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Office of the High Commissioner for Human Rights, Nepal



Report of investigation into arbitrary detention, torture  
and disappearances at Maharajgunj RNA barracks,  
Kathmandu, in 2003–2004

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## Introduction

This is a report of OHCHR's investigations into the arrest, detention, torture and continuing disappearance of individuals arrested by the Royal Nepalese Army (RNA, now the Nepalese Army) and held in Maharajgunj barracks in Kathmandu in 2003 on suspicion of being linked to the Communist Party of Nepal (Maoist) (CPN-M). Most of the hundreds of individuals who were arrested by the RNA in 2003 and detained for varying periods in Maharajgunj barracks were subjected to severe and prolonged ill-treatment and torture, with a principal role played by the Bhairabnath battalion. To date, OHCHR has confirmed the identity of 49 individuals who were in the custody of Bhairabnath battalion between September and December 2003 but who remain disappeared. OHCHR's continuing investigation suggests that the actual number in this category is significantly higher. The Government of Nepal has denied any knowledge of their fate or whereabouts. Their names are among those currently listed as unresolved disappearance cases maintained by various agencies, including the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID). The Bhairabnath battalion acknowledges responsibility for the arrest and detention of 137 people during the period concerned and claims that these individuals were released or transferred after short periods of detention. However, absent from this list are at least forty-nine individuals known to OHCHR to have been held in the custody of the Bhairabnath or Yuddha Bhairab battalions. The OHCHR rejects the RNA's denial of responsibility on the basis of consistent, credible and corroborated testimony of victims and witnesses that these people were last seen in their custody in Maharajgunj.

OHCHR initiated investigations into these serious allegations soon after it set up its office in Nepal in May 2005. It did so after dozens of relatives lodged complaints at its office. After preliminary investigations, OHCHR sent a formal letter of inquiry to the RNA Human Rights Cell on 19 August 2005 requesting that the RNA clarify 19 cases of disappearances which had also been publicly reported at the time. Despite repeated reminders, to date, no response has been received from the RNA.

OHCHR has conducted more than fifty interviews with the families of the disappeared, with former detainees and with other witnesses and informants regarding their detention and torture. OHCHR teams

visited Bhairabnath and Yuddha Bhairab battalions on three occasions. It obtained an official list of all people held in detention at the army barracks since 2003. While these lists are relatively complete with regard to individuals who were held in unacknowledged detention during in 2003 and who were later acknowledged to be in RNA detention, transferred into custody elsewhere or released, at least 49 people do not appear on the list and continue to be disappeared. These names are listed in Annex A to this report along with details of their arrests.

## Background

The disappearances documented in this report occurred in 2003 following the breakdown of the second of three ceasefires in force during the 10-year-old armed conflict in Nepal. This bilateral ceasefire lasted from 29 January to 27 August 2003. Just before the start of the ceasefire, the CPN-M had killed Armed Police Force (APF) Inspector General Krishna Mohan Shrestha and his wife on 26 January 2003 while they were on a morning walk in the Patan area of the capital, Kathmandu. The Inspector General is the most senior police or APF officer killed by the CPN-M to date. The ceasefire collapsed partly as a result of the massacre of 17 CPN-M members and two other civilians in Doramba, Ramechhap District, on 17 August 2003. On 28 August 2003, Colonel (Col.) Kiran Bahadur Basnet was assassinated in his Kathmandu residence by two masked gunmen. He is one of the highest-ranking RNA officer to have been killed in the conflict.

In the months following the end of the ceasefire, violence increased sharply throughout the country, resulting in over 500 deaths within several weeks and the declaration of *bandhs* ('general strikes') and curfews in many districts by the CPN-M. The CPN-M conducted a number of operations in urban areas, including targeted attacks by small cells. The RNA conducted operations in remote areas, including the Maoist stronghold in Rolpa District. There was heightened international concern regarding increasing violations of international humanitarian law by the CPN-M as well as about increasing reports of unacknowledged detention, torture and ill-treatment by the RNA. By December 2003, on the occasion of a visit by then US Assistant Secretary of State, Christina Rocca, in which she expressed concern regarding alleged human rights abuses, RNA spokesperson Col. Deepak Gurung admitted excesses and stated that 17 soldiers had been jailed or suspended for abuses.

The pattern of RNA activity in the Kathmandu Valley during this period of escalating violence and violations of international humanitarian and human rights law demonstrates a concerted RNA operation to eliminate the CPN-M operational capacity in Kathmandu. Those arrested included, in particular, members of the All Nepal National Free Student Union (Revolutionary) (ANNFSU-R), the student wing of the CPN-M which had been declared illegal by the Government in 2002. They also included individuals not involved any violent activity or without any CPN-M affiliation. According to OHCHR's findings to date, the 10<sup>th</sup> Brigade's Bhairabnath battalion played a central role in this operation, including the arrest, detention and interrogation of CPN-M suspects. This report focuses on Bhairabnath battalion operations from September through December 2003, at that time under the command of the then Lieutenant Colonel Raju Basnet, brother of assassinated Col. Kiran Basnet.

### **Arbitrary arrest and secret detention**

Hundreds of individuals were arrested in the Kathmandu Valley and held in unacknowledged detention by the Bhairabnath battalion and by the Yuddha Bhairab battalion in Maharajgunj between September and December 2003, and thereafter. These two battalions, together with the Mahabir battalion, form part of the RNA 10<sup>th</sup> Brigade, headquartered at Balaju, Kathmandu. They shared the Maharajgunj army camp while the Mahabir battalion was based in Chhauni army camp, as they still are today.

In spite of national and international norms governing detentions of suspected insurgents, including in times of internal armed conflict, these hundreds of detentions were consistently denied by the RNA. National and international appeals for information and clarification were ignored. Detainees were hidden from inspection. The fundamental guarantee of judicial control over detentions was denied. The only official documentation available regarding any of these detentions was prepared when some of the detainees were eventually transferred to civilian custody following *habeas corpus* proceedings, mainly in 2005.

According to at least ten relatives of the disappeared interviewed by OHCHR, when they heard about the arrests, they made inquiries with state authorities, including the RNA, the Nepal Police, APF, and Home Ministry. Many filed *habeas corpus* petitions and visited various RNA barracks following clues wherever they could be found. They

received no official information. One father searched continuously for his three sons, all student members of ANNISU-R, after they were arrested from public places in Kathmandu by individuals in plain clothes between August and December 2003. He immediately informed the International Committee of the Red Cross (ICRC), Amnesty International, the National Human Rights Commission (NHRC) and local non-governmental organisations after their disappearance and filed *habeas corpus* petitions. The detention of one of his sons, Birendra Basnet, was finally acknowledged by the RNA after 19 months of secret detention in June 2005. He was released under a Supreme Court order in December 2005. The father's efforts to find the other two sons, Pushpa and Dharendra Basnet, have proven fruitless to date. Multiple witness testimony gathered by OHCHR confirms that all three sons were arrested and detained by the Bhairabnath or Yuddha Bhairab battalions.

According to former detainees, officers of the NHRC and the ICRC first visited Maharajgunj in early 2004. During this period, the RNA successfully hid detainees from detection within the Maharajgunj barracks. In one instance, in spite of a notice from the Supreme Court requesting that the NHRC investigate the disappearance of one of many ANNFSU-R student leaders arrested, Krishna KC, the RNA denied the NHRC entry into the barracks on 31 May 2004. NHRC access was finally granted by the RNA on 1 July 2004, when three detainees were identified and interviewed. OHCHR has confirmed that many others were hidden from the NHRC at this time.

Dozens of those held by both battalions during this period were eventually released due to decisions of the Supreme Court in *habeas corpus* proceedings. A typical case was that of Krishna KC. He was arrested in September 2003 and held in secret detention for 17 months by the Bhairabnath battalion before the RNA finally acknowledged he was in their custody, falsely claiming that he had been arrested on 14 February 2005 in Gorkha. Following a third *habeas corpus* petition filed by his family, the Supreme Court found that the Government was unable to offer any legal grounds for continuing the detention of Krishna KC. Notwithstanding this decision, immediately upon his release on 22 September 2005 by order of the Supreme Court, Krishna KC was re-arrested on the steps of the apex court by the security forces.

The detention of many other ANNFSU-R members who, like Krishna KC, were arrested and detained by the Bhairabnath battalion, has never been acknowledged by the RNA. Among those OHCHR has concluded were alive and under control of Bhairabnath or Yuddha

Bhairab battalions until at least 20 December 2003 are Gyanendra Tripathi, Kaushalya Pokharel and her brother, Arjun Pokharel, Rebakala Tiwari and her husband, Bhawanath Dhamala. In addition to students, many labourers, trade union members, intellectuals, and teachers, were also subject to arbitrary detention and torture and the deliberate denial of judicial supervision.

In some cases, former detainees were simply released, and many of these feature on the Bhairabnath battalion's list of eventually acknowledged detentions. Some of those released attribute their survival to a combination of three factors: a decision by the RNA regarding their innocence; political and family connections; and domestic and international attention. For instance, Amnesty International issued dozens of urgent appeals on behalf of the detainees thought to have been held in the custody of the Bhairabnath battalion during this period. Many of those on whose behalf these appeals were sent were subsequently released or transferred into civilian custody. Some of these individuals, despite threats against their lives, later gave public accounts of what happened during their unacknowledged detention and torture while held in Maharajgunj barracks. OHCHR has confirmed through independent testimony that these individuals were indeed arrested and detained by the Bhairabnath battalion.

Released individuals received direct threats from the RNA upon their release, as well as the obligation imposed by Bhairabnath battalion that they report every one to four weeks at different locations to battalion members in civilian clothes. Former detainees have been told that they would be killed if they revealed any information about their detention to anyone, particularly human rights organisations. OHCHR is monitoring their ongoing security given these direct threats to their lives and holds the RNA directly responsible for any violations of their physical and psychological integrity.

### **Improvised detention facilities in Maharajgunj RNA barracks**

The Bhairabnath and Yuddha Bhairab battalion barracks in Maharajgunj occupy a large area dominated by a central palace dating from the Rana period in Nepal, now used as RNA offices. Most of the forty-nine detainees listed in Annex 'A' were kept by the Bhairabnath battalion in the southwest corner of this compound. The rest of the compound, located to the north and northeast of the

Rana palace, was used by the members of these battalions for food storage, accommodation and training.

### **The Inquiry Tents**

On arrival at the Maharajgunj barracks, some detainees were kept temporarily in tents located in a large area directly north of the main entrance to the barracks, under the control of the Bhairabnath battalion. This temporary accommodation was usually followed by longer-term detention in a converted garage (the 'Garage') or in a converted squash court (the 'Hall'). Some detainees would later be transferred from the Garage to the Hall. There was regular movement of new and old detainees in this detention area throughout the period from September through December 2003. All of these facilities were within fifty metres of the main street. Detainees, continuously blindfolded and handcuffed, could hear the daily sound of traffic and the shouts of bus conductors ('*kalashi*'). One recalled peeking from his blindfold at the neon "Himalaya" bank sign towering above the walled barracks compound from the opposite side of the street to the west.

All of the witnesses interviewed separately by OHCHR described without any inconsistencies the relative orientation and the use made of these improvised detention places. OHCHR visited the Bhairabnath barracks twice in 2005 and confirmed the location of the squash court (the 'Hall') as described by witnesses.

As shown in the diagram in Annex B, the Hall was a large rectangular space with an adjacent toilet and a nearby 500-litre black water tank located at that time within several metres of the Hall, but since removed. The toilet consisted of a broken urinal bowl and a single hole, both of which were located next to a small room also used by a single detainee during one period. The water tank was mounted on a concrete stand with a broken, unused tap at the front. Detainees reached into the tank with a water jug through an opening in the top in order to wash their faces. The Garage was a rectangular space adjacent to the opposite or east end of the Hall and consisted of a high zinc roof mounted on metal poles with three brick walls, one improvised canvas wall, and a concrete floor. To the south of these three places, several tents of three different sizes were erected and used for temporary detention and inquiry. Next to these tents and to the Hall, a large brass, two-handled container was sunk into the ground and filled with filthy water. This was used for torture and was also an open urinal used by the guards at night. Detainees also consistently recall hearing the sounds of a temple in daily use located

southeast of the Hall, in proximity to the inquiry tents. OHCHR confirmed the presence of a Hindu temple in this location.

Below follows a more detailed description of the places where the detainees were held.

### **Mass Detention Area**

Some detainees, both men and women, were held in an open area on a surface covered in stones and pieces of glass, with a tin roof held up by metal poles. This area appears to have been separate from the other detention areas described below (the Garage and the Hall). Neither mattresses nor bedding were provided to many of these detainees. Many were forced to sleep only in their underclothes while permanently blindfolded and handcuffed. This large area was backed by an old brick wall and divided into repeated sections of twenty to forty detainees separated by canvas dividers. When detainees wished to use the single available toilet, some would have to walk blindfolded across a distance of fifty to seventy metres, feeling their way against a long wall but frequently bumping into or accidentally stepping upon fellow detainees. Guards tended to laugh on such occasions. Some of those kept in this area were transferred later to the places described below, without further contact with prisoners from the mass detention area. Others spent their entire detention period in this area. Five or more women were held in this area, some of whom have not been seen alive since 2003, including Nirmala Bhandari and a reported girl younger than 16 whose name has not been confirmed.

### **The Garage**

The Garage was divided into separate sections for male and female detainees by a vertically suspended heavy canvas stretched out across the length of the Garage. Approximately 30 male detainees slept with their heads at the canvas, making it easy to overhear conversations on either side and to communicate from time to time. These detainees exited the Garage through a door in the southwest corner and walked along the outer length of the Hall, blindfolded, in order to use the shared single toilet adjacent to the Hall. It was during this trip to the toilet that detainees from both the Hall and the Garage, as well as other detainees from nearby tents, could have chance encounters and exchange information quickly through whispers.

Some of the detainees held in the Garage were transferred to the Hall in early December 2003, to be removed days later as part of a large group of detainees who remain on the current list of unresolved

disappearance cases. Three other former detainees in the Garage, who were seen in custody at Maharajgunj after December 2003, probably died while in custody due to torture (see below). Of eight women who shared one side of the Garage at this time, only four have been seen alive after December 2003. Those who remain disappeared are Kaushalya Pokhrel, Rebkala Tiwari, Durga Bisenke and Renuka Dulal.

### **The Hall**

Witness testimony regarding the period from September to December 2003 consistently refers to a high, rectangular building, with red brick exterior, white interior walls in one single room with a narrow balcony at one end, ventilation windows near a high roof on all sides, and a single narrow exit at one end leading to an outer narrow passageway. The passageway had a staircase to the balcony at one end and an exit at the other end, through which access to the toilet was possible. The adjacent toilet could hold only one person at a time, for which there were regular and long queues. In 2005, OHCHR confirmed the existence of this squash court inside Maharajgunj army camp.

According to consistent testimony, from September to mid-December 2003, approximately 70 detainees were being kept in the Hall. In order to accommodate these numbers and to minimize the chances of communication, detainees were placed with their head and feet in alternating directions. From late November to mid-December 2003, four key detainees occupied the only cots (camp beds) used in the Hall, positioned in the four corners of the Hall: Krishna KC and Himel Sharma, the principal ANNISU-R student leaders, and Bhim Giri and Nischal Nakarmi, students involved in other aspects of CPN-M activity. Their position on cots allowed guards to watch them more closely but also gave these individuals a view, when they risked peeking beneath their blindfolds, of all detainees who came and went. Other detainees also could peek from beneath their blindfolds with relative ease, but at risk of beatings.

The Hall was used for detainees considered by the RNA to be influential members of the CPN-M. They were guarded around the clock by two to four guards on four-hour rotations positioned on an upper balcony of the kind originally designed for the viewing of squash games. At a later stage, in early 2004, a camera was installed to monitor the detainees more closely.

Also located in the Hall, and uniformly described as suffering severe torture, were subordinates of these captured Maoist leaders, as well as intellectuals and labourers who supported the CPN-M in varying

ways, members of Maoist-affiliated trade unions, and persons with no apparent involvement with the CPN-M.

At least 40 individuals were removed from the Hall in late December 2003, including some individuals transferred several days earlier from the Garage. Those remaining in the Hall after this date recall that they each then had a significantly expanded area to occupy. Over the ensuing weeks, most of those formerly located in the Garage had been transported to the Hall.

### **The Bunker**

Witnesses describe several occasions between approximately February and April 2004 in which they were marched from the Hall and the Garage to what is described as a 'bunker', a fifteen or twenty-minute walk from the main detention area. The transfer took place each time at about 3am and detainees were kept there often for an entire day, after which they were returned to the Hall. Orders to remain absolutely silent were strictly enforced with severe beatings. Handcuffs and blindfolds were tightened. Food was scarce. The Bunker area was described as a low depression in the ground. There were speculations that this place was used to hide detainees during visits by the ICRC and later on by the NHRC. Added to this speculation was the fact that the detainees were made to clean up the Hall and take all their belongings when being transferred to this Bunker.

### **High Security Tents**

By April 2004, detainees in the Hall had been moved to tents of varying sizes in a high security area within Maharajgunj at the back of the Yuddha Bhairab facilities, referred to by some former detainees as the 'PTS' area due to its proximity to the Parachute Training School. The witnesses describe a large grassy area with a growth of banana trees boxed in by a traditional large white building of Rana architecture. In 2005, OHCHR visited Maharajgunj and confirmed an area fitting this description. In this area, control over movement and communication was strictly enforced while in other respects the treatment improved, especially with more regular medical care. Some speculated that this new detention area was intended to more permanently hide the detainees from visits from outsiders, including the ICRC and the NHRC.

### **Sivapuri Army Camp (under the command of the Yuddha Bhairab battalion)**

In mid-January 2005, approximately 18 detainees were loaded in a truck and taken from the Maharajgunj high security tents to an

army camp in Sivapuri forest under the command of the Yuddha Bhairab battalion. Some individuals were left behind, including Kiran Rayamaji, who was extremely ill with an infected eye. He remains disappeared. The others journeyed to a relatively high altitude in Sivapuri forest to a residential compound with a central courtyard and adjoining rooms. This was their last collective detention place before they were eventually transferred to official facilities in acknowledged detention.

The following report focuses on conditions of detention and allegations of torture during the period from September to December 2003.

### **Torture and ill-treatment**

Torture and ill-treatment of detainees during interrogation at Maharajgunj barracks was routine and systematic, with a special team carrying out the tasks of torture and interrogation.

Witness testimony describes a pattern of severe torture during the early days and weeks of an individual's detention, which extended as long as the RNA believed that the victim could provide useful information. Such torture was also applied later in 2004 in order to induce some detainees to renounce their allegiance to the CPN-M. In addition to this systematic and deliberate torture, former detainees describe how they were subjected to "informal" or "unofficial" torture consisting of regular beatings given either arbitrarily on a whim, sometimes under the influence of alcohol or hashish, or as punishment for disobedience.

This section focuses primarily although not exclusively, on the experience of torture for those held in the Hall, rather than the Garage, since most of the disappeared were held in the Hall, and would have been subjected to such treatment.

#### **"Formal" torture**

"Formal" torture is the term used by detainees to refer to the deliberate and systematic torture to which they were subjected during interrogation. OHCHR has documented a sufficient number of cases to conclude that a significant number of detainees were subjected to various methods of torture, including beating with plastic pipes on the lower back, legs, and soles of the feet, submersion in water ('submarino'), and electric shocks, during the period from September

to December 2003. In almost all cases, victims of this torture, including women, were made first to remove their clothing, and were subjected to continuous abusive and degrading language. In addition, there were acts of torture involving sexual humiliation of both male and female detainees. A detainee could be a victim of such treatment only once, or repeatedly during several months, sometimes more than once per day. Medical assistance was regularly provided to victims, including intravenous saline drips often following loss of consciousness.

Formal torture began with the removal of a detainee from his or her place of detention. This usually occurred at night between 6pm and 10pm. In the Hall, detainees would hear the single door open, followed by the sound of a voice ordering that whoever is taken should not speak. At other times, particularly in the Garage, a guard would approach the targeted detainee, get his attention with a kick or jab usually with a black plastic pipe, and escort the detainee out of the room. When guards approached in this way, detainees knew they were being taken for a period of interrogation and likely torture in the area of the Inquiry Tents.

Those who were not selected at any given moment were subjected on a nightly basis, usually from 6pm to 10pm, to the repeated sound of screaming and pleas as four to five new and old detainees were being tortured in or just outside of the nearby Inquiry Tents. Sometimes torture and interrogation occurred with groups of two or more detainees present. One former detainee in the Hall recalled that the screaming and the torture would reach a peak and then, "suddenly the sound stopped. Fainting. Unconscious. When we heard that, we were very troubled." Another former detainee described his constant shaking as he lay handcuffed behind his back and blindfolded in the Hall, forced to listen to what he had already experienced and could anticipate might happen again to him. When the anonymous new victim was returned to the Hall, the detainees quickly learned his or her identity through whispered communication, but often they had been able to identify the person from the sound of his voice shouting or screaming from the area of the Inquiry Tents.

As a result of this daily routine, most of the detainees experienced depression in addition to fluctuating levels of fear, believing that they would eventually be killed.

One detainee described a typical torture session:

"My hands were tied. I was naked. They asked if I knew about certain

killings. 'Were you there? Did you help anyone? If you don't say the truth', they told me, 'we have SLRs [self-loading rifles]. After a half hour you will go to heaven.' Two persons, one on my arms, another on my legs, took me and drowned [submerged] me, for half an hour, in the water pond. It was dirty water. Then they pulled me out and asked questions. But I had no answer. I cried and cried. Then they got me outside and started to beat me: fists, legs apart, all privacy [gone]. [They used an] iron rod; how many times, I forget. I became unconscious. [Two days later] I became conscious. Slowly I moved my hands. My whole body was covered in blood. My vest was stuck to my skin. I could not move my legs because of the swelling."

One former detainee in the Hall described his first experience of torture:

"The door [to the Hall] opened. I heard the sound of boots on the floor. Someone grabbed my arm. I said, "Sir", but my mouth was covered and they took me outside. We walked about forty or fifty steps from the Hall. They put me in a chair, and I brushed against what felt like a tent. They asked me questions about Maoists, and I kept repeating that I [did not have such information]. Then one said, "let's kill him." They took me from the tent and sat me down against a wall for a few minutes. Then they stood me up and walked me several steps. They took off my handcuffs and I heard someone give an order, "get his clothes off". Then another said to me, "take off your clothes." I kept on my underwear but someone grabbed it and pulled it off. My head was covered with a black hood tied at the neck. My handcuffs were tightened, "click, click, click," behind my back, much more tightly than normal. Then they beat me with plastic pipes and shouted, "Tell us! Tell us! What level of Maoist are you?" [using the lowest form of address, also used for animals]. Two or three kept hitting me with plastic pipes. Since I was blindfolded, I could not protect myself, but I tried to bend over to shield my head. Then they beat me on the back and one guy kicked me really hard [points to the side of his abdomen]. It was extremely painful. I said nothing. Then, while I was lying on the ground, one of them said, "let him go swimming." Two of them grabbed my arms and took me to a nearby place. Then two people grabbed my legs and held me upside-down. My head was forced underwater in a big drum about one meter wide. I tried to raise my head, but I was held down by their boots against my shoulders. When they lifted me up, I choked and gasped for air. They repeated this. Then I felt a powerful electric shock. I became rigid and noises came from my mouth. I collapsed. Then they lowered me again into the water. The next thing I remember

was waking up in the Hall, with all of my clothes on except for my underwear. I could not move. Another detainee lying next to me was patting me on my back. There was a tube in my arm and a bag of saline hanging on a stand. At about 7 in the morning, this was removed by a medical assistant. My hands were again cuffed in front. I could barely walk, but I managed to make it somehow to the toilet. Inside, I lifted my blindfold and saw that my thighs were black and blue and covered in blisters. A guard later said to me when he saw wounds from the electric shock, "you must have stolen a mango and got bitten by an ant." I found out later that the guards urinated in the water container. It was round, made of brass. I saw it about 15 or 20 days later by peeking when I went to the toilet."

Another detainee in the Hall described a similar pattern of questions, beatings, submersion in water, and electric shocks (also referred to as "ant bites"). Unlike the previous victim, this detainee was repeatedly subjected to this torture during a period of two months. He described the different forms of torture as follows:

"There was physical torture and mental torture, like when they showed you how they were beating someone else. I was usually taken to the tents in front of the Hall where a hood was put over my head. They would ask questions before and after torture but sometimes just tortured me. They used to beat me with plastic pipes until I fell to the ground. Then someone would ask, "what sort of ant bite would you like? Japanese or American?" The American 'bite' was higher voltage. They jabbed me with the electricity all over my body, but mostly on the soles of my feet and on my back [points to his upper back]. Then they would ask me, "You want to have some daal?" [lentil soup]. They would shove my head into filthy water that filled a big cauldron sunk into the ground. They would shove my head underwater maybe twenty or twenty-five times, asking me questions. Sometimes I would become unconscious. Sometimes they would punch me in the stomach when I was underwater or give me electric shocks when they pulled me up. I would feel the shock in my whole body and lose consciousness. One time I asked to urinate. They did not take me to the toilet. They took me to another spot and told me to piss. Below, I could see a electric heater coil. When I urinated, I felt the shock enter my body. I woke up much later, lying in the Hall. There was saline in my arm. My genitals were swollen and painful. Later a doctor told me that I could not ever have an erection again. The damage is permanent. I heard that one person died as a result of electric shock. Months later a guard [in Maharajgunj] told me, 'We're using ants less now'."

Four of eight female detainees held in the Garage have not been seen since December 2003: Rebkhala Tiwari, Kaushalya Pokharel, Renuka Dulal, and Durga Bishenke. All were arrested between September and December 2003. Another two female detainees held in a separate location have also not been seen since December 2003: Nirmala Bhandari, arrested on 15 September 2003, and a girl under 16 whose name has not been confirmed. One or more of these women may have been pregnant at the time of arrest. OHCHR received credible and consistent reports that female detainees were subjected to physical and verbal sexual abuse, sometimes by intoxicated officers. Witness testimony indicates that some women had their clothing removed during interrogation.

OHCHR received multiple and consistent testimony regarding the torture of those who subsequently disappeared. For instance, three former detainees have provided testimony about the torture of Budi Lama Tamang, who was arrested by the Bhairabnath battalion together with Kaushalya Pokharel from Dukuchhap VDC, Lalitpur District, on 29 November 2003.

The first witness stated:

“Budi Lama was so badly tortured that he could not even lie down on a hay-filled carpet that they gave him in the Hall. I gave him my carpet and I helped him once to remove his shirt. It was stuck to his back with blood and pus. I remember his fingernails were infected from pins being forced underneath. It was about Mangsir 2060 [November – December 2003]. I never saw him again after Poush 2060 [December 2003 – January 2004]”

A second one stated:

“I remember Budi slept near me at one point. He arrived in the Hall in Mangsir 2060. He was tortured a lot. When he came back to the Hall sometimes, I remember his whole body would be shaking. He could not speak without his voice quivering. He was bleeding on different parts of his body. One time I remember there was a saline bag hanging near him, with a tube in his arm.”

A third one confirmed:

“I remember one time someone was screaming in the tents nearby. I was in the Garage. When someone was being tortured, the other detainees would whisper to each other, trying to identify the person. I remember that people whispered his name: Budi Lama. I remember his screams.”

Former detainees continue to suffer the psychological and physical consequences of ill-treatment. Physical consequences include chronic pain in joints and in the lower back, partial loss of bladder control, and other symptoms. A forensic report made available to OHCHR concludes that “uncountable” scars on one victim’s back are consistent with beating by long objects. Psychological consequences are largely undiagnosed, but victims interviewed by OHCHR describe insomnia, nightmares, and temporary periods when they are unable to distinguish past and present.

### **Participation of medical profession in torture**

According to several testimonies, members of the medical profession were involved in the torture, ill-treatment and cruel, inhuman or degrading treatment and punishment, in that they resuscitated those who fell unconscious and treated the wounds without apparently questioning the authorities concerned regarding the treatment meted out. Their care appeared to sustain and facilitate ongoing torture and other ill-treatment. RNA officers monitored their work and sometimes intervened to limit the degree of care that they were able to provide:

“I could feel nothing. All of my body was uncovered. Then it was early morning. I could hear birds chirping. Someone came with medical instruments. He was starting to nurse me. ‘Sir, you are very damaged. I will help you to dress.’ Then another came and hit me in the backside with his boot and ordered the man not to nurse me. ‘It’s no use treating him. Today we are killing him.’ No person came for the rest of the day.”

Witnesses confirmed that medical personnel were aware of the origin of the wounds that they treated and would advise them to confess to being a member of the CPN-M to avoid further torture. One former detainee remembers a medical assistant’s advice while treating his wounds from torture: “If you were not a Maobadi, maybe you would be earning good money. You would not have been beaten. If you show the other Maobadi, you won’t be beaten”.

None of the witnesses accused members of the medical team of directly participating in torture or ill-treatment. Few witnesses, however, described any sympathetic care by medical assistants. The general approach was to provide treatment without questioning, at least not openly, the ill-treatment.

## **Cruel, inhuman or degrading conditions of detention**

All of the witnesses interviewed by OHCHR consistently describe the cruel, inhuman or degrading conditions in which the detainees were held for up to 18 months, permanently handcuffed and blindfolded. These constraints were removed only when the RNA acknowledged a detention and submitted to inspections. Some victims described these general conditions to be cumulatively worse than the formal torture and threat of execution. Particularly in late 2003 and early 2004, these cruel, inhuman or degrading conditions included meagre and unhygienic rations of rice and watery lentil soup, lack of access to clean water for bathing and cleaning clothes, untreated lice infestations, restricted movement, and virtually no medical attention to disease and wounds until individuals were close to death. OHCHR received credible reports of at least three deaths due to, or aggravated by, these conditions, described in more detail below.

### **Restricted movement**

Apart from for a number of limited activities, detainees spent day and night lying in a prone position on a thin mat on the floor, with their hands handcuffed behind their back or, less commonly, in front, and blindfolded. One detainee, who survived 260 days in this condition, describes this situation as worse than all of the beating and torture combined. Many former detainees echoed this conclusion.

The Bhairabnath battalion maintained close 24-hour surveillance of detainees in both the Garage and in the Hall, with the clear rule that there should be no movement of any kind that was not either ordered by the RNA (for purposes of interrogation and punishment) or explicitly permitted, which in practice meant the use of the toilet and eating twice a day. Visits to the toilet usually involved waiting in a line-up, sometimes for several hours. Meals were consumed sitting up at one's sleeping place following a shift of handcuffs from back to front. 'Exercise' was imposed every morning during certain periods in a cruel and degrading fashion, with beating of those unable to perform jumping on the spot, standing on one's head, or carrying fellow detainees on one's back. During some periods in the Garage, detainees were made to stand up every hour for ten or fifteen minutes during the night. Brief access to the water tank for washing one's face varied over time and between locations.

Detainees were handcuffed permanently except when using the toilet. At night, most detainees were handcuffed behind their backs. During

the day, some detainees were permitted to remain handcuffed in front, while all were handcuffed in front during two meal times. Both metal handcuffs and rope were used. Some detainees preferred metal, because it tended to provide more freedom of movement than tightly knotted rope. Others stated that the metal was less desirable because it cut into the skin and bone, but in these cases their rope tended to be tied with sufficient slack to allow some movement. Lying down with hands cuffed behind resulted eventually in skin sores and pain in the upper arms. Some long-term detainees became so completely habituated that, once released, they find themselves still sleeping with their arms behind them, as though handcuffed.

A request to use the toilet between the fixed times was not always permitted and detainees were sometimes left no other choice but to soil their bedding. When this occurred, some guards would use their plastic pipes to lift the bedding up and carry it out of the Hall. More often, however, a co-detainee would remove his shirt and use it to clean the area if there was a sympathetic guard to move the handcuffs from back to front. On other occasions, the bedding was left in that condition for some time. Some guards wore masks against odour and disease.

### **Prolonged sensory deprivation**

All of the detainees were continuously blindfolded during their periods of detention by the Bhairabnath battalion. Most wore a black, red, or brown blindfold made of a nylon or polyester material with two layers and two sets of straps, one tied at the top of the head, the other at the neck. Some blindfolds would cover the whole face, including the mouth, but detainees routinely pushed the bottom up over the nose by rubbing the blindfold against their knee or other surface. Some detainees were forced to wear a full black hood continuously, tied at the neck, for several weeks, particularly in the early stages of their detentions. A hood was compulsory while undergoing interrogation and torture, except when detainees were asked to identify other suspected Maoists.

Peeking along one's nose through the opening at the bottom of the blindfold was practised by most detainees, frequently at the cost of punishment, but also sometimes acknowledged and tolerated by some guards. Long-term detainees were eventually able to link familiar voices of guards and interrogating officers with their faces and, in most cases, a real name or code name. Blindfolds were regularly checked and tightened by guards, particularly in advance of visits by officers or before interrogation. In 2005, some detainees

developed a way of removing a portion of one of the two polyester layers, discreetly allowing almost complete vision through the remaining thin layer.

Detainees lived in a constant state of fear and were desperate to learn the tiniest scraps of information: 'who just arrived?' 'who just left?' 'has [this or that co-detainee] returned?' 'who is screaming?' 'what happened?'. The whispering occurred primarily when lining up for the toilet, while washing, and while lying in their assigned positions.

### **"Informal torture" relating to detention conditions**

The low-ranking soldiers deployed as guards (*sipa*) regularly beat detainees accused of violating the rules such as the prohibition on movement (see below). Beatings by guards or by officers also occurred arbitrarily and without warning. Hard black plastic pipes were used for this purpose and produced open wounds, bruising, and swelling. Detainees were also regularly subject to kicks at any given moment without warning. A typical offence was slipping one's legs through one's arms in order to have the handcuffs in front, as sores and blood blisters were produced by sleeping with arms cuffed behind. If discovered by guards, such infractions could result in being forced to stand all night, in beatings twenty or thirty times with plastic pipes, or in being thrown fully clothed into a cold pool outside. Beatings led to broken and lost teeth and bleeding from the mouth. In some cases, bleeding from ears was reported by witnesses. Other infractions resulting in similar punishment included speaking, or shifting one's blindfold. Even without these apparent immediate motives, guards typically entered the Hall quietly and then, without warning, struck the floor or the wall forcefully with a plastic pipe. It was also common for a guard to sit in the passageway at the exit of the Hall and beat with a plastic pipe those detainees leaving the Hall in order to use the toilet. They would again be beaten upon their return. Certain detainees were often made to stand in the middle of the Hall while they were beaten arbitrarily. This kind of arbitrary punishment was not limited to the Hall. In another location inside Maharajgunj barracks, one survivor explained that:

"... most of the people kept there [during one period] were beaten three times a day with a pipe. I was beaten twice, in the morning and in the evening, about ten blows. Others received two dozen, right there [in the place of detention], one after the other. Half of

them were made to stand on their heads. I did this for two or three days then could not. Sometimes, while standing on the head, a soldier would come without a single word and kick him with his boot. The person would fall down”.

The result of these practices was to maintain detainees in a permanent state of anxiety, combined with varying levels of depression and fear. Some former detainees described their efforts to cope. One individual decided that the outside world could no longer assist him, and made an effort to keep a clear and attentive mind focussed only on the present. Other individuals assumed leadership roles in trying to encourage other detainees. Some were more acquiescent to the guards and officers and attempted to please them, while others were constantly taking risks to speak, to peek beneath blindfolds, to gather information from more sympathetic guards. Some detainees chose to ignore their co-detainees out of fear or on the assumption that their cases were different, that they would be released if only they kept to themselves and obeyed instructions. Some detainees sank into deep depression, exacerbated by illness.

### **Access to medical treatment**

A team of medical assistants in civilian clothes was usually available when detainees were in serious condition. Lesser illnesses or wounds were not treated. A saline drip apparatus was kept in the narrow passageway adjacent to the Hall and was used on several occasions according to witnesses and victims.

Because lesser wounds and illnesses were left untreated, it was common for infections to develop. Several survivors interviewed by OHCHR recalled the sight of shirts stuck to wounds with dried blood and pus. It was not unusual to see some individuals coughing up blood.

Former detainees also recall that the smell in the Hall became so strong that guards wore masks, although some witnesses speculated that this may also have been a measure to avoid contracting any contagious illnesses. There were periods when colds and fever would affect many detainees. The detainees themselves became accustomed to the odour of sweat, vomit, urine and suppurating wounds.

Until their transfer to the high security tents in Yuddha Bhairab detention facility in March 2004, medical assistance from a doctor

only occurred if a detainee was taken to hospital for treatment. Regular RNA health assistants provided resuscitation of detainees and the provision of saline intravenous treatment to those who lost consciousness due to torture. After their transfer to the High Security Tents, medical attention and access to water for washing improved.

### The disappeared

Detentions at Maharajgunj barracks continued even after the RNA acknowledged the arrest and detention of certain people, for instance in responses to *habeas corpus* petitions filed in the Supreme Court. The RNA, however, never acknowledged the arrest of those currently disappeared nor the role played by members of the Bhairabnath and Yuddha Bhairab battalions in their detention during 2003 of those subsequently transferred to prison and/or released.

In the course of its investigation to date, OHCHR has gathered 49 names of individuals held in Maharajgunj barracks but who have neither been confirmed released nor acknowledged to be in detention. It is possible that others also disappeared from Maharajgunj barracks whose names will emerge in the course of ongoing investigations.

The list of 49 individuals includes many of those detained in the Hall who were removed and never seen again during the last week of December 2003. Some former co-detainees recall, in particular, the night 20 December 2003 (5 Poush 2060). This date became significant only in hindsight; after they noticed that a large group of detainees who were taken out on that night or within one or two days of this date had not returned. As on many other nights, guards entered the Hall and removed individuals quietly. Some detainees were asleep and did not notice anything unusual. Others, however, observed their co-detainees being escorted outside of the Hall. One former detainee said that he was also taken out of the Hall and loaded into a truck but then finally left behind. Another former detainee said he pretended to need the toilet and observed the loading of individuals into a truck at about 10pm before he was taken back to the Hall and told his turn would come another day. A third former detainee remembered that RNA soldiers who came that night were wearing boots, unlike the more quiet canvas shoes of the guards. He said that they entered the Hall at about 10:30pm. He said he remembered how Bhim Giri was woken up by a guard and taken

away. He could hear the sound of trucks outside. He also heard the sound of radios.

In early December 2003, the Garage was being used by the Bhairabnath battalion to detain approximately 40 men and women of less military or political significance. After the removal of between forty and fifty individuals from the Hall in December 2003, many of those still detained in the Garage were gradually transferred to the Hall.

Eighteen months after this date, an officer in Bhairabnath battalion said to one former detainee that he should not think any longer about his "friends", implying their death. The names of those removed were no longer heard as had been common when an individual was present. During interrogations, officers stopped asking questions related to any of the former detainees in the Hall. Most former detainees interviewed by OHCHR believe that these detainees were executed.

### Death in custody

Among those former detainees whose whereabouts are still not clarified are three individuals who were reported very ill when last seen by many former co-detainees in 2004 and in early 2005. Khadka Bahadur Gharti Magar, a middle-aged businessman, Padam Narayan Nakarmi and Kiran Rayamaji, both students, are believed to have died while in custody in early 2004 and in early 2005 as a result of ill-treatment and torture and related health problems that were allowed to worsen without necessary medical treatment.

Detainees recall that by late December 2003, Gharti Magar and Narayan Nakarmi were both suffering from severe swelling of the body and overall weakness. Several detainees recall that both begged guards and officers for more food during a long period. Khadka Bahadur Gharti Magar begged officers to request money from his relatives to buy food. All of the detainees suffered from malnutrition, which made everyone susceptible to illness. Such illness became severe in the case of these two individuals. Padam Narayan Nakarmi eventually could not eat and may have developed tuberculosis. By the month of March 2004, within days of one another, they were separately removed from the Hall on stretchers. It was unclear to witnesses whether they were still alive at that point. The RNA allegedly returned the body of Khadka Bahadur Gharti Magar to his family. Neither individual is included in the official list of detainees as provided

to OHCHR by the Bhairabnath battalion. The whereabouts of these two individuals is still unknown.

A third individual, Kiran Rayamaji, developed a serious eye disease of the right eye. Numerous witnesses are able to describe how the eye increasingly protruded, causing immense pain. He was apparently taken to hospital for a week at one point during 2004, but without any apparent improvement following his return to Maharajgunj. He was left behind in Maharajgunj when other detainees were transferred to Sivapuri in January 2005. He remains on the list of disappeared.

### Conclusions and recommendations

OHCHR finds that the RNA's 10<sup>th</sup> Brigade systematically arrested, held in secret detention, and tortured suspected CPN-M members at its Maharajgunj barracks in 2003. The RNA 10<sup>th</sup> Brigade consisted of three battalions in 2003, as it still does today: Bhairabnath, Yuddha Bhairab, and Mahabir. The first two battalions shared the Maharajgunj army camp, located in Maharajgunj, Kathmandu. In addition, the Yuddha Bhairab battalion had a camp at Sivapuri, to the northeast of Kathmandu. The Mahabir battalion was and remains located in the Chhauni army camp, which it shares with Jagadal battalion, to the west of Kathmandu. The Bhairabnath battalion, commanded at the relevant time by Lt. Col. Raju Basnet, played a leading role in this RNA operation. The RNA Chief of Army Staff, the Director-General of Military Operations, the Director of Military Intelligence and the Commander of the 10<sup>th</sup> Brigade also knew or ought to have known about these actions by the battalions under the command of the 10<sup>th</sup> Brigade.

Detainees were subjected to torture and other cruel, inhuman or degrading treatment while permanently blindfolded and handcuffed for up to eighteen months. At least 49 of these detainees were known to have been held by the battalion and to have disappeared on 20 December 2003 or shortly thereafter, never to be seen again since. Notwithstanding the continuing denial by the RNA of knowledge of these 49 disappearances, OHCHR concludes that all were arrested under authority of the 10<sup>th</sup> Brigade and held principally by its Bhairabnath battalion during the period from September to December 2003.

OHCHR continues to investigate the fate or whereabouts of others currently on lists of disappeared from that period, including the role

that may have been played by the 10<sup>th</sup> Brigade in their arrest and subsequent disappearance.

OHCHR recommends that the following steps be taken immediately:

- ❖ Establish a credible, competent, impartial and fully independent investigation into the arrest, detention, torture, and ultimate fate or whereabouts of the people who were held by the 10th Brigade and who are reported as disappeared.
- ❖ Such an investigation might be part of a wider investigation to ascertain the fate or whereabouts of all those who disappeared and the responsibility of other units of the RNA for such violations of human rights.
- ❖ Those potentially implicated directly or through command responsibility for units involved should be suspended from any official duties pending the investigation, and should not be proposed for participation in United Nations peacekeeping missions.
- ❖ The 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.
- ❖ All necessary measures should be taken to ensure that witnesses and former detainees will not be subjected to threats or intimidation. The unlawful practice of requiring former detainees to report to the Nepalese Army on a regular basis should be ended immediately.
- ❖ The findings of the investigation should be made public and widely disseminated.
- ❖ Persons against whom there is evidence of criminal responsibility should be brought to justice before a civilian court.

**Note:** *OHCHR-Nepal has compiled a document setting out internationally agreed criteria relating to the establishment, terms of reference, composition, procedures, powers and resources of a commission of inquiry on enforced disappearances: see Annex B*

ANNEX A

**Current list of those who remain disappeared after being held in Maharajgunj barracks in 2003**

No.	Name	Alleged Dates of Arrest
1	ACHARYA, Lila	20 October 2003
2	ADHIKARI, Madhav	During or before October 2003
3	ADHIKARI, Rupak	21 October 2003
4	ALI [or Oli] (f, under 16-years-old) (name not confirmed)	UNCONFIRMED
5	BAJRACHARYA, Astraraj	During or before September/October 2003
6	BASNET, Dharendra	12 December 2003
7	BASNET, Pushpa	5 September 2003
8	BASTOLA, Jalandar	During or before September/October 2003
9	BHANDARI, Nirmala (f)	15 September 2003
10	BHATTARAI, Santi Ram	21 November 2003
11	BISHENKE, Durga (f)	During or before October 2003
12	BISWA KARMA, Tej Man	26 November 2003
13	CHAPAGAIN, Desh Bhakta	During or before September/October 2003
14	CHETTRI (or KC), Janak	During or before September/October 2003
15	DHAKAL, Chandra Kumar	During or before October/November 2003

16	DHAMALA, Bhawanath	20 October 2003
17	DHUNGANA, Chetnath (CN)	21 August 2003
18	DULAL, Renuka (f)	10 October 2003
19	GIRI, Bhim	3 December 2003
20	GHARTI MAGAR, Khadka Bahadur	22 September 2003
21	KAFLE, Ram Chandra	23 October 2003
22	KANDEL, Amrit	11 October 2003
23	LAMA TAMANG, Budi	29 November 2003
24	LAMA, Nima Dorje	5 November 2003
25	LIMBU, Doleswor	During or before September/October 2003
26	MAHARJAN, Arjun	29 October 2003
27	MAHARJAN, Bhim Raj	During or before October/ November 2003
28	MALI, Rajendra	During or before September/October 2003
29	NAKARMI, Nischal	3 December 2003
30	NAKARMI, Padam Narayan	22 September 2003
31	NIRAUULA, Gokul	During or before October/ November 2003
32	PANDEY, Lila	19 October 2003
33	PANTA, Dipendra	13 or 14 October 2003
34	POKHAREL, Arjun	26 November 2003
35	POKHAREL, Kaushalya (f)	29 November 2003

36	RAYAMAJI, Kiran	UNCONFIRMED
37	RIZAL, Sudarshan (Sapkota)	UNCONFIRMED
38	ROKKA, Hira Bahadur	6 December 2003
39	SARU, Hira Bahadur	24 November 2003
40	SHRESTHA, Babu Kaji	8 November 2003
41	SHRESTHA, Bal Krishna	24 October 2003
42	SHRESTHA, Hem Narayan	UNCONFIRMED
43	SHRESTHA, Pipal	UNCONFIRMED
44	SHRESTHA, Suchindra	7 December 2003
45	SUNUWAR ('Akela'), Ashok	1 December 2003
46	TAMANG, Tara Man	UNCONFIRMED
47	THAPA, Rajendra	18 December 2003
48	TIWARI, Rebkhala (f)	30 October 2003
49	TRIPATHI, Gyanendra	26 September 2003

## **ANNEX B**

### **Criteria for a commission of inquiry on Enforced Disappearances**

#### **Introduction**

This note sets out agreed criteria relating to the establishment, terms of reference, composition, procedures, powers and resources of a commission of inquiry on enforced disappearances.

These criteria have been drawn up with reference to the Declaration on the Protection of all Persons from Enforced Disappearances ("Declaration") adopted by General Assembly Resolution 47/133, 18 December 1992 and the Inter-American Convention on Forced Disappearance of Persons ("Inter-American Convention") which came into force on 28 March 1996. The Declaration is a set of principles adopted by the General Assembly, but is not legally binding on Member States. The Inter-American Convention is binding, but only on countries in that region. This note also refers to a draft International Convention for the Protection of All Persons from Enforced Disappearance ("Draft Convention") adopted by the Working Group on Enforced or Involuntary Disappearances ("Working Group") in September 2005. The Draft Convention is expected to be brought before the General Assembly for adoption at its sixty-first session in 2006 so that it can be opened for ratification. Once it enters into force, the Draft Convention will be legally binding on State Parties. Where appropriate, references to other international standards are also included.

#### **Establishment of a commission of inquiry**

- 1. States must investigate acts of enforced disappearance.**  
The responsibility of States to investigate disappearances is one of the fundamental principles underlying the Declaration, the Inter-American Convention and the Draft Convention. This principle is also found in the jurisprudence of regional human rights courts, including the Inter-American and the European Courts of Human Rights.
- 2. Where the established investigative mechanism is inadequate or inappropriate, an independent commission of inquiry or similar mechanism must be established.** The Principles on the Effective Investigation and

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Principles on Effective Investigation of Torture") and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ("Principles on Effective Investigation of Executions") require Governments to carry out investigations through an independent commission or other similar procedure if the established investigative procedures are inadequate because of insufficient expertise, suspected bias, the apparent existence of a pattern of abuse or other substantial reasons.<sup>1</sup> The Principles on Effective Investigation of Executions explicitly state that an independent commission or similar procedure should be set up in cases where families of victims complain about such inadequacies or other substantial reasons.<sup>2</sup>

#### **Terms of reference of a commission of inquiry**

3. **The commission of inquiry's terms of reference must be clearly defined.** The updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity ("Principles to Combat Impunity") require that the terms of reference for a commission of inquiry be clear, in order to prevent conflicts of jurisdiction with other bodies.
4. **The commission of inquiry must not be a substitute for the courts.** As stated in the Principles to Combat Impunity, the role of a commission of inquiry should not be to carry out judicial proceedings, but to establish the facts regarding allegations of human rights violations and to ascertain the truth regarding matters which were constantly denied. The commission of inquiry must also safeguard evidence for later use in judicial proceedings, but the courts must retain jurisdiction to establish individual criminal or other responsibility and imposing sentences.

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1. *Article 1 (2) of the Declaration provides that acts of enforced disappearance constitutes a violation of the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.*

2. *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ("Principles on Effective Investigation of Executions"), recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989, Principle 11. The Declaration provides that acts of enforced disappearance violates or constitutes a grave threat to the right to life.*

### **Composition of a commission of inquiry**

5. **The members of the commission of inquiry must be competent.** This requirement is set out in the Principles to Combat Impunity as well as the Principles on Effective Investigation of Torture.
6. **The members of the commission of inquiry must be independent and impartial.** Both the Declaration and the Draft Convention refer to the need for independent and impartial investigations. Although neither the Declaration nor the Draft Convention provide a definition of "independence" or "impartiality," the Principles to Combat Impunity require that the members of a commission of inquiry be irremovable from office for the duration of their terms except on grounds of incapacity or behavior rendering them unfit to discharge their duties, and that they enjoy privileges and immunities in respect of any civil or criminal actions brought against them on grounds of facts or opinions relating to the investigation. Further, the Principles on Effective Investigation of Torture and the Principles on Effective Investigation of Executions also require members of commissions of inquiry to be independent of any suspected perpetrators and the institutions or agencies they serve.
7. **The members of the commission of inquiry should include women and representatives of other appropriate groups.** The Principles to Combat Impunity state that a commission should be adequately represented by women as well as representatives of other groups particularly vulnerable to human rights violations.

### **Procedures of the commission of inquiry**

8. **The commission of inquiry must initiate investigations even without a formal complaint.** Both the Declaration and the Draft Convention require that an investigation be conducted if there are reasonable grounds to believe that an enforced disappearance has been committed, regardless of whether a formal complaint has been filed.
9. **The commission of inquiry must carry out investigations promptly and thoroughly.** The Declaration requires that investigations be prompt and thorough. Similarly, the Inter-American Convention and the Draft Convention require State Parties to promptly examine any allegation of enforced disappearance, and if appropriate, to undertake a thorough investigation without delay.

- 10. The commission of inquiry must continue investigations for as long as fate of the disappeared person remains unclarified.** The Declaration requires Governments to investigate allegations of enforced disappearance until the fate or whereabouts of the disappeared person is determined. This obligation has also been firmly established in international human rights jurisprudence. Moreover, Governments must not suspend or cease investigations into alleged enforced disappearance because it has failed or is incapable of identifying the possible perpetrators,<sup>3</sup> or because the perpetrators cannot be legally punished under certain circumstances.
- 11. The commission of inquiry must ensure the safety and security of victims, witnesses, complainants, counsel and investigators.** As reflected in the Declaration of Basic Principles on Victims of Crime and Abuse of Power ("Victims' Declaration"), a fundamental principle of any investigation is the protection of victims, their families and witnesses on their behalf from intimidation and retaliation.<sup>4</sup> Specifically with respect to disappearance, the Declaration requires that complainants, witnesses, counsel and investigators are protected from ill-treatment, intimidation, reprisal or any other form of interference, and that appropriate punishment is imposed for such interference. The Declaration also requires that persons alleged to have committed disappearances be suspended from any official duties during the investigation, while the Draft Convention requires that alleged perpetrators are not in a position to influence the progress of investigations through pressure, intimidation or reprisal aimed at complainants, witnesses, relatives of the disappeared or their defence counsel, or persons conducting investigations. This requirement is also contained in other international standards.
- 12. The commission of inquiry must give victims the opportunity to present their views.** The Victims' Declaration requires that victims be allowed to present their views and concerns, and have those views and concerns considered. To ensure their well-being, social workers and mental health-care practitioners should be available to assist victims before and

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3. *Working Group on Enforced or Involuntary Disappearances, General Comment on Article 18 of the Declaration, E/CN.4/2006/56, paragraph 3 (a).*

4. *Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power ("Victims' Declaration"), adopted by General Assembly Resolution 40/34 of 29 November 1985, Principle 6 (d).*

after they provide testimony, as recommended by the Principles to Combat Impunity.

13. **The commission of inquiry must afford certain guarantees to alleged perpetrators before they are publicly identified.** As required by the Principles to Combat Impunity, the commission of inquiry must attempt to corroborate information implicating persons before they are publicly named. It must also provide such persons with the opportunity to provide a statement setting forth their version of the facts in a hearing convened by the commission or through the submission of a document for inclusion in the files of the commission of inquiry.
14. **The commission of inquiry must ensure that the bodies of any deceased persons are not disposed of until autopsies are conducted.** The Principles on Investigation of Execution requires that autopsies be carried out by physicians, who if possible, are forensic anthropologists.<sup>5</sup> Such experts must be able to function impartially and independently of any potential implicated persons, organizations or entities. Further, they must have access to all investigative data, the location where the body was discovered and the location where the death is believed to have occurred. Bodies which are already buried must be carefully and competently exhumed. If the body of a deceased person is identified, the commission of inquiry must inform the family of the deceased person, who may have a medical or other qualified representative present at the autopsy. The body must then be returned to the family upon completion of the investigation.
15. **The commission of inquiry must ensure confidentiality, as appropriate.** The Principles to Combat Impunity require victims and other witnesses to be informed of the rules relating to the disclosure of information provided by them, and prohibit any confidential information given by a witness from being disclosed. The commission of inquiry should also consider requests to provide information anonymously, particularly in

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5. *The Principles on Effective Investigation of Executions also requires the following: 1) at minimum, the autopsy must attempt to establish the identity of the deceased and the cause and manner of death; 2) to the extent possible, the time and place of death should also be determined; 3) detailed color photographs must be included in the autopsy report in order to document and support the findings of the investigation; and 4) the autopsy report must describe any and all injuries to the deceased including any evidence of torture.*

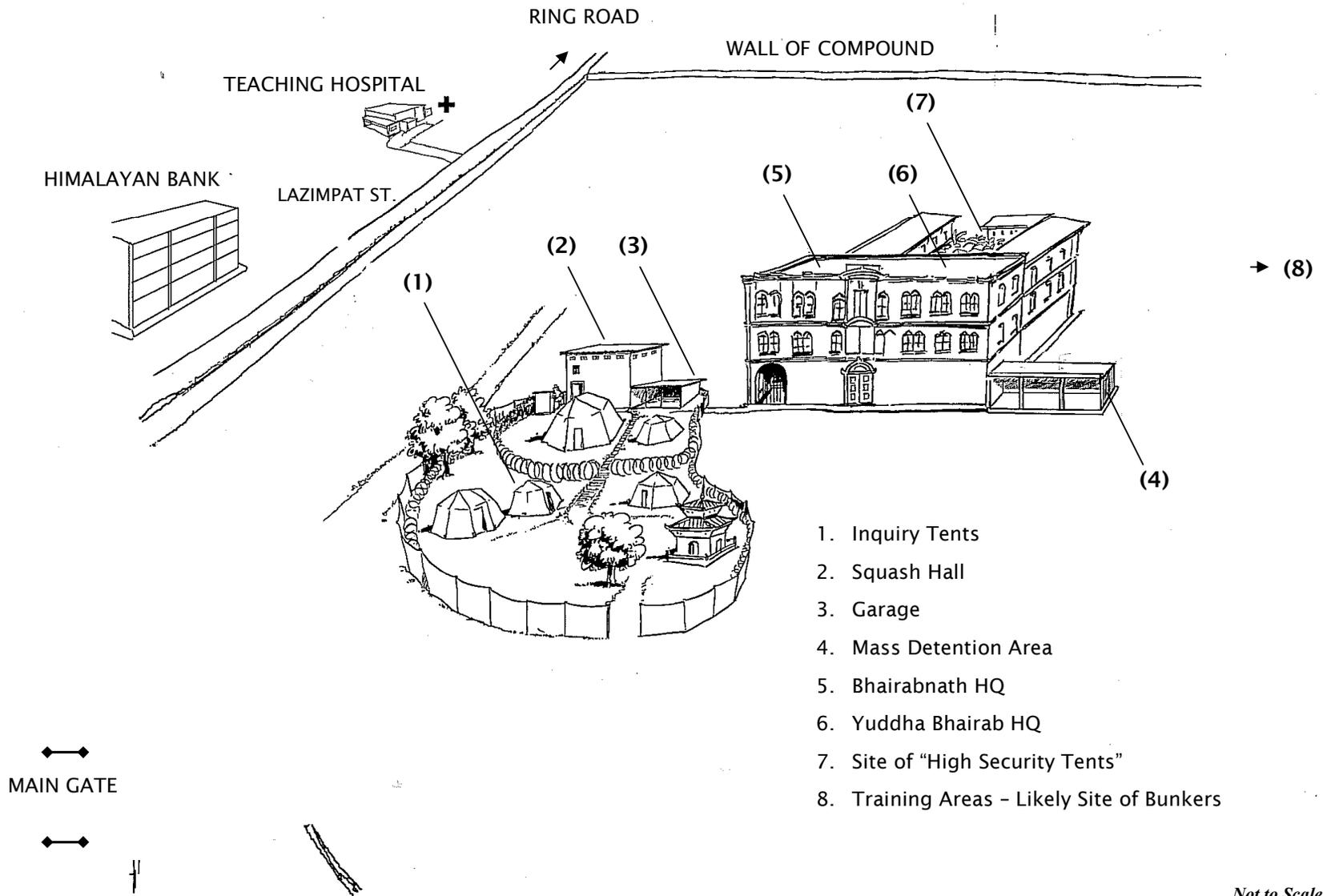
cases involving sexual assault. For this purpose, procedures should be established to guarantee anonymity and allow corroboration of the information provided, as appropriate.

- 16. The findings of the commission of inquiry must be made public and disseminated widely in a written report.** Under several international standards, commissions of inquiry are required to make their final report publicly available. The Principles to Combat Impunity also explicitly require the wide dissemination of the final report. In contrast, the Declaration requires only that the findings of investigations be made available upon request to all persons concerned, if doing so would not jeopardize any ongoing criminal investigations.

#### **Powers and resources of the commission of inquiry**

- 17. The commission of inquiry must have the power to summon the attendance of witnesses and the production of documents.** The Declaration as well as the Draft Convention require that investigative authorities be equipped with the necessary powers to conduct investigations effectively, including powers to compel the attendance of witnesses and the production of relevant documents. Other international standards also include such a requirement, and specifically mention the power to summon any officials who may be involved. However, the Principles to Combat Impunity allow commissions of inquiry to call victims and witnesses on their behalf on a strictly voluntary basis only.
- 18. The commission of inquiry must have the power to make immediate on-site visits.** The Declaration requires that investigative authorities be empowered to make immediate on-site visits, presumably to any place where a disappeared person may be present or where any information relating to disappeared persons may be located. The Draft Convention also requires that investigative authorities be given access to sites of detention or other places where there are reasonable grounds that a disappeared person may be present, if necessary, with the prior authorization of a judicial authority.
- 19. The commission of inquiry must be provided with adequate resources.** The requirement that investigative authorities be provided with adequate resources is explicitly included in the Declaration, the Draft Convention and the Principles to Combat Impunity. The Principles to Combat Impunity also require that the funding of commissions of inquiries be transparent in order to ensure their independence.

**ANNEX C - Relevant Physical Structures in Witness Testimony: Maharajgunj barracks – Kathmandu**



*Not to Scale*

