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Excellency,

I am writing in the context of recent developments concerning disappearances, illegal detention and torture allegedly committed by personnel from the then Royal Nepalese Army 10th Brigade (hereinafter referred to as the NA 10th Brigade) at Maharajgunj barracks, Kathmandu in 2003 and 2004.

The Nepalese Army (NA) has recently made public statements claiming that it has clarified the allegations surrounding its responsibility for disappearances, torture and illegal detention committed by the NA 10th Brigade at the Maharajgunj barracks in 2003 and 2004¹.

OHCHR is deeply concerned both that these grave human rights violations allegedly committed by the NA 10th Brigade not been properly investigated and those responsible held accountable, and also that the NA is publicly denying responsibility and seeking to promote senior officers who were in positions of responsibility when these violations took place - most notably the recent recommendation to promote former head of the NA 10th Brigade, Major General Toran Jung Bahadur Singh, to Lieutenant General. OHCHR does not accept the NA's claim that it has clarified 12 of these disappearance cases in its High-level Task Force report of 12 June 2006.

As you may be aware, on 26 May 2006 OHCHR released a report² of its investigations into disappearances, torture and illegal arrests committed by members of the NA 10th Brigade, and in particular by members of the Bhairabnath and Yuddha Bhairab battalions, in 2003 and 2004. The objective of the report was to bring to the attention of the Government of Nepal the urgent need to establish a credible, competent, impartial and fully independent investigation into the arrest, detention, torture and fate of individuals disappeared by the NA 10th Brigade in 2003 and 2004 and ultimately into all cases of individuals who were disappeared and tortured in Nepal during the conflict.

In its 2006 report, OHCHR focused on the actions of the Nepalese Army's 10th Brigade in Maharajgunj barracks during 2003-2004 as one example of systematic violations of human rights committed by NA personnel during the conflict. The list of 49 names in OHCHR's original report reflected information OHCHR was able to gather about individuals who had reportedly been disappeared at Maharajgunj barracks and who OHCHR considered to be at immediate and grave risk of further harm. The list was not exhaustive and, Contrary to some press reports,

¹ Examples include: "An appeal not to assassinate the character of the Army", *Rajdhani National Daily*, 8 July 2009 and "Nepal Army names 12 of 49 disappeared", *Republica National Daily*, 9 July 2009.

² Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003-2004, OHCHR-Nepal, May 2006.

OHCHR's report did not reach any conclusion regarding the fate of these individuals. Rather, it urged the Government to establish a commission to clarify the reported disappearances and NA personnel responsibility for these severe violations of human rights. Since OHCHR's report was released in 2006, reports and lists of the names and number of the disappeared continue to be updated by many organisations. These include reports by the Home Ministry³, the International Committee of the Red Cross (ICRC)⁴ and the National Human Rights Commission (NHRC)⁵. The fate of some of the disappeared who were named in OHCHR's 2006 report has been clarified in some of these subsequent reports, but the vast majority remains disappeared.

OHCHR considers that the Nepalese Army, as the alleged perpetrator of these serious violations of human rights and international humanitarian law, is not the appropriate institution to investigate these allegations. As recommended in OHCHR's 2006 report as well as in OHCHR's 2008 report on conflict-related disappearances in Bardiya district, an investigation into these and other cases of disappearance and torture must be carried out by establishing a "credible, competent, impartial and fully independent investigation"⁶. Further, it is imperative that the NA fully cooperates with investigations into the actions of the NA's 10th Brigade. OHCHR regrets that the NA's cooperation with OHCHR investigations has to date been poor and has in some instances reflected a lack of good faith.⁷

OHCHR notes that it is not the only institution which the Nepalese Army has misled or denied cooperation. For example the one-man committee set up by the Ministry of Home Affairs in May 2006 to investigate disappearances, including cases from the Maharajgunj barracks, reported that the lack of cooperation from the NA was one of the contributing factors to the committee's inability to investigate the vast majority of cases reported to it.

OHCHR understands that the NA High-Level Task Force concluded in its report that it could not find any evidence that torture and disappearance had taken place at Maharajgunj barracks in 2003 and 2004 and effectively dismissed the allegations contained in OHCHR's 2006 report⁸. In its report the Task Force chose to

³ In July 2006 Baman Prasad Neupane, Joint Secretary at the Ministry of Home Affairs, presented a report after having been tasked to clarify the status of 776 persons who were reportedly disappeared.

⁴ See, for example, ICRC's 2008 Report, *Missing Persons in Nepal – The Right to Know* and 1 April 2009 updates to the report available online: http://www.familylinks.icrc.org/wfi/mis_npl.nsf/Bottin!OpenView&lang=eng

⁵ *Status Report on Individuals Disappeared During Nepal's Armed Conflict*, NHRC, Lalitpur, Nepal 2008.

⁶ *OHCHR Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003-2004*, OHCHR-Nepal, May 2006, p 67.

⁷ This includes the NA providing OHCHR with incomplete and misleading information regarding detainees during OHCHR's 2005 and 2006 investigations into the disappearances at Maharajgunj barracks. For example, the official lists of former detainees which Major Bibek Bista of Bhairabnath Battalion provided OHCHR on 30 March 2006 did not include the names of Nirmala Bhandari, Reenuka Ale Mangar and Rup Narayan Shrestha, all of whom the NA Task Force report acknowledged had been detained by the Bhairabnath Battalion.

⁸ The report has not been shared directly with OHCHR.

present only the names of 12 individuals whom the NA claimed were not disappeared.

OHCHR has conducted follow-up investigations on the NA clarifications and verified that 4 out of the 49 listed in its report have been released and that one person died in NA custody. According to OHCHR's investigation the fate of the other seven individuals named in the NA Task Force report remains unclear, despite NA claims that it has clarified their circumstances. At this stage, OHCHR considers that those seven individuals continue to be disappeared (see Annex 1). The NA apparently continues to deny its responsibility for having disappeared these individuals. It should also be noted that the NA has to date denied credible allegations of torture and illegal arrests.

OHCHR recommended in its 2006 report that those Nepalese Army officers potentially implicated directly, or responsible through the chain of command, should be suspended pending a full investigation into the NA 10th Brigade's actions. This must include an investigation into who within the chain of command directly ordered, knew or ought to have known about the serious human rights violations and grave breaches of international humanitarian law that took place and failed to take any steps to stop these actions.

To OHCHR's knowledge, neither the Army nor the Government has taken any steps to suspend or hold accountable any of the persons responsible through the chain of command, including the then Chief of Army Staff Pyar Jung Thapa; then Director General of Military Operations Kul Bahadur Khadka; then Director of Military Intelligence Dilip Rayamajhi; then Commander of 10th Brigade, now Major General, Toran Jung Bahadur Singh; then Commander of Bhairabnath battalion, Col. Raju Basnet; and the then commander of the Yuddha Bhairab Battalion. In addition to these officers there are several junior officers, including Major Bibek Bista and Captain Indibar Rana of the Bhairabnath Battalion, who should be suspended pending an investigation into their role in those serious violations.

As referred to above, in 2008 OHCHR completed a report into conflict-related disappearances in Bardiya district; the report included a comprehensive set of recommendations to the Government regarding disappearances and investigations into conflict-related crimes which equally are applicable to other instances, including those related to Maharajgunj Barracks.

OHCHR urges that action be taken as a matter of priority in relation to the following recommendations:

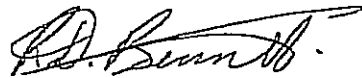
- The Government of Nepal should immediately suspend from official duty pending investigation any serving Nepalese Army personnel against whom there are credible allegations of either direct involvement or who through command responsibility knew or ought to have known about the disappearances, systematic torture and ill-treatment that were carried out in the Maharajgunj Barracks until such time as an independent and impartial investigation into their responsibility is undertaken.
- All Nepalese Army personnel who served in the Bhairabnath or Yuddha Bhairab Battalions should be screened before being deployed on UN

missions and if they are suspected to have participated in any breaches of international humanitarian law or violations of human rights, they should not be nominated for such service.

- Either a comprehensive Commission of Inquiry on Disappearances or, at a minimum, a credible, competent and fully independent ad hoc commission to investigate the disappearances, torture and illegal detentions at the Maharajgunj RNA barracks in Kathmandu in 2003 -2004 should be established. Such a commission should make available its results to any national commission of inquiry on disappearances. This investigation should also examine the role played by members of the medical profession in engaging, actively or passively, in acts which constitute participation or complicity in ill-treatment and torture,
- The civilian authorities should ensure cooperation by the Nepalese Army with any investigation being carried out either by a Commission or police authorities or other mandated national or international body.
- All necessary measures must immediately be taken to ensure that witnesses and former detainees will not be subjected to threats or intimidation.
- The findings of the investigation must be made public and widely disseminated.
- Persons against whom there is evidence of criminal responsibility should be brought to justice in front of a civilian court.

I thank you for your attention to these matters. Please do not hesitate to contact me should you wish to discuss any of these issues further.

Please accept, Excellency, the assurances of my highest consideration,



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