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FOR HUMAN RIGHTS IN NEPAL



Statement to the Press

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OHCHR has this week submitted to the Prime Minister, in his capacity as Minister of Defence, as well as to the Chief of Army Staff, a report of its investigations into the arrest, detention, torture and continuing disappearance of individuals arrested by the then 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).

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 of the disappeared lodged complaints at its office. OHCHR has conducted more than 50 interviews with the families of the disappeared, with former detainees and with other witnesses and informants regarding their detention and torture.

Our investigations have found that 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. They have also concluded that at least 49 persons, and probably a significantly higher number, remain disappeared.

In spite of national and international norms governing detentions of suspected insurgents, including in times of internal armed conflict, these detentions were consistently denied by the RNA and those detained were disappeared. 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.

You will find the report's description of torture and cruel, inhuman or degrading conditions of detention to which detainees were subject deeply shocking. 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, and electric shocks. 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. Detainees were repeatedly threatened with execution.

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. Some victims described these general conditions to have been cumulatively worse than the “formal” torture and threat of execution. OHCHR received credible reports of at least three deaths due to, or aggravated by, these conditions. Former detainees continue to suffer the psychological and physical consequences of torture and ill-treatment.

The Bhairabnath battalion now 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 49 additional individuals known to OHCHR to have been held in the custody of the Bhairabnath or Yuddha Bhairab battalions (both part of the RNA’s 10th Brigade) between September and December 2003 and who remain disappeared. Many of these were removed from their place of detention during the last week of December 2003 and never seen again. During subsequent interrogations, officers stopped asking questions related to any of these former detainees. Most former detainees interviewed by OHCHR believe that these detainees were executed.

On the basis of consistent, credible and corroborated testimony of victims and witnesses that these people were last seen in custody in Maharajgunj, OHCHR rejects the RNA’s denial of responsibility.

In submitting the report to the Government, OHCHR has recommended the establishment of 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 RNA 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 in Nepal during the conflict 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 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.

I welcome the commitment already made by Home Minister Krishna Prasad Sitaula that a high-level commission of inquiry will soon be established to investigate disappearances. I have written to the Minister drawing his attention to internationally-established criteria for commissions of inquiry mandated to investigate disappearances, relating to the competence, independence and impartiality of a commission, as well as to the rights of both victims and alleged perpetrators.

OHCHR has also welcomed the establishment of the High Level Commission of Inquiry investigating the violations of human rights and abuse of power during the People’s Movement. Earlier this week I met with Judge Krishna Jung Rayamajhi to offer all assistance which OHCHR can provide from its own monitoring and investigations into matters within the Commission’s mandate. Once a commission to investigate disappearances is established, OHCHR will offer assistance and provide information regarding its on-going investigations into the disappearances at Maharajgunj barracks and all other cases of disappearances reported to it from around the country.

Nepal faces a heavy agenda of accountability for violations of human rights and international humanitarian law committed by both state and non-state actors. It is right that some aspects of this agenda – recent killings and the fate of the disappeared, and the immediate needs of victims – should be addressed with urgency. But two principles should be fully respected: those responsible for gross violations should be brought to justice; everyone is innocent until proven guilty by a fair trial. No-one should take the law into their own hands. I hope that Nepal will address past violations in a manner which strengthens the rule of law, and OHCHR will offer its assistance in this painful but essential process.

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