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Office of the High Commissioner for Human Rights**



**Conflict-related Disappearances
in Bardiya District**

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CONFLICT-RELATED DISAPPEARANCES IN BARDIYA DISTRICT

TABLE OF CONTENTS

CHAPTER I: INTRODUCTION	4
CHAPTER II: METHODOLOGY	14
CHAPTER III: BACKGROUND.....	17
CHAPTER IV: PROFILE OF THE DISAPPEARED	21
IV.i: Persons disappeared after arrest by the State	21
IV.ii: Persons disappeared after abduction by the Communist Party of Nepal-Maoist (CPN-M)	23
CHAPTER V: THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK.....	23
V.i: International legal framework on enforced disappearances and related violations	23
V.ii: National Legal Framework.....	27
CHAPTER VI: ENFORCED DISAPPEARANCES AFTER ARREST BY SECURITY FORCES	29
VI.i: Security force presence and operations in Bardiya District	29
VI.i.i: Royal Nepalese Army (RNA).....	29
VI.i.ii: Nepal Police (NP)	33
VI.i.iii: Security force operations in the Rajapur Delta	33
VI.ii: Arbitrary arrests in the course of security operations	34
VI.ii.i: Targeted arrests during search operations.....	35
VI.ii.ii: Non-targeted arrests	38
VI.ii.iii: Illegal use of force during arrest.....	39
VI.iii: Detention, torture and ill-treatment in Chisapani RNA Barracks	39
VI.iii.i: Places of detention	41
VI.iii.i.a: The National Park warden’s office	41
VI.iii.i.b: Service staff building facing soldiers’ mess	42
VI.iii.i.c: Quarter guard in the military store	43
VI.iii.i.d: The trench and bunker	43
VI.iii.i.e: Other places of detention	43
VI.iii.ii: Cruel, inhuman and degrading treatment in detention.....	44
VI.iii.iii: Torture	46
VI.iii.iv: Mock executions and the fear of death	49
VI.iii.v: Rape and other forms of sexual violence.....	49
VI.iii.vi: Coercion to identify suspected Maoists, including relatives.....	50
VI.iii.vii: Extortion	51
VI.iv: Failure to acknowledge arrests and detention	51
VI.v: Right to challenge the legality of detention	55
VI.vi: The fate of the disappeared	56
VI.vi.i: Extrajudicial executions in detention.....	56
VI.vi.ii: Pattern of removal of persons subsequently disappeared from detention.....	57
VI.vi.iii: Possible death from injury during arrest.....	57
VI.vi.iv: Possible death due to torture	58
VI.vii: Attempts by the NA to cover up disappearances in Bardiya District.....	59
VI.vii.i: Killing of persons whom the NA stated were released.....	61
VI.vii.ii: Persons who the NA stated were “killed in an encounter” or “while trying to escape”	62
VI.vii.iii: Ministry of Defence press releases that victims were "killed in an encounter”	63
CHAPTER VII: ACTIONS TANTAMOUNT TO ENFORCED DISAPPEARANCE BY THE CPN-M	65
VII.i: CPN-M presence and operations in Bardiya District.....	65
VII.ii: Unresolved abductions and enforced disappearances.....	67

VII.iii: Detention	68
VII.iv: Fate of those abducted and disappeared	69
VII.v: Failure to disclose the location of the bodies	70
VII.vi: Cases where the bodies of the abducted individuals were located	71
VII.vii: CPN-M denial of involvement in abduction and disappearance	72
CHAPTER VIII: SOCIO-ECONOMIC IMPACT OF DISAPPEARANCES ON THE FAMILIES OF THE DISAPPEARED.....	73
VIII.i: Diminished food security	74
VIII.ii: Lack of access to health and education, and child labour	75
VIII.iii: Social discrimination against wives of the disappeared.....	75
VIII.iv: Case studies	76
CHAPTER IX: TRUTH, JUSTICE AND REPARATIONS.....	77
IX.i: Efforts of the victims' relatives, Nepalese and international organisations	78
IX.ii: Decision of the Supreme Court of Nepal	79
IX.iii: State obligations and responses regarding truth, justice and reparations.....	80
IX.iii.i: Truth	80
IX.iii.ii: Accountability and Justice	83
IX.iii.iii: Remedies, including reparations.....	87
CHAPTER X: CONCLUSIONS	89
CHAPTER XI: RECOMMENDATIONS	92

CONFLICT-RELATED DISAPPEARANCES IN BARDIYA DISTRICT

*“I will take with me the lasting memory of the accounts given by the Tharu and other families whose relatives disappeared in Bardiya District during the conflict. I believe their stories. The suffering they expressed is testament to the fact that disappearances are on-going human rights violations. The parties to the peace accord must act without delay to clarify the whereabouts or fate of all those who disappeared, and to provide justice and redress for their families.”*¹

Executive Summary

This report sets out the findings of OHCHR’s investigations into enforced disappearances and related serious human rights and international humanitarian law (IHL) violations in Bardiya District in the context of the conflict between the State and the Communist Party of Nepal-Maoist (CPN-M). OHCHR has received information on over 200 cases of enforced disappearance after arrest by the security forces in the district, the highest number of reported conflict-related cases in one district in the country. Of these, OHCHR has investigated 156 cases so far, most of which took place following arrests between December 2001 (following the declaration of the first State of Emergency on 26 November 2001 and the deployment for the first time of the then Royal Nepalese Army (RNA)) and the subsequent ceasefire in January 2003. OHCHR’s investigations into enforced disappearances by the State authorities focus on this period, which was one of the most intense of the conflict in the district. Fourteen cases of actions tantamount to enforced disappearance after abduction by the CPN-M between November 2002 and October 2004 were also documented in Bardiya District, 12 of which have been acknowledged by the CPN-M.

The disappearances by both parties were part of a broader pattern of widespread human rights and IHL violations which occurred during the conflict nationwide. Many of the victims were civilians not taking part in hostilities. Although many other serious violations of human rights and IHL were committed during the conflict - including extrajudicial executions and other unlawful killings, abductions, torture, assaults and extortion - this report focuses on disappearances because of the urgency of establishing the whereabouts of the disappeared.

The question of resolving conflict-related disappearances has remained one of the pending issues of the peace process. There have been very significant developments in Nepal since the 2006 ceasefires, including an end to hostilities, the signing of the Comprehensive Peace

¹ Extract from a statement made by Louise Arbour, the then UN High Commissioner for Human Rights, during her visit to Nepal in January 2007.

Agreement (CPA), the formation of a newly-elected and for the first time broadly representative Constituent Assembly, the abolition of the monarchy and declaration of a republic, as well as the formation of a new government. These developments mark a historic new phase in Nepal's peace process. The Supreme Court of Nepal, in a landmark judgment on enforced disappearances in June 2007, directed the Government of Nepal to ensure justice and redress to the victims, and the CPN-M and other political parties involved in the peace process have made repeated political commitments to take action on this critical issue.

The formation of a new government and the Constituent Assembly offer a unique opportunity for the authorities to demonstrate a real commitment to human rights and ending impunity by taking concrete and effective steps to resolve conflict-related violations of the past, including the disappearances documented in this report. During the high-level debate of the UN General Assembly in September 2008, Prime Minister Pushpa Kamal Dahal affirmed the commitment of the Government of Nepal to protect and promote the human rights of its people and to end the culture of impunity.

As this report was being finalised in November 2008, welcome steps were taken by the Government to establish the Commission on Disappearances, including the sharing of draft legislation on disappearances and its approval by the Council of Ministers pending referral to the Legislature, as well as a Council of Ministers decision to provide interim relief to families of the disappeared.

Following the end of hostilities in May 2006, the climate of fear which had prevailed during the conflict diminished, and information started to emerge about the scale of the disappearances in Bardiya District, especially by security forces. Three units of the RNA were based in Bardiya District between December 2001 and January 2003 and were primarily responsible for arbitrary arrests, unacknowledged detention and enforced disappearances in the district: Bhimkali Company, Barakh Company (which was upgraded to a battalion during the period) and Ranasur Company – all of which fell under the command of the 4th Brigade and the Western Division of the RNA. The Nepal Police (NP) and Armed Police Force (APF), sometimes working with the RNA, were responsible for arrests in a smaller number of cases. OHCHR documented the consistent refusal by the RNA to acknowledge arrests, the systematic use of torture in at least one place of detention and secret killings in custody, suggesting that the RNA deliberately arrested and removed detainees from the protection of the law to coerce them into providing information on the CPN-M and to eliminate CPN-M presence from the area. Given the scale of these violations and the failure to take necessary action to prevent or restrain them, the leadership of the Western Division of the RNA at that

time must bear considerable responsibility, as must individual company commanders. There is also a need for investigations to establish broader chain of command responsibilities within the hierarchy of the security forces and the Government of the time.

Members of the Tharu indigenous group, who make up 52% of the population in Bardiya District, account for over 85% (135) of the persons disappeared by State authorities in cases documented by OHCHR. Among the victims were 123 men (including 102 Tharus), 12 women and 21 children. All the women and children were of all of Tharu origin. Information provided to OHCHR leads to the conclusion the majority of the disappeared were civilian villagers who were not CPN-M members at the time of arrest. Most of the victims were farmers and others were labourers, students, teachers and carpenters. In addition to their occupations, several were prominent Tharu activists. The Tharus constitute one of the several indigenous groups that are historically marginalised and discriminated in Nepal. Many of the disappeared who were not Tharu were also from economically disadvantaged sectors of the population. This report highlights that the issues of land distribution and lack of access to economic resources for marginalised groups, as well as discrimination, lack of political representation and lack of access to state services and protection are at the root of the conflict in Bardiya District and therefore underlie the disappearances documented.

Following their deployment in the conflict, RNA units based in Bardiya District gathered information on alleged CPN-M members and supporters, and conducted search operations near their barracks, arresting anyone suspected of links with the CPN-M. Most of the disappeared were specifically targeted and arbitrarily arrested during search operations, mainly from their homes during the night, by armed and uniformed RNA teams, sometimes together with police. The security forces also conducted one large scale operation from temporary camps constructed in the Rajapur Delta area of Bardiya District, during which at least 15 persons were disappeared. In violation of national and international law, arrests were often violent; those arrested were not informed of the reason for arrest and were taken away with little or no explanation. Security force teams often did not identify themselves during arrests. According to local sources, persons from marginalised rural communities, including Tharu civilians, were particularly harassed and humiliated by security force teams during operations, at check posts and when they approached army barracks.

OHCHR's investigations into the conditions and treatment of the disappeared in detention focused on Chisapani Barracks, which it found operated as a centre for intelligence collection, where detainees were systematically held in unacknowledged detention and subjected to torture and cruel, inhuman and degrading treatment in violation of international law, with the

involvement, knowledge and/or acquiescence of commanding officers. Most detainees were held handcuffed and blindfolded almost continuously for the duration of their detention. Methods of torture to which detainees were subjected included severe beatings, including on the soles of the feet; rolling a heavy wooden pole with pressure applied on limbs causing muscular damage; being made to lie in the sun and stare at it; having pins inserted beneath the fingernails or having fingernails pulled out; being submerged in water to produce a feeling of drowning; rape and mock executions. OHCHR has thus far gathered witness testimony which indicates that at least 21 of the disappeared were held in Chisapani barracks. Among them were men, women and children, including a 14-year-old boy who was last seen in detention in a trench.

The RNA repeatedly denied the detention of many of those it arrested, placing them outside the protection of the law. In spite of a general climate of fear and insecurity, many relatives approached army barracks and temporary military camps only to be turned away sometimes with threats or violence. In the small number of cases where the police or army initially acknowledged detention, families were not able to meet or receive information about detainees after a certain point. The fact that arrests were denied, detainees were not given access to a lawyer and detention was not reviewed by a judicial authority severely limited the ability of families to challenge the legality of detention. In particular, the courts normally dismissed *habeas corpus* writ petitions where detention was denied by the authorities and the petitions proved ineffective. Families were thus left searching in vain for any news of their disappeared relatives. Human rights defenders who intervened in such cases at the time did so at considerable risk.

The fate of most of the disappeared by the State authorities in Bardiya District remains officially unknown, despite the fact that their names have been submitted to the authorities with repeated requests for clarification, by families of the disappeared and human rights organisations, including OHCHR. However, OHCHR obtained credible witness testimonies on a significant number of cases indicating that detainees were killed in custody. OHCHR gathered independent testimonies regarding extra-judicial executions in detention. It also documented a pattern of removal of detainees from custody in Chisapani Barracks in vehicles sometimes equipped with digging equipment. On occasions, these were followed by the sound of gunshots after which vehicles returned empty. A number of the disappeared were last seen being removed from detention in this way. Information gathered indicates that others received injuries during arrest and through torture which may have led to their death.

In cases where the Nepalese Army (NA)² has since provided information to government commissions and OHCHR, OHCHR believes it has attempted to cover up the fate of some of the disappeared. OHCHR received two communications from the NA, in September 2006 and February 2008 respectively, providing information on 55 persons documented by OHCHR as disappeared after arrest by the security forces. According to the NA, most victims were killed either in an encounter, in security force operations or while trying to escape. Ministry of Defence press releases issued at the time of arrest also claimed that those named were “killed in an encounter”. In other cases, the NA said the persons in question were released or living at home, handed over to the police, or that there was no record of their detention or death. However, in the cases where OHCHR was able to carry out further investigation, it received witness testimony which contradicts these claims and as such OHCHR continues to consider the persons as disappeared. By way of illustration, OHCHR’s investigations found that four young people aged 15 and 16, whom the NA claims were killed in an encounter, were among eight persons arrested from home in front of multiple witnesses in Manau VDC in April 2002. The fact that the NA has acknowledged the death of these individuals, albeit under different circumstances, may be taken as confirmation of their deaths. Given that all were seen in security force custody, OHCHR believes that they were in fact killed in custody and their bodies disposed of in secret.

The actions tantamount to enforced disappearances by the CPN-M documented by OHCHR took place within a pattern of what the CPN-M termed “party action” against persons considered to be exploiters or informants and included public executions, abductions, torture and assaults. According to the CPN-M, all decisions on this “action” during the period in question were taken by the district committee and were normally carried out by small groups of People’s Liberation Army (PLA) cadres known as “squad teams”. OHCHR found that most of the victims were abducted from their home or the street near their home village in the day or the night by small groups of persons in civilian clothes, sometimes with known Maoist cadres among them. The victims included 13 men and one woman, aged between 20 and around 65. Among them were three Maoist-affiliated persons and three members of the security forces (one APF and two RNA personnel) who were taken while they were on leave or off duty. None of the families of those abducted were able to meet them in CPN-M captivity. However, relatives of at least four of those abducted heard from local people and also witnesses who had been held with them that they were beaten severely by the CPN-M, and had visible signs of wounds on their faces and bodies.

² The title of the Royal Nepalese Army (RNA) was changed to Nepalese Army (NA) by the House of Representatives proclamation of 18 May 2006. In the report, RNA is used when referring to the army’s operations at the time of the conflict. NA is used when referring to post-May 2006 actions.

In July 2008, the CPN-M acknowledged to OHCHR that it had killed 12 of the 14 persons OHCHR had documented as victims of actions tantamount to enforced disappearance by the CPN-M. While the families of some of these individuals had previously learnt through press releases issued by the CPN-M or verbally from Maoist cadres between a few days and a few weeks following the abduction that they were killed, others had not received any information from the CPN-M regarding their fate. The acknowledgement of their death by the CPN-M is a positive step towards determining the fate of the disappeared. However, the full circumstances of the abductions and killings, as well as the whereabouts of the remains must be disclosed. In August 2008, the national-level CPN-M representative for human rights undertook to discuss with CPN-M leaders the issue of informing families in writing that their relatives were killed, in cases where the CPN-M acknowledged killings. He also committed that efforts would be made to identify those responsible in order to locate the victims' remains and OHCHR understands that instructions to do so have been given to district-level CPN-M leaders.

The central demands of the families of the disappeared are truth, justice and reparations, which find support in international standards and the above-mentioned decision of the Supreme Court of Nepal in June 2007. Despite repeated commitments by all parties to the peace process, deadlines set to make the fate of the disappeared public have long expired and the establishment of a commission of inquiry on enforced disappearances has been pending for two years in spite of it being one of the measures, along with criminalisation of such practices, ordered by the Supreme Court of Nepal in its June 2007 ruling. The NP has repeatedly obstructed the registration of First Information Reports for conflict-related crimes, including those related to disappearances, and failed to investigate such cases. No-one has been prosecuted and perpetrators continue to enjoy complete impunity.

The failure of the Government to clarify the fate and whereabouts of the disappeared constitutes a continuing violation of the human rights of their families which must be addressed urgently. It is therefore welcome that in mid-November 2008, draft legislation on disappearances, including the criminalization of disappearances and the establishment of a Commission of Inquiry to investigate them, was released by the Government and approved by the Council of Ministers. The establishment of the Commission has the potential to be an important step towards clarifying the fate of the disappeared, including the persons whose cases are documented in this report. However, OHCHR suggests that the responsible agencies should not wait for the outcome of this inquiry before taking action on cases of disappearance that have been brought to their attention. This report is intended to assist both

the Commission and the responsible authorities to meet their obligations under international law.

Disappearances have had a deeply adverse socio-economic effect on families of the disappeared, many of whom were living at subsistence level before the disappearance. They have been left with diminished food security and lack of access to healthcare and education and vulnerable to child labour and social discrimination. Relatives of four of the disappeared from Bardiya were among those provided with interim relief in line with the Supreme Court decision. This interim relief must be provided to all families of the disappeared as a priority, in accordance with the Council of Ministers decision of November 2008. In addition, there remains an urgent need for a comprehensive programme ensuring a full-range of appropriate reparations, including restitution, rehabilitation and satisfaction, in consultation with families of the disappeared.

Disappearances and abuses linked to them such as extrajudicial executions, torture and arbitrary detention are among the most serious violations of Nepal's international human rights and humanitarian law obligations, especially the International Covenant on Civil and Political Rights. Lack of information about the fate of the victims prolongs the agony of their relatives over many years as they search for information. Repeated promises of action by the parties have led to hope and then despair as these promises are not fulfilled. As the newly-elected Government of Nepal begins the process of transforming Nepal after years of conflict, dealing with past violations of the kind documented in this report will be a critical challenge. This is not only important in terms of ensuring the rights to truth, justice and redress for the victims of disappearance and their families, but for laying a stronger foundation for the rule of law in Nepal and therefore for the long term success of the peace process.. As indicated above, in his address to the UN General Assembly in September 2008, the Prime Minister assured that his Government would end the environment of impunity in Nepal. In accordance with its mandate, OHCHR stands ready to assist the Government in this important undertaking.

CHAPTER I: INTRODUCTION

This report sets out the findings of OHCHR's investigations into enforced disappearances and related serious violations of human rights and international humanitarian law (IHL) in Bardiya District in the Mid-Western Region during the conflict between the State and the Communist Party of Nepal-Maoist (CPN-M)³. OHCHR has received information⁴ of over 200 cases of enforced disappearance after arrest by the security forces in the district, the highest number of reported conflict-related cases in one district in the country. Of these, OHCHR has investigated 156 cases so far. Among them were more than 20 children aged between 14 and 17, six of them female. Most of the 156 arrests took place between December 2001, following the declaration of the State of Emergency on 26 November 2001, after which the then Royal Nepalese Army (RNA) was deployed for the first time, and the subsequent ceasefire in January 2003.⁵ The investigations into enforced disappearances by the security forces focus mainly on this period, which was one of the most intense of the conflict, when IHL and human rights violations intensified in the district.

Fourteen unresolved cases of actions tantamount to enforced disappearance⁶ by the CPN-M between November 2002 and October 2004 were also documented in Bardiya District. In these cases there is no information about the location of the body of the victim, although in some of them families learnt (sometimes through press releases) a few days or weeks after the abduction that the victim had been killed. In others, families received no information about the fate or whereabouts of the victim.

The question of resolving conflict-related disappearances has remained one of the pending issues of the peace process. There have been very significant developments in Nepal since the 2006 ceasefires. These include the signing of the Comprehensive Peace Agreement (CPA) and other agreements, arms and army management, Constituent Assembly (CA) elections, the declaration of a republic and formation of a new government. Since May 2006, there have been repeated commitments made by the parties to the peace process to clarify the fate of the

³ In 1996, the CPN-M launched its "People's War" against the Government of Nepal. Hostilities ended in April 2006 following massive street protests, and the declaration of ceasefires in May 2006. The conflict formally ended in November 2006 with the signing of the Comprehensive Peace Agreement.

⁴ As documented by the Conflict Victim Committee, Bardiya, the Informal Sector Service Centre (INSEC) and other organisations.

⁵ A small number of enforced disappearances by the State (18 according to one local victims' group) were recorded in the district in the five years of the conflict before the State of Emergency, and 15 between January 2003 and April 2004. None were reported to OHCHR after that period.

⁶ The terminology used in this report is explained further in Chapter V on the international legal framework. In brief, 'enforced disappearances' is used to refer to State-related disappearances, 'actions tantamount to enforced disappearances' for CPN-M-related disappearances, and the term 'disappearances' is used in a general sense in both contexts, and to cover both categories of cases.

disappeared and set up a disappearances commission. These include a provision in the November 2006 CPA which required the parties to clarify the fate of the disappeared within 60 days, and a 23 December 2007 agreement which required the then Government to set up a commission within a month. However, the commitments made have not yet born fruit.

The formation, in September 2008, of a new government and a new, for the first time broadly representative, Parliament and Constituent Assembly which took office following elections in April 2008 marks a new phase in Nepal's peace process. It offers a unique opportunity for the authorities to demonstrate a real commitment to human rights by taking concrete and effective steps to resolve conflict-related disappearances. As this report was being finalised in November 2008, welcome steps were taken by the Government in this regard, including the release of draft legislation on disappearances and a Council of Ministers decision to provide interim relief to families of the disappeared.

Following the end of hostilities in May 2006, the climate of fear which had prevailed during the conflict diminished, and information started to emerge about the scale of the disappearances in Bardiya District, especially by security forces. Families of those who disappeared have continuously sought to know what happened to their loved ones, with the support of NGOs, to no avail. Although, as indicated below, other serious IHL and human rights violations were committed by both the State and by the CPN-M in Bardiya District during the conflict, this report looks particularly at the cases of disappearances after arrest or abduction because of the urgency of establishing the whereabouts and fate of the victims, and holding accountable those responsible.

This report describes the presence and operations of the RNA units and other security forces Bardiya District, and the patterns of enforced disappearances which resulted from a systematic practice by the security forces of arbitrarily arresting anyone suspected of links with the CPN-M, keeping them in secret, unacknowledged detention outside the protection of the law, and torturing them. The apparent aim was to extract information about the CPN-M, including through ill-treatment and torture, and to eliminate the CPN-M presence from the area. In particular, by way of illustration, OHCHR focussed its investigations on the pattern of unacknowledged detention and torture in Chisapani Barracks, including sexual violence against women. OHCHR's investigations also show that a significant number of individuals who disappeared from army barracks are believed to have been secretly killed in custody – including several young people aged between 15 and 17 - and that the authorities attempted to cover up the killings.

The report also describes cases of actions tantamount to enforced disappearance by the CPN-M. The victims included individuals whom the CPN-M accused of being “exploiters” or informants”, or of belonging to the security forces. Although the CPN-M has recently acknowledged that most of these individuals were killed, the failure to identify the location of the bodies and to collaborate with the authorities in holding accountable those responsible remains a serious concern. The CPN-M leadership has given assurances to OHCHR, in August 2008, that they will make efforts to inform all relatives and to locate the bodies.

This report also seeks to examine the socio-economic causes and consequences of the disappearances of the Tharus in Bardiya.

The disappearances by both parties to the conflict in Bardiya District were part of a broader pattern of widespread human rights and IHL violations which occurred during the conflict, many of the victims being civilians not taking part in hostilities. In 2006, OHCHR published a report documenting a pattern of arbitrary arrest, secret detention, torture and enforced disappearances by the RNA in Maharajgunj Barracks, Kathmandu, in 2003/4, patterns which were very similar to those documented in this report⁷. The United Nations Working Group on Enforced and Involuntary Disappearances (WGEID), in its report⁸ on a visit to Nepal in December 2004, noted that the phenomenon of enforced disappearance in Nepal was widespread, and that it was most likely under-reported in rural areas because of a “culture of silence” which had sprung up, with villagers fearing reprisals from security forces or CPN-M cadres if they reported cases. It noted that reports of disappearances had increased “exponentially”, with the NHRC receiving more than 600 complaints in 2003/4 compared with dozens of cases received in 2000/2001, the majority implicating the security forces. There were also reports of hundreds of abductions by the CPN-M, including numerous politicians, police and members of the army, as well as the forcible abduction and recruitment of children.

As well as enforced disappearances, the reported violations included hundreds of executions and other unlawful killings, arrests and torture by the State, as well as many killings, assaults and abductions by the CPN-M. The exact scale of human rights violations and abuses remains difficult to assess, because of the severe constraints facing witnesses and human rights defenders in reporting such cases at the time, but the number of victims is thought to run into thousands, according to national and international human rights organisations. The patterns

⁷ OHCHR-Nepal: *Report of investigations into arbitrary detention, torture and disappearances at Maharajgunj RNA Barracks, Kathmandu, in 2003-2004*, May 2006.

⁸ E/CN.4/2005/65/Add.1: *Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Nepal 6-14 December 2004*.

have been extensively documented by these organisations at the time and subsequently⁹, as well as by OHCHR since its establishment in Nepal in May 2005 (see also below, Chapter III: *Background*).

For all of these violations of human rights law and IHL, including the disappearances in Bardiya District, there has been almost total impunity, and no-one has been prosecuted by a civilian court¹⁰. OHCHR's report documents the efforts of relatives and human rights organisations to obtain truth, justice and reparations, and assesses the steps taken by the Government and the CPN-M to meet obligations in this regard. The report concludes with recommendations to the CPN-M-led Government and State authorities which OHCHR believes must be implemented to ensure that the rights of the victims' families are addressed. A number of recommendations are also addressed specifically to the CPN-M party itself because of its obligations as a party to the conflict.

CHAPTER II: METHODOLOGY

Soon after the opening of OHCHR's regional office in Nepalgunj in August 2005, it began to receive information from local human rights organisations regarding scores of disappearances during the conflict in Bardiya District, most of the victims being Tharus. When the human rights and security environment improved after the April 2006 demonstrations (known as the 'People's Movement' or *Janaandolan II*) and the subsequent end of hostilities, OHCHR began receiving individual complaints of disappearances in Bardiya District. In June 2006, the Office conducted a mapping exercise in order to obtain an overview of the patterns of disappearances, and to identify emblematic cases.

Data was collated from a wide range of sources. From June 2006, OHCHR carried out over 300 interviews, in Bardiya and Banke Districts as well as in Kathmandu, with relatives of the disappeared, former detainees, local authorities (Chief District Officers (CDOs), Nepal Police (NP), Armed Police Force (APF), Nepalese Army (NA)¹¹ and prison officials); the National

⁹ See for example: INSEC Human Rights Yearbooks, 2002, 2003; NHRC: *Human Rights in Nepal-A Status Report 2003*, September 2003; Human Rights Watch: *Clear Culpability: Disappearances by Security Forces in Nepal*, March 2005; Amnesty International: *Nepal: A Spiraling Human Rights Crisis*, 4 April 2002; Amnesty International: *Nepal: A Deepening Crisis*, December 2002; Amnesty International: *Nepal: Escalating Disappearances Amid a Culture of Impunity*, 30 August 2004.

¹⁰ A small number of court martials related to conflict-related cases were carried out by the RNA but in the cases which were brought to the attention of OHCHR, the Office does not believe that the court martials fully and impartially investigated the cases and punishments were often minimal. See for example, OHCHR: *The torture and death in custody of Maina Sunuwar, Summary of Concerns*, December 2006.

¹¹ The title of the Royal Nepalese Army (RNA) was changed to Nepalese Army (NA) by the House of Representatives proclamation of 18 May 2006. In the report, RNA is used when referring to the army's operations at the time of the conflict. NA is used when referring to post-May 2006 actions.

Human Rights Commission (NHRC) and other human rights and civil society organisations, representatives of the CPN-M and other political parties, Tharu and non-Tharu community leaders and other local people, UN agencies and other international organisations, as well as historians. In the course of these investigations, OHCHR has thus far documented 156 cases of individuals, the majority from the Tharu community, who disappeared following arrest by the security forces in Bardiya District, and 14 following abduction by the CPN-M in the district (see Annex I and II for lists of names).

In September 2006, OHCHR submitted 315 cases of reported enforced disappearances allegedly perpetrated by the then RNA, including many cases from Bardiya District, to the Human Rights Cell of the NA requesting clarification of their fate and whereabouts. It also submitted cases of enforced disappearances attributed to the NP to police authorities at the same time. It has since received two communications in which the NA specified the alleged fate of 55 persons who OHCHR had documented as disappeared from Bardiya District. In cases where OHCHR has been able to do additional follow-up, it has challenged the NA account of what happened and believes the individuals to be still disappeared (see below, Chapter VI.vii: *Attempts by the NA to cover up disappearances in Bardiya.*) It also received a communication from the NP, which stated that there was no record of arrest or detention in 57 cases of reported disappearance in Bardiya District, including seven of the nine persons documented by OHCHR as arrested by police teams.

OHCHR conducted a site visit to Chisapani Barracks in September 2007, and to Thakurdwara Barracks in November 2007, in order to obtain information about the units and commanding officers based there during the relevant period, and to verify information gathered from testimonies regarding places of detention.

In August 2008, OHCHR wrote again to the NA Chief of Staff as well as to the Home Ministry submitting a list of investigated cases of enforced disappearances after arrest by the security forces in Bardiya District. The letters requested confirmation of the names of the relevant security force commanders at the time and access to interview them to obtain their perspective. In a meeting with OHCHR, the NA Human Rights Cell informed OHCHR that two of the concerned persons were unavailable for interview (see below Chapter VI.iii: *Detention, torture and ill-treatment in Chisapani Barracks*) and requested OHCHR to direct its communications to the security forces through the Prime Minister's Office. OHCHR did not receive a formal reply to the letters. The Office has also raised cases of actions tantamount to enforced disappearances during a number of meetings with CPN-M district and national representatives, as well as through correspondence with the national leadership,

including the submission of a list of cases and a request to interview relevant CPN-M commanders.

In October 2008, a draft of this report was submitted to the Government with a request for feedback. Comments were subsequently received, which were taken into account in finalising the report. OHCHR notes that while the Government stated that the report does not incorporate the perspective of all sides to the conflict, no specific information on the perspective of the security forces regarding the matters raised in the report was provided.

As the aim of OHCHR's investigation was to document patterns of violations rather than to exhaustively record individual cases of disappearance, the report does not include a comprehensive investigation or assessment of all cases. In addition, given the geographic focus on security force/CPN-M action in areas of operation, the cases of persons from Bardiya District who were arrested or abducted elsewhere are not reflected in the report¹². Thirdly, the report does not reflect patterns of violations which cross the district border, and in particular the fact that at least one RNA unit based in Bardiya District (Bhimkali Company based in Chisapani Barracks) is known to have operated in areas of neighbouring Banke District, where credible information indicates that the company was responsible for enforced disappearances and other serious human rights violations.

For the most part, OHCHR was able to carry out its investigations without restriction or constraints, whilst taking into account possible protection issues where necessary. OHCHR wishes to express its appreciation to the NHRC for its valuable cooperation. At the regional level, the NHRC provided OHCHR with important information on patterns of violations and disappearance cases documented through its own investigations. It also shared information on NHRC recommendations to the Government on a number of disappearance cases in Bardiya District. In September 2008, the NHRC, together with other human rights organisations, participated in two consultations organised by OHCHR on draft recommendations regarding disappearances in Bardiya District, feedback on which was incorporated into this report. In meetings with OHCHR, the leadership of the NHRC also provided feedback on a draft version of this report. The Office also wishes to thank Advocacy Forum, Informal Sector Service Center (INSEC), United Youth Community-Nepal (UNYC-Nepal), Nepalgunj Media Centre and in particular the Conflict Victim Committee, Bardiya (CVC) for their cooperation.

¹² Lists of such cases which were received from sources in the course of OHCHR's investigations but not in themselves investigated are attached in table 2 of Annexes I and II.

In general, local authorities cooperated with the investigations. The CPN-M cooperated in terms of partially clarifying the fate of persons abducted but information is still pending on the full fate and whereabouts of the individuals concerned. OHCHR is concerned that the NA provided inaccurate and misleading information regarding the fate of some of those who disappeared after arrest by security forces, and on other cases did not provide any responses. Despite OHCHR's mandate of direct access, neither the security forces nor the CPN-M made respective commanders available for OHCHR to interview.

CHAPTER III: BACKGROUND

Located in the Terai plains of the Mid-Western Region, Bardiya is a predominantly rural district, almost half of which is occupied by the (Royal) Bardiya National Park¹³ ('the national park'). The district is characterised by poverty, discrimination and a lack of development and access to basic needs for many. The most recent Government census records the population at 382,649¹⁴, the majority of whom belong to the Tharu indigenous group (52 percent), followed by Chhetris and Brahmins of *pahadi*¹⁵ origin (ten and nine percent, respectively). One hundred and fifty six persons were documented by OHCHR as disappeared by the State authorities in Bardiya, and over 85 percent were from the Tharu community. Others who disappeared also came predominately from disadvantaged economic groups.

The Tharu of Bardiya District belong to indigenous communities known as the Deshauri and Dangaura Tharus, who claim Dang District, east of Bardiya, to be their original home and have their own language¹⁶. Today, these groups make up significant parts of the population in the Terai districts of the Mid- and Far-Western regions. They are widely recognised as having been essentially the sole inhabitants of parts of these once inhospitable, malaria-infested, forested areas until the 1800s.

In 1860, the area of the Terai west of the Rapti river in Dang¹⁷ District – which came to be known as the *naya muluk* or “new country” - was returned by Britain to Nepal, in return for

¹³ The title of Royal Bardiya National Park was changed to Bardiya National Park following the House of Representatives proclamation of 18 May 2006, which removed references to the monarchy in the titles of government institutions.

¹⁴ Government census 2001.

¹⁵ *Pahadi* is the Nepali word to denote 'of hill origin', as opposed to people from the plains.

¹⁶ According to local community representatives. Those interviewed by OHCHR estimate that around eighty per cent of the Tharu population do not speak fluent Nepali.

¹⁷ Including the present Banke, Bardiya, Kailali and Kanchanpur districts.

Nepal's military support¹⁸. Half of this area, including the whole of Bardiya District, was gifted by King Rajendra to the then Prime Minister, Jung Bahadur Rana, as land from which he could collect taxes¹⁹. In a bid to increase both revenue and geographic influence, Jung Bahadur Rana in turn redistributed the tax concessions amongst his family and acquaintances who increasingly laid claim to land ownership.

Following malaria eradication projects in the Terai in the 1950s, there was an influx of State-encouraged migration, mainly of high-caste populations from the northern hills, who were closer in terms of caste, language and culture to the ruling elites²⁰. At the same time, a population of poorer economic migrants moved into the district from hilly areas and other Terai districts, as well as from India. Through lack of awareness, fraudulent money-lending practices, corruption, lack of access to justice and discrimination by State authorities, the Tharu population was largely dispossessed of its traditional lands. Control of much of the land was transferred to a minority of high-caste immigrants,²¹ who became the *jamindars*, a term used locally to refer to wealthier landowners who employ agricultural or other types of labour. The majority of the Tharu population was reduced to the status of tenants (share croppers), wage labourers, or *kamaiya* (bonded labourers)²².

The marginalisation of the Tharu people was perpetuated by lack of representation in government and politics, language barriers, and lack of access to State protection and services, including education. According to one local NGO, for the majority of the conflict period, as today, there were no Tharu persons at officer level in any government office in Bardiya District. Political representation was, until recently, extremely low.²³

The social structure in rural areas thus came to be dominated by a significant power imbalance between landowners and Tharu and other disadvantaged communities who were vulnerable to exploitation and abuse. Women were susceptible to being doubly victimised through sexual abuse and rape at the hands of landowners. According to local sources. As a

¹⁸ John Whelpton: *A History of Nepal*, Cambridge University Press 2005.

¹⁹ Action Aid: *Liberation is not enough: the kamaiya movement in Nepal*, 2005.

²⁰ Arjun Guneratne: *Many tongues, one people: the making of Tharu identity in Nepal*, Cornell University Press 2002 page 93.

²¹ Action Aid: *Liberation is not enough: the kamaiya movement in Nepal*, 2005 pp. 12 to 20, Arjun Guneratne, *Many tongues, one people: the making of Tharu identity in Nepal*, Cornell University Press 2002 page 91.

²² *Ibid.* page 95. There are over 16,000 former *kamaiya* families registered with the Government of Nepal in Bardiya District (Ministry of Land Reform February 2007). According to one NGO working in this field, 99% of former *kamaiya* are Tharu.

²³ In the 2008 Constituent Assembly elections, three out of the four seats in Bardiya District were won by Tharu candidates representing the CPN-M. The peace process has seen welcome progress in relation to the rights of marginalised groups, including increased representation in the Constituent Assembly (see below *Chapter X; Conclusion*)

result, a social confrontation or “low intensity conflict”²⁴ developed in rural areas between tenants and labourers from Tharu and other disadvantaged groups on the one hand, and high-caste landowners on the other, at the centre of which were struggles over land.

In this context, a number of parallel movements for Tharu and land rights emerged, which challenged the dominance of the high-caste landowners. The most significant of these was the movement to end the *kamaiya* system of bonded labour, which gained significant momentum in the Mid- and Far-Western regions following the democratic movement of 1990, eventually leading to a Government decision, in July 2000, to “liberate” all *kamaiya* labourers, and the adoption of the *Kamaiya* Labour Prohibition Act in February 2002.²⁵ The predominant view among local civil society representatives interviewed by OHCHR is that the “freeing” of the *kamaiyas*, along with ongoing initiatives at that time to fight for Tharu and land rights, created insecurity among the local landowning class, who felt that their power-base was being challenged and began to view the Tharu community as a threat.

The CPN-M was active in Bardiya District from the start of the “People’s War” in 1996²⁶. According to CPN-M district-level leaders interviewed by OHCHR, its strategy focused on the mobilisation of marginalised rural groups, in particular from the Tharu community, against what they termed “exploitation by feudalistic landlords”. The CPN-M held meetings and cultural programmes at the local level to recruit members and promote its ideology of “revolutionary land reform”, adopting the language of Tharu emancipation. Although there are no comprehensive figures, sources agree that in this way the CPN-M included a significant number of Tharu people in its ranks. In addition, local people from Tharu and other disadvantaged groups were encouraged and often forced, through intimidation and fear, to support the CPN-M and take part in its activities. As the CPN-M movement gained momentum, it increasingly targeted the high-caste landowning elite with violence, including the theft and destruction of properties, physical attacks, abductions and in some cases killings.

Local people and Tharu and non-Tharu civil society representatives repeatedly stated to OHCHR that the distinction between the CPN-M insurgency and ongoing Tharu and land rights movements became blurred for many high-caste landowners. The Tharu population was increasingly associated with the CPN-M and the view that “all Tharus are Maoists” became common among the landowning class. Furthermore, through the links of kinship and caste

²⁴ See Arjun Guneratne: *Many tongues, one people: the making of Tharu identity in Nepal*, Cornell University Press 2002 page 91, in relation to Dang District.

²⁵ Although the 2002 Act included rehabilitation programmes, the provisions of the Act have never been fully implemented.

²⁶ According to CPN-M representatives and local people interviewed in Thakurdwara and Suryapatuwa VDCs.

between these landowners and members of the high-caste groups of hill origin that dominated State institutions, this became the prevailing mentality of local authorities and security forces alike. In this context, members of the Tharu and other marginalised groups claiming their rights vis a vis landowners or State authorities were at increasing risk of being labeled as Maoists and insurgents.

In the initial years of the conflict, only the police - the NP and later the APF – had been engaged in fighting the CPN-M and during these early years, a small number of enforced disappearances were reportedly carried out by the NP in Bardiya District (see footnote no. 3 above). On 26 November 2001, the Government declared a State of Emergency, following the breakdown of peace talks with the CPN-M, and in a subsequent series of attacks by the CPN-M in the hilly areas of the Mid-Western Region in which dozens of police and military were killed. The CPN-M was declared a “terrorist” organisation, anti-terrorist legislation was introduced in the form of the Terrorist and Disruptive Activities Ordinance (TADO)²⁷, and the RNA was deployed for the first time to fight the CPN-M insurgency. In the months that followed, the human rights situation in Bardiya District, Mid-Western Region, as elsewhere in Nepal, deteriorated rapidly amidst unprecedented levels of political violence and insecurity. Thousands were arrested (more than 5000 between November 2001 and February 2002 alone, according to official sources), on suspicion of having links with the CPN-M. Amnesty International reported that it had submitted to the Special Rapporteur on extrajudicial executions information on 200 cases of alleged extrajudicial execution by security forces in 2002.²⁸ In its report *Human Rights in Nepal: A Status Report 2003*, NHRC noted an alarming increase in torture by state authorities in 2002, citing figures from the annual reports of INSEC (3430 cases in one year)²⁹. At the same time, landowners, teachers and politicians were among the hundreds attacked, abducted, tortured and/or unlawfully killed by CPN-M on accusations of being “enemies of the revolution”. Police and RNA personnel were also targeted for abduction and in some cases killing.

Although the State of Emergency was lifted in August 2002, patterns of violations of human rights and IHL continued to be widespread. Many of the victims of the conflict were civilians

²⁷ See Chapter V: *International and National Legal Framework* for an assessment of human rights concerns regarding TADO.

²⁸ Amnesty International: *Nepal: A deepening human rights crisis*, December 2002.

²⁹ The use of torture in the context of the conflict was confirmed again in the report of the Special Rapporteur on Torture on his visit to Nepal in September 2005, in which he concluded “unequivocally” on the basis of interviews and of complaints received over several years previously, that torture and ill-treatment are systematically practised in Nepal by the police, armed police and the RNA primarily to extract confessions and to obtain intelligence in relation to the conflict. He also cited “repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practiced.” E/CN.4/2006/6/Add.5: *Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Mission to Nepal*, 2006.

caught between the army and the CPN-M, at risk of reprisals from both sides as a result of perceived or real collaboration with one or the other. It is in this context that most of the disappearances described in this report took place.

CHAPTER IV: PROFILE OF THE DISAPPEARED

IV.i: Persons disappeared after arrest by the State

Of the 156 individuals whose cases OHCHR has documented, 138 victims were male and 18 were female. As already indicated, most (135) were Tharus. All the women and children documented as disappeared (see below) were of Tharu origin. Other victim groups include Brahmin and Chhetri (five cases each), Thakuri (four cases), Magar (three cases), Dalit (two cases) and Mandal and Sheik (one case each). Many of those who were not Tharu were also from economically disadvantaged sectors of the population.

The age of the victims³⁰ at the time of arrest reportedly ranged from 14 to 60 years old, the largest number (74) being between 18 and 27 years old. Thirty of the victims were reportedly aged 28 to 37 years old and 16 were reportedly aged 38 to 47 years old. Seven were documented as aged between 48 and 60 years old.

It is of particular concern that 21 of those who disappeared were aged between 14 and 17 years old at the time of their arrest. Most of these children were arrested from home, and appear to have been targeted because they, or their family members, were accused of CPN-M involvement. A smaller number were apparently arrested randomly by RNA patrols. Three were confirmed to be active CPN-M recruits.

According to information available, the 18 female victims were aged from 15 to 23 years old, making them on average younger than male victims. Six of them were under 18 years old. Eleven of them were reportedly arrested in the area of operation of the RNA based in Thakurdwara Barracks. According to their relatives and the CPN-M, at least nine of these women were CPN-M members at the time of their arrest, making the proportion of CPN-M members significantly higher among female victims (see below).

The occupation of victims was recorded in 146 cases. The largest number of victims (61) were subsistence farmers, reflecting the predominant form of livelihood in the rural areas most affected by disappearances in Bardiya District. They included small farmers, sharecroppers, former *kamaiyas* and farm labourers. A further 17 of those who disappeared

³⁰ Recorded in 148 cases.

were labourers, including seasonal labourers in India who had returned to their home village only a few days prior to their arrest. Among the disappeared are also 15 students, nine teachers and six carpenters.

Several prominent Tharu activists were among those who disappeared after arrest by the RNA. They include three central committee members of *Gochali*, a network of intellectuals in Bardiya District which published a magazine with the same name in the Tharu language. Formed to pressurise the Government for Tharu rights, raise awareness on the *kamaiya* system, and promote the Tharu language, *Gochali* had reportedly refused cooperation when the CPN-M sought to use the network as an avenue to mobilise Tharu support but its members were targeted by the RNA nevertheless. All three were teachers in local schools.³¹

Twenty-three of those who disappeared in Bardiya District were, according to their relatives and in some cases CPN-M sources, CPN-M members at the time of their arrest. They include a CPN-M area committee member and secretary, CPN-M party workers and a CPN-M ward chief, as well as a messenger, and individuals who were working with the CPN-M for periods from two to three days to four years. Some were mobile cadres who were away from their homes at the time of arrest.

The majority of the persons disappeared were civilian villagers. According to information gathered by OHCHR, they were not members of the CPN-M at the time of their arrest or directly involved in hostilities - a fact that has been confirmed by district and local level CPN-M representatives, and a representative of the CPN-M-affiliated Society of the Family of the Disappeared (SoFaD), during interviews with OHCHR. A number of these individuals reportedly had no connection at all with the CPN-M; their arrests are believed to have been motivated by false information, including that obtained through torture, and false accusations motivated by personal vendettas. Some were reportedly CPN-M sympathisers or supporters, some of whom had voluntarily provided food or shelter to mobile CPN-M party workers, or attended village-level mass meetings which were convened by the CPN-M. Others may have provided such support or attended meetings, but the voluntariness of the act was questionable, given that it was often done through fear of reprisals from the CPN-M given the extensive physical attacks and killings which were taking place.

³¹ On 27 December 2001, the co-founder of *Gochali* and central committee member, Sagun Lal Chaudhari, was reportedly arrested on his way home from work, during an RNA search operation in a village where the CPN-M had attacked a local landowner the previous day. On 5 January 2002, a second central committee member, Ruplal Chaudhary, was reportedly arrested from his home by the RNA. Both were last seen in detention in Chisapani RNA barracks. On 17 April 2002, a third central committee member, Bhim Bahadur Tharu, was reportedly arrested by the RNA from his home.

IV.ii: Persons disappeared after abduction by the CPN-M

OHCHR documented the cases of 14 persons whose physical whereabouts has remained unknown after abduction by the CPN-M in Bardiya District between November 2002 and October 2004. The victims include 13 men and one woman, aged between 20 and around 65 years old. The largest number were in their twenties (eight), two were in their 30s, and one in their forties, fifties and sixties respectively³². They include three Tharus, Chhetris and Brahmins, three Dalits – including two Badis – and two people of Madheshi³³ origin (Muslim and Kayastha).

In terms of occupation, the largest number of victims (seven persons) were farmers, including one tractor driver and two farmers of Badi origin. Three of the victims were members of the security forces - two RNA and one APF personnel – who were not in combat (*hors de combat*) at the time of their abduction (see Chapter V: *The International and National Legal Framework*). The remainder include a homemaker, a businessman, a mechanic and a medical professional. Three victims were affiliated with the Nepali Congress (NC) Party (a member, a supporter and a Tarundal (Nepali Congress youth wing) village chairperson). A further three were Maoist-affiliated and were targeted by the CPN-M on accusation of being an informer or for criminal activities.

CHAPTER V: THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

V.i: International legal framework on enforced disappearances and related violations

International human rights law

As the UN General Assembly (GA) has underlined, enforced disappearance is a grave and flagrant violation of human rights.³⁴ It represents violations of key human rights guarantees under the International Covenant on Civil and Political Rights (ICCPR) to which Nepal has been party since 1991, including the right to recognition as a person before the law (article 16); the right to liberty and security (article 9), and the right not to be subjected to inhuman and degrading treatment (article 7). In addition, it is a potential gateway to other violations of human rights. Once in detention, the disappeared person faces a threat of extrajudicial execution, in violation of the right to life (article 6), and torture (article 7, ICCPR and the

³² The age of one victim was not available.

³³ Madheshi is the Nepali term for people who originated from the plains (known as the Madhesh) as opposed to hill areas.

³⁴ Declaration on the Protection of all Persons from Enforced Disappearance, adopted 18 December 1992 ('the Declaration on Enforced Disappearance').

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

Indeed, the subject of enforced disappearance has been regarded as sufficiently serious to warrant the adoption of the 1992 GA Declaration on the Protection of all Persons from Enforced Disappearance, and in 2006, the adoption of a specialised human rights treaty, the International Convention on the Protection of all Persons from Enforced Disappearance (hereafter referred to as the Convention on Enforced Disappearance). Under those instruments, the key elements of ‘enforced disappearance’ are that:

- (a) a person is arrested, detained, abducted or otherwise deprived of his or her liberty;
- (b) such deprivation of liberty is undertaken by State agents/officials, or by persons or groups authorised by, or with the support or acquiescence of the State; and,
- (c) there is a refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person which places such person outside the protection of the law.³⁵

Whilst Nepal has not yet ratified the Convention on Enforced Disappearance, nor has the treaty entered into force internationally, Nepal remains under an obligation to desist from enforced disappearances under its ICCPR obligations. These international human rights law obligations apply in times of peace and war³⁶ and so are equally applicable to the time of conflict in Nepal as the present time. The Human Rights Committee, for instance, recently considered a communication from a petitioner in Nepal concerning an alleged enforced disappearance which took place during the conflict. The Human Rights Committee concluded that the case was substantiated and that Nepal was in violation of its obligations under Article 2(3), 7, 9 and 10 of the International Covenant on Civil and Political Rights.³⁷ Under the ICCPR and the instruments on Enforced Disappearance, the focus is on State action as constituting the relevant violation of human rights. This includes, however, a duty on the State to investigate and bring to justice those responsible for acts of disappearances committed by persons/groups acting without State authorisation, consent or acquiescence.³⁸

International humanitarian law (IHL)

³⁵ These key elements are taken from looking at the elements in the preamble to the Declaration on Enforced Disappearances and Article 2 of the Convention on Enforced Disappearance.

³⁶ Advisory opinion of the International Court of Justice (ICJ) on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, (2004) ICJ Reports.

³⁷ *Sharma v Nepal*, Communication No 1469/2006 (6 November 2008), UN Doc CCPR/C/94/D/1469/2006.

³⁸ See Article 3 of the Convention on Enforced Disappearance. See also the jurisprudence of the Human Rights Committee concerning the obligation on the State to take steps to protect persons from acts of private parties/organisations that impair the enjoyment of ICCPR rights: Human Rights Committee General Comment No. 31, *The nature of the general legal obligation imposed on State Parties* (2004), para 8.

Both sides to a ‘non-international armed conflict’ (in the Nepal context, both the State security forces³⁹ and CPN-M) are bound by the provisions of applicable IHL. Nepal is a party to the four Geneva Conventions though not to either of the Additional Protocols. Under Common Article 3 of the Geneva Conventions, persons taking no active part in the hostilities (including members of armed forces who are placed ‘hors de combat’ by detention or any other cause) are entitled to be treated humanely. It is prohibited for parties to an armed conflict to subject such persons to violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing out of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording judicial guarantees. Relevant customary international rules on non-international armed conflicts have developed, including a prohibition on the arbitrary deprivation of liberty and requirements to keep a register of persons deprived of their liberty, respect detainees’ family life, permit visits of detainees by their close relatives and allow correspondence by detainees with their families. Customary international law also requires each party to an armed conflict to take all feasible measures to account for persons reported missing as a result of the conflict, and to provide their family members with any information it has on their fate. The combined effect of these obligations leads to the conclusion that the practice of disappearance (committed by either side to a conflict) is prohibited by customary international humanitarian law.⁴⁰

International criminal law

Disappearances violate a range of treaty as well as customary rules of IHL, including arbitrary deprivation of liberty, torture and sometimes even murder. Serious violations of IHL constitute war crimes. According to the ICRC study on customary IHL, this includes, in particular, serious violations of Common Article 3 of the Geneva Conventions and of applicable customary rules of international law on non-international armed conflict.⁴¹ Within this ambit are the violations against persons taking no active part in the hostilities such as violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, outrages upon personal dignity, in particular humiliating and degrading treatment, the passing out of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording judicial guarantees, making the civilian

³⁹ In this context, State security forces includes the NA as well as the APF and NP, when they take part in hostilities, such as participating in military operations under the unified command of the NA.

⁴⁰ Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross: *Customary International Humanitarian Law, Volume I: Rules*, Cambridge University Press 2005 (“ICRC Study on Customary IHL”) Rule 98, pp 340-1.

⁴¹ ICRC Study on Customary IHL, Rule 156, pp 568-603.

population or individual civilians the subject of attack and committing sexual violence.⁴² War crimes may be committed by any party to a conflict. When committed as part of a widespread or systematic attack directed against a civilian population with knowledge of such an attack, enforced disappearances may constitute a crime against humanity.⁴³ Under the Rome Statute of the International Criminal Court, such a crime⁴⁴ can be perpetrated by, or with the authorisation, support or acquiescence of, a State or a political organisation.⁴⁵ While Nepal has not ratified the Rome Statute, a similar prohibition exists within customary international law and so is applicable to both State and non-State actors in Nepal.⁴⁶

Other relevant international standards

International conventions, treaties and principles also contain important standards with regard to impunity and the rights of victims to truth, justice and reparations. These standards are outlined in Chapter IX: *Truth, Justice and Reparations*.

While the provisions of the above-mentioned conventions and treaties are the main international standards of relevance to this report, Nepal is also party to other international conventions and treaties which provide a framework for assessing respect for other rights referred to in this report. These include the International Convention on Economic, Social and Cultural Rights which requires the State to respect, protect, and fulfil the rights to adequate food, an adequate standard of living, health and education. In Chapter VIII, this report looks at the impact of disappearances on the economic and social situation of the family members and the lack of State support to assist the families in meeting basic needs. In addition, the Convention on the Rights of the Child provides the framework of principles for the protection of children against recruitment into armed groups, unlawful killings, arbitrary detention, torture and enforced disappearance. This report includes a number of cases where children were the victims of such violations.

Terminology used in this report

⁴² Id.

⁴³ Article 7 of the Rome Statute of the International Criminal Court. See also discussion of customary international law on this point: *infra*.

⁴⁴ Article 7 (2)(i) of the Rome Statute of the International Criminal Court provides that ‘enforced disappearance of persons’ refers to the arrest, detention or abduction of persons followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

⁴⁵ Id.

⁴⁶ Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, to the UN Commission on Human Rights, 8 January 2002 (“Nowak Report on Disappearances”), pp 27-29; Antonio Cassese: *International Criminal Law*, Oxford University Press 2003, pp 74, 80.

As is apparent from the above, there are slightly varying definitions of ‘enforced disappearance’ existing in international law as the law has developed. Within the international human rights legal framework ‘enforced disappearance’ refers only to cases in which the State has played a role – either directly through State agents/officials, or in supporting or acquiescing in the actions of non-State personnel.⁴⁷ Within international criminal law, the offence of crime against humanity of enforced disappearance is broader and covers not only State actors but also those acting ‘with the authorisation, support or acquiescence of a political organisation’. International humanitarian treaty law does not explicitly refer to disappearance. In this report a protocol has been adopted of using ‘enforced disappearance’ to refer to State-related cases, ‘actions tantamount to enforced disappearance’ to refer to CPN-M-related cases and ‘disappearance’ as a general term applicable to both categories of cases.

V.ii: National Legal Framework

At the time of the events described in this report, Nepalese law did not contain an express prohibition on enforced disappearance or actions tantamount to enforced disappearance, nor did it criminalise torture. This remains the case today, though draft legislation criminalising disappearances was released by the Government in mid-November 2008.⁴⁸ There were, however, some protections contained within the constitutional framework of rights relevant to such matters, though it was a regime subject to exceptions and specialised anti-terrorism provisions. The 1990 Constitution provided, for instance, that a person could only be deprived of his/her personal liberty ‘in accordance with law’ (Article 12(1)),⁴⁹ that a person had the right to be informed as soon as possible after arrest and detention of the grounds for arrest, and had the right to consult and be defended by a legal practitioner of his or her choice (Article 14(5)). It also provided that persons detained during investigation or for trial or for any other reason had the right not to be subjected to physical or mental torture, or subject to cruel, inhuman or degrading treatment (Article 14(4)). The Constitution also provided that persons arrested and detained had the right to be brought before a judicial authority within 24

⁴⁷ See also ‘General Comment on the definition of enforced disappearance’ by the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID).

⁴⁸ In 2007, a law was passed criminalizing ‘abduction’ and ‘hostage taking’ and the Government had announced its intention to pass a law criminalizing disappearances. In mid-November 2008, the Ministry of Peace and Reconstruction released a draft Disappearance Bill which included provisions criminalising disappearance. These provisions are to apply retrospectively. The Council of Ministers approved the draft legislation and its referral to Parliament on 19 November 2008.

⁴⁹ The Supreme Court of Nepal read this provision as implying that there was also a ‘right to life’ in their decisions regarding a right to live in a clean and health environment: see *Leaders Inc. v Godavari Marble Industries*, 4 S Ct. Bull 1.

hours. However, this right did not extend to persons detained under ‘any law providing for preventive detention’ (Article 14(6) and (7)).⁵⁰

In November 2001, the King, on the advice of the Cabinet, declared a State of Emergency, suspending a number of the constitutional guarantees, including limitations on the use of preventive detention.⁵¹ In the same month, the Terrorist and Disruptive Activities Ordinance (TADO) was promulgated which gave sweeping powers to the security forces, on the orders of the Chief District Officer (CDO), to arrest without warrant and hold anyone suspected of “terrorist” or “disruptive” activities in preventive detention ‘in a humane place’.⁵² Such persons could be held for up to ninety days without being brought before a court. An additional 90-day period of detention could be authorised by the Home Ministry. An order under TADO declared as terrorists the CPN-M and ‘any person, organisation or group...directly or indirectly involved in, or [who] renders assistance in, the activities carried out by that group’.⁵³ In April 2002, the TADO was replaced by an Act of Parliament, the Terrorist and Disruptive Activities (Control and Punishment) Act, 2002 (TADA) which continued a similar preventive detention scheme.⁵⁴ The security forces were specifically defined both in the TADO and TADA as including the RNA, APF and NP, thereby formally giving the RNA powers of arrest and detention.

In applying a regime built around vague definitions of ‘terrorist’ and ‘disruptive activities’, there was ample opportunity for arbitrary arrests. The time-limits on preventive detention were often extended or ignored. The vagueness of the term “in a humane place” made it possible for the RNA to keep detainees in army custody. In practice, CDOs were reported to be subordinate to the security forces, and so acted on the instruction particularly of the RNA with regard to authorising detentions.⁵⁵ In the report of its visit to Nepal in 2004, the WGEID quoted senior government officials’ opinion that “allowing [preventive] detention for

⁵⁰ The Constitution limited the use of preventive detention to situations in which there were sufficient grounds to suggest an immediate threat to the sovereignty, integrity or law and order situation in Nepal: Article 15, 1990 Constitution.

⁵¹ Other freedoms suspended by the Declaration of the State of Emergency were freedom of expression, freedom of peaceful assembly, freedom of movement, rights against censorship, right of information, right to property, right to privacy, and the right of a constitutional remedy. The right to the remedy of habeas corpus was, however, retained.

⁵² The measure was originally passed as an Ordinance on the basis that Parliament was not in session.

⁵³ Order published in Nepal Gazette, 26 November 2001, pursuant to section 7 of TADO.

⁵⁴ Under TADA, the time period for preventive detention was limited to 90 days (without the possibility of renewal). However, upon its expiration after two years, a series of TADO ordinances were passed which permitted preventive detention for six months, with the possibility of a six month renewal.

⁵⁵ A Task Force set up by the Supreme Court in 2007 to investigate four disappearance cases concluded in its report that after the RNA deployment, the civil administration “collapsed” and that the role of the CDO was reduced to signing papers prepared by army personnel. WGEID described the role of the CDO as systematically rubber-stamping preventive detention, “with almost no inquiry into the merits of the request for detention, or the physical condition of the suspect.”

up to one year would reduce the number of disappearances and extrajudicial executions”. In addition to this tacit acknowledgement at senior government level that such cases were occurring, the WGEID described this assumption as “worrisome”: “Such opinion supposes that the security forces will engage in such acts unless they are given more “flexibility” in detaining suspects without any need to adduce proof of immediate danger to society”. Enforced disappearances effectively continued unabated.

Whether directly or indirectly, the TADA nevertheless contributed to the creation of a climate of impunity in which protection against arbitrary arrest was diminished and security forces were able to arrest and detain without civilian or judicial control or scrutiny, and without therefore being obliged to demonstrate links of persons with “terrorist” or “disruptive” activities. As WGEID concluded: “Mere suspicion can and does extend all too easily to innocent people. Security forces are also reaffirmed in the presumption that their judgement is unquestionable⁵⁶.”

CHAPTER VI: ENFORCED DISAPPEARANCES AFTER ARREST BY SECURITY FORCES

VI.i: Security force presence and operations in Bardiya District

This section focuses primarily on the period between December 2001 and January 2003, during which most reported enforced disappearances by the State took place in Bardiya District⁵⁷. Of the cases of persons whose disappearance OHCHR documented, 128 were reportedly arrested by RNA personnel and nine by NP. An additional 14 persons were reportedly arrested by joint RNA, NP and/or APF teams. The remainder were arrested by people identified as security forces because of their uniform and appearance, but who witnesses could not distinguish between RNA, NP or APF.

VI.i.i: Royal Nepalese Army (RNA)

Three RNA units were based in Bardiya District for varying periods of time during this period: Bhimkali Company, Barakh⁵⁸ Company (which was upgraded to a battalion during the period) and Ranasur Company. These units fell within the command area of the RNA 4th Brigade, then headquartered in Surkhet District, and the RNA Western Division, at the time headquartered in Ranjha Barracks in Nepalgunj, Banke District. An operations unit within the

⁵⁶ E/CN.4/2005/65/Add.1: *Report of the WGEID: Addendum: Mission to Nepal, 6-14 December 2004.*

⁵⁷ See map in Annex III.

⁵⁸ Also known locally as Barakhdal Company.

Western Divisional Headquarters in Ranjha Barracks reportedly coordinated counter-insurgency activities in the region. Because of its close geographical proximity to Nepalgunj, the Bhinkali Company effectively reported directly to the Divisional Headquarters, according to information gathered by OHCHR. In its August 2008 communication to the NA, OHCHR requested the names of the commanders of the Western Divisional Headquarters and the 4th Brigade during the period under review and to interview them. The Office was subsequently informed it should write to the Prime Minister's Office for such information and access, in spite of OHCHR's mandate of unrestricted access.

In addition to units based in Bardiya District, RNA units based in neighbouring Kailali District also conducted operations in Bardiya District in areas where people disappeared after arrest between December 2001 and January 2003 (see below, Chapter VI.i.iii: *Security force operations in the Rajapur Delta*).

All RNA units deployed in Bardiya District were based within the national park, and their role was initially limited to protecting the park's wildlife. According to consistent witness accounts, following their deployment in the conflict, the RNA undertook frequent and sustained operations which appear to have been aimed at the elimination of the CPN-M's presence and support base.

The units gathered information on the identity and whereabouts of alleged CPN-M members and supporters through regular patrols, and undercover teams in civilian clothes who moved in communities, as well as from local informants and detainees who were tortured in order to coerce them into providing information. On the basis of this information, teams of RNA soldiers conducted "cordon and search" operations, sometimes with police, in rural villages close to their barracks and arrested anyone suspected of links with the CPN-M from their homes, in the street, places of work or where they were sheltering (see Chapter VI.ii: *Arbitrary arrests in the course of security operations*). Anyone considered to be a potential source of information, however weak the basis of the suspicion was, risked being arrested, a practice that was facilitated by the fact that these arrests were not subjected to judicial control.

According to the information gathered by OHCHR, during cordon and search operations as well as other types of military operations, RNA personnel particularly harassed and humiliated people from marginalised rural communities, including Tharu civilians, who were treated in an insulting and derogatory way, made to wait longer at checkpoints, and interrogated more rudely and thoroughly. Multiple reports revealed that Tharus were regularly told by RNA personnel that "All Tharus are Maoists!" when approaching army barracks, at

check posts and during search operations. Search operations commonly focused on Tharu settlements and houses⁵⁹. Civil society organisations, intellectuals, activists and leaders who were not CPN-M members, but were active in advocating for the rights of marginalised groups also fell prey to arrests and repeated search operations of premises⁶⁰ by the RNA.

- *Bhimkali Company, Chisapani Barracks*

According to the information received from the NA, Bhimkali Company was headquartered at Chisapani Barracks, located on the eastern limits of the national park where it borders Banke District. Consistent sources indicate that the unit was under the command of Major Ajit Thapa and Captain Ramesh Swar (second in command), during the period under investigation. A section of Bhimkali Company was also based at Rambhapur RNA post, which operates a check post on the Mahendra Highway, in Magaragadhi VDC.

Consistent reports indicate that between December 2001 and January 2003, Bhimkali Company conducted frequent search operations in the six VDCs in Bardiya District that are joined by the section of the Mahendra Highway between Rambhapur RNA post and Chisapani Barracks. In addition, Bhimkali Company operated in areas of neighbouring Banke District, and, as indicated below, was reportedly involved in the “Karnali Operation” (see below, Chapter VI.II.iii: *Security force operations in the Rajapur Delta*). Commanding officers were reported by witnesses to be frequently involved in arrests.

The unit used both military and government vehicles, sometimes with number plates removed. Soldiers from Rambhapur RNA post or Chisapani Barracks travelled by vehicle via the Mahendra Highway and then along the dirt roads leading north and south to settlements, typically targeting and arresting individuals from their homes. While arrests from market areas were sometimes made during the day, search operations in rural villages were almost exclusively conducted at night. One team of soldiers sometimes reportedly visited numerous locations during the same night, carried out searches and arrests both in Bardiya and neighbouring Banke Districts, and returned to their barracks in the morning. Most of those arrested were taken to Chisapani Barracks (some after an initial period of detention at Rambhapur Barracks), which also operated as a centre for detention and intelligence

⁵⁹ For example, on 29 December 2001 an RNA team from Bhimkali Company conducted a search operation in Belwa VDC after the CPN-M had burnt down a vacant army post nearby a few days earlier. Although the village has approximately 200 households, the search operation focused on a cluster of 86 households belonging to the Tharu community.

⁶⁰ Staff from one NGO working for Tharu community development in Bardiya District told OHCHR it was raided four times by the RNA during the State of Emergency. During raids, RNA soldiers shouted at Tharu staff “You’re all Maoists!”.

collection (see below, Chapter VI.iii: *Detention, torture and ill-treatment at Chisapani Barracks.*)

OHCHR documented the disappearance of 60 persons who were reportedly arrested in the area of operation of Bhimkali Company, the highest number in Magaragadhi VDC, in which Rambhapur checkpost is located.

- *Barakh Company and Battalion and Ranasur Company, Thakurdwara Barracks*

According to the NA, when the State of Emergency was declared in November 2001, Barakh Company was based in Thakurdwara Barracks, located in the national park where it borders Thakurdwara VDC in the west of Bardiya District. It was then under the command of Major Lav Rayamajhi. On 25 January 2002 Barakh Company was upgraded to a battalion. On 6 April 2002, Major Lav Rayamajhi was injured in a CPN-M ambush of a Barakh Battalion vehicle in Suryapatuwa VDC⁶¹, and was replaced by Major Ananta Karki until 10 April 2002, when Lieutenant Colonel Bishnu Rudra Sharma assumed command of Barakh Battalion. In early May 2002, Barakh Battalion was replaced by Ranasur Company, under the command of Major Pushkar Jung Thapa.

According to information gathered by OHCHR, soldiers from Thakurdwara Barracks conducted regular patrols and frequent search operations in the five VDCs bordering the national park between the Karnali and Babai rivers. In addition, the units based in Thakurdwara Barracks also operated in the Rajapur Delta area, across the Karnali River, including in Manau VDC. Reports suggest they were also involved in the “Karnali Operation” (see below, Chapter VI.i.iii: *Security force operations in the Rajapur Delta*).

The RNA units based in Thakurdwara Barracks operated during the day and at night. They arrested people from home and work, as well as a number of mobile CPN-M cadres from villages where they were taking shelter. RNA teams typically reached locations via the gravel and dirt roads which join settlements in the area. They reportedly travelled either on foot or in the two dark green and taupe-coloured pickup vehicles used by the RNA during that period. It is believed that those arrested were detained in Thakurdwara Barracks.

OHCHR documented the disappearance of 47 persons who were reportedly arrested between February and September 2002 in the area of operation of RNA units based in Thakurdwara Barracks (not including in the Rajapur Delta area, see below). RNA action intensified after

⁶¹ Media reports at the time stated that five RNA personnel were killed and several injured.

the above-mentioned ambush in April, and arrests and disappearances peaked during the three months after the ambush. The highest number of disappearances were reported in Thakurdwara VDC, which is closest to Thakurdwara Barracks.

VI.i.ii: Nepal Police (NP)

According to the NP, before the conflict there was a District Police Office (DPO) and 23 Area Police Offices (APOs) and police posts in Bardiya District. However, due to increasing CPN-M activities, including attacks against police structures and personnel, and the vulnerability of police posted in outlying VDCs, APOs and police posts were progressively dismantled and merged with each other and with the DPO or RNA bases. By December 2001, the DPO and 11 APOs and police posts remained. By January 2003, all but the DPO and one APO, in Taratal VDC, were dismantled. Pratap Singh Thapa was Superintendent of Police in Bardiya District when the State of Emergency was declared in November 2001 until 10 January 2002. He was succeeded by Purna Singh Khadga from 24 January to 17 April 2002, and then Ravi Pratap Rana until 5 May 2003.

According to OHCHR's information, the NP conducted independent search operations into early 2002. Teams of armed, uniformed NP conducted search operations and arrested people from their homes, in the street and at police checkpoints. In six of the seven cases of individuals who disappeared after arrest by the NP, those arrested were detained in police posts (Basgadhi, Rajapur and Mainapokar), the DPO in Bardiya and the Bardiya District jail. From early 2002 onwards, conflict-related NP activities were mainly conducted jointly with the RNA and sometimes with the APF.

VI.i.iii: Security force operations in the Rajapur Delta

During the period under investigation, there was no permanent RNA presence in the Rajapur Delta (also known locally as "mini-Rolpa⁶²"). A police unit was based at a post in Rajapur itself until December 2002, when they were relocated to Thakurdwara RNA Barracks. Made up of 11 VDCs in the west of Bardiya District, the area is characterized by its relative isolation, located between two branches of the Karnali River to the west and east and with the Indian border to the south. At the time it was considered a CPN-M stronghold. As a result, it was targeted by security forces based in surrounding areas, in particular RNA units, including the Thakurdwara Barracks in Bardiya District and units based in neighbouring Kailali District.

⁶² Rolpa is the district in which the CPN-M "People's War" started.

The fact that the arrests were conducted by RNA and other units based outside the Rajapur Delta area made it more difficult for relatives and witnesses to identify which units were responsible and where those arrested were taken. As such, the relatives and witnesses often determined the identity of the unit by the direction from which the soldiers arrived or departed, and the means of transport used.

The main operation in this area was known as the “Karnali Operation”, a large scale operation carried out by the RNA jointly with the NP and APF in October 2002. It was conducted from temporary camps, which were constructed on 20 October 2002 and dismantled four or five days subsequently⁶³. The operation saw intensive night-time raids and cordon and search operations, targeted and random arrests, indiscriminate violence and intimidation of the local population. A temporary military camp in Manpur Secondary School, Manpur Tapara VDC, was used as a detention centre.

OHCHR documented the disappearance of 42 persons who were reportedly arrested by the RNA, in some cases with NP and/or APF involvement, in the Rajapur Delta, including at least 15 arrested during the “Karnali Operation”.

VI.ii: Arbitrary arrests in the course of security operations

International human rights standards require – *inter-alia* - that there must be sufficient grounds for an arrest, the detainee must be informed of the reasons for the arrest and have access to legal counsel, be held in a recognised place of detention, and the detention must be subjected to judicial control, including being brought promptly before a competent authority. Relatives must be informed of the whereabouts of the detainee and have access to him/her even in times of conflict (see above).

Between December 2001 and January 2003, according to human rights defenders, hundreds of people were arbitrarily arrested by security forces in Bardiya District, predominantly by the RNA, and held – the majority in unacknowledged detention - in Chisapani and Thakurdwara Barracks; Rambhapur army post; temporary military camps in the Rajapur Delta area; police posts and the Bardiya DPO in Gulariya, and Ranjha barracks in Banke District, amongst other places. Others were arbitrarily detained in Bardiya District jail. In violation of international⁶⁴

⁶³ Human Rights Watch: *Clear Culpability: “Disappearances” by Security Forces in Nepal*, March 2005.

⁶⁴ International Covenant on Civil and Political Rights.

and national⁶⁵ standards on arrest and detention, they were mostly not informed of the reason for their arrest. They were not given access to legal counsel, and their detention was not subject to review by a court. The consistent refusal by the RNA to acknowledge arrests, coupled with the routine use of torture as documented by OHCHR (see below, Chapter VI.iii: *Detention, torture and ill-treatment in Chisapani Barracks*), suggests that the RNA deliberately arrested and removed detainees from the protection of the law to coerce them into providing information on the CPN-M.

Many of those who disappeared initially were eventually released by the authorities after a few days or months, but the 156 individuals whose cases are documented in this report remain disappeared⁶⁶. All were last seen in security force custody. This section examines the patterns of arrest and unacknowledged detention which led to these enforced disappearances.

VI.ii.i: Targeted arrests during search operations

According to consistent witness testimonies, most of the disappeared were specifically targeted and arrested during the RNA search operations. Large groups of RNA soldiers in uniform (10 to 100) typically arrived in villages, either on foot or in vehicles, searching for a specific individual or individuals. They often had lists of people to arrest, and on some occasions were accompanied by informants, who helped identify their targets. RNA soldiers surrounded homes and entered by force or simply shouted from the courtyard.

Once located by the soldiers, the individuals were sometimes accused of being “Maoist” and beaten and interrogated in front of their relatives before they were taken away. On other occasions, they were taken away with little or no explanation. There were numerous witnesses, given that the majority of people who disappeared were arrested from their homes or public places, in the presence of extended families or local people. Often, witnesses clearly identified the RNA unit responsible, because of regular and sustained action by the relevant unit in that area.

A typical case is that of 28-year-old Hariram Tharu from Magaragadi VDC. According to consistent witness testimonies, in the early hours of the morning on 9 August 2002, around 30 to 40 RNA soldiers arrived at Hariram Tharu’s family home, and violently awoke family

⁶⁵ Constitution of the Kingdom of Nepal 1990.

⁶⁶ Many of these cases have been documented by other organisations, see for example Human Rights Watch: *Clear Culpability: “Disappearances” by Security Forces in Nepal*, March 2005; Amnesty International: *Nepal: A Spiraling Human Rights Crisis*, 4 April 2002; Amnesty International: *Nepal: A Deepening Crisis*, December 2002; Amnesty International: *Nepal: Escalating Disappearances Amid a Culture of Impunity*, 30 August 2004.

members, demanding to know where he was. Soldiers kicked and punched relatives when they said they did not know. They continued to search the house, and when they found Hariram Tharu asleep they dragged him outside the house and along the road to where more soldiers were waiting. It is believed Hariram Tharu and four other villagers who were arrested during the same operation were taken to a vehicle waiting on the Mahendra Highway, blindfolded, handcuffed and taken to Rambhapur RNA post. Three of those arrested were released, but Hariram and Tateram Tharu remain disappeared.⁶⁷

The security forces often gave dismissive responses to relatives who pleaded for their family members. OHCHR received numerous reports that soldiers told relatives not to worry, and promised that those arrested would be taken for questioning and returned after a few hours or days. Relatives who insisted, or attempted to stop soldiers taking their loved ones were, however, often physically restrained, threatened or assaulted. The wives of many of those who disappeared were reportedly pushed away with gun butts or shoved back into the home and locked inside when they tried to follow the soldiers taking their husbands. Soldiers arriving at night invariably carried powerful torches, which they shone in the faces of relatives. If family members attempted to light oil lamps, they were told not to, or beaten in order to prevent them doing so. If they protested or asked questions, they were often slapped or hit and told to “shut up” or “stop crying”.

During the night of 20 October 2002, as part of the “Karnali Operation”, a large group of armed and uniformed security forces violently entered the home of Raj Kumar Tharu in Manpur Tapara VDC, in the Rajapur Delta. Relatives were petrified by the sudden commotion and the intimidating appearance of the RNA team. Soldiers shouted “Raj wake up and come with us”, while one pushed Raj Kumar Tharu’s wife with a gun butt to stop her going outside. When Raj Kumar Tharu’s eight-year-old son tried to stop them, they caught him by the neck and forced him to lie down. Soldiers threatened the family at gunpoint that they would kill them if they made a noise. One family member described “crying inside”, as Raj Kumar Tharu was taken away. Raj Kumar Tharu was taken to a military camp in Manpur Secondary School, Manpur Tapara VDC, where he was last seen in detention the following day.

According to OHCHR’s information, some of the individuals who disappeared were arrested by the RNA during search operations conducted in direct response to attacks by the CPN-M,

⁶⁷ These cases were among a number which were the subject of a June 2007 Supreme Court ruling order the Government to pay their families interim relief (see below, Chapter IX: *Truth, Justice and Reparations*).

including the brutal murder of landowner Amrit Man Shresta⁶⁸, the burning of a vacant RNA national park post, the previously mentioned ambush of a military vehicle, and numerous incidents of raids on homes, threats and assaults to individuals, as well as destruction and theft of property. While such actions cannot be condoned, and in some cases amount to IHL violations themselves, they cannot justify arbitrary arrests, torture and disappearances, which are considered to be violations of international human rights and humanitarian law.

Twenty-two-year-old Nirmal Tharu and 35-year-old Jagat Prasad Tharu of Manau VDC were arrested following the killing of Amrit Man Shresta by a CPN-M group in a nearby village three weeks previously. At approximately 9am on 25 February 2002, a team of uniformed soldiers arrived at their village on foot. According to witnesses, the soldiers were rowdy and violent, dragged men out of their homes and beat them severely with *lathis* (bamboo sticks). As they took Nirmal Tharu from his home, they accused him of “leading the team” that killed the landowner. When they arrested Jagat Prasad Tharu, they asked aggressively whether he knew the landowner in question. The two men were taken away with a third individual (who was later released); their whereabouts remain unknown.

Reference has already been made to the CPN-M ambush on 6 April 2002 in Suryapatuwa VDC, of a vehicle belonging to Barakh Company. Media reports from that time state that five RNA personnel were killed and several others, including Major Lav Rayamajhi, commanding officer of the company, were injured. Local sources repeatedly stated that following the ambush, the frequency of RNA operations and arrests increased, as did RNA violence and suspicion of the local population. OHCHR found that enforced disappearances from VDCs surrounding Thakurdwara Barracks peaked in the three months following the ambush.

The RNA’s use of informants appears to have been key in the identification and arrest of those who subsequently disappeared in Bardiya District. Sources suggest that these informants included local security force personnel, present and former CPN-M cadres, members of local landowning families, and detainees who were coerced, often through ill-treatment and torture, as well as other local people who provided information to the RNA both through fear and on a voluntary basis, including in some cases reportedly to settle

⁶⁸ According to witnesses interviewed by OHCHR, at around 10pm on 2 February 2002, a group of 200-250 people arrived at the home of 57-year-old landowner Amrit Man Shresta in Manau VDC. They beat him severely with large *lathis* and stabbed him with sharp weapons. They also physically assaulted other family members. They then fired gunshots in the air and chanted “long live the Maoists” before leaving. The victim died after a few hours. According to the *post-mortem* report seen by OHCHR, there were multiple injuries to the body, including multiple fractures on both legs and arms, as well as torn skin and muscle. The cause of death is given as “neurologenic shock and cardiogenic shock”. A CPN-M district representative confirmed that “he was killed in party action: our cadres broke his hand and he died because of bleeding”.

personal scores. Informants were reportedly dressed both in civilian dress and military uniform, with their faces often hidden by cloth wrapped around the face below their eyes. They were seen pointing at people to be arrested, nodding when the RNA team had apprehended someone or simply saying “it’s him” when an individual denied their identity to the RNA. Despite the disguise, informants were often recognised. On some occasions informants reportedly bragged afterwards to relatives of the disappeared that they were responsible for the arrest, at the same time threatening them not to speak about their involvement to others.

VI.ii.ii: Non-targeted arrests

As well as targeted arrests, it is believed that a number of the disappeared were arrested because they raised the suspicion of RNA personnel whose path they crossed. These included persons who were arrested at security force checkpoints, or during RNA search operations or patrols. For instance, Lahanu Chaudhari, Bhawan Kumar Chaudhari, Sher Bahadur Chaudhari, Bhukhlal Tharu, Patiram Tharu and Buddhi Tharu, all from Motipur VDC, disappeared after being arrested on 1 September 2002 at Rambhapur checkpost, where the RNA stopped a bus they were travelling in. Their whereabouts remain unknown. The RNA also made random arrests when they could not locate the suspect they had intended to arrest.

On 29 December 2001, a few days after Maoists had burned down a vacant RNA post in the national park, the RNA conducted an operation in a nearby village in Belwa VDC. According to multiple witnesses, the team of around 40 to 45 RNA soldiers arrived in the village early in the morning in two Toyota pickup vehicles from the direction of Chisapani Barracks, with their faces covered with handkerchiefs. Unable to locate the individual they were seeking, the soldiers entered homes forcefully and dragged out the males, who were made to line up in the street. The men were beaten *en masse* with gun butts, slapped and punched by soldiers, who demanded to know who was responsible for the burning of the RNA post. Those who fell down after being struck were violently kicked in the face and head. As some tried to escape, soldiers gave chase and made arrests in other parts of the village. Eventually at least eight men were reportedly singled out and pushed into the vehicles, which drove them to Chisapani Barracks. Three of those arrested in the incident, Palta Tharu, Sarju Tharu and Anand Pariyar, have not been seen by their families since.

VI.ii.iii: Illegal use of force during arrest

As illustrated by some of the cases above, the security forces frequently violated provisions of international⁶⁹ and national⁷⁰ law on use of force during arrests. OHCHR received numerous accounts of disturbing levels of sometimes indiscriminate violence during search operations. The most common forms of violence documented were severe beatings with fists, *lathis* and gun butts, and kicking with boots. Such violence targeted not only those being arrested, but also relatives present at the time, including children. OHCHR was told that during several RNA search operations, soldiers destroyed or violently disturbed house contents, apparently looking for weapons or CPN-M suspects. They often took any cash they found, which ranged from a few hundred to many thousand rupees.

OHCHR found that women were treated as brutally as men during search operations. Numerous witnesses reported that women and girls were verbally and physically harassed by soldiers, who sometimes tried to take them into separate rooms. Whether or not sexual violence occurred in this context as has been alleged in some cases requires further investigation given the sensitivity and complexities of pursuing such inquiries, including cultural factors inhibiting discussion of these matters.

Twenty-three-year-old Sita Chaudhari was a female student and night-class facilitator for an NGO providing education to Tharu people. At around 3am on 13 August 2002, Sita Chaudhari was arrested from home by a group of RNA soldiers who arrived in her home village on the Mahendra Highway in Deudakala VDC, in two vehicles from the direction of Chisapani Barracks. After arresting her, the soldiers brought Sita to a bus shelter on the Highway, around 500m north of her home. Due to the moonlight, witnesses were able to see soldiers kicking and beating her severely. Her screams and cries for mercy were reportedly heard by many in the village. Witnesses described how eventually the screams stopped. She was then picked up and put in one of the two RNA vehicles, which then drove off in the direction of Rambhapur Barracks. Local people said that the next morning they found bloodstained clothes, underwear and sandals at the bus stop, the floor of which was also stained with blood. Sita's relatives confirmed to OHCHR that the garments were hers. She has not been seen since.

VI.iii: Detention, torture and ill-treatment in Chisapani RNA Barracks

⁶⁹ International Covenant on Civil and Political Rights.

⁷⁰ Constitution of the Kingdom of Nepal 1990.

OHCHR's investigations into the treatment of the disappeared in detention have focused on Chisapani Barracks⁷¹, the headquarters of Bhimkali Company during the period in question. As previously indicated, Chisapani Barracks operated as a centre for intelligence collection, where detainees were removed from the protection of the law, interrogated and routinely subjected to torture and cruel, inhuman or degrading treatment in violation of international human rights law,⁷² with the involvement, knowledge and/or acquiescence of commanding officers. Most of those detained in this barracks were arrested by Bhimkali Company in its areas of operation in Bardiya and Banke Districts. Other detainees were transferred from other places of detention, including Rambhapur RNA post and Thakurdwara Barracks. Those detained included men and women, CPN-M cadres, and members of CPN-M affiliated organisations, as well as many individuals who were not involved with CPN-M activities.

Through witness testimonies, OHCHR has documented that at least 21 persons who remain disappeared after their arrest in Bardiya District were last seen in Chisapani RNA Barracks, and the actual number is believed to be significantly higher. The 21 include a 14-year-old boy, Tej Bahadur Tharu, who was one of a number of juveniles detained in the barracks. Other persons who were initially disappeared in these barracks as a result of prolonged secret, unacknowledged detention were eventually released, and those interviewed by OHCHR described how they bear the physical and psychological scars of torture and ill-treatment they endured in the camp to this day.

Located on the eastern limits of the national park, where it borders Banke District, Chisapani Barracks are accessed by Surkhet Road, a tarmac road that runs north-south through the forest of the national park. The barracks compound occupies a large clearing, which is surrounded by a trench - along which a number of sentry posts are located - and enclosed by barbed wire fencing. In a second clearing adjacent and to the north of the barrack compound is a vacant national park warden's office building which was used by Bhimkali Company as a place of detention at that time. Those detained in the Chisapani Barracks area described it as pitch black and eerily silent at night, except for the frequent cries of fellow detainees being tortured, the occasional sound of vehicles coming and going and of gunfire.

Testimonies frequently cited the two commanding officers, Major Ajit Thapa and Captain Ramesh Swar⁷³, as being present and involved in interrogation and torture, both of whom

⁷¹ See map in Annex IV.

⁷² International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷³ Former Captain Ramesh Swar is reported to be from a landowning family in Bardiya District. The home of one of his relatives was targeted twice by large groups of Maoists and Maoist supporters, on 5 April 2001 and on 26

were also named in the UN Special Rapporteur on Torture's 2006 report mentioned above. OHCHR sought to interview both in order to obtain their responses to the allegations in this report. The Office learnt that Captain Ramesh Swar had resigned from the NA in July 2005 and was now working outside of Nepal. The NA informed the Office that Major Ajit Thapa, since promoted to Lieutenant Colonel, was, at the time of the request, undertaking a course in India. OHCHR does not seek to make final judgements as to criminal guilt, nor should OHCHR's mention of the two individuals be taken as an indication that the list of possible perpetrators is exhaustive.

VI.iii.i: Places of detention

Upon arrival in Chisapani Barracks, many detainees were placed in the national park warden's office, next to the barracks compound. Others were detained in one of the many one-storey brick and wooden buildings located inside the barracks compound, most of which line a dirt track circling the outer edge of the compound. In the north of the compound, these buildings included a military store, a Company Office building in which commanding officer Major Ajit Thapa's office was located, and the officers' residence and mess. In the south of the compound was the living area for Junior Commissioned Officers and soldiers, including three wooden barrack buildings, messes and smaller brick buildings housing service staff. At the centre of the barrack compound was an open area where a helipad and a bunker, constructed in the first half of 2002, were located. Although most detainees were blindfolded, they were able to observe the places of detention during mealtimes, toilet trips or by slipping their blindfolds up. Those interviewed by OHCHR consistently described these places, their orientation and their locations relative to other buildings in the compound. In September 2007, OHCHR visited Chisapani Barracks and confirmed this information. Most buildings remained as witnesses had described them to be over five years previously. More information on the main places of detention is given below.

VI.iii.i.a: The national park warden's office

The main place of detention was the national park warden's office, a one-storey brick building which had been vacated by the warden due to the conflict. It contains five adjacent rooms: one on each end which are accessed directly from the outside and three in the middle accessed from a corridor or "gallery", which includes an external door. The centre room contains a toilet. A concrete veranda runs the length of the front of the building, which faces

December 2001, during which property was looted and/or burnt or damaged. The family left the home temporarily after the first attack, during which they were reportedly forced to leave amid accusations of being "exploiters".

a grass clearing to the east and Surkhet Road - visible beyond a line of trees. OHCHR found that a number of those disappeared were kept at some point during their detention in the warden's office. Many of them were last seen in this building.

There was constant movement of detainees between the rooms in the building and other places of detention in the barracks, and numbers of persons in each room fluctuated greatly from one or two to tens of detainees. Former detainees interviewed by OHCHR were held in the warden's office for between two days and 10 months. The common belief amongst former detainees is that the rooms in the building were designated for individuals at different stages of the interrogation process, and who were the object of varying levels of suspicion.

One room was of particular significance, RNA guards referring to this as "number one room" and some told detainees it was the most dangerous in the barracks. Detainees speculated that the room's appellation signified that it was reserved for confirmed CPN-M members or those who would be killed. Detainees in this room recalled frequent and severe ill-treatment and torture during interrogations as well as particularly severe detention conditions (see below).

Of the other rooms in the warden's office, the southern-most was where many newly arrived detainees were first placed. Those who were about to be released were often transferred to the northern-most room. Conditions in this room were consistently described by detainees as better in comparison to others. The room was better ventilated, there was more freedom, and routine interrogations, torture and ill-treatment decreased or came to a stop.

VI.iii.i.b: Service staff building facing soldiers' mess

Detainees consistently described a one-storey brick building with a tin pitched roof, located in the south west of the barracks compound, facing the soldier's mess. This building contained four to five small adjacent rooms with external access, reportedly originally used for service staff. Meals for lower ranking soldiers were cooked in the open mess opposite and eaten in the space between the two structures. Between February and July 2002, rooms in this building were used for the solitary confinement of detainees, who were kept there for periods of up to three months and eventually released. These detainees tended to be better educated and more articulate, and some said they believe they were kept alone so as not to be able to share information or talk to others.

VI.iii.i.c: Quarter guard in the military store

The closest building to the entrance, in the north east of the barracks area, was the military store. This was a one-storey brick structure with three rooms, facing east on the dirt track around the edge of the compound. The central room contained an adjoining barred detention facility which was known as the “quarter guard,” in reference to its use for the internal discipline of soldiers and solitary confinement of detainees. One detainee who was kept in this space recalled watching soldiers clean their weapons on the other side of the bars.

VI.iii.i.d: The trench and bunker

At least five former detainees told OHCHR that at some point in their detention they were placed in a trench running the periphery of the barracks area for periods of up to one month. The trench was roughly 1.5m deep and was interspersed with sentry posts constructed from piles of sand bags on three sides. OHCHR obtained testimony that at least two of those who disappeared, Tej Bahadur Tharu and Dhaniram Chaudhari, were detained in the trench.

Former detainees also described a bunker, a wide, round depression in the ground located near the helipad in the clearing at the centre of the compound area, where individuals were reportedly detained when it was under construction in early 2002. Once complete, it was concreted over and covered with a roof almost at ground level. During its visit to Chisapani Barracks in September 2007, OHCHR confirmed that the construction of the bunker was completed by Bhimkali Company on 19 July 2002.

VI.iii.ie: Other places of detention

Other detention facilities in the barracks compound included wooden huts of varying sizes raised off the ground, with walls of horizontal overlapping wood planks. One of these was a small structure with two rooms, located in the north-west of the compound next to the officers’ residence building. At least three larger adjacent huts, used for the accommodation of RNA personnel, were located in the centre of the compound, facing south. Rooms in the Company Office building, including two adjacent toilet rooms and an empty room next to the telecommunications room, were also used for detention. In addition, one former detainee recalled being held in a small green canvas tent in the clearing at the centre of the compound.

VI.iii.ii: Cruel, inhuman and degrading treatment in detention

Former detainees consistently described how they were subjected to cruel, inhuman and degrading treatment related to conditions in detention, for periods of up to ten months, in Chisapani Barracks. These conditions varied between places of detention in the barracks, and included restrictions on movement, sensory deprivation, meagre food, lack of medical treatment, and detention in unbearably hot, crowded or dirty places, including in a muddy trench. OHCHR was repeatedly told by former detainees that they were treated no better than animals. For some, instances of humiliation experienced as part of everyday conditions of detention stand out as the worst memories of their captivity, as bad as the severe ill-treatment and torture they endured.

Detainees spent day after day with their hands tied, normally behind their backs. Apart from occasional work maintaining the barracks, their only movement outside their place of confinement was once in the morning to use the toilet and twice for food, which was normally eaten directly outside the place of detention. Further toilet trips were not permitted by guards and detainees had to use pots in their rooms. Outside of this daily routine, detainees were required to stay almost motionless. At night, having their hands tied meant they could only sleep on their sides, often on bare concrete floors with no bedding. At times, rooms used for detention became so crowded that there was not enough room for detainees to stretch their legs. They were required to sleep sitting up or lying almost on top of one another.

One detainee recalled the humiliation that resulted from these degrading conditions: “I was detained with my hands tied behind my back. It was very hot at that time, I was very thirsty. The water bottle would be placed out of reach, I had to try to drink from it by putting my mouth on the opening and tipping it. I would knock it over, and have to drink off the floor. I was no better than an animal. I’ll never forget it.”

Most detainees were blindfolded or hooded almost continuously for the duration of their detention, with blindfolds loosened to provide partial downwards vision only for toilet trips and at mealtimes. Material used to blindfold detainees ranged from pieces of the clothing they were wearing when they were arrested, to pieces of black cloth strapped across their eyes and tied at the back of their heads. Many detainees developed ways to push the blindfolds upwards slightly so they were able to see out of the bottom. They risked violent punishment if caught. This practice was, however, almost impossible for detainees who were hooded. The hoods were made from different materials, including from black cloth with black plastic sewn into the inside, or black material resembling that used to make umbrellas. This material made

it difficult for detainees to breathe, even when small holes were sometimes cut near the nose, resulting in a feeling of suffocation. One detainee said he was required to wear such a hood continuously during the seven months of his detention. Another recalled how the skin on his nose scraped off due to his constant efforts to pull the hood upwards over his face by rubbing his head on his knees to relieve a sensation of asphyxiation. Some detainees, particularly those who spent many months in detention, were not blindfolded towards the end of their detention.

A lack of air and feeling of suffocation was repeatedly mentioned by detainees in certain places of detention in the barracks, including “number one room”, which had one window with shutters that were constantly closed. This small tin-roofed room became extremely hot in the summer months. It was sometimes so crowded that there was not enough space for detainees to sit together cross-legged on the floor. One detainee recalled how the floor became slippery with the sweat from their bodies.

Conditions in the trench were cited by many detainees as the worst of all, especially after periods of rain, when the bottom of the trench was filled with mud. Detainees were made to squat in the trench and sleep in lines in the mud. Some detainees were taken out of the trench to use the toilet or take food. One detainee, however, reported that he and four fellow-detainees were kept in the trench continuously for a week and forced to eat as well as to urinate and defecate on the spot. The bodies of those detained in the trench became swollen from being semi-submerged constantly in fluid. Some detainees speculated that the RNA kept people in the trench as a form of cruel, inhuman and degrading treatment, and part of a strategy to coerce them to provide information.

Former detainees described how they were at the constant mercy of lower level soldiers and guards and their violent whims. One detainee recalled: “One day when we were having food outside, a guard asked a detainee eating next to me if he wanted chillies. The detainee said ‘yes’, then the guard went away and came back with one. He broke it in two and shoved one end in the man’s eye. Then he asked me if I wanted some. I said no – I was beaten.”

Being arbitrarily kicked and beaten with *lathis* or rubber pipes was reportedly a common occurrence. These attacks were irregular and unpredictable. Some were beaten every day. One detainee told OHCHR: “They used to come in the morning and kick us around. For them it was like drinking their morning tea”. Others were rarely beaten. Beatings were also inflicted by some guards as punishment for violations of the strict rules of behaviour, including loosening one’s handcuffs, slipping one’s blindfold up or whispering to fellow detainees.

Not all guards were malicious and a number of detainees recalled soldiers who would turn a blind eye to breaches of the rules or even help detainees become more comfortable, once they were sure their commanders were out of sight. These guards were also a valuable source of information for detainees on events inside the barracks and sometimes raised morale. One detainee recalled being reassured by one guard that he was not going to be killed, just when he had given up all hope of survival: “He told me that I was going to be OK, and that I should try to eat a bit more than just *dal* (lentil soup). After that I had a glimmer of hope and I was able to keep on”.

VI.iii.iii: Torture

The use of torture in Chisapani Barracks has been documented by other organisations and experts, including the UN Special Rapporteur on Torture.⁷⁴ According to a December 2002 report issued by Amnesty International, the barracks were “notorious for torture”⁷⁵. Multiple, consistent testimony gathered by OHCHR also confirmed that torture was routine in Chisapani Barracks during the period in question. Detainees were systematically and severely beaten with instruments known as the *bhim lauro* and *kal bhairabh*. The *bhim lauro* was a bamboo baton wrapped at one end with rubber resembling a cycle tube. It was particularly painful, but reportedly left few marks of ill-treatment. The *kal bhairabh* was a tapered wooden baton wrapped at the handle end with a thin strip of bamboo.⁷⁶ Other forms of torture to which detainees were subjected included being made to carry out physically challenging tasks, such as carrying water buckets with the arms outstretched horizontally; beatings on the soles of the feet (producing pain in the crown of the head); rolling a heavy wooden pole with pressure applied on the calves and thighs, which caused muscular damage; “drying”, whereby detainees were made to lie in the sun and stare at it, either naked or wearing many layers of clothing; having pins inserted beneath the fingernails or having fingernails pulled out; being submerged in water to produce a feeling of drowning; sexual violence and mock executions. Detainees were also forced to witness the torture of others, including motorbikes being driven over the legs of detainees lying on the ground.

All but a fraction of detainees were subjected to torture during their first interrogation upon arriving at Chisapani Barracks. Most detainees were taken to a room commonly referred to as

⁷⁴ See Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from his mission to Nepal, January 2006, Op. Cit; also Advocacy Forum: *Sharing Experiences of Torture Survivors*, 26 June 2006.

⁷⁵ Amnesty International: *Nepal: a deepening human rights crisis*, 19 December 2002

⁷⁶ Probably named after a Hindu god known for his potential for indiscriminate violence when angry.

“the office” for questioning. Located in the one-storey green and white Company Office building, this room was, according to the testimonies gathered, the office of Major Ajit Thapa, the commanding officer. Here, detainees were accused of being involved with the CPN-M and having taken part in recent CPN-M attacks. They were interrogated about the whereabouts of leading CPN-M cadres, and told that they would be killed if they did not cooperate and show the RNA the location of Maoists. At least 14 detainees, interviewed separately by OHCHR, alleged that Captain Ramesh Swar and/or Major Ajit Thapa were present or involved during interrogation. Detainees knew their names because they saw name plates on their desks, or because they were told the names by lower ranking soldiers or other detainees. In addition, the Major and Captain sometimes introduced themselves to detainees by their rank, and detainees heard other RNA personnel calling them “Major” and “Captain”. Some detainees learnt the names of the Major and the Captain from fellow former detainees once they were released.

During questioning, detainees were severely beaten with the *bhim lauro* and the *kal bhairabh* by RNA personnel, including by the Captain and the Major. One detainee recalled: “I was made to bend down over the bench in front of the desks of Captain Ramesh Swar and Major Ajit Thapa. The Captain said “You’re a Maoist, so where are the other Maoists? If you want to leave alive, show us or you’ll die!” When I denied knowing any Maoists, I was beaten severely and repeatedly on the back and on the thighs. Then I was made to sit on top of another man while he bent over and was beaten. It made it more painful for him and humiliated us both.” Another former detainee recalled being made to lie face down on the floor in the office where he was beaten continuously for half an hour by one soldier while another kicked and stamped on him until he started to bleed from his ear: “Then the Major said: ‘He’s bleeding, take him away or my room will be dirtied’.”

Some individuals were not tortured again after this first interrogation. These individuals were normally released within a few days or weeks. Others were subjected to further interrogations, some just once more and others repeatedly for the period of their detention. Further interrogation sessions were sometimes interspersed with periods in particularly difficult places of detention, including the trench and solitary confinement in the military store building and the toilet in the office building, among other places. Statements were also intermittently taken by persons in civilian dress, on which occasions detainees were not ill-treated. The interrogations continued as long as detainees were thought to have further information - including the ability to “guide” the army to identify CPN-M members during raids – or in some cases until large sums of money were paid to the RNA by the detainees’ families.

In addition to the office of the commanding officer Major Ajit Thapa, torture took place in various other places in the barracks, including the clearings at the centre of the barracks compound, in front of buildings used for detention, in a round thatched structure next to the office building known as “the Cottage”, or in the jungle areas surrounding the barracks.

One former detainee recalled:

“At around 10am or 11am, I was taken out of my room to a place used for punishment, outdoors near the office. Captain Ramesh Swar and Major Ajit Thapa were there with around 20 other soldiers. They started asking me questions - my name, address, political affiliation, profession. I answered all the questions. Someone picked me up by the scruff of my neck and threw me down. Then the questions started again. I answered the questions properly, but around three of the soldiers lifted me up by my legs and pushed my head and whole torso in a drum full of dirty water and held me there. I couldn't breathe, I felt like I was suffocating and in the end I couldn't take it anymore and gasped, sucking in a lungful of water. I lost consciousness. I came round because they put me over a tyre on the ground and pushed my stomach on it to get me to spew up the water. Then they pushed my head in the water again. They kept on asking me questions, and people – I think it was the soldiers - started to beat me, on the legs with a plastic pipe and on the back and chest with a bamboo *lathi*. When they hit me on the soles of my feet, I felt a pain like an electric shock in my head. It went on and on. I think I was beaten for around one hour. They were saying things like: “You're lying, you haven't told us the truth, you know Baburam Bhattarai and [other CPN-M leaders], you have to point them out to us”. I said “I don't know these people, I know these names but I don't know them.” Then I lost consciousness. When I came round I was in a room, I think it may have been days later. I didn't know what had happened. I was hurting all over. I couldn't stand up or move my arms or turn my head. My eyes were swollen and I was bleeding from my left ear...after that I thought I might die.”

Former detainees also remembered that those who subsequently disappeared were subjected to severe torture. One detainee recalled the case of an individual held with him who was reportedly arrested in Banke District in March 2002 and subsequently disappeared: “I remember once he was taken out of our room. When he was brought back he whispered to me that his eyelids and penis were cut with a blade and chilli powder was put in the wounds. I could see that his eyes were like slits and there was a cut in one of his eyelids, it was bleeding.”

VI.iii.iv: Mock executions and the fear of death

For many former detainees, memories of Chisapani Barracks are dominated by the recollection of a constant fear of death. A belief that fellow detainees were routinely executed was pervasive amongst those in captivity and this was actively encouraged by army officials. Detainees were subjected to repeated assertions, from the time they arrived in the barracks, that they would be killed. These were made both during interrogation and in confinement. RNA personnel told some detainees constantly over a period of days that they were going to die, apparently as part of a strategy intended to mentally break them. In addition, junior army personnel guarding places of detention told detainees that killings were commonly practiced and gave details of reported deaths in custody. For example, one former detainee who was arrested with her brother in December 2001 told OHCHR that they were brought to Chisapani Barracks by vehicle at night. She described how upon arrival at the barracks, her brother was separated from her, after which she heard two gunshots. The next day, an army guard told her that her brother was killed and his body was lying outside, and said he could show her the body. She declined saying she was too frightened, and has not seen her brother since.

Patterns of detainees being removed from custody not to return, coupled with the frequent sound of gunshots, seemed to confirm the belief that detainees were being killed (see below, Chapter VI.VI: *Fate of the disappeared*.) The RNA conducted mock executions to capitalise on this fear. On these occasions, detainees were typically taken into the forest surrounding the barracks compound and told they were about to be killed. Some were told to lie down, the barrel of a gun placed on their body, and were asked where they wanted to be shot. Others had the barrel of a gun placed in their mouth. One detainee recalled being put in a hole dug in the ground in the jungle area at dawn one morning. RNA soldiers returned to the location around one hour later and placed a gun to his head, telling him, “Now we’re going to kill you”. Detainees were told that they would only be spared if they provided information or showed RNA teams where Maoists were. At least two detainees told OHCHR they were made to witness the killing of other detainees (see below, Chapter VI.vi.i: *Extra-judicial executions in detention*). Most former detainees told OHCHR they were convinced their death was imminent.

VI.iii.v: Rape and other forms of sexual violence

OHCHR received a number of reports of sexual violence perpetrated against female detainees, including rape. One detainee told OHCHR that he had sometimes been able to have

contact with women detainees when he was taken to the jungle to go to the toilet, and that they had told him that women detainees had been raped by an RNA officer several times, as well as being subjected to other forms of sexual abuse. Another detainee told OHCHR: “One day [a woman] was brought into our room, she had been arrested along with her daughter who was put in another room. She was able to see her daughter the next morning when all the detainees were brought outside for food. She talked to her daughter for a while and when we were taken inside the detention room, she cried a lot. When we asked her what happened, she said that her daughter was raped by Captain Ramesh Swar the previous night. She cried for several weeks for her daughter.”

In one well-documented case⁷⁷, two female cousins, aged 16 and 18, of Banke District were allegedly raped by RNA personnel, including at least one senior officer of Bhimkali Company, during their detention in Chisapani Barracks in April 2002. They were arrested by an armed and uniformed RNA team, who arrived at their family home looking for the father of the elder cousin, who had recently been released from detention in Chisapani Barracks. Fearing for his death if he was detained again, the man managed to escape. The RNA team took the two girls to Chisapani Barracks, where they were detained for three days. During this time, the 16-year-old girl was allegedly raped by a group of three or four RNA personnel. Her 18-year-old cousin was allegedly raped in turn by two RNA personnel. When they were released after three days, the girls were told: “All these things happened to you because of your father. If he was there it wouldn’t have happened to you”. Following the release of the girls, the incident was publicised by human rights organisations and the press. On 24 December 2002, the girls’ family was called to a nearby house by an RNA team. In front of journalists and a film crew, the 18-year-old girl was made to retract the statements the family had made about the rape of the two girls. OHCHR was subsequently informed that Captain Ramesh Swar was court-martialled for this case, but only found guilty of illegal detention. His promotion was reportedly suspended for ten months as a result. OHCHR has requested copies of the court of inquiry and court martial in this case from the NA but as of the end of October 2008, had yet to receive a reply.

VI.iii.vi: Coercion to identify suspected Maoists, including relatives

One central aim of the RNA’s use of ill-treatment and torture was to coerce detainees to provide information on the whereabouts of CPN-M cadres and supporters, and to force detainees to lead RNA teams to individuals suspected of involvement in CPN-M activities. A

⁷⁷ See Amnesty International: *Nepal: a deepening human rights crisis*, 19 December 2002; and *Fear for safety*, 3 January 2003.

number of detainees interviewed by OHCHR were forced to lead RNA personnel to close family members, under extreme duress and in the knowledge that their actions would probably lead to the harm and possible death of their loved ones. One detainee told OHCHR that on 5 or 6 February 2002, around three weeks after his arrest, he was made to accompany RNA personnel to his home to identify his eldest son, who they suspected of being a Maoist. “Luckily my son wasn’t at home on that day. I thought they wanted to find him and kill him, I was so scared,” he said.

VI.iii.vii: Extortion

OHCHR found that high ranking officers in Bhimkali Company used the arrest, detention and torture of civilians to coerce them into handing over large sums of money. Victims included more wealthy business persons, who were sometimes accused of crimes, including smuggling. Some detainees were told during torture that they would be killed if they did not pay the money demanded – sometimes amounting to several hundreds of thousands of rupees. One man who was arrested from his home in Banke District by an RNA team including Captain Ramesh Swar was allegedly severely tortured in detention by RNA personnel, who demanded up to two million rupees from his family for his release. The detainee was reportedly released after several hundred thousand rupees in cash were paid. (See also Chapter VI.v: *Right to challenge the legality of detention*).

VI.iv: Failure to acknowledge arrests and detention

According to international standards, any person deprived of liberty must be held in an officially recognised place of detention and in conformity with national law, be brought before a judicial authority promptly after detention, and information on the place of detention must be made promptly available to their family members⁷⁸. In violation of these requirements, the detention of the vast majority of those arrested by the RNA was not acknowledged by State authorities, despite efforts on the part of their families, friends and human rights organisations to establish their whereabouts. Relatives of at least 89 of those arrested and subsequently disappeared told OHCHR that they inquired with the RNA after the arrest of their loved ones. Despite the general climate of fear and insecurity at the time of the arrests, many relatives went to RNA barracks in the locality soon after the arrest. They were consistently denied access to the barracks by sentries who told them their relatives had not been arrested by that RNA unit and were not being detained inside. Undeterred, families

⁷⁸ UN Declaration on the Protection of all Persons from Enforced Disappearance.

continued to search endlessly for those arrested, visiting other barracks in Bardiya District, neighbouring Banke and Kailali districts, and sometimes as far afield as the army headquarters in Kathmandu. They received no information from the RNA, and faced constant denials regarding the arrest of their relatives, despite multiple witnesses to most arrests.

The wife of one disappeared individual from Dhadhawar VDC, who witnessed his arrest from home by armed uniformed RNA soldiers in April 2002, told OHCHR in January 2007: “The day after [my husband’s] arrest I went to Rambhapur, Thakurdwara and Chisapani Barracks. Sentries at all these places denied they had my husband in custody. We thought he would be returned like the army promised when they took him. The days went by, then the weeks and the months. Now it’s been almost five years and we still don’t know where he is or what’s happened to him.”

In some cases, relatives of those arrested were able to confirm their detention without having access to them.

The relatives of nine persons arrested by joint RNA, APF and NP teams on 20 October 2002, during the “Karnali Operation”, went to the temporary military camp in Manpur Secondary School, Manpur Tapara VDC, the following day to search for them. There, they reportedly saw the detainees in a room in a school building located close to the road. Through the window of the school building, relatives saw that the detainees were being kept standing up with their hands tied behind their backs. Although the faces of the detainees were not visible, they were recognised by the clothes they had been wearing when they were arrested the night before. The area surrounding the school was reportedly heavily militarized, with a large presence of armed sentries. According to witnesses, sentries at the gate to the school denied to families that they had arrested their relatives, and prevented them from entering. Sources stated that when relatives insisted, sentries became agitated, and told them to go home. In some cases, soldiers reportedly became violent, hitting relatives on the legs with *lathis*, pushing them with gun butts and throwing stones at them to chase them away. Later on the same day, the windows of the school building were reportedly covered with sacks to prevent people seeing inside. The detainees have not been seen since.

In a small number of cases, the RNA initially acknowledged arrests, but they were subsequently either denied, or families were simply unable to receive information on the whereabouts of the detainees after a certain time.

For example, the RNA in Thakurdwara Barracks acknowledged the detention of at least four persons (Ajay Kumar Shah, Lallu Chaudhari, Keshar Bahadur Basnet and Amar Budha) arrested before 6 April 2002 to their relatives, the date the CPN-M ambushed the vehicle belonging to Barakh Company. In two of these cases the commanding officer, Major Rayamajhi, had reportedly undertaken that the detainees would be released on 7 April 2002. Following the ambush, security around the barracks was heavily reinforced with armed guards, who prevented civilians from entering the area. Family members were no longer able to gain access to the barracks to receive news of their loved ones. One father, who was able to meet his son three times in detention in Thakurdwara Barracks after his arrest in February 2002, recalled: “After the Kothiyaghat ambush, no one could go to the barracks anymore. There was such a huge army presence around there after that. The soldiers all had guns, they would say we weren’t allowed to go there. Since then, I haven’t had any news of my son.”

Thirteen people arrested prior to the ambush in the area of operation of the RNA based in Thakurdwara Barracks subsequently disappeared, including the four whose detention was acknowledged. One day after the ambush, national newspapers reported that the Ministry of Defence issued a press release stating that 13 rebels who were involved in the ambush were shot dead in an encounter in the jungle of Kothiyaghat in Bardiya District the previous night. However, multiple sources consulted by OHCHR, including local people and CPN-M representatives, consistently stated there was no such encounter.

Similarly, the arrest and detention of at least five persons, Saraswati Chaudhari, Darbari Tharu, Tulshiram Tharu, Lachiman Tharu and Shiv Charan Chaudhari, by the NP between December 2001 and February 2002 was acknowledged to the families by the NP at the time of their arrest. Relatives were able to meet these detainees a number of times after arrest, in local police posts, the DPO Gulariya and lastly in Bardiya jail. However, at the end of April 2002, visitors seeking to meet the detainees at the jail were told that they were no longer detained there, and either that they had been transferred to other locations, including the DPO, or that “the army took them”. Despite repeated efforts, relatives were not able to obtain information from the authorities on the whereabouts of the detainees. These five were among nine detainees who were transferred from the Bardiya District jail to the DPO in two groups at the end of April and the beginning of May 2002. OHCHR’s investigations suggest they were taken from the DPO by a group of RNA, APF and NP personnel on 2/3 May and extra-judicially executed (see below, Chapter VI.vi: *The fate of the disappeared*). In its communication to OHCHR in February 2007, the NP stated that there was no record of arrest or detention by the NP of these five persons.

Some detainees were eventually released after periods of unacknowledged detention ranging from a few days to a few months but are still considered to have been subjected to enforced disappearance⁷⁹. Those held at Chisapani Barracks were usually called to the office of Major Ajit Thapa and made to sign a pre-drafted “statement”, the contents of which they were normally not aware, either because they were not given the opportunity to read it or because they were not literate. Detainees sometimes had their photograph taken prior to release. They were often given strict warnings not to divulge information about the treatment they were subjected to or about the other occurrences they witnessed in detention. Most detainees were ordered to report to Chisapani Barracks at regular periods after their release, although some did not adhere to this requirement.

Factors to which former detainees interviewed by OHCHR attributed their release include: a person of stature or influence was able to intervene on their behalf⁸⁰; a payment was made to an RNA official; the fact that they did not admit to CPN-M involvement during interrogation; an improvement in the political situation toward the end of 2002; and the advocacy of human rights organisations on their behalf. In addition, a number of detainees who were arrested in Banke District were reportedly released following the filing of *habeas corpus* writ petitions with the Appellate Court in Banke District, and with the Supreme Court (see below).

However, many relatives did not have access to such remedies. Tharu families faced particular obstacles in their efforts to seek information about the release of their loved ones. Due to substantial social exclusion, the majority of these families did not benefit from connections with high ranking security forces personnel or other influential persons, which were central in securing the release of detainees. In comparison to members of other communities, Tharu families also lacked the knowledge and resources needed to report arrests to human rights organisations, who could advocate for release with some influence. In addition, language barriers, lack of awareness and discrimination meant that many Tharu relatives of the disappeared were not able to gain access or advocate effectively with RNA personnel for the release of their relatives.

⁷⁹ According to the “General Comment on the definition of enforced disappearance” issued by the WGEID, the duration of the enforced disappearance is irrelevant. If a detention, even if short-term and even if resolved in the release of the disappeared, has the immediate consequence of placing the detainee beyond the protection of the law, that act is an enforced disappearance. See: http://www2.ohchr.org/english/issues/disappear/docs/disappearance_gc.doc.

⁸⁰ An NA official informed that he had been able to “save the life” of a detainee held in Chisapani Barracks whose family had approached him for assistance.

For example, according to one reliable source, one high caste person was arrested along with seven Tharu men from Badalpur VDC during the “Karnali Operation”. The mother of the non-Tharu man reportedly approached the senior army officer there (instead of just talking to the sentries) and pleaded for her son’s release. She reportedly later said: “he was released because I was clever, and I got to talk to the commander, unlike those Tharu women, just hanging round and begging at the gate”.

VI.v: Right to challenge the legality of detention

The right to have an arrest and detention reviewed by a judicial authority is recognised by Nepalese law, at the time the 1990 Constitution, and by international law, in the ICCPR. In practice, there were serious obstacles to exercise this right for detainees and their relatives. Detainees were not given access to a lawyer or judge, making legal action impossible. The authorities also consistently denied the arrest and detention of individuals, limiting the ability of relatives, human rights organisations and lawyers to challenge the legality of the detentions.

Habeas corpus writ petitions, mainly filed with the Supreme Court, were nevertheless one means used by relatives, human rights organisations and lawyers to challenge the legality of arrests and detention. According to legal practitioners who assisted families to file such petitions, in cases where the arrest was acknowledged by the security forces, *habeas corpus* writ petitions were effective in securing the release of detainees in some cases. However, where the authorities denied the arrest, the Supreme Court normally dismissed *habeas corpus* writ petitions, and they proved ineffective. OHCHR has received information from a legal aid organisation assisting relatives of at least 80 *habeas corpus* writ petitions submitted to the Appellate Court in Banke District and the Supreme Court in relation to persons arrested in Bardiya District. As of May 2008, 53 of them were reportedly quashed. The remainder are reportedly pending, except for four cases considered by the Supreme Court in its decision on disappearances in June 2007 and five cases which were the subject of a November 2007 Supreme Court ruling (see below, Chapter IX: *Truth, justice and reparations*).

In the absence of effective remedies and desperate for news of their loved ones, a number of family members were duped into paying money to individuals who undertook to endeavour to secure the detainee’s release. Among those who took money were reportedly relatives of senior army personnel, including at least one government official, as well as local persons believed to be working as RNA informants. Claiming to be acting as messengers for the RNA, some of these individuals conveyed the threat that the families’ relatives would only be

spared if sums of money were paid. The daughter of one Tharu farmer who was arrested from home in Magaragadhi VDC recalled how the family paid what represented, for them, crippling amounts of money to three different individuals, who claimed they could secure his release: “Someone came to our village saying there were people who could help release my father, if we paid. We went to Nepalgunj to meet them. They said they were related to Captain Ramesh Swar. They claimed they could get my father released if we paid 15,000 rupees, because they knew all the police and army. My family also paid money to two people from Bhuri Gaun, who came to our village and said they could help, one time asking for 3,000 rupees and one time for 5,000 rupees. We paid the money, but my father was never released. They cheated us. We don’t know what happened to him.”

VI.vi: The fate of the disappeared

The fate of the detainees who disappeared after arrest in Bardiya District and whose cases OHCHR and others have documented remains officially unknown. Nevertheless, OHCHR obtained multiple witness testimonies on a significant number of cases indicating that these detainees were illegally killed in detention, while others sustained injuries during arrest or from torture which may have led to their death.

VI.vi.i: Extrajudicial executions in detention

Information gathered by OHCHR indicates that a number of detainees were extrajudicially executed by security forces in detention. For example, two independent witnesses who were detained in Chisapani Barracks in 2002 told OHCHR that they were made to witness separate incidents of killings of other detainees. In both cases, the witnesses were brought out into the compound of the barracks, where a number of other detainees were standing in a line, blindfolded and handcuffed. On both occasions, an identified RNA officer (different on each occasion) and a number of lower ranking soldiers were present. The witnesses were told to watch how the army killed people. They were then made to look on while the RNA officer shot the detainees in the head, one by one, from close range.

One of the detainees recalled: “At around midday, soldiers came and took me to the clearing in the middle of the barracks, near the helipad and the bunker. They took my blindfold off on the way. When I got there, there were seven people standing in a line with their hands tied behind their backs and black hoods over their heads. From their clothes, I think there were two ladies among them. There was [an RNA officer], who said to me “see the way these people are killed, this is how you’ll be killed”. Then, starting from the left, he shot them with

a black pistol, one by one, in the head from up close. [The officer] carried on shooting them after they fell to the ground, and when they were dead he fired some shots in the air.”

VI.vi.ii: Pattern of removal of persons subsequently disappeared from detention

OHCHR documented a pattern of incidents from late December 2001 onwards, in which detainees were removed from the national park warden’s office in Chisapani Barracks, typically at night or in the early hours of the morning, and did not return. According to multiple witness testimony, these detainees were called out of their detention rooms by RNA personnel, including on occasions by Captain Ramesh Swar. They were placed in an RNA vehicle, which was sometimes equipped with digging tools. These vehicles were seen by detainees driving on dirt tracks which enter the forested area surrounding the barracks without using Surkhet Road, which provides the main access to the barracks. On repeated occasions, multiple single gunshots were subsequently heard and the vehicles were seen returning to the barracks some hours later without the detainees. Detainees vividly recalled that those removed in this manner were often not able to take personal belongings, including shoes or sandals, with them, and these remained in the rooms in which they were last detained for days, before they were disposed of or burnt by lower-ranking soldiers.

A number of those who disappeared were last seen being removed from detention in this way. For example, husband and wife Chaite Lal Chaudhari and Sita Janaki Chaudhari from Dhadhawar VDC were among four or five detainees who were removed from the national park warden’s office after dark, at the beginning of January 2002. The same night between 20 and 40 single gunshots were heard. The detainees did not return, but some of their belongings, including a towel, clothing and sandals, reportedly remained in the gallery of the warden’s office where the couple had been detained. The whereabouts of Sita Janaki and Chaite Lal Chaudhari remain unknown.

Similarly, Sagun Lal Chaudhari from Dhadhawar VDC, Ajay Kumar Shah from Bagnaha VDC, Mahendra Bikram Oli, Bhangi Tharu and Kushiram Tharu from neighbouring Banke District, were taken from “number one room” in the national park warden’s office just before dawn, probably sometime in April 2002. They were placed in a vehicle which drove towards the forested area and have not been seen since.

VI.vi.iii: Possible death from injury during arrest

OHCHR found that at least two of the disappeared were severely injured at the time of their arrest, in a manner which may have contributed to their eventual death.

One individual who might have died from such injuries is 34-year-old Thagga Tharu of Motipur VDC. During the night of 2 October 2002, a large team of RNA soldiers from Bhimkali Company, in uniform and civil dress, surrounded Thagga Tharu's home village and swarmed into the courtyard of his parental home. In the commotion, Thagga Tharu ran into a field at the back of the house. Gunshots were heard and his parents heard him moaning. Soldiers then took a *palanga* (bed made from rope) from the house into the field and carried Thagga Tharu to an RNA vehicle parked nearby. The sounds of moaning were no longer heard as they passed by. The same team arrested Kaliram Tharu (Thagga's brother), Baburam Tharu and Badhu Tharu from the same village, along with a fifth person who was later released. Relatives of the four who did not return reportedly inquired at Chisapani RNA Barracks four months after their arrest, but the army denied that they were held there. OHCHR also submitted their names to the army in September 2006, requesting information on their fate or whereabouts. In February 2008, the army informed OHCHR that Kaliram Tharu was killed when trying to flee during a security force operation on 2 November 2002 in Khairichandanpur village of Bardiya District. This contradicts corroborating witness testimonies that he was arrested from home on a different date and from a different village. No further information was provided by the NA on the other three. The four thus remain disappeared.

VI.vi.iv: Possible death due to torture

OHCHR found that at least one of those disappeared was last seen in very poor health in detention in Chisapani Barracks, leading to speculation amongst co-detainees that he may have succumbed to his injuries.

Raj Dev Mandal, a teacher from Magaragadhi VDC, was arrested from home in the night of 30 September 2002 by RNA soldiers from Bhimkali Company. Several witnesses recalled seeing him in the subsequent weeks, unable to walk and with multiple pus-ridden wounds all over his arms, legs, back and chest due to successive beatings. One detainee remembered: "One day Mandal told us 'I'm almost dead, can someone help call my family?' He was a little chubby. All his skin had come off where he'd been beaten, on his thighs, his calves, his back and chest. He showed us. The wounds got badly infected because of the heat and he was sweating. The wounds were decayed, filled with pus, and smelt so bad it was unbearable for us sharing a room with him." Another told OHCHR he saw Raj Dev Mandal when he was taken for food outside the warden office: "He couldn't walk, he was being carried. He had wounds on his back, on his arms, all over his body. All the wounds were infected and filled

with maggots. He was the worst injured person I saw.” After some time in October 2002, Raj Dev Mandal was no longer seen in detention, and his whereabouts remain unknown.

VI.vii: Attempts by the NA to cover up enforced disappearances in Bardiya District

The cases of enforced disappearances documented in this report have been submitted to the relevant security forces and State authorities with requests for clarification as to the fate or whereabouts of the persons concerned, by relatives of the disappeared, NGOs and international organisations, including OHCHR. In most cases, the authorities have failed to provide any information regarding the disappeared. In some cases, the NA has stated that individuals were either killed in an encounter or while trying to escape, or released. Press releases that victims were “killed in an encounter” were also issued by the Ministry of Defence at the time of arrest of some of those subsequently disappeared. The NP has also denied arrest and detention in a number of cases. Witness testimony gathered by OHCHR consistently contradicts these claims, and indicates that a significant number of those disappeared between December 2001 and January 2003 in Bardiya District were unlawfully killed in custody by security forces.

In July 2006, a one-person disappearance committee established by the Home Ministry⁸¹ published its findings, stating that the fate or whereabouts of 174 persons, including 20 from Bardiya District, had been established by the NA as either “released” or “killed in crossfire”.

In September 2006, OHCHR sent a list of 315 reported enforced disappearances to the Human Rights Cell of the NA requesting clarification as to their fate and whereabouts, including many cases of those who disappeared in Bardiya District. At the same time, it also submitted cases of enforced disappearances attributed to the NP to police authorities. In response, the same month, the NA provided OHCHR with information regarding the alleged fate or whereabouts of 52 persons, 24 of whom are documented by OHCHR as disappeared in Bardiya District. According to the NA four out of these 24 persons were released from custody, Saraswati Tharu, Phula Ram Tharu, Lahanu Chaudhari and Bhim Bahadur Tharu. The NA claimed that a further 20 were killed by security forces, in an encounter between the security forces and the CPN-M (16 people), or when trying to escape from security forces (one person) or both. In three cases, the NA provided what appeared to be conflicting

⁸¹ The committee of Baman Prasad Neupane, Joint Secretary at the Ministry of Home Affairs, which was established in May 2005 with the task of clarifying the status of 776 persons who were reportedly disappeared. See below, Chapter IX: *Truth, Justice and Reparations*.

information on the same case. In a number of cases, the responses provided repeated the information provided by the NA to the Home Ministry disappearances committee, and published in July 2006.

In February 2008, OHCHR received a further communication from the NA listing responses on 59 cases of reported enforced disappearances in Bardiya District, including information relating to 41 cases documented by OHCHR, ten of which had been included in the September 2006 communication. According to the NA, 24 of the victims were killed, either in an encounter (14 cases), in “security operations” (four cases) or when they were trying to escape (three cases). Two other cases appeared to be duplicated in the list, with conflicting information as to how they were killed. In another duplicated case, that of Som Prasad Tharu, he was listed both as having been released and killed. In three cases, the NA stated that the victim was arrested (Nepali Chaudhari) or handed over to the DPO (Shree Ram Tharu, Shree Ram Chaudhari) without providing further information on their fate or whereabouts. The NA further stated that five of those reportedly disappeared, Bhagi Ram Tharu, Shiv Prasad Tharu, Phula Ram Tharu, Bhagram Tharu and Sita Janaki Chaudhari, were released and a further two, Palta Tharu and Tateram Tharu, are living at home. In seven other cases included in the NA list, those of Bhawan Kumar Chaudhari, Bhuklal Tharu, Tirtha Bahadur Thapa, Bam Bahadur Shahi, Hirasingsh Batha Magar, Raj Bahadur Tharu and Balkisun Tharu, the list stated that there was no record of the arrest or death of the victim. In at least one case, that of Lahanu Chaudhari, the February 2008 letter (which stated the person in question was killed in an encounter) contradicted the earlier information provided by the NA (that he was released).

OHCHR also received a communication from the NP, in February 2007, which stated that there was no record of arrest or detention in 57 cases of reported disappearance in Bardiya District, including seven of the nine persons documented by OHCHR as arrested by police teams (Saraswati Chaudhari, Darbari Tharu, Tulshiram Tharu, Lachiman Tharu, Shiv Charan Chaudhari, Bed Prasad Yogi and Tek Nath Yogi) and a further two persons (Ram Narayan Chaudhari and Masur Tharu) who were last seen, according to OHCHR’s investigations, in detention in the Bardiya DPO (see below, Chapter VI.vii.i: *Killing of persons whom the NA stated were released*).

On the basis of its own findings, where OHCHR has carried out further follow-up, OHCHR continues to believe that those named remain victims of enforced disappearance. It should also be noted that one of those indicated as released by the NA was included in the June 2007 Supreme Court ruling which *inter-alia* ordered the Government to pay interim relief to his

family. To OHCHR's knowledge, the NA has not transmitted the information included in their responses to OHCHR to the families concerned.

VI.vii.i: Killing of persons whom the NA stated were released

Of the nine persons the NA alleged were released from detention, as of August 2008, none have returned home or been seen by their families since their arrest and detention by the security forces. Furthermore OHCHR's investigations suggest that at least one of these persons was killed in custody by the security forces, along with eight other detainees who are also disappeared. Saraswati Chaudhari, Shiv Charan Chaudhari, Tribhuwan Giri, Darbari Tharu, Tulshiram Tharu, Lachiman (known as Lachiram) Tharu, Ram Narayan (known as Som Prasad) Chaudhari, Masur Tharu and Dasram (known as Ghoguwa) Chaudhari were arrested by members of the security forces between the end of December 2001 and the beginning of February 2002. According to documents available at the District Administration Office (DAO), all nine were issued with preventive detention orders under TADO on 5 March 2002. Relatives of at least six of these detainees were able to meet them a number of times following their arrest, most recently in Gulariya District jail where they were last seen in late April 2002. According to information provided to OHCHR by the NA, Saraswati Chaudhari was released from Gulariya jail on 2 May 2002.

Documents available at the DAO and the district jail also state that the nine detainees were released on 3 May 2002, following release orders issued by the CDO. However, testimony gathered by OHCHR suggests that rather than being released, all nine detainees were transferred from the jail to the Bardiya DPO in two groups on 20 April and 2 May 2002 respectively. Subsequent to their transfer, visitors seeking to meet the detainees in the jail were told that they were no longer detained there. According to multiple witnesses, other detainees in the DPO and the jail had been met in detention by the ICRC and had received ICRC identifications cards, whereas the nine victims had not because the authorities had hidden them from the ICRC during visits. In its communication to OHCHR in February 2007, the NP stated that there was no record of arrest or detention by the NP of seven out of the nine victims. There was no information on the other two (Tribhuwan Giri and Dasram Chaudhari).

According to OHCHR's investigations, on the night of 2 or 3 May 2002, the nine detainees were taken out of custody from the DPO and are reported to have been extra-judicially executed at a location close to the Bhada Bridge, near Bhadapur village in Gulariya municipality. A former co-detainee told OHCHR: "Between 11pm and midnight the police

called the eight male detainees by name. They were told they were being released but they were not allowed to take any personal belongings.” The only female, Saraswati Chaudhari, was being detained elsewhere in the DPO and had already been brought into the DPO compound. In the compound, the detainees were met by APF and NP personnel, and RNA personnel including an officer from Bhimkali Company. Most of the security forces personnel were armed with self-loading rifles or .303 Lee Enfield rifles. The RNA officer was reportedly armed with a Sterling sub-machine gun. “Through the ventilation hole of the cell, we could see that, once outside, the hands of the nine detainees were tied behind their backs and they were blindfolded”, another detainee informed OHCHR. They were then pushed into pickups, one of which contained three shovels. A number of NP, APF and RNA personnel climbed into the pickups before the vehicles left the compound of the DPO, driving towards the east.

A former co-detainee reported: “About 30 to 60 minutes later, I could hear both single and automatic shots being fired.” This was corroborated by several other detainees, who reported not being able to sleep out of fear. In addition, local people said they heard screams and shots at the Bhada River, about 2.5km east of DPO Gulariya. The following morning, local people saw a hole filled with dead bodies in a sandbank of the Bhada River, north-east of the Bhada bridge. There are numerous reports that body parts were sticking out of the hole, and that dogs and crows were dragging and picking at dead bodies. During the weeks following the incident, the NP and APF were repeatedly seen covering the hole and the bodies with sand to prevent body parts from sticking out. About two months later, the bodies were reportedly washed away by a flood.

VI.vii.ii: Persons who the NA stated were “killed in an encounter” or “while trying to escape”

Of the further 35 persons disappeared in Bardiya District who the NA claims were killed in an encounter or security operation, or when they were trying to escape, OHCHR found that the majority were in fact arrested from home by the security forces during search operations. Among them are a number who were arrested during two large scale operations in the Rajapur Delta area of Bardiya District, the first on 11 April 2002 and the second on 20 and 21 October 2002, during the Karnali Operation (see above, Chapter VI.ii: *Arbitrary arrests by the security forces*). For example, the NA states that Dhani Ram Chaudhari, Soni Ram Chaudhari (16 years old), Kamla Tharu (16 years old), Lauti Tharu (16 years old), Mohan Tharu, Chillu Tharu (15 years old) and Raghulal Tharu, all of Manau VDC, were killed when security forces were attacked by Maoists in the nursery jungle area of Manau VDC, and responded by

firing. However, according to OHCHR's investigations, the seven were among at least eight individuals who were arrested by a large group of security forces from their homes in the night of 11 April 2002.

Similarly, according to the NA, Raj Kumar Tharu and Radheshyam Tharu were killed in action by the security forces after they attacked a security patrol in the Manpur area of Bardiya District on 24 October 2002; Ram Karan Chaudhari was shot when he tried to escape a security cordon in Bhimmapur VDC; and Runchya Chaudhari was killed in an encounter in Neulapur VDC on 8 June 2002. Consistent witness testimonies gathered by OHCHR contradict this information and indicate that they were among six people who were arrested from their homes in Manpur Tapara VDC by security forces in the night of 20 October 2002 at the start of the "Karnali Operation". They were taken to the temporary camp at the Manpur Secondary School, where relatives last saw them from the road the following morning, in one of the schoolrooms.

VI.vii.iii: Ministry of Defence press releases that victims were "killed in an encounter"

On a number of occasions, shortly after the RNA arrested persons who subsequently disappeared, announcements were made on radio stations, including Radio Nepal, that they had been "killed in an encounter between the security forces and the CPN-M". These announcements were made on the basis of press releases issued by the Ministry of Defence at the time. The announcements often shocked and puzzled relatives of those arrested and local people, who were aware that the victims were recently taken by the RNA, on many occasions from their homes, and that they had not been involved in any encounter as claimed. However, the declaration that the victims were deceased was taken by many to indicate that they were killed after their arrest by security forces.

Five persons whose death "in an encounter" was announced on Radio Nepal shortly after their arrest are Kalapati Chaudhari, Sushila Chaudhari, Pardesni Chaudhari (women in their early twenties), and Surya Bahadur Chaudhari and Sanju Tharu (men in their early twenties), all of Thakurdwara VDC. OHCHR found that in the early hours of 8 June 2002, all five were asleep in their homes when an RNA team arrived in a vehicle in their village. According to witnesses, the RNA team went from home to home, calling out the names of the five and arresting them one by one, before taking them back to the vehicle and driving away. At around 5pm the following day, local people witnessed five detainees, both male and female, being transported in an RNA pick-up truck from the direction of Thakurdwara Barracks through Thakurdwara bazaar and onto a dirt track leading through the community forest area

east of the bazaar. Shortly afterwards, a number of single gunshots were heard and around 15 minutes later, the RNA pick-up vehicle returned in the direction of Thakurdwara Barracks, without any detainees. The following day, a dead body was seen under a small bridge over a stream in the community forest. Two freshly dug mounds were also seen nearby on the bank of the stream, leading to speculation amongst local people that the three women and two men who were arrested by the RNA on 8 June were killed and buried by the RNA at that spot the following day. At 3pm on 10 June 2002, an announcement was heard on Radio Nepal that Kalapati Chaudhari, Sushila Chaudhari, Pardesni Chaudhari, Surya Bahadur Chaudhari, and Sanju Tharu were killed in an encounter between the security forces and the CPN-M, apparently confirming that the five were no longer alive. In the following days, local witnesses recalled a smell of putrefaction coming from under the bridge, and stray dogs digging up and bringing bones into nearby villages from that location.

The fact that the NA has acknowledged the death of these individuals, albeit under different circumstances, may be taken as confirmation of their deaths. Given the consistent witness reports that they were arrested by security forces, it is believed that these individuals were extrajudicially killed in custody, and their bodies were disposed of in secret. Indeed, OHCHR confirmed one case of extrajudicial execution in custody - that of an 11-year-old girl - after which the Ministry of Defence issued such a press release claiming that a Maoist was “killed in an encounter.” The fact that the victim was an 11-year-old girl highlights the security forces’ blatant disregard for human rights.

During the night of 21 July 2002, a joint RNA and NP team dragged Rupa Chaudhari, an 11-year-old schoolgirl of Sorahawa VDC, out of her home and killed her. According to multiple witnesses, the joint team of RNA from Bhimkali Company and NP from Mainapokar APO stormed Rupa Chaudhari’s home village on foot. Many of the security force personnel appeared drunk as they randomly and violently entered homes and dragged out villagers, beating them and accusing them of helping Maoists. Around 10 to 15 security force personnel forced their way into Rupa Chaudhari’s family home and aggressively woke family members. Soldiers pulled Rupa Chaudhari out of bed, asked her name, blindfolded her and pulled her outside. She was dragged to Kunwa *chowk* (junction), around 50m from her home, where security force personnel fired at least three rounds of gunfire, shooting and killing her.

After the incident, Rupa Chaudhari’s body was carried on a *palanga* to Mainapokar APO, and then taken by RNA vehicles to Chisapani Barracks. On 23 July 2002, a Ministry of Defence press release announced that a CPN-M cadre who tried to escape from a security force cordon

in Sorahawa VDC was killed by the RNA. The following day, Rupa Chaudhari's father was called to the Bardiya DPO, where he was asked to identify her body. The corpse was decaying and had a bullet injury in the back with an exit wound in the chest. He asked to take her body home. However, the NP took him with Rupa Chaudhari's body to a location on Budhikhola River, south of Gulariya, where she was buried at around 8pm.⁸²

CHAPTER VII: ACTIONS TANTAMOUNT TO ENFORCED DISAPPEARANCE BY THE CPN-M

VII.i: CPN-M presence and operations in Bardiya District

According to the CPN-M, it was active in Bardiya District from the start of the "People's War" in 1996. As in other districts, the CPN-M attacked government structures, including army and police posts and VDC facilities, apparently to rid the area of government presence, and installed CPN-M entities in their place. According to the CPN-M, by 2002, it had established a District Committee in Bardiya District, comprised of Area in-charges and headed by a District-in-charge, with the District Committee Secretary as second in command. Area Committees covered varying numbers of VDCs, village-level "People's Governments" were established in all VDCs, and a "People's Court" was functional in Bardiya. People's Liberation Army (PLA) units were also reportedly present in Bardiya from the PLA's establishment in 2001.

The CPN-M informed OHCHR that during the period in which unresolved disappearances were documented by the Office in Bardiya District, from 2002 to 2004, "Anal" was the Bardiya District-in-charge and "Tufan" was the District Committee Secretary. They came under the command of the Bheri-Karnali Regional Bureau, headed by Regional Bureau in-charge "Prakanda". In August 2008, OHCHR requested interviews with these representatives through the CPN-M leadership but has not yet received a response.

⁸² The NP initially refused to register the FIR in the case of the murder of Rupa Chaudhari, which was submitted to the Bardiya DPO on 17 October 2007. The NP's refusal was based on the fact that it did not agree with the content of the FIR, and in particular the identity of one alleged individual NP perpetrator named in the FIR. In violation of its obligation to register the FIR, the NP encouraged the complainant to remove the name of the individual perpetrator in question. Following the complainant's agreement to do so, the FIR was registered by the NP on 15 November 2007. In relation to the same case, on 13 June 2006, the NHRC recommended the Government to "identify the security personnel responsible and to take strong legal action, as well as to provide the victim's family with 200,000 rupees as a compensation". This recommendation was communicated to the Cabinet on 19 July 2006, but as of July 2008 is yet to be implemented.

As well as mobile political and other cadres (whole-timers) who moved from place to place, the CPN-M entities were staffed with local people, including those who were identified by the CPN-M as active, articulate and/or benefiting from local support, and who were encouraged or forced to take part (part-timers) in CPN-M activities in the district. In violation of international child rights standards, it also recruited children under 18 into its ranks, several of whom were reportedly subsequently arrested and disappeared by the army.

The actions tantamount to enforced disappearances by the CPN-M documented by OHCHR took place within a pattern of what the CPN-M termed “action” against those considered to be “exploiters” or “informants”, who included landlords viewed as “feudalist”, suspected informants, security force personnel and members of the political opposition. The CPN-M carried out killings, abductions, physical attacks and raids on homes during which they looted and destroyed property, apparently in order to displace target groups, pressure security force personnel to resign from their posts and discourage informants.

A central part of CPN-M “action” was to attack large landowners, destroying and looting their property and redistributing it among supporters and local farmers from marginalised groups. Some individuals and organisations that chose to remain independent from the CPN-M were also targeted by the CPN-M, as they were seen as threatening its influence. The CPN-M reportedly detonated explosive devices on the premises of a number of both Tharu and non-Tharu organisations. As well as being punitive, CPN-M “actions” were often brutal and conducted in public, including executions, apparently in order to send a signal of warning to others. Those reportedly killed by the CPN-M died as a consequence of the injuries sustained or were subsequently executed; shooting and beheading were methods of execution used⁸³.

In contrast with the security forces, the CPN-M often acknowledged killings as part of CPN-M “action”, and the bodies of victims were often left in public areas for others to see. While the CPN-M viewed such “actions” as a legitimate part of the conflict, a significant number of them were clearly serious violations of IHL, many of which have been documented in other reports which have already been mentioned above and do not fall within the purview of this report.

CPN-M representatives informed OHCHR that all decisions on party “action” during the relevant period, including abductions and killings, were made by the District Committee. This “action” was mainly carried out by PLA “squad teams”, which were formed of normally

⁸³ OHCHR received information about nine cases of killings by the CPN-M in Bardiya District, in which victims were beaten severely with *lathis*, stabbed with *khukuris*, wounded by sickles, and had their arms and legs broken.

less than ten PLA members on a needs basis. CPN-M political and other cadres were reportedly not normally involved in “party action”. However OHCHR received information implicating local CPN-M cadres in some abductions that led to disappearances. In the case of attacks on large landowners and their property, the CPN-M leadership reportedly gathered local people, including CPN-M cadres, CPN-M supporters and villagers and authorized them to take what was seen as retribution against the landowners in question. The participation of local villagers in these attacks may have been voluntary, or out of fear of reprisals if they did not. Military operations such as attacks on government structures and ambushes were reportedly exclusively carried out by the PLA.

VII.ii: Unresolved actions tantamount to enforced disappearances

In the course of its investigations, OHCHR documented the cases of 14 persons abducted by the CPN-M in Bardiya whose fate and whereabouts has not yet been fully clarified, although in most cases the CPN-M has now acknowledged that the victim was killed. Most of the disappearances occurred in 2004 (nine cases), the others occurring in 2002 (one) and 2003 (four).

Most of the disappeared were abducted by the CPN-M from home or from the street near their home village in the evening or the night. A small number were taken during the day. According to witnesses, most victims were taken by groups of between two and ten Maoists, who were in most cases wearing civilian clothes and did not have any visible weapons. Relatives sometimes recognised local Maoist cadres in the group. In some cases, the CPN-M asked victims to accompany them for a few minutes or hours, and told their relatives they would return later. In at least five cases, victims were taken forcefully. Among these, a number were blindfolded and had their hands tied behind their backs before they were taken away.

For example, on 21 October 2004, five Maoists, including a local female cadre, abducted Anita BK, a homemaker of Taratal VDC. According to witnesses, they arrived at Anita BK’s home at around 5pm and accused her of extorting local people in the name of the CPN-M. Anita BK was breastfeeding her four-month-old baby boy in the courtyard of her home. The female Maoist pulled the baby from Anita’s arms and handed him to a relative before Anita was made to follow the Maoists to the nearby *chowk* in the village, where she was blindfolded and taken away on foot. One and a half months after the incident, the family approached “Navin”, the CPN-M Area in-charge, who acknowledged that Anita BK was in CPN-M captivity and said she would be released after two to three months. Anita did not, however,

return. Despite asking CPN-M cadres, including a district committee member who was campaigning in the village during the 2008 Constituent Assembly election period, Anita's family has not received any information on her fate or whereabouts. In July 2008, a CPN-M district representative acknowledged to OHCHR that Anita BK was killed as part of "party action". The following month, CPN-M leaders gave assurances that the family would be informed but as of mid-October 2008 had not reportedly done so.

In three cases, victims were reportedly abducted from home at night by large groups of hundreds of Maoists who were wearing combat dress and had weapons.

On 10 November 2002, Rojan Ali Jaga, a businessman of Deudakala VDC, was abducted from home by a large group of over a hundred Maoists dressed in civilian dress and combat dress, some carrying firearms. The Maoists shouted from outside before breaking down the door of his home. They held his wife while they beat Rojan Ali, tied his hands, blindfolded him and took him away. Following the abduction, his family was told by local Maoists that they killed Rojan Ali Jaga but they were not informed about the whereabouts of the body.

Among the disappeared are three members of the security forces (one APF officer and two RNA soldiers), who were abducted while they were on leave or off duty. According to IHL, members of the security forces who are not or are no longer taking active part in hostilities are entitled to protections applicable to civilians.

Krishna Prasad Adhikari was a 26-year-old RNA soldier of Deudakala VDC. He was abducted by the CPN-M on 18 July 2004 while he was home on leave. According to OHCHR's information, he was playing *karam* at Laxmana *chowk* in his home VDC, when a group of around ten Maoists arrived, blindfolded him and tied his hands behind his back before they took him away in the direction of the forested area north of the *chowk*. His family have not seen him since. In July 2008, the CPN-M district leadership acknowledged to OHCHR that Krishna Prasad Adhikari was killed by the CPN-M but has yet to provide information on the whereabouts of the body.

VII.iii: Detention

After the CPN-M carried out abductions, most families searched for their abducted relatives by asking local people and CPN-M cadres in surrounding villages and VDCs about their whereabouts. In seven of the cases OHCHR investigated, CPN-M cadres initially denied they

had abducted the victim or told families that they did not know about the incident. In another six cases, the CPN-M acknowledged detaining the victims, either saying they would be released shortly or that they did not have further information. These abductees were kept in captivity in a local school and in a local person's house, as well as at undisclosed locations.

None of their families were able to meet them in CPN-M captivity. However, relatives of at least four of those abducted heard from local people and also witnesses who had been held with them that they were beaten severely by the CPN-M, and had visible signs of wounds on their faces and bodies.

VII.iv: Fate of those abducted and disappeared

In July 2008, OHCHR raised the 14 cases documented by OHCHR at a meeting with local CPN-M representatives. The CPN-M district leadership acknowledged that the CPN-M had killed 12 of these persons, as part of "party action", in most cases because they were considered to be informants. They denied involvement in the case of two other individuals (see below, cases of Kali Bahadur and Bhim Bahadur Bista).

Among the 12 cases where the CPN-M has now acknowledged responsibility are four in which the victims' families had not previously received any information on the fate or whereabouts of their disappeared relative. The CPN-M district leadership claimed that as a policy, press releases were issued after the killing of abductees which would have informed the families of the death of their relative, but this has not been confirmed in these four cases, and their family members were unaware of any press releases. OHCHR believes that solely issuing press releases regarding the death of a person abducted does not fulfil the obligation to provide information to relatives as to the fate of their loved ones after arrest or abduction, as it cannot be assumed that the relatives would have access to the press release. In July 2008, the local CPN-M leaders undertook to inform the four families verbally that their relatives were killed.

In the remaining eight of the 12 cases where the CPN-M acknowledged having killed the victim during the July 2008 meeting, relatives of those abducted had already received information in some form that their loved ones had been killed. In five of these, the families said they had heard about the deaths through press releases, between seven and 12 days following the abduction. In some of the press releases, the CPN-M specified the reasons for the killing, including that the victim was considered to be an informant or had been judged by the "People's Court" for "crimes", including looting and rape.

Another two families were informed verbally of the killings by CPN-M cadres a few weeks after the abductions in response to their inquiries but were given no further information. In the eighth case, the family was given conflicting information about what happened to the victim. They were informed verbally by one CPN-M source a few days after the abduction that the victim had been killed, but another CPN-M source denied the killing.

One person whose killing the CPN-M acknowledged is Rajendra Chaudhari, a 20-year-old APF officer from Dhadhawar VDC, who was abducted from home on 18 January 2003, while he was on leave. OHCHR documented how a group of Maoists arrived at his home and asked him to go with them, telling his relatives he would be home that evening. He did not return, however. His family had previously been told by the CPN-M that Rajendra Chaudhari should resign from the APF. A few weeks after he was taken, relatives were informed by two CPN-M cadres that Maoists had killed the victim. They were threatened not to speak about the incident. Rajendra Chaudhari's family still consider him to be abducted and missing, as they have not received concrete information on when and why he was killed or on the location of his remains.

VII.v: Failure to disclose the location of the bodies

While the CPN-M acknowledged the killing of 12 persons who were disappeared following abduction, it has so far failed to disclose the location of the remains of these victims. This is despite the fact that in some cases, where families had information that their relative was killed, they have repeatedly requested the CPN-M for this information.

In mid-March 2004, Dil Bahadur Khadka and Narayan Sapkota were abducted from their homes in the same village in Kalika VDC by CPN-M members, including local CPN-M cadre "Navin". Around two weeks later, the *Kantipur Daily* newspaper published a press release by the CPN-M stating that the two victims had been presented in front of the "People's Court" accused of criminal activities, including looting and rape, and were killed by the CPN-M. Around four months after the abduction, relatives approached a local CPN-M cadre, who acknowledged the killings. When asked about the location of the victims' remains, he reportedly said: "I'm the leader, I give the orders to kill, and my cadres carry them out. I don't know what they do with the bodies."

The fact that the CPN-M has not informed families of the location of remains has prolonged their anguish, by provoking uncertainty and preventing them from carrying out the last rites. In addition, without the remains, families of the disappeared have not been able to obtain death certificates, and are therefore not able to access entitlements (including compensation) or carry out legal transactions such as transferring the victims' assets such as land.

A relative of Bhim Raj Shreebastav, a medical professional and Tarundal (NC) village leader of Jamuni VDC, told OHCHR: "The Maoists took Bhim Raj in the night of 1 April 2004. Locals heard a commotion in the night and when we woke up he was gone. One week later (on 9 April 2004), the *Nepalgunj Express* paper reported that the CPN-M killed Bhim Raj for being an informer. After that, we begged the Maoists to know where his body was. When they didn't tell us, we asked just for a small part of his body, for a hand or a finger, so we could carry out the last rites. But they did not tell us anything."

In July 2008, OHCHR urged the CPN-M district leadership to confirm in writing that the individuals had been killed and to ensure as a priority that the locations of the remains of those killed by the CPN-M are identified. In follow-up to this meeting, on 8 August 2008, OHCHR met with the national level CPN-M liaison for human rights, Barsha Man Pun, to raise the cases OHCHR had documented. He committed to discussing the issue of providing such information to the families with the CPN-M leaders, and to investigate further the two cases where local CPN-M denied involvement (see below).

He also gave assurances that the CPN-M would try to locate those responsible for the disappearances with the aim of establishing the location of gravesites. OHCHR understands that instructions have already been given to local CPN-M leaders in Bardiya District to do so. OHCHR also believes that these steps should be part of an investigation to hold accountable those responsible for these IHL violations.

VII.vi: Cases in which the bodies of the abducted individuals were located

In addition to the 14 unresolved abduction cases, OHCHR also documented a further two cases in Bardiya District in which the bodies of the persons who were abducted were subsequently found. At around 8pm on 18 November 2002, Ritesh Jung Shah, a 40-year-old CPN-United Marxist Leninist (CPN-UML) ward chairperson of Daulatpur VDC, was abducted from his home by 30 to 35 Maoists who tied his hands before they took him away. Two days later, his body was found on the bank of the Karnali River in Daulatpur VDC. He had reportedly been beheaded. The CPN-M posted pamphlets in the victim's home village

saying they had “taken action” against him. The CPN-M district representative told OHCHR that the CPN-M killed Ritesh Jung Shah because he was an “exploitative” person.

In the second case, the victim’s body displayed wounds to the body, suggesting that he was tortured in detention before he was killed.

Twenty-four-year-old Prakash Dahit of Nayagaun VDC, an NP policeman based at the Rajapur APO, was abducted by the CPN-M on 7 March 2002, while on his way from home to work. His relatives were reportedly told by local CPN-M cadres that he would be released after ten days. On 5 April 2002, almost one month after his abduction, his body was found lying on a riverbank in Manau VDC. Witnesses told OHCHR that there were bruises all over the body, a knife stab injury and a gunshot injury in the abdomen.

VII.vii: CPN-M denial of involvement in actions tantamount to enforced disappearance

In the case of two victims, who were reportedly abducted by a group of people including at least one known CPN-M cadre, the CPN-M district leadership denied official CPN-M involvement to OHCHR. According to witnesses, on 18 June 2003, father and son Kali Bahadur Bista and Bhim Bahadur Bista of Belwa VDC were abducted from their home by a large group of people carrying firearms, including a local woman known as a CPN-M member. The group reportedly locked family members in a room before looting money, gold and clothes and taking Kali Bahadur and Bhim Bahadur Bista away.

Prior to the abduction, the Bista family had reportedly received repeated requests for “donations” for the CPN-M from the woman and her brother, who was also known locally as a CPN-M member, among others. These reportedly included a request for a 150,000 rupee “donation” a week before the abduction, which the family was unable to pay. Both villagers and local CPN-M cadres confirmed that the brother and sister were CPN-M members. These sources stated that the brother was subsequently dismissed from the CPN-M on the accusation of bigamy.

Two weeks following the abduction, a relative of the two alleged CPN-M members reportedly delivered a letter to the Bista family, which stated that Kali Bahadur Bista and Bhim Bahadur Bista were in CPN-M captivity and would be released after one day. It also warned them not to report the abduction to the security forces. After around 20 days, the alleged female CPN-M member reportedly stated personally to the family that the victims were in CPN-M

captivity “because they had done something wrong,” and said they would be released after punishment, again warning the family not to report the case to the security forces.

After around one month, when the victims had still not returned home, the family reported the case to the police and approached the CPN-M Area-in-charge “Sushil”, who denied any CPN-M involvement in the abduction. Since then, Kali Bahadur and Bhim Bahadur Bista’s family has not been able to obtain any information on the fate or whereabouts of their disappeared relatives. According to local CPN-M representatives and villagers, following the May 2006 ceasefires, the CPN-M held a village-level meeting to clarify the incident, which ended inconclusively due to lack of information.

In a meeting with OHCHR in July 2008, the CPN-M district-level representative again denied CPN-M involvement in the abduction of Kali Bahadur and Bhim Bahadur Bista. He denied that the brother and sister were CPN-M members at the time of the incident, but said that the sister later joined the party. He also claimed that the brother killed the victims for personal reasons. He also denied that the CPN-M requested a donation of the 150,000 rupees from the family, saying such “donations” were only demanded from wealthy persons, whereas the Bistas were modest farmers. He expressed that it is not the CPN-M’s responsibility to investigate the disappearances further because they were not involved.

The fact that in other cases raised by OHCHR, the CPN-M acknowledged that the victims were abducted and killed as part of “party action” suggests that the abduction of Kali Bahadur and Bhim Bahadur Bista may not have been part of authorised CPN-M action. However, the reported involvement of persons believed at the local level to be CPN-M cadres needs to be clarified by the CPN-M and efforts by the CPN-M and Government authorities to clarify the fate and whereabouts of the victims must be undertaken. In August 2008, the CPN-M central-level leadership assured OHCHR that the CPN-M would take measures to clarify the case.

CHAPTER VIII: SOCIO-ECONOMIC IMPACT OF DISAPPEARANCES ON THE FAMILIES OF THE DISAPPEARED

As indicated previously, Article 24 of the Convention on Enforced Disappearance includes in its definition of those affected by enforced disappearances “any individual who has suffered harm as the direct result of an enforced disappearance”. The impact on relatives of the disappeared covers a full range of rights, not only civil and political but also economic, social

and cultural. Under international human rights law,⁸⁴ the State has an obligation to respect, protect and fulfill the rights to adequate food,⁸⁵ an adequate standard of living, health and education. Most of those arrested and disappeared from Bardiya District were adult male heads of households, who provided income and agricultural produce from the land. Their disappearances have therefore had a deep adverse socio-economic impact on the families left behind. In addition, without confirmation of death or the remains, families of the disappeared have not been able to obtain death certificates, and are therefore not able to access entitlements (including compensation) or carry out legal transactions such as transferring the victims' assets such as land. Many are still facing these difficulties today, and they consider the provision of relief and compensation as equally important as the need for truth and justice⁸⁶. The following assessment was based on focus group discussions and individual interviews with a sample group of relatives of the disappeared. Although the group was predominantly Tharu, OHCHR believes that many other families of the disappeared are facing similar economic and social hardship.

VIII.i: Diminished food security

Most of the families interviewed were living at subsistence level even before the disappearance. Land holdings are a major source of income and food for the Tharu and other disadvantaged communities, and determine the ability of a family to have food security. The average land size in OHCHR's sample did not exceed 2 *bighas*,⁸⁷ placing them in the small farmer category. Many families supplemented their income through seasonal migrant labour in India, as the land did not provide sufficient food.

The disappearances have meant significantly less food and income for relatives. Female-headed *kamaiya* and *sukumbasi* households were the most adversely affected by disappearances, because they were only marginally subsisting prior to the disappearance. Faced with these difficulties, families have resorted to taking loans where available, sending women and children to work, at lower wages and in often difficult conditions, and begging in the community to survive.

⁸⁴ International Covenant on Economic, Social and Cultural Rights.

⁸⁵ In its General Comment 12, the UN Committee on Economic, Social and Cultural Rights considers that the core content of the right to adequate food implies the "availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture; and the accessibility of such food in ways that are sustainable and do not interfere in the enjoyment of other rights".

⁸⁶ Recognising the effects of an enforced disappearance on the relatives of the disappeared, the International Convention for the Protection of all Persons From Enforced Disappearance, which was adopted by the General Assembly in December 2006, adopts a broad definition of "victim" as "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance" (Article 24).

⁸⁷ One *bigha* is roughly equivalent to 0.677 hectares of land.

VIII.ii: Lack of access to health and education, and child labour

In a predominant number of cases where male family members disappeared and left behind female-headed households, the ability to access employment and work in safe and dignified conditions has been extremely limited. In many cases, families were compelled to send their children to work for landlords or in other family homes, including in forms of bonded labour, since they were unable to feed them. This form of domestic child labour often implies working long hours, in undignified conditions where children are confined to the premises of the employer, making them vulnerable to exploitation, physical and sexual abuse. It also disrupts the ability of children to access the right to education and has implications in terms of the psycho-social, emotional and balanced development of the child.

A number of families told OHCHR that when family members, including small children, fell ill, they were not able to afford medical treatment. In addition, some families were not able to afford the cost of sending children to school, and a number of children of the disappeared were unable to continue their education.

Despite the adverse impact of disappearance on each of these rights, most families⁸⁸ reported that they have received no government support or relief following the disappearance of their family members.

VIII.iii: Social discrimination against wives of the disappeared

Female heads of households without other family support have faced particular social difficulties. Many have encountered social discrimination and gender-based violence following the disappearance. One common difficulty is the suspicion with which wives of the disappeared are treated, some for example being characterised as “loose women”. Many have been criticised in the community for their involvement in activities to seek the truth about the fate and whereabouts of their husbands, in particular because it involves interaction with wider society and the male population. Wives of the disappeared have come under social pressure to register the deaths of their husbands, which many are reluctant to do so because of lack of official information regarding their fate. On occasions, these women have been accused of being unwilling to accept the austerity that life as a widow demands culturally. This social discrimination has compounded the emotional, social, and economic difficulties women face in the wake of the disappearances of their loved ones.

⁸⁸ See below, Chapter IX.iii.iii: *Remedies including reparations*.

VIII.iv: Case studies

The following three cases illustrate the socio-economic impact of disappearances on Tharu families of the disappeared in Bardiya District.

Case 1

A Tharu former *kamaiya* mother with six young children told OHCHR that when her husband was arrested and disappeared by the RNA in April 2002, their six children were all small (12 years old and under). Her husband, the sole means of livelihood for the family, primarily worked as a daily wage labourer and a seasonal agricultural labourer, while she took care of their children. The family had no land. In the government process of registering former *kamaiya*, the family had received a “red card”, which identified them as belonging to the most socio-economically marginalised of the former *kamaiyas*, and prioritised them for land distribution (five *kathas* of land was to be given to each former *kamaiya* family). Following the disappearance of her husband, the family was left without any source of income or food. She was compelled to send her eldest daughter, who was 12 years old at the time, to work at the home of a *pahadi* family as a bonded labourer. As the income was insufficient to feed the family, she herself worked as a seasonal agricultural labourer and collected firewood, while trying to look after her small children. She could not initially afford to send her children to school, although now her youngest child attends the local primary school. Lack of food security remains her family’s biggest problem. In addition, due to lack of education, access and awareness, she has been unable to claim her entitlement to land as a former *kamaiya* holding a red card. At the time of the interview with OHCHR in 2007, she and her six children were occupying two *kathas* of government land in a forested area. They feared that they could be evicted at any moment.

Case 2

A Tharu female head of a household informed OHCHR that her two eldest sons, aged 23 and 20 years old, were disappeared by the RNA in April and June 2002 respectively. The family owns two *bighas* of land, and prior to the disappearances her eldest son worked as a carpenter and her second-eldest farmed their land. These means of livelihood provided sufficient income for her family of eight which included her four sons and two daughters-in-law. After her two eldest sons disappeared, she and her daughters-in-law had to lease 50 percent of their land to a sharecropper because they were unable to work on the land and manage the household simultaneously, due to emotional and practical reasons. This halved the food supply of the family.

In the initial year following the disappearances, she had to take a loan to purchase 100 kilos of rice for the family, but had difficulty in obtaining loans for other needs. As a result, she had to send her younger son to work in another household for four years. This form of child labour disrupted the child's education. However, it provided the family with food, clothes and one bull. Members of the family also faced health problems. One of her daughters-in-law miscarried and her grandchild was seriously sick for three months. The family had to take an additional loan for treatment of the child.

Case 3

The 22-year-old son of an elderly Tharu former *kamaiya* woman disappeared after his arrest by the RNA in May 2002. The family has less than one *katha* of land, and before his disappearance, her son supplemented the family income by working as a migrant labourer in India. After her son disappeared, her daughter-in-law migrated abroad, leaving herself and her elderly husband to care for their two infant grandchildren, aged five and six at the time of the interview. The elderly couple faced extreme difficulties without any source of income and she had to beg in the community for food. Her husband took a loan of rice from a landowner, which lasted four months. They had to give their sole buffalo to the landlord to pay off the debt. Shortly after the disappearance, her grandchildren also fell sick with measles, and the family had no money to pay for treatment. The couple still rely on others to provide them with food occasionally, and they said they often go hungry to feed the children. As former *kamaiyas*, they are entitled to receive a government card for land redistribution. However, due to lack of awareness and resources they have not approached the authorities regarding this entitlement and as of March 2007 they had not been registered. As a result they have no recourse to an asset base and remain extremely marginalised.

CHAPTER IX: TRUTH, JUSTICE AND REPARATIONS

The central demands of families of the disappeared in Bardiya District are: truth regarding the fate or whereabouts of their disappeared relatives; punishment of those individuals who perpetrated disappearances; and reparations in relation to the violations that took place. These demands, which find support in international standards and a ground-breaking 2007 decision of the Supreme Court of Nepal, have been advanced by the continuing efforts of the families, as well as by Nepalese and international organisations. As this report was being finalised in

November 2008, there were some positive steps taken by the Government in this area, including the release of draft legislation on disappearances and a decision to provide interim relief to families. However, much remains to be done to respond to the rights of the victims and the obligations of the State. As with other human rights and IHL violations, the perpetrators continue to enjoy almost total impunity.

IX.i: Efforts of the victims' relatives, Nepalese and international organisations

A wide range of stakeholders have actively advocated for the disappearances in Bardiya District to be addressed. These include families of the disappeared, human rights NGOs, media and international organisations. The families have organised demonstrations in Bardiya District and other locations, including in front of the NA Headquarters in Kathmandu. In April 2007, Conflict Victim Committee, Bardiya, an association of the families of the disappeared, was officially established in the district, and it has thus far documented the disappearance of 193 people by the State and 16 people by the CPN-M, whose whereabouts remain unknown. On 14 October 2007, the association submitted a memorandum to the Prime Minister, through the CDO of Bardiya District, calling for truth, justice and reparations.

The disappearances in Bardiya District have also been well-documented by national and international organisations. National NGOs and the NHRC did so in extremely difficult conditions during the conflict, often at personal risk. International NGOs have also issued several reports.⁸⁹ In December 2004, WGEID conducted a mission to Nepal, and found that the phenomenon of disappearances was widespread, with perpetrators shielded by political and legal impunity. The ICRC published in August 2008 a list of over 1,200 missing persons in Nepal, including 213 persons who were disappeared by the State or the CPN-M or remain unaccounted for in the context of the conflict from Bardiya District. It called for the parties to the conflict to inform the families of the fate of these persons. In June 2008, NHRC sent recommendations to the Government that it establish the fate and whereabouts of the disappeared and provide the families of the disappeared with 100,000 rupees interim relief, in several cases of disappearances in Bardiya District.

In addition, OHCHR has repeatedly called for hundreds of conflict-related disappearances to be addressed in line with international standards. As previously indicated, in May 2006 the Office published a report on the arbitrary arrest, torture and disappearance of at least 49 people held by the Bhairabnath Battalion in Maharajgunj, Kathmandu, in late 2003 and early

⁸⁹ Op. Cit.

2004. The NA set up a Task Force to look into the allegations made in the report. Apparently based almost exclusively on interviews with military personnel, its report, which was never sent directly to OHCHR, concluded that it was unable to find evidence that torture and disappearances had taken place. The Government has never fully responded to the allegations contained in the report, although the NA provided information on 12 cases, some of whom OHCHR considers to be still disappeared.

During her visit to Nepal from 21 to 24 January 2007, the UN High Commissioner for Human Rights met with relatives of the disappeared in Bardiya District and reiterated to the Government the need to clarify the fate and whereabouts of the disappeared, and to ensure accountability and reparations. Thus far, the Government has not made serious efforts to do so and has so far failed to implement the 2007 Supreme Court ruling which should have led to extensive progress in addressing the rights of the relatives to truth, justice and reparations.

IX.ii: Decision of the Supreme Court of Nepal

In June 2007, the Supreme Court of Nepal issued a ground-breaking decision in response to writ petitions of *habeas corpus* relating to dozens of disappearance cases, among them four cases of those who disappeared in Bardiya District: Jagana Tharu, Hariram Chaudhari, Tateram Tharu, and Shri Ram Tharu.

The ruling ordered the Government to:

- Establish a commission of inquiry on conflict-related disappearances in compliance with international standards;
- Enact a law to criminalise enforced disappearances in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance;
- Prosecute those responsible for disappearances; and
- Provide compensation to victims' families.

In relation to the establishment of a commission, the Supreme Court found that the existing Inquiry Commission Act, 1969, was not intended as a basis for the conduct of inquiries pertaining to disappearances. Consequently, it ordered the enactment of a law including provisions on the establishment of a separate commission with respect to disappeared persons, and endorsed the *Criteria for a Commission of Inquiry on Enforced Disappearances* which OHCHR had prepared as guidelines.

In relation to compensation, the Supreme Court specifically ordered the Government to provide the families of the disappeared with interim relief pending legislation on compensation and clarification of the fate of their relatives. It made clear, moreover, that such interim relief should be provided “with the limited purpose of helping the victims’ families bear the pains suffered by them while seeking justice”, on the condition that it would not affect the amount and nature of the remedy to be provided in accordance with a comprehensive law on disappearances and any subsequent investigations.

The Court’s decision, although a significant step towards recognising the rights of victims of disappearance and their families, has not been implemented by the Government except for the disbursement of some interim relief to a limited number of individuals. A second Supreme Court ruling, issued on 27 November 2007 in response to *habeas corpus* petitions submitted in 2003 and 2004 on behalf of five of those who disappeared in Bardiya District, also ruled that immediate compensation should be paid. The five were Raj Kumar Tharu (from Badalpur VDC), Raj Kumar Tharu (from Manpur Tapara VDC), Bam Bahadur Shahi, Shreeram Chaudhari and Hirasingsh Batha Magar. The ruling also ordered the Government to launch proceedings by “immediately subjecting the then chiefs of the concerned offices who were involved in illegally arresting and disappearing them, and the employees thereof, to departmental [internal] action if they are deemed to be punished.”

IX.iii: State obligations and responses regarding truth, justice and reparations

IX.iii.i: Truth

Despite repeated stated commitments by the Government and political parties, as well as the Supreme Court order, there has been no credible, competent, impartial and fully independent investigation into disappearances in Nepal, and families of the disappeared have not been provided the truth regarding the fate of their disappeared relatives. As indicated in a previous chapter, State efforts have often rather aimed to mislead and cover up than to clarify the fate of those who disappeared in Bardiya and elsewhere.

Both IHL and international human rights law have recognised the right of victims of disappearance (including families) to truth concerning the disappearances. Under customary IHL, each party to an armed conflict must take all feasible measures to account for persons reported missing as a result of the conflict, and must provide their family members with any

information it has on their fate⁹⁰. This obligation is binding on both the Government of Nepal and the CPN-M. In relation to the State's obligations under the ICCPR, the Human Rights Committee, the international monitoring body of the ICCPR, has recognised that a family member has the right to know what happened to a close relative who is disappeared⁹¹, and has called upon States to take all pertinent measures to allow the victims of human rights violations, including disappearances, to find out the truth about the violations.⁹²

More recent human rights instruments have explicitly recognised a victim's right to truth. The International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the UN General Assembly in 2006 but has not yet entered into force, states that each "victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person". This is consistent with statements in such instruments as the UN General Assembly Resolution, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*,⁹³ that victims have a right to access to relevant information concerning violations of international human rights and humanitarian law. The UN *Updated Set of Principles to Combat Impunity*⁹⁴ specify that the families of the disappeared have the right to know the truth about the fate of their relatives, including the circumstances in which enforced disappearances and other violations took place. They stipulate that, to give effect to this right, States must take appropriate action, which may include the establishment of a competent, impartial and independent commission to establish the facts surrounding violations and to prevent the disappearance of evidence.

There has also been recognition of a collective dimension to the right to truth – recognising the interests of the community in also knowing the truth of violations. The *Basic Principles and Guidelines on the Right to a Remedy and Reparation* state there should be a full and public disclosure of the truth, to the extent that such disclosure does not cause further harm to victims, their relatives, witnesses or those persons who have assisted the victim.

The efforts of the Nepalese Government and parties to political agreements have been limited with regard to providing the truth. As indicated previously, in May 2006, a one-person

⁹⁰ ICRC Study on Customary IHL, Rule 117, pp 421-7.

⁹¹ *Quinteros v. Uruguay*, Communication No. 107/1981 (21 July 1983), UN Doc. CCPR/C/OP/2 at 138 (1990).

⁹² Concluding Observations of the Human Rights Committee: Guatemala, CCPR/C/79/Add.63 (3 April 1996).

⁹³ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the General Assembly in December 2005.

⁹⁴ *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (which were recognised in a consensus resolution of the UN Commission on Human Rights in 2005).

committee, consisting of Joint Secretary Baman Prasad Neupane, was established by the Home Ministry with the task of clarifying the status of 776 persons who reportedly disappeared⁹⁵. The Committee published its findings in July 2006, stating that the fate or whereabouts of more than a hundred disappeared persons had been established as either “released” or “killed in crossfire”, including a number of cases from Bardiya District. In a further 602 cases, the persons remained unaccounted for. Due to its lack of legal status, limited authority and lack of cooperation from the NA, the Committee said it did not have the capacity to carry out investigations.⁹⁶

In response, on 25 July 2006, the Foreign Relations and Human Rights Committee of the Interim Parliament-Legislature directed the Government to form an “all-powerful commission to solve the issue of disappearances once and for all”. As per the directive, the commission should be made up of parliamentarians, civil society members and human rights defenders, and should be given the authority to investigate the acts of the NA, identify perpetrators and recommend punishment for those found guilty. The directive has not been implemented to date.

The Seven-Party Alliance (SPA) and the CPN-M have also made repeated commitments to take measures to address the issue of disappearances. For example, an agreement between the SPA and CPN-M on 8 November 2006 included a provision to form a “high-level commission to investigate and publicise the whereabouts of citizens that were alleged to be disappeared by the State and the Maoists”. These provisions were reaffirmed in the Comprehensive Peace Agreement of November 2006, which obliged the parties to make public within 60 days the names of those disappeared or killed during the conflict and inform the family members. Such commitments are reflected, moreover, in the 2007 Interim Constitution which states that it is a responsibility of the State “to provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of persons who were the subject of enforced disappearance during the course of the conflict”.

Shortly after the Supreme Court decision of June 2007, the Government announced the formation of a commission of inquiry into disappeared persons⁹⁷. However the initiative was

⁹⁵ According to the report, 570 cases were reported by the NHRC, others by human rights organisations and relatives of the disappeared.

⁹⁶ The Home Ministry had also set up a five-member committee to look into disappearances, known as the Malego Committee, in July 2004, but the committee faced serious criticism due to its limited mandate and failure to effectively address the issue.

⁹⁷ On 21 June 2007, the Council of Ministers took a decision to form a Commission of Inquiry on Disappearances pursuant to the Commission of Inquiry Act. The Commission was to be comprised of former Supreme Court

suspended following widespread criticism that the commission as envisaged would not be in accordance with international standards, including those relating to its independence, powers and functions, and to public dissemination of reports, nor would it be in compliance with the Supreme Court ruling.

During late 2007 and 2008, there were successive political commitments to establish a commission on disappearances. In December 2007, a 23-point agreement among members of the parties called for the formation of the commission within a month, a commitment repeated in June 2008. In September 2008, the establishment of the disappearances commission, together with a Truth and Reconciliation Commission, was included as a priority within the announced Government programme. As this report was being finalised, welcome moves were made by the Government to realise these commitments. In mid-November 2008, draft legislation on disappearances (including the establishment of a Commission) was shared by the Ministry of Peace and Reconstruction and approved by Council of Ministers on 19 November 2008. It is expected to be referred to Parliament and debated in the coming session. While OHCHR notes the desirability of some technical amendments to the draft legislation to improve compliance with international standards, it recognises that the release and approval of the draft legislation by the Government is a significant step in responding to the victims' right to truth.

In July 2007, the Government published a draft bill on the establishment of a Truth and Reconciliation Commission. A revised draft was published in January 2008, following three regional consultations. According to the Ministry of Peace and Reconstruction, it intends to conduct further regional, thematic and cluster districts consultation meetings on the bill, including a consultation in the Far-Western Region scheduled for 18 and 19 December 2008. OHCHR has provided its comments on means of improving the consultation process and the draft bill, and welcomes the Government's stated commitment to having further consultations on a Truth and Reconciliation Commission.

IX.iii.ii: Accountability and Justice

Despite Nepal's obligations under international law to investigate and prosecute cases of disappearance, there has been complete impunity for perpetrators of disappearances in

Bardiya District and other areas of Nepal and no-one has been prosecuted. These obligations are to be found – *inter-alia* - in the ICCPR, as well as customary international law⁹⁸.

In considering the implications of the ICCPR, the Human Rights Committee has stated: “Where the investigations ... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognised as criminal under either domestic or international law, such as ... enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations.”⁹⁹

The Committee has thus stressed, in the same paragraph, that where public officials or State agents have committed violations: “the States Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties...and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility.” The Committee has noted that other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. Failure to investigate and bring to justice perpetrators can give rise to a separate breach of the Covenant. The Committee has called upon States to take action to bring to justice persons responsible for disappearances in individual communications brought before it.¹⁰⁰

In its 2007 ruling, referring particularly to the ICCPR and the Convention against Torture, the Supreme Court of Nepal concluded that “Even though complaints were made, the State did not fulfil its obligation of investigating the cases of disappearances impartially and independently.”

The Human Rights Committee in its recently released Views in the communication of *Sharma v Nepal* (an enforced disappearance case), expressed the situation as follows: ‘While the

⁹⁸ The discussion in this section focuses on obligations arising under international human rights law. However, similar obligations exist with respect to international humanitarian law: in particular, under customary international law, there is a duty to investigate war crimes committed in non-international armed conflicts and to prosecute the suspects if appropriate: ICRC Study on Customary IHL, Rule 158, pp 607-611.

⁹⁹ Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on State Parties to the Covenant* (2004), paragraph 18.

¹⁰⁰ *Quinteros v. Uruguay*, *op cit* footnote 85.

Covenant does not give individuals the right to demand of a State the criminal prosecution of another person, the Committee nonetheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations. The State party is also under an obligation to take measures to prevent similar violations in the future'.¹⁰¹

As specialised instruments have been developed on enforced disappearance, the requirement to criminalise enforced disappearance and take measures to investigate and prosecute has been explicitly stated. The International Convention for the Protection of All Persons from Enforced Disappearance requires State parties to hold criminally responsible any person who “commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance,” as well as a person who is criminally responsible for an enforced disappearance pursuant to the doctrine of superior responsibility.¹⁰² States parties must “make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.”¹⁰³ Whilst Nepal has not yet ratified this Convention, it can be argued that Nepal has similar obligations under customary international law. The UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, also state: “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”

Similarly, the UN *Updated Set of Principles to Combat Impunity* require States to investigate enforced disappearances and other violations of human rights and IHL, and to take appropriate measures to ensure that those responsible for enforced disappearance and other serious crimes under international law are prosecuted. It should also be recalled that Nepal as a party to the Convention against Torture has specific obligations with respect to torture: including to criminalise acts of torture, make the offences punishable by appropriate penalties and in relation to alleged perpetrators, either extradite the suspect or “submit the case to its competent authorities for the purpose of prosecution.”¹⁰⁴

¹⁰¹ *Sharma v Nepal*, Communication No 1469/2006 (6 November 2008), UN Doc CCPR/C/94/D/1469/2006, para 9.

¹⁰² *Id.*, article 6.1.

¹⁰³ *Id.*, article 7.1.

¹⁰⁴ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 4(1) and (2), 5(2), and 7(1).

Both the *Set of Principles* and the Convention on Enforced Disappearances clearly specify that accountability is not restricted to perpetrators responsible for individual acts but also to superiors who ordered, covered up, acquiesced in or should have known about the violations and did nothing to prevent them (“superior responsibility”). The Rome Statute of the International Criminal Court itself includes provisions defining the criminal responsibilities of those who ordered crimes covered by the Statute as well as the criminal responsibilities of military commanders who knew about and failed to prevent crimes by those under their command.

Enforced disappearance or actions tantamount to enforced disappearance have not been made criminal offences under Nepalese law, although draft legislation criminalising disappearances was released by the Government in November 2008. An amendment to the Country Code criminalising abduction and hostage-taking came into force in November 2007 and provides a maximum sentence of 15 years’ imprisonment for those found guilty. In the absence of a law criminalising disappearances, attempts to obtain justice have relied upon the general criminal prohibitions on homicide¹⁰⁵ as a framework for the investigation and prosecution of those incidents that can be proven to have resulted in death. These efforts have faced serious obstacles. Even though Nepalese law¹⁰⁶ requires the NP to conduct investigations into such crimes, police have been unwilling to register First Information Reports (FIRs) and conduct proper investigations¹⁰⁷. Reform is thus needed at the level of both law and policing practices in relation to disappearance cases. OHCHR is thus recommending the formation of special investigation/prosecutorial units to deal with such cases.

OHCHR is aware of only one FIR that has been registered in relation to a disappearance case in Bardiya District, that of 29-year-old Keshar Bahadur Basnet of Neulapur VDC, who was reportedly arrested by the RNA on 11 March 2002, detained in Thakurdwara RNA barracks and subsequently disappeared. The victim’s name was included in the Neupane Committee report on disappearances published in July 2006, which stated that, according to the NA, the victim was killed in crossfire in April 2002. OHCHR’s investigations have, however, shown that this was not the case and that he disappeared following arrest. Although the whereabouts of Keshar Bahadur Basnet remains unknown, his family subsequently tried to file an FIR with the charge of “killing after arrest”, because of the absence of a crime of disappearance as

¹⁰⁵ Country Code, Chapter on Homicide.

¹⁰⁶ State Cases Act 1992.

¹⁰⁷ Human Rights Watch and Advocacy Forum: *Waiting for Justice, Unpunished Crimes from Nepal’s Armed Conflict*, September 2008.

mentioned above. The NP initially refused to register the FIR, which was submitted to the Bardiya DPO on 14 February 2007. It was eventually registered on 1 March 2007, following an instruction from the CDO, who also gave an order to investigate the case. However, the NP has not actively done so.

A further potential impediment to the prosecution of disappearance cases is that the 2006 Army Act requires that NA personnel accused of the act “defined as an offence” of disappearance be tried by a Special Court Martial. The Special Court Martial is to be comprised of an Appellate Court Judge, the Secretary of the Ministry of Defence and the Chief of the NA’s Legal Department and its findings may be appealed before the Supreme Court of Nepal. Since disappearances are not currently defined as criminal offences under the domestic law, there are threshold problems in establishing the jurisdiction of Special Court Martial in such cases. Furthermore, international standards stipulate that cases such as enforced disappearance should be tried before civilian courts, rather than subject to military justice. As stated in the *Updated Set of Principles to Combat Impunity*, the jurisdiction of military tribunals should be limited to specifically military offences and not be used for human rights violations which should come under the jurisdiction of domestic or international/internationalized courts.

IX.iii.iii: Remedies, including reparations

It is a fundamental principle of international human rights law that victims of human rights violations have a right to a remedy. The ICCPR recognises that any person whose rights have been violated has the right to an effective remedy, “notwithstanding that the violation has been committed by persons acting in an official capacity”.¹⁰⁸ State parties are required to ensure that persons claiming their remedy have their rights determined by competent judicial, administrative or legislative authorities, and to develop the possibilities of judicial remedy, as well as to ensure that such authorities enforce the remedies.¹⁰⁹

The Human Rights Committee has further expanded upon the meaning of the obligation to provide “accessible and effective remedies”. In a General Comment on the topic, the Committee, in addition to referring to the need to investigate allegations and cease any ongoing violations, has highlighted the importance of appropriate reparations including restitution, rehabilitation and measures of satisfaction. The latter include public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as

¹⁰⁸ ICCPR, Article 2(3)(a).

¹⁰⁹ ICCPR Article 2(3)(b) and (c).

well as bringing to justice the perpetrators of human rights violations.¹¹⁰ State parties may also be required to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.¹¹¹

This standard of providing remedies (including reparations) for victims is similarly stressed in the Convention against Torture (Article 14) as well as more general UN documents such as the UN *Principles to Combat Impunity*, the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation* and instruments specific to enforced disappearance.¹¹² The UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation* in outlining victims' rights to remedies refers explicitly to both remedies for gross violations of international human rights law and serious violations of international humanitarian law. The Basic Principles also reaffirm the expanded scope of reparations to include non-monetary forms of redress and outline ways of implementing reparatory measures.

In Nepal, in accordance with the June 2007 decision of the Supreme Court, the Government has reportedly provided interim relief of 100,000 rupees to the families in the cases considered by the Court, including families of four persons disappeared in Bardiya District. In addition, following a second ruling in November 2007, also referred to above, immediate monetary compensation was to be paid to the families of five others who disappeared in Bardiya District. The majority of relatives of the disappeared in Bardiya District have thus far received no economic or other support from the Government. However, according to the Ministry of Peace and Reconstruction, in November 2008, the Council of Ministers decided to provide interim relief of 100,000 rupees to all families of the disappeared. Guidelines for payment are reportedly being developed by the Ministry.

There remains a need for a programme ensuring the systematic provision of the full range of appropriate reparations through consultations with families of the disappeared. In addition to compensation, such reparations could include medical care, social services, a public apology, commemoration of the victims and institutional reforms. In demands submitted to the authorities and meetings with OHCHR, families of the disappeared in Bardiya District have stressed their need not only for compensation and interim relief to ensure their basic needs are met, but also for public memorials for their disappeared relatives, public recognition of the harm the families of the disappeared have suffered, and vocational training and support for

¹¹⁰ General Comment No 31, op cit, footnote 6, paragraph 16.

¹¹¹ Ibid, paragraph 19.

¹¹² See Article 19, Declaration on the Protection of all Persons from Enforced Disappearance; Articles 24(4) and (5) of the International Convention for the Protection of All Persons from Enforced Disappearance.

education. At the time of publication of this report, the Ministry of Peace and Reconstruction was reportedly preparing guidelines on compensation to conflict victims, including families of the disappeared.

CHAPTER X: CONCLUSIONS

Disappearances and abuses linked to them are among the most serious violations of Nepal's international human rights and humanitarian law obligations. Lack of information about the fate of the victims prolongs the agony of their relatives over many years as they search for information. This report has already outlined the obligations of the State to respond to victims' right to truth, justice and reparations, including taking immediate steps to reveal the fate/whereabouts of the disappeared, investigate and prosecute those responsible and providing adequate reparations to victims of disappearances.

The story of the disappeared in Bardiya started to emerge more fully after May 2006, when ceasefires provided greater and safer space for relatives and witnesses to come forward. As indicated, OHCHR has received information on over 200 cases of enforced disappearance in Bardiya District, 156 of which OHCHR was able to investigate. The victims disappeared after arrest by the security forces, particularly the RNA, who detained and systematically tortured any individuals suspected of links with the CPN-M, whether or not there were grounds for those suspicions. Most of those arrested were eventually released, in many cases after temporarily being subjected to enforced disappearance. The fate and whereabouts of the individuals whose cases are documented in this report remain unknown however.

The majority of those who disappeared were from the Tharu community, whose members have been extremely marginalised and discriminated against over the years, making them particularly vulnerable. Others who disappeared were also from amongst the most disadvantaged groups. Many were targeted by the security forces because they were perceived as supporting the CPN-M. The families of the victims mostly lacked the resources and access to the authorities in order to be able to advocate effectively for their loved ones to be released or brought before a court. Human rights defenders who intervened on such cases at the time did so at considerable risk.

According to the information gathered, three RNA units were involved in arbitrary arrests, unacknowledged detention, and enforced disappearances: Bhimkali Company, Barakh

Company (which was upgraded to a battalion during the period) and Ranasur Company – all of which fell under the command of the 4th Brigade and the Western Division of the RNA. As has been shown in this report, torture was systematic at Chisapani Barracks. Information gathered by OHCHR indicates that a number of the disappeared were secretly killed in custody after arrest by the security forces. Given the scale of these abuses and the failure to take necessary action to prevent them, the leadership of the Western Division must bear considerable responsibility. There is also a need to establish broader chain of command responsibilities within the hierarchy of the security forces and the Government of the time. OHCHR further documented attempts by the NA to cover up what happened to some of the detainees by providing false information about their fate. The involvement of the NP and APF in a small number of the enforced disappearances also requires investigation.

In addition, OHCHR documented 14 cases of actions tantamount to enforced disappearance by the CPN-M, some of whom were reported to have been tortured. Those targeted by the CPN-M were accused mostly of being informers or “enemies of the revolution”. Following OHCHR’s investigations into the 14 cases, the party leadership acknowledged to the Office that 12 persons had been killed and gave assurances that they would make efforts to locate the bodies and inform family members. While this acknowledgement is a positive step towards determining the fate of the disappeared, the full circumstances of the abductions and killings, as well as the whereabouts of the remains must be disclosed and those responsible for the killings – both political cadres who may have ordered the killings and any PLA or other Maoist members who carried out the killings - must be identified and held accountable. The fact that such abductions and killings were described as part of party policy and “action” also requires further investigation into hierarchical responsibilities.

The clarification of the whereabouts and fate of those who disappeared either after arrest by the security forces or abduction by the CPN-M, as well as the location of their remains, must be an urgent priority of the Government in order to address the victims’ right to the truth and respond to the ongoing suffering of families. It is therefore a positive development that in mid-November 2008, draft legislation on disappearances (including the establishment of a Commission) was released by the Government and approved by the Council of Ministers. The establishment of the Commission offers the potential for making a major contribution to clarifying conflict-related disappearances, including those documented in this report. The Commission must, however, be credible, independent and impartial, with sufficient resources to accomplish its tasks effectively.

The disappearances investigated in this report represent serious violations of international human rights obligations and international humanitarian law. Under international law, the State of Nepal has an obligation to fully investigate and bring to justice those responsible for such violations. This report has highlighted the on-going impunity enjoyed by the perpetrators of these violations. As explained above in the chapter referring to the legal framework, disappearances often involve alleged acts which may amount to serious violations of international humanitarian law. In the cases examined in this report, there appears to be evidence of acts by both the RNA and CPN-M which could amount to war crimes: in particular in the serious allegations of torture and ill-treatment, murder and sexual violence.

Under international law, there can be no amnesty for enforced disappearances and war crimes. It is therefore incumbent upon the Government to take measures to fulfill its obligations to ensure the right to justice for the victims of disappearance and their relatives. An immediate major step is to pass a law to criminalise disappearances and carry out thorough criminal investigations, with a view to instituting prosecutions against those responsible. The release of draft legislation criminalising disappearances in mid-November 2008 is a welcome step in this regard. Given the political nature of these offences (within the context of the armed conflict) and the need to ensure faith in the investigation and trial process, specific steps should be taken to ensure independent investigations and prosecutions. In both the judicial and non-judicial processes of accountability, the safety and security of victims and witnesses needs to be ensured.

Reparations are also an urgent priority. Many families of the disappeared, already from amongst the poorest and most disadvantaged communities, suffered further economic hardship with the loss of the breadwinner in the family, and their enjoyment of economic and social rights was impaired. The majority of the relatives have received no financial or other support whatsoever from the Government. The November 2008 Council of Ministers decision to provide interim relief to families of the disappeared is therefore a welcome step. There remains a need for a comprehensive and transparent programme providing the full range of appropriate reparations through consultations with families of the disappeared.

Finally, this report highlights that one of the root causes of conflict in Bardiya District which underlies the disappearances was the question of land distribution and access to economic resources for marginalised communities, including the Tharu indigenous group. The Comprehensive Peace Agreement required the parties to develop a land reform programme. At the end of November 2008, the Government announced that it would form a high-level land reform commission within two weeks. As the UN Special Rapporteur on the situation of

human rights and fundamental freedoms of indigenous peoples stated during his recent visit to Nepal, the peace process has seen welcome progress in relation to the rights of indigenous and marginalised groups, including increased political representation in the Constituent Assembly and the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples in August 2007. A number of positive measures have also been planned for the benefit of marginalised groups, including in the framework of the constitution-making process and in the form of reserve quotas in the civil service and security forces. Further consolidated and focused measures, including securing rights to land and resources, are urgently needed to address the history of marginalisation that lies at the root of the conflict and the violations documented in this report.

Repeated promises of action by the parties have led to hope and then despair as these promises remain unfulfilled. As the newly-elected Government of Nepal begins the process of transforming Nepal after years of conflict, dealing with past violations of the kind documented in this report will be a critical challenge. This is not only important in terms of ensuring the rights to truth, justice and redress for the victims of disappearance and their families, but for laying a stronger foundation for the rule of law in Nepal. In his address to the UN General Assembly on 26 September 2008, the Prime Minister assured that his Government would end the environment of impunity in Nepal. In accordance with its mandate, OHCHR stands ready to assist the Government in this important undertaking.

CHAPTER XI: RECOMMENDATIONS

These recommendations, with regard to disappearances both by the State and by the CPN-M, are primarily directed at the CPN-M-led Government and other State bodies because the primary responsibility for addressing such violations falls to those institutions. However, a small number are directed to the CPN-M party itself because of its dual obligation as a party to the conflict to provide information on the fate of the disappeared, and to cooperate with any investigations to hold those responsible accountable.

In particular, as immediate steps, OHCHR is recommending the setting up of a commission of inquiry to look into disappearances, the criminalisation of disappearances and the provision of interim relief to the families of the disappeared.

Recommendations to the Government

OHCHR recommends that the Government:

Supreme Court decision

- Fully implements the Supreme Court decision of June 2007, which ordered the Government to:
 1. Establish a commission of inquiry on conflict-related enforced disappearances in compliance with international standards;
 2. Enact a law to criminalise enforced disappearances in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance and other international legal standards;
 3. Prosecute those responsible for enforced disappearances; and
 4. Provide compensation to victims' families.

Commission of Inquiry into Disappearances (the commission)

- Ensures there is genuine consultation, including with families of the disappeared and with other victims, on the establishment and functioning of the commission.
- Ensures the commission investigates disappearances in Bardiya District, including by visiting the district and ensuring that relatives of the disappeared and other witnesses can give evidence to the commission in a safe environment.
- Makes public the findings of the investigation, including the circumstances in which persons disappeared. These should be widely disseminated and communicated to the families of the disappeared, in order to provide them with the truth regarding the fate and whereabouts of their disappeared relatives.
- Ensures the commission has the necessary powers to address the practical needs of families of disappeared persons, such as the power to issue death certificates or other documentation to overcome obstacles to remarriage, inheritance or other benefits.

Criminalisation of disappearance and related international crimes

- Ensures that legislation criminalising disappearance recognises it as a continuous offence, in line with international human rights standards.
- Ensures that any statutory limitation for the criminal offence of disappearance is of long duration and is proportionate to the extreme seriousness of this offence; and that it commences only from the moment when the offence of disappearance ceases, taking into account its continuous nature.

- Refrains from making or enacting amnesty laws or similar measures, whether legal, administrative or judicial in nature, that could exempt perpetrators of disappearances from criminal proceedings.
- Takes similar steps in relation to the criminalisation of related international crimes, in particular torture, war crimes and crime against humanity of enforced disappearance.

Criminal investigations and prosecutions

- Establishes one or more special investigations and prosecutions unit(s), under the leadership of a special prosecutor with functional autonomy within the Office of the Attorney General. The unit(s) should be comprised of competent and impartial trained staff, to conduct prompt and thorough investigations into alleged crimes related to disappearances, and to bring charges against persons against whom there is evidence of criminal responsibility, including chain of command responsibility, to ensure they are brought to justice before a civilian court.
- Concerning those disappeared persons confirmed dead, takes all measures to determine the locations of gravesites and put in place the technical structures and expertise required to exhume bodies in an appropriate way, confirm identities and return remains to relatives. Given that victims' remains are crucial evidence, in terms of official investigations into cause of death and potential criminal responsibility, all exhumations should be conducted within the framework of an official investigation.
- Ensures that victims of disappearances and their relatives are provided with legal aid where needed.
- Guarantees protection and security against ill-treatment, intimidation or reprisal, for witnesses, relatives of the disappeared, human rights defenders and others investigating or carrying out advocacy regarding disappearances and other human rights violations. Sets up a witness protection scheme for those cooperating with official investigations.
- Pending the setting up of a commission and the initiating of any other investigations, issues orders to all security forces that any evidence which may shed light on these disappearance cases, including detention logs, records of interrogations, burial sites, must be preserved with the help of forensic experts, and chain of custody established.

Destruction of such evidence should be treated as a criminal offence amounting to obstructing the course of justice.

Reparations

- Publicly acknowledges that the security forces were involved in widespread disappearances, including those in Bardiya District.
- Establishes a transparent, well-publicised and impartial process to ensure that the identification of families of the disappeared and that the provision of interim relief is conducted in a fair manner. The process must ensure that women relatives receive and are able to benefit fully from the relief due to them.
- Provides all families of the disappeared, including those in Bardiya District, with interim relief of 100,000 rupees, in line with the interim relief provided thus far to families of the disappeared in the cases examined by the Supreme Court in June 2007, to ensure as a priority that the families' basic needs are met.
- Introduces legislation ensuring the right of victims (i.e. any individual who has suffered harm as the direct result of a disappearance, including relatives of the disappeared) to reparations for material and moral damage suffered and prompt, fair and adequate compensation on the basis of consultations with victims. These should include public memorials, public recognition of the harm families of the disappeared have suffered, vocational training and support for education for relatives of the disappeared, as demanded by victims' groups.
- Ensures that reparation programmes specifically address the economic hardship and social discrimination faced by female relatives. In particular, any kind of monetary remuneration should be paid in the form of pensions instead of lump sums in order to avoid putting women in an even more vulnerable social situation.
- Undertakes sensitisation campaigns to address current traditions and stereotypes which stigmatise and marginalise widows.
- Ensures that reparations for those victims who were disappeared and subsequently released from detention include the provision of medical care and psycho-social assistance as needed.

- Addresses violations of social and economic rights, including the right to non-discrimination and land rights, which impacted on the relatives of the disappeared and which were among the root causes. This should include ensuring the implementation of the laws regarding resettlement of former *kamaiya*.

NHRC

- Fully consults with NHRC in the development of any mechanisms to address the issue of conflict-related disappearances.
- Ensures that NHRC's investigations and recommendations on disappearances, including those in relation to Bardiya disappearance cases which have been submitted to the Government, are given due consideration by any commission of inquiry and official investigations into disappearances.

Detention records

- As recommended by the WGEID in 2005, and as a preventive measure, ensures the establishment of a system of accessible, complete, accurate and fully up-to-date lists of detainees held in any detention centre, and that the relevant information is shared with families of the detainees, their lawyers and with civilian authorities, including the NHRC. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees.
- Ensure that all detention records and other operational logs of places where disappearances are believed to have occurred be made available to the courts, any commission of inquiry or other mechanism set up to look into cases of disappearances.

Vetting

- Ensures that those security personnel implicated in disappearances, individually or through command (superior) responsibility for units involved, including RNA personnel deployed to Bhimkali Company, Barakh Company and Battalion, and Ranasur Company between December 2001 and January 2003, are not proposed for participation in United Nations peacekeeping missions pending a proper investigation to identify those responsible, and/or for training abroad.

- Sets up a mechanism to ensure that those members of security forces who commit serious human rights and IHL violations do not remain within, or in the case of former CPN-M combatants are not incorporated into, the security forces.

Ratification of treaties

- Ratifies the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly in December 2006.
- Ratifies the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (2006), which requires, *inter-alia*, the setting up of one or more independent national bodies to regularly visit detention centres with a view to preventing torture.
- Ratifies the Rome Statute of the International Criminal Court.

WGEID

- Invites the WGEID to conduct a visit to Nepal in follow-up to its 2004 visit.

Recommendations to the Security Forces

OHCHR recommends that the security forces (NA, NP and APF):

- Fully cooperate with any commission of inquiry and/or special investigative and prosecutorial units which may be set up as well as with other official investigations into disappearances, including by giving prompt access to premises, witnesses and suspects, and full disclosure of all documents.
- As required under international law, conduct prompt and proper internal investigations to establish the fate and whereabouts of persons allegedly disappeared by their respective security force agencies, inform families of the disappeared of their findings, and pass all information to any commission of inquiry and/or special prosecutorial units for further investigation and necessary action.
- Take appropriate disciplinary action, including by suspending those security force personnel implicated individually or through command responsibility in enforced disappearances and related violations in Bardiya and other districts. Such action should also include dismissing anyone found to be responsible.

- Ensure that those security force personnel implicated in enforced disappearances and related violations, either individually or through command responsibility for units involved, are not proposed for participation in United Nations peacekeeping missions pending a proper investigation to identify those responsible.
- As recommended by the WGEID in 2005, as a preventive measure, ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees, their lawyers and with civilian authorities, including the NHRC. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees.

OHCHR recommends that the NP:

Criminal investigations

- Ensures the access to justice of victims by registering FIRs promptly in line with its obligations under domestic law.
- Pending the setting up of a commission of inquiry and/or a special prosecutorial mechanism to investigate disappearances, conducts prompt and thorough investigations into alleged crimes related to disappearances, so that persons against whom there is evidence of criminal responsibility are brought to justice before a civilian court.

Recommendations to the CPN-M

OHCHR recommends that the CPN-M:

- Fully cooperates with any commission of inquiry, special investigative/prosecutorial units and any other official investigations into disappearances, including by giving prompt access to premises, handing over witnesses and suspects, and full disclosure of documents and any other relevant information.
- In relation to those disappeared persons who are found to have been killed after abduction by the CPN-M, instructs the leadership at district level to inform the families of the victims in writing that their relatives were killed by the CPN-M, with

information on when, where and why they were killed. Such information must also be handed over to State authorities for further action.

- Instructs the CPN-M at the district-level to establish the locations of the remains of the victims and inform their families of the findings in writing, at the same time ensuring that any exhumations are only conducted within the framework of an official State investigation with those legally authorised to do so.
- Suspends those CPN-M members implicated, directly or through command responsibility for units involved, and hand them over to the State authorities for investigation.
- Dismisses from the party those CPN-M members found to be responsible for disappearances.