on the provision of taking

permission from the Ministry of Defence to take photograph of the security personnel and the rebellion. Even during the state of emergency, the reporters have to play their professional role. Mr Kharel said as Nepal is the only country in the South Asia, which provides the right to information in its Constitution, and such right is provisioned only in 15 countries of the world, we should not be much afraid of the present situation.

After that, Honourable, Sushil Pyakurel, Member of the National Human Rights Commission extended his views on the inviolable provisions of human rights. He said the Articles 6,7,8,11,15,16 and 18 as provisioned in Covenant on Civil and Political Rights, 1996 cannot be suspended even in the time of state of emergency. Accordingly, the state has also signed on it. The rights mentioned in the UN treaties where Nepal is a State Party are the rights of the Nepalese people. We are taking a stand on that. We must work on it as much as we can. He further said at the present situation, the National Human Rights Commission is seriously watching the situation. Talking about the concern that Human Rights Commission has not done anything at the time of state of emergency, Mr Pyakurel said the Commission organised a press conference in which it requested His Majesty's Government to be patient and think thoroughly before taking any action. He believed that if we lose our patience, then that would result in a mass killing. Talking about the activities the Commission was doing Mr Pyakurel said a team from their authority visited the Prime Minister and put

forward mainly two questions- matters regarding the injured people and pre-caution the government is taking for the casualties. He questioned the army goes for his operation from Rukum, Rolpa to Salyan and Solu but whether the government checks the number of doctors, medicines and other necessary materials in the hospitals before going for the operation.

At the end of the programme, General Secretary of INSEC Subodh Raj Pyakurel informed everyone about the proceeding on "A month of State of Emergency" and believed that this would fit as a complete material to the National Human Rights Commission, Human Rights Organisations, reporters and civil society. Finally, he thanked everyone present and concluded the programme.

## CONCLUSION

The following conclusions were drawn in the programme:

- At any cost, there should be a rule of law.
- The nation has to show commitment to fully comply with the International Humanitarian Law during the state of emergency.
- At this time, the whole civil society must move forward with courage to enforce the implementation of the mentioned acts.
- National Human Rights Commission and other Human Rights organisations must form a network in order to protect the people's right to information.
- The media must be free from fear.
- The lawyers must come forward to enforce the implementation of the rights that cannot be violated at any cost.

# Letter of Amnesty International to the Prime Minister

30 November 2001  
Ref: TG ASA 31/01.17

**SHER BHADUR DEUBA**  
Prime Minister  
Office of the Prime Minister  
Singha Durbar  
Kathmandu  
Nepal

**Dear Prime Minister,**

I am interested to draw your attention to several issues from the recent declaration of a state of emergency, the promulgation of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2001 (hereafter TADO), declaration of the Communist Party of Nepal (Maoist) (hereafter Maoists) as "terrorists" and the deployment of the army to combat the Maoists.

First of all, I would like to stress that Amnesty International appreciates the grave threat to law and order facing the country after the Maoist Leader called of the cease-fire on 23 November and subsequently attacked army camps, police stations and public and private property in Dang, Syangja, Baglung, Surkhet, Tanahun, Solukhumbu, Kathmandu and several other districts, reportedly resulting in the killing of 18 soldiers, 51 police personnel, a Chief District Officer and four civilians. We acknowledge that the government has a right and duty to protect the rights and safety of the people, and we have appealed to the Maoist leadership to bring an immediate halt to unlawful killings and other abuses of international humanitarian law.

However, any legislation enacted or action taken by the government must be in full conformity with international human rights standards. Indeed, it is our strong conviction that especially in difficult situations such as those currently prevailing in Nepal, human rights must be protected with extra vigilance.

Under Article 4 of the International Covenant on Civil and Political Rights

(ICCPR), to which Nepal is a state party, states may suspend certain rights in times of emergencies but only "to the extent strictly required by the exigencies of the situation", as long as the suspension does not conflict with the nation's other international obligations and if the state of emergency is officially declared and the government immediately informs the United Nations (UN) Secretary General about what rights have been suspended and why. Article 4 (1) of the ICCPR also specifies that derogation should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

We are concerned that the government in declaring the state of emergency has suspended throughout the country sub-clause (a), (b), and (d) of Clause (2) of Article 12, Clause (1) of Article 13 and Article 15, 16, 17, 22 and 23 of the Constitution of Nepal. Amnesty International is concerned that the suspension of these rights – the right to freedom of thought and expression, assembly and movement, the right not to be held in preventive detention without sufficient ground, the rights to information, to property, to privacy and to constitutional remedy – throughout the country goes well beyond what may be considered to be "strictly required by the exigencies of the situation" and therefore might be regarded by the Human Rights Committee to be in violation of Nepal's obligation under the ICCPR.

The suspension of Article 23 of the Constitution which denies people access to judicial remedy (apart from habeas corpus) is of particularly grave concern. It prevents judicial scrutiny of the measures recently taken by the government, including the declaration of the state of emergency and the promulgation of the TADO. In Amnesty International's view, this is contrary

to the provisions of Article 2 (3) of the ICCPR. In its General Comment of Article 4 issued on 24 July 2001, the Human Rights Committee said that Article 2 (3) requires a state party to the Covenant to provide remedies for any violation of the provisions of the Covenant. The Committee stated:

*"This clause is not mentioned in the list of non-derogable provisions in article 4 paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a state party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of their procedures governing judicial or other remedies, the state party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant, to provide a remedy that is effective."*

Amnesty International is concerned at the grave threat to the right to life in Nepal under the current circumstances. Article 4 (2) of the ICCPR clearly states that there can be no derogation from the duty to uphold the right to life and the right to freedom from torture in any circumstances, even "in time of public emergency which threatens the life of the nation." Given the regrettable fact that the Constitution of Nepal does not explicitly guarantee the right to life, we are concerned that the declaration of the state of emergency and the suspension of the fundamental rights as set out above, could be interpreted by the army and the police personnel to include a suspension of the right to life. We therefore urge you to send a clear message to the army, police and other forces involved in the armed conflict with the Maoists to uphold the right to life at all times and stating clearly that anyone responsible for unlawful killings will be brought to justice.

We are particularly concerned about the reports that the army and police



in Syangja, Gorkha, Udaypur and Salyan have been given the authority to "shoot on sight" any curfew violators. Again, this appears to give official sanction to the security personnel to commit extrajudicial executions. Providing such powers would be in direct violation to Article 6 of the ICCPR which guarantees the right to life and its protection by law and prohibits arbitrary deprivation of life. In its General Comment 6 on Article 6, the Human Rights Committee has stated: "The protection against arbitrary deprivation of life...is of paramount importance. The Committee considers that state parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security personnel. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and the circumstances in which a person may be deprived of his life by such authorities.

While Amnesty International does not take a position on the deployment of the army per se, we would like to raise various questions with regard to the operation aspects of this decision:

- Under the Army Act of 1969, the army has the authority to arrest people and hold them for up to 48 hours. Given that this provision contradicts the constitutional requirement under Article 14 (6) that anyone who is arrested and detained should be produced before a judicial authority within 24 hours of arrest, will the government clarify what directions the army personnel has been given in this regard?
- At which places of detention are people held after their arrest by the army?
- What safeguards have been put in place to ensure the safety of the detainees held in the custody of the army?
- What are the processes of accountability for any possible

human rights violations by the army?

The latter question arises from reports that army personnel deliberately killed Maoist combatants who had been put hors de combat by being wounded or being taken prisoner at Solukhumbu on 25 November in violation of one of the principles laid down in Article 3 common to the four Geneva Conventions of 1949 applicable in situation of internal armed conflicts. It also arises from allegations of other unlawful killings reported from Dang and Salyan districts over the last few days. It moreover gives way to our organisation's concerns about the lack of investigation into the hundred of extrajudicial executions already committed by the police throughout the six years since the declaration of the "people's war" by the Maoists in 1996, and the fact that no one has been held accountable for them.

As you know, Amnesty International has been concerned for a long time at the lack of independent investigation into allegations of extrajudicial executions in Nepal. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, as the UN Commission on Human Rights in April 2001 when she reported on her visit to Nepal in February 2000; has also stressed the "urgent need to put in place strong, independent and credible mechanisms to investigate and implementation of this recommendation is of paramount importance".

Amnesty International is therefore calling on the government to provide all necessary assistance to the National Human Rights Commission to ensure its independent and effective functioning, including to ensure it has the capacity to monitor and investigate any complaints of human rights abuses made in the current situation. We are also urging you to allow the International Committee of the Red Cross to monitor the adherence to international humanitarian law.

With this regard to the definition of "terrorist" and "person who works in collusion with the terrorists" contained in TADO, we are concerned about the vague definition used which includes "any individual who is in contact with or involved with the person involved in terrorist and disruptive activities" and "any person who directly or indirectly supports financially and by any other means a person or group involved in terrorist and disruptive activities". We are concerned that several of these terms may indicate activities, which do not involve any encouragement to commit violent or criminal acts. On the contrary, it might include the peaceful, private discussion of political ideas. This wording could thus apparently lead to violations of the right to freedom of expression established in Article 19 of the ICCPR.

We are shocked at the provision contained in Section 9 of the TADO which permits "any person deputed by the government for the purpose of preventing and controlling terrorist and disruptive activities and police or armed police and army" to issue a detention order "when there is reasonable ground to believe that somebody should be stopped from committing any possible terrorist or disruptive act". Under such detention orders these people can be held in detention for up to 90 days. This period can be extended to 180 days with the endorsement of the Home Ministry. It is unclear which procedural safeguards, if any, apply to this process, for example to prevent such detention from becoming arbitrary, or facilitating ill-treatment.

While acknowledging the need for the government to take adequate measures to tackle the grave threat to law and order that has arisen, we call upon you to consider the issues raised above to ensure that human rights do not become victimized in the process.

Yours sincerely,

**Gerry Fox**  
Director

Asia & Pacific Programme

# SOME IMPORTANT CHRONOLOGICAL EVENTS



Note: 1. 'Security personnel' denotes police or armed police or the Royal Nepalese Army or any individual deputed by His Majesty's Government to prevent or control the terrorist and disruptive activities.

- TADO, 2001, Article 2 (f)

2. Incidents caused by the Maoists are italicised.

After the third phase dialogue, Prachanda, Chairman of CPN (Maoists) declared suspicion on the solution of the present political situation through peace dialogue. The following chronological incidents developed in Nepal after it:

## November 21, 2001

- Prachanda, Chairman of CPN (Maoist) in a press statement stated that the significance of cease-fire that its party had declared four months earlier was over as the government locked all the possibility of reaching the solution of the

*present political situation through peace dialogue. The press statement further stated, "In this respect, we would, through this statement, like to clarify that the want of all the public and our party to reach a peaceful solution to the present political situation has*

*been shattered by the imperialists and the reactionaries." The same statement expressing the possibility of further dialogue with the government announces, "We will not close the prospect of the dialogue with the government if it turns*



*in favour of fulfilling the basic welfare of the public."*

#### **November 23**

- Maoists by breaking the understanding of the dialogue with the government, attacked with armed force and bomb in more than 25 districts of the country like Dang, Syangja, Surkhet and others.
- o In Dang District, 14 Army, 9 police and 3 other civilians were killed. In Ghorahi, different offices like District Administration Office, District Police Office, Bhagawati Prasad Barrack of Royal Nepalese Army, the residential areas of SP (Superintendent of Police), Chief District Officer (CDO), District Forest Office, Land Tenure Office, Agricultural Development Bank and some offices of Narayanpur like Area Police Post and National Commercial Bank were attacked and looted. Worth of around NRs 70 million with cash and kind was looted by the Maoists from banks and other offices. All the prisoners were made free by demolishing the jail there.
- o Later on 6 January 2002 it was stated that 4 Maoists were killed in the incident as published by the Maoists themselves and others.
- o In Syangja District, 14 Police were killed. Attack on the offices like District Administration Office, District Police Office, Jail Branch and Area Police Post, Waling. All the prisoners of the jail were made free.
- o In Surkhet District, a parked helicopter belonging to Asian Airlines was damaged.

- Maoists declared their parallel central people's government of 37 members under the co-ordination of Dr Baburam Bhattarai, leader of the Maoists. It was named as "Sanyukta Kramtikari Janaparishad Nepal (Joint Revolutionary People's Council), Central Working Committee." The Vice-Chairman of the committee was Krishna Bahadur Mahara, one of the deployed members in the dialogue programme with the government in which Dev Gurung was Secretary. The committee was formed on the occasion of the national level meeting in the second week of September at Kureli VDC, Dhangdhung of Rolpa.

#### **November 24**

- In Surkhet District, the Maoists killed 4 armed force police in an ambush while they were heading towards Surkhet from Nepalgunj in a truck. Some other policemen were also wounded.
- His Majesty the king summoned Prime Minister Sher Bahadur Deuba in order to get information on the event caused by the Maoists in different parts of the country on 23 November 2001.
- A meeting of all parties was held at the residence of the Prime Minister, Baluwater in which the leaders of the main opposition party including all the other opposition party leaders had expressed their opinions against declaring the state of emergency, which was in the offing.

#### **November 25**

- In Solukhumbu District, Maoists attacked at Salleri, the headquarters at night. The Chief District Officer (CDO), 28 police, 4 army and 1 prisoner were killed. The Maoists attacked on the telecommunication tower of Phaplung, District Administration Office, District Police Office, Agricultural Development Bank, Land Tenure Office, Residence of the CDO and the residence of District Superintendent of Police (DSP). Four other houses of the citizens were also attacked. More than 100 thousand of NRs with the similar worth ornament was looted from the Nepal Bank limited. The loss in Maoist side was unknown. Only 15 dead bodies were found.
- In Kathmandu District, Rabindra Shrestha, Central Level Leader of CPN (Maoists) and his wife Laxmi Shrestha, Member of All Nepal Woman's Association (Revolutionary), were arrested by the police from Naya Bazaar. It is said that Mr Shrestha was injured in his left hand. According to the statement made by the police, Rabindra was hurt himself when he tried to shoot the police with the revolver he had with him. Later on 24<sup>th</sup> December it was publicised that Mrs. Shrestha was put into custody at Women Imprisonment House by giving her warrant.
- Prachanda, Chairman of CPN (Maoist) in a press statement took responsibility of the other day's attack by his party's militia. The statement also disclosed the formation of the "Janamukti Sena" (People's Liberation Army) in which

*Prachanda himself was said to be the supreme commander.*

#### **November 26**

- The government declared the Maoists "terrorists."
- His Majesty the King, on recommendation of His Majesty's Government, promulgated an ordinance on "Terrorist and Disruptive Activities, Control and Punishment Ordinance, (TADO) 2001. In media sector, the following provisions were made:

#### **ISSUES RESTRICTED TO BROADCAST/PUBLISH**

- Affecting or insulting His Majesty the King or the royal family members.
- Affecting or insulting the sovereignty of the kingdom of Nepal.

- Affecting the protection, peace and the governing system of the kingdom of Nepal.
- Carrying a negative effect among different castes, ethnicity, religious groups, class and community people.
- Hurting and shocking the civilians, their faith, morality and social norms.
- Opposing the Constitution of the Kingdom of Nepal-1990.
- Helping to make the multi-party democracy weak.
- Encouraging terrorism and apartheid in order to have geographical division and others.
- Insulting, humiliating and shocking the personality of the army, police and civil servants.
- Encouraging the Maoists to involve in terror.
- Causing the government to be weak and overthrow through violent movements.
- Creating unnecessary fear and terror among the public.
- Issues that undermine devalue and insult any caste, language, and religion of the Nepalese people.

#### **ISSUES NOT RESTRICTED TO BROADCAST/PUBLISH**

- Sketching the real identity of the "terrorists" (that is the Maoists) movement by being cautious of not making the issue in favour of them.
- The appreciative deeds of the Royal Nepalese Army and Police's regarding their contribution and faith.
- The verified news from the authority of the government (that is the Ministry of Defence at present).
- His Majesty the King, on recommendation of His Majesty's Government, promulgated State of Emergency in Nepal. With

this, His Majesty the King, on recommendation of the Security Council, proclaimed the deployment of the Royal Nepalese Army throughout the country for eliminating the terrorist activities.

- Prime Minister of India, on a telephone conversation with the Prime Minister of Nepal, supported the declaration of the state of emergency in Nepal, which was stated by the speaker of the Foreign Ministry of India.
- The American Embassy supported the state of emergency declared with an aim to establishing peace and



#### **DADEL DHURA**

The police held Prem Bahadur Saud, Programme Co-ordinator of Human Rights and Public Awareness Centre affiliated with INSEC, in custody straight from the office on the 3<sup>rd</sup> of December. The police said that he was taken into custody for participating in the activities held by the Maoists. Mr Saud has been working actively in the field of human rights movement for more than two years.

#### **SURKHET**

Bishnu Prasad Khanal, Co-ordinator of Amnesty International Lawyers Group-69, Surkheta District, was called at the police office at 5:30 in the evening of 27<sup>th</sup> of November. Mr Khanal was reading a newspaper near Sangam Book Shop situated in Birendranagar at that time.

#### **SOLUKHUMBU**

The police seized a camera from Tej Narayan Rajbhandari, District Representative of INSEC while taking photo of dead Maoists in Salleri, Solukhumbu District on the



tranquillity in Nepal. The embassy, welcoming the attempt of the Nepalese government, also condemned the brutal attack made by the Maoists in the different places of Nepal in the recent days.

- The European Union, supporting the Nepalese government's present step taken for the welfare of the Nepalese people, requested the Maoist cadres to come up to the negotiating table. The union also praised the decision of the Deuba cabinet for resuming peace talks with the Maoists. The version was

also supported by the Head of Mission, Norway.

#### November 27

- Diplomatic agencies in a press meeting that was organised by Prime Minister Sher Bahadur Deuba supported the declaration of the state of emergency.
- The Indian Embassy, issuing a statement, supported the declaration of the state of emergency in Nepal and "terrorists" to the Maoists by the Nepalese government. The embassy also made clear that they would not let the Maoists use their land, which would go against the

Nepalese sovereignty. The embassy further informed the Indian Prime Minister's support for the step taken by the Nepalese government by condemning for the brutal attack made by the Maoists in recent days.

- In Rolpa District, according to the army officials, more than 50 Maoists were killed by the army in a search attack at Nuwagaun, Khunri, Holeri and Kotgaun.
- In Rolpa and Pyuthan Districts, the army news department on 28 November 2001 informed of the killings of different 'armed brigands'

## Human Rights Activists Arrested

26<sup>th</sup> of November. When he protested, the policeman answered that the Minister had instructed him to do so. He further told Mr Rajbhandari that his camera would be returned later. Later, on the 28<sup>th</sup>, Mohan Khadka, District Superintendent of Police (DSP) himself brought back the camera to the staff at home but according to the district representative the reel had been removed.

#### SYANGJA

Tim Kumari Kumal, aged 29, a working committee member of INSEC affiliated Human Rights Education and Development Centre, was arrested by the police on 29 November 2001. She was elected to the post in 2000. She is also the office secretary of Cottage Industries Development Committee. She has been kept in Kaski District Police Office currently. The Coordinator of INSEC Western Region and other friends

were not allowed to meet her. According to the police, she cannot be released at this moment.

#### CHITAWAN

Dharma Raj Acharya, Central Member and District President, People's Rights Concern Campaign, Chitawan; Rabimohan Sapkota, District Member; and Bhimraj Adhikari, Central Member, Nepal Human Rights Organisation were arrested by the police from their houses on charge of supporting the Maoist activities. Later, all of them were detained by the district administration on 16<sup>th</sup> December 2001.

#### TEHRATHUM

Jyoti Adhikari, Chairman of Public Awareness Campaign affiliated to INSEC was arrested by the police and taken to the District Administration Office on 19 December 2001. He was released on bail.

NB: Above incidents represent the violation of the general obligation of state to promote, protect and implement human rights, as well as their duty to take all necessary measures to protect human rights defenders from violence and arbitrary action, as highlighted on the Human Rights Defenders' Declaration, Paris, 1998. Such state activities have been directly violating the article 1 (*The Right of everyone to promote and protect human rights*), article 2 (*The responsibility of the state to promote and protect human rights, including the rights of human rights defenders*), article 6 (*The right to receive and disseminate human rights information and to draw public attention to human rights violations and to be protected against violence or adverse discrimination*) and article 12 (*Obligation of the state to protect fully human rights defenders against any attacks, violence, threats and discrimination, and to adopt all necessary measures to ensure that individuals and groups are fully protected by law and in practice*).



by the Nepalese Army in different places of Nepal. Accordingly, 22 were killed in the border of Rolpa and Pyuthan and others 7 were killed in another similar attack. Similarly 5 were arrested with cash worth NRs 18 lakh 1 thousand 2 hundred and 67 and some weapons.

#### November 28

- Prime Minister of India, on a telephone conversation with King Gyanendra Birabikram Shah, expressed willingness to assist Nepal "in any kind of need" in connection with the war against the "terrorists."
- In Dang District, the army shot dead 11 local farmers engaged in a dispute on the share of the crops with the landlords at Bargadi of Tribhuvannagar Municipality. Among the casualties were Asharam Chaudhary, Krishna Chaudhary, Jogi Chaudhary, Ripu Chaudhary, Ramu Chaudhary, Parashu Chaudhary, Situ Chaudhary, Jagaman Chaudhary, Khushilal Chaudhary, Rup Lal Chaudhary and Sangra Chaudhary.

- The Home Ministry in a statement requested all the citizens to be cautious for the matters of the national security.
- The Central Committee meeting of the Rastriya Prajatantra Party (RPP) called on His Majesty's Government, the ruling party as well as all the other political parties and the civil society to take effective steps towards giving a political way out of the existing problems by taking a meaningful steps and working for national consensus among all the political forces of the country.

#### November 29

- In Salyan District, the army news department announced of a killing of 70 "terrorists" on 28 November. In the similar incident, 8 Maoist activists, 4 staff members of the World Food Programme (including the driver and helper of the truck) and one local person waiting at a rural-flour-mill (ghatta) were shot dead by the army near

the confluence of Sharada and Malta rivers.

- Bhakta Bahadur Shrestha, Co-ordinator of the National People's Movement Committee desolved the committee stating that there was no significance of it in the present context.
- In Kathmandu District, a bomb blast was made by the Maoist at the Botlers Nepal limited, Balaju in which more than worth of 15 million NRs was in loss.
- The Central Committee Meeting of the CPN (UML), deciding in favour of the declaration of the state of emergency, concluded that the situation should be ended as soon as possible so as not to suspend the fundamental rights of the people for long.
- CPN (UML) formed a monitoring task force of MPs under the co-ordination of Rajendra Prasad Pandey, MP in order to draw attention of the government

### PREGNANT WOMAN BEATEN BY THE MAOISTS

In Jajarkot District, Lalita Khatri, aged 28, was beaten severely by the Maoists for not giving food at Jhapra VDC-4. The injured was beaten by nettle and water, which caused her miscarriage. This was stated in the Kantipur Daily on the 16<sup>th</sup> of January quoting the Chairman of the Jhapra VDC.

### PRISONERS ESCAPED

In Surkhet District, 30 prisoners escaped from the prison on 15 January 2002 by digging a 30 feet long tunnel. Among the escapees, 25 were imprisoned and 5 convicts. There were 12 who were convicted of committing a crime against the state, 11 for murder cases, 2 for trafficking, 2 for robbery and 3 for other cases against the state, as stated by the Prison

Administration. The investigation team has been formed under the coordination of Umesh Prasad Mainali, Executive Director of the Jail Management Department which consists of three members, Saradha Bhatka Ranjit, Senior Superintendent of the Police Headquarters and Karna Dhway Thapa, Senior Superintendent of the National Investigation Department to investigate the case and present a report, as stated by the Ministry of Home.

### Maoists Insulted a Lady Teacher

In Tanahu District, Sobita Neupane, aged 30, Headteacher of Mahadebata Primary School located at Barbhanga Yang VDC, Sherpa Bagaincha was manhandled, took out from the classroom and cut her hair by the maoists on 18 January 2002.



on the events during the period of the state of emergency. The members of the task force are Parsuram Meghi Gurung, Bir Bahadur Singh, Urmila Aryal and Dharmanath Prasad Shah.

#### November 30

- Home Ministry in a statement requested all the concerned to inform of the strangers who may be the "terrorists" and may settle in any lodge, hotel and others.
- Health Ministry in a statement requested all the concerned to take permission or inform of the treatment of the wounded that come to their clinics or hospitals.
- Minister of State for Health warned health institutions to take permission of security personnel for the treatment of the 'terrorist' prior to it. He further said that the proceeding without consent of the authority would be punishable.

- In Rolpa District, five citizens including Bali Ram Thapa, aged 36 of Khumel-4; Man Bahadur Gurung, aged 65, of Khumel-5; Phursi Roka, aged 12 of Khumel-4; Dil Bahadur Gharti, aged 28 of Khumel-6; and, Gayatri Gurung, aged 60 of Khumel-6 were shot dead by the security personnel in a helicopter gunshot at Meldhara, Khumel VDC-4. The people were gathering there to observe a religious festival Baraha Pooja in Meldhara. In the same incident, seven others including Man Bahadur Gharti, Tija Pun, Ganendra Gharti, Kirte Damai, Balu Gharti (Pujari), Nara Bahadur Gharti and Shyam Kale Thapa were injured severely.

#### December 1

- Russia, China and Japan supported the declaration of the state of emergency by the Nepalese Government.
- In Rolpa District, news of killing of 37 "terrorists" in the war between the army and the "terrorists" was broadcast.

- The Royal Nepalese Army published the start of "Cordon and Search Operation" in order to demolish the Maoists' strongholds and other inns through both air and land attacks.

#### December 2

- The joint meeting of 10 leftist groups demanded both the government and the Maoists to end the present situation through peace dialogue.
- Prime Minister Sher Bahadur Deuba in a press meeting organised in PM's Residence in Baluwatar, stated that even though there are some obstacles in the news broadcast due to the geographical problems, His Majesty's Government is keen on making it on time. He also made it clear to all the concerned that His Majesty's Government is trying to make the news broadcast more scientific and easily achievable. He further stated that the state of emergency is not intentionally targetted to other than the Maoist "terrorists."



## SURRENDER DAY ONCE A WEEK !

The number of the surrendering Maoists in the different districts is increasing day by day. The human rights organisations, in this respect, have demanded the government to make an easy process for the surrender cases. They also have demanded the government that there should be the monitoring system of the daily occurred incidents in the process of fighting the "terrorists" by its authorities. In this respect, the Parbat Administration Office has made a provision of registering the surrender cases once a week (that is on Friday) which was notified on the 5th of December. This has created problem to the concerned. Moreover, the rule that the subject has also to submit a pass port size photo a long with the file till Thursday for the purpose has added the next burden. In such a critical situation the surrender cases should be encouraged to file even in the days of the public holidays. The decision of the Parbat Administration Office to receive the applications only on Friday has made everyone surprised and sad.

### December 3

- The Ministry of Defence and the Royal Nepalese Army, issuing a request statement, asked all the concerned to let them know about the incident of any terrorist activities or whereabouts of them to assist the campaign against terrorism.
- An all-party meeting held at the office of the Communist party of CPN (UML) decided to monitor the state of emergency in order to warn the government for the misuse of power.
- Amnesty International, expressing worry on the declaration of the state of emergency in Nepal, requested the government not to make the human rights activists its victim.
- Home Ministry publicised news of surrender by around 700 Maoists in the districts like Nuwakot, Okhaldhunga, Ramechhap, Rasuwa, Sankhuwasava, Gorkha, Syangja and Baglung.

### December 4

- Ministry of Defence issued a press-statement on 4<sup>th</sup> December 2001, stating that 200 Maoists were killed in the cross fire with the security personnel in the Solukhumbu District on the 25<sup>th</sup> of November. It was also mentioned that the Maoists cut-off the heads of some of their comrades who were killed in the same incident. The bodies were found in the jungle.
- In Sindhupalchowk District, Prakash Lamichhane, a resident of Mahankal VDC,

was dead in an ongoing treatment at Dhulikhel Hospital of Kavre District who was shot by the security personnel near the Lamosangu Hydro-electricity Project. The victim was shot on the 3rd of December. He was in his relative's house and had just come out on his personal business at that time. The victim is said to be the supporter of the ruling Nepali Congress.

### December 5

- The Foreign Department of the United States sought clarification on the guidelines for press and medical personnel circulated recently by the Minister for Information and Communications and the Minister of State for Health.

### December 6

- Jaya Prakash Prasad Gupta, Spokesperson of HMG and Minister for Information and Communications, took back the decision of releasing the Maoist detainees. The decision was one of the major progresses of the third phase dialogue between the Maoists and the government.
- In Dhanusha District Chandradip Yadav, aged 56, Uttimlal Yadav, aged 35 and Devkumar Yadav, aged 26 were shot dead by the police after arrest. According to Hem Bahadur Gurung, Senior Superintendent of Police (SSP) the victims ran away from the police van. Among the dead, Chandradev and Uttimlal are father and brother respectively, of Ajablal Yadav, Central Leader of the

CPN (Maoist). Ajablal was arrested on April 3, 2000 and disappeared for one year. Later he was released during the phase of peace dialogue on 16th October 2001.

- The council of Ministers formed a 24 member Emergency Situation Management and Coordination Committee under the convenorship of Chiranjivi Wagle, Minister and Central Committee Member of Nepali Congress. The committee, in the same day instructed the concerned authorities to improve the management of the government services like, water supply, electricity, telephone (repair and connection) land registration, property transfer, issuing citizenship and passport so that the public do not suffer to get a timely service.

### December 7

- The government, for the emergency period, formed a 14 member Health Management Committee under the chairmanship of Saratsingh Bhandari, Minister of State of Health, for managing the treatment of the injured by the security personnel as stated by the meeting of the Council of Ministers on 30 November.
- The Health Management Committee decided to make a provision of informing the treatment of the injured coming into different clinics and hospitals to the Security authority. Meanwhile the committee also formed a central level committee named Disaster



Management Team at Bir Hospital. The team was provisioned to be on duty for 24 hours and to go out of the valley too, if need be.

- In Nuwakot District, Khet Prasad Lamichhane, aged 24 of Bageswori VDC-3 and Gyalchen Tamang of Yarcha VDC of Rasuwa were shot dead by the security personnel while shooting indiscriminately. According to the locals, Mr Lamichhane was not the supporter of the Maoist. The unidentified dead was said to be a shopkeeper.

#### December 8

- In Siraha District, Sibhanarayan Yadav (Sibhu) aged 30 was arrested by the police from Ramkhelauna Mahato's house at

Brahmahaan Gorchari VDC at Midnight. He was a resident of Sonmati Majhauila VDC-8. He was tied in the mango tree and beaten severely. Afterwards the police made three air fires before shooting him dead. The next day, the police asked the family members to take his dead body to the Zonal Hospital for the post-mortem.

#### December 9

- In Salyan District, the Maoists attacked the military guards of the Repeater tower of Nepal Telecommunication Corporation situated at Dhanwang. Among the Maoists killed in the cross fire, 11 casualties were found. Two army men were killed. As stated by the Ministry of Defence, many from the

*Maoists side were seriously injured and the bodies of the casualties were carried away by the Maoists themselves.*

- In Dang District, four representatives of the International Committee of the Red Cross (ICRC) reached there in order to study the situation created after the violent attack by the Maoists and to learn about the situation of the Tulsipur jail at the same district.
- In Bardiya District, an ambulance, Bhe.1.Kha. 485, of the Red Cross Society was destroyed in an ambush placed by the Maoists in Kalika VDC-8, Rajapur while it was heading towards Nepalgunj with a woman patient from Guleria.

## ABOUT THE DECEASED IN KANEPOKHARI

**I**n Morang district, three unidentified persons were shot dead by the security personnel on December 9, in a forest of Bayarban VDC-9, Kanepokhari. Though, security personnel stated informally that three persons were killed in an encounter.

In this connection, suspicion that those 3 deceased could be from the Sunderpur VDC came out in an all party meeting held on 17th December. In the meeting Tanka Bahadur Thapa and Bharat Shrestha of ward No.3 and Paltan Singh alias Ashok Rai of ward No.6, Bhoj Raj Phuyal of ward No.2 were arrested on 7th and 4th Dec. respectively. The question on whereabouts of those persons was raised in the meeting.

On 17 December, a delegation also met the Chief District Officer (CDO) in Biratnagar, the district headquarters and demanded to publicise the information on those missing. But, CDO Dolakh Bahadur Gurung expressed his ignorance on this matter.

On the same day, the VDC also organised a press conference in the auditorium of Forum for the Protection of Human Rights and Environment (FOHREN) in Biratnagar. On that occasion the VDC Chairman Krishna Prasad Dahal expressed his view in connection with the incidences.

On 9th December, the police cremated the three corpses, in the same pyre, at the bank of the Singhiya River, without their identification. The corpses were full of blood clots when they were brought for post-

mortem in the Koshi Zonal Hospital in the same day.

The relatives of those deceased requested the National Human Rights Commission of Nepal (NHRC) for the investigation of those disappeared persons. Secretary of FOHREN, Advocate Tul Bahadur Shrestha took initiation in this matter.

Meanwhile, CDO Dolakh Bahadur Gurung has expressed on 4 January 2002 that the suspicious persons were the real ones. This was verified when the district administration office showed photograph to their relatives. The corpses were of Paltansingh alias Ashok Rai of Sundarpur VDC-6 and Tanka Thapa and Bharat Shrestha of the same VDC. The relatives of the deceased are in their rituals now. The local police administration has not, however, formally informed of it.





*playing a trick to make them surrender*

- In Kathmandu District, Ramesh Manandhar aged 28, a US Embassy Security Staff was shot dead by the two unidentified men in front of the Lincoln School. He was returning from the inspection of the security of Lincoln School and USAID. Besides, they also took his wireless set and his purse along with his identity card. Those people are believed to be the Maoists. According to the eyewitnesses, after shooting Ramesh Manandhar, they said, "We are the Maoists, Don't come behind us. Beware" and went towards Soaltee Mode.

#### **December 16**

- Jayaprakash Prasad Gupta, Spokesman and Minister for Information and

#### **December 10**

- In Kathmandu District, Bhakta Bahadur Shrestha, Former Chairman of People's Movement Committee was arrested by the security personnel at about 10.45 PM. Among the security personnel, one was in civil dress and others two were in their uniform. The authority supplied no information after his arrest. According to the family members, there were about 50-60 police personnel outside the house during the time of arrest. Mr Shrestha was sick at that time. He was released on the 21 December 2001 in the presence of his family. During this period, Mr Shrestha was seriously ill and was admitted in the Chhauni Hospital for the treatment. According to the

*Space Times Daily, Mr Shrestha was well behaved by the authority after the arrest.*

#### **December 15**

- Prachanda Chairman of the CPN (Maoists) admitted that 15 Maoists were killed in the incident that occurred in Solukhumbu District, on the 25<sup>th</sup> of November. In the press conference via fax dispatched to the Nepal Samachar Patra Daily dated five days earlier, it was mentioned that the government did not listen to the wish expressed to give the rights of the decision to the people for the remedy of the political problem. Further it also stated that government mobilised the security throughout the country while the peace talk was still going on and blamed the government for

#### **SHER BAHADUR DEUBA** Prime Minister

No one is killed after arrest. As a leader of the democratic government, according to the Human Right's norms, I commit myself to provide the injured with food, accommodation and medical facilities. This state of emergency is just against the Maoist "terrorists" and those who assist them. The Maoists themselves are the ones who compelled us to do this. The government will not step back to punish the "terrorists" and their supporters. If there are anyone like those in my party, they too will not be pardoned. The military action against the Maoists will go on until they hold the arms.

#### **LAXMAN PRASAD ARYAL** Judge, Supreme Court

A few days ago, the order given by the Minister for Information



Communications expressed that as there was no warrant issued to the reporters during last three weeks by the Ministry of Information and Communication and the concerned district administration, this proves that the steps taken by the government is positive. He further stated that the government is not trying to suspend the rights and limitation of the press. In the same programme, Minister Gupta said that request made by the Maoists to the International Society is fake and announced that the government is not willing to discuss on their previous demands. He said the government could consider all the incident if they are willing to give up the weapons and ask for forgiveness.

#### December 17

- Commander In-chief Prajwalla Shamsher JB Rana, through "Disha Nirdesh" a programme of Nepal Television informed the public that the Security authority has requested the public to leave the place of army operation.

#### December 19

- According to the Nepal Samachar Patra, the ruling party Nepali Congress and the opposition party CPN (UML) have agreed to amend the Constitution with a lot of improvements on political, economic and social sectors during the state of emergency till upcoming meeting of the House of Representatives. It was said that Prime Minister Sher Bahadur Deuba and Madhav Kumar Nepal, the

opposition party leader had reached the agreement on the 16<sup>th</sup> of December. Girija Prasad Koirala, President of Nepali Congress has also mentioned the issue of amendment in the Constitution of the Kingdom of Nepal, 1990 in his agenda of democratic unity.

- In Kathmandu, Chinese Ambassador for Nepal Mr U Dhung Yong, in a press meeting, stated that no shelter has been given to the Nepalese Maoists in their country. He further expressed the confidence that China never supports terrorism. He also said that there is a close relation between Nepal and China from the ancient period and it would continue in the state of emergency too.

## THOUGHTS EXPRESSED ON THE OCCASION OF THE 53RD WORLD HUMAN RIGHTS DAY

and Communication on what to publish/broadcast and another circulation passed by the Minister for Health to take permission from the security council to treat the injured is not constitutional. As the case of state of emergency is also for the sake of human welfare and their security, the people must not be deprived of their rights to live as per the constitution, law and international conventions.

#### MADHAV KUMAR NEPAL

General Secretary, Communist Party of Nepal (UML)

The ruling party Nepali Congress is mainly responsible for the violence created from murder and retaliation and for pushing the state to the condition of civil war. The Prime Minister has to show courage to punish the corrupt and must be determined with adequate planning to find the solution of the problem. If the ruling party

misuses the state of emergency, then the opposition party will not just stay as a spectator.

#### DAMAN NATH DHUNGANA

Former Speaker

The state of emergency does not mean the end of the Constitution. During this period, the government must work with sincerity.

#### SUBODH RAJ PYAKUREL

General Secretary INSEC

In the context of Human Rights, I am against the state's inability on making a provision of medical facilities and temporary residence or prisons for those who surrender, prior to the declaration of the state of emergency. The Human Rights activists and the Nepalese citizens must not ignore and support the mistakes committed by the state.



- Human Rights Organisation of Nepal made a special request to the Prime Minister to give permission for the human rights activists, lawyers, professors, teachers to see the prisoners in the different prisons.

- In Kailali District, Shree Ram Chaudhaari, aged 28 of Tikapur Municipality -5 was dead in an ongoing treatment at a hospital. The victim was arrested by the police, when he was seriously ill. Afterwards, the police had taken him to the hospital as published in the Rajdhani, a national daily.

- In Kathmandu District, Amir Bahadur Khadka, elected member of Phutung VDC-4, was killed by the Maoists at Bajrayogini, Snakhu.

#### December 20

- A group of human rights activists under the leadership of Naiyan Bahadur Khatri, Chairman of National Human Rights Commission (NHRC) visited Prime Minister Sher

Bahadur Deuba in order to draw attention for the realisation of fundamental human rights of the people during the state of emergency.

- A joint meeting of the high-level monitoring committee of Nepali Congress and the Co-ordination Committee between the party and the government decided to instruct the government not to run the executive under anybody's pressure and not to release the perpetrators at any cost.

#### December 21

- A group of human rights activists under the leadership of Sudip Pathak, Chairman, Nepal Human Rights Organisation, visited on Home Minister Khum Bahadur Khadka. On the occasion, the group submitted a memorandum to the Minister in order to guarantee the congenial environment to human rights activists, redcross, press and others involving in the humanitarian assistance.

#### December 22

- In Bardiya District, a policeman Dipnaresh Chaudhary, aged 28, of Mainapokhari VDC-2, Uchuwagaon was dead on the way to hospital. Earlier, the victim was shot injured by the Maoists at New Christi Fancy Store, Mainapokhar Bazaar at 8.30 am. Dipnaresh was working at the area police post, Bansgadhi of the same district and was on leave at the time of accident. He is suspected to be killed by the Maoists. According to the Nepal Samachar Patra, a national daily, of 31 December 2001, he might have been killed by the police officer who is said to be involved in smuggling weapons and others.

- According to the Kantipur Daily, Chief Justice of the Supreme Court Keshab Prasad Upadhyaya stated that he would keep silent on the issues of constitutional and legal questions till they are not formally filed as cases. In a discussion programme organised by the Nepal Bar Association on the occasion of bar day, Mr Upadhyaya said, "The people's rights have been seized, but I am compelled to keep silent."

- According to the Kantipur Daily of 23<sup>rd</sup> December, Basudev Dhungana, Senior Advocate, expressed that the king and the crown prince's query about army operation in the absence of ministers may create doubt and illusions among the public. He also expressed his own doubt on such visit.





## December 23

- In the all party meeting held on the 23<sup>rd</sup> of December, according to the information presented by the Security Department Secretary Padam Kumar Acharya and Home Secretary Keshav Raj Rajbhandari, it was informed that from the time the security personnel have been deployed, from the 22<sup>nd</sup> of December, 350 (which is expected to reach 500) "terrorists" and twenty-nine army personnel have been killed. Similarly, forty army men were injured so far. Among 2,971 people arrested in the accusation of being the "terrorists", cases were filed against four hundred and eighty-one. Likewise, 6,560 Maoist activists surrendered to the local administration. According to the secretary of Security Department, all over Nepal in ninety-three areas in different districts, the Royal Nepalese Army are mobilised to quell the "terrorist"

activities of the Maoists during the state of emergency.

- The security personnel conducting the "Cordon and Search Operation" has changed its strategy as "Search and Destroy Operation". In Dolakha District, in the same process the security personnel destroyed three caves situated in Sailungeshwor.

## December 25

- According to the statement of the Ministry of Defence, Royal Nepalese Army Office organised a briefing programme on the "changes made in the army structure consolidating three divisions into one command for operation" where His Majesty the King and the Crown Prince were present. It was stated that the presence of the Secretary of Security Department Padam Kumar Acharya with the Majesties showed the

presence of the government. According to the notice by the ministry, due to an important reason the Prime Minister Sher Bahadur Deuba had to leave for Rupandhehi District. Thus he was unable to attend the briefing programme and he instructed the Secretary of Security Department to be present on that occasion.

- His Majesty the King addressed the Royal Nepalese Army. In the address, His Majesty expressed the confidence that the army would succeed in establishing peace. This address was read out by the Commander-in-Chief Prajwalla Shamsher Rana in a programme of the Royal Nepalese Army broadcast through Radio Nepal.
- In the first writ petition filed under habeas corpus after the declaration of the state of emergency, the Supreme Court ordered the

# LONG RANGE FIRING & HELICOPTER GUNSHOT

## 27 November 2001

"The Maoists, after they attacked Solu, (Salleri), Dang, Rolpa, and the different places of Pyuthan Districts, are now defeated by the army using long range firing and helicopter gunshots. The operation has made much loss in the Maoist side."

*-(RSS, a National News Agency; Statement by Ministry of Defence)*

## 28 November 2001

"The Maoists' preparation for attacking the different army posts in Okhaldhunga and Jajarkot was

shattered by the security personnel using 'long range' firing. The consequence of the firing is not known. There has been no loss in the army side."

*(RSS; statement by Ministry of Defence)*

## 29 November 2001

"According to the Ministry of Defence, The Royal Nepalese Army made a heavy attack by "helicopter gunship" on the Maoists yesterday in the jungle of Jajarkot and Rolpa. It was seen that the attack had made a lot of loss in the Maoist side. But how much of the loss could it make is still undecided."

*-(RSS; Press Statement)*

## 2 December 2001

"An attempt of the Maoists to attack the Basantapur Police Post was shattered by the army using 'long range' fire from Chitre. The army force was deployed to protect the Repeater Station of Nepal Telecommunication."

*(RSS; statement by Ministry of Defence)*

## 5 December 2001

The army made a helicopter gunshot on the Maoist militia who were found in a mass at the Chitre jungle of Gorkha on 4 December. The loss in the 'terrorist' side is not decided yet.

*(RSS, 'Terrorist Arrested')*



## SUICIDE AFTER SURRENDER

In Sindhupalchok District, Dhan Bahadur Shrestha, aged 48, of Kuvinde VDC-1, after surrendering to the district administration by abandoning the membership of "People's Government" committed suicide on 27 November 2001. He had surrendered to the administration on the 21 November and had hanged himself in the jungle of Chyandanda after a week.

government to present relevant proofs on arresting people. This summon was issued by the joint bench of Chief of Justice Keshav Prasad Upadhyaya and Judge Bhairab Prasad Lamsal. On the 27<sup>th</sup> of December, Jagat Krishna Pokhrel, Lecturer, Dhankuta Multiple Campus was arrested by the police in the accusation of being involved in the Maoist activities. The government claims of finding letterheads, donation receipts, books including other materials related to the Maoist activities in his residence. But, mentioning that the claims made by the government is not correct, the writ had been filed in the court.

### December 26

- In Kanchanpur District, Padam Raj Pant, aged 39, was beaten to death by the Maoists at Shreepur VDC-5. He underwent treatment in the health post in Belauni and died on the way while preparing to go to the Seti Hospital, Dhangadi at 5 o'clock the next morning.
- In Tanahu District, a woman of Bhirkot VDC was dead due to a bomb blast, which belonged to a Maoist who had come to her house to take shelter at night. Another

woman was also injured in the accident.

### December 27

- In Solukhumbu District, Maoists Dinesh alias Ram Prasad Parajuli, aged 21 and Chunda Dahal, aged 35 were killed in the operation by the security personnel in Phalate, Khamsuk Losko and Ratagaun as stated by the Ministry of Defence. But, Parajuli and Dahal were taken by the security personnel from the hotel when they came to surrender. It has come to our notice that later they were released and shot dead on the way.
- In Jumla District, the Maoists attacked the headquarters Khalanga. The DSP of the District Police Office was injured in the attack. According to the statement by the Ministry of Defence, the headquarters was taken under



control by the joint effort of the police and the military. In the crossfire, it is suspected that more than a dozen of Maoists were killed. Bhim Bahadur Sunar and Shivakali Sunar of Kartikswami were killed in the long range firing by the security personnel. Five other people were injured. The Maoists had attacked the barrack from the north side of Singachaur. Earlier, they had made a demonstration at Kartikswami VDC-9.

### December 28

- A press meeting was organised by Jayaprakash Prasad Gupta, Spokesperson of HM's Government and Minister for Information and Communications in order to inform the situation of the state of emergency. On the occasion, a total of 487 including 350 Maoists and 99 security personnel were

## EXAMINATION IN CUSTODY

In Nuwakot District, 6 students took their half-yearly examination from the custody of District Police Office, Nuwakot on 27 December. The examinees suspected to be the Maoists were Bhagabati Thapa, Pushpa Kandel and Asmita Thapa from grade 10; Sandesh Bhetuwal and Dipak Bishwokarma from grade 9; and Bhagabati Pandey from grade 6. They had taken the Nepali subject examination from there with the help of the District Education Office, Nuwakot. The provision was made by the common decision of the CDO, DSP and all party meeting on 26 December.



publicised to be killed after the 23<sup>rd</sup> November. On the Maoist side, it was said that the number 350 was fixed and an estimated of 500 of them is guessed to be killed. Among those 99, 31 were army personnel, 64 police (Janapath), 4 armed police, 2 civil servant and 64 civilians through Maoist's attack. The Minister further stated that 7, 773 of the Maoist supporters had surrendered and 3,321 were arrested. Among those arrested, some were in custody for investigation and the rest were released after some queries. A total of 481 were informed to be in custody in accordance with the ordinance and 49 were in accordance with Public Security Act.

- In Kathmandu District, Gauri Pradhan, President of CWIN and Non-government Organisation, Nepal refuted the decision of the government to declare the children the "terrorists". Mr Pradhan was speaking in a programme organised by Centre for Child Rights Protection. Speaking on the occasion he further demanded the 'self preservation' camp instead of surrendering centres.
- In Baglung District, Mohadutta Sapkota, aged 23, was shot dead by the Maoists in Tarakhola VDC-2. According to the family members, a number of 40-50 Maoists shot him and beat his mother and brother.
- In Dhanusa District, Shekhar Kumar Yadav, a Maoist activist, was shot dead by the police while he was sitting in a house at Sabaila VDC-6,

Kharhani Tole. Yadav was the son of Late Ram Briksha Yadav the then Central Committee Member of Maoist.

#### December 29

- In Gorkha District, 4 Maoists were killed in the fight between the Maoists and the security personnel in Birechowk and Taksaar. Similarly on the same day as stated by the Ministry of Defence, in Rolpa District, Belu Gharti, a Maoist Activist was killed in the operation by the security personnel.
- Padam Kumar Acharya, Secretary of Ministry of Defence stated that in the operation of the Royal Nepalese Army including the security personnel, the news of killing and arresting of the high level officials by the Maoists has not been flashed so far. Further he stated that from the time the Maoists attacked the Dang Barrack in one and a half month till December 27<sup>th</sup>, 487 people are killed including 99 security personnel, 2 officials and 36 civilians.

#### December 30

- In Nuwakot District, Som Raj Thapalia, aged 45, a resident of Belkot VDC-3 and District Treasurer of the Nepal Teachers' Association was abducted by the Maoists. His corpus was found the next day near Niranjana High School. According to the eyewitnesses, there were 5 gunshot holes on his body and some wounds of "khukuri".

#### December 31

- A press communiqué by Prachanda, Chairman, CPN (Maoist) was published in the Nepal Samachar Patra Daily stating that the document was faxed on December 30<sup>th</sup>. However the date was printed as 25<sup>th</sup> December. Prachanda mentioned that his party's movement was decreased in the towns but it is not so in the rural areas. The communiqué was issued for publicizing the decision of the standing committee meeting of the party. The meeting urged to interact and make understanding amongst the parties both

### Public of the Operation Area Have no Alternative Settlement

Commander In-chief Prajwalla Shamsher JB Rana, through "Disha Niradesh" a programme of Nepal Television informed the public that the law enforcing authority has requested the public to leave the place of army operation. Civilians of the conflict areas are requested to live that place without arranging their alternate settlements.

**NB:** Among the fundamental rules of International Humanitarian Law applicable in armed conflicts, Geneva Convention 1949's rule 7 "Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor the civilian persons shall be the object of attack. Attack shall be directed solely against military objectives." has been ignored.





*outside and inside the parliament and others.*

*struck dead by a "khukuri" and a stick by the Maoists in Harmi VDC-8.*

- Pushkar Lal Shrestha, Chief Editor and Publisher of Nepal Samachar Patra and Kapil Kafle Editor were asked for an explanation by Kirti Bahadur Chand, Kathmandu CDO in connection with the publication of the press communiqué and was requested not to publish such issues.

#### **January 1, 2002**

- In Kalikot District, near Manma, the district headquarters, Bhairab Malla, aged 11, and Khemraj Malla, aged 9, were killed in a socket bomb blast placed by Maoists in a public tap of Majpani as stated by the Ministry of Defence. In the same incident, Suja Shahi of Syuna VDC, Nabita Bhandari of Jumla District, at present living in Manma, Sanju Malla of Parkha VDC-4, Pramila Damai of Manma VDC and Santosh Damai of Surkhet District were injured. The injured were taken to the hospital by a helicopter.
- In Gorkha District, Lilanath Adhikari, aged 63, was brought out of the house and

- In Banke District, as stated by the Ministry of Defence, Kamal Damai was shot dead by the security personnel when he tried to run away from the custody in Bankatuwa VDC-4, Gegaun.
- In Bardia District, as stated by the Ministry of Defence, one Maoist was killed in a crossfire between the security personnel and Maoists in Baniyabhar.

#### **January 2**

- In Myagdi District, Mohan Prasad BK was killed in an army operation as stated by the Ministry of Defence.
- In Rasuwa District two Maoist activists Chhiring Ghale and Dinesh Shrestha were killed in an army operation at Gatlang as stated by the Ministry of Defence. Similarly, the ministry has stated that 2 Maoists at Ghumyigad of Dadheldhura District, and other 2 at Diyali of Okhaldhunga District, were killed on the same day.

- In Kanchanpur District, as stated by the Ministry of Defence, 5 Maoists were killed in crossfire between the security personnel and Maoists in Daiji VDC. Among the dead are Ranga Nath Bhandari, aged 35, Teacher of Ganesh Primary School, Pipalthala, Dirga Raj Bhandari, aged 18, Student of Sharada Secondary School, Daiji, Tek Bahadur Rawal, aged 40, Siddha Raj Pandey, aged 28 and Harke Sarki, aged 18 of the same VDC. Tule Sarki, aged 17, of the same group was escaped from the security

A press statement was jointly published by five personalities including Vishwanath Prasad Upadhyaya, Ex-chief Justice and Daman Nath Dhungana, Ex-speaker in the House of Representatives who were members in the then Constitution Recommendation Commission-1990. Other personnel were Nilambar Acharya and Dr Devendra Raj Pandey, Ministers during the interim government after the People's Movement, and Dr Madhu Ghimire, Senior Surgeon and Dr Krishna Bahadur Pandey. It said there was no implication of the state of emergency except "creating fright, suspect and confusion among the public." Given the title "Our Request" the statement further said, "It's not the fact that the government can do anything as it likes after declaring the state of emergency by suspending the fundamental rights of the people and should not also think that it has got unlimited power by declaring the state of emergency. There should be rather legal provision for guiding and controlling or filing case against any public whether in the state of



personnel. According to the INSEC Representative, the killed victims had been arrested by the security personnel.

### January 3

- Ministry of Home issuing a statement stated that the "terrorists" feeling themselves unsafe may take shelter in any house, hotel, lodge, hostel, factory and others. If any of them come to shelter the house owners are to notify of such people's name, address, age, and occupation within three days

to the nearest police post, or else the owners shall be punished as per the law.

- In a press conference organised in the capital, Nepal Bar Association stated that they planned to send observers to the five regions to collect existing reports regarding the violations of the human rights by the government as well as the Maoists during the time of state of emergency and give information to the related sources. Further, it stated that in the gathering organised under the co-

ordination of the Regional vice-president, president of the appellate courts and district courts, secretary and the co-ordinator of the related unit of the human rights would be the members.

- National Human Rights Commission has stated on the 3<sup>rd</sup> of January that it will put up a discussion between the court, Attorney General, the Foreign Affairs of the Parliament and Human Rights Commission. In the meeting of the commission organised on the 1<sup>st</sup> and 2<sup>nd</sup>

## **PRESS STATEMENT BY FIVE PERSONALITIES**

emergency or not." In the period of state of emergency if any prohibiting or compelling actions should be imposed in order to prevent the existing situation by providing the additional right to the security personnel, Article 115, Sub-article 7 of the Constitution of the Kingdom of Nepal, 1990 should be activated for such provision. But this provision has not been made yet. The statement further said, "It has been heard and published in the news paper that some of the demands have been put forth by the concerned that there should be, for the operation of the security personnel, support of the all party meeting as a precondition, the fundamental rights of the people should be suspended after declaring the state of emergency and the army should get opportunity in the operational work without

any hindrance and guidance by the civil regime. These types of demands have certainly created a dilemma whether there is the situation of dual government in the country. While the Maoists were killing hundreds of Police and other civilians, the security personnel were seemed to be raising the issue of process-wise deployment. But when the state of emergency was declared, they became ready to be operating in quelling the Maoists. This makes suspicious everyone whether the state of emergency was itself a pre-condition." The statement also said, "There should be a logic after the declaration of the state of emergency. The primary duty of the government is to protect the life and wealth of the public and the national wealth and make punishable the persons and organisation to go against law. To this end, the government can use forces as per

the necessity through its administration and security force without suspending the fundamental rights of the people. Actually, basic rights of the people like right to expression, right to information and others should not be suspended even in the state of emergency. Moreover, right to take information on the activities of the security personnel except their strategies and plans should not be seized by the state at any cost. It may really be shocking if the security personnel themselves involve in the uncontrolled operation and the flow of the information as if something is hidden or missed by them, as it seems currently. We, therefore, request the government to end the present situation of fear, doubt and confusion by correcting the activities and operation leading to subdue the Constitution, democratic norm, parliament, political parties, civil society and the public."



of January, it was decided to collect all the information regarding the violation of the Human Rights by the government in the process of operation during the time of suspension of the Civil Rights and make it published.

- In Myagdi District, 2 security personnel were killed and 6 injured in an ambush placed by the Maoists in Singa. The injured were brought to Birendra Army Hospital in Kathmandu for treatment. In the same place on the same day, two Maoists named Bir Bahadur Budha and Kashi Kathayat were killed in the operation of the security personnel as stated by the Ministry of Defence.

#### January 4

- In Dang District, the Maoists attempted an attack in the District Police Office, District Administration Office and the Barrack in Ghorahi. In the crossfire, Chet Bahadur Kuwar probably aged 40 and a rickshaw driver was shot dead by the security personnel in Tribhuvan Nagar Municipality-8.

#### January 10

- In Dang District, Hari Rijal of Sonpur VDC was killed by the Maoists.
- The National Working Committee of Nepal Sadhbhawana Party decided that during the state of emergency the fundamental rights of the people have been seized.



#### January 11

- In Kaski District, two Maoists were killed in an operation by the security personnel at Pundi Bhumdi VDC. The incident had occurred as crossfire when the Maoists attacked the vehicle of the security persons which was heading towards Syangja from Pokhara as stated by the Ministry of Defence.
- A joint meeting between Public Relations Taskforce of High Level Monitoring

Committee of the Nepali Congress and Monitoring Committee of CPN (UML) was conducted at the central office of Nepali Congress. The information received by both parties were found to be similar.

- In Surkhet District, Yagya Gurung of Birendranagar Municipality-2 was killed by the Maoists while he was taking meal.

### MAOISTS KILLED A TEACHER/ HUMAN RIGHTS ACTIVIST



In Lamjung District, Mukti Nath Adhikari, aged 46 of Duradanda, Chandeshwor VDC and Headmaster of Padini High School located in the same VDC-6, Chaharepani was shot dead by the Maoists on 16 January 2002. The victim was teaching at school when he was abducted by the Maoists, took him to Khajegaun of the same VDC-4 and killed. Late Adhikari was the co-ordinator of Amnesty International Lamjung, Duradanda Group-79.



# SURRENDER, JAIL AND QUESTION OF LIFE SECURITY

**H**it Bahadur Subedi, President of the Maoist's Gaon Public Government, Nuwakot was kidnapped by the Maoists while he was coming to District Administration Office for surrender. Mr Subedi had applied for surrender on the 4<sup>th</sup> of December 2001. He was ordered to present in the office on the 9<sup>th</sup> of December. But he could not reach the office as the Maoists kidnapped him on the way.

This incident also proves that the government has not given the proper protection for the surrendering Maoists.

Among the 75 districts of Nepal, some of the districts like Sunsari, Bara, Arghakhanchi, Bhaktapur and Dhanusha have no jails. And the jails of Solukhumbu, Dang and Syangja have been dilapidated due to the Maoist attack. This has resulted in the decrease by more than 85 prisoners' capacity. The total capacity of 73 jails of Nepal is only 5000. A total of 6 thousand 1 hundred and 85 prisoners were there in 2000 in the total jails of Nepal according to the Human Rights Yearbook, 2001. Similarly, there were 6 thousand 3 hundred and 18 prisoners in 1999 according to the Human Rights Yearbook 2000.

The total number of arrested persons, after the declaration of the state of emergency has crossed more than 3000. There is not any condition of keeping the surrendering persons and other arrested persons in the jails of Nepal. No special provision for settling this problem has been found to announce by the government.

## TREATMENT OF THE INJURED

*As stated by the Ministry of Defence, the air-attacks have been continued using "helicopter gunshots" in some of the districts like Ramechhap, Jajarkot, Rolpa, Pyuthan, Salyan and Gorkha. "Marked number" of Maoists has been killed on 30 November in such operation, as stated by the same ministry on 1 December 2001.*

Jayaprakash Prasad Gupta, Spokesperson of HMG and Minister for Information and Communications, in a press meeting conducted on 6<sup>th</sup> December, expressed the easiness and effectiveness of the operation through helicopter gunshot. Meanwhile, two "Chetak" helicopters presented by the Indian Government arrived in Kathmandu. These helicopters are for the special use of the army operation with the facility of night vision and SLR.

The army is attacking the Maoists through long-range shooting. According to the government source, 21 army personnel were injured as against of only 12-13 civilians till 6<sup>th</sup> December 2001. No information, despite this fact, has been given about the treatment of the injured. On the other hand, Commander In-chief Prajwal Shamsher JB Rana, through "Disha Nirdesh" a programme of Nepal Television, informed the public that the defense authority has requested the public to leave the place of army operation. There were 58 army injured till 17<sup>th</sup> of December.

Among the injured from the Maoist side, 1 from Solukhumbu on 25 November, 1 from Baglung on 30 November, 1 from Syangja on 2<sup>nd</sup> December and one from Salyan on 9 December were treated in the government hospitals.

According to the Gorkhapatra of 1 December 2001, there was no reserve blood in the Koshi Zone Hospital of Biratnagar, one of the largest cities of Nepal from 21 to 30 November. Among the 4 Quotas of Doctors provisioned in the Sunsari District Hospital, there is not a single doctor at present. Sunsari and Morang are Maoist affected Districts where the fight is continuing in various places, as per the news.

Similarly, no doctors are present in Sindhuli, Panchthar, Taplejung and some other Maoist affected districts. Medical persons are not available as per the need also in the districts like Rolpa, Rukum and Salyan as well as other resources for treatment of the injured. In the health-post of Sindhupalchok there is not any medical person.

On 7<sup>th</sup> December the Health Management Committee, constituted under the chairmanship of the Health Minister, decided to make a special arrangement for the treatment of the injured in the military operation. However, the committee has not yet publicized information regarding how many were injured, treated, the hospitals/districts as well as other arrangements, including the medicines and other facilities in those places.

**NB:** Parties involved in the armed struggle must treat and safeguard the injured and sick combatants within their regiment.

- Summary No.3 of the Regulations of the Geneva Conventions and their optional protocols.

# SOME TYPICAL INCIDENTS OF PLACING AMBUSH BY MAOISTS

## 24 November 2001

- In Surkhet District, 4 armed police personnel were killed in an ambush placed by Maoists while they were heading towards Surkhet in a truck from Nepalgunj.

## 6 December 2001

- In Bardiya district the vehicle numbered Ba. A. Jha. 3807 of the District Police Office was damaged in an ambush placed by Maoists while patrolling in Gularia Municipality-6.

## 9 December 2001

- In Bardiya District, an ambulance, Bhe.1.Kha. 485, of the Red Cross Society was destroyed in an ambush placed by the Maoists in Kalika VDC-8, Rajapur while it was heading towards Nepalgunj with a woman patient from Gularia.

## 21 December 2001

- In Gorkha District, three army personnel were injured in an ambush placed by the Maoists at Taple VDC. The army personnel were patrolling in a truck.

## 23 December 2001

- In Lamjung District, three army personnel were killed

and 24 injured in an ambush placed by the Maoists in Chandisthan VDC - 1, Salang Khola. Among the deceased, one was dead on spot and two in an undergoing treatment in the Birendra Military Hospital, Kathmandu.

## 26 December 2001

- In Rukum District, 4 local people died in an ambush placed by the Maoists in the Main road of Khara VDC-3. Among the dead were Ganesh KC, Juhari Budathoki and two others. In the same incident Khadkabahadur Damai of Shova VDC-5 was injured.
- In Banke District, 3 security personnel were injured and the patrolling police van numbered Bhe.1 Jha. 157 damaged in Phatepur VDC in an ambush placed by the Maoists.

## 3 January 2002

- In Myagdi District, two army personnel were dead and 6 injured in an ambush placed by Maoists at Singha.

NB: The Ottawa Convention, 1997 on completely restricting

the explosive ambush has been already ratified by 140 nations. However, Nepal is yet to ratify this convention. In the year 2000 the then Prime Minister Krishna Prasad Bhattarai had expressed the commitment to sign this Convention. Among the SAARC countries Maldives and Bangladesh have already ratified. The basic rules of the Geneva Convention no.6 (*Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.*) and no. 7 (*Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.*) have also restricted to such practices. Therefore, as the explosive ambush could hurt innocent people the concerned authorities must stop such practices immediately.

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# List of Journalists Arrested after 25 November, 2001

## 25 November

### KATHMANDU

Nim Bahadur Budhathoki, Computer Operator of Dishabodh Monthly was arrested by the police.

## 26 November

### KATHMANDU

Om Sharma, Govinda Acharya, Ishwor Gnyawali, Khil Bahadur Bhandari, Manrishi Dhital, Dipendra Rokaya, Dipak Mainali, Dipak Sapkota, and Rambhakta Maharjan were arrested by the security personnel. Later after 26 days, all the arrested journalists were put into Bhadrabandi House. Meanwhile, the Supreme Court, as per the writ, issued a show cause order to the government in favour of the arrested journalists including Nim Bahadur Budhathoki on 9 January 2002.

## 28 November

### SIRAHA

Sitaram Shah, Pawan Shrestha and Dev Kumar Yadav. Among them, Dev Kumar Yadav was released on the same day as requested by journalists. He became underground for some days. Later, he surrendered to the administration. Other two were released on December 3, 2001.

### JUMLA

Nawaraj Shahi - Stinger of Radio Nepal: He did not send any news as the Chief District Officer (CDO) instructed him so. The Maoists also enforced him to broadcast their news. So he stopped the duty so as not to involve in any conflict.

## 29 November

### RUPANDEHI

A total of 38 including Benuram Pradhan, Ajayaman Shrestha, Ishwor Gautam, Hari Paudel, Bibek Pradhan, Basanta Pokhrel, Jitendra GC, Bharat KC, keshari Pun, kalika Kheral, Mira Sharma,

Narayani Sharma, Sharmila Khanal, Khuma Bhandari, Binit Gupta, Tara Kharel, Himanshu Chaudhari, Harish Dhakal, Bharat Poudel, Rishi Poudel, Balkrishna Chapagai, Gunaram Ghimire, Pijayo Thapa, Tara Kaphle, Manoj Basnet, Dhankumar Joshi, Tara Thapa, Surya Basnet, Roshan Thapa, Kapil Gautam, Kabiram Bhattarai, Hemraj Sharma, Ram Prasad Acharya, Laxman Gnyawali, Sher Bahadur KC, Bishnu Ghimire and Chudamani Parajuli were arrested by security personnel. Among them 37 were released on the 1<sup>st</sup> and 2<sup>nd</sup> of December and Basanta Pokhrel was released on 17<sup>th</sup> December. The victims had been arrested in a gathering for welcoming Benuram Pradhan.

## 2 December

### SANKHUWASABHA

Reporters of Nepal Television and "Local Chautari Times" Ganga Bista, Spacetime Daily and Radio Nepal Shankar Khanal and Samachar Patra Indra Giri were arrested by the army on the 2<sup>nd</sup> of December. Indra Giri was released on the 6<sup>th</sup> of December.

## 5 December

### MORANG

Satyanarayan Sharma, Reporter of Chanakya Weekly, Biratnagar, was arrested by the police on charge of involving the Terrain National Liberation Front at 3 pm. Mr Sharma was attending a meeting organised by reporters Club, Morang Branch. He was released by the police as a request made by the club on 6 December 2001.

### RUPANDEHI

Bin Bahadur Kunwar, President Naya Sansar Publication of Janarajya Weekly from Butwal

was arrested by the police. He was released on 3<sup>rd</sup> January 2002. Sunsari: Chhiring Sherpa, Market Manager, of Vijayapur Weekly at Dharan was arrested by the police. Mr Sherpa was released in the presence of Nepal Federation of Journalist, Sunsari on 20 December. Earlier the police had made target to Bhawani Baral, Publisher and Editor of the newspaper but he was not found on the spot.

## 6 December

### KAILALI

Chitra Chaudhari, adviser-editor of Nawa Paricharcha Weekly from Tikapur, former editor-in-chief of Yugayan Weekly and principal of National Lower Secondary School, Patharaiya, was arrested by security personnel from the school at 11.00 am. Likewise, Sama Thapa, Publisher of Yugayan Weekly was arrested from Tikapur. After arresting, they were brought to Area Police Office, Tikapur and shifted to Regional Police Unit Office, Dhangadhi. At present, Mr. Chaudhari has been kept at Army Barrack, Dhangadhi and Thapa at the Regional Police Unit Office.

## 8 December

### RUPANDEHI

Narayan Sharma Gnyawali, Reporter of Naya Disha, Butwal was arrested by the police and was released on 11 the December.

## 9 December

### RUPANDEHI

Gurudatta Gnyawali, National Councilor of Nepal Federation of Journalists was arrested by the police. Mr gyawaly was released on 18 December 2001.

## 13 December

### RUPANDEHI

Dil Sahini, National Councilor Of Nepal Federation of Journalists was

arrested by the police from Butwal. He is not released yet.

#### **16 December RUPENDHI**

Dolaram Ghimire, Editor of Mechikali Daily, Butawal, was arrested by the police in civil dress. Mr Ghimire was attending a meeting at the hall of Municipality. He was released on 20 December 2001.

#### **LAMJUNG**

Madhav Adhikari and Buddhisagar Swarnakar, reporters of Janagunas Weekly, lamjung were arrested by the police. They have been released on condition of returning on the 21 December.

#### **17 December KATHMANDU**

Bandhu Thapa, Publisher of Deshantar Weekly and Gopal Budhathoki, Publisher & Editor of Sangu Weekly were arrested by the police. Mr Thapa was arrested from his own residence at 11 pm and Mr Budhaathoki too at 9 pm. Both victims were not given any warrant nor was said the cause of the arrest. Later, both of the journalists were released after 21 hours of the arrest.

#### **RUPANDEH**

Siddhichara Bhattarai, Chief Editor of Mechikali Daily, Butwal, was arrested by the police. He was released on 20 December 2001.

#### **18 December RUPANDEHI**

Bharat Pokhrel, Chief Editor of Mechikali Daily, Butwal, was arrested by the police. Mr Bhattarai was released on the same date after some clarification.

#### **21 December SUNSARI**

PB Dyali, Sub Editor of Blast Daily at Dharan was arrested by

the police from his own residence, Itahari. Later on 23 December, he was put under preventive detention.

#### **KASKI**

Kamal Baral, Editor of Swaviman Weekly, from Pokhara was arrested by the security personnel from his own residence. Mr Baral is still in custody.

#### **25 December BAGLUNG**

Badri Prasad Sharma, Editor and Publisher of Baglung Weekly was arrested by the security personnel from his own house at Baglung Municipality-5. Mr Sharma is in jail from 18 January 2002.

#### **27 December KATHMANDU**

Chandra Man Shrestha, Managing Director of Janadisha Daily was arrested by the security personnel from Maharajgunj. His whereabouts is still unknown.

#### **SIRAHA**

Bijaya Prasad Mishra, President of Nepal Federation of Journalists and Reporter of the Kantipur Daily was arrested by the police. As stated by CDO Bhola Prasad Siwakoti, he was arrested for a general query. Mr Mishra was released after half an hour by signing on a paper.

#### **31 December KASKI**

Janardan Biyogi, Sub-editor of Swoviman from Pokhara was arrested by the army from Pokhara Sub-metropolis- 9. Mr Biyogi is still in the custody.

#### **4 January, 2002 PYUTHAN**

Ghapendra Baidhya, Chief-editor of Lisne Tri-monthly from Pyuthan

district was arrested by the security personnel. He was released on the same day.

#### **5 January BANKE**

Sarad KC, Reporter of BBC Nepali Service, was arrested by the security personnel from the Regional Office of Radio Nepal located in Nepalgunj. He was taken into custody blindfolded and released after three hours. The same day, Harisaran Adhikari and Durga Rokaya, Hawkers of the Space-Time Daily, were also arrested and released on the same day.

#### **10 January PARBAT**

Lal Prasad Sharma, Reporter of the Kantipur, was arrested by the police. He was arrested as he sent news of killing Dalle Nepali a 14 year old child by the security personnel. Mr Sharma was released on the next day.

#### **19 January KATHAMNDU**

Anuradha Poudel, Reporter of Space Time Daily, was arrested by the security personnel from her residence at Golkhupakha. The security personnel also seized a binocular and some books. According to the family members MS Poudel was blindfolded while taken to the custody. She was released on 20 January 2002.

**NB:** a. *The Constitution of the Kingdom of Nepal, 1990, Part 3, Article 12 (1) "No person shall be deprived of his personal liberty save in accordance with law, and no law shall be made which provides for capital punishment." is seen to be violated by the government.* b. *The actions taken as above seem to go against the International Covenant on Civil and Political Rights, Part 3, Article 6 (1), Article 9 (1) and (2). In the same way, these are the incidents, which are being outlaw in accordance with the same Covenant, Part 2, Article 4 (1) and (2). Nepal had ratified the International Covenant on Civil and Political Rights on 14<sup>th</sup> May 1991.*



# THE 40-POINT DEMANDS OF THE UNITED PEOPLE'S FRONT

**On February 4, 1996 the then United People's Front (Dr. Bhattarai) had submitted the following 40-point demands to be fulfilled till 17th February 1996. But they declared war in the name of People's War on 12th February 1996.**

## **I. Demands Concerning Nationality**

1. All discriminatory treaties including the 1950 Indo-Nepal Treaty should be repealed.
2. The so-called Integrated Mahakali Treaty concluded on 29 January 1996 should be cancelled immediately as it designed to hide the fatal Tanakpur Treaty and allows the monopoly of Indian imperialists over all water resource of Nepal.
3. All open borders between Nepal and India should be regulated and controlled and systematised. All vehicles with Indian number-plates should be banned in Nepal.
4. Gorkha Recruitment Centre should be stopped. Nepalese citizens should be provided with dignified employment in the nation.
5. Nepalese workers should be prioritised to work in different sectors in the country. A 'work permit' should be strictly implemented if any foreign manpower is required in the country.
6. The domination of foreign capital in the sector of Nepalese industries, business and finance should be stopped.
7. Appropriate customs policy should be derived and implemented so that the nation can stand on its own self-reliant economic development.
8. The invasion of imperialist and colonial culture should be banned. Vulgar Hindu movies, video and magazines should be immediately outlawed.
9. The invasion of colonial and imperial elements in the name of NGOs and INGOs in the country should be stopped.

## **II. Concerning People's Democracy**

10. A new constitution should be made by the representatives elected for the establishment of people's democratic system.
11. All especial privileges of the king and the royal family should be seized.
12. Army, police and bureaucracy should completely be under people's control.
13. All suppressive acts including the security act should be cancelled.
14. All those extra-judicially and revengefully arrested for political reasons in Rukum, Rolpa, Jajarjot, Gorkha, Kavre, Sindhupalchok, Sindhuli, Dhanusa, Ramechhap and so on should be immediately released. All false cases should be immediately repealed.
15. The armed police operation, suppression and the state terror should be immediately stopped.
16. The whereabouts about the citizens disappeared from police custody, in different times, namely, Dilip Chaudhari, Bhuwan Thapa Magar, Prabhaker Subedi and others, should be investigated and those responsible should be brought to justice. The families of the victims should be duly compensated.
17. All those killed surrounding the People's Movement should be declared as martyrs. The families of the martyrs and those injured and deformed should be duly compensated, and the murderers should be brought to justice.
18. Nepal should be declared as a secular nation.
19. Patriarchal exploitation and discrimination against women should be stopped. The

daughters should be allowed their access to paternal property.

20. All racial exploitation and suppression should be stopped. Where ethnic communities are in the majority, they should be allowed to form their own autonomous government.
21. Discrimination against the downtrodden and backward people should be stopped. The system of untouchability should be eliminated.
22. All languages and dialects should be given equal opportunity to prosper, the right to education in the mother tongue, on to higher education, should be established.
23. The right to expression and freedom of press and publication should be guaranteed. The government mass media should be made completely autonomous.
24. Academic and professional freedom of scholars, literatures, artists and cultural workers should be guaranteed.
25. Regional discrimination between the hills and the Terai should be eliminated. Regional autonomy should be given to backward areas. There should be a balance between rural and urban areas.
26. Local bodies should be empowered and equipped necessarily.

### III. Concerning the Questions of Livelihood:

27. Land should belong to the tenants. The land under the control of the feudals should be confiscated and distributed to the land less and homeless citizens.
28. The property of brokers and comprador capitalists should be confiscated and nationalised. The capital hanging unproductively should be invested for industrialisation.
29. Employment should be guaranteed for all; unemployment allowance should be provided until employment is managed.

30. Minimum wages for the workers in industries, agriculture and so on should be fixed and strictly implemented.

31. The homeless should be duly rehabilitated. No one should be relocated until alternative infrastructure is guaranteed.

32. The poor farmers should be exempt from any loan; the loan taken by small farmers from the Agricultural Development Bank should be freed. Appropriate provision should be made to mobilise loan for small farmers.

33. Fertilisers and seed grains should be made cheap and easily available. Farmers should be provided with appropriate price and market for their farm produce.

34. Appropriate relief material should be managed for the flood victims and draught inflicted areas.

35. Free and scientific health services and education should be managed for all. Commercialisation of education should be stopped.

36. Price hike should be checked; wages should be increased proportionate in the price hike. Everyday goods should be made cheaply and easily available to everyone.

37. Drinking water, road and electricity facilities should be provided to all villages.

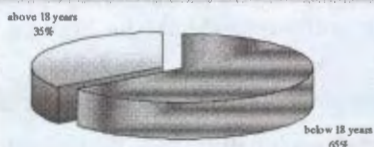
38. Domestic and cottage industries should be protected and promoted.

39. Corruption, smuggling, black-marketing, bribery, commission and so on should be eliminated.

40. The orphans, disabled, elderly and children should be duly honoured and protected.

## Surrender in Parbat District

(from 3 to 24 December)



A total of 215 Maoists had surrendered to the District Administration Office in Parbat District within the dates specified above. Among them 139 were from aged under 18 (65%) and the rest (35%) were from aged 18 and above.



# GOVERNMENT-MAOIST DIALOGUE: PROPOSED CODE OF CONDUCT

*A meeting of Human Rights defenders held in Kathmandu had submitted the following code of conduct to the government and the CPN (Maoist) on 19th September 2001.*

Cognisant of the fact that CPN (Maoist) sponsored 'People's War' and the policies adopted by the state to check it have resulted in grave human rights violations, the violation of the humanitarian law and the paramount loss of lives and property,

Mindful of the public resolve of the government and Maoists to solve the problem peacefully and, for that matter, to stop all government actions against Maoists and Maoist military activities,

Asserting the fact that the fundamental rights of the people to the dignified and peaceful life be compulsorily protected at all conditions,

Mindful of the confusion arising from the lack of the proper definition of 'cease fire' and the fundamental code of conduct both parties have to observe during the period,

Noting the parties constantly blaming each other for 'breaking the environment of dialogue',

Realising the fact that dialogue is the only means of peaceful resolution of the internal armed conflict and that continued violence results into a series of violence,

A meeting of human rights defenders held in Kathmandu has proposed the following code of conduct for His Majesty's Government of Nepal and the CPN (Maoist) to observe during the 'cease fire' and in the context of the dialogue for peace.

## **Code of Conduct for HMG Nepal**

- should not arrest anyone for being a Maoist or on any pretences, on grounds of conscience and faith
- should withhold public security laws immediately
- should not violate the right to peaceful assembly and other fundamental rights enshrined in the constitution
- should publicise the facts about those arrested (and disappeared) on grounds of conscience, release all prisoners of conscience
- should dismiss all forgery cases filed against prisoners of conscience
- the government, government representatives in the dialogue and the members of the party in power should not make public any views which stand counter to the spirit of dialogue
- should not enact and implement any laws that run counter to civil, political, social, cultural and economic rights

- should not use army on any pretences
- no force should be used during the period of dialogue
- law enforcing agencies should make sure that the code of conduct is respected fully at all levels
- the spirit of human rights and humanitarian laws should be respected in actions

## **Code of conduct for CPN (Maoist)**

- donation should not be collected forcefully from industrial institutions, NGOs, shops, citizens and so on
- should not force elected representatives to resign
- should not abduct anyone in the name of public action, no one should be terrorised
- institutions of public concern, such as education institutions, VDC offices, should not be closed, any action towards this end should stop
- all actions that do terrorise teachers, students and guardians should be stopped
- the spirit of human rights and humanitarian laws should be honoured and observed
- the central level of the party should take necessary initiations to ensure that the code of conduct is honoured at all levels, penalty should be publicly announced for those who do not accept the code
- no political campaigns and conferences should be organised in such a manner that terrorises people, armed campaigns should stop

## **Code of conduct for both parties**

- both parties should not use force between each other and in relation to public dealing, people should not be terrorised and incited, people should be taken into confidence
- no parties should disobey the code of conduct during the period of dialogue
- both parties should stick to the agreements reached in the dialogue
- both parties should not indulge into any activities which may unduly influence the dialogue, and the environment of the dialogue
- both parties should not manipulate media in such a way that spoils the environment of the dialogue

## **Observation**

Human rights community will regularly monitor whether or not the code of conduct is respected by the parties involved.

# Government- Maoist Dialogue: From Godawari to Godawari

The civil society from its earlier period had raised the issue of peaceful solution of the people's war, which is continually going on from six years back. The present government after its formation since last third week of July has taken the issue very seriously and made the issue open to conclude through peace talk. This resulted in the cease-fire by the government on people's war. So was publicised by the Maoists too.

In this context, the first dialogue between the government and the Maoists was held at Godabari, Lalitpur on 30 August 2001. The second and the third dialogue were held at Thakurdwar, Bardiya and once again at Godabari on August 13 and 14 and on 9 November 2001 respectively.

The representatives under the co-ordination of Mr Chirinjibi Wagle, Minister from the government level, are Mr Mahesh Acharya, Mr Vijaya Kumar Gachhedar and Mr Narahari Acharya. Through the Maoists side are Mr Krishna Bahadur Mahara, co-ordinator, and Mr Top Bahadur Rayamajhi and Agni Prasad Sapkota, members. Mr Padma Ratna Tuladhar and Mr Daman Nath Dhungana, human rights activists have been working as facilitators.

The phase wise discussions in the dialogue are as follows:

## Phase first

- Commitment towards solution of the problem through peaceful dialogue by both sides
- The Maoists submitted a proposal on republican state, new constitution and the formation of the new government.
- The government proposed to submit its agenda in the successive dialogue to let the bilateral discussion go further.
- Agreement on the second phase peace dialogue within two weeks

## Phase second

- Submission of proposal by the Maoists on the three major issues
- **Main Political Proposal**
  1. Provide right to the people on the formation of new constitution as the present constitution is a block to solve their problems.
  2. Interim Government should be formed by dissolving the present government.
  3. Since the traditional monarchy has been now virtually collapsed and the rise of republican state has settled in the soul of the people, the process of the development of the institutional republican state is to be started.

## ● Immediate Issues of the Public Interest

1. Abolition of the treaties like the treaty of 1950, the treaty of Mahakali and other unjust treaties

and understandings between Nepal and India, avoiding Indian Army from the Kalapani, and the stop of the border aggression by them.

2. The border between Nepal and India should be opened and regular.
3. The work permit system should be made effective.

## ● Proposal Put forth for Making the Dialogue Easier

1. Make public the whereabouts of the people like Dandapani Neupane disappeared by the government in the different times before and after the start of the people's war.
2. Release the imprisoned leaders of the Maoists like Matrika Yadav, the central leader.
3. Abolish laws such as the law on security made by the government, which is targeting the people's war.
4. Withhold the integrated development and protection programme made to implement with conspiracy by the government in the issue of pressuring the people's war.
5. Withhold the deployed army in the name of various issues which is just an action to make the people terrorised.
6. The government took its stance on postponing the meeting of the Maoists and its wings that was scheduled to be held in Kathmandu on 20<sup>th</sup> and 21<sup>st</sup> of September.
7. Commitment of the government towards the process of publicity and release of the imprisoned Maoists leaders and avoidance of using the armed police force against them.
8. The dialogue became fruitless and ended without any conclusion due to the Maoists who put forth the agenda of the abolition of the present constitution, parliament and desolation of the cabinet.

## Phase third

- The Maoists excluded the demand of the republican state from the agenda and included the demand of the constituent assembly with major priority.
- The government did not support the demand of the constituent assembly.
- Accusation of each other in the issues of the use of power by both sides in different events of human rights violation
- Demand of the government to Prachanda for instructive press statement on the abuse of the power by their activists
- Demand of the Maoists to withhold the army and the armed force from the Maoists areas
- Possibility of the next dialogue within 4<sup>th</sup> week of November.

Meanwhile the government repealed the law on public security and publicised the names of the imprisoned Maoist leaders. Some of the Maoist leaders and activists like Matrika Yadav and others were also released. Also a decision of withholding 68 imprisoned Maoist leaders was made. The publicity of Dandapani Neupane who was claimed by the Maoists made hidden by the government was made public of not noticing in the record.



# Some Exemplary Reports of Human Rights Violation by State

Date	Incident	District	Area	Incident Report	Source of Information
27 Nov. 2001	Firing through 'long range'	Okhaldhunga Jajarkot		The preliminary attempts of the Maoists to attack on the army posts of Okhaldhunga and Jajarkot were made unsuccessful by the army using 'long range' firing.	as stated by the Ministry of Defense on 29 November  RSS (a national news agency)
30 Nov. 2001	Indiscriminate killing	Rolpa	Khumel VDC-4	Phursi Rokka, aged 12 and Man Bahadur Gurung, aged 65 and other 3 persons were shot dead by the army through helicopter gunshot. Others about 7 were injured. The victims were gathering for Baraha (god) worship at Meldhara.	Jayaprakash Prasad Gupta, Minister for Information and Communications in a press meeting held on 6 December expressed the easiness to fight against Maoists through helicopter gunshot.
2 Dec. 2001	Firing through 'long range'	Terathum	Basantapur	The Maoists were attacked through 'long range' weapon by the army as they attacked on Basantapur Area Police Post. The army force was deployed to protect the Repeater Station of Nepal Tele-communication at Chitre.	As publicized by the Ministry of Defence  RSS (a national news agency)
3 Dec. 2001	Indiscriminate killing	Sindhupalchok	Mahankal VDC-1	Prakash Lamichhane of Mahankal VDC-1 was shot by the army deployed for the protection of Lamosangu Hydro-electricity Project at 8 PM. The victim was dead in an ongoing treatment at Dhulikhel Hospital	INSEC district representative

**NB:** Convention on the Rights of the Child, Part 1, Article 6, Clause 1, (the States Parties agree upon the by-birth right to life of every child) and Article 38, Clause 1 of the same conventions (the States Parties shall use all the possible alternatives to guarantee that no children under 15 are involved in war directly) have been violated by the government. Similarly, the 'Basic Rules of the Geneva Conventions and their Additional Protocols, 1949 is also found to be violated. Among others, Rule No. 7 reveals, "Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives."

Date	Incident	District	Area	Incident Report	Source of Information
5 Dec. 2001	Indiscriminate killing	Gorkha	Chitre jungle	A large number of Maoist militia were killed in the helicopter gunshot by the army but casualty toll was unknown	as publicized by Ministry of Defense
6 Dec. 2001	Indiscriminate killing	Dhanusha	Dhanusha VDC-7	Chandradeep Yadav, aged 56, Uttimal Yadav, aged 35 and Devkumar Yadav, aged 26 of Dhanushadham VDC-7 were shot dead by the police. According to the police, the victims were in police van and had tried to escape.	INSEC district representative
7 Dec. 2001	Indiscriminate killing	Bardiya	Deudhakala VDC-3	Jitendra Tharu, aged 16 of Deudhakala VDC-3 was shot dead by the army. The victim was cutting grass in a jungle there.	INSEC district representative

Date	Incident	District	Area	Incident Report	Source of Information
8 Dec. 2001	Indiscriminate killing	Dang	Tulipur Municipality-7	A porter named Mangale Kami (Dalit) aged 35 of Tulipur VDC-7 was shot dead by the army. The victim was carrying a heavy load at that time.	INSEC district representative
9 Dec. 2001	Indiscriminate killing	Dolakha	Gaurimudi VDC-1	Dan Bahadur Tamang, aged 35 of Gaurimudi VDC-1 was shot dead by the police on the way to custody. The victim was attending a symposium on 'conflict solution' organized by ECIMOD at the hall of District Forest Office.	INSEC district representative

**NB:** Among the fundamental rights of International Humanitarian Law on armed force, the 'Basic Rules of the Geneva Conventions and their Additional Protocols, 1949' is found to be violated. Among others, Rule No. 7 reveals, **"Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.**

Date	Incident	District	Area	Incident Report	Source of Information
28 Nov. 2001	Unconstitutional circular on information, publication and broadcast			The Minister for Information and Communications in a gathering of media persons circulated a 'guideline' for the news to publish/broadcast.	News published on The Gorkhapatra, 29 November

**NB:** The instruction was opposite the ordinance promulgated recently in the name **"Terrorist and Destructive Activities, Prohibition and Control (TADO)"**

Date	Incident	District	Area	Incident Report	Source of Information
30 Nov. 2001	Indiscriminate killing	Rolpa	Khumel VDC-4	Phursi Rokka, aged 12 and Man Bahadur Gurung, aged 65 and other 3 persons were shot dead by the army through helicopter gunshot. Others about 7 were injured. The victims were gathering for Baraha (god) worship at Meldhara.	The government announced the dead and the injured the 'terrorists' but a 12 year child can not be a terrorist

**NB:** The Conventions on Child Rights, Part 1, Article 6, Clause 1, **(the States Parties agree upon the by-birth right to life of every child)** and Article 38, Clause 1 of the same conventions, **(the States Parties shall use all the possible alternatives to guarantee that no children under 15 are involved in war directly)** have been violated by the government.

Date	Incident	District	Area	Incident Report	Source of Information
30 Nov. 2001	Injured and killed in the army operation	Rolpa Gorkha	Khumel VDC	7 were injured at Khumel, Rolpa on 30 November and 37 on 1 December in the same district; the injured number was not mentioned in the attack of Gorkha on 5 December. It was also said that the death toll could not be indicated.	As publicized by the Ministry of Defense and the Ministry of Home

**NB:** 1. The duty as assigned by the Geneva Conventions, Chapter 2, No. 4 **"Search for the wounded, dead and missing"** has been violated.  
2. Chapter 4, No. 3 of the same conventions, **"The prohibition of attacks on civilian persons and civilian property"** has not been respected fully.



Date	Incident	District	Area	Incident Report	Source of Information
30 Nov. 2001	Inhumane punishment by Health Minister			Saratsingh Bhandari, Minister of State for Health, warned the medical personnel to take permission of the defense authority for the treatment of the injured in advance. The treatment against this warning was also made punishable in accordance with the ordinance.	As published in The Kathmandu Post "Government Warning to Medics", Dec. 1
16 Dec. 2001	Arrest	Banke	Kohalpur	Dr. Jitendraa Mahaseth, a staff of Lord Buddha Medical College was arrested by the security personnel from his own office on charge of treating the Maoists.	INSEC Regional Office, Nepalgunj

**NB:** The Geneva Convention, in addition to other protocols, chapter 2, No. 10 "**Medical Mission**" has been violated.

Date	Incident	District	Area	Incident Report	Source of Information
10 Dec. 2001	Arrest	Kathmandu		Bhakta Bd. Shrestha, former President of National People's Movement Coordination Committee was arrested from his own house at 10.40 PM. The family members were given no information on the purpose of the arrest and his whereabouts. Mr. Shrestha had desolved the committee on 29 Nov. expressing that the committee had no significance in the present situation.	Family members
25 Nov. 2001	Arrest	Kathmandu and other places		A total of 54 journalists, 10 from Kathmandu on 25 Nov.; 38 from Rupandehi on 29 Nov.; 1 from Surkhet on 27 Nov.; 1 from Jumla on 28 Nov. and 3 from Siraha were arrested.	Family members and other newspaper

**NB:** International Protocol on Civil and Political Rights, Article 9, (the victim is pre-notified for the cause of his arrest and his wrongdoing) has been violated.

Date	Incident	District	Area	Incident Report	Source of Information
16 Dec. 2001	Insufficient government news			<p>a. According to the Chief District Officer (CDO), a total of 104 'terrorists' were arrested after the declaration of the State of Emergency till 14 December. Among them 3 were released.</p> <p>b. According to the Ministry of Defense, a total of 14 'terrorists' were arrested after the declaration of the State of Emergency till 14 December.</p>	<p>a. The Gorkhapatra, 16 Dec 2001</p> <p>b. RSS (7 Dec.); The Gorkhapatra (16 Dec.)</p>

**NB:** 1. The whereabouts of the arrested persons as mentioned above is not publicized yet. The family members are too unknown about it.

2. Geneva Conventions, Additional Protocol First, Chapter 2 a PI 32 (The family has the right to know whereabouts of their family members) has been violated.

# Some Exemplary Reports of Human Rights Violation by the Maoist

Date	Incident	District	Area	Incident Report	Source of Information
25 Nov 2001	Ferocious killing	Gorkha	Manbu VDC	Netra Bahadur Shrestha, President of Mandu VDC was beaten severely by the Maoists. While he was inspecting the construction of the bridge, he was called aside and beaten in his hands and legs by the chisel. After that, he was beaten in his wounds by the hammer and left to die. The Maoists threatened the villagers that if anyone carried him, they would treat them in the similar manner. Six hours after the incident, some people carried Netra Bahadur to the hospital but in Aarughat, he died.	INSEC District Representative, District Police Office, District Office of Nepali Congress Party, Gorkha
27 Nov 2001	Shot dead	Sindhupalc howk	Baadegaun VDC-7	Chandra Bahadur Tamang, Ward Chairman of Baadegaun VDC-7 was shot dead when he refused to follow some people who came to call him. He was the elected Ward Chairman of RPP.	INSEC District Representative, Sindhupalchowk
3 Dec 2001	Indiscriminate killing	Rautahat	Pipra Rajwada VDC	Ramdev Yadav, aged 68 and a former Chairman of the PipraWada VDC was poked to death using a rifle.	INSEC District Representative, CPN(UML) District Party Office, Rautahat
3 Dec 2001	Indiscriminate killing	Lalitpur	Lalitpur Sub-metropolitan city	Tshring Sherpa aged 34 of Helambu, Sindhupalchowk District and Chintamadi Timilsina aged 35 of Damak Municipality were killed due to the bomb blast kept by the Maoists in the carpet showroom. They worked in Classic Handicrafts in Ekantakuna.	Kantipur Daily, Samachar Patra Daily, Space Time Daily (4 Dec 2001)
5 Dec 2001	Indiscriminate killing	Taplejung	Mashing	Prem Andambe, a peon of the Sub health post was shot dead by the Maoists while he was returning from his work.	Budabaar Saptahik (12 Dec 2001)
6 Dec 2001	Indiscriminate killing	Kaski	Dhambush	Policemen Birendra Shrestha and Buddhibal Khadka were shot dead by the Maoists by placing the bullet into their mouths. They were the unarmed community policemen working in Dhambush Police Post.	INSEC Regional Office, Pokhara
8 Dec 2001	Killing done by using "khukuri" and Bullets	Nuwakot	Ganeshthan VDC	Sitaram Rai of Ganeshthan VDC was first stroked by the "khukuri" then shot dead by the Maoists while he was arranging the things in his shop.	INSEC District Representative, Nuwakot
15 Dec 2001	Beaten to death	Dailekh	Lakanda VDC-4	Janak Thapa aged 24 of Lakanda VDC-4 was beaten to death by 15-20 Maoists at 11 o'clock at night.	INSEC Regional Office, Nepalgunj

Among the fundamental rights of Geneva Conventions and their Additional Protocols, Part 2, No.4 Humanitarian Law, a, fundamental guarantee, P. ii, 4 "Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction." has the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- Outrages upon personal dignity, in particular humiliating and degrading treatment;
- Taking of hostages;
- The passing of sentences and the carrying out executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.
- Threatened to carryout the above mentioned acts. The Maoists did not follow this act.



Date	Incident	District	Area	Incident Report	Source of Information
9 Dec 2001 Night time	Ambulance Damaged	Bardia	Kalika VDC-8 main road of Rajapur	Ba.1 Kha 487 number Ambulance of the Bardia Branch of Nepal Red Cross Society was damaged in an ambush laid by the Maoists in Kalika VDC-8 Rajapur while it was carrying a woman patient towards Nepalgunj. The driver of the ambulance was injured.	INSEC Regional Office, Nepalgunj, Gorkhapatra Daily, Kantipur Daily, Samachar Patra Daily, Space Time Daily, Rajdhani Daily, (11 Dec 2001)

**NB:** Among the fundamental rights of the Geneva Conventions and their Additional Protocols, Part 2, No.1c 'Medical Personnel and Vehicles' ("Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.") has been violated by the Maoists.

## VICTIMS KILLED BY STATE (NOV 23, 2001 - JAN 19, 2002)

Date	District	Type of Event	Type of Victim	No. of Victim	Source
23-Nov-01	Dang	Killed by Firing	"Maoist"	4	INSEC
25-Nov-01	Solukhumbu	Killed by Firing	"Maoist"	200	Government
26-Nov-01	Rolpa	Killed by Firing	"Maoist"	50	Government
26-Nov-01	Salyan	Killed by Firing	"Maoist"	70	Government
26-Nov-01	Solukhumbu	Killed by Firing	Student	1	INSEC
26-Nov-01	Darchula	Killed by Firing	"Maoist"	12	Government
27-Nov-01	Terhathum	Killed by Firing	Worker	1	INSEC
27-Nov-01	Rolpa	Killed by Firing	"Maoist"	22	Government
27-Nov-01	Pyuthan	Killed by Firing	"Maoist"	7	Government
28-Nov-01	Dang	Killed by Firing	Agricultural	11	INSEC
28-Nov-01	Salyan	Killed by Firing	"Maoist"	8	INSEC
28-Nov-01	Salyan	Killed by Firing	Civil Servant	4	INSEC
28-Nov-01	Salyan	Killed by Firing	General People	1	INSEC
28-Nov-01	Rolpa	Killed by Firing	General People	5	INSEC
28-Nov-01	Dang	Killed by Firing	General People	1	INSEC
1-Dec-01	Makaw anpur	Killed by Firing	General People	1	INSEC
1-Dec-01	Nawalparasi	Killed by Firing	General People	1	INSEC
1-Dec-01	Rolpa	Killed by Firing	"Maoist"	37	Government
2-Dec-01	Kailali	Killed by Firing	"Maoist"	3	Government
4-Dec-01	Gorkha	Killed by Firing	"Maoist"	1	INSEC
4-Dec-01	Sindhupalchowk	Killed by Firing	General People	1	INSEC
4-Dec-01	Gorkha	Killed by Firing	"Maoist"	1	INSEC
5-Dec-01	Sunsari	Killed by Firing	"Maoist"	1	INSEC
6-Dec-01	Dhanusha	Killed by Firing	General People	3	INSEC
7-Dec-01	Bardiya	Killed by Firing	General People	1	INSEC
8-Dec-01	Siraha	Killed by Firing	"Maoist"	1	INSEC
8-Dec-01	Morang	Killed by Firing	"Maoist"	3	INSEC
8-Dec-01	Nuwakot	Killed by Firing	General People	2	INSEC
8-Dec-01	Bardiya	Killed by Firing	General People	1	INSEC
9-Dec-01	Rolpa	Killed by Firing	"Maoist"	60	Government
9-Dec-01	Kailali	Killed by Firing	"Maoist"	11	Government
9-Dec-01	Salyan	Killed by Firing	"Maoist"	11	Government

# VICTIMS KILLED BY MAOISTS

## (NOV 23, 2001 - JAN 19, 2002)

Date	District	Type of Event	Type of Victim	No. of Victim	Source
23-Nov-01	Dang	Killed by firing	Army	14	INSEC
23-Nov-01	Dang	Killed by firing	Police	9	INSEC
23-Nov-01	Dang	Killed by firing	General People	2	INSEC
23-Nov-01	Syangja	Killed by firing	Police	14	INSEC
24-Nov-01	Dang	Killed by firing	Student	1	INSEC
24-Nov-01	Surkhet	Killed in an Ambus	Police	4	INSEC
24-Nov-01	Surkhet	Killed in an Ambus	Worker	1	INSEC
24-Nov-01	Udayapur	Killings	Political Worker	1	INSEC
25-Nov-01	Solukhumbu	Killings	Police	27	INSEC
25-Nov-01	Solukhumbu	Killings	Civil Servant	2	INSEC
25-Nov-01	Solukhumbu	Killings	Army	5	INSEC
25-Nov-01	Solukhumbu	Killings	Prisoner	1	INSEC
25-Nov-01	Gorkha	Killings	Political Worker	1	INSEC
25-Nov-01	Sunsari	Killed by bomb blasting	"Maoist"	2	INSEC
25-Nov-01	Sunsari	Killed by bomb blasting	Student	1	INSEC
26-Nov-01	Kanchanpur	Killings	General People	1	INSEC
26-Nov-01	Pyuthan	Killed in an Ambus	Army	2	INSEC
27-Nov-01	Darchula	Killed by firing	Police	7	INSEC
27-Nov-01	Sindhupalchow k	Killings	Political Worker	1	INSEC
1-Dec-01	Dolpa	Killings	General People	1	INSEC
2-Dec-01	Syangja	Killings	Political Worker	1	INSEC
4-Dec-01	Lalitpur	Killings	Worker	3	INSEC
4-Dec-01	Rautahat	Killings	Political Worker	1	INSEC
5-Dec-01	Taplejung	Killings	Student	1	INSEC
6-Dec-01	Kaski	Killed by firing	Police	2	INSEC
8-Dec-01	Nuw akot	Killed by firing	General People	1	INSEC
9-Dec-01	Rolpa	Killed by firing	Army	4	Government
9-Dec-01	Syangja	Killings	Political Worker	1	INSEC
9-Dec-01	Salyan	Killed by firing	Army	2	Government
9-Dec-01	Ilam	Killings	General People	2	INSEC
12-Dec-01	Dang	Killed by bomb blasting	General People	5	INSEC
12-Dec-01	Dang	Killed by bomb blasting	"Maoist"	1	INSEC
15-Dec-01	Dailekh	Killings	General People	1	INSEC
15-Dec-01	Kathmandu	Killed by firing	Worker	1	Government
16-Dec-01	Kailali	Killings	General People	1	Government
16-Dec-01	Dolakha	Killed by firing (accidently)	Teacher	1	INSEC
16-Dec-01	Solukhumbu	Killed by firing	Army	1	INSEC
17-Dec-01	Gorkha	Killings	Teacher	1	INSEC



17-Dec-01	Gorkha	Killings	Political Worker	1	INSEC
19-Dec-01	Gorkha	Killed in an Ambus	Army	2	Government
19-Dec-01	Kathmandu	Killings	Political Worker	1	Government
20-Dec-01	Gorkha	Killings	Teacher	1	INSEC
22-Dec-01	Kalikot	Killings	Political Worker	1	CPN (UML)
22-Dec-01	Bardiya	Killed by firing	Police	1	INSEC
23-Dec-01	Lamjung	Killed in an Ambus	Army	3	Government
24-Dec-01	Banke	Killings	Political Worker	1	INSEC
24-Dec-01	Rautahat	Killed by firing	Political Worker	1	INSEC
26-Dec-01	Sindhupalchow k	Killed by firing	Political Worker	1	INSEC
26-Dec-01	Rukum	Killed in an Ambus	General People	3	Government
26-Dec-01	Tanahu	Killed in an Ambus	General People	1	Government
26-Dec-01	Baglung	Killed by firing	General People	3	Samacharpatra
27-Dec-01	Kaski	Killed by firing	Political Worker	1	INSEC
27-Dec-01	Dadeldhura	Killings	General People	1	Government
28-Dec-01	Baglung	Killed by firing	General People	1	New spapers
<b>Total</b>				<b>150</b>	

Note : On December 28, 2001, J. P. Gupta, Spokesperson of the government and Minister for Information and Communications stated that a total of 137 defence authorities as well as other civilians were killed by the Maoists after November 23, 2001.

29-Dec-01	Nuw akot	Killed by firing	General People	1	INSEC
30-Dec-01	Nuw akot	Killings	Teacher	1	INSEC
30-Dec-01	Dailekh	Killings	Political Worker	1	Government
1-Jan-02	Kalikot	Killed by bomb blasting	Student	2	Government
1-Jan-02	Gorkha	Killings	General People	1	Government
3-Jan-02	Myagdi	Killed in an Ambus	Army	2	Government
3-Jan-02	Lamjung	Killings	General People	1	Government
3-Jan-02	Kapilvastu	Killings	General People	1	Government
4-Jan-02	Myagdi	Killings	Political Worker	1	Government
6-Jan-02	Gorkha	Killings	Teacher	1	INSEC
6-Jan-02	Gorkha	Killed by firing	Political Worker	1	INSEC
8-Jan-02	Bardiya	Killings	Political Worker	1	INSEC
10-Jan-02	Dang	Killings	General People	1	Government
11-Jan-02	Taplejung	Killed by firing	Teacher	1	Government
11-Jan-02	Taplejung	Killed by firing	General People	2	Government
11-Jan-02	Surkhet	Killings	Political Worker	1	Government
13-Jan-02	Dadeldhura	Killed by firing	Police	1	New spapers
13-Jan-02	Dolakha	Killed by firing	Political Worker	1	INSEC
13-Jan-02	Pyuthan	Killed by firing	General People	1	New spapers
14-Jan-02	Palpa	Killed by firing	Army	1	New spapers
15-Jan-02	Dang	Killings	Political Worker	1	INSEC
15-Jan-02	Gorkha	Killed by firing	Police	1	Government
16-Jan-02	Lamjung	Killed by firing	Teacher	1	INSEC
16-Jan-02	Palpa	Killed by firing	Political Worker	1	Government
16-Jan-02	Khotang	Killed by firing	Teacher	1	Government
16-Jan-02	Mugu	Killed by firing	Political Worker	1	INSEC
17-Jan-02	Kailali	Killings	Political Worker	1	New spapers
18-Jan-02	Pyuthan	Killings	General People	1	New spapers
18-Jan-02	Kanchanpur	Killings	Political Worker	1	Government
18-Jan-02	Myagdi	Killings	Political Worker	1	INSEC
19-Jan-02	Lamjung	Killings	General People	1	Government
<b>Total Number of Victim :</b>				<b>184</b>	

# REGULATIONS IN TIME OF ARMED CONFLICT

(World Medical Association : 1956, 1957, 1983)

1. Medical Ethics in time of armed conflict is identical to medical ethics in time of peace, as established in the International Code of Medical Ethics of the World Medical Association. The primary obligation of the physician is his professional duty; in performing his professional duty, the physician's supreme guide is his conscience.
2. The primary task of the medical profession is to preserve health and save life. Hence it is deemed unethical for physicians to:
  - A. Give advice or perform prophylactic, diagnostic or therapeutic procedures that are not justifiable in the patient's interest.
  - B. Weaken the physical or mental strength of a human being without therapeutic justification.
  - C. Employ scientific knowledge to imperil health or destroy life.
3. Human experimentation in time of armed conflict is governed by the same code as in time of peace; it is strictly forbidden on all persons deprived of their liberty, especially civilian and military prisoners and the population of occupied countries.
4. In emergencies, the physician must always give the required care impartially and without consideration of sex, race, nationality, religion, political affiliation or any other similar criterion. Such medical assistance must be continued for as long as necessary and practicable.
5. Medical confidentiality must be preserved by the physician in the practice of his profession.
6. Privileges and facilities afforded the physician must never be used for other than professional purposes.

## Rules governing the care of sick and wounded, particularly in time of conflict

- A. 1. Under all circumstances, every person, military or civilian must receive promptly the care he needs without consideration of sex, race, nationality, religion, political affiliation or any other similar criterion.
2. Any procedure detrimental to the health, physical or mental integrity of a human being is forbidden unless therapeutically justifiable.
- B. 1. In emergencies, physicians and associated medical personnel are required to render immediate service to the best of their ability. No distinction shall be made between patients except those justified by medical urgency.
2. The members of medical and auxiliary professions must be granted the protection needed to carry out their professional activities freely. The assistance necessary should be given to them in fulfilling their responsibilities. Free passage should be granted whenever their assistance is required. They should be afforded complete professional independence.
3. The fulfillment of medical duties and responsibilities shall in no circumstances be considered an offence. The physician must never be prosecuted for observing professional secrecy.
4. In fulfilling their professional duties, the medical and auxiliary professions will be identified by the distinctive emblem of a red serpent and staff on a white field. The use of this emblem is governed by special regulation.





**MUKTINATH ADHIKARI, AGE- 46  
KILLED BY MAOISTS, LAMJUNG  
ON 16 JAN. 2002**



**AMBULANCE OF NEPAL REDCROSS SOCIETY  
WRECKED IN AN AMBUSH PLACED BY MAOISTS,  
BARDIYA ON 9 DEC. 2001**

## Maoists arrested with weapons in Kavre, Dolalghat





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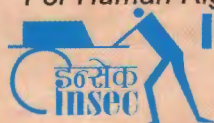
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