

**Internal armed conflict and abducted democracy in Nepal
Concerns over violation of IHL**

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Prepared by



FOHRID

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Executive Summary

FOHRID Human Rights and Democratic Forum carried out a study expressing worries over the present context of declaration of state of emergency, suspension of fundamental rights and stalemate in the democratic process in Nepal. There are plenty of instances where both the State and the Maoist insurgents have violated international human rights laws and international humanitarian laws to victimize the people in the past decade.

The latest activities of the King in the name of overcoming terrorism has pushed democracy and human rights situation of the country into critical mode. Both the State and the Maoist insurgents are responsible for degrading situation of human rights and increasing humanitarian crisis. People are deprived of their individual liberty and right to life that are essential for ensuring democratic atmosphere. The ambition of the ruler and the weaknesses in the governing system are responsible for this.

Present government led by the King has denied possibility of dialogue with the Maoists. This has made the peace loving people sad. Besides, neither the democratic forces and the King nor the democratic forces and the insurgents have any potential for a consensus. We realize that this condition has pushed the possibility of resolving Maoist insurgency far away. It is obvious that the sustainable peace and institutional development of multiparty democracy is possible only with the active working solidarity of all the stakeholders in the country. Direct rule of the King has also failed to ensure institutional development of multiparty democracy, improvement of human rights situation and peaceful resolution of the ongoing internal armed conflict in the country. The current deadlock has posed threat to the application of IHL, right to sustainable livelihood, social and political participation of the people.

This is the summary of 30 pages long report entitled "**Internal armed conflict and abducted democracy in Nepal: Concerns over violation of IHL**" that contains around 15,500 words. This report has been made public by FOHRID Human Rights and Democratic Forum on 9th April 2005. We have tried our best to include only the verified incidents of human rights violation. We request you to go through the entire report for detail.

You are always welcome to give comments and suggestions in the FOHRID address.

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1. Backgrounds of Crisis in democracy

Modern Nepal gained landmark achievements after the political transformation of 1990. The democratic constitution formed at that time has mentioned the fundamental rights in accordance with the international standard. *In Nepal*, the promulgation of the democratic Constitution in 1990 restored political freedom and civil rights. Bestowing sovereignty on the people, the Constitution accepts constitutional monarchy and embraces multi-party parliamentary democracy. It has guaranteed basic human rights to every citizen, including freedom of the press, the right to information and constitutional remedies for violations of these rights. It also guarantees property rights and prohibits all forms of discrimination in the name of religion, caste, race and sex. Though not directly enforceable, social, economic and cultural rights are embodied in the fundamental principles. In addition, Constitutional provisions enable various institutions to function better under democratic system. It proposes a two-tier parliamentary system and grants executive power to the Council of Ministers, accountable to Parliament. The Supreme Court is entrusted with the power to interpret the Constitution and protect the fundamental rights of citizens.¹

In this connection, democratic practice for some years following the political change were satisfactory. But, it was unfortunate for the people and the country that this process could not run until it could gain maturity. This is due to lack of experience of the political parties to handle the democratic system and commitment in the part of the political leaders who were in the government after 1990. The parties in opposition chose street to parliament for fulfillment of their demands and could not play due role of the opposition to institutionalize multiparty democratic system. Perpetual greed for power, individual ambition, financial interest, internal conflict and split in the parties for which the leaders themselves were responsible made the democratic system fragile. Taking advantage of this unstable and un-farsighted activities of the parliamentary parties, Communist Party of Nepal – Maoist (CPN-M) declared 'people's war' in Nepal and they commenced their insurgency after submitting 40 point demands to the then government in 1996. The insurgency began by the Maoists did not take more than 5 years to spread throughout the country to cripple the daily lives of the people. It was felt nationwide by the year 2001 as well as it created contempt to young democracy of Nepal and terribly affected peoples' rights to sustainable livelihood and social and political participation.

Besides, the 'People's War' has posed a threat to the implementation of International Humanitarian Law (IHL) in Nepal. The country has been affected by the armed conflict as they aimed radical transformation of the country's political scenario. In the beginning phase, Government launched 'Romeo' operation in Rolpa and Rukum districts to counter the 'people's war'. After the failure of this operation, government launched 'Kilo Sera Two' operation in the inflicted areas. Hundreds of militia, political activists including alternate central member of the Maoists were killed in this period. Despite this military means of suppression, the Maoist insurgency and the expansion of their organization could not be controlled. Government never paid attention to address the issues raised in the 40-point agenda. The result is before us –

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murder, violence, pessimism, hatred, dilapidated villages, terrorized dwellings and the economic development in an embargo.

A cease-fire was declared between the government and the insurgents in August 2001. Maoists left the negotiation table raising a trifle issue just after four months. Government declared state of emergency for the first time on 26 November 2001. Both the government and the Maoist sides had already caused disappearance of hundreds of people by that time. People faced serious violation of their fundamental rights during the nine months of state of emergency in 2001. People could not enjoy most of the fundamental rights ensured by the Constitution. In the emergency period more than 250 cases of disappearance by the government side were disclosed.²

Emergency could not avert the Maoists from launching big attacks. They centralized their attacks in the selected Terai region of strategic importance. They even ran open training and political campaigns. The issue of extending state of emergency divided the ruling Nepali Congress and the then Prime Minister Sher Bahadur Deuba dissolved the elected House of Representatives. The state of emergency remained in force till 27 August 2002. His Majesty King Gyanendra Bir Bikram Shah Dev ousted elected Prime Minister Deuba as a consequences of this. Three governments led by Lokendra Bahadur Chand, Surya Bahadur Thapa and again Sher Bahadur Deuba have already been formed and dissolved using the Article-127 of the Constitution of the Kingdom of Nepal.

Government raised its force from 45 thousand to more than 80 thousands and Maoists claimed that their capacity limited to squad was, by that time, elevated to division. The Thapa government overran the constitution in forming unified command only to sacrifice humanitarian values introducing a concept to run the police, armed police and local government under the supervision of the army. The unified force has got the responsibility to overcome the crisis in the country. All these consequences have created two kinds of crisis – firstly, the crisis in the constitution and democracy; and secondly, the possibility to peaceful settlement has been ignored. Government declared its plan to provide arms and training to the general public in the name of ‘village security squad’ on 4 November 2003. This only invited additional confrontation, though it was vigorously denounced by the civil society.

Maoists attacked the district headquarters in Bhojpur and Myagdi. About 500 people, including armed forces, civilians and militia lost their lives. Red Cross officials shared their hands to cremate 35 dead bodies left behind by the Maoists in Beni attack. International Committee of Red Cross (ICRC) took initiatives to release 37 captives including DSP Rana Bahadur Gautam and CDO Sagar Mani Parajuli. Civil society and international community have time and again appealed Maoists to prove their pragmatic commitment to the Common Article-3 of the IHL, but this does not suffice to cleanse their atrocities. The ‘rural volunteer security group and peace management committee’ formed by the Thapa government to strengthen rural security and to encourage people for their own safety proved suicidal. This committee provided training and weapons to the general public at Chula Chuli of Ilam district, eastern Nepal. The 13-member peace, protection, good governance committee formed under Chetraj Bantawa had been

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accredited to the Batuk Gan (Company), Char Ali of Jhapa district. But the Maoists shot dead Chairman Bantawa in the broad daylight at Damak and grabbed his pistol on March 2004.

By September 2004, Maoist affiliated Trade Union forced to close down 47 important industries and enterprises directly affecting livelihood of tens of thousands of workers. Hotel Soaltee Crowne Plaza and Surya Nepal, in which the members of Royal family have their investment, including other multinational and foreign investment industries were among their targets. Maoists got stronger in respect to their military might and they tried to forbid the presence of the government in every sector. They claim that they have captured 80% of the total land.

Calamity of 1st June 2001 is yet another event that will be remembered in Nepalese political history as a factor affecting democratic system. The day symbolizes for a transitory point heralding danger to democracy and human rights in Nepal. The issue of the security and right to life of Nepalese people has been endangered ever after. The day is infamous as witness to the royal palace massacre. The incident that was explained as the massacre of his own parents and other family members by the then Crown Prince Dipendra before killing himself invited different suspicions and explanations. Many observers questioned how could one trust for the safety of the people when the life of the King himself is not safe. Nepalese people were not ready to accept the logic that Crown Prince Dipendra was solely responsible for that tragic incident. The event was followed by a continuous erosion of the popular legitimacy of the Nepalese Monarchy. People were compelled to initiate debate for and against monarchy for future Nepal. This transitory period is still prevalent in Nepal.

Multiparty democratic process has been weakened by the political instability and Maoist insurgency. Clear threat to democracy were visible by the end of 2002. King Gyanendra dismissed Prime Minister Sher Bahadur Deuba by using Article 127 of the Constitution on 4 October 2002. The royal move attacked the democratic system at one hand and at the other hand there were visible signs that military solution would be forwarded for the suppression of Maoist insurgents. A ceasefire was declared between the government and the Maoist insurgents in 29 January 2003 for the second time. The negotiation was disrupted after the delegates could not enter into the major political issues after three rounds of talks. The Doramba incident was used as the immediate surface cause by the Maoists which was agreed by a large portion of civil society in Nepal. But actually the royalists, surrounding the King, with their vested interest also did not want the negotiation to succeed.

Political development after the end of ceasefire could not yield any positive response in favour of democracy. Government mechanism started to lose hold gradually in the local level. The triangular conflict among the royalist, parliamentarian and the Maoists proved unfavourable to democracy and human rights in the country. The then governments could neither improve human rights situation nor they could bring peace in the country. Hundreds of demonstrators were detained and released repeatedly during the movement of the five parties against what they called 'regression' in 2003. Political right to assemble and protest the unpopular activities of the government was abducted. Youths and students raised anti-monarch slogans strongly. Mock elections were organized in various campuses and universities where an overwhelming majority

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was seen in favour of republican State. These events posed serious challenge to the King as it could boost up public opinion against monarchy. This urged the King to act immediately.

All these led to militarization in the country. Key impacts of these developments were seen in the declaration of the state of emergency, dominance of the military ambition, establishment of a unified command and continued stalemate in the democratic process. It was seen that the closely aligned palace and army, not the appointed government, held power over many aspects of decision making and this is still prevalent. It is this militarization and lack of political accountability, combined with weak state institutions, corruption and a breakdown in the rule of law that has helped to create the climate of impunity within which unlawful killings are taking place.³ It is estimated that almost 12,000 people have lost their lives and about 50,000 people have been displaced till March 2005.

In this backdrop, King Gyanendra dismissed the Deuba government on 1st February 2005 and formed new government in his own chairmanship to directly rule the country. Emergency for six months was imposed immediately after the King made above royal proclamation citing the Article 27 (3) of the Constitution. New government was declared in the chairmanship of the King and most of the top political leaders were either detained or put into house arrest. In this way, the King has abducted democracy and suspended all the fundamental rights except the right to habeas corpus. Political activities and instead of ensuring free press the army has imposed strong censorship to the media. Internment is imposed to senior political leaders, journalists, human rights activists and leaders of the civil society from leaving the capital or the country.

Democracy is going through hard times after the onset of Maoist insurgency. King Gyanendra who came to the Nepalese political limelight in a difficult time after the royal palace massacre in 2001, has abducted democracy. Many senior political leaders have left the country due to unfavourable environment in the country.

Latest political development has compelled people to question about the existence of the Constitution of the Kingdom of Nepal 1990 and the concept of multi party democracy. Fundamental rights of the people have been suspended. This has added vulnerability in the application and enjoyment of fundamental rights. On the one hand, Maoist insurgency was one extreme default situation being faced by the people and on the other hand the King has tried to replace it by another extreme measure. This has posed threat to the application of IHL, right to sustainable livelihood, social and political participation of the people.

2. Internal Armed Conflict and Concern of FOHRID:

Human rights situation and the humanitarian values have been threatened due to Maoist insurgency and the ongoing triangular political conflict. Democratic forces are in the street due to dominance of military power. Daily life of general people is worsening day by day. Security forces and the insurgents are setting one after another record to invite humanitarian crisis. Our concern in the backdrop of series of careless armed conflict is the implementation of Common Article-3 of the IHL. Nevertheless, we are not in favour of extended wars implementing the Common Article-3. We have firm conviction that peace and humanity can prosper in a society without armed conflict. Promotion of human rights, peace and democracy are our primary

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objectives at present. The decade long ‘people’s war’ has been more targeted to the destruction of fundamental humanitarian values being distracted from their political goal. It has neglected the spirit of IHL, Human Rights Declaration, conventions and other international instruments. An unprecedented crisis in the political, economic, educational life and social security have been witnessed, vis a vis Nepal is pushed to the peril of being declared a failed state.

Our first concern is that the armed conflict threatening humanitarian values must be stopped immediately and both the conflicting sides must show their honesty and commitment to resolve the crisis. The parties involved must respect and implement minimum standards of humanity, humanitarian law and human rights. Secondly, the obstructed democratic system should be strengthened and the King should realize that his lust of power is not the solution of present crisis.

Peace and human rights activists throughout the world believe that both government and insurgents are responsible for humanitarian crisis and they cannot be redeemed of their responsibility of being accountable to the IHL. Parties involved in war must understand and should strictly follow that the combatants who have surrendered should be regarded as non-combatant citizens and are liable to humanitarian behaviour according the IHL.

We cannot favour the activities against humanity and democracy, and, at the same time, we have to be clear whether we are trying to take advantage of the grievances of the victims. FOHRID would like to commit that it never decides what is wrong and what is right, it does not concern over political disputes and does not make any compromise to the violation of human rights, humanity and non-democratic activities. The steps taken to monitor and evaluate the implementation of the IHL are beyond dispute. This is a non-partisan movement and it is not guided by the myth of favouring one side and neglecting the other.

3. Nature of violations of IHL (Common Article-3) in Nepal:

Due to humanitarian crisis after the onset of armed conflict, Nepal has been black listed as one of the countries having most cases of human rights violation. Increasing cases of human rights violation have become matter of concern of the international community. ‘People’s war’ and its resistance from the government forces have jeopardized the implementation and respect of various international instruments on human rights and humanitarian law. Nature and excess of violation of human rights and humanitarian law can be briefly enumerated as follows:

3.1 Murder:

Murder is not an exceptional case in a war; nevertheless, it is a heinous crime against humanity. Even the death of combatants belonging to the government forces and insurgents in their uniform is a humanitarian loss. The parties in conflict claim that murder is a natural consequence of war, and, at the same time, ignore the need to keep civilians away. The parties involved in armed conflict have violated the Common Article-3 by unlawful killings, unjustified murder, massacre, deliberate murder and individual murder. Most of the murders from the security forces have been defended in the name of armed encounter. Massacre of 30 civilians in Beni during the Maoist attack on 20 February 2003 is an example. Security forces took Muna Adhikari (Namrata) and Harka Bahadur (Yogesh) to a terrace and killed them on 21 February 2003 (Kantipur daily,

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Tuesday, 23 February 2003). INSEC has reported that 1077 people were killed by Maoists and 1604 people were killed by the security forces in the year 2004 alone.

Large number of non-combatant civilians have been killed during military operations in the name of encounters. One of them happened at Doramba. This incident is a direct violation of Common Article-3 that provokes for the security of the arrested people. Royal Nepal Army killed 19 people, their hands tied at the back after leading them 2 hours walk away from the site of arrest. Similarly, the killings of civilian for political avenge by the Maoists accusing them of spying for the army are also serious.

Birendra Kumar Shahi was panic stricken. They were using saw to cut his body. He pleaded in his utter agony, 'Please shoot me'. 'Who shall pay the cost of bullets?' they demanded. I shall pay the cost of the bullets that kill me,' he retorted. They eventually shot him dead and received the cost of three bullets at the rate of Rs. 175/- from the wife of the victim. This savage incident occurred in Athbiskot of Rukum district. The brutal antagonists were non other than the Maoists. Later on they declared Shahi as a spy to the government. A group of people captured Shankar and Ishwar Shahani in Sarlahi district. They were handed over to the security force. Security force compelled them to carry guns. They took photos of the captives. The force then asked them to dig hole on the ground. They were pushed in, shot and buried.⁴

3.2 Torture

Common Article-3 of the IHL has prohibited all kinds of torture at any place and time during armed conflict. Freedom from torture falls within minimum humanitarian standard as torture is prohibited by the domestic laws also. Government security forces and the insurgents take torture as a primary means and they repeatedly use this against civilians. One can find a large number of cases where the police or the army have tortured civilians accused of Maoists or the Maoist activists after their arrest. The ever increasing trend of torture is weakening humanitarian values in Nepal. It is a dangerous idea to seek help of torture as a means of suppression during armed conflict. Government claims that torture may accidentally happen during investigation of the captives. Victims have access to neither medicinal nor legal aid. The captives in the custody or home arrest are denied with their fundamental rights. They are deprived of their basic needs like food, sanitation, security, medical aids. In some instances, male and female captives are kept in the same apartment. Correspondence is censored or not allowed. Health and life of the captives are endangered through unwanted treatment, vengeance and carelessness. The fate of journalist Krishna Sen is an example of killing in the custody. Incidents of torture are found in the police stations, army camps, jail and the office of the Chief District Officer. Maoists torture their captives in their camps, private residence and open area. Cases of torture from government side increased twofold from 101 in 1999 to 201 in 2002. The number of captives and victims of torture reached 2716 in the year 2003. Though the disclosed cases of torture from the Maoist side is less than that of the government side, it is increasing significantly in the recent days. Maoists were responsible for 37 incidents of torture in 2001 which reached 180 in 2002. Death in government custody were counted 37 in the year 1997. Maoists have been frequently targeting political leaders, local leaders and so called spy in the rural areas. A study carried out by the National Human Rights Commission has revealed that 75% of the victims have received mental and physical torture. The ratio of government and Maoist side is 70:30 in these cases. Altogether 2589 people had been victims of torture after their arrest in the year 2004. Cases of torture are

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increasing every year. Both the sides have been in the run to set new records of brutality through torture.

3.3 Corporal punishment

There are abundant cases of corporal punishment during armed conflict. Government security forces intend to hide the cases of corporal punishment whereas the insurgents declare it publicly. Normally, Maoists announce and carry out such punishment against non-combatant civilians, e.g., teacher, farmer, local level political activists, retired army or police personnel etc. to terrorize public.

There are many people who escaped death after torture. Many of them are physically impaired as a consequence of the inhuman treatment. The only crime of Badri Prasad Adhikari was that he was once in the Royal Nepal Army. Mr. Adhikari, resident of Tipling VDC, Ramechhap is physically impaired. Maoists have crushed his legs by stone.

There are considerable number of cases in which people have lost their lives after being punished by the Maoists for quitting their 'people's army'. In the 'Deepening human rights crisis in Nepal' published by Amnesty International, London in 2002, 800 killings by the Maoists in the name of 'enemy to revolution' have been recorded. Many of them have lost their lives due to corporal punishment.

3.4 Mutilation

Mutilation during attack and counter attack in the course of armed conflict may be counted as natural consequence. But the warring parties always require to be careful that their attack or confrontation should not harm the non-combatant civilians. Such activities are prohibited by the IHL, Common Article-3. But a significant number of people have been victim of mutilation during armed conflict in Nepal. National Human Rights Commission carried out a survey in 6 districts in 2003. The study has shown that the cases of mutilation were 66 in Rukum, 58 in Rolpa, 57 in Jajarkot and 48 in Salyan districts. Many of these 238 people lost their sight, hearing power and limbs. Security forces beat Kaliman Pun of Rakam VDC, Puljip on 23 December 2003. He lost vision of his left eye after he was brutally beaten by the security forces who came to his village to chase the Maoists.

3.5. Outrage upon personal dignity and degrading treatment:

Parties to armed conflict should not treat with atrocity and harass their enemy or the non-combatant civilians. Everyone has the right to be treated in the humanitarian ground. But the practice has shown that the conflicting parties impose atrocity and harassment to the people under their control. It is the weakness of the security officers not to behave according to their position. Security forces are more responsible to the atrocities such as use of dirty and humiliating language, sexual harassment to the women including physical and mental torture against the people under control.

Maoists beat Mr. Gosai Chaudhari, Headmaster of Athbish Dandagaun, Rukum on 25 October 2003. The victim Mr. Chaudhari returned to his parental home in Saptari after the incident. Alleging Sushila Nepali of her relationship with Chaudhari, activists of Maoist Dalit Mukti Morcha took off her blouse and insulted her by squishing her nipples.

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3.6. Hostage taking: Both the government security forces and the Maoist armed militia have violated the Common Article-3 by taking of hostage. Security forces in civil dress have kidnapped hundreds of civilians. They come at night and kidnap people from their residents, without producing warrant, in the name of investigation. Security forces usually deny such cases. In rare cases, after much pressure from the media and the human rights activists they accept it as arrest. But the arrest should follow due process of law. There is no difference between kidnapping and arrest without due process of law. Maoists have already kidnapped 26181 people including children, teachers, farmers, women and civilians in the year 2004. They set free some people but use others as human shield during their attacks. People do not sleep at night due to fear of being kidnapped in many remote areas. Parents are compelled to send their children to a safer place due to fear of this. Large number of youth in the western Nepal are displaced to district headquarters or to India due to this fear. Chief District Officer Sagarmani Parajuli, who was abducted after Beni attack with 37 security personnel was fortunate enough to be freed on 6 April 2004 in the initiatives of ICRC. But there are many cases in which the abducted people are not freed.

3.7. Collective punishment:

Punishment without hearings in an authorized jurisdiction is illegal. Parties in conflict must not carry out punishment in isolation or collectively. IHL has prohibited any form of collective punishment. Security forces have sometimes persecuted villagers in the name of helping Maoists and Maoists persecute them for not helping them. Maoists abducted five villagers including Ritu Bhar, 14 on 24 July 2003 and kept them at a school at Hariharpur VDC for 3 days.

Security forces declared collective punishment to more than 60 villagers including an 80 years old woman, children, pregnant women at Ishibu VDC, Terhathum district after Maoists injured a policeman on 17 December 2003.⁵

3.8. Executions without fair trial:

IHL Common Article-3 has prohibited any punishment without fair trial. Especially, security forces are responsible for keeping people in their custody without any chance of fair trial in the competent court. Some companies of the Royal Nepal Army refused to respond to the order of habeas corpus from the Supreme Court. People are deprived of their right to fair trial as the court could not use its right to search in the custody. Arrested person should be presented to the concerned authority within 24 hours of arrest whether it be the case of suspected or identified insurgents or anyone else. Even the domestic law has prohibited keeping such people for more than 24 hours without consent from the competent authority. But most of the arrested people are kept for more than 24 hours in the custody without providing chance of legal hearing. Some of them disappear from there and few of them even succumb to death.

Gobinda Poudel of Kabilas VDC-1, Jugedi of Chitwan district was arrested by the Security forces. Jail administration returned his dead body to his wife after a month. Local administration informed that he died due to malfunctioning of his urinal duct. Chitwan branch of FOPHUR, Nepal claimed in the same case that he lost his life due to torture in the custody.⁶

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CPN-M Central Committee Member Dinesh Sharma was kept in the custody for 11 months. In the case of another Maoist leader Ishwari Dahal, police refused to disclose his whereabouts even after persistent inquiry from the Human Rights defenders. Maoists claim that he was abducted by the police. Incidents of repeated arrest of the political activists, civilians and general people as suspected Maoists is often reported. Amnesty International has claimed that many people have been tortured in the police and army custody without giving them chance of fair hearing. Common Article-3 has prohibited punishment without due process of law and fair trial in the court. Unfortunately, both the Maoists and the government forces have punished people on their own. In its report published in 2002, Amnesty International has mentioned that Bhadra Satyal of Siuna VDC-2, Kalikot district was murdered by the Maoists accusing him of spying for the security forces.

3.9. Cruel Treatment:

Both the security forces and the Maoist insurgents have caused incidents of cruel treatment. Most of such cases have resulted in murder. Cruel treatment cannot be excused even during conflicting hours, but both the parties involved have been cruel to the people under their control. Maoists have killed hundreds of people by using sharp weapons, piercing skin, throwing stone, exploding body with explosives, cutting body into pieces, using axe or hammer, throwing people down the cliff and other similar inhuman ways. People tortured by the security forces say that they blindfold the captives, rape and harass women, use electric shocks, beat in the sensitive organs and do not provide sufficient food in the custody. Maoists abducted Motiram Silwal, Nepali Congress - Democratic activist of Nalang VDC-9 when he was mourning death of his mother. He was found murdered after two days by firing bullet to his head and cutting his throat. Maoists either abduct or kill those family members who refuse to provide food and shelter to them. This has increased the number of widow and orphans. Security forces arrested Chandra Lal Tamang and Dharma Raj Lama of Narayansthan VDC-8, Kavre when they were heading towards their village. They were shot dead after beating severely. Armed conflict naturally increases cruel and inhuman treatment but it does not affect only the victims. Journalist and teacher Gyanendra was killed by the Maoists in the broad daylight. They tied up his hands to a volleyball pole and cut his throat with a knife. They forced his wife to witness the event.

A group of 15-20 Maoists entered the house of Dhan Bahadur on 29 March 2002 and asked Rs. 13 thousand with the 28 years old teacher. Maoists tied up his and his siblings' hands to their back and started to kick him. He was beaten brutally with the iron rod and stick. Both of his legs were broken. He lost his conscience. When he regained his consciousness, he was on the floor and a dog was licking blood from his mouth.⁷

3.10. Disappearance:

Hundreds of people have disappeared during the armed conflict. AI has repeatedly shown its concern to the large number of cases of disappearance of the Maoist activists by the security forces. It had mentioned disappearance of 250 people in its report published in 17 October 2003. The report has mentioned that additional 80 people disappeared after the security operation was intensified from 1999 to 2001. The report claims that more than 100 people disappeared by the security forces from the beginning of the state of emergency on 26 November 2001 till 29 August 2002. Human rights Year Book-2005 published by INSEC has mentioned that 313

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people have disappeared in the year 2004. Government has caused disappearance of 98 people from Kathmandu during that time. Maoists are responsible for disappearance of 84 people.

In April 2004, International Bar Association wrote a letter to the King. The Association had requested the King to arrange disclosure of Advocates Jeevan Basnet, Laxman Prasad Aryal, Sujindra Maharjan and Rajendra Dhakal. On its 60th Session, UN Human Rights Committee had portrayed Nepal as the country with maximum cases of disappearances.

3.11. Taking of hostage:

People not related to armed conflict, combatants giving up weapons and the injured combatants cannot be taken hostage. But a large number of people have been taken hostage during armed conflict and the follow-up operations. Security forces have kept hundreds of people in hidings without giving any cause after their arrest. They are kept in secret places without giving any information to their family members and relatives. Security forces have ordered many people to attend their camps and barracks on regular basis. It is learnt that such 'date hostages' are strongly instructed not to violate the secrecy.

Maoists force youth to join their group and keep them in detention. A top Maoist leader accepted murder of 11 people taken hostage in a press conference held on 18 October 2002. Forcing people under control to work according to their instruction is also a kind of taking of hostage. Maoists have, in many occasions, used kidnapped civilians as human shield. At many places, they have instructed people to take permission from them for their movement also. Many people are compelled to remain under internment due to armed conflict. Increasing internment is the excessive violation of humanitarian law.

3.12. Actions against the access to sources of basic humanitarian services:

Government security forces and the Maoist rebels have been putting obstacles to the access to basic humanitarian sources during armed conflict. INSEC Human Rights Year Book-2004 has mentioned the destruction of 1 health post, 13 residences and 2 private offices by the Maoists and 38 private residences from the government forces in the year 2003. Maoists in 31 cases and government in 7 cases have violated the civilian right to property. Both sides are responsible to obstruct food supply. They have taken road and bridge under their control. Maoists destroyed 7 bridges in 2003. Government security forces have harassed passengers of long route by searching their baggage and pockets. Longstanding bandhs, strikes and blockades called by the insurgents have strayed transportation, food supply and emergency services. Pregnant women have lost their lives due to lack of emergency services during bands. Maoists have attacked, thrown down cliff, bombed and set fire to the passenger and tourist vehicles. Besides, the insurgents have destroyed number of water resources, agricultural offices, post offices, schools, hydropower projects, communication towers etc. They have snatched the food from the farmers and slaughtered their oxen for meat.

Though the Geneva Convention, Common Article-3 has not explicitly mentioned about actions against the sources of basic humanitarian services, the second protocol has prohibited them. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) has prohibited actions against the sources of basic humanitarian services. The sites relating to the fundamental needs of livelihood of non-combatant civilians should not be targeted. But the parties in conflict are repeatedly violating this.

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3.13. Anti-personal land mines and ambush:

Security forces have accepted use of anti-personal land mines and ambush from their side. However, Maoists have used more landmines. Human Rights Year Book-2005 has recorded that landmines placed by Maoists caused 112 deaths whereas the mines placed by the security forces claimed 1 death. Bomb explosion from the Maoists claimed 121 lives and from security forces claimed 1 life in the year 2004. An official of the Royal Nepal Army has informed NCBL/ICBL that they have placed 10,000 AP Mines in 50 army camps. Civilians become victims of such mines as they are placed even in the private land and public foot trails. Security forces do not inform duly the neighbouring people about mines placed by them.

In an interview with NCBL in November-December 2002, representatives from 30 districts mentioned that security forces have planted landmines to protect their camps. Maoists increased extensively the use of landmines and explosives after their attack to the training center of Armed Police at Satbaria, Dang in November 2001. It was revealed in 2002 that Maoists use landmines in 72 districts. Use of mine has crippled and destroyed public transportation, industry, commerce, physical infrastructure and agricultural sector. Thousands of non-combatant civilians like innocent children, passers-by, shepherds, farmers, students have been victimized. NCBL has recorded that 7 hundred 20 victims from landmines, IEDs and other explosives, out of which 202 were killed and 518 were injured in the year 2000 only. Media reports have shown 13 cases within 29 January to May 2003, in which 4 people lost their lives and 9 others were injured.⁸

Bal Bahadur Oli of Salyan Marke VDC-7 fell into an ambush planted by Sabuj Company of RNA at Rakkatti area when he went to fetch grass at 7 a.m. on 19 July 2003. He lost his right leg in the incident.

3.14. Rape:

Incidents of rape of women under control of the government security personnel and the Maoists have been exposed repeatedly. Sexual violence is common in most of the cases pertaining to women during armed conflict. At some instances, rape is regarded as a punishment to the women. The security personnel or the Maoists found guilty of rape during armed conflict should be treated as criminals. Women who abandoned CPN-Maoists have disclosed that women militants in large number are victimized of rape in their squad.

National Human Rights Commission in its "Human Rights Monitoring Report – 2059 (2002)" has mentioned that 5 women were raped by the government security forces in Jumla and Kalikot districts and one woman was raped by Maoists in Morang district during the emergency. In the Human Rights Year Book-2004, INSEC has mentioned 8 cases from the state and one case of sexual abuses from the Maoists in the year 2003. Same organization has mentioned 8 cases of rape and 3 cases of attempted rape in 2004 by the security forces. The women victimized of rape by whether the government security forces or the Maoist insurgents do not get any care or legal treatment. In many occasions they refuse of being raped in fear of being excluded from the society or home. This is because the raped women do not get a groom to marry with and the husband abandons her after such incidents. Sexual violence against women are prohibited by the international human rights and IHL, which are applicable during armed conflict. Asian Human Rights Commission drew attention to the illegal murder of three youths in the first week of March 2003. In September 2004 around 50 security personnel came to Sangeeta's (name

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changed) house in the Far Western Region of Nepal and accused her husband of being involved with the CPN-Maoist. Five security personnel took Sangeeta and her husband to their cattle shed where they allegedly took turns to rape her in front of her husband. When her husband tried to protest, the security forces beat him in his eyes until they were damaged. It is reported that Sangeeta's husband and brother-in-law were then taken a short distance from their home and shot dead. Sangeeta found her husband and brother-in-law's bodies on the roadside near their village. Her husband had been shot in the chest and arm.⁹

3.15. Use of ambiguous language:

Innocent civilians lose their life due to failure to understand ambiguous language of the combatants. The local people have complained that the military language of the army is not clear for them. Meaning of the military code language differs from the common language, e.g., 'Halt' is used by the security forces to mean 'stop'. But the people understand it as 'move' immediately from the present location. There are some cases where people have lost their lives when they did not understand this code language. This is a humanitarian loss caused by lack of understanding in the use of language, though the forces have acknowledged this as a mistake.

3.16. School as a military target

Both sides have obstructed school activities and the student's learning. Maoists have frequently exploited schools for their political teachings and military trainings. They have used schools even as their shelter. Parents interfered Maoist training when the latter controlled Jipu Lower Secondary School in Pipal, Rukum district for their training in March 2004. But the Maoists have frequently repeated such activities. Students of Tribhuvan Janata Higher Secondary School, Khalanga are studying under terror after the security forces has been taking shelter in that school for more than three years. Security personnel set fire Sharada Secondary School of Mudhbhara VDC-1, Doti district when Maoists were conducting their cultural programs. Four students including Sushila Joshi and Yadunath Joshi were killed in the incident. The victimized students were forced to witness the program by the Maoists.

Department of Education has mentioned that about 3 thousand teachers have been displaced. This has directly affected the study of 150 thousand students. State killed 43 students and 2 teachers whereas the Maoists killed 21 students and 13 teachers in the year 2003. Maoists kidnapped 219 students and 145 teachers in the same year. State caused disappearance of 58 students and 12 teachers.¹⁰

Schools, where the children begin their lives, is a 'zone of peace'. But future of thousands of students is being pushed into darkness due to armed conflict. Carelessness in the education of the children obstruct their future progress. Schools and students should be kept away from the conflict at any cost.

3.17. Children and use of child armed squad:

Children have the right to receive necessary care and assistance during armed conflict. The conflicting parties should not take any measures to affect children negatively. Maoists have been forcibly taking students from Class 8 and above in their program of civil resistance. Children are being murdered during the armed struggle of the combatants. Dozens of children were injured in

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an aerial attack conducted by the security forces at Binayak Vidhya Mandir HS School, Achham on 14 April 2003. The injured students were aged between 8 to 15.

'Crime' of Pabitra Kumal of Chhiring Sundhara VDC-8, Tanahu district was that she went to defend her parents who were being beaten ruthlessly by some security personnel. Pabitra, a student of Class four was shot dead by the security forces. She was cremated without postmortem.¹¹

IHL has prohibited recruitment and use of the children under 15 years old in armed conflict, but the Maoists are violating this provision. Maoists are violating IHL by forcing students under the age of 15 to participate their political and military programs. Maoists have forced children to become soldiers, porters and caused sexual exploitation. Hundreds of children were kidnapped to take part in their programs during armed conflict.¹²

Both the government security forces and the Maoists have ignored their duties in preserving child rights during their operation and armed conflict. Neither attempts have been made to evacuate children from battle fields. Gentle hands to carry pen and books are forced to carry gun. Man Bahadur Gharti alias 'Tiger' was studying at Class seven in 2001 when he entered into Maoist militant group. Prem Oli, a student of Class 10 at Sri Krishna Secondary School, Ghartigaun, Rolpa has been in the Maoist militant force since last 5 years. Students who leave their schools or are forced to do so are present in a significant number in the political, militia, cultural and other wings of the Maoists. More students have entered into Maoist force by compulsion or pressure than by being impressed of their ideology. This may benefit the Maoists for some time but, it cannot be neglected that the future of thousands of children is being pushed into oblivion. This is a threat to the civilization and the nation will have to pay for it after some decades.

3.18. Internal displacement:

Humanitarian loss and internal displacement increases tremendously after every declaration of state of emergency in the country. State is responsible for the inhuman cases like false accusation, arrest without warrant in the name of Maoist, torture, compulsion of due date, murder of women after rape, taking of hostage to children, disappearance and murder after abduction etc. Similarly, Maoists have victimized security personnel and their family members, local representatives, local political party cadres, government servants, teachers, local lenders and landlords, mid-level farmers, youths etc. They have released strict instruction to support their activities. Maoists have treated brutally to all those who disagree their activities, who surrender or abandon after involvement with them and the so called 'spy' declaring them the 'enemy of people's war'. There are many reasons behind internal or external displacement of the people in the villages, such as, child education, pressure and harassment from both sides, problem in daily life, murder and disappearance of the family members, disappearance, threat, fear, terror etc.

Displacement of youths in a large number started after Maoists declared their "one family one person" and "either person or wealth" in September 2003. Many such cases in the distant villages are not exposed. Hence, the activities of the security forces and the Maoists are triggering terror and deserting villages rather than ensuring peace and security or transforming into a progressive society. Members of the families whose houses are locked have no other choice but to migrate. Maoists locked 8 houses after Doramba incident. Maoists locked 25

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houses and abducted all the property for party at Ramechhap district accusing people of 'spying' within 2060 (2003-2004). INSEC recorded displacement of 38,191 people till the end of 2003, out of this 11,638 people were displaced in 2003 alone. Home Ministry has confirmed displacement of 7343 people. Government has declared some relief and scholarship package to the displaced people but access to this is limited to few people and victims blame that the distribution is affected by political prejudice, relation and access.

3.19. Protection of wounded, sick and war-wrecked:

Protocol Additional to the Geneva Convention of 12 August 1949 adopted on 8 June 1977 has mentioned about the protection of the wounded, sick and the people in the wrecked ship. But only the protection of wounded, sick and war-wrecked has been chosen here as the case of wrecked ship is not relevant in Nepal.

There is not adequate protection for the security and care of the wounded, sick and combatants. Problem has been created especially through limited resources, lack of commitment and difficult geographical structure. There is lack of adequate infrastructure in the hospitals and health posts in the affected areas. Maoists have destroyed health posts and threatened health workers in many places. Humanitarian aid with proper protection is required for the wounded in the war, non-combatant civilians and armed forces. But the conflicting parties have shown cruelty to the wounded persons. Army helicopters have been deployed to rescue and treat the wounded in the war in some cases. But in most cases the Maoist insurgents losing life in the struggle are not identified, neither efforts are made to search them, collect their dead bodies or properly cremated. Treatment of the wounded becomes a far cry in such cases. About two dozen people were killed and many civilians were left without treatment after an aerial attack on 18 April 2004 at Binayak Vidhya Mandir HS School, Achham. Karna Bahadur Dhakal who received bullet at his back and hand is being treated at a medical shop at Dunibagar of Dailekh, but he has not been able to receive treatment from a competent physician. Neither the government nor the donors have set fund for an emergency aids to address such cases.

4. Right to fair trial during internal armed conflict

Right to fair trial is the foundation of human rights in a society ensuring rule of law. This is linked with fair and independent criminal justice system. This is also protector of fundamental rights and basic freedom of the people. Right to fair trial is defined and explained in various ways depending upon time and circumstances. Nevertheless, the trial needs to follow due process of law. More importantly, it must be equally activated in the time of both conflict and peace. In other words, it has equal importance in all times for the security of the citizens. As the insurgents are more prone to be sued and held in the custody by the government, the right to fair trial is raised with more emphasis during the time of conflict. Hence, the right to fair trial should be regarded as a means to scale criminal justice. An independent judiciary can ensure this because it has the responsibility to impart justice to the people. Judiciary keeps the power to implement laws as the decision of the court is obligatory to the government also. But in the present Nepalese context, government and the security forces, especially the Royal Nepalese Army, are ignoring the decisions and directives of the court.

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Right to fair trial has always been obstructed under the Nepalese criminal justice system. Individuals are deprived of their personal liberty ignoring the spirit of relevant legal provisions. People are arrested without warrant and the concerned authority does not feel it necessary to explain reason for detention in many cases. Basic standards for ensuring fair trial are hardly followed. One can find plenty of examples when the individual under interrogation is given mental and physical torture. They are deprived of the right to choose a lawyer and seek proper legal remedy.

Legal framework of Nepal for the promotion of fair trial seems to be theoretically sufficient. There are three levels of court in Nepal – one district court in each of the 75 districts, 16 appellate courts at different centres and one Supreme Court in the capital. Apart from these regular courts, special courts have been established to look after special cases, for instance, there is Special Court to hear the crimes against State and corruption cases, Labour Court hears the cases regarding labour and industry, Revenue Tribunals hear the cases of tax and revenue and the Administration Tribunal hears the cases pertaining to the public servants. These courts have the right to investigate, file cases and announce verdict over the cases under their respective jurisdiction.

According to an estimate, 35 percent of criminal cases are still tried by quasi-judicial authorities such as the Chief District Officer (CDO), the Forest Officer, the Conservation Park Warden, the Customs Officer, etc.¹³ Most of the trials inside closed chambers of such executives are just for fulfillment of the formality. Practice of these authorities have been, to some extent, misused to violate human rights in the country under armed conflict. Actions regarding the criminal cases are taken without providing opportunity of fair trial in the name of armed conflict.

There are still some black laws that are derogative to the personal liberty and abduct fundamental rights of the people in Nepal. State authority has time and again misused them against citizens. The infamous Public Security Act 1990 introduced during the Panchayat era is still effective with some modification. This Act authorizes the district administrators to put civilians in the custody for 6 months by informing the Home Ministry. Another similar law is Some Public Offence and Punishment Act 1970. This Act also enables the authorities to carry out arbitrary arrest and detention. It is regrettable to recall that such draconian laws were not improved but intensified and misused during the democratic regime after the restoration of the multiparty democracy. Such laws became sure weapons to deny and marginalize the right to fair trial in the name of armed conflict.

Terrorist and Destructive Activities (Control and Punishment) Act 2001 (TADA) was promulgated on 26 November 2001 as an ordinance, 3 days after the declaration of State of Emergency for the first time which was later passed by the Parliament. This Act authorized the security personnel to hold an individual into custody without judicial remand for the period of 90 days. The latest amendment in TADA done through the Royal Ordinance with the consent of the Deuba government is equally problematic. Article 9 of the TADA has now been amended in such a way that any person suspected with terrorist and destructive activities could be held under preventive detention up to one year without trial whereas the earlier provision was limited to three months. Under this fascist provision, the security officials now can arrest and detain anyone

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up to six months on their own, and the next six months with the permission of the Home Ministry. The sad reality is that there are almost no cases in the past where the Home Ministry has denied of such an extension under the Public Security Act providing for similar provision for preventive detention. The provision of detention in police custody for up to two months in the case of those involved in the terrorist and destructive activities is still intact to be used for the purpose of investigation. Today's reality is that most of these detainees are held under incommunicado detention in unknown places, mainly in army camps, and are also disappeared involuntarily in thousands-making Nepal the top in the crimes of "disappearances" and other human rights violations in the whole world. Similarly, the violations of the IHRL, the IHL and the Constitution are taking place not only through legislation and the draconian Royal Ordinances but also through various internal orders and regulations issued by the security agencies-both the police and the army. For example, the Police Service Citizen's Charter, 2061 BS has inserted a provision of the death penalty for crimes committed against the members of the Royal family.¹⁴

Right to fair trial cannot be limited during the time of peace or in the name of the war during conflict. However, national and international human rights laws and the IHL (Geneva Convention) Common Article 3 are applicable and attracted, with due priority, during the time of internal armed conflict. Common Article 3 guarantees with priority the right to fair trial during the time of internal armed conflict. On the other hand, this right is very prone to be abducted by the State during such time. In some cases, the State suspends this right in the name of national security. The government is allowed to suspend the right to fair trial at some special circumstances, but this does not mean that it can be suspended even during normal political insurgency. Right to fair trial can be suspended only during the time of serious instability such as to avert loss of property and lives during the time of war or natural calamities.

International Humanitarian Law needs to be applied in Nepal as the country is facing armed conflict for the last one decade. Common Article 3 of the four Geneva Conventions of 1949 and Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 6 have guaranteed right to fair trial during internal armed conflict.

The right to fair trial under International Humanitarian Law should be respected and guaranteed at all phases of war and its provisions cannot be ignored whether by the State or the insurgents. Denial of fair trial can be regarded as war crime and action can be taken against the responsible person at any time. The war criminals can be prosecuted in the International Criminal Court. The government or the security force should not forget regarding respect of fair trial during armed conflict that no one can be subjected to arbitrary arrest and detention. The arrested or detained person in a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power.

4.1 Right to fair trial and vulnerability:

Major vulnerability seen in the context of Nepalese justice system is lack of legal representation in trial. About 56 percent of the convicted people do not have access to lawyer during trial (See Table below):

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Table : Presence of Lawyers During Trail		
Particulars	Number	Percent
Total respondents	321	100
Had Lawyers during trial	181	56
Had no lawyers during trial	140	44
Lawyers hired	133(Out of 181)	73
Legal aid obtained	48 (Out of 181)	27

Source: CeLRRd. Analysis and Reforms of Criminal Justice System in Nepal, 2000.

Most of the detainees cannot consult a lawyer within 24 hours of detention. Besides, poverty and ignorance hinder them from hiring a lawyer. There are many other factors affecting fair trial. There is not a separate criminal court in Nepalese justice system to hear criminal cases. Criminal and civil cases are heard under the same court. The existing civil case load take 72 percent of the judicial time and resource at all levels of court.¹⁵ Trial process is also very lengthy – it goes so far that in some cases the convicted spends more time in the custody than the actual time sentenced in the decision of the court. In fact, conviction is made randomly. Only 5 percent of the cases handled by the police are filtered (NHRC, 2003). This invites a big question in the free and fair trial of cases violating the fundamental rights and human rights of the people. For instance, 7 cases of death in detention in 2004 were recorded by INSEC. Inadequate fund provided to the judiciary is also a big hurdle for ensuring fair trial. Impaired judicial system due to inadequate fund results not only in the lack of fair and competent justice system but it ultimately hampers the democratic process of the country. The issue of fair trail is in vulnerable condition because there is no free and fair justice possible in a system where same institution has the rights to investigate, prosecute, as well as adjudicate alleged offence.¹⁶ So called tribunals and quasi-judicial institutions, like the Police Special tribunal, are sometimes so powerful that they can impose a sentence of life imprisonment, and thus underestimate the principle of fair trial.¹⁷ In fact, Nepalese justice system is incompetent due to lack of effective policy and implementation mechanism.

4.2 Right to constitutional remedy

Special provision of constitutional remedy is required to ensure and protect fundamental rights in comparison to the ordinary legal rights. The rights in paper do not bear any meaning until they are activated and implemented in practice. Right to constitutional remedy is provided for ensuring that the people enjoy rights and the law enforcers implement them appropriately. But the declaration of the state of emergency after the royal take over and the dominance of military solution of the current armed conflict has created an unfavourable situation.

Role of fair and independent court is also important in this regard. Nepalese judiciary has played crucial role to protect people from any potential violations of their rights through these provisions. The number of habeas corpus writ has increased alarmingly after the onset of the 'people's war' in Nepal. But unfortunately, the security force has neglected most of the orders and directives of the Court in this regard. This has posed a serious threat to the rule of law and justice system of the country. This trend can ultimately weaken the trust of the people to the constitutional provisions. This is no doubt a mockery against the justice system and the rule of law as a whole.

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Though the right to remedy is regarded as a strong constitutional weapon to protect the fundamental rights of the people, this provision has not been able to benefit adequately the vulnerable groups and the marginalised communities. This is a bitter truth that they have least access to legal remedy. The communities who are poor, ignorant and remain away from any opportunity are in the more helpless situation as they have to come to the Supreme Court or Appellate Court to enjoy these rights. Victims in most cases cannot come to the Supreme Court in the capital and Appellate courts in some selected areas. People who are already pessimistic due to poverty are pushed to vulnerability by expensive justice system as they cannot hire competent lawyer on their own. Even the government has not formulated policy to provide free legal aid to the poor and deprived people. Government deploys its lawyer to proceed the state cases but this does not benefit the poor people because the government lawyer does not handle cases of individual, neither advocates in favour of the people in the cases pertaining to the constitutional remedy.

5. Gap between commitment and action: Humanitarian hazards

It is already discussed above that the parties in conflict have violated the Common Article-3 of the IHL and the Protocol Additional to the Geneva Convention-1977. Common article-3 and the Protocol Additional to the Geneva Convention have made it obligatory that the persons not willing to be involved in the struggle should be provided humanitarian treatment without any discrimination and under any circumstances. Party to conflict are not allowed to violate humanitarian law and they are totally responsible for its implementation and application. But there is a big gap between their commitment and activities. Maoists who are one step ahead to talk about the humanitarian law have made repeated commitments; however they have not stopped inhuman treatments. Maoists released two statements expressing their commitments not to affect any political leaders activists in October – November 2003. Maoist supremo Prachanda, through his statements, has expressed commitments repeatedly not to attack physical infrastructure, security personnel without arms, political activists and the general civilians. But the Maoists have never shown true accountability to this public commitment. United Nations Commission on Human Rights in the "Chairman's Statement on Human Rights Assistance to Nepal" made on 20 April 2004 called on the CPN-Maoists to "respect the human rights of all people". The insurgents have ignored the appeal of the Commission on Human Rights and the promises of their own leaders and have continued to violate IHL by abduction, torture and killings of civilians and security forces personnel who are hors de combat.

Nepal has signed and ratified 16 international conventions / protocols pertaining to human rights. Besides, international conventions on labour and environment have also been ratified. Human rights situation of the country is degrading day by day even after the ratification of so many international instruments. Only cause behind this is the lack of commitment for the implementation by the government and the Maoists.

International community has been repeatedly expressing deep concern over armed conflict and the incidents of human rights violation in Nepal. The then Thapa government released its 25-points commitment to human rights and humanitarian law on 26 March 2004 after persistent criticism from the international community. But the national and international human rights

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organizations are compelled to express suspicions about its implementation. On 2nd April 2004, AI appealed the government to apply practically the 25-points commitments. Similarly, Human Rights Watch (HRW) has welcomed government commitment and requested for its effective implementation. Government has failed to develop human rights culture in its concerned agencies including in the security force and the commitments have remained as challenge for the government even now.

Immediately after the commitment of the government, Home Ministry wrote a letter to the National Human Rights Commission stating that the security personnel should be included in the monitoring team of the Commission. This government step is a naked encroachment to an independent agency; it only encourages destruction of human rights culture.

A writ was filed in the Supreme Court on 27 December 2002 to order including certiorari Mandamus. after this writ, the Supreme Court issued directive order on 12 March 2004 to the government to form necessary law to enforce humanitarian law. Lack of domestic law is felt hindering implementation of IHL. Hence, it is required to introduce immediately a bill for the implementation and application of the IHL. But the country at present is going through a democracy without parliament. This is the first instance that the Supreme Court released a directive order in favor of respect to the inalienable human rights and implementation of the humanitarian law. But it seems that the activities of both government and Maoists are targeted to the destruction of inherent human dignity and values.

6. Obstacles created by armed conflict in application and implementation IHL:

a. Absence of conflict management:

Nepal has already witnessed two ceasefires followed by government-Maoist talks after the onset of the internal armed conflict. But no solid outcome has been unearthed, neither the causes of the conflict are identified. Conflict cannot be managed without identifying its root causes; and the result is never ending war. This is the major challenge for peace, human rights and the application and implementation of humanitarian law.

b) State oppression:

Insurgents are more likely to violate fundamental standard of human rights where even the government does not comply with it. Lack of discipline in the ruling side invites more rebellion. This encourages rebels to induce more forceful measures in their movement. Such a critical situation makes way for external interference. State reaches at the verge of a failed state. Tolerance from the state is most required during armed conflict because the State cannot neglect the fundamental rights of the people. Situation after the royal takeover of 1st February has become even worse. The government has denied any chances of peaceful solutions of the current insurgency and they are dreaming military solution for it. It is sure to intensify State oppression.

c) Application and implementation of IHL:

Both State and the Maoists have not been able to abide with the IHL. The Maoist rebels who always repeat their commitments are more violating humanitarian law. Nepal has already ratified the four International Humanitarian Law Geneva Convention (1949). It is obligatory for

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both the State and the Maoists to apply and implement the Common Article-3. Pragmatic commitment to the Common Article can reduce the impact of conflict in a great extent. Similarly, it can also improve current human rights situation humanitarian crisis.

d) Unlawful killings:

Spiraling unlawful killings threaten the respect, protection and promotion of human rights. Unlawful killings have increased remarkably after the Cordon and Search Operation of the RNA, declaration of state of emergency, deployment of joint forces and unified command. Killings of 35 labourers by RNA at Suntharali, Kalikoti district on 24 February 2002 is an example of this.

e) Impunity:

Government security force is committing serious violation of human rights through torture, murder, rape, disappearance etc. Security personnel involved directly in such cases are criminals. At many occasions, they are not duly punished rather rewarded and the most usual action against them is transfer. Hence, impunity is being encouraged and the criminals are saved. Impunity is the age old problem in Nepal and it has increased during armed conflict. Amnesty International has claimed that no investigation has been held on the Suntharali incident.

f) Dark law:

Terrorist and Destructive Activities (Control and Punishment) Act (TADA) – 2058 was induced after the declaration of the state of emergency for the first time. Article-9 of the same empowered the security forces to hold any person in custody for 90 days, if there is ample evidence to believe that he might be involved in terrorist or destructive activities. This provision has been amended through royal ordinance in October 2004 that extended the period of detention to six months which can be extended for another 6 months with the consent from the Home Ministry. This provision is a direct threat to the human rights, life and freedom of the people.

g) Negligence in actions:

Both the conflicting parties have been neglecting human rights in their actions. This has victimized thousands of common people. State security forces are not being accountable to them during their operations. The incidents of negligence are not properly investigated by the authority. Maoists have also repeatedly expressed lip commitment to the human rights instruments but without proper care in applying them.

h) Lack of mechanism for implementation of commitments:

State has not been able to construct necessary infrastructure and mechanism to implement its international commitment on human rights. This has created problem in monitoring incidents of human rights violation. State has not passed any law at the domestic level to apply and implement IHL during armed conflict though the Supreme Court has given verdict to this effect in 22 March 2004. Parliament is required to implement State obligation but it is defunct. Various commitments have been expressed from the government in the past but there is no implementation.

i) Lack of application of rule of law:

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In most of the cases, arrested people are not presented to the court within 24 hours. Arbitrary arrest and detention is increasing alarmingly. There are some instances when the security personnel refuse to abide with the Court verdict. State does not follow due process of law. These problems have been persistent since Panchayat era and the restoration of democracy has not improved the situation. Imposition of the fascist Terrorist and Destructive Activities (Control and Punishment) Ordinance (TADO) – 2004 has pushed the rule of law into comma.

j) Constitutional embargo and absence of representative government:

Constitutional embargo started after the dissolution of the elected parliament and ousting of the legitimate government in 2002. There is no representative government since then and there is direct rule of the King since February 2005. Armed conflict has made parliamentary election very much difficult. Under such a circumstance, it is beyond expectation that the appointed government should be accountable. This is a critical situation for democracy and human rights.

k) Use of unlimited force and explosives:

Both the government and Maoists have used unlimited power during attack and counter attacks. Maoists are using more explosives and landmines than the other side. This has caused large scale of casualties of the non-combatant civilian. Revelation of the incidents of violation of one side may shadow similar violations by the other side.

l) Indiscriminate attacks:

Especially, Maoists are conducting more indiscriminate attacks. Non-combatant civilians have lost their lives during their attacks in the public places, transportation, schools, health posts, bridge, telephone towers etc. Likewise, the government forces have attacked private residence, villages and schools.

m) Lack of chain of command:

The government agencies, such as Home Ministry, Defence Ministry and the security high commands have not been able to control the security personnel to stop the incidents of human rights violation. Maoist leadership have also lost control to their people's army or militia.

n) Maoists' violation of their own commitments:

On several occasions, Maoists have repeated their commitments not to target physical infrastructure, armless security personnel, political activists and civilians, but their activists have been violating this commitment time and again. So much so that the burden to clarify whether they are a criminal group or a political group has fallen upon themselves.

o) Lack of signature of human rights agreement:

Parties in conflict are yet to sign the human rights agreement paper proposed by the National Human Rights Commission. The application of this agreement by the conflicting parties can make sure way for dialogue and respect and protection of human rights.

p) Hurdles to human rights defenders and humanitarian agencies:

Due to complexity of the internal armed conflict, national and international human rights defenders and organizations are facing difficulty to work for protection and promotion of human rights, to ensure peace and to provide humanitarian assistance. Several international agencies

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have postponed their development and other humanitarian activities due to this unwanted situation. The government security forces have frequently harassed, arbitrarily detained and tortured and raided the offices of human rights organizations making the reporting and investigation risky and difficult. Those working for humanitarian aid, peace and human rights have found themselves at risk due to threat, unnecessary conditions and donation collection from the Maoists. This does not favour human rights and humanitarian issues. The witnesses are often reluctant to provide information and testimonials of any incident due to threat from both sides.

q. ‘People’s Court’ and death sentences:

Maoists claim to have set up ‘people’s court’ to adjudicate on local disputes in the areas under their control. They conduct hearings of the trials and even announce death sentences. Death sentence is prohibited by the IHL because this is against humanitarian values. They do not follow proper system to announce other punishments also. It depends upon the frenzy of the mob gathered in the time of passing a verdict. Mock execution in several occasions proves this.

7. Recommendations

7.1. Recommendations to the government:

Major challenge before the government is to enhance human rights protections and to create environment for transparent and accountable mechanism to investigate and monitor incidents of human rights abuses. State must apply and implement the universal judiciary systems. Based on its study and findings, FOHRID recommends following suggestions to the government:

To create environment for protection of human rights and humanitarian law:

1. Necessary steps should be taken to implement commitments on human rights and IHL expressed by government.
2. It should be pragmatically proved that the government does not favour incidents of human rights and IHL violations e.g., murder, disappearance, torture etc.
3. Government should give clear directives to the security forces for the respect and implementation of fundamental human rights.
4. Home Ministry, Defence Ministry, Chief District Officer and security officers should maintain chain-of-command control with the security forces not to violate human rights.
5. Those giving orders or involved in human rights violations should be treated as criminals by the State.
6. To ensure individual accountability, State should present the individuals responsible for the violation of human rights, e.g., murder after arrest, rape, torture, illegal murder, torture in the custody etc. to the court.
7. An independent agency should be formed for the independent investigation and prosecution of the cases of human rights violation. Special task force should be appointed for effective investigation and prosecution against those who violate human rights.

Reparation, compensation and steps in favour of the victims:

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1. Government should provide reparation and compensation to all victims of armed conflict and their families.
2. Government should take effective measures to minimize mental torture to the family members of the disappeared people by disclosing their whereabouts.
3. Victims of conflict should be provided with necessary medical services and rehabilitation.
4. Reparation and compensation should be provided to the civilians whose houses are destroyed during armed conflict.
5. Necessary immediate medical treatment should be provided to the injured non-combatant and combatant of the insurgents side also.
6. Victims of torture, disappearance and murder should be identified and compensated. Relatives seeking compensation should be convinced of their security and the State should make special arrangements for poor, vulnerable groups and marginalized communities.

Preventing incidents of human rights violation:

1. Security personnel who use weapons before enemy is clearly identified should be prosecuted.
2. Security personnel should duly inform the neighboring civilians about the landmines implanted for their security.
3. Security forces should not use difficult code language with the civilians during their operations.

Reform in police and army

1. Mechanism for regular monitoring of the steps taken by police and army to keep records of the cases against human rights and atrocity and for evaluation of their activities and ensuring implementation of national and international human rights standards.
2. Government should take necessary measures to strengthen the condition of security mechanism and standard of their professional practices.
3. Security personnel should be trained on human rights and IHL standards to carry out investigation of crime without torture or cruel, inhuman or degrading treatment and generally implementing the rule of law.

Strengthening National Human Rights Commission:

1. Government should provide necessary assistance and facilities to the National Human Rights Commission for ensuring its independent and effective presence.
2. Offices of the Human Rights Commission should be stretched all the development regions.
3. Law should be amended to ensure effective functioning of the National Human Rights Commission to investigate all cases pertaining to human rights.

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Strengthen human rights commitments:

1. Government should regularly submit reports to the Six Treaty bodies established according to the UN Human Rights system.
2. Government should provide all necessary assistance to the ICRC for the monitoring of the implementation of IHL.
3. Government should ratify the Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.
4. Government should ratify Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002).
5. Government should take necessary initiatives to establish Monitoring Mission of the Office of the High Commissioner for Human Rights to monitor incidents of human rights and IHL violation and human rights monitoring report should be prepared by arranging visit of the Thematic Special Procedures or their rapporteur.
6. Government should create necessary environment for the signature and ratification of the Rome Status of the International Criminal Court.
7. Government should ratify the Ottawa Treaty (1997) to discourage use of landmines.

To arrange security of the children, women and civilians during the armed conflict:

1. Instructions should be circulated by the responsible authority of both conflicting parties not to take shelter in the schools and private residence.
2. Both sides should be cautious to safeguard children, women and civilians.
3. Both sides should control use of unlimited force.

Application of rule of law and effective justice:

1. Government should renounce Terrorist and Destructive Activities (Control and Punishment) Ordinance – 2061 and review the Local Administration Act and the Police Act in accordance with the international standards.
2. Captives should be presented before the court within 24 hours of their arrest.
3. Arbitrary detention, arrest without warrant and keeping in a hidden cell, custody and internment should be stopped. Records of the captives and persons under control and their relatives should be informed about this.
4. Necessary Acts should be formed for the implementation of the IHL.
5. Effective legal measures should be taken to respect and protect the rights of the captives or prisoners and their families.
6. Hearings of the habeas corpus writ should be strengthened in all the three levels of the court.
7. All kinds of arbitrary detention should be discouraged and effective judicial supervision of anyone held in preventive detention should be ensured.

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7.2 Recommendations for the Maoists:

1. The leaders of the CPN-Maoists should respect IHL, especially the Common Article-3 of the Geneva Convention (1949).
2. Maoist leadership should give clear instruction to their militia (Jana militia) to respect IHL.
3. Being serious to the human rights of the non-combatant civilians, Maoists should immediately stop taking of hostage, kidnapping, arbitrary terror etc.
4. The commitment expressed by CPN-Maoist Chairman Prachanda on 21 October and 16 November 2003 should be implemented in practice.
5. Declaration of death sentence and execution by the 'people's court' should be stopped immediately.
6. Schools should be declared zone of peace and schools, teachers and students should not be made military target.
7. To ensure implementation of IHL, Maoist leadership should sign the Human Rights Agreement prepared by the National Human Rights Commission.
8. Maoists should not obstruct free movement of the human rights observers.
9. Attacks upon civilian targets such as health post, telephone booths, public transportations etc. should be stopped.
10. Easy access of the team of the ICRC to their captives and camps should be ensured.
11. Maoists should immediately respond positively to the requests for information and clarification from the National Human Rights Commission.
12. Maoists should respect and facilitate easy access of NGOs, INGOs, UN organs and other representatives deployed for humanitarian cause.
13. Maoists should pragmatically prove that they do not use civilians as human shields.
14. Maoists should stop child recruiting in their army and human rights activists should be welcomed to monitor the situation of the children below the age of 16.

8. Practical way for resolution of the current armed conflict:

Ceasefire and commencement of the peace negotiation are the primary steps towards long term resolution of the current armed conflict. Maoist activities guided to harass and defeat the government are part of their war strategy. Hence, the military solution of the current problem is quite impossible. As their war is based upon certain ideology, solution cannot be found easily. Two ceasefires and three rounds of talks in each of them were held in the past but none of them could yield positive results. In the latest round of talks, Maoists slipped away showing concern over their security after the Doramba incident. Dominance of the military interest in both sides was another cause for that. Constituent Assembly may be a solution but the King should give up his ambition of the 'constructive monarchy' to make room for it. Progressive reform through the

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reinstatement of the parliament could be another way out. But ceasefire is the prerequisite for all these. Proposed steps and suggestions for sustainable settlement of Armed Conflict is as follows:

a. First step:-Ceasefire and commencement of dialogue:

Immediate ceasefire is the first step for sustainable resolution of the armed conflict for which the parties in conflict must ensure minimum environment. Ceasefire without any prior agreement could not succeed in the past; therefore, the parties must sign ceasefire agreement, mentioning the points they should follow, according to the international practice. Ceasefire agreement can directly help to make the process of dialogue fruitful. State and the insurgents must express their commitments that they will not escape from ceasefire, dialogue and agreement to resolve the crisis for the best interest of the people and the country.

Ceasefire makes room for peace negotiation. It is not possible to expect final agreement or application to the constitution or withdrawal or acceptance of major political issue at the very beginning of the dialogue. Hence, the dialogue should run with due patience so that a resolution for the benefit of all could be reached. For example, eliminating child soldiers, discouraging encounters, limiting movements of the combatants of both sides in the specified areas, stopping killings of the non-combatant civilians, stopping kidnapping of teachers and students, ban in the purchase, import, transport and use of explosives and weapons can open door to negotiation.

b. Second step: Signature of code of conduct and human rights agreement:

Both sides should sign code of conduct after ceasefire. Human rights agreement should follow with the help of National Human Rights Commission. Fundamental issues in the agreement may be implementation of the Common Article-3, stopping inhuman or cruel treatments, murder, rape, disappearance, abduction and free entry to the human rights and humanitarian activists, rehabilitation of the victims of conflict and responsibility of child education etc. Likewise, both the sides should stop use of unlimited force, army march pass, create human rights monitoring mechanism and stop violent activities.

c. Third Step: Declaration of end of armed conflict:

End of armed conflict can be declared after the fulfillment of the process and responsibilities mentioned in the ceasefire, code of conduct and human rights agreements. Sustainable conflict resolution can be reached after the inclusive decision based on major agreed points. This can be materialized through drawing the final agreement for overall political, economic and social development of the country.

Nepal is at the verge of being declared a failed state due to internal armed conflict and constitutional embargo. Country's political system, human rights situation, democracy, civil supremacy, economic development and independent existence are degrading day by day. Still there is chance that we can ourselves resolve the ongoing conflict, but the mediation of an independent agency like the UN can be accepted, if required. All sectors of the society should concentrate their efforts for conflict management. Both the conflicting parties should be liberal and flexible in their stance for peace and conflict resolution. Then only we can prepare ground for discussion, talks and all party consensus.

9. Royal proclamation and appeal of FOHRID

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Royal proclamation of 1st February 2005 came at the time of when there is crisis in democracy and peace and Maoist insurgency has pushed the democratic process restored in 1990 in a critical mode. State of emergency, suspension of fundamental rights and censorship in the press have challenged sustainable livelihood and social and political participation of the people. Sovereignty vested in the people by the Constitution of the Kingdom of Nepal – 1990 has now been captivated inside the walls of royal palace after the royal proclamation made by King Gyanendra Bir Bikram Shah Dev on 1st February 2005. Parliamentary political parties have initiated peaceful protest against the royal move for the reinstatement of the democratic system from 18th February. FOHRID had received information that more than 500 people were abducted from their peaceful rallies in the first week of their protest. FOHRID extends its deep concern on the recent political development in the country and appeals as follows:

9.1. Appeal to the King:

The formation of cabinet under the chairmanship of the King is non-democratic as it does not comply to the present constitution. We appeal the King to respect letters and spirit of the Constitution of the Kingdom of Nepal-1990 and limit himself as constitutional monarch. We believe that the political ambition of the King, if not checked in time, will be ultimately harmful for the monarchy in Nepal. FOHRID has no doubt that the present step of the King will ultimately be harmful to himself. We feel that the future of the monarchy will be uncertain in Nepal if the King does not correct himself in time.

We appeal the King to withdraw the royal move of 1st February and the state of emergency. We demand the reinstatement of the fundamental rights of the people, unconditional release of the political leaders and activists, journalists, human rights activists and the common people and lifting of the censorship in the press.

9.2. Appeal to the Political parties:

Political parties are the key actors in a democratic system in which the interest of the people is at the centre. The parties have declared yet another round of agitation, but, before that they should finalize clear agenda to strengthen democratic process. Movement of the political parties for the reinstatement of the democratic process can be fruitful only if they come up with united voice, acting solidarity and clear vision. They should recognize their potential to play a crucial role to bring the Maoists in the mainstream peaceful politics.

9.3. Appeal to the Maoists:

FOHRID appeals the Maoist insurgents to respect and apply the IHL Geneva Convention. We believe that their armed ambition cannot lead them to success but it can spoil the country. We appeal them to be serious to the feelings of the people who are fed up of the armed conflict and instability and wish for peace.

CPN-Maoist should not ignore the fact that there is no alternate to democracy and pluralistic society in the modern world. In the backdrop of the political stalemate created by the recent royal takeover, we appeal them to give up weapons and come to shake hands with the mainstream political parties for the reinstatement of the people's rights. We appeal them to be conscious to

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protect the values and spirit of democracy and to work for the restoration of peace in the country. We also appeal the Maoists to be accountable to IHL.

9.4. Appeal to the International Community:

We appreciate the constant support of the international community in favour of human rights and for institutionalisation of democratic system in Nepal. We believe that their continued pressure to the government and the Maoists will be helpful to restore democratic process and improve human rights situation in the country. We hope that they will continue their support for the strengthening of democracy and reinstatement of peace.

10. Finding and conclusion:

Both the government security forces and the Maoists are responsible for widespread violation of humanitarian law in Nepal. The government has failed to fulfill its international obligations for ensuring human rights. The Maoists have done almost nothing in this regard except issuing statement from the leaders which is later violated by their cadres.

If we ponder over the popular proverb, 'morning shows the day', the initial days of the direct rule of the King have not shown any sign of improving democracy and human rights situation in Nepal. Human rights situation and democratic system of the country has widely deteriorated after the royal take over of 1st February. The government chaired by the King has excluded agenda of negotiation from its priority list, eliminating any chance of dialogue for the time being. Multiparty democratic system is in complete embargo and the Royal Nepalese Army has replaced civil administration and rule of law. Declaration of the state of emergency, suspension of civil rights, tough censorship to the press, ban in the movement and peaceful rally of the political parties in the name of combating terrorism have proved mockery to the King's repeated commitment to democracy and constitutional monarch.

It was found during the study that political parties could not see and avert this uncomfortable situation when they were in power. They were ousted from power before they could gain maturity. The political parties do not have a common agenda and working solidarity under common framework to win the heart of the people for strengthening democracy.

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