

INTERNATIONAL  
COMMISSION  
OF JURISTS

Centre for the Independence of Judges and Lawyers

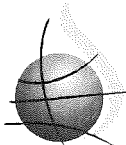
**HUMAN RIGHTS AND ADMINISTRATION OF JUSTICE:  
OBLIGATIONS UNFULFILLED**

Fact-Finding Mission to Nepal

June 2003  
Reprinted November 2003

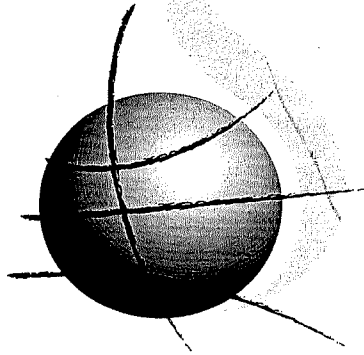
## International Commission of Jurists

The International Commission of Jurists (ICJ) is a non-governmental organization devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world. It is headquartered in Geneva, Switzerland, and has 85 national sections and affiliated legal organizations. It enjoys consultative status in the United Nations Economic and Social Council, UNESCO, the Council of Europe and the Organization of African Unity. The ICJ maintains cooperative relations with various bodies of the Organization of American States.



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## Preface

The report of the International Commission Jurist (ICJ) fact-finding mission to Nepal, which took place from 27 to 3 February 2003, was initially released in June 2003. The ICJ has decided to reissue the report in the wake of a sharp deterioration in the general human rights situation in Nepal, which has followed upon the collapse of the cease-fire and negotiation process between the Government and the Maoist rebels. According to a report released at the end of October by the Nepal-based non-governmental Informal Sector Service Centre (INSEC), some one thousand persons have been killed in the two months since the cease-fire was suspended on 27 August.

The cease-fire had been announced on 29 January during the ICJ visit to Nepal and was followed by three rounds of negotiations, the most recent of which took place in August. The talks apparently broke down over the core question of the status of the Constitution. The Maoists, who favor the abolition of the monarchy and the establishment of a republic, were pressing for the election of an assembly tasked to draft a new Constitution. The Government insisted upon proceeding under the existing Constitution, although it was seemed willing to entertain the possibility of constitutional amendments that would not affect the status of the monarchy. Aside from the substantive issues, the negotiations seemed to take place in an atmosphere of mutual distrust. It was reported, for example, that Government negotiators had agreed at one point to confine the Royal Nepalese Army (RNA) to within five kilometers of barracks, but that Government subsequently reneged upon this commitment in the face of staunch objections from the Army. Both sides increasingly leveled accusations against one another of breaching the cease-fire agreements.

On the political front, a stasis has set in, whereby a government consisting of unelected officials continues to serve at the appointment of the King. Since King Gyanendra dissolved Parliament in October 2002, no elections have been held despite the Constitutional requirement that elections be held within six months of parliamentary dissolution. The ICJ in its report warned that Nepal seemed to be slipping from a constitutional towards an absolute monarchy, and developments since the visit have only served to reinforce this conclusion. On 30 May, amidst a waive of popular protest, Prime Minister Lokendra Bahadur Chand resigned and the King replaced him on 4 June with Surya Bahadur Thapa, a royalist and four-time prime minister from the Rastriya Prajatantra Party. The major political parties had by consensus pressed for Madhav Kumar Nepal, of the United Marxist Leninist party (UML) to succeed Prime Minister Chand, as interim Prime Minister, but this proposal was disregarded by the King. The main political parties have continued to insist that Parliament should be reinstated or a new government should be created consisting of ministers from amongst these parties.

The human rights situation has drastically deteriorated, with numerous cases of extra-judicial killings and disappearances reported and the RNA apparently acting beyond effective civilian control and accountability. In a notorious incident, on 17 August a unit from the RNA summarily killed at least 19 unarmed persons in Ramechhap District. An independent inquiry set up by the National Human Rights Commission (NHRC) and headed by former Supreme Court Justice Krishna Jung Rayamajhi

confirmed the army responsibility for the killings. The initial response of RNA officials, including the Advocate General, was to attack the NHRC and accuse it of bias. The RNA has consistently failed to investigate or punish Army personnel accused of human rights abuses, despite the numerous well-founded allegations. On 10 October 2003, the ICJ wrote to King Gyandera requesting that the Minister of Law and Attorney General use the NHRC findings as a basis for investigating and prosecuting the responsible RNA personnel in ordinary, not military, courts.

A human rights accord, proposed during the course of negotiations by the National Human Rights Commission, aimed to establish five regional offices to perform human rights monitoring and receive advisory assistance from the UN Office of the High Commissioner for Human Rights. The ICJ believes that this accord constitutes a firm basis for carrying out urgent human rights reforms and should be implemented with or without a political settlement.

The ICJ has requested the Government to comment upon its fact-finding report. Although assured by officials that an official response would be forthcoming, none has so far been received. The Government has apparently failed to implement any of the 38 recommendations contained in the report. The ICJ hopes that the reissue of this report will assist in providing new impetus for the Government to fulfil its human rights obligations and to restore the rule of law in Nepal.

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## EXECUTIVE SUMMARY

The International Commission of Jurists (ICJ) and its Centre for the Independence of Judges and Lawyers (CIJL) conducted a fact-finding mission in Nepal from 26 January to 3 February 2003. The purpose of the mission was to examine human rights and the functioning of the administration of justice in the country in the context of a prevailing Constitutional crisis and armed conflict between the Government and the Maoist insurgency.

During the visit, the mission team met with senior political leaders, including the Prime Minister; the Home Minister, also serving as Minister of Justice; military and police officials; members of the National Human Rights Commission and the National Women's Commission; the Chief Commissioner of the Commission for the Investigation of Abuse of Authority; Judges of the Supreme, Appellate and District Courts, including the Supreme Court Chief Justice; officers of the Nepal Bar Association; lawyers; officials from political parties; diplomats; non-governmental organisations; and victims of human rights abuses.

The mission took place against the backdrop of an ongoing seven-year armed insurgency waged by Maoist rebels. In November 2001, following the collapse of peace talks, a nation-wide emergency was declared and the Army was called up to confront the insurgency. The King promulgated an ordinance giving the Government expanded powers of arrest and detention, which was subsequently adopted by Parliament as the Terrorism and Disruptive Activities Act (TADA). In October 2002 the King dissolved the Parliament and appointed a new government. During the ICJ/CIJL visit, a cease-fire was announced. A renewed process of negotiations between the Government and Maoists has since commenced.

Although the mission noted certain positive aspects, such as an independent superior judiciary, and a vibrant, though politicised, bar and civil society, its overall impression was of a country undergoing a crisis in the rule of law and little political will to address a grave human rights situation. The integrity of the Nepalese Constitution itself is under severe strain, with the King having failed to call new elections within the mandated six-month time frame following the dissolution of Parliament. The present Government is composed of largely unelected figures from outside the major political parties or the dissolved parliament. The mission considers that Nepal is perilously close to slipping from a constitutional to an absolute monarchy.

Nepal has ratified the six principal human rights treaties and these instruments are directly incorporated in law. However, there is general unawareness among a large proportion of the Government, bar and bench of the applicability of the human rights treaties, and they have not substantially been implemented in judicial or administrative practice. The practice of arbitrary detention is widespread, particularly in cases related to the insurgency, and the adoption of TADA has effectively legitimised this practice. The remedy of habeas corpus is often ineffective, as persons whose release is ordered are often rearrested immediately upon securing their liberty.

The Government on a number of occasions has altogether disregard judicial orders for release and thereby undermined judicial authority in the country.

The Army holds a significant number of persons in detention without legal authority, but with de facto connivance or acquiescence by Ministers at the highest levels of government. Those detained are held incommunicado, beyond access to lawyers, relatives or the courts. Torture of such detainees is routine. A number of lawyers have been arbitrarily detained and tortured, simply because of association with their clients.

A large number of cases of enforced disappearances and extrajudicial killings have been documented. There is near total impunity for officials of the Army, Armed Police Forces and police who engage in serious human rights violations including torture, unlawful killings and war crimes. Gender and caste discrimination remain a substantial problem, both in law and practice.

National institutions that address human rights concerns are weak and ineffective. The National Human Rights Commission appears unable or unwilling to look into the vast majority of cases it receives and may not be fully independent. Human Rights cells recently established in the Army, Armed Police Forces, and police have thus far been wholly ineffective, and their establishment appears to be a mere cosmetic gesture.

Courts are under-resourced, and lower courts typically fail to receive judgements of the Supreme Court in a timely manner, if at all. The Supreme Court appears to be taking preliminary steps to address the serious problem of judicial corruption.

Access to justice for citizens of Nepal is sorely lacking. In at least 13 Districts, there were no courts in operation, leaving a number detainees stranded indefinitely in detention. More than half of all detainees, many of whom face lengthy prison sentences, go unrepresented by counsel. Judges rarely inquire into the means by which statements of defendants have been obtained.

Defendants passing through the criminal justice system often do not receive a fair trial. Most evidence used for conviction consists of "confessions", a large proportion of which have been extracted through torture or other ill-treatment. Torture itself has not been made a specific crime, as required by the Convention against Torture, and perpetrators of torture are seldom prosecuted. Existing torture compensation legislation has not served victims well and does not provide for individual responsibility of perpetrators.

The mission has issued 38 recommendations for implementation by the Government of Nepal and assisting bodies and agencies.

Human rights concerns are squarely before the negotiators in the present peace talks and any accord is expected to contain a human rights component. With or without a peace agreement, human rights monitoring is urgently needed throughout the country.

## INTRODUCTION

1. This report contains the findings of a Mission to Nepal sent by the International Commission of Jurists (ICJ) and its Center for the Independence of the Judges and Lawyers (CIJL). The mission's mandate was to examine the functioning of the administration of justice in Nepal, including the existing legal framework and actual practice, and to evaluate the effectiveness of judicial and administrative implementation of international standards. The mission also sought to evaluate the impact of recent Nepalese law and practice on the fulfilment of Nepal's international human rights obligations. Some of the particular areas of question and concern were whether there existed effective means to challenge unlawful or arbitrary detention, such as *habeas corpus*; the implications of the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) and other legislation used in context of countering the ongoing Maoist insurgency; the practice of torture of detainees by the authorities and the adequacy and effectiveness of means to prevent and remedy incidents of torture and other ill-treatment; the extent to which judges were willing or able to carry out their professional functions independently and impartially; allegations of harassment of lawyers in the country, including cases of arbitrary detention and violent assault. The Mission also sought to gather information with a view to determining, on a preliminary basis, Nepal's capacity building needs in the area of administration of justice.

2. The members of the mission team were Justice John Dowd, A.O. (Australia), (Supreme Court of New South Wales, Australia; President ICJ Australian Section (Head of the Delegation); Michael Ellman (United Kingdom) Solicitor and Officer of the Board of the International Federation for Human Rights (FIDH); and Paul Harris (Hong Kong), Barrister, Founding Chairman, Hong Kong Human Rights Monitor. They were accompanied by two members of the ICJ legal staff, Ian Seiderman and Hassiba Hadj-Sahraoui, who also served as mission rapporteurs.

3. By letter dated 16 December 2002, the ICJ Secretary-General, Louise Doswald-Beck informed the Permanent Representative of Nepal to the United Nations in Geneva, Ambassador Shambhu R. Simkhada, that the ICJ wished undertake a mission to Nepal. At a meeting in Geneva on 17 December, the Ambassador indicated to the Secretary-General that the ICJ would be welcome to visit Nepal. He also gave assurances of the full co-operation of the authorities in arranging appointments with relevant Government officials.

4. The ICJ would like to express its gratitude to the Government of Nepal for extending its full and active co-operation with the Mission in Nepal. The ICJ is also deeply appreciative of the efforts of the Advocacy Forum, a Nepalese non-governmental organisation composed of lawyers focusing on human rights, and the ICJ Nepal National Section for their assistance in facilitating the mission.

## CHAPTER ONE: CONDUCT OF THE MISSION

5. The mission held meetings in Kathmandu with senior Government officials, judges, lawyers, police officials, non-governmental organisations, national institutions, and diplomatic personnel from 26 January to 3 February. The mission also visited Nepalgunj, in the Western Region of Nepal, on 29-30 January. A summary of these meetings follows below.

### **A. Government Ministers**

6. Toward the end of the visit, the mission met separately with the Prime Minister, Mr. Lokendra Bahadur Chand and the Home Minister and Justice Minister, Mr. Dharma Bahapur Thapa (holding both portfolios). We put to the ministers a number of the central concerns that had arisen as a consequence of our inquiries during the course of the visit and presented to them lists of a number of the persons we believed to have disappeared or were being held in unacknowledged detention.

7. The Prime Minister affirmed his Government's overall commitment to promoting a human rights culture in Nepal and as evidence pointed to the establishment of human rights cells within the Army, the Armed Forces Police and Police. He also conceded that there was an outstanding need for personnel in various governmental services to receive expert advice and training in human rights. However, to the mission's regret, the Prime Minister was quick to advance the perceived exigencies of countering the Maoist insurgency as an excuse for the grave human rights situation and for the inadequacies of the Government in redressing the situation. He openly acknowledged that the Army was continuing to detain persons unlawfully. Contradicting the assertions made to us by Army officers, the Prime minister contended that the army had received no authorisation from the Government to carry out such detentions. Despite being charged with constitutional responsibility for overseeing the Army, the Prime Minister appeared not to accept it as his obligation to end this widespread practice through instructions to the Army and other security forces, instead opting to conceptualise the problem as one of individual cases that he might look into.

8. Mr. Dharma Bahapur Thapa holds both the posts of Home Minister and Minister of Law, Justice and Parliamentary Affairs. The mission was deeply troubled by this Minister's approach to the human rights situation, whereby he blithely defended the Government's practice of immediately re-arresting persons who are released pursuant to court orders. The Minister told us that such persons were "too dangerous" to be released, despite a judicial determination that there was no basis for their detention. He also declined to acknowledge that torture was at all practised in Nepal, even though we came across numerous cases of convincing evidence of torture, including of lawyers, and almost all other Government and non-governmental sources had indicated to the mission the existence of a grave problem in this regard. The mission met the Secretary of the Ministry of Law, Justice and Parliamentary Affairs, Mr. Udaya Nepali Shrestha. The Secretary informed the mission that he in fact effectively ran the Ministry on a day-to-day basis, as the Minister himself was almost invariably occupied with his duties at the Home Ministry. Indeed, the Secretary suggested that the merging of these portfolios might pose a conflict of interest for the Minister. In

response to queries regarding serial instances of official defiance of judicial orders, the Secretary assured the mission that the independence of the judiciary was well respected in Nepal and that any problems regarding the Government's respect of judicial orders simply resulted from "misunderstandings".

9. The Mission also met with a Spokesman for the Ministry of Foreign Affairs, Mr. Gyan Chandra Acharya, who has since taken up a post as Ambassador to the United Nations in Geneva. The mission informed Mr Acharya that it considered that the country would be well served by the establishment of an office of the UN High Commissioner of Human Rights, which would carry dual monitoring and advisory functions. Mr. Acharya expressed his desire to accept technical assistance from the international community in the human rights area and affirmed his desire to address the extensive delays of the Government in submitting its periodic reports to the supervisory organs of the six major human right treaties.

#### **B. Military and Armed Forces Police**

10. The mission met with the Deputy Inspector and Advocate General of the Royal Nepalese Army, BA Kumar Sharma, and two associates in the Army's recently established Human Rights Cell, Lieutenant Colonel Ramindra Chetry and Deepak Gurung. Most of the activities undertaken by this unit to date appeared to fall within the area of human rights training, although we were assured that a monitoring and investigative function was central to its mandate. The officers conceded to the mission team that the Army did hold persons in unacknowledged detention without charge and access to family and lawyers and in contravention of Nepalese legislation. They insisted that they had been granted special dispensation to do so from the highest levels of governmental authority, including the Prime Minister. They were, however, unable or unwilling to provide the mission with any written instructions or orders legally underpinning this putative authority. The Advocate General promised to investigate specific cases submitted to him by the mission, but this commitment has remained unfulfilled.

11. The mission called on Gyanendra Raj Rai, Deputy Inspector General and Head of the Human Rights Cell of the Armed Police Forces. The Armed Police Forces, consisting of some 15000 personnel, had been established in 2001 as part of the emergency response to the Maoist insurgency. It was tasked to assist both the Royal Nepalese Army and the Nepalese Police in carrying out their respective counter insurgency operations. The Human Rights Cell was a nascent unit and most of their projects were of a prospective character. The Deputy Inspector was unable to present the mission with rules of engagement. He denied that the APF was detaining people, although we received information from a number of sources insisting that the APF had been responsible for widespread torture and instances of extrajudicial killing.

12. The mission paid a surprise visit to the Chisapani Army Barracks in Nepalgunj, Banke district, as it had learned that upwards of 100 persons were being held by the Army in Banke in secret detention, with a substantial proportion of these detained at these barracks. Although the mission failed to gain admittance to the barracks, the junior officer who spoke to us conceded that "seven or eight" detainees were presently held. The Chief District Officer told us that he had not been informed of any such

detentions, nor had the Army transferred custody of the detainees to his civilian authority as required by law.

### C. Police Adviser

13. The mission met with Richard Miles, an advisor to the police sponsored by the United Kingdom Department for International Development (DFID). Mr. Miles, a former assistant chief constable in the United Kingdom, confirmed the appraisals we had heard repeatedly regarding the widespread use of police torture. He noted that the police frequently encountered substantial political interference in their work. Corruption was prevalent and there was a near complete absence of financial accountability. He reported that practice in the preparation of case files and record keeping was appalling. A principal reform needed was to link recruitment and promotion to merit. Police needed training on evidence-gathering techniques, although the infrastructure was not appropriate yet for high-tech methods.

### D. Judiciary

14. The Mission visited the Supreme Court of Nepal and met with the Chief Justice (Kedar Nath Upadhaya), Justice Arbinda Nath Acharya, Justice Hari Prasad Sharma, the Registrar, Shree Prasad Pandit and the Joint Registrar, Ram Krishna Timilsena. The Justices informed us that they had experienced no overt pressure or threats to their independence. They expressed concern, however, that in a number of cases, especially those involving public interest litigation, the Government had been slow to adhere to the court rulings. The Justices also highlighted problems of serious delays in judicial proceedings, especially in respect of civil litigation. They expressed dissatisfaction at the advent of special courts under the TADA legislation, and were confident that the ordinary judiciary had the capacity to adjudicate cases arising out of the civil conflict. The Justices acknowledged that a certain degree of corruption obtained within the judiciary of Nepal, but they indicated that they were unable accurately to gauge its extent. The mission brought to the Justice's attention a serious problem regarding the administration of justice in a number of districts, namely that there were no courts operating in these regions, even though there were persons held by police and Army. The Judges seemed unable to formulate a means by which to address this alarming situation. On the day after its visit, the mission was pleased to learn of the announcement by the Supreme Court that they were empanelling a team of senior judges to visit some of the outlying districts, with a view to looking into this problem as well as allegations of judicial corruption.

15. The Mission also visited two Appellate Courts, for Patan and Banke Districts. At Patan, the mission met with the Chief Judge Khil Raj Regmi and Judge Mohan Siraula, who had also formerly served as a judge at the special court established under TADA, as well as the Court Registrar. In contrast to repeated complaints registered to us by lawyers, these judges seemed satisfied that *habeas corpus* cases were being handled properly by the police. They suggested that their main difficulties were a lack of human resources and the cumbersome requirements of judicial process. They indicated that court staff were unable to gain access to remote areas affected by the insurgency.

16. In Banke we met with the Acting Chief Judge, Rajendra Koirala and Judges Komal Nath Sharma, Judge Dihirendra Bista and Judge Krishana Prasad Babyal. These judges acknowledged the problem of torture. One Judge noted that police officers sometimes usurped court authority and they highlighted the problem of the falsifying of records by police officers. They considered themselves powerless to issue charge warrants vis-à-vis Army activities, although they said that they were well aware of cases of unacknowledged detention by the Army. The Judges seemed unaware of their authority to rely on international human rights treaty standards, even though these standards form part of Nepalese domestic law.

17. The mission visited District Court Judges in Kathmandu Judges O.P. Mishra, S.P. Ghimire and Bhatt and Registrar Mr. K.D. Adhikari. In Nepalgunj, the mission met with Chief District Court Judge Prem Bahadur, Judge Karunanidhi Sharma and the Registrar, Lekh Nath Paudel. The judges informed the mission that there were cases in which the Government had not carried out court orders and some lawyers were unlawfully detained. However, they did not consider their independence impeded. One judge recognised that the "police are not treating people humanely", but seemed unaware of the duty of these judges to investigate cases of torture.

#### **E. Bar**

18. The mission team participated in a round table meeting of the Nepal Bar Association, attended by eight prominent members including the President and the Secretary of the Bar Association, and the former Minister of Law and Justice (see annex I). These lawyers expressed a number of serious concerns, including the widespread instances of arbitrary arrests; the ineffectiveness of *habeas corpus* petitions; the Government's strategy of re-arresting persons whose release had been ordered by the courts; the denial by the authorities that detained persons were being held in custody; the problem of detention by the Army, despite its having no legal power to detain persons; the persecution, including arrest and torture of lawyers who are identified with their clients, particularly in the case of Maoist suspects; and the problems of rampant corruption throughout the court system.

19. The mission also observed a protest demonstration on 31 January sponsored by the Nepal Bar Association, at which some 300 lawyers participated. The lawyers were demonstrating generally against the defiance by the Government of court orders and the particular case of five colleagues who were held despite orders from the Supreme Court for their release.

#### **F. Joint Consultative meeting**

20. The mission attended a human rights consultation session organised by the Advocacy Forum in Nepalgunj. Some 27 persons were present, including the Chief District Officer of Banke District, three Judges from the Banke District Court, the District Court Registrar, the Inspector of the District Police Office, a District Police Officer, the President and Secretary of the Nepal Bar Association Appeal Court, the President of the Nepal Bar Association District Court Unit, Advocates from the Nepal Bar Council, an advocate from the Centre for the Victims of Torture (CVICT),

advocates from the NGOs HURON, CeLLrd and CAPCORN, the Editor of Nepali Express Newspaper, a reporter from Kantipur Daily, a reporter from Channel Nepal, and lawyers from the Advocacy Forum.

21. This meeting presented an opportunity for all sectors responsible for the administration of justice to discuss and debate the human rights situation. On the positive side, it was noted that local government was gradually becoming aware of the obligation to provide legal detainees with basic needs and prisoners were becoming increasingly cognisant of their basic rights. However, multiple problems were reported: torture allegations were often not registered by police or judges; many lawyers had been and remained unable to visit detainees; detainees were often unaware of fundamental rights, including the right to a lawyer; police and judges rarely asked for medical examinations to be carried out; detainees were released and immediately rearrested under TADA; the Army detained persons unlawfully and were not subordinate to civilian authority; bail was only available for those accused of minor offences and those who could afford the unduly high amounts set; prisons were overcrowded; judges believed that they could not inquire into allegations of torture. The Superintendent of Police for the District indicated that torture allegations were exaggerated.

#### **G. National Institutions**

22. The mission met with members of the National Human Rights Commission (NHRC), including the Chairman, Justice Nayan Bahadur Khatri, members Dr. Gauri Shankar Das, Ms Indira Rana and the Acting Secretary, Kedar Prasad Poudyal. The mission learned that the NHRC had broad jurisdiction to hear individual complaints of human rights abuse and to carry out investigations, but were only competent to make non-binding recommendations and, accordingly, lacked power of enforcement. Most of the complaints presently received were said to arise from the insurgency and many involve cases of disappearances. Present NHRC projects include “responding to crisis project” and monitoring. The mission also discussed the case of two girls allegedly raped by officers of the armed forces, which had recently been publicised by Amnesty International. The mission was appalled to learn that the NHRC apparently had accepted the girls' retraction of the allegation and much of the Army account in the case, despite the fact that the retraction had been made after they and their family had been visited and subjected to intense pressure by army officers.

23. The mission also met the recently appointed NHRC National Rapporteur on Trafficking in Women and Children, Dr. Renu Raj Bhandari. The appointment, supported by the UN Task force against Trafficking, was the first of a thematic expert to be established by the NHRC. We learned that trafficking was an enormous problem and that the legislation against trafficking was poorly implemented. The Rapporteur informed us that she was hoping to establish a complaint mechanism.

24. The mission met with members of the National Women's Commission, including Pratiba Rana (Vice-Chairperson), Uma Shah, and Maha Laxmi Upadhyaya. The Commission, established in March 2002, is a monitoring body aimed at ensuring that international instruments and national law concerning women are implemented. It had recently conducted visits and carried out surveys in 53 Districts with a view to



producing its own statute, which would have to be approved by Parliament. The draft contained no enforcement mechanism.

25. The mission met with the Chief Commissioner of the Commission for the Investigation of Abuse of Authority (CIAA), Surya Nath Upadhyay and the Secretary, Madhab Prasad Ghimire. The CIAA, established under article 97 of the Constitution, is composed of five Commissioners appointed by the King upon recommendation of the Constitutional Council and accountable to Parliament. The CIAA has no jurisdiction over military personnel and judges, but may investigate court staff. (Jurisdiction to discipline judges resides with the Judicial Commission). The Chief Commissioner told us that while the CIAA maintained jurisdiction over the police, he had focused his own efforts primarily upon corruption, not human rights abuses. He did not consider himself to have jurisdiction over abuse or corruption in the Army, and believed separate agencies should be established for that purpose.

#### **H. Political Parties**

26. The Mission met with representatives from the two largest political parties, Mr. Jhala Nath Khanal, Standing Committee Member and Chief of Department for International Relations Communist Party of Nepal (Unified Marxist-Leninist) and Mr. Narahari Acharya, Nepali Congress party. Both party representatives expressed disillusionment with what they perceived as unconstitutional usurpation of power by the King and selection of ministers from outside the Parliament and main political parties. Both representatives called into question the legitimacy of the existing Government.

#### **I. Non-Governmental Organisations**

27. In addition to the extensive interaction with the mission's facilitating organisation, Advocacy Forum, and the ICJ Nepal Section, the mission met with a number of representatives of non-governmental organisations.

28. The mission met with the General Secretary of the Informal Sector Service Centre (INSEC), Mr. Subodh Pyakurel. INSEC is a leading human rights NGO operating throughout the country. The General Secretary provided the mission with a substantial study it had carried out on human rights throughout the country, including testimony from victims. He alleged that the Government had failed to comply even with the already restrictive terms of TADA. Since emerging from barracks two years ago, the Army, unaccustomed to dealing with a counterinsurgency, had cast suspicion upon virtually every villager in affected areas of participation in Maoist activities. The result had been a spate of extrajudicial executions. For their part, the Maoists had compensated for their shortfall in weaponry by instilling generalised terror in the population. Police had taken reprisals upon lawyers and human rights activists seen as defending Maoists. The General Secretary believed that the establishment of human rights cells in the armed forces was a positive sign, but the gesture fell substantially short of the large scale reforms needed to address the human rights crisis.

29. The mission met with the Chairperson of the Human Rights and Peace Society (HURPES), Mr. Krishna Pahadi. HURPES was said to have 2500 active members in the country. It advocates a general policy of non-violence. It had held human rights training seminars in some 41 districts. He expressed concern that most Nepalese people were sandwiched between the Army and the Maoists, and indicated that presently the Maoists had lost control of their militias, making discipline difficult.

30. The mission visited the Centre for Legal Research and Resource Development (CeLLRD), which is connected with the Kathmandu School of Law. There it met Professor Yub Raj Sangraul, Director of the School of Law and Kishor Silwal, Director of CeLLRD. Professor Sangroula gave the mission a thorough briefing on the legal history of Nepal and the challenges it faced in reforming its antiquated legal codes and judicial structures. He noted that much of the procedural legal content in Nepal is derived from civil law. In 1963 Nepal moved to an adversarial model, resulting in a hybrid system. He stressed that the primary difficulty in achieving such reform rested not in the paucity of material resources, but in entrenched attitudes and lack of training and education of judges and lawyers in contemporary legal developments. He also indicated that with the dissolution of the Constitution and the arrogation of powers to the King and his hand-picked ministers from outside the parliament, the Constitution had effectively ceased to exist. There had been a large political vacuum left, whereby the monarchy and the Maoists were the only players wielding effective power.

#### **J. Victims**

31. The mission met individually with several victims of human rights violations, including three lawyers, many of whom were reluctant to have their identity revealed for fear of reprisal. Some of these cases are highlighted in the report. These meetings produced vivid and credible testimony, corroborating accounts consistently conveyed to us by other sources of arbitrary detention, torture, and harassment of lawyers and human rights defenders.

32. Finally, the mission met with a number of diplomatic personnel from donor countries and the European Commission with a view to gathering information on the present donor activities vis-à-vis the administration of justice and to see where needs for capacity building remain.

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## **CHAPTER TWO: HISTORICAL AND POLITICAL BACKGROUND**

33. Nepal is the world's only Hindu kingdom. A landlocked country sandwiched between India and Tibet, it has an area of 147,181 square km and a population of about 25 million. It is among the world's poorest countries, with a per capita income of US\$220 in 1998 and more than half the population earning less than US\$1 per day. Most Nepalis live in rural areas and subsistence agriculture is the main occupation. Population growth is rapid. This high growth rate and the resulting pressure on land in a mainly agricultural country is a major contributory factor to Nepal's many economic, social and political problems.

34. Geographically Nepal can be divided into the Terai, the flat land bordering India which is physically part of the Indo-Gangetic Plain; the Pahad or hill region, in which the capital Kathmandu is located; and the high Himalaya Region, which contains eight of the world's ten highest mountain peaks, including Mount Everest.

35. Apart from agriculture, the mainstays of the Nepali economy are manufacture of garments and carpets; tourism (currently in deep recession because of Nepal's unstable political situation); overseas aid; and remittances from Nepalis working abroad. Nepal's small amount of industry is mainly located in the Terai.

36. Ethnically the people of Nepal are a mixture of Indo-European peoples originating from India and Tibeto-Burman people originating from the Himalayas. Broadly speaking the former are Hindus while the latter are Tibetan Buddhists. Nepali, a Sanskrit based language related to Hindi, is the national language and is generally understood.

37. Nepalis are divided by caste as well as ethnicity. Although inter-caste marriage now occurs in the cities, in rural areas rigid caste distinctions are still a dominant feature of life. Throughout Nepal's modern history political power has been held by Brahmins of Indo-European origin from the Pahad region. Of the Tibeto-Burman groups, the Gurungs, Rais and Limbus are noted for their military prowess and form the bulk of Gurkha recruits and of the Nepali Army, while the Sherpas are famous for their mountaineering skills. Other ethnic groups include the Tamangs of the Himalayas, the Newars of the Kathmandu valley and the Thakurs. Discrimination against dalits (untouchables) remains a major feature of Nepali life.

38. Prior to the 18<sup>th</sup> century Nepal was a collection of small principalities, many ruled by Rajputs originating from India, and the three kingdoms of the Malla dynasty, Kathmandu, Patan, and Bhadgaon (modern Bhaktapur). From 1742 the ruler of the Gorkha principality, Prithvi Narayan Shah, conquered neighbouring states. To counteract his enhanced power, the Malla rulers brought in forces lent by the British East India Company. When these were withdrawn in 1769, Prithvi Narayan Shah was able to conquer the Malla kingdoms and unite Nepal as one state with the capital at Kathmandu. His descendants remain the hereditary kings of Nepal today.

39. In 1814 Nepal fought a war with the British East India Company as a result of which it was forced to cede much of the Terai by the Treaty of Sugauli in 1816. However, much of this territory was returned to Nepal in 1868 as a British reward for Nepali support during the 1867 uprising (the "Indian Mutiny"). The British were so impressed by the military skills of the Nepalis in the 1814 War that they began recruiting Nepali mercenaries, known as Gurkhas, into their Army, beginning a tradition which continues to the present day.

40. From 1816 to 1951 Nepal was officially closed to foreigners. Although the Shah dynasty reigned throughout this period, from 1846 they were reduced to figureheads as real power was seized by a nobleman from Western Nepal, Jung Bahadur Rana, who established a system of hereditary Prime Ministers, the Ranas. Under their rule, Nepal was closed, autocratic, conservative and hierarchical.

41. After World War II the achievement of independence by India and the Communist Revolution in China followed by the Chinese seizure of Tibet led to political upheaval in Nepal. In late 1950 King Tribhuvan, assisted by India, seized power from the Rana Prime Minister and established a Government consisting of both Ranas and commoners from the Nepali Congress Party ("NCP"), a party led by B.P. Koirala and loosely modelled on the Indian Congress Party. Nepal gradually re-opened its doors to the outside world, establishing diplomatic missions with other nations. However the Ranas have remained powerful and influential. Both the present King Gyanendra and his brother, the late King Birendra, married members of the Rana family.

42. Politically, from 1951 to 1990 successive monarchs attempted to retain effective power and to resist pressure to restrict themselves to the role of constitutional monarchs. A democratic constitution provided for elections, which were held in 1959, resulting in victory for the NCP. However, in 1960 King Mahendra had the Cabinet arrested and assumed total control of the country. In 1962 he introduced a system of non-party government known as Panchayat. Local panchayats (councils) chose representatives to district panchayats, which in turn chose some members of the National Panchayat. However power remained with the King, who appointed 16 of the 35 members of the National Panchayat, and appointed the Prime Minister and the Cabinet of his choice.

43. In 1972 King Mahendra died and was succeeded by his son, Birendra. Gradually rising discontent with the Panchayat system erupted in violent riots in 1979, and in response the King announced a referendum on the future of the Panchayat system. A referendum was held in 1980 and resulted in a vote of 55 percent in favor of the Panchayat system. Following this vote King Birendra made modifications to the Panchayat system which gave it a more democratic appearance. The District Panchayats were abolished, and the majority of members of the National Panchayat were directly elected with a five-year term. The number of members of the National Panchayat appointed by the King was reduced to 20, and the National Panchayat elected the Prime Minister. In addition, certain constitutional rights were guaranteed. Yet behind this semi-democratic façade the King wielded almost complete power and the Panchayat operated as a rubber stamp for his decisions. The military and the police were almost wholly unaccountable, censorship was strict, and torture and arbitrary arrests were widespread.

44. In 1989 the opposition parties formed a coalition to fight for multi-party democracy with the King as constitutional head. In 1990 a "people power" movement known as the Jana Andolan gathered momentum. The King initially responded with force, and several hundred people died when police fired into crowds. However as a result in part of pressure from foreign aid donors the King in April 1990 announced the end of the Panchayat system, the introduction of multi-party democracy, and his acceptance of the role of constitutional monarch.

45. Since 1990 Nepal has been a multi-party democracy characterised by weak and unstable governments prone to collapse. The early optimism of the years immediately following the Jana Andolan were followed by widespread disillusion with the ineffectiveness of successive democratic governments and their inability to bring about meaningful improvement to Nepal's social and economic conditions. From 1990 to 1994 the governing party was the NCP under the leadership of Girji Prasad Koirala. In the following general election, the NCP was defeated by the United Marxist-Leninist Communist Party (UML), which had been the largest opposition party. A UML Government took office with Man Mohan Adhikary as Prime Minister, making Nepal the world's first Communist monarchy. After a brief period, Parliament was again dissolved in 1994 and in the ensuing election no party gained an overall majority. Several years of unstable coalition government ensued, with five governments emerging over a five-year period.

46. It was during this period of instability that the present Maoist insurrection began. A Maoist party called the United People's Front (UPF) had contested the 1991 general election, winning nine seats. A rift subsequently occurred in the UPF leadership, leading to the establishment of the United People's Front (Bhattarai) under the leadership of Dr Baburam Bhattarai. This party combined with the Communist Party of Nepal (Maoist) founded by Pushpa Kamal Dahal, commonly known as "Prachanda", and in February 1996 insurgent activity started under the leadership of Dr Bhattarai and Mr Prachand, who declared a "People's War".

47. The immediate reason given by the Maoists for this declaration was the failure of the NCP Government of Sher Bahadur Deuba to respond to a memorandum listing 40 demands, including the abolition of royal privileges, the promulgation of a new constitution and abrogation of the Mahakali treaty regulating relations between Nepal and India relating to water, electricity and the common border. The movement attracted a degree of popular support as a reaction to rampant corruption, poverty, and the caste system.

48. Since February 1996 the Maoist have engaged in violent insurgency involving killing of police, public officials and ordinary civilians. The Maoists have been responsible for torture, bombings, kidnapping, extortion and intimidation. They have been active in more than 50 of the country's 75 districts, and are particularly strong in the western districts of Rolpa, Dolpa, Kailali, Kalikot, Jajarkot, Jumla and Accham, and in the eastern district of Sindhuli. The Maoists have killed scores of members of other political parties. They are said to have made teachers one of their primary targets and to have killed 28 members of the Nepal Teachers Association. In some districts the Maoists have effectively supplanted the authority of the central Government, which is able to mount, armed incursions but does not have firm control

of territory outside a few command centres. In these districts buildings symbolising central government authority, including courts, have often been destroyed by the Maoists, who operate instead their own so-called "People's Courts".

49. In May 1999 the NCP gained a Parliamentary majority in the general election, raising the prospects for renewed political stability. However the previous pattern of short-lived governments continued, under Krishna Prasad Bhattarai from 31 May 1999 to 17 March 2000; G.P. Koirala from 20 March 2000 to 19 July 2001; and Sher Bahadur Deuba from 23 July 2001 to October 2002.

50. On 1 June 2001 Crown Prince Dipendra shot and killed nine members of the Royal Family including his father King Birendra, his mother Queen Aishwarya, and a younger brother of the King, before shooting himself. It was alleged that he did so because he was angered by his mother's disapproval of his choice of bride. Some suspected a political motive, but no firm evidence was adduced to support this hypothesis. The King's surviving brother Gyanendra succeeded to the throne. Gyanendra's accession to the throne was greeted with serious public unrest. In an attempt to assuage this unrest a commission of inquiry was set up into King Birendra's death. The matter remains controversial and sensitive.

51. In the latter part of 2001 peace talks were held between the Government and the Maoist rebels. The talks and the accompanying cease-fire broke down on 23 November 2001, followed by an attack by the Maoists on police and Army posts in 42 districts. The authorities responded on 26 November by declaring a nation-wide emergency and for the first time deploying the Army, rather than the police. (In February 2002 the Parliament extended the state of emergency) The King also announced the Terrorism and Disruptive Activities Ordinance 2001 (TADO) making legal provision to control terrorist and disruptive activities and provide improved public security. This ordinance was superseded by the similar Terrorist and Disruptive Activities (Control and Punishment) Act 2002 passed by Parliament on 4 April 2002.

52. The promulgation of a state of emergency resulted in suspension of many fundamental rights, such as freedom of expression and speech, freedom of assembly, freedom against arbitrary detention, right to privacy and right to constitutional remedies. Habeas corpus was preserved. The police were granted, and employed, wide powers to arrest any person suspected of being involved in terrorist activity. The Maoists were declared a terrorist organisation under the TADO, and anyone thought to be a Maoist sympathiser was likely to be detained as a terrorist. At an all-party meeting on 17 May 2002, the political parties opposed a decision of the prime minister to further extend the state of emergency. On 22 May, the Prime Minister asked the King to dissolve the Parliament and call elections. The state of emergency lapsed on 28 August 2002. However violence showed no sign of decreasing and may have increased after that date, with reports of hundreds being killed in clashes between the Army and actual or suspected Maoists.

53. More than 5000 people were arrested in the period of the state of emergency, including lawyers, teachers, journalists and human rights activists. During the emergency period, the Government also instituted some cosmetic measures aimed at addressing human rights concerns, such as establishing a National Women's

Commission (March 2002), a human rights cell in the Army (July 2002) and a Dalit Commission mandated to improve the conditions among the "lower" caste communities (August 2002).

54. In October 2002 the King dissolved Parliament and dismissed Sher Bahadur Deuba, on grounds of "incompetence" and replaced him with Lokendra Bahadur Chand, who had previously been Prime Minister under the Panchayat system. A subsequent court challenge to the dissolution of Parliament led to a finding that the action was constitutional. Grave doubts continue however as to the constitutionality of the dismissal of Prime Minister Deuba.

55. A series of bloody encounters between the armed forces and the Maoists during 2002, during which neither side appeared to gain a clear military advantage, was followed on 26 January 2003, during the present mission, by the assassination in Kathmandu of the Inspector General of the Armed Police.

56. At this grave juncture a cease-fire and talks between the Government and the Maoists were unexpectedly announced on 29 January 2003. The talks were on-going as this report was in preparation, led by Social Development Minister Mahendra Singh Pun for the Government and Baburam Bhattarai for the Maoists. The Government agreed to withdraw international police warrants and awards for the arrest of the Maoists and to cease designating them as terrorist. On 13 March 2003 a code of conduct was agreed. Both parties undertook "to cease from armed and provocative activities" and also agreed on fair access to the state run media. The Government also agreed to the release of Maoists detainees. The Maoists, in turn, appeared to be softening their demand that the monarchy be abolished.

57. As this report was being prepared, two sessions of negotiations had been held, but significant progress appeared elusive. The major political parties declined to engage in the process and insisted that the Government as presently constituted was illegitimate and not competent to negotiate the country's future. A dispute has apparently arisen between the Government and Maoists after the Government appeared to renege on an agreement according to which a number of Maoist leaders were to have been released from detention and the Army was to be confined to within five kilometres of their barracks.

58. Regarding negotiations on the human rights concerns, a draft agreement is to be tabled for consideration, which will commit both the Government and Maoists to agree to guarantee protection for a number of enumerated rights. The agreement envisions giving the National Human Rights Commission the pre-eminent role in monitoring compliance with the agreement through five regional offices that are to be established.

## CHAPTER THREE: THE CONSTITUTION AND LEGAL SYSTEM

### A. The Constitution

59. Nepal did not have a written constitution until 1948, at which time a constitution was promulgated by the last Rana Prime Minister that did not substantially challenge the prevailing Rana order. A democratic constitution based on the British Westminster model was adopted in 1959 and was subsequently replaced by King Mahendra's "Panchayat" Constitution in 1962. Both the 1959 and 1962 constitutions enumerated fundamental rights to be protected, but neither instrument provided for any mechanism for enforcing those rights. The rights provisions were therefore generally ineffective and ignored.

60. Nepal's present Constitution came into effect on 9 November 1990 (2047 by the Nepal calendar), a few months after the "Jana Andolan" revolution. It mandates a democratic Government with separation of powers, a constitutional monarchy, and constitutionally guaranteed protection of human rights. Most significantly, for the first time in Nepal's history, it provides expressly for constitutional review of laws to ensure their compatibility with the Constitution. Under article 88, "any citizen of Nepal shall be entitled to file a petition in the Supreme Court for the declaration of any Nepal law or any part thereof as void due to its inconsistency with the Constitution on grounds of unreasonable restriction imposed in the enjoyment of fundamental rights conferred by the Constitution or on any other ground." The Supreme Court has jurisdiction, if it finds the impugned law to be inconsistent with the provisions of the Constitution, to declare it void and inapplicable either *ab initio* or from the date of its decision. This provision of the Constitution is in active use and, in a number of cases, parts of laws have been struck down as unconstitutional, a notable example being part of the citizenship law in the case of *Meera Gurung v. Immigration Department* (1995).

61. Turning to the substantive provisions, the Constitution recognises religious diversity, but entrenches Hinduism as the national religion. Article 2 provides that the Nation consists of the people of Nepal "being united by a bond of common aspirations and faith in the independence and integrity of the nation, irrespective of religion, race, caste or tribe." However, article 4 states that "Nepal is a multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu and a constitutional Monarchical Kingdom." Article 6 provides that Nepali in the Devanagari script shall be the official language, but provides that all languages spoken as mother tongue in various parts of Nepal are the languages of the nation.

62. Part II concerns citizenship and provides that citizenship is passed by patrilineal descent, or by naturalisation based on 15 years residence and knowledge of Nepali, or by two years residence in the case of a descendant of a citizen of Nepal. A child born in Nepal of unknown parentage is deemed to be a son of a citizen of Nepal. This anachronistic provision as to passage of citizenship by patrilineal descent only is patently gender discriminatory and in breach of Nepal's international obligations



under the International Covenant on Civil and Political Rights and the Convention on the Elimination of Discrimination against Women. We also consider that it provides a constitutional underpinning and reinforcement to pervasive discriminatory attitudes towards women in Nepali society. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has similar reservations in this regard. In 1994, "the Committee express[ed] its concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination as regards marriage, inheritance, transmission of citizenship to children...." These concerns were repeated in CEDAW's 1999 report.

63. Part III, containing Articles 11 to 23, guarantees fundamental rights.

64. Article 11, entitled Right to Equality, provides that all citizens shall be equal before the law, and no person shall be denied equal protection of laws. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideology or any of them. The state shall not discriminate against citizens on grounds of religion, race, sex, caste, or ideology. Special provisions may be made by law to protect or promote the interests of women, children, aged or disabled persons or those who are economically or socially backward. No person shall be discriminated against on the basis of caste as an untouchable or be denied access to any public place or be deprived from the use of public utilities, and any act in violation of this provision shall be punishable by law.

65. It is obvious from even the most cursory acquaintance with Nepal that while Article 11 may reflect an official aspiration, it is widely breached and that discrimination on grounds of caste and sex form a pervasive feature of Nepali life. CEDAW noted in its 1999 observations that "the Government has not taken sufficient action...to amend prevailing discriminatory laws" and it was concerned by the retrograde views of the Supreme Court, which had stated "that if any laws do not conform with culture and tradition, society will be disrupted."

66. Despite the express constitutional prohibition on caste discrimination, the mission received information according to which in neither 2001 nor 2002 were there any Dalits ("untouchables") employed in positions traditionally closed to them, such messengers or tea servers, in any Government office in Kathmandu. Even in respect of positions not closed, there is a general practice of employment discrimination towards Dalits. Likewise, although the Constitution guarantees equal remuneration, there is no equal pay legislation and equal pay is the exception not the rule. The ICJ hopes that the establishment of a Governmental Dalit Commission, expressly charged with improving the status of Dalits, and the National Women's Commission will go some way toward ameliorating such discrimination and the debilitating effects it has on affected groups.

67. In its 2001 observations on the periodic report of Nepal to the Convention on the Elimination of all forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination (CERD) "note[d] that the non-discrimination clauses in article 11 of the Constitution do not cover all the grounds provided for in articles 2 and 26 of the Covenant. It is particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplores

inadequacies in the implementation of the prohibition of the system of castes. The persistence of practices of debt bondage, trafficking in women, child labour, and imprisonment on the ground of inability to fulfil a contractual liability constitute clear violations of several provisions of the Covenant. The Committee remains concerned at the existence of caste-based discrimination, and the denial which this system imposes on some segments of the population of the enjoyment of the rights enshrined in the Convention."

68. Article 12 guarantees freedom of thought and expression, freedom of assembly, freedom to form unions and associations, freedom to move and reside in any part of Nepal, and freedom of profession or occupation. Article 13 prohibits censorship. The difficulties relating to press freedom are discussed in Chapter 4 below.

69. Article 14 provides for rights regarding criminal justice. It prohibits retrospective criminalisation or penalisation; double jeopardy, self-incrimination as well as torture or cruel, inhuman or degrading treatment of those in custody. It provides that no person who is arrested shall be detained in custody without being informed at the earliest of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. Our inquiries indicate that this provision is widely ignored.

70. We were informed by certain Government officials that there was little or no torture in police custody in Nepal and informed by practising lawyers and NGOs that such torture was commonplace. Our conclusion is that torture is indeed widespread. (See following chapter 4 on serious breaches of human rights.)

71. Article 15 prohibits preventive detention without sufficient grounds and provides that anyone so detained shall be entitled to compensation. Article 16 provides for a general right for any person to "demand and receive information on any matter of public importance. Article 17 guarantees the right to private property and no expropriation without compensation. Article 18 guarantees to every community in Nepal the right to conserve and promote its language script and culture, and to provide mother tongue primary education. Article 19 guarantees freedom of religion. Article 20 prohibits slavery or trafficking in human beings. Article 21 prohibits exile. Article 22, entitled Right to Privacy, provides that the person, house, property, documents, correspondence or information belonging to any person are inviolable "except in circumstances laid down by law".

72. Article 23 provides the right to proceed in accordance with Article 88 (see above) for the enforcement of the rights guaranteed in Part III of the Constitution.

73. This part of the constitution thus guarantees most of the internationally recognized civil and political rights. Moreover, although some such rights are not directly constitutionally guaranteed, such as a general right to a fair trial in all its aspects, Nepal has ratified the six principal international human rights instruments. (However, it has as yet failed to ratify the Statute of the International Criminal Court.) Under Nepali law, such international treaties, once ratified, are directly applicable as part of domestic law without the need for any municipal legislation (Nepal Treaties Act,

Section 9). On paper, therefore, Nepal has a comprehensive code of human rights protection. However, as indicated in the examples given above, many of these rights clearly have failed to be safeguarded in practice.

74. Part IV of the Constitution contains the "Directive Principles of the State" (Article 25) and State Policies (Article 26). The principles contain a general commitment to promoting the welfare of the population, economic development, justice, participation in governance, and international comity. The 16 policies are more specific, and include protection of the environment, promotion of opportunities for women, raising the standard of living of "backward" communities, accelerating rural development, providing free legal aid, and working for peace in international relations.

75. Part V concerns the monarchy. Article 27 states that "His Majesty is the symbol of the Nepalese nation and the unity of the Nepalese people. His Majesty shall abide by and protect this Constitution for the best interest and progress of the people of Nepal." Article 31 exempts the King from the jurisdiction of the courts, while making it clear that this does not exempt his Government or any public official. Part VI provides for the appointment of a Raj Parishad or Council of State by the King, to meet if the King dies or becomes incapacitated.

76. Part VII deals with the executive. Article 35 provides that the executive power shall be vested in the King and the Council of Ministers and that the powers of the King are to be exercised by and with the advice and consent of the Council of Ministers submitted through the Prime Minister, except those specifically mentioned as to be exercised by him personally or in some other manner. Article 36 provides that the King shall appoint as Prime Minister the leader of the Parliamentary party having a majority in the House of Representatives and that the Prime Minister shall be responsible to the House of Representatives.

77. Part VIII contains prescriptions regarding the legislature and provides for a bicameral legislature. The House of Representatives consists of 205 members elected by universal franchise from single member geographical constituencies, with the ratio of seats allocated to each district intended to reflect the population. The maximum term of the House of Representatives is five years. The National Assembly consists of 60 members, 10 of whom are nominated by the King from among distinguished persons who have rendered eminent service in different fields of national life; 35, including at least three women, elected by the House of Representatives by single transferable vote proportional representation (STV); and 15 members elected by STV by an electoral college consisting of chairmen and deputy chairmen of village, town and district local authorities. Members of Parliament are required to be aged over 25 for the House of Representatives and over 35 for the National Assembly. Ministers may take part in the proceedings of either House but only vote in the House of which they are members. Article 62 provides free speech protection for Parliamentary debate, but makes it clear that there is no Parliamentary immunity against arrest on a criminal charge. Part IX of the Constitution sets out the legislative procedure for passage of bills. Part X deals with finance, and prohibits the levying of taxes except in accordance with law.

78. Part XI concerns the judiciary. Article 84 provides that the judicial power shall be exercised in accordance with the provisions of the Constitution, the laws for the time being in force, and the established principles of justice. Article 85 provides that the courts shall consist of the Supreme Court, Appellate Courts and District Courts, as well as such other courts and tribunals as may be established from time to time. There is a prohibition on a court or tribunal being constituted for the purpose of hearing a particular case. The articles which follow contain detailed provisions as to the appointment, qualifications and conditions of service of judges. Judges are appointed on the recommendation of a Judicial Services Commission (Article 94) consisting of the Chief Justice, the Minister of Justice, the senior most judge of the Supreme Court, the chairman of the Public Service Commission, and the Attorney-General. All judges have security of tenure. A Supreme Court judge may only be removed by a two-thirds resolution of the House of Representatives. A judge of the appellate or district court may only be removed by the Judicial Council provided for by Article 93, consisting of the Chief Justice, Minister of Justice, two most senior judges of the Supreme Court, and one distinguished jurist to be nominated by the King. The remuneration, privileges and conditions of services of the judges may not be altered to the detriment of the incumbent (Articles 86 and 91).

79. Part XII of the Constitution establishes the Commission on the Investigation of Abuse of Authority (CIAA) to investigate both corruption and other forms of abuse of authority by persons holding public office. One unusual aspect of the CIAA's remit, contained in the Commission on the Abuse of Authority Act, 1991, is that it does not encompass the judiciary. A bill to extend its remit to the judiciary was withdrawn in Parliament in 2001 as a result of opposition from the judiciary. The judiciary have expressed concern that its independence might be threatened by such an investigative power. One solution which has been canvassed is that the CIAA should have power to mount such investigations, but only after prior approval from the Judicial Council (see further chapter on the judiciary below).

80. Other parts of the Constitution provide for the Public Service Commission, the Electoral Commission, and the office of the Attorney-General, who is the Chief Legal Adviser to the Government.

81. Part XVIII contains only Article 115, which provides that if a situation of grave emergency exists due to war or external aggression or armed revolt or extreme economic depression, whereby the sovereignty and integrity of the Kingdom of Nepal or the security of any part of the country are threatened, the King may by proclamation declare or order a state of emergency in all or part of the kingdom. The emergency must be approved by Parliament within three months and lapses in any event after six months. This power was invoked by the Government in November 2001 after the first peace talks with the Maoists collapsed.

82. Article 116 (art XIX) makes provision for amendment to the Constitution by a two-thirds majority of both Houses of Parliament.

83. Of the remaining articles, the most relevant to our concerns are articles 118 and 119, which define the constitutional position of the Army. The King deploys the Army on the advice of the National Defence Council. The National Defence Council

consists of the Prime Minister, Minister of Defence and the commander in chief of the Army. The King is the Supreme Commander of the Army and appoints the Commander in Chief.

84. Under Article 122 the King has a general power to commute the sentence of any court.

85. We note that a key demand of the Maoist insurgents is for revision of the Constitution. While revision of the constitution in aspects such as the monarchical system of government are matters beyond the terms of reference of the mission, we are concerned that there should be no changes which might weaken the protection of democracy, the rule of law, and fundamental human rights for which the existing Constitution provides. As already indicated, we consider that the key problem for Nepal is how to ensure that the rights protection set out in the existing Constitution is fully implemented, which is a matter of bringing other laws and administrative practices into conformity with the constitutional provisions which already exist. The principal changes which we regard as desirable to the constitution itself are (1) the removal of the discrimination of women in relation to nationality contained in Article 11 and (2) a clearer statement of the subordination of the Army to the democratically elected government (see chapter 5).

86. We consider that there is an urgent need for better understanding of the Constitution in the community generally as well as among Government officials including those of high rank. We were shocked to be told by the Home Minister himself that a way around any unforeseen problems with the Constitution might be for the King to use his power under Article 127. This power provides that "If any difficulty arises in bringing this Constitution into force His Majesty may issue necessary orders to remove these difficulties". This provision is clearly not relevant to a situation 12 years after the constitution came into force and the suggestion shows a worrying lack of commitment to constitutional norms.

## **B. The Legal System**

87. Nepal's legal system is essentially a common-law system influenced by the common law system of India, but with many traditional Hindu elements still remaining reflecting Nepal's earlier history.

88. The first Nepali legal code was the Manab Naya Sastra, introduced by King Jayasthiti Malla in the late 14<sup>th</sup> century. Drafted by Orthodox Brahmins, it was an attempt to unify and codify Nepalese social practices. The code was largely a product of traditional Hindu values, with personal rights and obligations being linked to sex and caste. Women had no independent legal status, but rather were always under the guardianship of a male relative. There were strict penalties for breaches of caste rules, with death prescribed for some inter-caste marriages.

89. The first attempt at a legal code in the modern sense was the Muluki Ain (General Code of Law of the Land), promulgated by the first Rana ruler, Jung Bahadur, in 1846. The Muluki Ain is said to have been inspired by the Code Napoleon in Europe. At the

time it was seen as a progressive measure, as, for example, it abolished the practice of sati, whereby women were required or pressured to immolate themselves on their husband's funeral pyre. However, it continued to reflect a traditional Hindu approach to the law in most respects, with caste playing an important part in determining an individual's rights and penalties, and women having minimal rights.

90. The first modern code was the New Muluki Ain promulgated in 1963. This legislation replaced Jung Bahadur Rana's code and attempted to introduce a genuine secular legal system. It remains a fundamental part of the Nepali legal system. In its structure, however, it is not intended to be a permanent comprehensive code, but is subject to statutory replacement and/or qualification. Thus, where a statute has been passed by Parliament on the same subject as a part of the New Muluki Ain and makes different legal provisions from that part of the New Muluki Ain those provisions in the New Muluki Ain will be regarded as superseded and no longer good law.

91. Just before the enactment of the New Muluki Ain, an important statute introduced modern common-law concepts into Nepali Law. The State Cases Act 1961 provides for cases to be investigated and prosecuted by the state as a party, doing away with the previous system under which a person acting as an informer was required to provide the evidence of a defendant's guilt. It introduced the adversarial system of justice in place of the previous inquisitorial system, whereby the judge investigated the case.

92. A further reform of the legal system was the enactment of the Evidence Act 1974. It lays down rules for the admissibility of confessions, providing that they must have been obtained while the subject was conscious, understanding what s/he had said, and obtained without torture. The Act expressly obliges the prosecution to prove the case beyond reasonable doubt. It also introduced cross-examination of witnesses. Unfortunately, a third major reform planned at this time, the introduction of a criminal code, never went beyond a draft.

93. The legal system entered a new era with the start of democratic rule and the adoption of a democratic, law-based constitution in 1990. A new State Cases Act 1993 was enacted which further separated the investigation and prosecution functions by delineating the responsibilities of the police and of the prosecution. The provision of the right to challenge laws on grounds of unconstitutionality and the power of the Supreme Court to issue orders of mandamus, certiorari and habeas corpus ensure that its decisions are effectively binding on the lower courts, which in practice was not the case before 1990. The Bar Council Act of 1993 made provision for a modern fully independent legal profession. However, much of the legal system remains unreformed, leaving a patchwork of law in which justice and individual rights are often ignored. This is particularly so in relation to the police and their role in investigating crime, as discussed in Chapter Five.

94. The court system consists of the Supreme Court, 18 Appellate Courts, and 75 District Courts (one for each district). There is no distinction between criminal and civil courts and no jury trial. Large numbers of relatively minor cases are tried not by the Courts, but by the Chief District Officer, an administrative official who is also empowered to try cases under many individual statutes and may pass sentences of up to six months imprisonment.

95. The system of trial of minor offences by a District Officer is a wholly anachronistic and unacceptable colonial style system deriving its origins from British India and other parts of the former British Empire. It is a blatant breach of the principal of separation of powers underlying the Constitution of Nepal. It also contravenes the fair trial provisions of the International Covenant on Civil and Political Rights, Article 14 of which states that in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not only is the Chief District Officer not an independent tribunal, being the head of the executive in the district, but the power of adjudication in criminal matters also makes the District Officer an over-powerful figure in his district with scope for abusing his power by harassing opponents with unwarranted prosecutions and convictions. We strongly recommend that this system be abolished and replaced by a system of magistrates' courts for minor criminal offences.

96. Studies of the operation of the legal system have been carried out by the non-governmental Centre for Legal Research and Resource Development (CeLLRRD) in 1999 and 2001, based on extensive surveys and analysis of the available statistics. These paint a depressing picture of gross inefficiency, brutality, corruption, and ignorance. The criminal investigation system is overwhelmingly based on extraction of confessions, with the majority of persons arrested being tortured in custody to extract confessions. The ability of the police to investigate crime by other methods such as interviewing of witnesses who are not in custody, or collection of forensic evidence, is minimal. Delays with repeated adjournments are the norm in criminal trials as well as civil cases. The ability of judges at first instance to evaluate evidence is often lacking. Only about 60 per cent of prosecutions result in a conviction, a low rate which reflects the absence of any prior screening by prosecutors before cases are brought to court. There is no legal provision for police bail, and bail granted by judges is usually linked to the defendant entering into a bond, which effectively limits bail to the better-off citizens. There is no legal provision for courts to sit in camera when hearing sensitive private matters such as matrimonial cases. Such cases are on the contrary treated as public entertainment. Corruption among police and court clerks is widespread. It is less common among judges, but does occur in significant proportions. There appears to be a gross overloading of the system with civil cases, with no mechanism to prevent minor civil cases being appealed successively up to the Supreme Court.

97. The system does however have some strengths and potential for further improvement. At the higher level the judiciary has established a reputation for independence, and has struck down several laws and actions of Government Departments as unconstitutional. Our findings as to the operation of the courts are considered in more detail in Chapter 6.

## CHAPTER FOUR: HUMAN RIGHTS CONCERNS

### A. Arbitrary Arrest and Detention

98. The difficulties in respect of the administration of justice in Nepal begin at the point of the first contact of the individual with officialdom. Indeed, in the great majority of cases of detention that came to the notice of the mission, no warrant for arrest had been produced, and no reason had been given to detainees or their families for the arrest. Contrary to the dictates of Nepalese legislation (State Cases Act), arrests are made without warrant before substantial evidence is accrued connecting the suspect with the crime. The purpose of this practice is to facilitate the primary means used by police to gather evidence, custodial interrogation.

99. In most instances involving arrest by police, detainees had been held for 7 to 14 days or more without any opportunity to see a lawyer, contact family members, or appear before a court. During the initial period of detention, detainees typically had been beaten or otherwise ill-treated, and they had been provided little or no food, other than scraps given by other prisoners. Police officials were reported generally to avoid recording the date of arrest until the day before detainees have been taken before the court, so as to convey the impression that such persons had been produced within the 24 hours prescribed by the Constitution (article 14 (6)).

100. Under Nepalese law, the military authorities are not authorised to hold persons in detention. If it is necessary to detain a person during the course of military engagement, the Army must transfer the detainee to the custody of civilian authority within 24 hours. Certainly there may arise exceptional instances for which the 24-hour rule is difficult to apply strictly, such as in respect of operations that take place far from civilian police outposts. However, hundreds of cases have been reported of the Army holding persons in barracks for periods of weeks or months. During these periods of detention, the victims usually undergo interrogation under torture. The detainees are held in unacknowledged detention, beyond any judicial supervision and without notification to the families of detainees. Family members or lawyers who may attempt to visit a person detained in military barracks are invariably denied access.

101. Although initially reluctant to admit to these unlawful cases of detention, both military and civilian Government officials generally conceded to the mission team that the Army was holding a number of persons. Army officials claimed to have been granted authorisation for this practice from the highest levels of Government, while the Prime Minister himself denied having so authorised the Army to act. Military and other government officials tended to maintain that the practice was a necessary consequence of fighting a difficult conflict against ruthless opponents. However, these officials invariably failed to explain why the already broad allowances provided under the Terrorism and Destructive (Control and Punishment) Act 2002 (TADA) were not sufficient to preclude resort to unlawful means of detention.



102. Under TADA, a “Security Officer”, meaning the Chief District Officer (CDO), but in theory “any Gazetted Officer-employee of H.M. Government designated by ... notification in Nepal Gazette”, may arrest on “adequate and reasonable suspicion ... and furnish information of such arrests along with reasons thereof.” The mission saw no evidence that Army officers had been designated as “Security Officer” in the Gazette and was informed by all sources that the appropriate Security Officer was always the CDO. Certainly the Army invariably gave no information about detentions, including the reasons for arrest, to the detainees or their lawyers.

103. Given that the Army is not authorised to make arrests, it came as no surprise to the mission to discover that there was no budget for food, health or other essential maintenance. Detainees therefore are often forced to subsist on occasional rations shared with them by visitors or sympathetic officers. Overall living conditions are even worse than in police stations or prisons.

104. The following case that came to the attention of the Mission typifies the pattern of arbitrary detention obtaining in Nepal:

*M.R., a 17 year-old labourer living in Kathmandu, was arrested on 7 July 2002 by seven police officials in civilian dress, who came to his door at 10 p.m. while he was sleeping and asked for his identity card. M.R. told the officer that he did not have the identification document. Although not holding one's identification documents is not an offence in Nepal, the police brought him, along with his brother and his niece, to Hanuman Dhoka. The next day he was moved to the interrogation section and asked about the place where he kept stolen goods. When he proclaimed his innocence, the police subjected him to torture, which included beatings with a plastic pipe and bamboo stick on his back, legs and buttocks. His thighs were rolled with a plastic pipe. That day he was beaten for about one hour. He was continuously beaten on the first three days for about 15-30 minutes each day, and, thereafter, every two to three days over some 15-20 days. Police kicked him with boots, and prodded his stomach with a stick. Detainees were forced to slap each other and when they refused, the police continued to beat them. M.R. finally was able to receive a visit by a lawyer on 1 August. He reported he had pain in his wounds for about 20 days, felt giddiness, pain on his right leg and heart, and he could not sleep at night because of the mosquito bites. He was brought to court 20 days after his arrest, and only then was he provided with money for food. His statement was forcefully taken in the police station, but the manner in which his statement was produced was not addressed in court, and the judge failed to ask him about torture.*

#### ***Lack of effective remedy***

105. Very few cases of arbitrary detention reach the higher courts on *habeas corpus* writs or otherwise. A large proportion of the *habeas corpus* orders that are issued are ignored by the police or other authorities. In respect of some cases, there is a manifest lack of will on the part the Government to ensure release. Indeed, in such instances as when a prisoner is held by the Army, the civilian authorities seem to consider themselves powerless to act. The courts lack enforcement capacity, and repeated

instances of disregard or delay in implementation of court release orders have served largely to erode the authority of the judiciary in Nepal.

106. In more than a few cases, detainees have been released pursuant to a *habeas corpus* order, only to be immediately re-arrested, again usually without warrant or stated reason. This practice clearly contravenes international standards, which mandate not only the availability of a remedy against unlawful detention, but also that such remedy be effective. Another frequently reported practice is for the Chief District Officer to provide police officers with pre-signed detention orders authorising a preventive detention under TADA. These orders contain blank spaces, which police subsequently fill in with the names of persons whom they detain. Thus, while only the CDO is authorised to order preventive detentions, police officials instead appear effectively to be doing so.

### *Lack of Access to Counsel*

107. Despite constitutional guarantees (Article 14), there is in practice no right to a lawyer while on remand or under interrogation. In any event, the limited legal aid provisions make enjoyment of this right impracticable for the great majority of defendants, so that there are hundreds of people in custody without access to counsel. One reliable study found that 71 per cent of detainees do not even know of their legal right to a lawyer. Such legal aid provisions as exist involve bureaucratic application procedures, the completion of which is practically impossible for most detainees in police custody. Even when detainees are provided legal representation, there is usually no opportunity for a defendant to consult with the lawyer before trial. From the time of arrest to the commencement of court proceedings the vast majority of detainees will not have spoken to any lawyer. When consultations between detainees and their lawyers eventually occur, these conversations are usually overheard by the police. Around half of cases are said to proceed through the courts without the detainee being represented by counsel.

## **B. Torture**

108. The practice of torture by the police, armed police forces and Army is widespread in Nepal. Torture is used to extract information or to obtain a “confession”, to dissuade a person from exercising lawful but unwelcome activities (*e.g.*, to prevent lawyers from representing Maoists or acting as a human rights defender), or simply to impress the prisoner with the power of his captors. Torture is usually carried out in such a manner so as not to leave signs. Sexual torture is often used on men and women.

109. Under the State Cases Act (1992), interrogation must be carried out by the Prosecutors, who are required to witness any statements. In practice, most questioning is done by poorly trained police officers. Under the Evidence Act 1974, no confessions obtained by force should be used, but it is estimated that some 60 per cent of convictions are obtained solely on the basis of a confession. It was found by one reliable study that 50 per cent of statements are made against the free will of the detainee. Further, only around 12 percent of persons making statements were allowed

to read the statements prior to signing them. Some 21 percent of detainees were in any event illiterate.

110. Normally, no food is made available to a detainee appearing in court, even when in police custody. A detainee must be brought before a judicial authority within 24 hours, but in practice the average time between an arrest and a first court appearance is one week. Courts very rarely inquire of persons before them how long they have been detained or whether they have been tortured or otherwise ill-treated. In cases where such inquiries are made, detainees frequently suffer reprisals for having revealed information regarding their treatment.

111. The ICJ received allegations of torture in numerous cases. The cases described below serve as examples:

*Lal Bahadur Rokaya left his parents' farm in the mountains at Dolpo at the age of 18 after a group of Maoists insurgents had beaten him for refusing to join their movement. He thereafter went to Nepalgunj and enrolled as a student to obtain his secondary school certificate and train as a teacher. As a young man from a Maoist district, he was apparently viewed by the authorities with suspicion and was detained by armed police in Nepalgunj in December 2001, along with three friends. The police handcuffed and blindfolded him and subjected him to torture every day for eight months. The methods of torture including beatings to his feet with rubber hoses and smearing of his wounds with chilli powder. Eventually his health deteriorated to such an extent that the authorities feared he would die in custody. He was therefore transferred to hospital in a convulsive state, paralysed on his left side. He was diagnosed with cerebral tuberculosis.*

*J.L., a 20-year old carpet weaver from Dang, was detained by police officials on 8 May 2002. The police did not inform him of the reasons for his arrest. He was taken into custody at Hanuman Dhoka, where he was asked to provide information about a theft case. When he failed to provide the information sought, the police beat him with a plastic pipe and bamboo stick all over his body. The police tied his hands and legs with bamboo and beat him for two hours a day for eight days. They also hung him from the ceiling and beat him with a stick on the soles of his feet and his back for an hour, leaving bruises and contusions all over his body. After 11 days he was taken to court. The judge failed to ask him about his treatment. He was provided with money for food only after being taken to court. (In Nepal detainees are usually required to buy their own food.) There was not enough room to sleep, as he had to share a cell with 15 other detainees.*

*In June 2001 X, a lawyer, was arrested at his office as he was about to go to court by three civilians who identified themselves as members of the Security Forces. He was taken by private taxi (after changing taxi twice), blindfolded, to an Army barracks. There he was held for 15 days with his hands in handcuffs behind his back and given one meal a day. The meals were the only occasion when his blindfold and handcuffs were removed. He was tortured, including by being punched on his body, kicked with boots, beaten with sticks, and having his fingernails pulled off. On one occasion, he was nearly drowned in a pond. After two days he fell unconscious. He was thereafter hung by his feet, his skin was pinched and pulled and salt rubbed in his wounds. He was questioned as to his professional position, including his defence of persons held in Preventive Detention, his representation of Maoists and his human rights advocacy. After 15 days he was taken to a police station and his handcuffs and blindfold removed. He was denied access to medical care. When his family made legal petitions, the police told the Supreme Court they did not know him. Eventually, after numerous interventions by colleagues and a Bar official, he was released, having spent over three months in detention. He does not dare bring a complaint for fear of further reprisals.*

### C. Disappearances

112. Disappeared persons generally fall into two categories. In some instances, civilians, military personnel or Maoist insurgents will have been killed in the course of military or paramilitary operations. Religious customs dictate that bodies should be cremated, and this procedure may take place before the body has been identified.

113. The vast majority of cases of disappeared persons are those held in unacknowledged detention. Some of these persons are eventually released and others remain in detention. An indeterminate number of the disappeared are believed to have been extra-judicially executed. The process of informing a detainee's family of an arrest may sometimes be justifiably delayed in remote areas, where communication is difficult. Nonetheless, record-keeping regarding detainees appears to be arbitrary. In cases of Army detention, it is unclear whether any record-keeping system exists. This negligence is unsurprising, given that the Army is not legally or formally authorised to detain persons. Yet even the police do not appear to have a central register of all prisoners, so that an officer may in good faith erroneously tell the court or relatives that they do not hold a person. There is very little communication between the Army and the police until the Army hand a prisoner over to police custody, often weeks after the arrest.

114. The Working Group on Enforced and Involuntary Disappearance of the UN Commission on Human Rights received more cases from Nepal than any other country in 2002. In its report to the Commission of 21 January 2003, the Working Group said that it was "deeply concerned that disappearances have continued in such alarming numbers during 2002."

115. The following case brought to the mission's attention is representative of the situation of the disappeared in Nepal:

*Bipin Bhandari is the 23-year old son of a lawyer, member of the Executive Committee of the Nepal Bar Association. He is a student and was elected as joint secretary of the Student Union. On 27 April 2002 security forces, including DSP Vikram Singh Thapa, came armed to his father's house to ask about Bipin and his whereabouts. They stayed for a number of hours, searched the house, threatened the family, and finally left. Bipin did not return home. On 17 June his father heard on the radio that he had been arrested with four other students, including two girls. He applied to the National Human Rights Commission (N.H.R.C.) and made representations to the Red Cross and human rights organisations. Upon petition, the Supreme Court asked the NHRC on three occasions to investigate the matter. The ICJ mission has made inquiries to the Army Human Rights Cell, the police and the Home Minister, but no reply has been received to date. The two girls have been released to police custody, but the whereabouts of the three men remain unknown.*

116. There are a large number of unresolved cases of disappearances that are longstanding.

*Pravakar Subedi, an engineering student and member of the All Nepal National Free Student Union, disappeared in 1993 after he had gone to buy medicines from a nearby pharmacy. He was not at any of the local hospitals and did not appear on the list of those who died at a student protest in June that year. His brother requested the police for news, but they did not respond. A local newspaper subsequently published his photograph in accompaniment of an article about police cruelty. It was evident that he had been arrested, detained, and injured, but it was not clear whether or not he remained alive. His brother applied for habeas corpus, producing the photograph that he had identified. The photograph was sent together with earlier ones to a laboratory, but they reported that it was slightly overlapped and the two could not be compared. The Police asserted that he had not been arrested or detained and applied to quash the petition. The Supreme Court, citing the problems with the photograph and an alleged discrepancy as to his age, duly quashed it. His family has had no further remedy.*

#### **D. Extra-judicial Executions**

117. The mission received information, according to which a large number of persons had been shot by the police or the Army, in some cases deliberately. Some of these cases involve persons caught in crossfire in the conflict between the Army or security forces and the Maoists, but in a large number instances cases the killings have been wilful. Investigations into killings are not generally carried out and prosecutions for unlawful killings are rare.

118. During its meetings with the human rights cells of the Army and Armed Forces police, the mission attempted to gain information regarding the rules of engagement in

force, but none was forthcoming. Indeed, after initially promising to share such rules with the mission, the representative of the Armed Forces Police later conceded that no such rules existed. While it was clear that some rudimentary instruction in humanitarian standards was provided during the courses of training to the officer corps of the Army, there was little evidence of this instruction having been incorporated into Army practice.

119. The following illustrative case of unlawful execution came to the attention of the mission:

*On 21 July 2002, at approximately 10:30 P.M. a group of drunken soldiers kicked down the door of Ram Kishun's house during an Army raid on the village of Jagatiyaa. The soldiers told him to put the light on while they searched the house. They found his daughter Ripa, who was aged about 12 years, dragged her outside to the village well, and shot her in the chest and elsewhere. The soldiers then forced some villagers to carry her body to the police station, where her father was allowed to collect it three days later. He was not allowed to perform funeral rites, but she was buried in a pit he dug in the forest.*

#### **E. Women and Children**

120. Nepal is party to the UN Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women, and these conventions are directly enforceable by the courts in Nepal. In practice, however, remedies are ineffective. A victim of rape, sexual assault or trafficking who brings a complaint does so at great risk of further personal violence and social stigma. In the few cases that have been successfully brought, the defendant has generally been sentenced to a fine payable to the state, with no compensation to the victim. In the area of criminal law, certain offences such as homicide, carry higher penalties for women than for male offenders.

121. There are very few women police officers. Generally, victims and witnesses are not treated with respect by the police and are thus dissuaded from registering complaints. Frequently, court clerks are corrupt and will prolong cases in order to obtain bribes for expediting them. In this system, women and children tend to fall to the back of the queue.

*Ms. C.K., aged 28, was arrested on 30 January 2002 with her brother at his house in Kirtipur, where she was working. She was taken to Hanuman Dhoka interrogation section, where female police asked her where a thief was hiding. When she failed to provide information, she was tied up and beaten on the floor every day for three days. Her family members were not informed of her detention. Police officers took 1900 rupees from her and refused to allow her to take a bath or change her clothes, as she could not pay for these privileges. She was asked to sign a paper and gave her fingerprint, although she is illiterate and no one read the contents to her. She believes she might have been arrested for possessing stolen goods.*

*Tarnum and Tabsum Maniyar, women cousins from Nepalgunj aged 16 and 18, were detained by the Army in April 2002 and taken to the Army camp at Chisapani, where they were raped. The case was thereafter publicised by Amnesty International. The Army immediately sent armed officers to visit them at their home, and pressed them to retract their complaints and deny the incident. Under severe pressure, they retracted their statement and the retraction was broadcast three times on television. The retraction seems to have been accepted by the authorities as final and no further action is likely to be taken.*

122. On 26 September 2002, a law decriminalising abortion (Country Code (Mulki Ain) (11<sup>th</sup> Amendment)) adopted by the Lower House of the Parliament was given royal assent and entered into force. Previously, abortion had been prohibited under all circumstances without exception. Abortion is now permissible up to the 12th week of pregnancy, the 18th week in case of rape or incest, or at any time if the pregnancy poses a danger to the life or physical or mental health of the women or would result in the birth of a disabled child.

123. Before the new law was approved, a study conducted by the Center for Reproductive Law and Policy (CRLP) and the Forum for Women, Law and Development, established that 27 per cent of all women in prison were serving sentences ranging from two years to life for miscarriage/abortion/infanticide-related crimes. The study also established that when facing criminal charges for abortion, many women were subjected to beatings by police to extract "confessions" and were deprived of their right to a legal counsel despite a potential sanction of life imprisonment. In one notorious case, a woman who had just suffered a miscarriage was denied a medical examination and kept in police custody for 17 days. The same study showed that law enforcement authorities arbitrarily tended to classify spontaneous and induced miscarriages as infanticide and women were therefore subject to criminal penalties. The effects of these practices are continuing, as the newly adopted law failed to address the fate of women currently serving prison sentences for having abortions while the ban was in place. At least 60 women are said to remain in prison for such offences.

124. Discrimination against persons from the lower castes (Dalits) is illegal, but widely practised. Women who have managed to achieve some measure of equality are usually members of upper castes.

125. There is also a serious problem of trafficking of women and children, mainly to India, for the sex trade or for domestic or factory work. Traffickers tend to go to the villages and promise to introduce the children into a good household, secure them a good education and pay the parents a small sum, sometimes as little as 300 rupees (less than USD 4.00). The children are treated as chattels and sold on until someone can use them. The case was recounted to the mission of a six-year old boy, who had been forced to work in carpet weaving in India. As it is illegal to employ children, he had to work underground in a dark cellar, and had already gone blind.

## F. Freedom of Expression and Freedom of the Press

126. Nepal has a diverse press with numerous daily papers, including several published in English, which the mission team was able to read and compare on a daily basis, and a variety of radio broadcasts. However, the press is overwhelmingly centred in Kathmandu, and its ability to report on events in remote parts of the country is limited both by distance and the lack of reporters based in those remote areas. Regrettably, many reporters are justifiably fearful for personal safety, particularly if they cover matters which may give offence to powerful interests, whether they be the security forces, the Maoists, or local elites.

127. There is strong evidence that the Maoists have systematically targeted those whom they regard as “journalist spies”. On 13 August 2002 the mutilated body of Nawaraj “Basant” Sharma was found in western Karnali province. Sharma was the founder and editor of the weekly newspaper *Karnali Sandesh* (Karnali Message), which since 1999 had been the only independent news medium in the far west, Nepal’s poorest region. He was also president of the local branch of the Federation of Nepalese Journalists (FJN). He had previously been kidnapped and detained by a Maoist group in February, and on his release had been detained for five days on suspicion of being a Maoist spy. On 1 June 2002 armed men identified as Maoist rebels stormed his home and kidnapped him. Sharma appears to have been subjected to unspeakable cruelty before being killed, with his limbs hacked off and eyes gouged out before he was shot in the chest. The Maoists are also said to have kidnapped Dhana Bahadur Rokka Magar, a news presenter for state owned Radio Nepal’s programme Kham, who was abducted from a bus in the Jaluke District in the west of the country, and Demling Lama, correspondent of Radio Nepal and of the Himalaya Times newspaper, who was abducted from his home in the Sindhupalchok district north-east of Kathmandu but escaped four days later from his captors, who had beaten him.

128. Journalists were particularly affected adversely by the mass arrests which formed part of the state of emergency from November 2001 to August 2002. More than 300 journalists were detained, of whom at least 10 were tortured. (The mission has details of several of these cases, but has decided not to publish their names as it is possible that this might lead to further retaliation against the individuals concerned.) An inquiry in September 2002 identified 26 journalists still held in violation of judicial procedures, in that they had not been taken before a judge and the 90-day limit on their detention had been ignored. Reporters without Borders has described Nepal as “the world’s biggest prison for journalists”.

129. As well as actual detentions, the military routinely threaten journalists, as a result of which many practise self-censorship. A representative of the British Broadcasting Corporation in Nepal told Reporters Without Borders: “Our field access is very limited. The threats from the military make us fear for the worst if we go to investigate reports of abuses. We have ended up practising a large degree of self-censorship. The Army and the Government have nothing but contempt for provincial journalists and yet we are the ones who are close to what is going on. What is the good of reporting from the field if our editors in Kathmandu just reproduce the communique put out in the capital by the Ministry of Defence?”



130. This quotation illustrates the extent to which the spirit of freedom of the press has already been blighted as a by-product of the current conflict. In this situation it is likely to become increasingly difficult to expose and prevent human rights abuses unless effective steps are taken to prevent unlawful arrest and detention and torture and to punish abuse of power.

### **G. Lawyers**

131. Nepal has a Bar consisting of a substantial number of committed and capable lawyers who act responsibly for their clients, and vigorously defend those who are prosecuted. The mission met a number of such lawyers during its visit. However, there remain a sizeable number of lawyers who take excessive fees and participate in the corruption of judges and officials. The Bar Association is divided into political factions, and is usually unable to punish malpractice. A mere five per cent of lawyers are women. Many lawyers were said to be reluctant to go to the Bench because of the poor salaries paid to judges. Lawyers who defend Maoists are subject to severe pressure, such as that described under torture (case of "X") above, which was by no means an isolated case. Very few lawyers are prepared to take on the defence of persons out of favour with the authorities.

132. Nevertheless, there is among most lawyers a strong commitment to the rule of law. The mission observed a demonstration by some 300 lawyers in Kathmandu on 31 January protesting against the State's failure to release five lawyers in whose favour habeas corpus decisions had been given by the Supreme Court.

133. While Nepal has ratified the major international human rights treaties and these instruments are incorporated directly into Nepalese law, one reliable survey revealed that some 50 per cent of lawyers were unaware of the Conventions or their applicability. The treaties are usually not relied on, either in domestic legal practice or through existent international human rights machinery. For example, bringing complaints before the United Nations Human Rights Committee under the Optional Protocol to the ICCPR is possible but virtually untried.

### **H. Government Institutions**

134. Corruption is rampant in State institutions. Corruption in the judiciary is typically at the petty level, often 100-200 rupees (USD 1.20-2.50) to maintain favourable terms with the judge and court staff. This rate is not high compared to corruption in other Government departments. The new Chief Justice is widely respected, and is said to have cut the instances of corruption significantly.

#### *CIAA*

135. The mission met the Chief Commissioner for the Investigation of Abuse of Authority (CIAA), Mr. Surya Nath Upadhyay, who had refused to take office until a new law had been passed giving him wider authority. He appears to have taken advantage of these expanded powers to bring prosecutions against some senior officials accused of corruption. These powers are recent, and it remains to be seen

whether the CIAA will be really effective in combating the endemic corruption, as well as cases of torture and other abuses mentioned above. At present, the CIAA Commissioner is bringing about 80 cases a year, a considerable increase on his predecessor's record. He is also securing a conviction rate over 50 per cent.

136. In respect of cases of torture, the CIAA chief calls on the senior officer to take departmental action in the first instance. If the officer does not act within three months, the CIAA in principle may prosecute, often including the senior officer in the prosecution. However, such prosecutions have rarely occurred in practice. He does not retain jurisdiction over the judges, nor, regrettably, over the military. He maintains that he does send cases involving the military to the Army HQ, but the Army is not at all transparent in respect of their handling of such referrals.

### *National Human Rights Commission*

137. The mission met with the National Human Rights Commission (NHRC). The members explained that they were inadequately financed. They have made a positive contribution in disseminating general information about human rights, but their representations to the Government seem to be largely ignored. The NHRC did not convey the impression of acting vigorously in cases brought to its attention. Indeed, as we subsequently discovered, the vast majority of complaints received are not acted upon at all. The mission also has serious concerns as to whether the NHRC is fully independent. In its entirely unsatisfactory investigation of the notorious case involving the rape of two girls in Nepalgunj by Army officers (see Women and Children above), the NHRC seemed to accept at face value the Army's version of events in the face of convincing evidence contradicting that account.

138. The NHRC has no jurisdiction over the Army, which is subject only to the control of the King and the National Security Council (itself composed of the King, the Prime Minister, Minister of Defence and Commander in Chief of the Army). It lacks the power to compel testimony. Its decisions and conclusions are non-binding and may be ignored by governmental authorities. Its work is largely non-transparent, as a result of which public confidence in it is low as an avenue for victims to seek redress. The NHRC has failed to extend its reach nation-wide, although visits by members to many districts and steps towards setting up regional offices constitute moves to redress this shortcoming.

139. As mentioned in Chapter one, the NHRC recently appointed a rapporteur for trafficking, Dr. Renu Raj Bhandari, who seemed to be highly active and committed. The appointment of rapporteurs in additional thematic areas could substantially assist the work of this fledgling institution.

140. As noted in Chapter two, the National Human Rights Commission is proposing to serve as a monitoring mechanism for any prospective human rights agreements reached between the Government and the Maoists in the course of the peace negotiations. Given its unreliable past performance and indications by the NHRC to members of the mission that it envisages using untrained volunteers to carry out monitoring operations, we do not consider that the NHRC acting alone is fit for this critical task. We believe that the NHRC could best use its capacities by operating in

conjunction with an international monitoring mechanism under the auspices of the UN Office of the High Commissioner on Human Rights.

## CHAPTER FIVE: NEPAL'S POLICE AND ARMY

### A. Police and Armed Forces Police

141. The mission met with the "Human Rights Cell" of the Armed Police Forces; with the Police Adviser of the DFID (British Overseas Aid Agency), and with police officers as part of a round table discussion organised by Advocacy Forum at Nepalganj. The mission also met the Home Minister, who is responsible for the police. We have also reviewed reports on the working of the criminal justice system in Nepal, including those prepared by CeLLRD and Advocacy Forum, as well as reports by Amnesty International about police actions during the emergency.

142. Our overwhelming impression was of a poorly trained and ill-equipped police force, whose methods of operation have little changed since the advent of formal constitutional and human rights reforms. For the most part, police officials appeared to have minimal investigative competence, relying heavily on torture to extract "confessions" in the absence of any facility for gathering evidence by alternative methods. (See Chapter Three.) The gross inadequacies of the police have no doubt been exacerbated by the Maoist insurgency, which has led to well-documented atrocities by the police and Army as well as by the Maoists. However, the roots of the problems with the Nepal Police go much deeper than incidents of brutality and crime during the insurgency.

143. Among the serious long-term problems which have been identified are:

- (1) *Widespread and routine use of torture to extract confessions.* A survey by CeLLRD for its report on the criminal justice system in Nepal found that of 222 arrested persons interviewed 50 per cent stated that they had been tortured;
- (2) *Widespread unlawful detention.* Article 14(2) of the Constitution provides that suspects may not be detained for more than 24 hours without being brought before a court, excluding the time necessary to travel from the place of arrest. However the same CeLLRD study found that in only 37 per cent of the cases surveyed was this time limit respected;
- (3) *Absence of prosecutorial screening aggravates effects of police abuse.* Prosecutors systematically neglect to ensure that the cases brought to them by the police involve genuine possible wrongdoing, as opposed to a wrongful arrest or an obviously innocent defendant. Although under Section 17 of the State Cases Act the investigating authority should refer a case to the prosecuting attorney, who may ask the court to acquit for lack of evidence, in practice this important procedural safeguard is not applied;
- (4) *Lack of judicial concern over police abuse of their detention powers.* The majority of judges appear to be indifferent to breaches of Article 14(2), so that the police were able to ignore it with impunity as a matter of routine. Of the cases surveyed by CeLLRD, applications for remands for further detention were

made in 219 cases. These applications were refused in only eight cases, granted after scrutiny of the investigation process and grounds for seeking the remand in 21 cases, and granted without any scrutiny of the investigation process and the grounds in 193 cases, or 87 percent of the total;

- (5) ***Refusal of access to lawyers.*** Although Article 14(5) provides that all accused persons have the right to counsel of their choice, it is extremely rare for police to allow arrested persons to access to a lawyer within the first 24 hours of their detention. The rare cases wherein such access is granted concern arrested persons who are wealthy or otherwise influential;
- (6) ***Perjury is almost never treated as crime in Nepal.*** There is therefore no disincentive to witnesses, including police officers, to lie in court;
- (7) ***Absence of promotion on merit within the police force;***
- (8) ***Endemic corruption, including bribery of senior police officers by politicians to enable the police to be misused for electoral purposes;***
- (9) ***General lack of investigative competence, with many serious crimes handled by generalist sub-inspectors of police with little or no training in crime investigation;***
- (10) ***Insufficient use of forensic or serological testing as part of investigations;***
- (11) ***Inadequate keeping of case files and other records;***
- (12) ***Severe lack of resources including equipment, accommodation and food.*** Many police posts do not have electric power. In at least one police station, 300 police officers share a building designed for 100 persons. We were told that the entire police budget is usually expended on salaries, with no separate allocation for maintenance, equipment and supplies. In some areas, because there was no separate budgetary allocation for food for an arrested person, the prisoner would receive no food unless the police shared their own food with him or her.
- (13) ***Poor donor planning or co-ordination, resulting in waste of aid resources.*** We were given the examples (1) of one aid agency providing 14 women and child centres staffed by police, but without any provision for them to have telephones; (2) another agency providing the police with cameras and recording equipment, but without any budgetary allocation or other provision for films or batteries.

144. The combined effect of these problems is that the police have every incentive to abandon proper procedures and to beat confessions out of suspects, with very little chance of any sanction against them for doing so. As their pay and working conditions are poor they remain prone to accepting bribes.

145. We consider that the police force requires a fundamental overhaul of its working ethos, including both substantial investment in equipment and training, and a rigorous policy of promotion on merit with sanctions against corrupt and incompetent officers. Money alone will not be sufficient to solve the force's deep-rooted problems. What is

needed is a change in culture, which can only be brought about by very determined pressure from the highest levels of governmental authority over a prolonged period.

146. We heard favourable comments on the commitment of the present Inspector General of Police to improvement of his force. However, we consider that the scope for such reform may be limited under the present Ministerial direction of the Police. We found the Home Minister, Mr Dharma Bahadur Thapa, to be ill-informed and unreliable in his analysis of the situation. Out of all the meetings we had in Nepal, it was only at the meeting with him that the statement was made to us that “there is no torture by police”. This patent unwillingness by the Minister with supervision of the police to confront an obvious and grave problem indicated that there is little prospect of the culture of torture being eradicated or ameliorated in the near term. Likewise, the Minister’s denial that persons were being held by the police in breach of Supreme Court habeas corpus orders meant that meaningful dialogue with him was unlikely, as the previous day had seen the large demonstration by the Nepal Bar Association mentioned above and attended by some 300 lawyers for the release of five named individuals who remained detained in defiance of such orders. We do not see a realistic prospect of reform unless the Minister is a person with a recognition of problems and a genuine commitment to solving them.

147. We were equally unimpressed by the Human Rights Cell of the Armed Police Forces. After initially offering to show us the Armed Police’s Rules of engagement, the Head of this organisation, Deputy Inspector General Gyanenda Raj Rai, rapidly retracted his offer when it was taken up. We were left with the strong impression that no such rules of engagement existed, which corroborated what we had learned from other sources and that the Human Rights Cell had a largely public relations function designed to impress critics such as international organisations and aid donors. Unless it can be transformed into an effective human rights component of the police it should be disbanded.

148. There is at present no legal provision at all for police bail. This is an obvious gap which should be remedied by legislation as soon as possible.

## **B. The Royal Nepalese Army**

149. The mission met with Lieutenant Colonel Ramindra Chetty and Deputy Advocate General of the Royal Nepalese Army, BA Kumar Sharma, at Army Headquarters in Kathmandu. They were representing the recently established Army Human Rights Cell. The mission also attempted to visit the Royal Nepal Army camp at Chisapani, near Nepalganj, where large numbers of civilian detainees are believed to be held. The mission was refused admission to these premises, although we were able to see through the entrance gate persons who appeared to be civilian detainees, undertaking labour under the supervision of soldiers. The presence of civilian detainees contradicted information given to the mission that day by the local District Officer that there were no longer any civilian detainees at Chisapani. But the ranking officer present at the base, a lieutenant, confirmed that detainees were being held there.

150. The Royal Nepal Army has about 53,000 troops and a number of helicopters. It remains, in structure and culture, largely the same army which existed before Nepal became a democracy and is known for its strong personal loyalty to the King. Indeed, it has never been brought under the control of any civilian government. Its troops have extensive experience of United Nations Peacekeeping missions around the world, but until 2001 they had not been engaged in combat in or for Nepal for over 100 years. This relative dormancy changed dramatically with the declaration by King Birendra of a state of emergency in November 2001, following the breakdown of the first peace negotiations with the Maoist rebels.

151. During the months of the state of emergency and afterwards numerous credible reports emerged according to which the Nepalese Army engaged in gross human rights abuses in the course of its campaign against the Maoists. These accounts were paralleled by equally serious reports of atrocities against civilians by the Maoists. For example, during 2002 Amnesty International submitted to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions details of more than two hundred people killed by the Army. Amnesty International's report on human right abuses in Nepal including those by the Army has been indignantly denounced by some Nepalese commentators, but contains much detail about incidents which critics of the report have not rebutted. Our own meetings with NGOs, lawyers and victims of Army detention satisfied us that the Amnesty International report presents a generally accurate picture of the situation between the state of emergency and the recent cease fire.

152. A particularly shocking massacre by the Army occurred on 14 February 2002. Thirty-five labourers involved in construction of an airport at Suntharali (Kalikot District) were deliberately killed by an Army patrol after first collecting their identity cards. The killing took place in the aftermath of the killing of 56 soldiers by the Maoists at Mangalsen in Achham District on 17 February, and of the firing by Maoists at an Army helicopter at the same airstrip on 20 February. As far as we were able to ascertain, no Army personnel have been charged or disciplined in relation to this massacre.

153. There have been numerous other cases of extrajudicial killings of civilians, including women, and large number of enforced disappearances. At the end of 2002 at least 199 cases of such disappearances reported in the context of the Maoist insurgency and counter-insurgency had been submitted to the UN Working Group on Enforced or Involuntary Disappearances. The Working Group reported 108 of these cases to the Nepal Government and only 3 had received a response.

154. There have been documented numerous cases of torture, including rape, by the Army. The notorious case of two Muslim girls abducted by a captain in the Army and held overnight and raped by the captain and an unidentified officer, reported by Amnesty International (see chapter three), occurred at the Chisapani camp, which we attempted to visit. This camp is suspected also to be the place where some of those who have disappeared are or have been held. On 3 April 2002 two young Muslim girls were abducted by a captain in the Army, taken to Chisapani and there held overnight and raped by both the captain and another unidentified officer.

155. After this case was publicised by Amnesty International the two girls were again taken away by the Army and were later produced by the Army to the press, and in the presence of Army personnel, retracted their earlier claims of rape. We have concluded on the basis of close investigation into this incident that the two girls were raped as they originally stated and that the later retraction of the rape claims was made under duress from the Army. We were informed that following a rising tide of indignation at the treatment of the girls the captain concerned had fled the country at the time of our visit.

156. Senior Army personnel whom the mission met appeared to be in a state of denial with regard to Army human rights abuses. We were told that the Army did not detain people outside the legal system, but sometimes just made a brief arrest to get information, such as about stolen weapons. When we informed the Lieutenant Colonel that we had been told the previous day by the ranking officer at the Chisapani camp that detainees were being held there, he then admitted that detainees were indeed being held for intelligence purposes and their identity was not disclosed. There was no time limit on how long detainees were held. The colonel was unable to point to any legal authority for such detention. He was also unable to be precise about numbers of such detainees, and added: "What does it matter if there are 3 detainees or 300?" When asked about the Chisapani barracks rape case, the Colonel simply said that the case had been thoroughly investigated. When asked for a copy of the document authorising the Army to detain people outside the legal system, the meeting degenerated into confusion, and we were eventually told that no documents could be provided to us without Government permission.

157. Although our direct contacts with Army personnel were limited, they overwhelmingly confirmed information from lawyers, ex-detainees, local and international NGOs and diplomats that the Nepal Army is feudal in its outlook, contemptuous of human rights, and operating as a law unto itself. There is an urgent need for education about the Geneva Conventions and about the role of the Army in a democracy. The Army Human Rights Cell is officially designed to carry out this role, but is a toothless and largely fictitious entity, designed as window-dressing to disarm critics rather than as a serious institution contributing to the process of reform.

158. We share concerns that have been expressed by legal experts and the representatives of the major political parties with whom we met, that the Constitution does not clearly subordinate the military to the civilian power. By Article 119 of the Constitution, the King is the Supreme Commander of the Army. Article 118 provides that he shall perform the operation and deployment of the Army on the recommendation of the National Defence Committee, which is chaired by the Prime Minister. According to Article 119, the Commander in Chief of the Army is to be appointed by the King on the recommendation of the Prime Minister. In practice there has never been any effective democratic control over the Army. In a situation such as that prevailing presently, where the democratically elected prime minister has been dismissed and replaced by a prime minister chosen by the King, there is clearly no democratic control at all over the operation of the Army. In these circumstances it is not surprising that the Army's loyalty appears to be only to the King and that its commitment to democratic values appears weak.



**CHAPTER SIX:**

**THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE**

**A. Institutional framework and impediments to the administration of justice**

159. The judiciary in Nepal is structured as a three-tier hierarchy. The district courts are the courts of first instance and are located in all 75 districts of Nepal. They have jurisdiction over both civil and criminal matters. At the second level, sixteen courts of appeal are established in various regions of the country. The Supreme Court, the highest court in the country, is the guardian of the Constitution. It is composed of fourteen Judges and ad-hoc judges, who are appointed by the King on recommendation of the Judicial Council. All courts, except for the Military Court, fall under the supervisory control of the Supreme Court.

160. The Constitution also establishes a Judicial Council, a body responsible for providing recommendations to the King regarding the appointment, transfer, disciplinary actions and dismissal of services of the judges. It is composed of the Chief Justice of Nepal as ex-officio Chairman, the Minister of Justice of Nepal, the two most senior justices of the Supreme Court as ex-officio members and a distinguished jurist of reputation nominated by the King as a member.

161. Over the past ten years, the caseload has increased markedly in all courts, especially in the Supreme Court. This expanded workload has led to an overburdening of the whole system and to longer periods of adjudication. Although the bulk of dockets consist of civil cases, both the civil and criminal justice systems have been hampered as a result of understaffing in courts. Criminal trials often stretch over extended periods of time, sometimes greater than a year and the defendant is usually detained during the trial period. The slow functioning of the system poses an unjustifiable encumbrance to the accused person's liberty and leaves him or her vulnerable to human rights violations.

162. Several factors contribute to this phenomenon. First, the Government has neglected to deal with the exigencies of the expanded caseload by concomitantly increasing funding and staffing. In addition, the authorities have failed to distribute existing resources in a coherent and rational manner. While urban courts are desperately overburdened and many remotely situated courts have a scant caseload, the proportional distribution of funds among courts fails to reflect realities on the ground.

163. The Basic Principles on the Independence of the Judiciary provide that it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions. The Government is clearly in breach of this principle. Typically, Court judgements are not delivered in the form of a written opinion, even if substantial questions of law are at issue. Systematic and timely dissemination of judgements in the official bulletins or by electronic means is glaringly lacking. Throughout the court system there is an absence of computing facilities and even more basic equipment. Although the Supreme Court has a website, it is frequently inoperative and not reliably updated. A number of judges and lawyers expressed their

frustration to the mission team that it was not possible to receive judgements of the Supreme Court in a timely fashion.

164. The judiciary in Nepal benefits from a substantial degree of independence. Indeed, the Chief Justice of Nepal, judges of the Supreme Court and the Registrar and Joint Registrar of the Supreme Court, informed the members of the ICJ mission in a consultation meeting at the Supreme Court that they had not experienced overt pressure or threats to their independence. However, there have been numerous instances wherein the Government has declined to carry out the orders of the court. On 31 January 2003, as mentioned in chapter one, the mission observed a protest demonstration of some 300 lawyers sponsored by the Nepal Bar Association. This action was aimed at the general lack of respect for court orders by the Government and at demanding the release of five colleagues held in defiance of release orders from the Supreme Court. In the consultations between the mission and the judges of the Supreme Court, the judges made clear that they were aware of the problem of government non-compliance, but seemed unable to formulate proposals to alleviate the situation. The courts have been especially reluctant to issue robust contempt orders in such cases.

165. Judges at the superior levels appear to be highly competent. Many complaints, however, have come to light regarding judicial corruption. Indeed, there is a pervasive public perception of a high level of corruption among the judiciary. A top official of the Nepal Bar Association told the mission that he estimated that some 90 per cent of the judges had been receiving bribes before the appointment of the current Chief Justice, but that this figure had since dropped to about 50 per cent. The Ministry of Justice strongly disputed these estimates during discussions with the mission. The mission raised its concerns regarding corruption with the Chief Justice and other Supreme court judges. The following day, the Chief Justice announced that teams of judges would be visiting all regions of the country, inter alia, to investigate these concerns.

166. While guidelines governing judicial conduct apparently exist, they are not generally disseminated or implemented. The Judicial Council, in charge of disciplinary matters, far from taking action against corruption, appears instead to be shielding the members of the judiciary. It is therefore not surprising that the Judicial Council also lacks popular confidence.

167. The Commission for the Investigation of the Abuse of Authority (CIAA), a serious and relatively effective institution, has authority to investigate complaints on matters of corruption and abuse of power by the authorities. While it may look into conduct of court staff, the CIAA lacks competence to supervise the judges themselves. Therefore, corruption and abuse of power by the judiciary goes largely unchecked. Nepal is in critical need of an independent authority, which itself is beyond suspicion of corruption, to investigate and discipline abusive behaviour within the judiciary.

168. The qualifications of court personnel are in many cases unsatisfactory. There is a tendency to recruit general clerical staff, instead of employing staff with a legal background. To ensure that fundamental fair trial standards are met, it is necessary

that all court staff entrusted with important responsibility in handling cases, and not only judges, be properly trained and qualified.

169. The present annual disposal rate of cases is less than 50 per cent of cases initiated in the year, resulting in half of the cases being backlogged to the following year. While some delays may be the inevitable result of shortfall of resources, it is also in part occasioned by slackness on the part of some judges and judicial personnel, particularly in outlying districts. There exists no audit or other mechanism to assess the effectiveness and efficiency of judicial work and little possibility of penalising poor performance.

170. Another extremely worrying condition revealed to the mission was the complete absence of functioning courts in a number of districts, particularly in regions affected by the insurgency. According to the Nepal Bar Association, there are no courts or judges in 13 districts. While it may well be that judges have been forced to abandon their posts for security reasons, there can be no justification for leaving detainees stranded indefinitely in detention without access to courts. In such instances, it is incumbent on the supervisory courts to order the transfer of detainees to venues where their cases may be judicially processed.

## **B. Criminal proceedings**

171. The legal framework is an outdated patchwork of enactments from different periods. Various projects to draft new codes of criminal law and procedure have been under way for many years, but these efforts have not yet reached fruition. A substantive criminal code draft has been formulated, but there is presently no legislature in place to enact the code. To some extent, the inadequacies in human rights protection in municipal substantive law are mitigated by the fact that Nepal has ratified the major human rights treaties (the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD) and the Convention against Torture (CAT)) and that according to article 9 of Nepal's Treaty Act, the provisions of the international treaties become part of Nepalese law upon ratification. However, this safeguard is at present of limited practical use because of the inadequate knowledge among lawyers and judges about the existence of these treaty provisions.

172. The inadequacies of the present legal framework and practice have adversely affected the entire criminal justice process. Serious abuses by the police begin during the investigation phase, continue during the prosecution phase, and are thereafter sanctioned by the courts during the adjudication phase. While gross violations such as torture happen mainly at the hands of the investigative officers, i.e. the police, they are made possible only through the willingness of the courts to overlook these violations and thereby effectively act in complicity with the perpetrators of the violations.

### *Investigation Stage*

173. In Nepal, the investigative stage of the criminal proceedings falls entirely under the dominion of the police. The role of the police in the treatment of detainees, previously discussed in this report, bears repeating. It is during the pre trial process that the situation of suspects is most precarious, as they are often held in unlawful detention in overcrowded prisons, without being granted their most basic procedural rights, thereby becoming easy targets of police violence. Detainees are not informed of their right to communicate with counsel, and are systematically denied access to their family, to a lawyer and to a doctor.

174. The police systematically arrest all criminal suspects. Arrest generally occurs without a warrant, in violation of Nepalese law. Typically, no notice of the grounds for arrest is delivered to the detainee. Regrettably, the Supreme Court has held that no notice has to be served in cases of arrest for the purpose of investigation. The jurisprudence of the Supreme Court in this respect is in clear conflict with the ICCPR. Article 9 (2) of the ICCPR makes no distinction among the grounds of arrest, but rather provides that all persons must be informed of the charges brought against them.

175. While Nepalese law mandates that detainees be taken before a judge within 24 hours of the arrest, this right, often ignored, is anyway of little significance in practice in the absence of notification of the rights and access to counsel. As the UN Special Rapporteur on Torture has observed, most people arrested are not brought before a court within the 24-hour period and are held incommunicado in detention for prolonged periods, often in unofficial places of detention. Moreover, as only appellate courts have the power to grant habeas corpus, that remedy is effectively unavailable to those held in areas far from regional appellate courts. In the 13 districts for which there are no courts, persons are held in detention indefinitely. In addition, habeas corpus, in practice, is not enforced by an officer of the court, as prescribed by law.

176. In most instances, remands requested by the police are summarily granted by the court in the absence of a lawyer for the detainee. District courts fail to scrutinise evidence and related documents while ordering remand for detention, thus making pre-trial detention a virtually automatic measure at the investigation stage. Although the period for remand ordered by the court should not, in law, exceed 25 days, in practice repeated remands are requested by the police, making the period of pre-trial detention virtually endless. Suspects who have been released are frequently re-arrested, without further evidence.

177. Conditions in most places of pre-trial detention do not conform with international standards. While the Prison Act and Regulations provides that persons awaiting trial should be held separately from convicted persons, this injunction is not followed in practice. Also, in breach of the Children Rights Act, juveniles are usually not separated from adults.

178. Arbitrary and incommunicado detention, which are widespread, are facilitated by two special laws. Under the Public Security Act, the police have wide powers to detain individuals for up to 90 days. This period may be extended for an additional 90

days by the Ministry of the Interior, and, for a further 12 months from the original date, if such extension is approved by an advisory board established under the Act.

179. The Terrorist and Disruptive Activities Act (TADA) grants authority to the police to arrest any person believed to be involved in activities covered by the Act. It allows for holding persons in preventive police detention for 90 days. Persons detained under TADA are not informed of the reason for the arrest, are not brought promptly before a court and are held for prolonged periods without charge. During the mission, the judges of the Supreme Court expressed reservations about the special courts introduced through TADA and were confident that ordinary courts had the capacity to adjudicate cases arising out of the conflict. In practice, the Special Courts have only been used in a very small number of cases to date.

180. The Judiciary has largely avoided confronting the alarming practice of military detention. As underscored previously in this report, a substantial number of persons continue to be held in incommunicado military detention, even though there is no legal ground for such military detention in the law. A judge of the Appellate Court of Banke admitted that he knew “personally”, but not officially, of this practice.

181. According to a judge of the Appellate Court in Patan, no detainee has ever protested in court against military detention on the ground that it has no basis in law. The problem, however, is that persons held in military detention are not brought before the judiciary. When a habeas corpus petition is filed on behalf of persons believed to be held in military detention, inquiries are made to the civilian Chief District Officer (CDO), who will usually deny any knowledge of the detainee’s whereabouts.

182. The mission considers that this systematic resort to detention without judicial guarantees and without supervision by a court amounts both to a violation of rights of detainees under Nepalese law and a systematic breach of Nepal’s international obligations under the ICCPR. The UN Human Rights Committee has emphasised in its General Comment to ICCPR article 9 that pre-trial detention must be the exception and not the rule and should be as short as possible. Practice in Nepal clearly shows the opposite tendency. Prolonged incommunicado detention also constitutes a violation of the right to be treated with humanity and with respect for the inherent dignity of the human person enshrined in article 10 (1). Critically, incommunicado detention leaves those held vulnerable to torture and other ill-treatment, as borne out by practice in Nepal.

183. The failure of the authorities to inform the detainee of his right to counsel and to grant access to lawyer also constitutes a breach of Article 14 (3) (b) and (d) of the ICCPR. The Human Rights Committee has consistently held that the refusal of access to a lawyer during police investigation contravenes Article 14 (3) (b) and (d). The Committee has further noted that that Article 14 (3) ICCPR requires that persons should have access to a lawyer “in conditions giving full respect for the confidentiality of their communications”. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 17 and 18) and the Basic Principles for the Role of Lawyers provide that detained persons shall be entitled to have assistance of, and to communicate and consult with legal counsel, and that

confidential communication with counsel shall be ensured to detainees (Principles 5 through 8).

184. Denial of rights to access to a lawyer, relatives and doctors, has contributed to the frequent instances prolonged pre-trial investigation, which in turn places the detainee at high risk of human rights violations. Torture or inhuman or degrading treatment are systematically practised in police custody in order to extract “confession” from the detainee and has been reported in well over half of all cases of detention. According to one reliable Nepalese research report, the investigator is “more concerned with forging or taking evidence, rather than discovering it”.

185. Under the CAT, to which Nepal is a party, the state is obligated to enact legislation banning evidence obtained through torture or any other form of inhuman and degrading treatment from criminal proceedings. Article 4 of the CAT requires Nepal to make torture a specific offence under Nepalese law. Both the Human Rights Committee and the Committee against Torture have stressed that allowing impunity for the crime of torture constitutes as much a breach of international obligations as the acts of torture themselves. Article 14 of the CAT grants victims a right to fair and adequate compensation, including the means for as full rehabilitation as possible.

186. In dereliction of all of these obligations, Nepal law does not make the practice of torture a specific offence or provide for the suppression of evidence obtained through torture. In practice, officials responsible for acts of torture or cruel, inhuman or degrading treatment are never held accountable for their abuse of power, either by way of criminal sanction or by way of civil accountability. While a right to compensation for torture victims is provided under the Torture Compensation Act, prosecutors are not mandated to prosecute officials for torture, but only to defend police officers in compensation cases. In addition, the compensation granted to the victim is not levied from the perpetrators, but from state funds. There is therefore no individual responsibility specifically for acts of torture under Nepalese law.

187. Nepal does not adequately comply with any of the preventive measures for the eradication of torture mandated under the Convention against Torture, such as the training of law enforcement personnel and other public officials, of the systematic review of interrogation rules.

### *Prosecution stage*

188. After concluding the investigation, the police officer in charge of the case reports the findings to the concerned government lawyer. The government lawyer decides, on the basis of the evidence submitted to him, whether to initiate a prosecution. Although the prosecutor is in principle fully responsible for supervision of the investigation, prosecutors in practice frequently abdicate this function and have simply processed the results of the police investigation without review. The low ratio of convictions compared to prosecutions seems to indicate that the prosecution treats many decisions in a superficial manner. While the rate of convictions for public order offence, is very high, it stands well below 40 per cent in other cases, leading to the conclusion that the prosecution is not adequately filtering or preparing cases.

*Adjudication stage*

189. After the appearance of the suspect and submission of the charge sheet to the court, the adjudication stage begins. Here, violations of human rights committed during the investigation stage could and should be redressed. In practice, the judiciary usually turns a blind eye toward official abuses and frequently relies on "evidence" obtained through unlawful methods to convict the accused.

190. The registration of the charge sheet triggers the bail proceedings, immediately followed by the deposition of the suspect. The deposition should be recorded, but judges do not always follow this procedure. Bail may be granted as a privilege for offences for which the punishment is less than three years. However, bail is often only granted against the deposit of a monetary value bond. As a consequence, bail is generally only available to those who have the means to afford the required sum, making it a privilege of the relatively wealthy. Some District Court judges acknowledged the unfairness of this practice to the mission. This discriminatory policy with regard to bail is also arbitrary and violates the principle of equality before the law. It is problematic that bail is only granted for offences carrying a maximum penalty of less than three years, because it increases the instances of unnecessary incarceration and calls into question the presumption of innocence for those not accorded bail. The mission considers that the purpose of bail is to ensure the appearance of the defendant in future judicial procedures and its availability should not be connected principally to the length of sentence applicable to the charges.

191. In respect of a substantial proportion of cases, defendants go unrepresented by counsel at trial, even when faced with the most serious charges. Some defendants are unaware of their right to be represented by counsel, but in many cases the defendant simply lacks the financial means to retain a lawyer. The Legal Aid Act of 1997 provides for the possibility of legal aid to indigent persons. In fact, a lawyer is appointed to each Court of Appeal and in most District Courts to ensure free legal representation for persons unable to afford counsel. These lawyers are paid remuneration on a monthly basis. Yet, these arrangements are inadequate and poorly administered, as more than half of the persons convicted do not have legal representation. These shortcomings infringe the right to representation by counsel under article 14 of the ICCPR. Similarly, the Basic Principles on the Role of Lawyers enjoin governments to ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons.

192. The Secretary of the Nepal Bar Association told the mission that outside of Kathmandu, Maoists or persons held on suspicion of collaboration with Maoists do not get legal aid. Moreover, as the Bar Association complained to the mission, lawyers themselves have been tortured or arbitrarily detained simply because of association with their clients, particularly in the case of Maoist suspects. These practices contravene the basic Principles on the Role of lawyers, which place a duty upon the state to protect lawyers in the discharge of their functions and explicitly provide that lawyers shall not be identified with their clients or their clients' causes as a result of carrying out their professional functions.

193. Judges routinely fail to investigate allegations of torture and generally ignore the manner in which “confessions” have been obtained. While legislation prohibits reliance on evidence obtained through use of force, the Supreme Court has placed the burden of proving that torture was inflicted onto the accused. According to a report of the Center for Legal Research and Resource Development, confessions were taken from 85 per cent of detainees in police custody. Some 42 per cent of these detainees complained that the confession was obtained through ill-treatment. Yet, 60 per cent of those complaining about ill-treatment were nonetheless convicted. Taking into account that many persons subjected to ill-treatment do not report their ordeals owing to intimidation or fear of reprisal, even these statistics necessarily understate the true scope of the problem.

194. The failure to investigate allegations of torture constitutes a violation of international human rights law. As the Human Rights Committee and the Committee against Torture make clear, an independent and impartial investigation must be conducted every time there is an indication that an individual may have been tortured. If the allegations are well founded, the investigation must lead to the prosecution and punishment of the perpetrator.

195. The resort to violent methods to extract statements is deeply worrying not only because of the violation to the physical integrity of the victim. In addition, the confessions obtained during the investigative phase remain the primary source of proof against defendants in criminal cases and thereby undermine the possibility of a fair trial. Although the Supreme Court has established that the statement of the accused cannot be the sole basis for conviction, judges still mainly rely on the “confession” of the accused for their findings. Moreover, they rely on “confession” before the police officer or prosecutor, rather than on the statement of the accused in court. Indeed, judges tend to pay scant attention to the suspects’ or witnesses’ depositions in court.

196. During the mission’s visit to the appellate courts, some judges acknowledged the problem of torture and of falsified police records. However, they did not seem to consider it their task to provide remedy for such human rights abuses. Some judges in Banke were unaware of international human rights treaty standards, although Nepal has ratified all major treaties and these standards forming part of Nepalese domestic law. The same attitude was evinced in the district courts in Kathmandu, where judges were aware of the inhumane treatment in police custody, but did not consider it their duty to investigate and punish these abuses.

197. It is entirely unsatisfactory that courts in Nepal frequently only rely on evidence not directly produced in the courtroom. Although Nepalese legislation prohibits the reliance on evidence obtained through ill-treatment, this legal proscription alone is not a sufficient safeguard. The judge should concentrate on evidence produced in the oral hearing, mainly the deposition of the accused, witness testimony and forensic science. Forensic science may be difficult to obtain given that the police and government attorneys tend to eschew the gathering of forensic evidence in the vast majority of cases. However, judges can play a role in changing the practice of police and investigators by rejecting uncorroborated “confessions” as a basis for convictions.



198. The Government lacks a serious policy for protection and rehabilitation of victims. When considered as witnesses, victims are seldom provided with protection, so that many persons are reluctant to testify in court against police or other government officials. There are no provisions for giving testimony in closed sessions or through remote television monitor.

199. There is a dearth of victim rehabilitation programs in Nepal, although we learned that an initiative is under way for one to be established through donor contributions. Fines paid by offenders go to the states coffers, rather than victims, so that crime becomes a source of revenue for the state. Beyond the Torture Compensation Act, there is no law for the compensation and rehabilitation of victims of crime.

## CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS

200. Most of the recommendations set forth below are intended for implementation by the Government of Nepal. Some, however, are directed to the various governments and agencies which are now, or which may be prepared, to assist the Government of Nepal in improving its legal system and judicial system generally.

201. As our terms of reference pertained to the administration of justice, it was not generally within the mandate of the mission to examine the conduct of the Maoists during the course of the armed insurgency. Needless to say, many Maoists insurgents are responsible for a large number of well-documented atrocities, including acts which may amount to international crimes. It is to be hoped that the discussions between the Maoists and the Government will proceed to a successful conclusion. In the unfortunate event that further armed conflict, the insurgents no less than the Government must fully respect their obligations under international law.

### I. THE RULE OF LAW AND GENERAL CONSTITUTIONAL QUESTIONS

#### **Conclusion A**

202. The most fundamental question arising in the context of the present peace process is whether Nepal should adopt a new constitution; amend the existing Constitution to enshrine new constitutional arrangements; or leave the existing constitutional arrangements in place. It is well beyond the terms of reference of this mission to offer any views on this weighty question. However, as the peace process unfolds, Nepal should continue to operate under a constitutional government. The dissolution of parliament, combined with the failure to hold elections within the six-month time frame required by the Constitution, and the formation of a government consisting of unelected ministers from outside the major political parties, has placed a profound stress on the democratic and constitutional framework of Nepal. Because the principal ministers seem to be answerable only to the King, Nepal is perilously close to slipping from a constitutional towards an absolute form of monarchy.

203. In principle, the Government would need to hold instant elections to preserve the integrity of the present Constitution. Recognising that the holding of elections or restoration of the previous parliament may be now both impracticable and generally unwelcome in light of the impending peace negotiations, certain immediate steps might yet be taken to vest the interim Government with some modicum of constitutional and democratic legitimacy. In particular, the inclusion in a broad-based government of members of the dissolved parliament from among the major political parties could be one step in the process.

#### **RECOMMENDATION 1**

205. Until a legitimate parliament is constituted, the Government should not legislate by ordinance and its activities should be strictly limited by the terms of the Constitution.

## **Conclusion B**

206. At present, there exists no mechanism by which to determine the limit of the monarch's authority under the Constitution. The Constitution provides that actions of the monarch are non-justiciable. Therefore, a monarch carrying out an action arguably outside his constitutional authority or in clear breach of such authority cannot be legally challenged for such transgression. It is certainly not unusual under a constitutional monarchy for difficulties to arise in ascertaining the relationship between the head of state, the parliament and the judiciary. We consider that this following recommendation should be implemented because it is fundamental that the branches of the government are clear as to the limits of their functions in relation to one another.

### **RECOMMENDATION 2**

207. Whether through a new constitutional arrangement or amendment to existing constitutional provisions, the Constitution should clearly set out those powers of the monarch which are not subject to review and should provide that any question of excess of the monarch's authority shall be subject to review by the courts.

## **II. INTERNATIONAL MONITORING, ASSISTANCE AND COOPERATION**

### **Conclusion C**

208. Despite ratifying and incorporating into national law the six principal international human rights treaties, Nepal has failed adequately to cooperate with United Nations human rights mechanisms and has not taken full advantage of the possibility of using the services of the Office of the High Commissioner on Human Rights. Nepal has been derelict in its reporting obligations to several of the human rights treaty supervising bodies and has not always responded to requests for visits or for information by UN special procedure mechanisms.

209. The capacities of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) are clearly needed, both to monitor and report on the human rights situation in Nepal and to assist in the implementation of the large number of programmes presently carried out by other agencies and organisations. This presence would also ensure that human rights questions are adequately addressed in the course of the ongoing peace process. The UNOHCHR's recent dispatch of an adviser to work under the auspices of the United Nations Resident Representative, is a welcome, albeit insufficient, step toward that end.

### **RECOMMENDATION 3**

210. Nepal, as a matter of priority, should submit all outstanding reports to the United Nations human rights treaty supervisory bodies.

#### RECOMMENDATION 4

211. The United Nations Office of the High Commissioner Office for Human Rights should establish and the Government should accept a field office with monitoring, co-ordinating and technical assistance functions.

#### Conclusion D

212. Nepal at present benefits from the activities and assistance of foreign governmental and inter-governmental agencies and donors, as well as of local and international non-governmental agencies. Yet co-ordination of such activities is not satisfactory. In order to fill existing lacunae in respect of such assistance, as well as to prevent unnecessary duplication and misdirection of energies, donor countries and agencies should establish a mechanism to better co-ordinate their activities. Non-Governmental Organisations, both external and internal to Nepal, should also seek to enhance their coordination by collecting and providing information as to available assistance and by determining the nature of additional assistance that may be required. Such a procedure should operate independently of the Government and in no way be used to restrict the existence or activities of local or external NGOs.

#### RECOMMENDATION 5

213. Two co-ordinating mechanisms should be set up, one for external governmental or international government donors and agencies and one for external NGOs and all internal NGOs and bodies. Those mechanisms should provide a system for the achievement of enhanced co-ordination so as to provide maximum assistance to the Government and people of Nepal and to identify those areas where no assistance is being provided and new assistance can be directed. The NGO mechanism should be entirely independent of Government.

### III. THE JUDICIARY

#### Conclusion E

214. The judiciary in Nepal maintains a substantial level of independence and many judges at the highest levels appear to be highly competent. However, the judiciary historically has been subject to various complaints and occasional removal and there is a strong perception of judicial corruption held by the Nepalese community. The Judicial Council, which is responsible for discipline of judges, lacks popular confidence. Judges are widely seen as being unable or unwilling to police their own activities. The Commission for the Investigation of the Abuse of Authority (CIAA), which is charged with investigating and prosecuting official corruption and abuse of power, has no jurisdiction over the judiciary. While apparently guidelines exist governing judicial conduct, they are not widely disseminated or implemented.

#### RECOMMENDATION 6

215. Either through reform of the existing Judicial Council or new constitutional or statutory provisions, an independent body, consisting of a mix of constituents from within and outside of the bench, including the C.I.A.A., should be established to investigate and discipline instances of corruption and other abuses of judicial authority.

#### Conclusion F

216. The courts, at all levels, frequently fail to issue written judgements, even in respect of cases where a significant question of law is at issue. When such judgements are issued, there are often substantial delays in the dissemination of the judgements through bulletins or electronically. The Supreme Court website is frequently inoperative and judgments are usually not posted thereto in a timely manner. The appellate and district courts typically lack computer facilities that would allow for the easy retrieval of judgements and the undertaking of research. In addition to the judgements themselves, there is an urgent need for the computerisation of records on case dockets. There is a need for a culture change for judges to adjust and to be assisted to make use of modern technology.

#### RECOMMENDATION 7

217. The judiciary, especially at the Supreme and appellate court levels, should issue written judgments in a timely manner and these judgments should be dispatched expeditiously for use by the judiciary, lawyers and the general public, including through electronic means. The courts are in need of the capacity and training to keep electronic records. The Judicial Academy has played a useful educative role and its activities should be expanded. In particular, greater legal resources should be provided to judicial officers working in more remote locations.

### **IV. HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE**

#### Conclusion G

218. The adoption of the Terrorist and Disruptive Activities Ordinance Act (TADA) has effectively legitimised the widespread practice of arbitrary detention, in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights. Persons detained under TADA are particularly vulnerable to torture. Such persons are often not informed of the reason for arrest, are not promptly taken before a

court, and are held for prolonged periods without charge, whether for preventive or investigative purposes. As no state of emergency now exists in the country, TADA on its face contravenes Nepal's international legal obligations.

#### RECOMMENDATION 8

219. The Government should at present desist from implementing TADA. At such time as a legitimately constituted parliament convenes, TADA should be repealed or substantially amended to bring it in conformity with Nepal's international obligations under articles 9 and 14 of the International Covenant on Civil and Political Rights.

#### Conclusion H

220. There is near total impunity for officials of the Army, armed police forces and police who engage in serious human rights violations including torture, unlawful killings and war crimes.

221. By failing to make torture a specific crime in its legislation, Nepal is in dereliction of a core obligation under the Convention against Torture. Although torture victims may seek compensation under the Torture Compensation Act, such compensation, when granted, is the responsibility of the state, not the torturer. Thus, under Nepalese law, there is a complete lack of individual responsibility, either criminal or civil, for the international crime of torture; i.e., near total impunity. Indeed the public prosecutor has the responsibility to defend the police in Torture Compensation Act cases, but is not charged with the mandate to prosecute suspect police officials for offences of torture. In practice, neither the police, the prosecutor, nor judges either undertake or order investigations of torture allegations. Most torture victims are fearful of pressing cases for fear of reprisal. Judges do not consider it a component of their responsibility to inquire into a detainee's treatment or to question how "confessions" are obtained. Judges should have a power to refer torture allegations to an investigative authority.

#### RECOMMENDATION 9

222. The Government, including the Minister of Law and Justice, the Attorney General, prosecutors and police should investigate and prosecute serious violations of human rights including extrajudicial killings and torture. Nepal should comply with its obligations under the Convention against Torture, including by making the prohibition on torture and inhuman and degrading treatment a specific crime under national law.

**RECOMMENDATION 10**

223. Judges should have and exercise the power on a prima facie case of torture or inhuman or degrading treatment to order an independent investigation. Such investigations should be carried out urgently by officials who are independent and administratively separate from the ordinary police. Victims providing accounts of torture should be given appropriate protection against reprisal.

**RECOMMENDATION 11**

224. Assistance for complaints and compensation claims for torture or inhuman or degrading treatment should be provided by way of legal aid.

**Conclusion I**

225. An unknown but substantial number of persons are presently held in unacknowledged incommunicado military detention without trial. Many such detainees are subject to interrogation under torture. These detentions are unlawful, as the military have no authority to hold persons. The Chief District Officer has responsibility for detainees in cases falling under the Terrorist and Disruptive Activities Act (TADA) and the police have such responsibility in all other cases. When these civilian institutions abdicate their responsibility to see to it that the Army hands over suspects to their control, an independent authority, or the Attorney General, should exercise power to oblige the Chief District Officer or police to answer, subject to powers in the nature of contempt. Because only the appellate courts, not district courts, have the power to grant habeas corpus, persons held in areas far from regional appellate courts have difficulty in filing habeas corpus petitions.

**RECOMMENDATION 12**

226. All persons presently detained in military custody should immediately either be released or handed over to the custody of the police or, where appropriate, to the Chief District Officer, who should then decide whether to charge the detainee with a cognisable crime or to release the detainee.

**RECOMMENDATION 13**

227. The power to hear habeas corpus cases should vest in the District Courts, as well as the appellate courts. An independent authority should be able to call upon the Chief District Officer to provide details of all

persons held longer than twenty-four hours and for the release on application to a local district court for persons held longer than twenty-four hours.

#### **Conclusion J**

228. Many persons who encounter the justice system in Nepal lack the most basic access to justice. Persons arrested are typically not informed of their right to a lawyer and many are tried without counsel, even for the most serious offences. Even in respect of defendants who are eventually represented, lawyers are generally not given access to their clients until the trial phase. Almost all interrogations take place without counsel. Existing legal aid provisions are inadequate in scope to cover the overwhelming majority of defendants who cannot afford counsel and in cases where the court appoints counsel pursuant to a defendant's request, the rates of remuneration are too low to make acceptance of representation attractive.

#### **RECOMMENDATION 14**

229. All persons upon arrest should be informed of their right to a lawyer. Access to counsel should be granted at the first stages of custody, including prior to questioning. Police should notify lawyers of the detention of their clients without delay. Legal aid schemes should be expanded. Under no circumstances should any person be tried without legal representation for an offence which carries a sentence of more than six months.

#### **Conclusion K**

230. A number of lawyers have been arbitrarily detained, some for prolonged periods and subject to torture, simply because of association with their clients.

#### **RECOMMENDATION 15**

231. The Government should scrupulously respect the United Nations Principles on the Role of Lawyers, particularly Article 16 and Article 18, which provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

#### **Conclusion L**

232. It is clear that confession is the primary source of proof of many criminal prosecutions and that in many cases such confessions are improperly obtained. Part of



this methodology is a by-product of grossly inadequate police training in criminal matters. International expertise is available in criminal investigations, including police training techniques and relatively efficient forensic science facilities, which would reduce the reliance on torture as the means of obtaining evidence. While certain forensic facilities might be beyond Nepal's resource capacity, some means are relatively inexpensive to implement.

**RECOMMENDATION 16**

233. The Government should invite international policing experts to provide training inside and outside Nepal in interrogation and investigative techniques to improve police investigations and so decrease the incidence of torture and improve the administration of justice.

**RECOMMENDATION 17**

234. Forensic science facilities should be developed and provided through international assistance to improve police investigation.

**Conclusion M**

235. Nepal does not have appropriate forms of non-custodial penalty such as probation, community service orders, parole or release on licence. Enactment of a law to provide for such non-custodial penalties or facilities is a compelling reform which should not be unduly complicated to implement.

**RECOMMENDATION 18**

236. That a system of probation and parole supervision be implemented using models now available throughout the world. This is a cheaper and less socially damaging means of supervising transition back to the community and is less expensive than holding people in custody.

**V. NATIONAL HUMAN RIGHTS INSTITUTIONS**

**Conclusion N**

237. The National Human Rights Commission (NHRC) is a significant national institution for protecting and promoting human rights in Nepal. Yet while certain NHRC members bring a seriousness of purpose to their work, others appear ready to accept unlawful or otherwise inappropriate Government activities or inactivity with little or no serious investigation. To date the NHRC has been devoid of the capacity to deal with the many complaints it receives. It lacks essential powers to carry out its

work effectively, such as the power to compel testimony. Its decisions and conclusions are non-binding and may be ignored by governmental authorities. Its work is largely non-transparent, as a result of which public confidence is low in the institution as an avenue for victims to seek redress. The NHCR has failed to extend its reach nationwide, although visits by members to many districts and steps towards setting up regional offices constitute moves to redress this shortcoming. The NHCR is expected to play a leading role in monitoring the human rights components of any agreement that may be reached between the Government and the Maoists. Any such monitoring should be conducted in conjunction with an international monitoring team from the Office of the UN High Commissioner for Human Rights. Monitoring teams should be composed of paid and qualified human rights professionals, rather than poorly trained volunteers, as suggested by the NHRC.

#### RECOMMENDATION 19

238. The National Human Rights Commission should be reformed, upgraded and expanded to include representatives from a broad cross-section of the community including more representatives of human rights NGOs and other independent bodies. It should be provided with enhanced resources commensurate with the magnitude of its mandate as the primary official organ protecting and promoting human rights. The NHRC should be granted power to enable it to compel testimony and, unless there are compelling counter indications, it should publish its findings pursuant to its investigations. In monitoring the human rights situation pursuant to any agreement reached between the Government and Maoists, it should seek to work in conjunction with international monitors to be provided by the Office of the UN High Commissioner for Human Rights.

#### RECOMMENDATION 20

239. The National Human Rights Commission should appoint rapporteurs along the lines of the existing mechanism on trafficking of women and children, so as to rationalise its work and give pronounced and expert focus to critical areas of thematic concern, such as enforced disappearances and torture.

#### Conclusion O

240. The human rights bodies established by the police, the armed police forces and Army are little more than public relations units and do not control abuses of human rights. Because they fail dismally to carry out proper investigation and prosecutions of serious human rights abuses occurring within their ranks, near total impunity prevails within each of these institutions. The human rights promotion programs carried out by the Army and Armed Police Forces are also largely without substantial

effect, primarily because such programs tend to be targeted at the level of high-ranking officer, with little training imparted transmitted to the non-officer ranks.

**RECOMMENDATION 21**

241. The regular Army and the Armed Police Forces should be subject to published rules of engagement, which incorporate fundamental human rights and humanitarian provisions to prevent war crimes and crimes against humanity. Human rights and humanitarian law training should be provided amply to personnel at all levels.

**RECOMMENDATION 22**

242. The National Human Rights Commission should be given the resources and the power to investigate abuses by the Army.

**VI. GENERAL RECOMMENDATIONS TO ENHANCE  
THE ADMINISTRATION OF JUSTICE**

**Conclusion P**

243. In addition, we make the following recommendations for improvements to the legal system:

**RECOMMENDATION 23**

244. There is a need for enforceable sanctions to be clearly stated within the law for perjury, whether evidence is given by way of oath or affirmation in the courts. Such sanctions should apply to all persons giving evidence, including police and law enforcement officers, so as to improve overall respect for the law.

**RECOMMENDATION 24**

245. Detaining authorities, police or otherwise, should keep continuous records of every person coming under custody, recording time and circumstances of arrest, medical conditions and treatment, legal visits and personal visits. A record of hand over of the detainee to the courts or to the legal authorities should also be kept. Such records should be accessible by court order, and copies should be kept centrally.

**RECOMMENDATION 25**

246. Provision should be made for the immediate notification, at a maximum within 24 hours, of family members and lawyers when an arrest occurs, regardless of where the detainee is held. A record should be kept indicating by whom and when such notification occurred. Such records should be continuous and accessible by the courts.

**RECOMMENDATION 26**

247. Bail or conditional release laws should be expanded to include offences carrying a maximum of three-years' imprisonment, to reduce unnecessary incarceration and to strengthen the presumption of innocence. In serving a sentence, credit should automatically be given for time spent in detention pending trial.

**RECOMMENDATION 27**

248. Measures to expedite the procedures from arrest to completion of trial – now often two to three years -- should be introduced as a matter of priority

**RECOMMENDATION 28**

249. Persons awaiting trial should be held in custody separate from convicted persons, as provided for in the Prison Act and Regulations, but widely breached in practice.

**RECOMMENDATION 29**

250. Generally, alternatives to incarceration, such as rehabilitation homes, should be used for juveniles. When juveniles are incarcerated, they should be held in detention facilities separate from adults, both while awaiting trial and in the event of conviction, as provided for in the Children Rights Act, but widely breached in practice.

**RECOMMENDATION 30**

251. The Attorney General or an independent body, who is answerable to the parliament but not the executive, should be given authority over prosecution of military and civil police to take action on behalf of the state. The CIAA might also fill this function.

**RECOMMENDATION 31**

252. The Attorney General and the CIAA or another independent body should have coextensive authority and power to prosecute serious human rights and war crimes violations.

**RECOMMENDATION 32**

253. Habeas corpus must be enforceable by a proper officer of the court, as presently provided in law, but not practice. Officials failing to comply with such orders should be subject to orders in the nature of contempt.

**RECOMMENDATION 33**

254. The court before which a habeas corpus writ is returned should be given the power to prohibit re-arrest, unless further cogent evidence is produced to the satisfaction of the court that such re-arrest is appropriate.

**RECOMMENDATION 34**

255. Any evidence produced in court that flows from an unlawful Army detention is necessarily tainted and should be inadmissible in court.

**RECOMMENDATION 35**

256. There should be an authority for the protection of witnesses and provision for the hiding of witnesses where appropriate, particularly when testifying against Government or military officials. Provision should be made, pursuant to the court's exercise of discretion, for witnesses to give testimony in closed session or by means of remote television monitor.

**RECOMMENDATION 36**

257. Legislation should be adopted and implemented to mandate statutory discounts for those pleading guilty to offences.

**RECOMMENDATION 37**

258. Women serving prison sentences for abortion-related offences should be released, at least in cases where the conviction was pursuant to conduct that is no longer criminal under the reformed abortion legislation.

**RECOMMENDATION 38**

259. Nepal should ratify the Optional Protocol to the Convention against Torture and so move to prevent torture by providing for visits to places of detention by national and international mechanisms.

## ANNEXES

### ANNEX I: CONSTITUTION OF THE KINGDOM OF NEPAL 2047 (1990)<sup>1</sup>

Adopted on: 9 Nov 1990

Adopted by: Act No. 2047, issued 1990

Official Title: Constitution of the Kingdom of Nepal

#### Editor's Note

The ICL edition is based on the raw text of the official translation as published in the Himalayan Research Bulletin, Vol. XI, Nos. 1-3, 1991 - Ter Ellingson and on <http://asnic.utexas.edu/asnic/countries/nepal/nepalconstitution.html>. Minor language corrections and ICL keys have been added.

#### PREAMBLE

WHEREAS, WE are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people, and, therefore, We have, from time to time, made known our desire to conduct the government of the country in consonance with the popular will;

AND WHEREAS, in keeping with the desire of the Nepalese people expressed through the recent people's movement to bring about constitutional changes, we are further inspired by the objective of securing to the Nepalese people social, political and economic justice long into the future;

AND WHEREAS, it is expedient -

To promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal;

And also to consolidate Adult Franchise, the Parliamentary System of Government, Constitutional Monarchy and the System of Multi Party Democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality;

And also to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality:

NOW, THEREFORE, keeping in view the desire of the people that the State authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this Constitution, I, KING BIRENDRA BIR BIKRAM SHAH DEVA, by virtue of the State authority as

<sup>1</sup> Text of the Constitution available at <http://www.oefre.unibe.ch/law/icl/np00000.html>

exercised by Us, do hereby promulgate and enforce this CONSTITUTION OF THE KINGDOM OF NEPAL on the recommendation and advice, and with the consent of the Council of Ministers.

## **PART I PRELIMINARY**

### **Article 1**

#### **Constitution as the Fundamental Law**

- (1) This Constitution is the fundamental law of Nepal and all laws inconsistent with it shall, to the extent of such inconsistency, be void.
- (2) It shall be the duty of every person to uphold the provisions of this Constitution.

### **Article 2**

#### **The Nation**

Having common aspirations and united by a bond of allegiance to national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste or tribe, collectively constitute the nation.

### **Article 3**

#### **The Sovereignty**

The sovereignty of Nepal is vested in the Nepalese people and shall be exercised in accordance with the provisions of this Constitution.

### **Article 4**

#### **The Kingdom**

- (1) Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom.
- (2) The territory of Nepal shall comprise:
  - (a) the territory existing at the commencement of this Constitution; and
  - (b) such other territory as may be acquired after the commencement of this Constitution.

### **Article 5**

#### **National Flag**

The national flag of Nepal, as handed down by tradition, consists of two juxtaposed triangular figures with a crimson-coloured base and deep blue borders, there being a white emblem of the crescent moon with eight rays visible out of sixteen in the upper part and a white emblem of a twelve rayed sun in the lower part. The method of drawing out the flag and other particulars relating thereto shall be as set forth in Schedule I.

### **Article 6**

#### **Language of the Nation**

- (1) The Nepali language in the Devanagari script is the language of the nation of Nepal. The Nepali language shall be the official language.
- (2) All the languages spoken as the mother tongue in the various parts of Nepal are the national languages of Nepal.



**Article 7**  
**National Anthem etc.**

- (1) The national anthem of Nepal shall be as provided in Schedule II.
- (2) The Rhododendron Arboreum shall be the national flower, Crimson Colour shall be the national colour, the Cow shall be the national animal and the Lophophorus shall be the national bird of Nepal.
- (3) The coat-of-arms of Nepal shall be as set forth in Schedule 3. The coat-of-arms may be enlarged or reduced as required, and such colour shall be used therein as specified by His Majesty's Government.

**PART II**  
**CITIZENSHIP**

**Article 8**  
**Citizenship at the commencement of the Constitution**

At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal:

- (a) any person who is a citizen of Nepal by virtue of Article 7 of the Constitution of Nepal (1962) or section 3 of the Nepal Citizenship Act, 1964.
- (b) any person who has acquired naturalised citizenship of Nepal by virtue of section 6 of the Nepal Citizenship Act, 1964.

**Article 9**  
**Acquisition and Termination of Citizenship**  
**after the Commencement of the Constitution**

- (1) A person who is born after the commencement of this Constitution and whose father is a citizen of Nepal at the birth of the child shall be a citizen of Nepal by descent.
- (2) Every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent.
- (3) Whenever any territory is acquired by way of incorporation into the Kingdom of Nepal, every person having his domicile within such territory shall become a citizen of Nepal, subject to the provisions of existing laws.
- (4) After the commencement of this Constitution, the acquisition of citizenship of Nepal by a foreigner may be regulated by law which may, inter alia, require the fulfilment of the following conditions:
  - (a) that he can speak and write the language of the nation of Nepal;
  - (b) that he is engaged in any occupation in Nepal;
  - (c) that he has renounced his citizenship of another country; and
  - (d) that he has resided in Nepal for at least fifteen years.
- (5) Notwithstanding anything contained in clause (4), a woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen and who has initiated proceedings for renunciation of her foreign citizenship, and any other person, who, has renounced the citizenship of Nepal had gone to a foreign country but who has renounced his foreign citizenship, may acquire the citizenship of Nepal.
- (6) Notwithstanding anything contained in sub-clauses (b) and (d) of clause (4), the son or daughter or descendant of a citizen of Nepal and who has resided in Nepal

for a period of at least two years may acquire the citizenship of Nepal on such terms and conditions as may be prescribed by law.

Provided that this clause shall not be applicable in the case of descendants of naturalized citizens.

- (7) The termination of the citizenship of Nepal shall be as determined by law.

#### **Article 10**

##### **Conferment of Honorary Citizenship**

Notwithstanding anything contained in Article 9, honorary citizenship may be granted to an internationally renowned person.

### **PART III FUNDAMENTAL RIGHTS**

#### **Article 11**

##### **Right to Equality**

- (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
- (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varya), sex (li\_ga), caste (jât), tribe (jâti) or ideological conviction (vaicârik) or any of these.
- (3) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.
- (4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.
- (5) No discrimination in regard to remuneration shall be made between men and women for the same work.

#### **Article 12**

##### **Right to Freedom**

- (1) No person shall be deprived of his personal liberty save in accordance with law, and no law shall be made which provides for capital punishment.
- (2) All citizens shall have the following freedoms:
  - (a) freedom of opinion and expression;
  - (b) freedom to assemble peaceably and without arms;
  - (c) freedom to form unions and associations;
  - (d) freedom to move throughout the Kingdom and reside in any part thereof; and
  - (e) freedom to practise any profession, or to carry on any occupation, industry, or trade.

Provided that -

- (1) nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and

integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes

- (1) or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality;
- (2) nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal;
- (3) nothing in sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, which may instigate violence, or which may be contrary to public morality;
- (4) nothing in sub-clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities;
- (5) nothing in sub-clause (e) shall be deemed to prevent the making of laws to impose restriction on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services; or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

#### **Article 13**

##### **Press and Publication Right**

- (1) No news item, article or any other reading material shall be censored. Provided that nothing shall prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act against which may be contrary to decent public behaviour or morality.
- (2) No press shall be closed or seized for printing any news item, article or other reading material.
- (3) The registration of a newspaper or periodical shall not be cancelled merely for publishing any news item, article or other reading material.

#### **Article 14**

##### **Right Regarding Criminal Justice**

- (1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted or punished for the same offence in a court of law more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.
- (4) No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.

- (5) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.

**Explanation:** For the purpose of this clause, the words "legal practitioner" shall mean any person who is authorised by law to represent any person in any court.

- (6) Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.
- (7) Nothing in clauses (5) and (6) shall apply to a citizen of an enemy state, and nothing in clause (6) shall apply to any person who is arrested or detained under any law providing for preventive detention.

### **Article 15**

#### **Right against Preventive Detention**

- (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal.
- (2) Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the right to be compensated in a manner as prescribed by law.

### **Article 16**

#### **Right to Information**

Every citizen shall have the right to demand and receive information on any matter of public importance;

Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

### **Article 17**

#### **Right to Property**

- (1) All citizens shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of, property.
- (2) The State shall not, except in the public interest, requisition, acquire or create any encumbrance on, the property of any person.
- (3) The basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State for in the public interest, shall be as prescribed by law.

### **Article 18**

#### **Cultural and Educational Right**

- (1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture.
- (2) Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

**Article 19**  
**Right to Religion**

- (1) Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices; provided that no person shall be entitled to convert another person from one religion to another.
- (2) Every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

**Article 20**  
**Right against Exploitation**

- (1) Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law; Provided that nothing herein shall be a bar to providing by law for compulsory service for public purposes.
- (2) No minor shall be employed in work in any factory or mine, or be engaged in any other hazardous work.

**Article 21**  
**Right against Exile**

No citizen shall be exiled.

**Article 22**  
**Right to Privacy**

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

**Article 23**  
**Right to Constitutional Remedy**

The right to proceed in the manner set forth in Article 88 for the enforcement of the rights conferred by this Part is guaranteed.

## **PART IV**

### **DIRECTIVE PRINCIPLES AND POLICIES OF THE STATE**

#### **Article 24**

##### **Application of Directive Principles and Policies**

- (1) The principles and policies contained in this Part shall not be enforceable in any court.
- (2) The principles and policies contained in this part shall be fundamental to the activities and governance of the State and shall be implemented in stages through laws within the limits of the resources and the means available in the country.

#### **Article 25**

##### **Directive Principles of the State**

- (1) It shall be the chief objective of the State to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life, including social, economic and political life, while at the same time protecting the lives, property and liberty of the people.
- (2) The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available means and resources of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public .
- (3) The social objective of the State shall be to establish and develop, on the foundation of justice and morality, a healthy social life, by eliminating all types of economic and social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races and communities.
- (4) It shall be the chief responsibility of the State to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralisation, and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquillity and order in the society.
- (5) The State, in its international relations, shall be guided by the objective of enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independence of the country.

#### **Article 26**

##### **State Policies**

- (1) The State shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions by equitably distributing o investment of economic resources for balanced development in the various geographical regions of the country.
- (2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic

- groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.
- (3) The State shall pursue a policy of mobilising the natural resources and heritage of the country in a manner which might be useful and beneficial to the interest of the nation.
  - (4) The State shall give priority to the protection of the environment and also to the prevention of its further damage
    - (1) due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the protection of the rare wildlife, the forests and the vegetation.
  - (5) The State shall create conditions for the economic progress of the majority of the people, who are dependent on agriculture, by introducing measures which will help in raising productivity in the agricultural sector and develop the agricultural sector on the principles of industrial growth by launching land reform programmes.
  - (6) The State shall pursue a policy of increasing the participation of the labour force, the chief socio-economic force of the country, in the management of enterprises by gradually securing employment opportunities to it, ensuring the right to work, and thus protecting its rights and interests.
  - (7) The State shall pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment.
  - (8) The State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education.
  - (9) The State shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons, as well as ensure their protection and welfare.
  - (10) The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.
  - (11) The State shall, with a view to bringing about prosperity in the country, pursue a policy of giving priority to the development of science and technology and shall also give due consideration to the development of local technology.
  - (12) The State shall, for the purposes of national development, pursue a policy of taking measures necessary for the attraction of foreign capital and technology, while at the same time promoting indigenous investment.
  - (13) The State shall pursue a policy of creating conditions for the acceleration of the speed of rural development, keeping in view the welfare of the majority of the rural population.
  - (14) The State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law.
  - (15) The foreign policy of Nepal shall be guided by the principles of the United Nations Charter, nonalignment, Panchsheel, international law and the value of world peace.
  - (16) The State shall pursue a policy of making continuous efforts to institutionalise peace for Nepal through international recognition, by promoting cooperative and

good relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world.

## **PART V HIS MAJESTY**

### **Article 27 His Majesty**

- (1) In this Constitution, the words "His Majesty" mean His Majesty the King for the time being reigning, being a descendant of the Great King Prithvi Narayan Shah and an adherent of Aryan Culture and the Hindu Religion.
- (2) His Majesty is the symbol of the Nepalese nationality and the unity of the Nepalese people.
- (3) His Majesty is to preserve and protect this Constitution by keeping in view the best interests and welfare of the people of Nepal.

### **Article 28**

#### **Provision Relating to Succession to the Throne**

- (1) Nothing in this Constitution shall affect the custom, usage and tradition relating to the order of succession to the Throne by the descendants of His Majesty.
- (2) His Majesty shall have the exclusive power of enacting, amending and repealing the law relating to the succession to the Throne by His descendants.

### **Article 29**

#### **Expenditures and Privileges relating to His Majesty and the Royal Family**

Expenditures and privileges relating to His Majesty and the Royal Family shall be as determined by law:

Provided that no law shall be made having the effect of reducing the expenditures and privileges being provided by the existing law.

### **Article 30**

#### **Income and Property of His Majesty to be Exempt from Tax and Inviolable**

- (1) The income and personal property of His Majesty shall be exempt from all kinds of tax, fee or other similar charge.
- (2) The property of His Majesty shall be inviolable.

### **Article 31**

#### **Question not to be Raised in Courts**

No question shall be raised in any court about any act performed by His Majesty:

Provided that nothing in this Article shall be deemed to restrict any right under law to initiate proceedings against His Majesty's Government or any employee of His Majesty.



**Article 32**

**Royal Representative, Council of Royal Representatives,  
Regency and Council of Regency**

- (1) In this Constitution, any reference to His Majesty shall, unless the subject or context otherwise requires, include reference to a Royal Representative or Council of Royal Representatives exercising powers pursuant to clause (2), and to a Regent or Council of Regency empowered pursuant to Article 34.
- (2) His Majesty may, by warrant under His Royal Seal, appoint any person or council as His Royal Representative to exercise, subject to such conditions as may be specified in the warrant, such functions as His Majesty is to perform pursuant to this Constitution or the existing law during His Majesty's absence from Nepal or during any specified period. The functions exercised by such Royal Representative within the terms and limits specified in the warrant shall, for the purposes of this Constitution and existing laws, be deemed to have been exercised by His Majesty.

**Article 33**

**Royal Standard and Salute**

- (1) Square in shape and crimson in colour having borders in white, the Royal standard is traditionally comprised of a crescent moon, in the upper corner near the flagstaff with eight out of sixteen rays shown in white colour, and a white sun with twelve white rays in the upper corner opposite to the flagstaff, and a white flag showing a six-angled figure and a sword in the middle of the standard with an upright white lion facing the flag with both its paws holding, and the right hind leg supporting, the flagstaff.
- (2) The national anthem of Nepal is the Royal salute.

**PART VI**

**RAJ PARISHAD**

**Article 34**

**Raj Parishad**

- (1) His Majesty shall constitute a Raj Parishad, the functions of which shall be as set forth in this Constitution.
- (2) The Raj Parishad shall consist of the following members:
  - (a) Members of the Royal Family as designated by His Majesty;
  - (b) Prime Minister  
Ex-Officio Member;
  - (c) Chief Justice  
Ex-Officio Member;
  - (d) Speaker of the House of Representatives  
Ex-Officio Member;
  - (e) Chairman of the National Assembly  
Ex-Officio Member;
  - (f) Chairman of the Standing Committee of the Raj Parishad  
Ex-Officio Member;
  - (g) Deputy Prime Minister  
Ex-Officio Member;
  - (h) Ministers

- Ex-Officio Member
- (i) Leader of the opposition in the House of Representatives  
Ex-Officio Member;
  - (j) Field Marshal  
Ex-Officio Member;
  - (k) Bada Guruju  
Ex-Officio Member;
  - (l) Commander-in-Chief  
Ex-Officio Member;
  - (m) Mukhya Shahebju  
Ex-Officio Member;
  - (n) Chief Commissioner of the Commission for the Investigation of Abuse of Authority  
Ex-Officio Member;
  - (o) Auditor-General  
Ex-Officio Member;
  - (p) Chairman of the Public Service Commission  
Ex-Officio Member;
  - (q) Chief Election Commissioner  
Ex-Officio Member;
  - (r) Attorney-General  
Ex-Officio Member;
  - (s) Mukhya Chautariya  
Ex-Officio Member;
  - (t) Principal Secretary or Secretary of His Majesty  
Ex-Officio Member;
  - (u) Chief Secretary of His Majesty's Government  
Ex-Officio Member;
  - (v) Inspector General of Police  
Ex-Officio Member; and
  - (w) Such other members as His Majesty may designate from among persons who, being renowned in different fields of national life, or who, having rendered distinguished service, are considered fit to be members of the Raj Parishad.
- (3) Persons designated by His Majesty pursuant to sub-clause (a) and (w) of clause (2) shall remain members during the pleasure of His Majesty.
- (4) A meeting of the Raj Parishad shall be summoned by the command of His Majesty, and shall be presided over by Him if present at the meeting. If His Majesty is not present at the meeting, and if the Crown Prince has attained the age of eighteen years, the meeting shall be presided over by the Crown Prince, such , and if the Crown Prince has not attained the age of eighteen years, or if He is not present, the meeting shall be presided over by such person as is designated by His Majesty shall so preside, and if no such person has been designated, by the Chairman of the Standing Committee of the Raj Parishad.
- (5) The Chairman of the Standing Committee of the Raj Parishad shall summon a meeting of the Raj Parishad in the following circumstances and such meeting shall be conducted under his Chairmanship:
- (a) on the demise of His Majesty or if His Majesty proclaims His abdication.

- (b) if at least one-fourth of the total number of members of the Raj Parishad sign a requisition declaring that His Majesty is unable, by reason of mental or physical infirmity, to perform his functions.
- (6) A meeting summoned under the circumstances mentioned in sub-clause (a) of clause (5) shall proclaim the accession to the Throne of the heir-apparent to His Majesty in accordance with the law, custom and usage relating to the succession to the Throne. It shall also proclaim the appointment of a Regent or Council of Regency, subject to rules made by His Majesty, in case His Majesty is below the age of eighteen years: Provided that the Regency or Council of Regency proclaimed under this clause shall dissolve on His Majesty attaining the age of eighteen years.
- (7) If a meeting of the Raj Parishad, summoned under sub-clause (b) of Clause (5) with the object of deciding whether His Majesty is mentally or physically incapacitated, passes a resolution confirming such incapacity by a majority of two-thirds of its total membership, the meeting of the Raj Parishad shall proclaim the Crown Prince to be the Regent if He has attained the age of eighteen years, and in other circumstances, it shall, subject to rules made by His Majesty, proclaim a Regent or Council of Regency: Provided that the Regency or Council of Regency proclaimed under this clause shall, subject to rules made by His Majesty, dissolve on the demise of or abdication by His Majesty, or on His Majesty informing the Raj Parishad that he is fit to resume the Royal functions.
- (8) A Regent or Council of Regency proclaimed under clauses (6) or (7) shall not have any power to decide or to give approval to anything which shall be prejudicial to the interest of His Majesty or His successor.
- (9) Nothing in clauses (6) and (7) shall prevent the heir apparent to His Majesty from exercising the powers of the Throne pending a proclamation to that effect.
- (10) The Raj Parishad shall transact its business notwithstanding the absence of any of its members at any meeting if: -
- (a) notice of such meeting has been sent to all persons who were members on the date of issuance of the notice; and
  - (b) at least one-third of the total number of members are present.
- (11) The Raj Parishad may make necessary rules to regulate its business. Until such rules are made, its business shall be regulated by rules made by His Majesty.
- (12) Members of the Raj Parishad shall take an oath in the manner as specified by His Majesty.
- (13) His Majesty shall appoint the Secretary of the Raj Parishad.
- (14) His Majesty may, from among the members of the Raj Parishad, constitute a Standing Committee of the Raj Parishad, consisting of a maximum of fifteen members including a Chairman and the following ex-officio members:
- (a) Prime Minister;
  - (b) Chief Justice;
  - (c) Speaker of the House of Representatives;
  - (d) Chairman of the National Assembly;
  - (e) Bada Gurujyu; and
  - (f) Commander-in-Chief.
- (15) The tenure of office of the Chairman and the members of the Standing Committee of the Raj Parishad other than the ex-officio members shall be four years from the date of appointment. Such members shall be eligible for reappointment.

- (16) The office of the Chairman or a member of the Standing Committee of the Raj Parishad shall be deemed vacant under the following circumstances: -
  - (a) if he dies; or
  - (b) if he is relieved of office by His Majesty;
  - (c) if his resignation submitted to His Majesty in writing is accepted by Him;
  - (d) if his term of office expires pursuant to clause (15).
- (17) In order to be eligible for appointment as the Chairman or a member of the Standing Committee of the Raj Parishad, a person must meet the following requirements: -
  - (a) he has reached the age of fifty years;
  - (b) he is not disqualified under any law.
- (18) The functions, duties and power of the Standing Committee of the Raj Parishad shall be as follows: -
  - (a) to submit recommendations on matters referred to it by His Majesty; and
  - (b) to carry out the functions relating to the Royal Family as specified by His Majesty.
- (19) The Standing Committee of the Raj Parishad may, subject to the provisions of this Article, frame necessary rules to regulate its business. Until such time as these rules are approved by His Majesty, this business shall be regulated by rules made by His Majesty.
- (20) The remuneration of the Chairman and the members of the Standing Committee of the Raj Parishad shall be as fixed by His Majesty.
- (21) The meetings of the Standing Committee of the Raj Parishad shall be summoned by its Chairman. During discussions on any issue at such meetings, any other member of the Raj Parishad may also be invited.
- (22) The Secretary of the Raj Parishad shall also act as the Secretary of its Standing Committee.
- (23) The members of the Standing Committee of the Raj Parishad shall take an oath in the manner as specified by His Majesty.

## **PART VII EXECUTIVE**

### **Article 35 Executive Power**

- (1) The executive power of the Kingdom of Nepal shall, pursuant to this Constitution and other laws, be vested in His Majesty and the Council of Ministers.
- (2) Except as otherwise expressly provided as to be exercised exclusively by His Majesty or at His discretion or on the recommendation of any institution or official, the powers of His Majesty under this Constitution shall be exercised upon the recommendation and advice and with the consent of the Council of Ministers. Such recommendation, advice and consent shall be submitted through the Prime Minister.
- (3) The responsibility of issuing general directives, controlling and regulating the administration of the Kingdom of Nepal shall, subject to this Constitution and other laws, lie in the Council of Ministers.
- (4) Except in so far as any action is to be taken in the name of His Majesty pursuant to this Constitution and other laws, all other executive actions shall be expressed to be taken in the name of His Majesty's Government.

- (5) Any decision, order or implementation warrant to be issued in the name of His Majesty pursuant to this Constitution and other laws shall be authenticated in such manner as may be set forth in rules made by His Majesty at His discretion. All other decisions, orders and implementation warrants to be issued in the name of the Council of Ministers pursuant to clause (4) above shall be authenticated in such manner as may be set forth in rules approved by His Majesty.
- (6) No question shall be raised in any court as to whether or not any recommendation or advice has been given to His Majesty pursuant to this Constitution by the Council of Ministers or any other institution or official, nor shall any question be raised in any court about what recommendation or advice has been given.

### Article 36

#### Constitution of Council of Ministers

- (1) His Majesty shall appoint the leader of the party which commands a majority in the House of Representatives as the Prime Minister, and shall constitute the Council of Ministers under his chairmanship.
- (2) The Council of Ministers, in addition to the Prime Minister, shall consist of a Deputy-Prime Minister if required and such other Ministers as may be required.
- (3) His Majesty shall, upon the recommendation of the Prime Minister, appoint from among the members of the Parliament, a Deputy-Prime Minister if required and such other Ministers as may be required.
- (4) The Prime Minister and other Ministers shall be collectively responsible to the House of Representatives, and the Ministers shall be individually responsible for the work of their respective Ministries to the Prime Minister and the House of Representatives.
- (5) The Prime Minister shall be relieved of his office in the following circumstances:
  - (a) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (b) if His Majesty relieves him of office in accordance with a no confidence resolution passed by a majority of the total number of members of the House of Representatives pursuant to Article 59; or
  - (c) if he ceases to be a member of the House of Representatives; or
  - (d) if he dies.
- (6) The Deputy-Prime Minister or a Minister shall be relieved of his office in the following circumstances:
  - (a) if his resignation submitted to His Majesty in writing through the Prime Minister is accepted by Him; or
  - (b) if the Prime Minister is relieved of his office pursuant to the provisions of clause (5) above; or
  - (c) if he ceases to be a member of Parliament; or
  - (d) if he is relieved of office by His Majesty on the recommendation of the Prime Minister; or
  - (e) if he dies.
- (7) If the Prime Minister is relieved of his office pursuant to clause (5), the existing Council of Ministers shall continue to function until a new Council of Ministers is constituted. Provided that His Majesty shall, upon the death of the Prime Minister, designate either the Deputy-Prime Minister or the seniormost Minister to act as the Prime Minister until a new Prime Minister is appointed.

### **Article 37**

#### **State Ministers and Assistant Ministers**

- (1) His Majesty shall, on the recommendation of the Prime Minister, appoint State Ministers from amongst the members of Parliament.
- (2) His Majesty shall, upon the recommendation of the Prime Minister, appoint Assistant Ministers from amongst the members of Parliament to assist any Minister in carrying out his responsibilities.
- (3) The provisions of clause (6) of Article 36 relating to Ministers shall also be applicable to State Ministers and Assistant Ministers.

### **Article 38**

#### **Appointment of Non-Member of Parliament as Minister**

Notwithstanding anything contained in Articles 36 and 37, any person who is not a member of either House of Parliament may be appointed Deputy-Prime Minister, Minister, State Minister or Assistant-Minister:

Provided that such Deputy-Prime Minister, Minister, State Minister or Assistant-Minister shall be required to become a member of Parliament within six months from the date of his appointment.

### **Article 39**

#### **Remuneration and Other Privileges**

The remuneration and other privileges of the Prime Minister, Deputy-Prime Minister, Ministers, State Ministers and Assistant-Ministers shall be as determined by an Act, and until so determined, shall be as specified in rules made by His Majesty.

### **Article 40**

#### **Oath**

The Prime Minister, Deputy-Prime Minister, and other Ministers shall take their oaths of office and secrecy before His Majesty, and the State Ministers and Assistant-Ministers before the Prime Minister.

### **Article 41**

#### **Conduct of Government Business**

- (1) The allocation and transaction of business of His Majesty's Government shall be carried out as set forth in rules approved by His Majesty.
- (2) No question shall be raised in any court as to whether or not rules made pursuant to clause (1) above have been observed.

### **Article 42**

#### **Special Provisions Concerning the Council of Ministers**

- (1) If no one party has a clear-majority in the House of Representatives, His Majesty shall appoint as Prime Minister a member who is able to command a majority with the support of two or more parties represented in the House.
- (2) If no member is able to command a majority in the House of Representatives even pursuant to clause (1) above, His Majesty shall appoint as Prime Minister the leader of the parliamentary party that holds the largest number of seats in the House of Representatives.
- (3) A Prime Minister appointed pursuant to clause (1) or (2) above shall be required to obtain a vote of confidence from the House of Representatives within thirty days.

- (4) If a Council of Ministers appointed pursuant to the provisions of clause (2) above fails to obtain a vote of confidence from the House of Representatives, His Majesty shall dissolve the House of Representatives and issue an order for holding elections within six months.

#### **Article 43**

##### **Information to be submitted to and Recommendations to be made by His Majesty**

- (1) It shall be the duty of the Prime Minister to inform His Majesty of the following matters:
- (a) decisions of the Council of Ministers regarding the administration of the Kingdom of Nepal,
  - (b) Bills to be introduced in Parliament,
  - (c) such other information as commanded by His Majesty on matters mentioned in sub-clauses (a) and (b), and
  - (d) the current general state of affairs of the country, matters concerning peace and security in the country, matters of political, social and administrative concerns, and matters concerning international relations.
- (2) His Majesty may make recommendations to, or appreciations of, or admonitions to, the Council of Ministers on matters of national importance.

### **PART VIII LEGISLATURE**

#### **Article 44**

##### **Constitution of Legislature**

There shall be a Legislature, to be called Parliament, which shall consist of His Majesty and two Houses, namely the House of Representatives and the National Assembly.

#### **Article 45**

##### **Constitution of the House of Representatives**

- (1) The House of Representatives shall consist of two hundred and five members.
- (2) For the purpose of election of members to the House of Representatives, administrative districts shall be treated as election districts, and the ratio of the number of seats allocated to any district shall be, so far as practicable, equal to the ratio of the population of that district to the national population as determined by the last census preceding the concerned election; and the number of election constituencies shall be equal to the number of seats so allocated; and one member shall be elected from each election constituency. Provided that the number of members to be elected from the districts shall be so determined and election constituency so delimited that there be elected at least one member from each district irrespective of its population.
- (3) Unless dissolved earlier pursuant to the provisions of this Constitution, the term of the House of Representatives shall be five years. Provided that the term of the House of Representative may be extended by an Act for a period not
- (I) exceeding one year during the operation of a proclamation of a State of Emergency.

- (4) The term of the House of Representatives as extended in pursuance of the proviso clause of clause (3) shall ipso facto stand terminated after the expiry of six months from the date on which the proclamation of the State of Emergency is withdrawn.
- (5) Subject to the provisions of this Constitution, election to membership in the House of Representatives shall be held on the basis of one man-one vote through secret ballots in accordance with the provisions of law.
- (6) Every Nepali citizen who has attained the age of eighteen shall be entitled to vote in one of the election constituencies in accordance with the provisions of law.
- (7) Every person who is entitled to vote in the elections for the House of Representatives may, subject to the provisions of Article 47 and other existing laws, be a candidate from any of the election constituencies.
- (8) Any vacancy in a seat occurring in the House of Representatives, while a portion of its term still remains, shall be filled through a by-election.
- (9) Subject to the provisions of this Article, elections for the House of Representatives and other matters pertaining thereto shall be regulated in accordance with law.

#### **Article 46**

##### **Constitution of the National Assembly and the Tenure of Office of Members**

- (1) The National Assembly shall consist of sixty members as follows: -
  - (a) ten members to be nominated by His Majesty from amongst persons of high reputation who have rendered prominent service in various fields of national life,
  - (b) thirty five members, including at least three women members, to be elected by the House of Representatives in accordance with the provisions of law, on the basis of the system of proportional representation by means of the single transferable vote, and
  - (c) fifteen members, three from each of the Development Regions, to be elected in accordance with law on the basis of the system of single transferable vote by an electoral college consisting of the Chief and the Deputy-Chief of the Village and Town level Local Authorities and the Chief, Deputy-Chief, and the members of the District level Local Authorities: Provided that until elections are held for the Local Authorities, such electoral college shall, for the first time, consist of the members of the House of Representatives elected from the concerned Development Region.
- (2) The National Assembly shall be a permanent House. The tenure of office of one-third of its members shall expire every two years.
- (3) The tenure of office of the members of the National Assembly shall be six years: Provided that, for the first time, after the commencement of this Constitution, arrangements shall be made by drawing lots to retire one-third of the members on the expiry of two years, another one-third on the expiry of four years, and the final one-third on the expiry of six years.
- (4) The term of office of the members, including any unfilled seats, shall be deemed to have started on the date on which National Assembly commences its first session.
- (5) Vacancies of seats in the National Assembly shall be filled in the same manner of election or nomination through which the seat of the vacating member was filled.
- (6) If any seat of a member of the National Assembly falls vacant during his tenure of office, the vacancy shall be filled in accordance with Clause (5), by election or nomination, as the case may be, for the remainder of the term.



#### Article 47

##### Qualifications for Membership

- (1) In order to become a member of Parliament any person -
  - (a) must be a citizen of Nepal;
  - (b) must have attained twenty five years of age for the House of Representatives and thirty five years for the National Assembly;
  - (c) should not be disqualified under any law; and
  - (d) should not hold an office of profit.

**Explanation:** For the purpose of this sub-clause, "office of profit" means any position, other than a political position, to be filled by election or nomination for which a remuneration or economic benefit is paid out of a Government Fund.

- (2) No person shall be a member of both Houses simultaneously.

#### Article 48

##### Decision About Disqualifications of Members

If a question arises as to whether a member of Parliament is disqualified or has ceased to possess any of the qualifications set forth in Article 47, the final decision shall be made by the Chief Justice of Nepal or any other Judge of the Supreme Court designated by him.

#### Article 49

##### Vacation of seat

- (1) The seat of a member of Parliament shall become vacant in the following circumstances:
  - (a) if he dies; or
  - (b) if he resigns in writing; or
  - (c) if he does not or has ceased to possess the qualifications referred to in Article 47; or
  - (d) if his term of office expires, or if the term of the House in accordance with this Constitution; or
  - (e) if he, without the leave of the concerned House, absents himself from thirty consecutive meetings of the House; or
  - (f) if the party of which he was a member when elected provides notification in the manner set forth by law that he has abandoned the party.

#### Article 50

##### Oath

The members of each House of Parliament shall, before taking part for the first time in a meeting of that House or any of its committees, take an oath in the specified form.

#### Article 51

##### Speaker and Deputy-Speaker of the House of Representatives

- (1) The House of Representatives shall, as soon as possible, elect a Speaker and a Deputy-Speaker from among its members. If the office of the Speaker or the Deputy-Speaker falls vacant, the House of Representatives shall fill the vacancy through election from among its members.
- (2) The Deputy-Speaker shall, in the absence of the Speaker of the House of Representatives, chair the House of Representatives.

- (3) If the election of the Speaker and Deputy-Speaker has not taken place, or if both the positions have become vacant, the member of the House of Representatives who is by age the seniormost shall preside over the meeting of the House of Representatives.
- (4) The Office of the Speaker or the Deputy-Speaker shall become vacant in the following circumstances:
  - (a) if he ceases to be a member of House of Representatives:  
Provided that, after the dissolution of the House of Representatives, the Speaker and Deputy-Speaker shall continue in office until the date of the filing of nominations for election to the House of Representatives; or
  - (b) he submits a written resignation; or
  - (c) if a resolution is passed by a majority of two-thirds of the total number of members in the House of Representatives to the effect that his conduct is not compatible with his position.
- 5) The Deputy-Speaker shall preside over a meeting at which deliberations are to be held on a resolution that the conduct of the Speaker of the House of Representatives is not compatible with his position. The Speaker shall be entitled to take part and vote in the deliberations on such resolution.

#### **Article 52**

##### **Chairman and Vice Chairman of the National Assembly**

- (1) After the commencement of its first session, the National Assembly shall, as soon as possible, elect a Chairman and Vice Chairman from among its members. If the office of the Chairman or the Vice-Chairman falls vacant, the National Assembly shall fill the vacancy through election from among its members.
- (2) The Vice-Chairman shall, in the absence of the Chairman of the National Assembly, chair the National Assembly.
- (3) If the election of the Chairman and Vice-Chairman has not taken place, or if both the positions have become vacant, the member of the National Assembly who is by age the seniormost shall preside over the meeting of the National Assembly.
- (4) The office of the Chairman or the Vice-Chairman shall become vacant in the following circumstances:
  - (a) if he ceases to be a member of the National Assembly; or
  - (b) if he submits a written resignation; or
  - (c) if a resolution is passed by a majority of two-thirds of the total number of members of the National Assembly to the effect that his conduct is not compatible with his position.
- (5) The Vice-Chairman shall preside over a meeting at which deliberations are to be held on a resolution that the conduct of the Chairman of the National Assembly is not compatible with his position. The Chairman shall be entitled to take part and vote in the deliberations on such resolution.

#### **Article 53**

##### **Summoning and Prorogation of Sessions and Dissolution of the House of Representatives**

- (1) His Majesty shall summon a session of parliament within one month after the elections to the House of Representatives are held. Thereafter, His Majesty shall summon other sessions from time to time in accordance with this Constitution. Provided that the interval between two consecutive sessions shall not be more than six months.

- (2) His Majesty may prorogue the session of both or either of the Houses of Parliament.
- (3) If, during the prorogation or recess of the House of Representatives, one-fourth of its members make a representation that it is appropriate to convene a session or meeting, His Majesty shall specify the date and time for such session or meeting, and the House of Representatives shall meet or commence its session on the date and time thus fixed.
- (4) His Majesty may dissolve the House of Representatives on the recommendation of the Prime Minister. His Majesty shall, when so dissolving the House of Representatives, specify a date, to be within six months, for new elections to the House of Representatives.

#### **Article 54**

##### **Address and Message by His Majesty**

- (1) His Majesty may address either House or a joint sitting of both the Houses of Parliament, and He may summon the Members for that purpose.
- (2) His Majesty shall address the first session after an election to the House of Representatives, and a joint sitting of both the Houses of Parliament after the commencement of the first session of each year.
- (3) His Majesty may send messages to either or both the Houses of Parliament. The House receiving such message shall, as early as possible, consider the matter mentioned in the message and submit its opinion to His Majesty.

#### **Article 55**

##### **Quorum**

Except as otherwise provided in this Constitution, no resolution shall be presented for decision in either House of Parliament unless one-fourth of the total number of members of the concerned House are present.

#### **Article 56**

##### **Restriction on Discussion**

- (1) No discussion shall be held in either House of Parliament on the conduct of His Majesty, Her Majesty the Queen and the heir apparent to His Majesty: Provided that nothing in this Article shall be deemed to bar criticism of His Majesty's Government.
- (2) No discussion shall be held in either House of Parliament on a matter which is under consideration in any court of Nepal.
- (3) No discussion shall be held in either House of Parliament about anything done by a Judge in course of performance of his duties: Provided that nothing in this clause shall be deemed to bar the expression of opinion about the conduct of a Judge during deliberations on a resolution held pursuant to clause (7) of Article 87.

#### **Article 57**

##### **Transaction of Business in case of Vacancy of Members**

Either House of Parliament shall have the power to transact its business notwithstanding any vacancies in the seats of its members; and no proceedings shall become invalid even if it is subsequently discovered that a person not entitled to take part in the proceedings of either House had participated therein.

### **Article 58**

#### **Voting**

Except as otherwise provided in this Constitution, all questions submitted for decision in either House of Parliament shall be decided by a majority vote of the members present and voting. Normally the member presiding shall not have the right to vote, but he may exercise his casting vote in the case of tie.

### **Article 59**

#### **Vote of Confidence**

- (1) The Prime Minister, while he holds office, may, whenever he is of the opinion that it is necessary or appropriate to obtain a vote of confidence from the members of the House of Representatives, present a resolution to that effect in the House of Representatives.
- (2) One-fourth of the total number of members of the House of Representatives may present in writing a no-confidence motion against the Prime Minister: Provided that a no-confidence motion shall not be presented more than once in the same session.
- (3) A decision on a resolution presented pursuant to clauses (1) and (2) shall be made by a majority of the total number of members of the House of Representatives.

### **Article 60**

#### **Minister Entitled to Take Part in Both Houses**

A Minister shall be entitled to attend and take part in the proceedings and deliberations of either House of the Parliament and its committees:

Provided that he shall not be entitled to vote in a House or committee of which he is not a member.

### **Article 61**

#### **Penalty for Unauthorized Presence or Voting**

If a person sits or votes in a meeting of either House of Parliament as a member without taking an oath pursuant to Article 50, or knowing that he is not qualified for membership in the House, he shall, on order of the person chairing the House, be liable to a fine of one thousand rupees for each day of such presence or voting. The fine shall be recovered as government dues.

### **Article 62**

#### **Privileges**

- (I) Subject to the provisions of this Constitution, there shall be full freedom of speech in both Houses of Parliament and no member shall be arrested, detained or prosecuted in any court for anything said or any vote cast in the House.
- (II) Subject to the provisions of this Constitution, each House of Parliament shall have full power to regulate its internal business, and it shall be the exclusive right of the House concerned to decide whether or not any proceeding of the House is regular. No question shall be raised in any court in this regard.
- (III) Subject to the provisions of this Constitution, no comment shall be made about the good faith concerning any proceeding of either House of Parliament and no publication of any kind shall be made about anything said by any member which intentionally distorts or misinterprets the meaning of the speech.

- (IV) Subject to the provisions of this Constitution, the provisions of clauses (1) and (3) shall also apply to any person, other than a member, who is entitled to take part in a meeting of the House.
- (V) No proceedings shall be initiated in any court against any person for publication of any document, report, vote or proceeding which is made under authority given, subject to the provisions of this Constitution, by a House of Parliament. Explanation: For the purposes of this clause and clauses (1), (2), (3) and (4), the word "House" shall mean and include the committees of a House and shall also mean a joint sitting of Parliament or a meeting of the Joint Committee.
- (VI) No member of Parliament shall be arrested between the date of issuance of the summons for a session and the date on which that session closes: Provided that nothing in this clause shall be deemed to prevent the arrest under any law of any member on a criminal charge. If any member is so arrested, the official making such arrest shall forthwith inform the person chairing the concerned House.
- (VII) Any breach of privilege of either House of Parliament shall be deemed to constitute contempt of Parliament and the concerned House shall have the exclusive right to decide whether or not any breach of privilege has taken place.
- (VIII) If a person is in contempt of either House of Parliament, the Chairperson of the concerned House may, after a decision by the House to that effect, admonish, warn or impose a sentence of imprisonment not exceeding three months, to remain effective only during the current session of the House, or impose a fine of up to five thousand rupees on such person. The fine shall be recovered as government dues:  
Provided that if the person so accused submits an apology to the satisfaction of the House, it may either pardon him or remit or commute the sentence imposed on him.
- (IX) Other matters relating to privileges not mentioned in this Constitution shall be as determined by law.

### Article 63

#### Procedures relating to the Conduct of Business

- (1) Each House of Parliament shall, subject to the provisions of this Constitution, frame rules for conducting its business, maintaining order during its meetings and regulating the constitution, functions and procedures of the committees or any other matter of the House or the committees. Such rules shall come into effect upon approval by His Majesty.
- (2) Matters relating to the conduct of business of a joint sitting of Parliament and the constitution of its Joint Committee, and the functions and procedures thereof shall be in accordance with rules made by His Majesty on the recommendation of the Speaker of the House of Representatives and the Chairman of the National Assembly.
- (3) Until such time as rules mentioned in clauses (1) and (2) are made, matters mentioned in those clauses shall be governed by rules made by His Majesty .

### Article 64

#### Committees

The House of Representatives may, by rules, regulate the constitution and management of Committees on Finance, Public

Account, Human Rights, Foreign Relations, Natural Resources, Protection of the Environment, Population and such committees on other subjects as required.

#### **Article 65**

##### **Joint-Committee**

- (1) If a resolution is passed by either House demanding that of both the Houses be constituted for the purpose of managing the working procedure between the two Houses, resolving disagreements on any Bill, or for any other specified function, a Joint-Committee thereon shall be constituted.
- (2) The Joint-Committee shall consist of up to a maximum of fifteen members in the ratio of two-members from the House of Representatives to-one-member from the National Assembly.

#### **Article 66**

##### **Secretariat of Parliament**

- (1) His Majesty shall appoint the Secretary of the House of Representatives on the recommendation of its Speaker, and the Secretary of the National Assembly on the recommendation of its Chairman and the Secretary-General of Parliament in consultation with both the Speaker and the Chairman.
- (2) The establishment of a Secretariat for the purpose of conducting the business of Parliament and other matters related thereto shall be as determined by law.

#### **Article 67**

##### **Remuneration**

The remuneration and privileges of the Speaker and Deputy Speaker of the House of Representatives, the Chairman and Vice-Chairman of the National Assembly and members of Parliament shall be determined by law, and until so determined, shall be as specified by His Majesty.

## **PART IX LEGISLATIVE PROCEDURE**

#### **Article 68**

##### **Procedure for Introducing a Bill**

- (1) A bill may be introduced in either House of Parliament: Provided that a Finance Bills shall be introduced only in the House of Representatives.
- (2) A Finance Bill or a Bill concerning the Royal Nepal Army or the Armed Police Force shall be introduced only as a Government Bill. Any amendment to such Bill may be introduced only upon the prior approval of His Majesty. Such approval shall be obtained through the person chairing the House.
- (3) "Finance Bill" means a Bill concerning any or all of the following subjects:
  - (a) the imposition, collection, abolition, remission, alteration or regulation of taxes;
  - (b) the preservation of the Consolidated Fund or any other Government Fund, the deposit of moneys into and the appropriation or the withdrawal of moneys from such Funds, or the reduction, increment or cancellation of appropriations or of proposed expenditures from such Funds;
  - (c) the regulation of matters relating to the raising of loans or the giving of guarantees by His Majesty's Government or any matter pertaining to

- amendment of the laws concerning the financial liabilities undertaken or to be undertaken by His Majesty's Government;
- (d) the custody and investment of all revenues received by any Government Fund, moneys acquired through the repayment of loans, and grant moneys; or audits of the accounts of His Majesty's Government; or
  - (e) matters directly related to the above subjects.
- (4) If any question arises whether a Bill is a Finance Bill or not, the decision of the Speaker shall be final.

#### Article 69

##### Procedure for Passage of Bills

- (1) A Bill passed by one House of Parliament shall be transmitted to the other House as soon as possible and such Bill, if passed by the receiving House, shall be presented to His Majesty for assent.
- (2) A Finance Bill passed by the House of Representatives shall be transmitted to the National Assembly. The National Assembly shall, after deliberations on such a Bill, send back the Bill to the House of Representatives within fifteen days from the date of receipt of the Bill with recommendations, if any.
- (3) The House of Representatives shall, upon deliberations on a Bill returned with recommendations pursuant to clause (2), present it to His Majesty for assent along with such recommendations as it may deem appropriate.
- (4) If the National Assembly does not return a Bill received pursuant to Clause (2) for more than fifteen days, the House of Representatives may present the Bill to His Majesty for assent.
- (5) Any Bill, except for a Finance Bill, passed by the House of Representatives and transmitted to the National Assembly shall be sent back with approval or recommendations within two months from the date of receipt. If the National Assembly does not return the Bill within that period, the House of Representatives may, by a resolution passed by a majority of more than fifty percent of the sitting members, present the Bill to His Majesty for assent.
- (6) If any Bill passed by one House is rejected or is passed with amendments by the other House, the Bill shall be transmitted back to the House where it originated.
- (7) If the House of Representatives, in considering a Bill which has been rejected or amended by the National Assembly pursuant to clause (6), passes it again as it was or with amendments, by a majority of more than fifty percent of its sitting members, the Bill shall be presented to His Majesty for assent.
- (8) A Bill for which amendments have been recommended and which has been transmitted to the National Assembly by the House of Representatives pursuant to clause (6) shall be presented to His Majesty for assent if the National Assembly also passes a resolution to adopt the Bill with such amendments.
- (9) The following Bills shall be referred to a joint sitting of the two Houses and if the joint sitting passes the Bill as it was or with amendments, the House in which the Bill originated shall present it to His Majesty for assent: -
  - (a) Bills which, though being passed by the National Assembly, have been rejected by the House of Representatives; or
  - (b) Bills which have been returned to the National Assembly with amendments by the House of Representatives, but which the National Assembly fails to pass with such amendments.
- (10) If a session of a House terminates while a Bill is under consideration, deliberations on the Bill may continue at the succeeding session: Provided that if

any Bill introduced in the House of Representatives is under consideration, or if a Bill, having been passed by that House and transmitted to the National Assembly, is under consideration in the National Assembly, when the House of Representatives is dissolved or its term expires, such Bill shall be deemed to have lapsed.

#### **Article 70** **Withdrawal of Bills**

A Bill may be withdrawn by the member introducing it with the approval of the House.

#### **Article 71** **Assent on Bills**

- (1) A Bill which is to be presented to His Majesty for assent pursuant to Article 69 shall be so presented by the Speaker or the Chairman of the House in which the Bill originated after it has been duly certified by him under his hand: Provided that in the case of a Finance Bill, the Speaker shall so certify.
- (2) Upon His Majesty's assent to any Bill that has been presented to Him pursuant to this Article, both Houses shall be informed as soon as possible.
- (3) Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, he may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him.
- (4) If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and it is again presented to him, His Majesty shall give assent to that Bill within thirty days of such presentation.
- (5) A Bill shall become an Act after His Majesty grants his assent to it in accordance with this Article, and such assent shall be deemed to have been granted after the Royal Seal has been affixed thereon.

#### **Article 72** **Ordinance**

- (1) If at any time, except when both Houses of Parliament are in session, His Majesty is satisfied that circumstances exist which render it necessary for him to take immediate action, He may, without prejudicing the provisions set forth in this Constitution, promulgate any Ordinance as He may deem necessary.
- (2) An Ordinance promulgated under clause (1) shall have the same force and effect as an Act: Provided that every such Ordinance:
  - (a) shall be presented at the next session of both Houses of Parliament, and if not passed by both Houses, it shall ipso facto cease to be effective;
  - (b) may be repealed at any time by His Majesty; and
  - (c) shall, unless rendered ineffective or repealed under sub-clause (a) or (b), ipso-facto cease to have effect at the expiration of six months from its promulgation or sixty days from the commencement of a session of both the Houses.

**Explanation:** If the two Houses of Parliament meet on different dates, the latter date on which a House commences its session shall be deemed to be the date of commencement of session for the purpose of computation of time under this clause.



## **PART X FINANCIAL PROCEDURE**

### **Article 73**

#### **No Tax to be Levied or Loan to be Raised Except in Accordance with Law**

- (1) No tax shall be levied and collected except in accordance with law.
- (2) No loan shall be raised or guarantee be given by His Majesty's Government except in accordance with law.

### **Article 74**

#### **Consolidated Fund**

Except the revenues of religious endowments, all revenues received by His Majesty's Government, all loans raised on the security of revenues and all moneys received in repayment of any loan made under the authority of any Act shall, unless otherwise provided by an Act, be credited to a Government Fund to be known as the Consolidated Fund.

### **Article 75**

#### **Expenditures From the Consolidated Fund or a Government Fund**

No expenditure shall be incurred out of the Consolidated Fund or any other Government Fund except the following: -

- (a) moneys charged on the Consolidated Fund;
- (b) moneys required to meet the expenditure under an Appropriation Act;
- (c) advance moneys authorised by an Act required to meet expenditures, when an Appropriation Bill is under consideration; or
- (d) -expenditures to be incurred in extraordinary circumstances under a Vote of Credit Act which contains only a description of expenditures: Provided that matters relating to the Contingency Fund shall be governed in accordance with the provisions of Article 82.

### **Article 76**

#### **Expenditure Chargeable on the Consolidated Fund**

The expenditures related to the following matters shall be charged on the Consolidated Fund and yearly approval of Parliament for these expenditures shall not be required: -

- (a) the amount provided by the Act relating to expenditures on the Royal Family;
- (b) the amount required as remuneration, privileges and pension payable to the Chief Justice of Nepal and other Judges of the Supreme Court;
- (c) the amount required as remuneration and privileges payable to the following officials: -
  - (1) the Speaker and Deputy-Speaker of the House of Representatives;
  - (2) the Chairman and Vice-Chairman of the National Assembly;
  - (3) the Chairman and members of the Standing Committee of the Raj Parishad;
  - (4) the Chief Commissioner and other Commissioners of the Commission for the Investigation of the Abuse of Authority;
  - (5) the Auditor-General;
  - (6) the Chairman and members of the Public Service Commission; and

- (7) the Chief Election Commissioner and other Election Commissioners.
- (d) the administrative expenses of the Supreme Court, the Raj Parishad, the Commission for the Investigation of the Abuse of Authority, the Department of the Auditor-General, the Public Service Commission and the Election Commission;
- (e) all charges relating to debts for which His Majesty's Government is liable;
- (f) any sum required to satisfy any judgment or decree of a court against His Majesty's Government; and
- (g) any sum declared by law to be chargeable on the Consolidated Fund.

#### **Article 77**

##### **Estimates of Revenues and Expenditures**

- (1) His Majesty shall, in respect of every financial year, cause to be laid before a joint sitting of Parliament an annual estimate including the following matters: -
  - (a) an-estimate of revenues;
  - (b) the moneys required to meet the charges on the Consolidated Fund; and
  - (c) the moneys required to meet the expenditure to be provided for by an Appropriation Act.
- (2) The annual estimate to be presented pursuant to clause (1) above should be accompanied by a statement of the expenses allocated to each Ministry in the previous financial year and particulars of whether the objectives of the expenses have been achieved.

#### **Article 78**

##### **Appropriation Act**

The moneys required to meet the expenditure-to be provided for by any Appropriation Act shall be specified under appropriate heads in an Appropriation Bill.

#### **Article 79**

##### **Supplementary Estimates**

- (1) His Majesty shall, in respect of any financial year, cause to be laid before the House of Representatives a supplementary estimate if it is found -
  - (a) that the sum authorised to be spent for a particular service by the Appropriation Act for the current financial year is insufficient, or that a need has arisen for expenditures upon new services not provided for by the Appropriation Act for that year; or
  - (b) that the expenditures made during that financial year are in excess of the amount authorised by the Appropriation Act.
- (2) The sums included in the supplementary estimates shall be specified under separate heads in a Supplementary Appropriations Bill.

#### **Article 80**

##### **Votes of Credit**

- (1) Notwithstanding anything contained in this Part, a portion of the expenditure estimated for the financial year may, when an Appropriation Bill is under consideration, be incurred in advance by an Act.
- (2) A Vote on Account Bill shall not be submitted until the estimates of revenues and expenditures have been presented in accordance with the provisions of Article 77 and the amounts involved in the Vote on Account shall not exceed one-third of the estimate of expenditures for the financial year.

- (3) The expenditures incurred in accordance with the Vote on Account Act shall be included in the Appropriation Bill.

**Article 81**  
**Votes of Credit**

Notwithstanding anything contained in this Part, if owing a local or national emergency due to either natural cause, a threat of external aggression or internal disturbances, or other reasons, His Majesty is of the opinion that it is impractical or inexpedient in view of the security or interest of the State to specify the details required under Article 77, He may cause to be laid before the House of Representatives a Vote of Credit Bill giving only a description of the proposed expenditures.

**Article 82**  
**Contingency Fund**

An Act may create a Contingency Fund into which shall be paid from time to time such moneys as may be determined by law. Such Fund shall be under the control of His Majesty's Government, and any unforeseen expenditures shall be met out of such Fund by His Majesty's Government. The amount of the expenditures so met shall be reimbursed as soon as possible by an Act.

**Article 83**  
**Act Relating to Financial Procedure**

Matters relating to the transfer of moneys appropriated from one head to another and other financial procedures shall be regulated by an Act.

**PART XI**  
**JUDICIARY**

**Article 84**  
**Courts to Exercise Powers Related to Justice**

Powers relating to Justice in the Kingdom of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice.

**Article 85**  
**Courts of Kingdom of Nepal**

- (1) Courts in the Kingdom of Nepal shall consist of the following three tiers:
- (a) Supreme Court,
  - (b) Appellate Court; and
  - (c) District Court.
- (2) In addition to the Courts referred to in clause (1) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases: Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case.

**Article 86**  
**Supreme Court**

- (1) The Supreme Court shall be the highest court in the judicial hierarchy. All other courts and judicial institutions of Nepal, other than the Military Court, shall be

under the Supreme Court. The Supreme Court may inspect, supervise and give directives to its subordinate courts and other judicial institutions.

- (2) The Supreme Court shall be a Court of Record. It may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial institutions.
- (3) The Supreme Court shall, in addition to the Chief Justice of Nepal, consist of up to a maximum of fourteen other Judges. If at any time, the number of existing Judges becomes insufficient due to an increase in the number of cases in the Supreme Court, ad hoc Judges may be appointed for a fixed term.

#### Article 87

##### Appointment, Qualifications and conditions of Service of Judges of the Supreme Court

- (I) His Majesty shall appoint the Chief Justice of Nepal on the recommendation of the Constitutional Council, and other Judges of the Supreme Court on the recommendation of the Judicial Council. The tenure of office of the Chief Justice shall be seven years from the date of appointment.
- (II) the Supreme Court for at least five years is eligible for appointment as Chief Justice.
- (III) Any person who has worked as a Judge of an Appellate Court or in any equivalent post of the Judicial Service for at least ten years, or has practised law for at least fifteen years as a law graduate advocate or senior advocate, or who is a distinguished jurist who has worked for at least fifteen years in the judicial or legal field is eligible for appointment as a Judge of the Supreme Court.

**Explanation:** For the purpose of this clause, services rendered prior to the commencement of this Constitution as a Judge of a Regional Court or Zonal Court shall be deemed as service rendered in an Appellate Court.

- (IV) If the office of the Chief Justice becomes vacant, or the Chief Justice is unable to carry out the duties of his office due to illness or any other reason, or he cannot be present in office due to a leave of absence or his being outside of Nepal, His Majesty may designate the seniormost Judge to act as the Acting-Chief Justice.
- (V) The Chief Justice or any other Judge of the Supreme Court shall hold office until he attains the age of sixty five years.
- (VI) The Chief Justice or any other Judge of the Supreme Court may, by submitting to His Majesty his resignation in writing, resign his office at any time.
- (VII) The Chief Justice or any other Judge of the Supreme Court shall be removed from his office if, for reasons of incompetence, misbehaviour or failure to discharge the duties of his office in good faith, the House of Representatives, by a two-thirds majority of the total number of its members, passes a resolution for his removal and the resolution is approved by His Majesty.
- (VIII) The Chief Justice or any other Judge of the Supreme Court charged pursuant to clause (7) shall be given a reasonable opportunity to defend himself, and for this purpose, the House of Representatives may constitute a Committee of Inquiry consisting of its members and legal experts for the purposes of recording the statement of the Judge, collecting evidence and submitting its findings. The working procedure of the Committee shall be determined by law.
- (IX) The Chief Justice or the Judge of the Supreme Court against whom impeachment proceedings are being initiated pursuant to clause (7) shall not perform his duties until the proceedings are final.

- (X) Except as otherwise provided for in this Constitution, the remuneration, allowances, leave, pension, gratuities and other conditions of service of the Chief Justice and other Judges of the Supreme Court shall be regulated by law.
- (XI) The remuneration, privileges and other conditions of service of Chief Justice and other Judges of the Supreme Court shall not be altered to their disadvantage.
- (XII) Any person once who has once held the office of Chief Justice or Judge of the Supreme Court shall not be eligible for appointment in any Government Service, nor shall he be entitled to practice law before any office or court.  
Provided that nothing in this clause shall be deemed to be a bar to his appointment to a political position, to a position concerning judiciary inquiry or to a position in which his responsibility extends to giving his advice, opinions and recommendations on the basis of study, research and investigation in the field of justice or law.
- (XIII) The Chief Justice may, on the recommendation of the Judicial Council, appoint a retired-Judge of the Supreme Court or any person who is qualified to be appointed Judge of the Supreme Court pursuant to this Article, as an ad hoc Judge for a fixed term. The ad hoc Judge thus appointed shall, in carrying out his duties in the capacity of Judge, be entitled to remuneration, allowances, leave and transportation facilities similar to that of a Judge of the Supreme Court. Provided that the Chief Justice shall obtain prior approval from His Majesty before making an appointment under this clause.

#### Article 88

##### Jurisdiction of the Supreme Court

- (1) Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground, and extraordinary power shall rest with the Supreme Court to declare that law as void either *ab initio* or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.
- (2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or to settle the dispute. For these purposes the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo warranto: - Provided that:
  - (a) the Supreme Court shall not be deemed to have power under this clause to interfere with the proceedings and decisions of the Military Court except on the ground of absence of jurisdiction or on the ground that a proceeding has been initiated against, or punishment given to, a non-military person for an act other than an offence relating to the Army.
  - (b) except on the ground of absence of jurisdiction, the Supreme Court shall not interfere under this clause with the proceedings and decisions of Parliament concerning penalties imposed by virtue of its Privileges.

- (3) The Supreme Court shall have original and appellate jurisdiction as defined by law.
- (4) The Supreme Court may review its own judgment or final orders subject to the conditions and in the circumstances prescribed by law.
- (5) If His Majesty wishes to have an opinion of the Supreme Court on any complicated legal question of interpretation of this Constitution or of any other law, the Court shall, upon consideration on the question, report to His Majesty its opinion thereon.
- (6) Other powers and procedures of the Supreme Court shall be as prescribed by law.

#### **Article 89**

##### **Establishment and Management of Appellate Courts and District Courts**

The establishment, management and jurisdiction of the Appellate Courts, District Courts and other courts subordinate to the Supreme Court shall be determined by law subject to this Constitution.

#### **Article 90**

##### **Qualifications for Judges of Appellate Courts and District Courts**

- (I) Any person who is a Nepali citizen shall be eligible for appointment as Chief Judge or other Judge of an Appellate Court if he, having a Bachelor's Degree in law, has worked as a District Judge or worked in any other equivalent post for a period of at least seven years; or has practised law for at least ten years as a law graduate advocate or senior advocate, or has taught law or done research thereon or has worked in any other field of law or justice for at least ten years.
- (II) A person who is a Nepali citizen, who has a Bachelor's Degree in law, and has worked for at least four years as a second class gazetted officer in the Judicial Service is eligible for appointment as a District Judge:  
Provided that nothing herein shall prevent the continuance or the reappointment of the Judges who at the commencement of this Constitution are working as Judges.
- (III) Unless the subject or context otherwise requires, the word "Judge" as mentioned in this Article and ensuing Articles, shall mean and include an Additional Judge.

#### **Article 91**

##### **Appointment and Conditions of Service of the Judges of Appellate Courts and District Courts**

- (1) His Majesty shall, on the recommendation of the Judicial Council, appoint any Chief Judge and Judges of the Appellate Courts and any Judges of the District Courts: Provided that His Majesty may delegate His authority to the Chief Justice for the appointment of the District Judges to be made on the recommendation of the Judicial Council.
- (2) The Chief Justice may transfer a Judge of an Appellate or District Court from one court to another on the recommendation of the Judicial Council.
- (3) If the Judicial Council recommends that a Chief Judge or any other Judge of an Appellate Court or any Judge of a District Courts be removed from his office for reasons of incompetence, misbehaviour or failure to carry out the duties of his office in good faith, or if it recommends that it is necessary and expedient to initiate proceedings against such Judge in accordance with law for reasons of misbehaviour, and if such recommendation is accepted by His Majesty, such

Chief Judge or Judge shall be so removed from his office or proceedings will be initiated against him in accordance with law: Provided that the Chief Judge or any other Judge who is facing such charge shall be given a reasonable opportunity to defend himself before the said recommendation is made and for this purpose, the Judicial Council shall cause an investigation to be made by a Committee of Inquiry under the Chairmanship of Judge of the Supreme Court for the purposes of recording the statement of the Judge, collecting evidence and submitting its findings.

- (4) A Chief Judge or a Judge of an Appellate Court, or a Judge of a District Court may, by submitting to His Majesty his resignation in writing, resign his office.
- (5) A Chief Judge and other Judges of an Appellate or District Court shall continue to hold office until the age of sixty-three.
- (6) The remuneration, allowances, leave, pension, gratuities or other privileges and other conditions of service of a Chief Judge and other Judges of an Appellate or District Court shall be as determined by law.
- (7) The remuneration, privileges and conditions of service of a Chief Judge and other Judges of an Appellate Court or District Court shall not be altered to their disadvantage.

#### **Article 92**

##### **Judges not to be Transferred to, or Engaged in, any other Assignment**

A Judge shall not be transferred to, or engaged in, or deputed to, any work except that of a Judge. Provided that His Majesty may, in consultation with the Judicial Council, depute for a specified period a Judge of the Supreme Court or a Chief Judge of any Appellate Court to work concerning judicial inquiry, to legal or judicial investigation or research, or to any other work of national concern. With regard to other Judges of the Appellate Courts and District Courts, the Chief Justice may, in consultation with the Judicial Council, depute them to the above works, including election works.

#### **Article 93**

##### **Judicial Council**

- (1) There shall be a Judicial Council to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of Judges, and other matters relating to judicial administration, which shall consist of the following as its Chairman and members: -
  - (a) the Chief Justice, ex-officio Chairman,
  - (b) the Minister of Justice, ex-officio member,
  - (c) the two seniormost Judges of the Supreme Court, ex-officio members; and
  - (d) one distinguished jurist to be nominated by His Majesty.
- (2) Notwithstanding anything contained in clause (1) above, if it becomes necessary for the Judicial Council to consider any matter relating to a Judge who is a member of the Council or to make a recommendation to His Majesty about such Judge, the Judge next in seniority shall take part as a member.
- (3) The term of office and privileges of the member referred to in sub-clause (d) of clause (1) shall be as prescribed by His Majesty.
- (4) The powers and duties of the Judicial Council other than those referred to in clause (1) shall be as prescribed by law.

- (5) The Judicial Council may frame rules to regulate its business. Such rules shall become effective upon approval by His Majesty.

#### **Article 94**

##### **Judicial Service Commission**

- (1) In appointing, transferring or promoting Gazetted Officers of the Judicial Service or taking departmental action concerning such officer in accordance with law, His Majesty's Government shall act on the recommendation of the Judicial Service Commission.

Provided that His Majesty's Government shall consult the Public Service Commission for the purpose of permanent recruitment to gazetted posts of the Judicial Service from persons who are not already in the Government Service or from persons being promoted from non-gazetted to gazetted posts within the Judicial Service.

- (2) The Judicial Service Commission shall consist of the following as its Chairman and members: -
- (a) the Chief Justice, ex-officio Chairman;
  - (b) the Minister of Justice, ex-officio member;
  - (c) the Senior-most Judge of the Supreme Court, ex-officio member;
  - (d) the Chairman of the Public Service Commission, ex-officio member; and
  - (e) the Attorney-General, ex-officio member.
- (3) Other powers, duties and procedures of the Judicial Service Commission shall be as determined by law.

#### **Article 95**

##### **Duty to Extend Cooperation**

It shall be the duty of His Majesty's Government and the offices and officials subordinate to His Majesty's Government to act in aid of the Supreme Court and other courts in carrying out the functions of dispensing justice.

#### **Article 96**

##### **Orders and Decisions of the Courts to be Binding**

- (1) All shall abide by the orders and decisions made in the course of hearing of a suit by courts.
- (2) Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing of a suit shall be binding on His Majesty's Government and all offices and courts.

### **PART XII**

## **COMMISSION FOR THE INVESTIGATION OF ABUSE OF AUTHORITY**

#### **Article 97**

##### **Commission for the Investigation of Abuse of Authority**

- (1) There shall be a commission to be called the Commission for the Investigation of Abuse of Authority of the Kingdom of Nepal consisting of a Chief Commissioner and such other Commissioners as may be required. If apart from the Chief Commissioner other Commissioners are appointed, the Chief Commissioner shall act as Chairman of the Commission for the Investigation of Abuse of Authority.



- (2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.
- (3) The term of office of the Chief Commissioner and other Commissioners shall be six years from the date of appointment. They shall be eligible for reappointment: Provided that: -
  - (a) if before the expiry of his term, the Chief Commissioner or a Commissioner attains the age of sixty five, he shall retire.
  - (b) The Chief Commissioner or a Commissioner may be removed from his office on the same grounds and in the same manner as has been set forth for the removal of a Judge of the Supreme Court.
- (4) The office of the Chief Commissioner or a Commissioner shall be deemed vacant under the following circumstances:
  - (a) if he dies; or
  - (b) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (c) if pursuant to clause (3) his term expires or he is removed Article from his office
- (5) No person shall be eligible to be appointed as the Chief Commissioner or a Commissioner unless he
  - (a) holds a Bachelor's Degree from a university recognised by His Majesty's Government;
  - (b) is not a member of any political party immediately before appointment;
  - (c) has at least ten years experience in the field of either law, accounting, revenue, construction, development or research, and is a distinguished person; and
  - (d) has attained the age of forty five.
- (6) The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall not, so long as they hold office, be altered to their disadvantage.
- (7) A person once appointed as the Chief Commissioner or Commissioner shall not be eligible for appointment in other Government Service: Provided that: -
  - (a) nothing in this clause shall be deemed to be a bar to appointment of a Commissioner of the Commission for the Investigation of Abuse of Authority as its Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his term of office shall be computed as to include his term as Commissioner.
  - (b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject.

**Article 98**  
**Functions, Duties and Powers of the Commission**  
**for the Investigation of Abuse of Authority**

- (1) the Commission for the Investigation of Abuse of Authority may, in accordance with law, conduct or cause to be conducted inquiries into, and investigations of, improper conduct or corruption by a person holding any public office:  
Provided that the Commission for the Investigation of Abuse of Authority shall not have jurisdiction over the following officials: -

- (a) any official in relation to whom this Constitution itself separately provides for such action; and
  - (b) any official to be prosecuted under the Army Act.
- (2) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried-out pursuant to clause (1), that any person holding any public office has misused his authority by improper conduct, it may admonish such person, or forward a recommendation to the concerned authority in writing for taking departmental or any other necessary action.
  - (3) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried-out pursuant to clause (1), that a person holding any public office has committed an act which is defined by law as corrupt, it may bring or cause to be brought an action against such person or any other person involved therein in a court with jurisdiction in accordance with law.
  - (4) Subject to this Constitution, other functions, duties, powers and procedures of the Commission for the Investigation of Abuse of Authority shall be as determined by law.
  - (5) The Commission for the Investigation of Abuse of Authority may delegate any of its powers, functions and duties relating to the inquiry, investigation or bringing actions, to the Chief Commissioner, a Commissioner or any employee of His Majesty's Government to be exercised and complied with subject to the specified conditions.
  - (6) The Commission for the Investigation of Abuse of Authority shall submit an annual report to His Majesty on the works it has performed in accordance with this Constitution. His Majesty shall cause such report to be laid before Parliament.

## **PART XIII**

### **AUDITOR-GENERAL**

#### **Article 99**

##### **Auditor-General**

- (1) There shall be an Auditor-General of the Kingdom of Nepal who shall be appointed by His Majesty on the recommendation of the Constitutional Council.
- (2) The term of office of the Auditor-General shall be six years from the date of appointment. He shall be eligible for reappointment: Provided that: -
  - (a) if before the expiry of his term, the Auditor-General attains the age of sixty five, he shall retire.
  - (b) he may be removed from his office on the same grounds and in the same manner as has been set forth for the removal of a Judge of the Supreme Court.
- (3) The office of the Auditor-General shall be deemed vacant in the following circumstances:
  - (a) if he dies; or
  - (b) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (c) if pursuant to clause (2) his term expires or he is removed from his office.
- (4) No person shall be eligible to be appointed as the Auditor-General unless he: -
  - (a) holds a Bachelor's Degree from a university recognized by His Majesty's Government;
  - (b) has worked for at least five years as a special class officer of His Majesty's government or has-experience in the field of accounting of not less than fifteen years;
  - (c) is not a member of any political party immediately before appointment; and
  - (d) has attained the age of forty five.
- (5) The remuneration and other conditions of service of the Auditor-General shall be as determined by law. The remuneration and other conditions of service of the Auditor-General shall not, so long as he holds office, be altered to his disadvantage.
- (6) A person once appointed to the office of the Auditor-General shall not be eligible for appointment in other Government Service:  
Provided that nothing in this Clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject.

#### **Article 100**

##### **Functions, Duties and Powers of the Auditor-General**

- (1) The accounts of the Supreme Court, the Parliament, the Raj Parishad, the Commission for the Investigation of Abuse of Authority, the Office of the Auditor-General, the Public Service Commission, the Election Commission, other offices of the Constitutional Bodies, the Royal Nepal Army and the Nepal Police, and all other government offices and courts shall be audited by the Auditor-General in the manner as determined by law, with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof.

- (2) The Auditor-General shall be consulted in the matter of appointment of auditors for carrying out the audit of any corporate body of which His Majesty's Government owns more than fifty percent of the shares or the assets. The Auditor-General may also issue necessary directives setting forth the principles for carrying out the audit of such corporate bodies.
- (3) The Auditor-General and his assistants shall, at all times, have access to documents concerning the accounts for the purpose of carrying out the functions stipulated in clause (1) above. It shall be the duty of the concerned office to provide all such documents or information which may be demanded by the Auditor-General or his assistants.
- (4) The accounts to be audited pursuant to clause (1) above shall, subject to the relevant law, be maintained in such form as prescribed by the Auditor-General.
- (5) In addition to the accounts of the offices referred to in clause (1) above, the law may also require that the accounts of any other office or institution be audited by the Auditor-General.
- (6) The Auditor-General shall submit an annual report to His Majesty on the works he has performed. His Majesty shall cause such report to be laid before Parliament.

## PART XVI PUBLIC SERVICE COMMISSION

### Article 101

#### Public Service Commission

- (1) There shall be a Public Service Commission of the Kingdom of Nepal consisting of a Chairman and such number of other members as may be required.
- (2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chairman and other members of the Public Service Commission.
- (3) At least fifty percent of the total number of the members of the Public Service Commission shall be appointed from persons who have worked for ten or more than ten years in any government office, and the rest of the members shall be appointed from persons, who have done research, investigation, teaching or any other significant work in such as like science, art, literature, law or any other sphere of national life and who hold a high reputation.
- (4) The term of office of the Chairman and the members of the Public Service Commission shall be six years from the date of appointment. They shall be eligible for reappointment: Provided that: -
  - (a) if before the expiry of his term, the Chairman or a member of the Public Service Commission attains the age of sixty five, he shall retire.
  - (b) the Chairman and the members of the Public Service Commission may be removed from their offices on the same grounds and in the same manner as has been set forth for removal of a Judge of the Supreme Court.
- (5) The office of the Chairman or a member of the Public Service Commission shall be deemed vacant in the following circumstances: -
  - (a) if he dies; or
  - (b) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (c) if pursuant to clause (4) his term expires or he is removed from his office.
- (6) No person shall be eligible to be appointed as the Chairman or a member of the Public Service Commission unless he:
  - (a) holds a Post Graduate Degree from a university recognised by His Majesty's Government;

- (b) is not a member of any political party immediately before appointment; and
  - (c) has attained the age of forty five.
- (7) The remuneration and other conditions of service of the Chairman and the members of the Public Service Commission shall be as determined by law. The remuneration and other conditions of service of the Chairman and the members of the Public Service Commission shall not, so long as they hold office, be altered to their disadvantage.
- (8) Any person once appointed to the office of the Chairman or a member of the Public Service Commission shall not be eligible for appointment in other Government Service: Provided that: -
- (a) nothing in this clause shall be a bar to appointment of a member of the Public Service Commission as Chairman thereof, and when a member is so appointed as the Chairman, his term of office shall be computed as to include his term as member; and
  - (b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of submitting advice, *opinions or recommendations after carrying out studies or research* on any subject.

#### Article 102

##### Functions, Duties and Powers of the Public Service Commission

- (1) It shall be the duty of the Public Service Commission to conduct examinations for the selection of suitable candidates to be appointed to Civil Service posts.
- Explanation: For the purposes of this Article, all services and positions in His Majesty's Government shall be deemed included within the Civil Service, except Army Officers and Soldiers, the service and positions of Police Personnel, and such other services and positions as are excluded from the Civil Service or positions by any law.
- (2) Permanent appointment to any position in the Civil Service which carries the benefit of pension shall not be made except in consultation with the Public Service Commission.
- (3) The Public Service Commission shall be consulted on the following subjects: -
- (a) matters concerning the law relating to the conditions of service of the Civil Service;
  - (b) the general principles to be followed in the course of appointment to, promotion to, and departmental action concerning the Civil Service or positions;
  - (c) matters concerning the suitability of any candidate for appointment to a Civil Service position for a period of more than six months;
  - (d) matters concerning the suitability of any candidate for transfer or promotion from one service to another within the Civil Service or from any other Government Service to the Civil Service;
  - (e) matters concerning the permanent transfer or promotion of any employee, working in any position of an organisation which is not required to consult with the Public Service Commission on matters of appointment, to any position for which consultation with the Public Service Commission is required; and
  - (f) matters relating to departmental actions proposed against any Civil Servant.

- (4) Notwithstanding anything contained in clause (3), matters falling within the purview of the Judicial Service Commission pursuant to Article 94 of this Constitution shall be governed by that Article.
- (5) The Public Service Commission may delegate any of its functions, duties and powers to any of its members, a committee of such members or any employee of His Majesty's Government, to be exercised and complied with subject to the specified conditions.
- (6) Subject to this Constitution, other functions, duties and working procedures of the Public Service Commission shall be as regulated by law.
- (7) Each year, the Public Service Commission shall submit to His Majesty an annual report on the works it has performed. His Majesty shall cause such report to be laid before Parliament.

## **PART XV**

### **ELECTION COMMISSION**

#### **Article 103**

##### **Election Commission**

- (1) There shall be an Election Commission of the Kingdom of Nepal consisting of a Chief Election Commissioner and such number of other Commissioners as may be required. If apart from the Chief Election Commissioner other Election Commissioners are appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission.
- (2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chief Election Commissioner and other Election Commissioners.
- (3) The term of office of the Chief Election Commissioner and other Election commissioners shall be six years from the date of appointment. They shall be eligible for reappointment: Provided that: -
  - (a) if before the expiry of his term, the Chief Election Commissioner or an Election Commissioner attains the age of sixty five, he shall retire.
  - (b) The Chief Election Commissioner and other Election Commissioners may be removed from their offices on the same grounds and in the same manner as has been set forth for removal of a Judge of the Supreme Court.
- (4) The office of the Chief Election Commissioner or an Election Commissioner shall be deemed vacant in the following circumstances: -
  - (a) if he dies; or
  - (b) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (c) if pursuant to clause (3) his term expires or he is removed from his office.
- (5) No person shall be eligible to be appointed as the Chief Election Commissioner or an Election Commissioner unless he:
  - (a) holds a Bachelor's Degree from a university recognised by His Majesty's Government;
  - (b) is not a member of any political party immediately before appointment; and
  - (c) has attained the age of forty five.
- (6) The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall not, so long as they hold office, be altered to their disadvantage.

- (7) A person once appointed to the office of the Chief Election Commissioner or an Election Commissioner shall not be eligible for appointment in other Government Service: Provided that: -
- (a) nothing in this clause shall be a bar to appointment of an Election Commissioner as Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his term of office shall be computed as to include his term as Commissioner.
  - (b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject.

#### **Article 104**

##### **Functions, Duties and Powers of the Election Commission**

- (1) The Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the elections to Parliament and Local Authorities at the village, town and district levels. For these purposes, the Election Commission shall prepare the electoral rolls of voters.
- (2) If, after nominations for election to Parliament have been filed but before the election is completed, a question arises whether a candidate is disqualified or has ceased to possess the qualifications set forth in Article 47, final decision thereon shall be made by the Election Commission.
- (3) The Election Commission may delegate any of its functions, duties and powers to the Chief Election Commissioner, a Commissioner or any employee of His Majesty's Government to be exercised and complied with subject to the specified conditions.
- (4) Subject to this Constitution, other functions, duties and working procedures of the Election Commission shall be as regulated by law.

#### **Article 105**

##### **Election Constituency Delimitation Commission**

- (1) His Majesty shall, on the recommendation of the Constitutional Council, constitute an Election Constituency Delimitation Commission. The tenure of the Commission shall be as specified by His Majesty.
- (2) After determining the number of seats in the House of Representatives for each district pursuant to Article 45, The Election Constituency Delimitation Commission shall delimitate the constituencies in districts having more than one seat; and in so delimitating the constituencies, the Commission shall give due consideration to the boundaries, the geographical conditions, the density of population, the transportation facilities, and the communal homogeneity or heterogeneity of the local residents in the administrative districts.
- (3) No question shall be raised in any court on matters of allocation of seats to a district and the delimitation of constituencies made by the Election Constituency Delimitation Commission pursuant to clause (2).
- (4) The remuneration and privileges of the Chairman and the members of the Election Constituency Delimitation Commission shall be similar to those of the Chief Election Commissioner and the Election Commissioners respectively.
- (5) Subject to this Constitution, other functions, duties and working procedures of the Election Constituency Delimitation Commission shall be as regulated by law.

**Article 106**  
**Election Court**

Petitions concerning elections shall be entertained by a court prescribed by law.

**Article 107**

**Restriction on Court Interference in Matters Relating to Elections**

Notwithstanding anything contained in other Articles of this Constitution, unless a petition is filed in the manner prescribed by law in the court prescribed under Article 106, no question shall be raised in any court regarding any election to the membership of Parliament.

**Article 108**

**His Majesty's Government to Provide  
Necessary Employees to the Election Commission**

His Majesty's Government shall provide such necessary employees and other things as may be required to carry out the functions of the Election Commission in accordance with this Constitution.

**PART XVI**  
**ATTORNEY-GENERAL**

**Article 109**

**Appointment of Attorney-General**

- (1) There shall be an Attorney-General of the Kingdom of Nepal to be appointed by His Majesty on the recommendation of the Prime Minister. The Attorney-General shall hold office during the pleasure of His Majesty.
- (2) No person shall be eligible to being appointed as Attorney-General unless he is qualified to be appointed as a Judge of the Supreme Court.
- (3) The office of the Attorney-General shall be deemed vacant under the following circumstances:
  - (a) if he dies; or
  - (b) if his resignation submitted to His Majesty in writing is accepted by Him; or
  - (c) if he is relieved of his office by His Majesty on the recommendation of the Prime Minister.
- (4) The remuneration and other conditions of service of the Attorney-General shall be as determined by law.

**Article 110**

**Functions, Duties and Powers of the Attorney-General**

- (1) The Attorney-General shall be the Chief Legal Advisor to His Majesty's Government. It shall be the duty of the Attorney-General to give opinions and advice on constitutional and legal matters to His Majesty's Government and such other authorities as His Majesty's Government may specify.
- (2) The Attorney-General or officers subordinate to him shall represent His Majesty's Government in suits wherein the rights, interests or concerns of His Majesty's Government are involved. The Attorney-General shall have the right to make the final decision as to whether or not to initiate proceedings in any case on behalf of His Majesty's Government in any court or judicial authority.



- (3) In addition to the functions, duties and powers referred to in clauses (1) and (2), other functions, duties and powers of the Attorney-General shall be as specified in this Constitution or other laws.
- (4) In the course of discharging his official duties, the Attorney-General shall have the right to appear in any court, office or authority of the Kingdom of Nepal.
- (5) The Attorney-General may delegate his functions, duties and powers under this Article to his subordinates, to be exercised and complied with subject to the specified conditions.
- (6) Each year, the Attorney-General shall submit an annual report to His Majesty's Government on the works performed by him in accordance with this Constitution and other laws, including a statement about crimes committed in the Kingdom of Nepal and His Majesty's Government shall cause the report to be laid before Parliament.

#### **Article 111**

##### **Right to Appear in Parliament**

The Attorney-General shall have the right to appear and express his opinion on any legal question in either House, any of their committees or the Joint Session of Parliament: Provided that he shall not have the right to vote.

### **PART XVII**

#### **POLITICAL ORGANISATIONS**

#### **Article 112**

##### **Prohibition on the Imposition of Restrictions on Political Organisations or Parties**

- (1) Persons who are committed to common political objectives and programmes shall, subject to laws made under proviso (3) of clause (2) of Article 12 of this Constitution, be entitled to form and operate political organisations or parties of their choice and to generate or cause to be generated publicity in order to secure support and cooperation from the general public for their objectives and programmes, and to carry out any other activity for this purpose. Any law, arrangement or decision which restricts any of such activities shall be inconsistent with this Constitution and shall be void.
- (2) Any law, arrangement or decision which allows for participation or involvement of only a single political organisation or party or persons having a single political ideology in the elections or in the political system of the country shall be inconsistent with this Constitution and shall be void.
- (3) The Election Commission shall withhold recognition from any political organisation or any party formed either with the objectives mentioned in clause (2) above or on the basis of religion, community, caste, tribe or region.

#### **Article 113**

##### **Registration Required for Securing Recognition for the purpose of Contesting Elections as a Political Organisation or Party**

- (1) Any political organisation or party wishing to secure recognition from the Election Commission for the purposes of elections, shall be required to register its name with the office of the Election Commission in accordance with the procedure as determined by the Commission. A petition so submitted for registration shall contain clear information about the name of the concerned

- political organisation or party, the names and addresses of the members of its executive committee or any such other committee and such petition shall be accompanied by the rules and manifesto of the organisation or the party.
- (2) Political organisations and parties shall be required to fulfil, in addition to the matters contained in this Part, the following conditions in order to qualify for registration pursuant to clause (1) above:
- (a) the constitution and rules of the political organisation or party must be democratic;
  - (b) the constitution or the rules of the organisation or party must provide for election of office bearers of the organisation or party at least once every five years;
  - (c) must have complied with the provisions of Article 114; and
  - (d) must have secured a minimum of three percent of the total votes cast in the election to the House of Representatives:

Provided that the terms and conditions mentioned in this sub-clause shall not apply to the contesting of the first election to the House of Representatives held pursuant to this Constitution.

**Explanation:** If any candidate belonging to a party which has secured less than three percent of the total votes cast is elected to the House of Representatives, such person shall be deemed to be an independent not belonging to an organisation or party.

- (3) The Election Commission shall not register any political organisation or party if any Nepali citizen of is discriminated against in becoming a member on the basis of religion, caste, tribe, language or sex or if the name, objectives, insignia or flag is of such a nature that it is religious or communal or tends to fragment the country.

#### **Article 114**

##### **Woman Candidates**

For the purposes of elections to the House of Representatives, at least five percent of the total number of candidates contesting an election from any organization or party must be women candidates.

### **PART XVIII EMERGENCY POWER**

#### **Article 115**

##### **Emergency Power**

- (1) If a grave crisis arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, His Majesty may, by Proclamation, declare or order a State of Emergency in respect of the whole of the Kingdom of Nepal or of any specified part thereof.
- (2) Every Proclamation or Order issued under clause (1) above shall be laid before a meeting of the House of Representatives for approval within three months from the date of issuance.
- (3) If a Proclamation or Order laid for approval pursuant to clause (2) is approved by a two-thirds majority of the House of Representatives present at that meeting, such Proclamation or Order shall continue in force for a period of six months from the date of issuance.

- (4) If a Proclamation or Order laid for approval pursuant to clause (2) is not approved pursuant to clause (3), such Proclamation or Order shall be deemed ipso facto to cease to operate.
- (5) Before the expiration of the period referred to in clause (3), if a meeting of the House of Representatives, by a majority of two-thirds of the members present, passes a resolution to the effect that circumstances referred to in clause (1) above continue to exist, it may extend the period of the Proclamation or Order of the State of Emergency for one other period, not exceeding six months as specified in such resolution, and the Speaker shall inform His Majesty of such extension.
- (6) During a dissolution of the House of Representatives, the National Assembly shall exercise the powers of the House of Representatives for the purposes of clauses (2), (3), (4) and (5) above.
- (7) After the State of Emergency has been declared pursuant to clause (1), His Majesty may issue such Orders as are necessary to meet the exigencies. Orders so issued shall be operative with the same force and effect as law so long as the State of Emergency is in operation.
- (8) His Majesty may, at the time of making a Proclamation or Order of a State of Emergency pursuant to clause (1), suspend sub-clauses (a), (b), (d) and (e) of clause (2) of Article 12, clause (1) of Article 13 and Articles 15, 16, 17, 22 and 23 of this Constitution for as long as the Proclamation is in operation: Provided that the right to the remedy of habeas corpus under Article 23 shall not be suspended.
- (9) In circumstances where His Majesty has suspended any Article of this Constitution pursuant to clause (8), no petition may lie, nor question be raised in any court for the enforcement of the fundamental right conferred by such Article.
- (10) If, during the continuance of a Proclamation or Order under clause (1), any damage is inflicted upon any person by an act of any official which was done in contravention of law or in bad faith, the affected person may, within three months from the date of termination of the Proclamation or Order, file a petition for compensation for the said damage and if the court finds the claim valid, it shall cause compensation to be delivered.
- (11) A Proclamation or Order of a State of Emergency issued pursuant to clause (1) may be revoked by His Majesty at any time during its continuance.

## PART XIX AMENDMENT OF THE CONSTITUTION

### Article 116

#### Amendment of the Constitution

- (1) A bill to amend or repeal any Article of this Constitution, without prejudicing the spirit of the Preamble of this Constitution, may be introduced in either House of Parliament: Provided that this Article shall not be subject to amendment.
- (2) If each House, with a two-thirds majority of its total membership attending, passes a Bill introduced pursuant to clause (1) by a majority of at least two-thirds of the members present, the Bill shall be submitted to His Majesty for assent; and His Majesty may, within thirty days from the date of submission, either grant assent to such Bill or send the Bill back for reconsideration with His message to the House where the Bill originated.

- (3) A Bill sent back by His Majesty pursuant to clause (2) above shall be reconsidered by both Houses of Parliament; and if both the Houses, upon following the procedures referred to in clause (2), resubmit the Bill in its original or an amended form to His Majesty for assent, His Majesty shall grant assent to such Bill within thirty days of such submission.

## **PART XX MISCELLANEOUS**

### **Article 117**

#### **Constitutional Council**

- (1) There shall be a Constitutional Council, for making recommendations in accordance with this Constitution for appointment of officials to Constitutional Bodies, which shall consist of the following as Chairman and members:
  - (a) the Prime Minister Chairman;
  - (b) the Chief Justice Member;
  - (c) the Speaker of the House of Representatives Member;
  - (d) the Chairman of the National Assembly Member; and
  - (e) the Leader of the Opposition in the House of Representatives Member.
- (2) For the purpose of recommendation of an appointment of the Chief Justice, the Constitutional Council shall include among its members the Minister of Justice and a Judge of the Supreme Court.
- (3) The functions, duties and powers of the Constitutional Council shall be as determined by this Constitution and other laws.
- (4) The Constitutional Council constituted pursuant to clause (1) shall have the power to regulate its working procedures on its own.

### **Article 118**

#### **Provisions Regarding the Royal Nepal Army**

- (1) There shall be a National Defence Council of Nepal consisting of the following as Chairman and members: -
  - (a) the Prime Minister Chairman;
  - (b) the Defence Minister Member, and
  - (c) the Commander-in-Chief Member.
- (2) His Majesty shall operate and use the Royal Nepal Army on the recommendation of the National Defence Council.
- (3) The establishment and management of the Royal Nepal Army, and other matters relating thereto, shall be as determined by law.
- (4) The National Defence Council shall have the power to regulate its working procedures on its own.

### **Article 119**

#### **Supreme Command of the Royal Nepal Army and Appointment of the Commander-in-Chief**

- (1) His Majesty is the Supreme Commander of the Royal Nepal Army.
- (2) His Majesty shall appoint the Commander-in-Chief of the Royal Nepal Army on the recommendation of the Prime Minister.

### **Article 120**

#### **Royal Nepalese Ambassadors and Emissaries**

- (1) His Majesty shall appoint the Royal Nepalese Ambassadors.
- (2) His Majesty may designate a Royal Representative for representing Him on special occasion, and may appoint a Special Emissary for a specified purpose.

### **Article 121**

#### **Provisions Regarding Employees of the Royal Palace**

Matters relating to the conditions of service of the employees of the Royal Palace including those of appointment, dismissal, salary, allowances, leave and pension shall be as determined by rules made by His Majesty at his discretion.

### **Article 122**

#### **Pardons**

His Majesty shall have the power to grant pardons and to suspend, commute or remit any sentence passed by any court, special court, military court or by any other judicial, quasi-judicial or administrative authority or institution.

### **Article 123**

#### **Titles, Honours and Decorations**

- (1) The titles, honours or decorations to be conferred on behalf of the state shall be conferred by His Majesty.
- (2) No citizen of Nepal shall, without the approval of His Majesty, accept any title, honour or decoration from the government of any country.

### **Article 124**

#### **Constitution of the Civil Service**

His Majesty's Government may, in order to run the administration of the country, constitute services as may be required. The constitution, operation and conditions of service thereof shall be as determined by an Act.

### **Article 125**

#### **Provisions Regarding Citizenship of Officials of the Constitutional Bodies**

In order to be eligible for appointment to constitutional positions under this Constitution, a person must either be a citizen of Nepal by birth or descent, or be a person who, as a naturalised citizen, has resided in Nepal for at least ten years.

### **Article 126**

#### **Ratification of, Accession to, Acceptance of or Approval of Treaty or Agreements**

- (1) The ratification of, accession to, acceptance of or approval of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is to become a party shall be as determined by law.
- (2) The laws to be made pursuant to clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of or approval of treaties or agreements on the following subjects be done by a majority of two-thirds of the members present at a joint sitting of both Houses of Parliament: -
  - (a) peace and friendship;
  - (b) defence and strategic alliance;

- (c) boundaries of the Kingdom of Nepal; and
- (d) natural resources, and the distribution of their uses.

Provided that out of the treaties and agreements referred to in sub-clauses (a) and (d), if any treaty or agreement is of an ordinary nature, which does not affect the nation extensively, seriously, or in the long term, the ratification of, accession to, acceptance of or approval of such treaty or agreement may be done at a meeting of the House of Representatives by a simple majority of the members present.

- (3) After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with this Article, it shall not be binding on His Majesty's Government or the Kingdom of Nepal.
- (4) Notwithstanding anything contained in clauses (1) and (2), no treaty or agreement shall be concluded that is detrimental to the territorial integrity of the Kingdom of Nepal.

#### **Article 127**

##### **Power to Remove Difficulties**

If any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary Orders to remove such difficulty and such Orders shall be laid before Parliament.

### **PART XXI**

#### **TRANSITIONAL PROVISIONS**

#### **Article 128**

##### **Provisions Regarding The Council of Ministers**

- (1) The Council of Ministers existing at the commencement of this Constitution shall be deemed to have been constituted under this Constitution.
- (2) If, for any reason the Council of Ministers referred to in clause (1) is dissolved, His Majesty shall constitute a new Council of Ministers consisting of representatives from the main political parties.
- (3) A Council of Ministers constituted under clause (2) above shall consist of a Prime Minister and, on his recommendation, other Ministers, State Ministers and Assistant Ministers as may be required.

#### **Article 129**

##### **Making of Laws until the First Session of Parliament**

After the commencement of this Constitution, His Majesty shall have the power to enact laws as required on the recommendation and advice, and with the consent of the Council of Ministers until the commencement of the first session of Parliament.

#### **Article 130**

##### **Provisions Regarding Constitutional Bodies and Officials thereof Appointed Pursuant to the Constitution of Nepal (1962)**

- (1) The Constitutional Bodies and officials thereof subsisting at the commencement of this Constitution, but which are not re-established under this Constitution, shall cease to subsist after the commencement of this Constitution; and the officials working in the Constitutional Bodies which continue to subsist in accordance with

this Constitution shall stand relieved of their offices if not reappointed within nine months of the commencement of this Constitution:

Provided that His Majesty may, if necessary, relieve any constitutional official before the expiry of the said period.

- (2) The Council of Ministers shall exercise the functions, duties and powers of the Constitutional Council until the commencement of the first session of Parliament after the elections held in accordance with this Constitution.
- (3) Pending the making of arrangements as to the Appellate Courts pursuant to Article 89, the Zonal Courts and Regional Courts constituted under the Judicial Administration Reforms Act, 1975 shall remain in operation as they were, and the Judges working in those courts shall continue to hold their positions.
- (4) The District Courts existing at the commencement of this Constitution shall, until otherwise provided by law, continue to subsist, and the Judges working in those Courts shall continue to hold their positions until a different arrangement is made.
- (5) Petitions and complaints pending in the Prevention of Abuse of Authority Commission shall be transferred to the Commission for the Investigation of Abuse of Authority.
- (6) Cases which are pending in the Prevention of Abuse of Authority Commission shall be transferred to the Central Regional Court existing under clause (3), and the Regional Court shall decide those cases in accordance with the existing law.
- (7) Appeals, and petitions relating thereto pending in the Prevention of Abuse of Authority Appellate Court shall be transferred to the Supreme Court and the Supreme Court shall decide those appeals and petitions in accordance with the existing law.
- (8) Petitions registered with the Judicial Committee in accordance with law and pending therein shall be transferred to the Supreme Court after the commencement of the Constitution, and if the Supreme Court deem appropriate, it shall, in exercising its power of review, decide those petitions.

#### **Article 131**

##### **Existing Laws to Remain in Operation**

All laws in force at the commencement of this Constitution shall remain in operation until repealed or amended:

Provided that laws inconsistent with this Constitution shall, to the extent of inconsistency, ipso-facto cease to operate one year after the commencement of this Constitution.

## **PART XXII**

### **DEFINITIONS AND INTERPRETATION**

#### **Article 132**

##### **Definitions and Interpretation**

- (1) Unless the subject or context otherwise requires, in this Constitution: -
  - (a) "Article" means an Article of this Constitution;
  - (b) "Nepal" means the Kingdom of Nepal;
  - (c) "Citizen" means a citizen of Nepal;
  - (d) "Bill" means a draft of an Act which has been introduced in Parliament;
  - (e) "Petition" means a document bearing the signature of the petitioner;
  - (f) "Remuneration" means and includes salary, allowances, pension and any other forms of emoluments.

- (2) Unless the subject or context otherwise requires, the Nepal Law Interpretation Act, 1953 shall, subject to the provisions of this Constitution, apply to the interpretation of this Constitution in the same manner as that law applies to the interpretation of the laws of Nepal.



**PART XXIII**  
**SHORT TITLE AND COMMENCEMENT**

**Article 133**

**Short Title and Commencement**

- (1) This Constitution may be called "The Constitution of The Kingdom of Nepal, 2047 (1990)."
- (2) This Constitution shall come into force on Friday the twenty-third day of the month of Kartik of the year 2047 Bikram Sambat (November 9, 1990).

**ANNEX II: PUBLIC SECURITY ACT, 1989**

Regni Research (Pvt) Ltd.  
Nepal Miscellaneous Series  
No. 6/2000  
Kathmandu: May 10, 2000

Regni Ville  
Lazimpat, Kathmandu  
Telephone: 4-11927

(For private study and research only)

**Public Security Act, 1989**

History	
September 27, 1989	New Public Security Act. Nepal Rajaptra, Vol. 39, No. 33 (E), Aswin 11, 2046.
April 12, 1991	First Amendment. Nepal Rajaptra, Vol. 40, No. 87 (E), Chaitra 29, 2047.
May 30, 1991	Amended by Judicial Administration Act. Nepal Rajaptra, Vol. 41, No. 11 (E), Jestha 16, 2048
November 4, 1991	Second Amendment. Nepal Rajaptra, Vol. 41, No. 50 (E), Kartik 28, 2048.
April 20, 1992	Amended by Some Nepal Laws (Amendment) Act. Nepal Rajaptra, Vol. 42, No. 2 (E), Baisakh 8, 2049.

**Consolidated Text**

**PREAMBLE**

Whereas it is expedient to take timely arrangements for keeping any person in preventive detention, or interning or externing him, in order to maintain the sovereignty, integrity or public tranquillity and order of the Kingdom of Nepal, as well as the interests of the common people, or amicable relations among people of different castes, communities or religions, now therefore, His Majesty King Birendra Bir Bikarm Shah Dev has enacted this law on the advice and with the approval of the National Panchayat.

**1. Short title and Commencement**

- 1.1. This law may be called the Public Security Act, 1988.
- 1.2. It shall come into force at once.

## 2. Definitions

- 2.1. Unless otherwise meant with reference to the subject or the context, in this act,
  - 2.1.1. Detention Order means an order issued under Sub-Section 3.1.
  - 2.1.2. Internment Order means an order issued under Sub-Section 3.2.
  - 2.1.3. Local Authority means the Chief District Officer; the term shall also denote the authority acting on behalf of the Chief District Officer in his absence.

## 3. Power to Issue Orders

- 3.1. In case there exist adequate and appropriate grounds to prevent any person from doing anything that may immediately undermine the sovereignty, integrity or public tranquillity and order of the Kingdom of Nepal, the local authority may issue an order to detain such person in any specified place for a specified period.
- 3.2. In case there exist adequate and appropriate grounds to prevent any person from doing anything that may undermine the interests of the common people or amicable relations among different castes, communities, or religions, the local authority may issue any of the following orders in the name of such person for internment or externment:
  - 3.2.1. To direct him not to stay at any specified place in the Kingdom of Nepal.
  - 3.2.2. To direct him not to enter into any specified place in the Kingdom of Nepal
  - 3.2.3. To direct him to stay only at a specified place in the Kingdom of Nepal.

## 4. Working Procedure Relating to Orders

- 4.1. While issuing an order under Sub-Section 3.1 or 3.2, the local authority must hand it over to the concerned person mentioning the reasons and grounds for doing so. He must also inform the Home Ministry along with a copy of the order.
- 4.2. In case an order for the detention of any person has been issued, the local authority must send a notice within 24 hours to the District Court of the district where the concerned person is to be detained under the order, along with a copy of the order.
- 4.3. The local authority must cancel the order issued under Sub-Section 3.1 or Sub-Section 3.2 within 24 hours after the reasons for which it was issued no longer exist.

## 5. Validity of Detention Order

- 5.1. A detention order issued under Sub-Section 3.1 providing for the detention of any person shall remain valid for a period of 90 days from the date of its issue, except when it is cancelled earlier.
- 5.2. Notwithstanding anything mentioned in Sub-Section 5.1, the period of validity of the detention order shall be as follows in the following circumstances:
  - 5.2.1. In case it is considered necessary to keep any person being detained under this act in detention for a term exceeding 90 days, the local authority shall write to the Home Ministry of His Majesty's Government explaining the reasons and grounds for doing so. In case the Home Ministry of His Majesty's Government holds the suggestion of the local authority appropriate and endorses it, the order of detention shall remain valid for six months from the date of its issue.
  - 5.2.2. In case it is considered necessary to keep any person being detained under this act in detention for a term exceeding six months, the Home Ministry of His Majesty's Government shall solicit the opinion of the Advisory Board mentioned in Section 7. In case the Advisory Board considers it appropriate to extend the term of detention, the order of detention shall remain valid for 12 months from the date of its issue.

## **6. Validity of Internment Orders**

- 6.1. An internment order issued in respect to any person shall remain valid for a period of 30 days from the date of its issue, except when it is cancelled earlier.
- 6.2. Notwithstanding anything mentioned in Sub-Section 8.1, in case it is considered necessary to maintain the internment order issued under this act for a term exceeding 30 days, the local authority shall write to the Home Ministry of His Majesty's Government explaining the reasons and grounds for doing so. In case the Home Ministry of His Majesty's Government holds the suggestion appropriate and endorses it, the order shall remain valid for 90 days from the date of its issue. .A (Deleted on April 20, 1992)

## **7. Formation of Advisory Board**

For the purpose of this Act, His Majesty's Government may form an Advisory Board under the chairmanship of an incumbent Justice of the Supreme Court and consisting of two other incumbent or retired Supreme Court Justices, in consultation with the Chief Justice.

## **8. Working Procedure of the Advisory Board**

- 8.1. In case it is considered necessary to validate a detention order in respect to any detainee for a term exceeding six months, the Home Ministry of His Majesty's Government shall submit to the Advisory Board a report

explaining the reasons and grounds for doing so along with the suggestion, if any, of the local authority in that connection, and the complaint, if any, filed with His Majesty's Government on behalf of the detainee.

- 8.2. The Advisory Board shall take into consideration the report and other documents received under Sub-Section 8.1, as well as the replies or the explanations given by the detainee to the enquiries made or explanations sought, if any, under Sub-Section 6.3, and write to His Majesty's Government whether or not it considers it necessary to extend the term of detention.
- 8.3. If the Advisory Board so deems necessary, it may conduct enquiries or demand explanations from any detainee.

## **9. Power to Cancel Orders**

- 9.1. The local authority may cancel any of the orders issued by him at any time during the term prescribed in the order.
- 9.2. His Majesty's Government may at any time cancel any detention or internment order.

## **10. Penalties**

- 10.1. The local authority may punish any person who acts in contravention of orders issued under Sub-Section 3.2 with imprisonment for a term not exceeding six months or with a fine not exceeding Rs 1000.
- 10.2. An appeal may be filed with the Appellate Court against the order of punishment issued under Sub-Section 10.1.
- 10.3. The Appellate Court shall dispose of the appeal filed under Sub-Section 10.2 by confining itself to the subject of whether or not action has been taken in contravention of the order.

## **11. No Question to be Raised in Any Court of Law**

No order issued under this act may be questioned in any court of law.

## **12. Procedure to be Adopted for Releasing Detainees**

A detainee shall be released in the presence of the Judge of the concerned District Court or of the Srestadar in his absence

### **12.A Procedure to be Adopted for Releasing Detainees**

12A.1 In case any person who has been detained under this law feels that he has been detained in contravention of this law or in a malafide manner, then, notwithstanding anything mentioned in Section 11, he may file a complaint at the District Court while still in detention or within 35 days after his release demanding compensation from the local authority who had issued the order for his detention.

12A.2 In case the particulars mentioned in the complaint filed under Sub-Section 12A.1 are substantiated, the District Court may decide to realize a reasonable amount of compensation from HMG to the complainant taking into account such factors as the period of his detention, his age, social prestige, and the financial loss suffered by him as a result of the detention.

12A.3 The local authority may request the Government Lawyer's Office to defend the case relating to the complaint filed under Sub-Section 12A.1, and the latter shall defend the case accordingly.

### **13. Departmental Action to be Taken**

In case the order issued by the local authority under this act is proved to have been issued with malafide motives, departmental action shall be taken against such authority, and he shall be punished.

### **14. Power to Frame Rules**

His Majesty may frame rules to implement the objectives of this act.

### **15. Repeal and Saving**

15.1. The 1961 Public Security Act has been repealed.

15.2. The provisions contained in this act shall be applicable in respect to orders issued under the 1961 Public Security Act.

**ANNEX III: JUDICIAL ADMINISTRATION ACT, 2048**

The following Act was published in the Nepal Gazette, Part II, Vol. 41, extra-ordinary number 11, dated 2048/2/16 (May 30, 1991).

**Act No. 6 of 2048  
An Act to make timely reforms  
In the Judicial Administration**

**Preamble**

Whereas it is expedient to provide for the establishment and jurisdiction of the Courts conforming to the provisions of the Constitution of the Kingdom of Nepal, 2047 and to make timely reforms in the judicial administration in order to dispense justice fast, render inexpensive and make easily accessible;

Now, therefore, His Majesty King Birendra Bir Bikram Shah Dev has, with the advice and consent of the Council of Ministers, made this Act pursuant to Article 129 of the Constitution of the Kingdom of Nepal, 2047.

**Chapter I  
Preliminary**

**1. Short Title and Commencement:**

- (1) This Act may be cited as "Judicial Administration Act, 2048".
- (2) This Act shall come into force on such date as may be appointed by His Majesty's Government through the notice published in the Nepal Gazette.

**2. Definitions:**

Unless repugnant to the subject or context, in this Act

- (a) "Constitution" means the Constitution of the Kingdom of Nepal, 2047 (1990).
- (b) "District Judge" also includes Additional District Judge of the District Court.
- (c) "Judge of the Appellate Court" also includes the Chief Judge and the Additional Judge of the Appellate Court.
- (d) "Prescribed" or "as prescribed" means those prescribed or as prescribed in the Rules made hereunder.

**Chapter II**  
**Establishment of Courts and Appointment of Judges**

**3. Establishment of District Court:**

- (1) There shall be one District Court in each district of the Kingdom of Nepal.
- (2) The District Court shall be located at the district headquarters.

**Provided that**

- (a) His Majesty may, on the advice of the Council of Ministers, designate any other place as the location of any District Court.
- (b) Nothing mentioned in this Sub-section shall prevent any District Court which is being located, prior to the commencement of this Act, at any place other than the district headquarter from continuing therein till another place is designated under this Sub-section.

**4. District Judges:**

There shall be one District Judge and such number of Additional Judges, as may be required, in each District Court.

**5. Establishment of Appellate Court:**

- (1) There shall be as many Appellate Courts in the Kingdom of Nepal as may be designated by His Majesty on the advice of the Council of Ministers.
- (2) The territorial jurisdiction of each Appellate Court and its location shall be as designated by his Majesty on the advice of the Council of Ministers.
- (3) His Majesty may, on the advice of the Council of Ministers, make alteration in the number of the Appellate Courts and change the territorial jurisdiction and location of any Appellate Court, as may be required.

**6. Judges of the Appellate Courts:**

- (1) In each Appellate Court, there shall be appointed one Chief Judge and such number of Judges as may be required but not exceeding five persons.
- (2) In case of increase in the workload in the Appellate Court, Additional Judges may be appointed for a prescribed period.



### **Chapter III** **Jurisdiction of the Courts and its Exercise**

#### **7. Jurisdiction of District Courts:**

Except as otherwise provided in the existing laws, the District Courts shall have powers to try and decide in original jurisdiction on all cases within its territorial jurisdiction.

#### **8. Jurisdiction of Appellate Courts:**

- (1) The Appellate Court shall have powers to hear appeals against the original decision or final order and to review over the reference case, according to the law, on cases or proceedings tried and decided by the District Court subordinate to itself and, except where the existing law provides to the contrary, by any other body or authority located within its territorial jurisdiction.
- (2) The Appellate Court shall have powers to issue writs of Habeas Corpus, Mandamus and Injunction, as may be required, for the enforcement of legal rights of any person infringed by any body or authority located within its territorial jurisdiction.
- (3) In addition to the powers as provided in Sub-section (1) and (2), the Appellate Court shall have powers to try, under its original jurisdiction, and to decide the following cases:
  - (a) Cases in which the Appellate Court is authorized by the existing laws to try in original jurisdiction and to decide;
  - (b) Cases in which the Supreme Court has considered appropriate and issued an order requiring the Appellate Court to try in original jurisdiction and to decide the case on grounds of hardship to the parties due to the excessive prolongation of proceedings in the case or due to some serious or complicated legal question involved in the case.

#### **9. Appeals to the Supreme Court:**

- (1) An appeal may lie in the Supreme Court against the decision or final order of the Appellate Court on the following cases:
  - (a) Cases tried in original jurisdiction and decided by the Appellate Court;
  - (b) Cases in which punishment of imprisonment for ten years or more are imposed; and

- (c) Cases involving material difference between the original judgment of the original court, body or authority and the judgment of the Appellate Court rendered on appeal against such judgment.
- (2) An appeal may also on the cases submitted to the Supreme Court for reference.

**10. Reference of a Case:**

- (1) Where reference to higher court is required on any case under the existing laws, such reference shall be made to the court hearing appeals.
- (2) Notwithstanding anything contained in Sub-section (1), such reference to the Supreme Court shall be made only if the Appellate Court has also confirmed the original judgment in the reference cases submitted pursuant to Sub-section (1) which involves capital punishment, life imprisonment with confiscation of property or simple life imprisonment.
- (3) In a case where reference has been made pursuant to Sub-section (1), if an appeal is also made, such case shall be adjudicated and decided upon by way of the process of appeal. If, in the same case, only one or a few of the accused have appealed, the case shall be adjudicated and decided upon, in respect of the non-appealant also, by way of the process of reference.
- (4) Where the case is being heard by way of reference process, if any non-appealing party or any concerned person submits a petition with pleas similar to an appeal, the court hearing appeal shall take into consideration of such petition while deciding the case.

**11. Review:**

- (1) The Supreme Court may review its judgment or final order on the following grounds:
  - (a) If the court observes that a fact likely to materially affect justice in the case came to the knowledge of the concerned party only after the disposal of the case.
  - (b) If the court observes that the decision is contrary to the precedent or legal principle enunciated by the Supreme Court.
- (2) Notwithstanding anything contained in Sub-section (1), the Supreme Court shall not review its judgment or final order, if:
  - (a) a review of such judgment or final order has already been made earlier;

- (b) the questions raised in the petition for leave of appeal were already raised in the Division Bench of the Supreme Court and during the hearing of the case in the Full Bench, due to difference of opinion among Judges in the Division Bench, a decision, by resolving the questions, had already been made;
  - (c) the case has already been heard by way of revision according to the prevailing laws prior to the commencement of this Act;
  - (d) the case was heard in revision pursuant to Section 12 and the judgment of Appellate Court had been confirmed.
- (3) An application for review may be filed within sixty days from the date of decision of the Supreme Court.

Provided that an application for review on the judgment or final order of the Supreme Court, made after the commencement of the Constitution and prior to the commencement of this Act, may be filed within thirty-five days from the date of commencement of this Act.

## **12. Revision of Cases:**

- (1) In cases where no appeal may be made in the Supreme Court in accordance with this Act or any other prevailing laws, the Supreme Court may hear in revision any judgment or final order of an Appellate Court on the following grounds:
  - (a) If the judgment or final order of the Appellate Court contains a grave error in the interpretation of the Constitution or law;
  - (b) If the precedents or legal principles enunciated by the Supreme Court have either not been observed or have been applied with wrong interpretation;
  - (c) In any case where a dispute relating to public property is involved, if such public property has been misappropriated or damages caused therein due to lack of proper evaluation of the evidence recorded in the file.
  - (d) If the justice is materially affected due to lack of proper representation of a child, woman, aged, disabled or mentally retarded person.
- (2) A case once heard in revision by the Supreme Court shall not be heard again in revision.
- (3) A petition for revision of a case to be filed under this Section may be filed in the Supreme Court or in the Appellate Court, deciding such case, within thirty-five days, excluding the days of travel, from the date of the decision of the Appellate Court.

**13. On Review or Revision:**

During the review of a case pursuant to Section 11 or revision of a case pursuant to Section 12, the Supreme Court shall decide the case keeping oneself limited within the grounds on which the Order for review or revision had been granted and to the matters relevant thereto.

**14. Powers of the Appellate Court or Superior Court:**

- (1) Subject to this Act and the prevailing laws, the powers of the Appellate Court or the Superior Court hearing reference cases shall be as follows:
  - (a) To confirm or to alter, wholly or partly, the decision of any subordinate court, body or authority.
  - (b) To exercise the powers of rendering judgment or final order similar to any subordinate court, body or authority.
  - (c) If the subordinate court, body or authority had failed to examine any evidence relevant to the question of adjudication in the case, to examine such evidence by itself or to send temporarily the file of the case back to subordinate court or body or authority in order to examine such evidence.
  - (d) If the subordinate court, body or authority has failed to give its decision on all questions involved in the case, to send back the file of the case, with a period prescribed for completion thereof, to the subordinate court, body or authority for its decision on the remaining questions.

**15. Withdrawal of Cases from Subordinate Courts:**

In any case under consideration of a subordinate court, body or authority, if the Supreme Court holds, through the report of the concerned court, body or authority or through the petition of a party to the case, that a complicated question of interpretation of the Constitution or any other law is involved in the case and that the settlement to the question by the Supreme Court is appropriate in view of its public concern or importance, the Supreme Court may withdraw such case for its consideration and may either decide the case wholly or, after deciding the concerned question, send back the case for decision on other questions to the concerned court, body or authority.

**16. Petition or Appeal Against Interim Order:**

Notwithstanding anything contained in the prevailing laws, a petition or appeal may be filed at the court of appeal of only one level higher against an Order of a court, body or authority requiring the defendant to be kept under detention or releasing the defendant on bail or to appear on the appointed date, or against any Interim Order relating to proceedings of the case.

**17. Exercise of Jurisdiction of the Court:**

- (1) The Bench of a District Judge shall exercise the jurisdiction of the District Court.
- (2) The Bench of a Single Judge or a Division Bench of Judges shall, in the manner as prescribed, exercise the jurisdiction of an Appellate Court.
- (3) If any proceeding, other than the act of rendering judgment or final order, is carried out by a Single Judge in any case which is required to be heard by a Division Bench according to the law, no such proceeding shall be deemed to be beyond jurisdiction or shall be void.

**18. Contempt of Court:**

- (1) A District Court may initiate proceedings against contempt of its own, and if found guilty of contempt, the accused may be punished with a fine up to one thousand rupees or an imprisonment up to one month or both.
- (2) An Appellate Court may initiate proceedings against the contempt of its own or the District Court subordinate to it, and if found guilty of contempt, the accused may be punished with a fine up to five thousand rupees or an imprisonment up to six months or both.
- (3) Notwithstanding anything contained in Sub-section (1) and (2), if the accused apologizes to the satisfaction of the Court, the Court may pardon, or remit the punishment if any punishment is already sentenced, or reduce the sentence, or suspend the sentence for six months on conditions prescribed by the Court and issue an Order with effect to non-execution of the sentence, if the conditions are complied with by the accused.

**19. Finality of Decisions of the Court:**

- (1) Except otherwise provided in this Act or in any other prevailing laws, a decision made by a court or body or authority in a case shall be final and binding to all parties to the case.
- (2) Except otherwise provided in this Act or in any other prevailing laws, any case once decided by the court, body or authority shall not be retried by the same court, body or authority, or make amendment in such decision with effect on the substance of justice.

Provided that some mistakes in writing or typing may be corrected through a separate procedural order.

**20. Inspection and Evaluation:**

- (1) Each court of appeal shall inspect at least once in a year its subordinate courts and the office of the body or authority against whom it hears an appeal.
- (2) The Judge deputed for inspection from the court of appeal shall inspect the cases pending with the court, body or authority and the cases already decided by such court, body or authority. If, during the inspection, any procedure required to be performed under the law is found to be missing or any act which ought not to be performed is found to have committed, the inspecting Judge may, in this respect, issue a requisite Order.
- (3) The inspecting Judge shall, in particular, invariably inspect the file relating to the following cases:
  - (a) Cases wherein a person is detained for trial;
  - (b) A few sample cases among the cases which are deemed as final due to in existence of any appeal;
  - (c) Cases where any minor, aged, woman or disabled is involved as party therein; and
  - (d) Cases where any question of public concern or interest is involved therein.
- (4) The inspecting Judge shall, during the inspection, examine the following aspects:
  - (a) Whether or not the execution of judgment has been performed according to the provisions of law in due time;
  - (b) Whether or not the Orders and Directives of superior courts have been carried out; and
  - (c) Whether or not the procedures in the pending cases are performed satisfactorily.
- (5) The inspecting Judge may also make inquiries with the employees of the court or office being inspected, with the parties to the case present in the court or office, the legal practitioners and other persons deemed appropriate in respect of the functioning of the concerned court, body or authority and ask for their suggestions and comments thereon.
- (6) The inspecting Judge shall, after the completion of inspection, send his inspection report, including the reasons and basis of his comment contained therein, to his own court, the Supreme Court and the concerned Ministry.

**21. Instant Inspection:**

- (1) The Supreme Court may perform an instant inspection of any District Court or Appellate Court and an Appellate Court may perform such inspection of any subordinate District Court in respect of its functions.
- (2) The Judge of the Supreme Court or the Appellate Court deputed for inspection pursuant to Sub-section (1) shall submit his report clearly depicting the genuine facts observed during the inspection, together with his opinion, to the Supreme Court and the Judicial Council.
- (3) The Supreme Court may depute any Judge of the Supreme Court or an Appellate Court to perform an instant inspection of the proceedings in cases pending with any body or authority. The Judge deputed for such inspection shall submit his report clearly depicting the genuine facts observed during the inspection, together with his opinion, to the Supreme Court and the concerned Ministry.

**22. Notice to Initiate Disciplinary Action:**

If any action or legal proceedings is required to be taken against any Judge or Officer pursuant to the report of inspection conducted under this Act, the Supreme Court shall inform it to the Judicial Council or concerned Ministry.

**23. Special Provisions relating to hearing of Habeas Corpus Petition:**

- (1) If the court is to remain closed for seven or more days, a Judge of each Appellate Court and the Supreme Court shall be designated to accept and hear petition of Habeas Corpus within the jurisdiction of such Court during the period of closure.

Provided that where the Supreme Court and an Appellate Court are located at the same place, no Judge of the Appellate Court shall be designated for the purpose of hearing petition under this Sub-section.

- (2) Notwithstanding anything contained in this Act or in any other prevailing laws, the Judge designated pursuant to Sub-section (1) may, during the period of such closure, issue any appropriate Order in exercise of jurisdiction of his Court in respect of the petition filed with him and the concerned official shall be bound to take necessary action according to the Order of the Court event during the period of such closure.
- (3) Matters relating to the filing of petition under this Section and place of its hearing shall be as determined by the Judge designated pursuant to Sub-section (1).

**Chapter IV  
Miscellaneous**

**24. Acts to be Performed by Judge Himself:**

- (1) The Judge shall perform with his own hands the act of making the decision or issuing the order and recording the statement of parties or witnesses to the case.

**Provided that:**

- (a) The Judge shall write or dictate himself and may get the document of judgment or order scribed or typed in fair by an employee of the Court.
- (b) The Judge shall, during the recording of statement of parties or witnesses, ask the questions by himself, and may get such questions and the answers scribed by an employee of the Court.
- (2) Notwithstanding anything contained in Sub-section (1), during the absence of the Judge, the Clerk (Shresteydar) may record the statement of parties or witnesses and issue Order relating to detention of the accused pending the trial, or release him in bail or on simple date of appearance.
- (3) The Judge shall, upon his resumption of duty in the Court, review as soon as possible the Orders of detention issued by the Clerk pursuant to Sub-section (1) and, if such Order is found to be deficient of procedures of law, he shall rectify them to accord with the procedures of law.

**25. Continuation of Existing District Courts:**

The District Courts existing at the time of commencement of this Act shall be deemed to have been established under this Act.

**26. Relocation of Cases:**

- (1) All cases and the petitions and reports relating thereto, filed and pending in the Zonal Courts and the Regional Courts at the time of commencement of this Act shall transfer to the concerned Appellate Court after the commencement of this Act.
- (2) Such cases and the petitions and reports relating thereto transferred to the Appellate Court pursuant to Sub-section (1) shall be decided by the Appellate Court in accordance with the laws prevailing at the time of commencement of this Act.

**27. Appeals to the Appellate Court:**

- (1) If an appeal may be made against the judgment or final order of the District Court or Zonal Court announced prior to the commencement of this Act, such appeal shall lie after the commencement of this Act in the Appellate Court according to the existing laws.
- (2) If an appeal may be made against the judgment or final order of any body or authority announced prior to the commencement of this Act in the Zonal Court or Regional Court, such appeal shall lie after the commencement of this Act in the Appellate Court according to the existing laws.



- (3) If a petition for leave of appeal may be made against the judgment or final order of the Zonal Court announced prior to the commencement of this Act in the Regional Court, such petition for leave of appeal may lie after the commencement of this Act in the Appellate Court according to the existing laws.
- (4) Such petitions for leave of appeal filed in the Appellate Court pursuant to Sub-section (3), shall be decided by the Appellate Court in accordance with the laws prevailing at the time of commencement of this Act.

**28. Appeals and Petitions Against Decisions of Regional Court:**

- (1) If an appeal may be made against the judgment or final order of the Regional Court, announced prior to the commencement of this Act, in the Supreme Court according to the existing laws, such appeal may lie according to such laws in the Supreme Court after the commencement of this Act.
- (2) If a petition for leave of appeal may be made against the judgment or final order of the Regional Court, announced prior to the commencement of this Act, in the Supreme Court, such petition for leave of appeal may lie after the commencement of this Act in the Supreme Court according to the existing laws.

**29. Files, Documents or Reply on Cases Demanded by the Court:**

If an order is issued by a Court to send or submit to it for the sake of evidence in a case any file, document or any fact relating thereto or an explanation or response is demanded, the Office so addressed shall comply with such Order within the reasonable time. If, due to disobedience of such Order by the concerned Office, the proceedings or decision in the case had been unduly delayed or if a party to the case had to suffer undue harassment or some adverse effect has resulted therefrom, the Court may impose penalty of a fine up to five hundred rupees for each count thereof upon the Chief or the employee of the concerned Office.

Provided that, after the Order of penalty is issued, if the Chief or the employee of the concerned Office requests for the retrieval from such penalty stating the reasons for being unable to comply with the Order and on being satisfied with such reasons, the Court may commute the amount of fine or cancel the Order the penalty.

**30. Powers to Issue Directives:**

For the efficient management and performance of the judicial administration, if the Supreme Court feels that issuance of certain directives to the subordinate courts, body or authority is imminent on any matter, it may issue such directives in conformity with the existing laws and such subordinate court, body or authority shall abide by such directives.

**31. Powers to Frame Rules:**

- (1) The Supreme Court may frame Rules to carry out the objectives of this Act. Such Rules shall come into force after their publication in the Nepal Gazette
- (2) Without any prejudice to the generality of powers conferred by Sub-section (1), Rules may be framed in particular on the following matters:

- (a) Procedures for filing complaint, appeal or petition in the courts other than the Supreme Court, fees relating thereto and other matters relating to procedures in the cases.
- (b) Methods of collecting records and statistics relating to the performance of the Judges of the Court.
- (c) Conditions and situations for transferring of cases.
- (d) Arrangements relating to exercise of jurisdiction of Appellate Court by the Division Benches consisting of one or more Judges.
- (e) Other matters relating to functions of the Court.

**32. Powers to Remove Difficulties and Hindrances:**

If any difficulty or hindrance emerges in the execution of this Act, the Supreme Court may, in consultation with the Judicial Council, issue necessary Orders for the removal of such difficulty or hindrance through notification published in the Nepal Gazette.

**33. Repeal and Amendments:**

- (1) Judicial Administration Reforms Act, 2031 is hereby repealed.
- (2) Acts cited in the Schedule are amended in the manner specified therein.
- (3) The words “Regional Court” or “Zonal Court” used in the existing laws are hereby amended by substituting with the words “Appellate Court”.
- (4) The words “Regional Judge” or “Zonal Judge” used in the existing laws are hereby amended by substituting with the words “Judge of the Appellate Court”.

**Schedule**

(Relating to Section 33)

**1. Civil Liberties Act, 2012**

- 1. Sub-section (1) of Section 16 is substituted by the following Sub-section (1).

“(1) Any arrested or detained person by himself or through any other person may petition the Appellate Court for a writ of Habeas Corpus.”

**2. Sub-section (1) of Section 17 is substituted by the following Sub-section (1)**

“(1) If any right granted by this Act is suspected of being infringed by any person, a complaint may be lodged at the Appellate Court.

**3. Prevention of Corruption Act, 2017**

The words “of Zonal Court” appearing in Sub-section (1) of Section 27 are substituted by the words “of District Court”.

**2. Ukhada Act, 2021**

The Proviso Clause to Sub-section (3) of Section 8 is hereby deleted.

**3. Nepali Language Publications Corporation Act, 2021**

The words “to the local Zonal Court” appearing in Section 31 are substituted by the words “to the District Court”.

**4. Bonus Act, 2030**

The words “in the Zonal Court” appearing in Sub-section (1) of Section 21 are substituted by the words “in the District Court”.

5. **Guthi Corporation Act, 2033**

The words “of the Zonal Court” appearing in Section 62 are substituted by the words “of the District Court”.

6. **King Mahendra Nature Conservation Fund Act, 2039**

The words “to the Zonal Court” appearing in Section 14 are substituted by the words “to the District Court”.

7. **Finance Company Act, 2042**

The words “to the Zonal Court” appearing in Section 64 are substituted by the words “to the District Court”.

8. **Offence Against State and Punishment Act, 2046**

The words “to the Zonal Court” appearing in Section 7 are substituted by the words “to the District Court” and the words “in the Zonal Court” appearing in Section 8 are substituted by the words “in the District Court”.

9. **Electricity Authority Act, 2041**

The words “to the Zonal Court” appearing in Section 39 are substituted by the words “to the District Court”.

*Royal seal of enactment affixed on*

- 2048/2/16/5

**ANNEX IV: TORTURE COMPENSATION ACT 2053 B.S (1996)**

(Non official translation)

*An Act to provide for compensation to a person who has been tortured while in detention.*

**PREAMBLE**

Whereas it is essential to provide for compensation to a person for having been subjected to physical or mental torture or cruel; inhuman or degrading treatment while in detention for investigation or awaiting trial or for any other reason.

Be it enacted by parliament in the twenty-fifth year of reign of His Majesty the King Birendra Bir Bikram Shah Dev.

**1. Short title and commencement**

- (1) This act may be called the "Torture Compensation Act 2053 [1996]"
- (2) This act shall enter into force immediately.

**2. Definitions**

In this act, unless the subject or context otherwise requires;

- (a) The term 'torture' shall be understood as physical or mental torture inflicted on a person who is in detention for investigation or awaiting trial or for any other reason, and this term includes cruel, inhuman or degrading treatment that person is subjected to.
- (b) The term "victim" shall be understood as the person who has been subjected to torture.

**3. Torture not to be inflicted**

- (1) Torture shall not be inflicted on any person who is in detention for investigation or awaiting trial or for any other reason.

**Explanation:** For the purpose of this sub-section, the term "in detention" shall include being taken into custody in accordance with the existing law.

- (2) The concerned officer at the time of detention and released of any person shall have that person's physical condition examined as far as possible by a doctor in government service, and when doctor not available by himself and shall keep and maintain records thereof.

**Explanation:** For the purpose of this sub-section, the term "doctor" shall be understood as doctor, Kaviraj, (auyerbedic doctor) health assistant, auxiliary health worker or Baidhya in government service.

- (3) One copy of the report concerning the examination of the physical or mental condition referred to in sub-section (2) shall be submitted to the concerned District Court.

#### **4. Compensation to be provided**

If it is held that any employee of His Majesty's Government has inflicted torture on any person the victim shall be provided compensation in accordance with this Act.

#### **5. Complaints may be filed**

- (1) The victim may file a complaint claiming compensation in the District Court of the District in which he was detained within 35 days of having been subjected to torture or of released from detention.
- (2) Notwithstanding the provisos contained in sub-section (1) in case the victim has died or any other reason can not file complaint himself, any other adult member from his family or his legal practitioner may setting out the reason thereof file the complaint pursuant to sub-section (1).
- (3) If it is suspected that a detainee has been subjected to torture any adult member from his family or his legal practitioner may file a petition in the concerned district court. Upon receiving such petition the Court may order to have the detainee's physical or mental examination within three days. Upon examination if treatment is deemed necessary it shall be undertaken by His Majesty's Government.
- (4) The complaint to be filed pursuant to sub- sections (1) and (2) shall, to the extent possible, indicate the following:
  - (a) The reason for detention and the time spent in detention,
  - (b) The details of torture inflicted while in detention,
  - (c) The details of damaged caused by torture,
  - (d) The amount of compensation claimed,
  - (e) Any other matters that are contributory in substantiating the claim.

#### **6. Proceeding in complaint and compensation**

- (1) Concerning the complaint filed pursuant to section 5, the District Court shall proceed the complaint in accordance with the procedures set forth in the Summary Procedure Act, 2028 [1972] and if the matter of the complaint is found to be true, may make adjudication to have compensation in maxim of one hundred thousand rupees paid by his majesty's Government to the victim.
- (2) While trying a complaint pursuant to sub-section (1) if it is found that the complaint was filed with malafide intention the district court may impose a fine up to five thousand rupees on such complainant.

#### **7. Action against the person involved in the act of committing torture**

If it is held that torture has been committed in accordance with this Act, the district Court shall order the concerned authority to take a departmental action

according to existing law against the government employee who committed the act of torture.

## **8. Determination of the amount of compensation**

The following things shall be taken into consideration when determining the Amount of compensation the purpose of sub-section (1) of section 6:

- (a) The physical or mental pain or suffering caused to the victim and its gravity.
- (b) Depreciation in income earning capability of the victim as a result of physical or mental damage.
- (c) In case the physical or mental damage caused cannot be treated, the victims age, his responsibility to the family.
- (d) The estimated expenses required for treatment if the damage can be treated.
- (e) In case of death due to torture, the number of family members dependent upon the victim's income and the minimum expenses needed for their livelihood.
- (f) Among the matters claimed by the victim, those deemed reasonable and appropriate.

## **9. Execution of adjudication**

- (1) After the final adjudication made on providing compensation to the victim, the victim or in case of his death, his nearest heir shall submit an application to the Chief District Officer of the District in which he was detained, accompanied by a copy of the District Court's adjudication on the provision of compensation, within one year of receiving information of the adjudication.
- (2) The Chief District officer shall provide the amount of compensation to the applicant within thirty-five days of the receipt of the application referred to in sub-section (1)
- (3) If the application is not submitted within the time limit referred to in sub-section (1), the compensation shall not be provided

## **10. Defense may be made by Government Attorney**

Concerning the complaint in accordance with Section 5, if the chief of the concerned office requests, the Government Attorney shall appear in the court on behalf of the employee and defend him.

## **11. Not considered an act of torture**

*Notwithstanding any provisions elsewhere in this Act, for the purpose of this Act. Any suffering inherently caused by detention pursuant to the existing law shall not be regarded as an act of torture.*

**12. No bar to institution of action pursuant to the existing law**

It shall not be deemed to bar to institution of a separate action on a matter deemed to be a crime pursuant to the existing law, merely by virtue of the institution of action for compensation against the commission of torture under this Act or receipt of compensation therefore.

**13. Power to make rules**

His Majesty's Government may make necessary rules for the purpose of implementation of the objectives of this Act.

**ANNEX V: TERRORIST AND DESTRUCTIVE ACTS  
(CONTROL AND PUNISHMENT) ACT, 2002**

*Ministry of law, justice, and parliamentary affairs  
Nepal Rajpatra, Vol .5t No.78 (extraordinary) chitra 20  
2058(April10 2002)  
Unofficial Translation*

**Terrorist and Destructive acts (Control and Punishment) Act, 2002**

**PREAMBLE**

Whereas it is expedient to enact legislation for controlling terrorist and destructive acts in order to maintain peace and order in the kingdom of Nepal and ensure the security of the common people, now there fore, the parliament has enacted this law in the first year of the reign of his king Gynendra Bir Bikram Shah Dev.

**1. Short Title and Commencement**

1. This act shall be known as the Terrorist and Destructive acts (Control and Punishment) Act 2002.
2. It shall come into force at once.
3. It shall remain in force for two years from the date of its commencement.

**2. Definitions**

Unless otherwise meant with reference to the subjects or context, in this Act,

(a) **Weapon** means rifles, guns, cannons, pistols, revolvers, Machine guns, rockets, rocket-launchers or similar other means or machine or spears, knives, kukris or other lethal weapons with or without sharp edge which can cause any damage to (human) bodies.

(b) **Ammunition** includes fog signals, fuse gunpowder, capes mortars, shots detonators, cartridges similar other ammunition.

(c) **Bomb** means a grenade landmine ,or any other weapon containing any type of explosive, or any type of material that explodes or cause explosion, which is made from any types of materials or means, made to explode by any other means or automatically and used for military or non military purposes.

(d) **Explosives** means TNT Amatol Barstool, Pentolite, RDX ,Tropex, plastic explosives dynamites gunpowder, nitroglycerine gelignites, semites sellite guncotton blasting powder, fulminates of mercury or any other similar or other materials which are produced or used with the objectives of causing an impact through explosion.

(e) **Poisonous substance** means any type of poison or solid or liquid substance mixed with such poison, the term includes any type of poisonous gas or smoke.



(f) **Security personnel** means the police, the armed police or the Royal Nepali Army, or any other person deputed by his Majesty's Government for the prevention and control of terrorist and destructive acts.

(g) **Terrorist and destructive Acts** means the terrorist and destructive acts mentioned in section 3.

(h) **Terrorist** means a person or group engaged in any of the terrorist and destructive acts mentioned in section 3.

(i) **Accomplices** mean the following persons:

1. Persons who are in contact with and extend cooperation to any person or group engaged in terrorist and destructive acts.
2. Persons who furnish any information to persons or group engaged in terrorist and destructive acts or those who disseminate information of persons or groups engaged in terrorist and destructive acts.
3. Persons who intentionally help directly or otherwise, persons or groups engaged in terrorist and destructive acts by providing them with financial or material assistance or shelter except when they are forced to do so.

(j) **Property** means any governmental, public or private movable or immovable property within or outside the kingdom of Nepal.

(k) **Informer** means a person who provides or helps to provide information to security personnel and His Majesty's Government in relation to terrorist and destructive acts and explosives.

(l) **Security Officer** means the Chief District Office or any Gazetted officer-employee of His Majesty's Government designated by His Majesty's Government by notification in Nepal Gazette (Rajpara).

(m) **Order** means an order issued by His Majesty's Government or the Security Officer.

### 3. Terrorist and Destructive Crimes

(1) Anyone who commits any of the following acts shall be deemed to have committed a terrorist and destructive crime;

(a) Any act of damaging or destroying property at any place, or formulation plans to do so, or lacking human life or crippling or insuring human beings at such places, by using any kind of weapons, bombs, explosives or any other means or machine or any act of causing physical or mental harm through arson or otherwise, or any act of taking human life crippling or otherwise causing harm to human life by using poisonous substances in goods of daily consumption or at public places, or any act of terrorizing the common people or people in motion or assembled by

committing any of the abovementioned acts, with the objective of affecting or hurting the sovereignty or integrity of the kingdom of Nepal, or security or peace and order of the Kingdom of Nepal or any of its parts, or security of foreign based Nepali diplomatic missions or property or,

(b) Any act of using force or terrorizing anyone in any place or vehicle or abducting from such place or vehicle or anyone travelling in such vehicle along with or without the vehicle, by threatening to kill, cripple, injure or otherwise harm anyone by using or threatening to use any of the materials mentioned in Clause (a), or any other material or means other than such materials, or terrorizing anyone through such acts in order to fulfil the objective mentioned in Clause (a).

(c) Acts of producing, distributing, accumulating, transporting, importing, exporting, selling, carrying or installing any kind of weapons, bombs, explosives or poisonous substances, or intentionally helping in any such acts, with the objective mentioned in Clause (a) or (b).

(d) Acts such as gathering people and providing them with training with the objective mentioned in Clause (a) or (b).

(e) Acts of extorting cash or goods or looting property with the objectives mentioned in this sub-section.

(2) In case anyone attempts or conspires to commit a terrorist and destructive act, or abets or compels others to do so, or assembles more than one person to gang or group to commit such acts or issues orders and instructions to commit such acts or participates in such acts with or without obtaining remuneration, or publicizes such acts or obstructs the governmental communication system, he too shall be deemed to have committed a terrorist and destructive crime.

Provided that no action that anyone has been forced to take shall be deemed to be a terrorist and destructive crime.

(3) Persons who commit any of the acts mentioned in sub-Section (1) or (2) shall be subjected to action and punishment as provided for in this Act.

#### **4. Extra-territorial Application of the Act**

Even if any person engage in terrorist and destructive acts has committed a crime targeting the kingdom of Nepal or Nepali citizen or any property of the Kingdom of Nepal by residing outside the Kingdom of Nepal. He shall be deemed to have committed the crime from within the Kingdom of Nepal and subjected to action and punishment under this Act.

#### **5. Special Powers to Check Terrorist and Destructive Act**

Notwithstanding anything contained in current law, His Majesty's Government may issue orders for taking all or any of the following actions to check terrorist and

destructive crimes in all or any of the parts of the Kingdom of Nepal while a Security Officer may do so to check such crimes in his area:

- (a) Arrest anyone on the basis of adequate and reasonable suspicion that he is engaged in terrorist and destructive acts, and furnish information of such arrests along with reasons thereof.
- (b) Search at any time the house, shop, warehouse, means of transport or any other places of any person after informing him in advance in case it is suspected that illegal arms and ammunition, bombs or explosives are stored or any suspicious person connected with terrorists is hiding there, and issue receipts of goods recovered, if any in the course of the search.
- (c) Search at any place or on any of thoroughfare anyone's person or belonging or the means or vehicle he is using in order to check terrorist and destructive acts.
- (d) Use necessary forces if anyone obstructs or opposes the act of making arrests under Clause (a) or conducting search or taking any other actions under Clause (b) or (c), use weapons if anyone obstructs or opposes such acts with weapons.
- (e) Use necessary force or weapons in case any person who is committing or has committed a terrorist and destructive act is likely to run away or escape, or in circumstances when it appears that he cannot be arrested.
- (f) Use necessary force or weapons in the course of securing the release of any place or vehicle, aircraft, ship or any other means of transport forcibly captured by persons engaged in terrorist and destructive acts, or of the persons being held hostage by them in such means, so as to protect the life and person of such hostages from any harm or danger or other losses.
- (g) Use necessary force or weapons in case any person or group attacks any security personnel with or without weapons while on duty.
- (h) Use necessary force or weapons in case any person or group threatens or attempt to threaten by carrying any weapon with objective of harming the life and property of any security personnel working in any specific place.
- (i) Use necessary force or weapons in any case any person or group attacks with the objective of physically harming persons who are to be provided security personnel, or the common people or employees deputed on government duties who are being provided security by security personnel or government's good or security personnel.
- (j) Use necessary force or weapon in the event of an encounter with any armed person or group, or in event of obstruction to security personnel by any armed or unarmed person or group while performing the prescribed functions.
- (k) Use of necessary force or weapons by security personnel against persons or groups carrying arms or in areas where arms are hoarded or training conducted with the objective of committing terrorist and destructive acts.
- (l) Security personnel taking under their control and custody the weapons possessed by armed person or group, or disarming such armed persons or groups, according to need.
- (m) Subjecting any suspicious person or place to surveillance, or arresting such persons or locking up or cordoning off suspicious places if necessary.

- (n) Freezing for a specified period the bank account or passport of any person who on the basis of adequate and reasonable grounds is suspected of being engaged in terrorist and destructive acts.

## **6. Power to Requisition Property**

His Majesty's Government or the Security Officer may requisition any private or government vehicles foodstuff, or other materials, goods or property needed for controlling and preventing terrorist and destructive acts, subject to payment of an appropriate compensation equivalent to their current value, or on a returnable basis.

## **7. Power to Declare Terror – Affected Areas and Terrorists**

- (1) His Majesty's government may declare any area affected or likely to be affected by terrorist and destructive activities as terror-affected area.
- (2) His Majesty's government may declare any person, association, institution, organization or group involved in any crime which is punishable under this act as a terrorist.
- (3) Notwithstanding anything contained in this section ,terror affected areas shall be deemed to have been declared automatically when a state of emergency is declared or ordered under the 1990 constitution of the kingdom of Nepal.

## **8. Power to Prohibit Moving about with Arms or Ammunition**

- (1) Notwithstanding anything contained in current law, in terror affected areas declared under Section 7, His Majesty's Government may issue an order prohibiting the carrying in person of arms or ammunition licensed under current law, or requiring such arms or ammunition to be deposited at the prescribed place, for specified period.
- (2) Arms or ammunition possessed by person who violates the order issued under sub section (1) shall be confiscated.

## **9. Power to Keep under Preventive Detention**

In case there exist appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and destructive act, the Security Officer may issue an order to keep him under house arrest at a place, which is suitable for human beings for not more than 90 days.

## **10. Penalties**

- (1) In case the commission of any terrorist and destructive act which is deemed to be crime under this Act has led to the death of anyone, the main person who committed or caused to be committed or conspired to commit the crime, and the person who ordered its commission, shall be punished with life imprisonment along with confiscation of entire property.

- (2) In case a crime mentioned in this Act has been committed but no loss of life has occurred, the main person who committed or caused to be committed or conspired to commit the crime, shall be with life imprisonment.
- (3) In case anyone attempts to commit any crime mentioned in this Act, or instigates or compels others to commit such a crime, or assembles more than one person or forms a group to commit or cause the commission of such a crime, or orders to commit or cause the commission of such crime or participate in such an act with or without remuneration, or produces, distributes, keeps transport imports exports or give or takes in any way arms, bombs, explosives or poisonous substances, or conducts or causes to be conducted publicity with the objective of committing such an act, he shall be punished with imprisonment for a term ranging between five and 10 years, according to the extant of his crime.
- (4) In case any loss of property has been caused by a person who has committed a terrorist or destructive act, compensation therefore shall be realized and paid by confiscating his share of (ancestral) property, in case the amount to be paid as compensation is not fully realized from his property, the outstanding payment shall be treated as equal to non payment of fine and converted to period of imprisonment according to current law.
- (5) Half of the punishment due to the perpetrator of any offense punishable under this Act shall be awarded to his accomplice.
- (6) In case anyone wilfully obstructed or opposes any search operation carried out under clause (b) or (c) of section 5 he shall be punish with imprisonment for a term not exceeding one month, or with fine not exceeding Rs. 500 or with both.

#### **11. Judicial Inquires to be Conduced by Keeping (The Accused) in Detention**

Person accused of committing a crime under this Act shall ordinarily be kept in detention during judicial inquires into the case, depending on the gravity of the crime.

#### **12. Right to Hold Meetings and Conference and Exercise Freedom of Thought and Expression**

In areas declared as terror – affected under Section 7, there shall be no restriction on holding peaceful meetings and conferences without wearing arm exercising freedom of thought and expression, or travelling to or from any part of the Kingdom of Nepal in a manner not prejudicial to this Act.

#### **13. Provision Concerning Monitoring and Coordination**

- (1) In case any person feels aggrieved at the actions taken or functions performed by the empowered the authority in the course of conducting investigations into a terrorist and destructive crime in exercise of the powers conferred on him under this Act, he, or any other person on his behalf, may submit a petition to the monitoring committee comprising of the following chairman and members;

- (a) A person designated by HMG from among retired justices of the supreme Court- Chairman
  - (b) Secretary, Ministry of Defense- Member
  - (c) Secretary, Ministry of Home – Member
  - (d) Secretary, Ministry of Law- Justice and Parliamentary Affairs.- Member
  - (e) Deputy Attorney General, Attorney Gen.'s Office of the Kingdom of Nepal.- Member
- (2) The monitoring committee shall itself regulate its working procedure.
  - (3) In case the Monitoring committee finds in the course of investigations into a petition filed under Sub-section (1) that the petitioner has actually suffered a wrong, it may give necessary advice to the concerned agency to redress it and also offer necessary suggestions to HMG on the problem and measure to resolve it.
  - (4) Information about the actions taken and functions performed by the monitoring committee under sub-section (3) must be furnished to the state affairs committee of the House of Representatives.
  - (5) There shall be a coordination committee with the concerned Regional Administrator or Chief District officer as convener and comprising the (Local) chiefs of the royal Nepali army, the Nepali Police, the Armed Police Force, the National Investigation, and other necessary coordinating (the activities) of the Royal Nepali Army, the Nepal police, the armed police, and other necessary governmental agencies to check or control terrorist and destructive acts within the area under their jurisdiction.
  - (6) The coordination committee mentioned in sub-section (1) shall itself regulate its working procedure.

#### **14. Confiscation**

- (1) In case anyone commits a crime which is punishable under this act, any property, equipment or means used by him for the purpose, if any, shall also be confiscated.

Provided that in case any such property, equipment or means of transport has been used without the consent of its owner, it shall not be confiscated.

- (2) All means of propaganda, weapons cash and goods which have been intentionally used for committing an act which is deemed to be a crime under section 3, or for providing help to such acts shall be confiscated.
- (3) In case anyone is proved to have committed any act which is deemed to be a crime under this act by staying outside the kingdom of Nepal, his share of movable and immovable (ancestral) property within the kingdom of Nepal shall also be confiscated, in addition to punishing him as provided for in section 10.

### **15. Authority to Hear Cases and Appeals**

- (1) The Court formed or prescribed by HMG by notification in the Nepal Rajpatra (gazette) shall have the power to hear cases relating to offences under this act.
- (2) The court mentioned in sub-section (1) shall adopt the working procedure laid down in the 1974 Special Court Act while taking action on and disposing of cases under this Act.
- (3) Appeals against the verdicts given or final orders issued by the court mentioned in sub-section (1) may be filed at the Supreme Court.

### **16. Government to be Plaintiff**

His majesty's Government shall be the plaintiff in all cases under this act, and such cases shall be deemed to have been included in schedule 1 of the 1993 State Cases Act.

### **17. Special Procedures**

- (1) Notwithstanding anything contained in current law in case any person who has committed any act which is considered to be a terrorist and destructive crime under this Act is not traced and has absconded a 15 days warrant with his complete description, as far as shall be no hindrance to taking action against such person under this Act even if he is not traced or arrested within the said time-limit.
- (2) Any person, employee or security personnel may be used as an informer in a group engaged in terrorist and destructive acts. No such person, employee or security personnel shall be subjected to any punishment under current law on the ground of his involvement in that group.
- (3) The identity of an informer shall be kept secret.
- (4) notwithstanding anything contained in current law, if the accused implicated in a case on which action has been initiated under this Act reveals any important matter or evidence in such a manner as to convince his Majesty's Government, the police employee or any other criminal responsible for actual leadership in the crime, he may be established as a government witness, and if he is so established as a government witness, no punishment shall be inflicted on him under current law.

Provided that in case such an accused provides false written information or fictitious evidence ,or is found to have acted out of malice or jealousy without any appropriate reason ,and in case a claim is made for punishment by treating him as an accused ,the authority hearing the case may punish him.

- (5) Notwithstanding anything contained in current law, the accused implicated in a crime under this Act may be kept in police custody for a period not exceeding 60

days from the date of arrest to the purpose of investigation with the permission of the authority hearing the case.

#### **18. Control over Means of Communication**

His Majesty's Government may exercise control over such means of communication as correspondence, telephone and fax of persons or groups involved in terrorist and destructive activities.

#### **19. Provision Concerning Medical Expenses and Compensation**

- (1) In case any police or security personnel who was been assigned the task of controlling or investigating into terrorist and destructive activities is crippled or dies. HMG shall pay an appropriate amount as medical expenses as well as compensation.
- (2) HMG shall make arrangements relating to necessary treatment other relief benefits for person affected by or suffering from terrorist and destructive activities.
- (3) HMG shall pay a reasonable compensation to the dependent family of an innocent common person who is killed as a result of action of a person in terrorist and destructive acts, or of security personnel.
- (4) In case it is proved that this Act has been applied with malafide motives, the agreed party shall be paid a reasonable compensation in the course of judgment on the concerned case .

#### **20. Immunity for Actions Taken with Bonafide Motives**

No officer or any other person shall be liable to punishment for any act or work performed or attempted to be performed by him with bonafide motives under this Act or the rules framed here under.

#### **21. No Time-Limit**

There shall be no time limit for filing cases under this Act.

#### **22. Power To Give Rewards**

HMG may give rewards which it deems to be appropriate to persons who captured or help to capture the person playing the main role in committing or causing the commission of terrorist and destructive act.

#### **23. Delegation of Authority**

HMG may delegate some of the powers vested it under this Act to any authority or with withdraw the power so delegated to any authority according to need.

#### **24. Power to Frame Rules**

HMG may frame necessary rules in order to implement the objectives of this Act.



**25. Saving**

Action in respect to matters provided for in this act shall be taken accordingly and in respect to other matters, according to current law.

**26. Consequences of Inoperation of the 2001 Terrorist and Destructive Act (Controlled and Punishment) Ordinance**

After the 2001 Terrorist and Destructive act (Controlled and Punishment) Ordinance become inoperative such in operation shall not, unless otherwise intended.

- (a) Revive any matter not in operation or existence at the time when the said ordinance become in operative.
- (b) Affect any matter initiated under the said ordinance, or any function already performed or any matter already under gone by fulfilling the formalities in accordance with the said ordinance
- (c) Affect any titles privilege, duty or liability secured gained or enjoyed under the said ordinance.
- (d) Affect any penalties awarded or confiscation effected under the said ordinance.
- (e) Affect any action, function or major taken in respect to the aforesaid title privilege, duty or liability or penalties, and any such legal action or major may be initiated, continued or applied as if the said ordinance was still in force.

***Royal seal affixed on Wednesday, Chaitra 28,2058 (April 10, 2002)***

**ANNEX VI: THE PREVENTION OF CORRUPTION ACT, 2059**  
**(2002 A.D)**

**PREAMBLE**

Whereas, it is expedient to make timely legal provisions relating to prevention of corruption with a view to maintaining peace, convenience, financial discipline, morality and good conduct among general public;

Be it enacted by Parliament in the first year of the reign of His Majesty's the King Gyanendra Bir Bikram Shah Dev.

**CHAPTER - 1**  
**PRELIMINARY**

**1. Short Title, Extent and Commencement:**

- (1) This Act may be called the "Prevention of Corruption Act, 2059 (2002 A.D)."
- (2) It shall be extended throughout the Kingdom of Nepal and applicable to all Nepalese citizens, public servants residing anywhere outside the Kingdom of Nepal and to the non- Nepalese citizens residing in foreign countries having committed any act that may be deemed to be corruption under this Act.
- (3) It shall come into force at once.

**2. Definitions:**

In this Act, unless the context otherwise requires,—

- (a) "Corruption" means offences punishable under Chapter -2.
- (b) "Graft" means cash, goods or any type of gain or benefit and the term also includes bribe.
- (c) "public institution" means the following institutions:-
  - (1) A company, bank or a committee wholly or largely owned or controlled by His Majesty's Government; or a commission, organization, authority, corporation, academy, board, center, council or any other corporate body of such nature established by His Majesty's Government;
  - (2) A university, college, school, research center and any other similar academic or educational institution run by His Majesty's Government or on the full or partial donation from His Majesty's Government;
  - (3) Local bodies constituted under the Local Self-Governance Act, 1999;
  - (4) An institution run on loan, grant or guarantee of His Majesty's Government;
  - (5) An institution fully or partly owned or controlled by the institution referred to in sub-clauses (1), (2), (3) or (4) or obtained grant from such institution; and
  - (6) Any other institution prescribed as public institution by His Majesty's Government in a notification published in the Nepal Gazette.

- (d) "Public Servant" means the person holding a public office under the prevailing laws and the term also includes the following persons:-
- (1) Persons appointed, nominated or elected under an oath to His Majesty, His Majesty's Government or to public institution, or under the terms, contracts or agreements concluded with His Majesty, His Majesty's Government or with any public institution, or holding any office of public responsibility for salary or allowances or remuneration or benefit or position with or without any type of gain from His Majesty's Government or any public institution;
  - (2) Person appointed as an arbitrator or any other person appointed in the same position pursuant to the prevailing laws to resolve or adjudicate any dispute;
  - (3) Persons appointed, elected or nominated as liquidator, surveyor or any other person working in the same capacity in accordance with the prevailing laws;
  - (4) Persons designated as public servants by His Majesty's Government in a notification published in the Nepal Gazette.
- (e) "Revenue" means any type of tax, fee, charge, royalty, fine and other amount of this type to be paid or given to His Majesty's Government or public institution, and the term also includes interest or fine to be charged on such tax, fees, royalty and other amount of this type.
- (f) "Degree of offense" means the degree of offense to be determined on the basis of circumstances and situation in which the offence has been committed or attempted to be committed, the gravity of such offence or the intention, qualification, position and capacity of the person who has committed or attempted to commit any offence punishable under this Act.
- (g) "Investigating Authority" means the body or official authorized to conduct inquiry, investigation and to file cases relating to corruption in accordance with the prevailing laws.

**CHAPTER - 2**  
**PROVISIONS RELATING TO OFFENSES**  
**OF CORRUPTION AND PUNISHMENT**

**3. Punishment to Giver and Taker of Graft:**

- (1) Whoever, being, or expecting to become, a public servant accepts or agrees to accept graft amounting as follows for himself or for any other person in consideration of his performing or having performed or of forbearing to perform or having forborne to perform any act pertaining to his office or the related act or in consideration of favoring or disfavoring or causing or not causing a loss or of having favored or disfavored or having caused or not caused a loss to any person while carrying out his official functions, shall be liable to a punishment of imprisonment as follows and of a fine as per the amount involved depending on the degree of the offense. In case the graft has already been accepted, it shall be confiscated.
- |  |   |
|--|---|
| (a) Up to twenty five thousand rupees.   | Imprisonment for a term not exceeding three months.                               |
| (b) More than twenty five thousand rupees to fifty thousand rupees.                | Imprisonment for a term from three to four months.                                |
| (c) More than fifty thousand rupees to one hundred thousand rupees.                | Imprisonment for a term from four to six months.                                  |
| (d) More than one hundred thousand rupees to five hundred thousand rupees.         | Imprisonment for a term from six months to one year and six months.               |
| (e) More than five hundred thousand rupees to one million rupees.                  | Imprisonment for a term from one year and six months to two years and six months. |
| (f) More than one million rupees to two million and five hundred thousand rupees.  | Imprisonment for a term from two years and six months.                            |
| (g) More than two million and five hundred thousand rupees to five million rupees. | Imprisonment for a term from four to six years.                                   |
| (h) More than five million rupees to ten million rupees.                           | Imprisonment for a term from six to eight years.                                  |
| (i) Whatsoever amount above ten million rupees.                                    |   |
- Imprisonment for a term from eight to ten years

- (2) Whoever, other than a public servant, accepts or agrees to accept graft amounting as follows for himself or for any other person with the intention of convincing any public servant to perform or forbear to perform any function under his office or position or for convincing to perform or forbear to perform any such act or with the intention of favouring or disfavouring any person or causing or not causing any loss or for convincing to perform or forbear to perform any such act while carrying out any function under his office or position, shall be liable to a punishment of imprisonment as follows and of a fine as per the amount involved depending on the degree of the offense. In case the graft has already been accepted, it shall be confiscated.
- (3) Whoever, gives a graft to a public servant or any other person in order to do or forbear to do any function pursuant to sub-Section (1) or (2), shall be liable to a punishment pursuant to sub-Section (1) depending on the degree of the offense committed.
- (4) Whoever abates to commit an offence punishable under this Section shall, if he is a public servant, be liable to a punishment as same as the punishment prescribed for the same offence, and if he is any other person, shall be liable to half of the punishment for that offence on the basis of the degree of the offence irrespective of whether or not the offence has been committed because of such abetment.

**1. Punishment to Public Servants Accepting Goods or Service Free of Cost or at Lower Prices:**

Whoever, being a public servant, accepts or agrees or attempts to accept, without a prior approval of His Majesty, His Majesty's Government or public institution, any goods or service free of cost or at lower prices for himself or for any other person, from any individual, having knowledge that such individual is related to or is likely to be related to any act related to his office or any act carried out or to be carried out by himself is related to any function of his office, shall be liable to a punishment of imprisonment for a term from six months to one year depending on the degree of the offence and a fine equal to the amount involved and in case such goods is already accepted, it shall be confiscated and in case of the service, the price thereof shall be fixed and a fine equal to the price of such service shall be imposed.

**2. Punishment for Taking Gift, Present, Award or Donation:**

- (1) Whoever, being a public servant, accepts, without a prior approval of His Majesty, His Majesty's Government or a public institution, any type of donation, gifts, presents, awards or any type of benefit himself or through any member of his family or other person, so as to causing an impact in any way on any of his works which is supposed to be carried out by him according to the office he assumes; or any public servant who borrows from a person related to a work which he has to carry out according to the office he assumes, shall be liable to a punishment of imprisonment from three to six months depending on the degree of the offence and the amount shall be confiscated.

- (2) Whoever, being a public servant, has received any present or gift in exchange of a gift or present brought from the amount of a fund belonging to His Majesty's Government or a public institution, such gift or present shall be immediately submitted to his office. If not submitted, it shall be deemed to have committed the offence referred to in sub-section (1) and such gift or present shall be confiscated having him punished accordingly.

### **3. Punishment for Taking Commission:**

In case any type of commission, remuneration, brokerage fee, benefit or advantage is liable to be paid while performing duties by a public servant or while purchasing or hiring or taking or giving on a lease any commodity or service necessary for His Majesty, His Majesty's Government or a public institution or while awarding or accepting a contract by His Majesty's Government or a public institution or while selling or hiring or taking or giving on a lease any commodity or service produced by His Majesty's Government or a public institution, such commission, remuneration, brokerage fee, benefit or advantage shall be submitted to the concerned office within seven days from the date of receipt. In case not submitted as such, such public servant shall be deemed to have committed the offence referred to in Section 3 and the amount shall be confiscated having him punished accordingly.

### **4. Punishment to Public Servants for Leaking Revenue:**

Whoever, being a public servant under the duty of collecting revenues, causes revenue leakage or helps or abets any person for its leakage having been involved himself in any of the following manners, shall be deemed to have committed the offence referred to in Section 3 with regard to the amount of revenue so leaked and he shall be liable to the same punishment of imprisonment, and double of the amount of revenue leaked shall be fined: -

- (a) To assist any person in the act of leaking revenue in any manner whatsoever, having accepted any cash or kind, fee, prize or donation or any type of other benefit or forbear to collect revenue or to assist or cause to assist to collect less revenue having caused loss to His Majesty, His Majesty's Government or a public institution by taking or not taking any type of gain from any person;
- (b) To assess or assist to assess less revenue or to assess revenue to the effect of not charging revenue at all by not going through the documents or not investigating such documents or by not collecting necessary evidences while assessing revenue as required by the existing law;
- (c) To embezzle the revenue collected by not depositing it in accordance with the prevailing laws;
- (d) To release or assist to release goods, by making difference in the invoice, quality or quantity of such goods, and without collecting the prescribed revenue while assessing the revenue or carrying out valuation of such goods.

### **5. Punishment to Public Servants for Getting Illegal Benefit or Causing Illegal Loss with Malafide Intention:**

- (1) Whoever, being a public servant, commits any of the following acts with the malafide intention of getting illegal benefits for himself or for any other

person, or of causing loss to His Majesty, His Majesty's Government or public institution, shall be liable to an imprisonment of a term from three months to three years depending on the degree of offense, and in case the amount involving the offence is known, such amount shall be confiscated having him fined accordingly. In case such amount is not known, an imprisonment for a term from three months to three years and a fine from ten thousand to fifty thousand rupees shall be imposed.

- (a) To show more costs or works in an unnatural manner without any ground of justification while conducting physibility study of, or setting norms for, a project.
  - (b) To use or allow to use the construction materials of lower quality than that of the prescribed quality, or to certify or to approve the use of such materials as the materials of prescribed quality;
  - (c) To degrade the quality of construction work or to change the form or shape thereof or to carry out or cause to carry out construction works in contravention of the prescribed terms, conditions and standard; or to certify or to approve such construction work as qualitative and under the prescribed terms and conditions without any reasonable ground;
  - (d) To carry out or cause to carry out construction works having increased or amended the costs estimate in an unnatural manner and without any reasonable ground;
  - (e) To give or receive payment having prepared false bills or receipts or to give or receive double payment of bills;
  - (f) To procure or cause to procure excessive quantity of goods in an unnatural manner than the quantity needed without reasonable grounds;
  - (g) To carry out or cause to carry out unnatural valuation of a government property, a property of a public organization or of public property;
  - (h) To register, occupy or use or to cause to register, occupy or use a government or public property in one's own name or in the name of other in an illegal manner;
  - (i) To value or cause to value a collateral security to be mortgaged in the name of a governmental or public organization in an excessive and unreasonable prices than the real prices;
  - (j) To procure or cause to procure goods of degrading quality, date expired and to procure or cause to procure goods having paid higher prices in an unnatural manner.
- (2) In case any public servant does not return a vehicle or a facility available to him by virtue of his official position within the prescribed time after the expiry of the official position without any reasonable ground, he shall be liable to a fine from one thousand to five thousand rupees depending on the degree of the offense and such vehicle or facility shall be taken back.
  - (3) Whoever, being a public servant, causes any type of loss to a governmental or public property with malafide intention having committed any act excluding the acts referred to in sub-Section (1) and (2), shall be liable to a punishment of imprisonment not exceeding two years or of a fine equal to the amount of the loss or both depending on the degree of the offence.
  - (4) In case any person other than a public servant, with malafide intention of making illegal gain to himself or to any other person, does not abide by the terms and conditions of an oath, undertaking, agreement, contract, license, permit, promissory note or dealership entered into with His Majesty, His

Majesty's Government or a public institution or carries out business or misuses the facilities or powers of governmental or such institution violating the Rules or Procedures determined by or terms and conditions accepted by His Majesty's Government or such institution in a manner prohibited by the prevailing law, he shall be liable to a punishment of imprisonment not exceeding two years and be fined according to the amount of loss and the amount of loss shall be confiscated.

**6. Punishment to Public Servants Preparing False Documents:**

Whoever, being a public servant under the duty of preparing documents, prepares false documents with malafide intention of causing loss to His Majesty, His Majesty's Government or Government or public institution, shall be liable to a punishment of imprisonment for a term from three months to one year, and a fine from ten thousand to fifty thousand rupees.

**7. Punishment for Translating False Documents:**

Whoever, either a public servant or any other person authorized or designated to translate documents, wrongly translates documents, translates documents incorporating therein false particulars or makes difference in the name, surname, date, facts or other particulars with the malafide intention of causing loss to His Majesty, His Majesty's Government, a Government or public institution; or with the intention of getting illegal benefit to himself or to any other person, shall be liable to a punishment of imprisonment for a term from three months to one year and of a fine from ten thousand to fifty thousand rupees, depending on the degree of offense committed.

**8. Punishment for Tempering Government Documents:**

Whoever, either a public servant or any other person, corrects, adds, or changes in documents belonging to a government or public institution without authority or in an illegal manner, shall be liable to a punishment of imprisonment for a term from three months to two years and a fine not exceeding fifty thousands rupees.

**9. Punishment for Causing Damage to Government or Public Documents:**

Whoever, being a public servant, conceals a document belonging to government or to a public institution or causes damage to, or destroys, such document, shall be liable to a punishment of imprisonment from six month to one year and shall be fined from ten thousand to fifty thousand rupees. In case any loss is incurred due to such concealment, damage or destruction, the loss shall also be recovered.

**10. Punishment for Disclosing Secrecy of Question Papers or Altering the Result of Examination:**

Save in cases where the authorized person discloses or causes to disclose question papers of an examination to be conducted by a government body or a



public institution before the prescribed time having given reasons of special circumstances, whoever, being a public servant, discloses or causes to disclose the secrecy of such question paper in any manner whatsoever, or alters or causes to alter the results of examinations with the intention of making illegal advantage to himself or any other person, shall be liable to a punishment of imprisonment from three months to one year and shall be fined from five thousand to ten thousand rupees.

**11. Punishment to Public Servants Engaging in Illegal Trade or Business:**

Whoever, being a public servant, engages in trade or business in his own name or in the name of other person or in partnership with others, takes part in auction or bidding, or becomes a partner in any firm or company or a cooperative organization while being prohibited by law, shall be liable a punishment of imprisonment for a term from three months to six months and a fine from ten thousand to fifty thousand rupees, and the property earned in such a manner shall be confiscated.

Provided that this section shall not be deemed to have hindered to subscribe shares of a public limited company called for public subscription.

**12. Punishment for Claiming False Designation:**

Whoever, either a public servant or any other person falsely claims that he holds any position, power, capacity or facility, or enjoys such position, power, capacity or facility of a public servant which he is not entitled to or displays any symbol, dress or mark relating to a position of a public servant or wears or displays any object resembling to such symbol, dress or mark with the intention of leading others to falsely believe that these are the official symbols, dresses or marks of a public servant, shall be liable to a punishment of imprisonment for a term from one year to two years and with a fine from fifty thousand to one hundred thousand rupees, depending on the degree of the offense committed.

**13. Punishment for Giving False Particulars:**

- (1) Whoever, with the intention of securing a position of a public servant, or of being continue in such a position, manner whatsoever, or alters or causes to alter the results of examinations with the intention of making illegal advantage to himself or any other person, shall be liable to a punishment of imprisonment from three months to one year and shall be fined from five thousand to ten thousand rupees.
- (2) Whoever, being a public servant under the duty of giving statement of his property under this Act or any other prevailing laws, gives false statement either having increased or having concealed the actual property belonging to or registered in his name or under his share entitlement or belonging to his joint family, shall be liable to a punishment of imprisonment for a term from one month to three months and the fine not exceeding ten thousand rupees. The property, which has been concealed in such a manner, shall also be confiscated.

#### **14. Punishment for Damaging Public**

Property: Whoever, being a public servant, misappropriates, causes loss to or abuses or causes others to do so, or destroys or uses for personal purposes, while performing his duties pertaining to his office, shall be liable to be punished pursuant to Section 3 and the property which has been misappropriated, damaged, misused or destroyed or caused others to do so, shall be recovered from him.

#### **15. Punishment for Exerting Illegal Pressures:**

Whoever, either a public servant or any other person, compels any public servant or any other person to commit any offence punishable under this Act by exercise of fear or threat of under, kidnapping, taking away of property, of causing adverse impact on prestige or by exerting any other type of illegal pressure, shall be liable to a punishment of imprisonment for a term from four to eight years and a fine from one hundred thousand to five hundred thousand rupees.

#### **16. Punishment for Giving False Report:**

- (1) Whoever, either a public servant or any other person authorized to carry out auditing in a government body or in a public institution, prepares auditing report with malafide intention having shown the facts not done or happened in the transaction or having concealed the facts done or happened, shall be liable to a punishment of imprisonment for a term from three months to one year and to a fine from ten thousand rupees to fifty thousand rupees depending on the degree of the offence committed.
- (2) Save as provided in sub-section (1), in case any public servant or any other person under the duty of submitting report having conducted a study or investigation on any subject in connection with functions of government body or public institution, prepares report with malafide intention having shown the facts actually not done or happened or having concealed the facts actually done or happened, such persons shall be liable to a punishment of imprisonment for a term from three months to one year and to the fine from ten thousand rupees to fifty thousand rupees depending on the degree of the offence committed.

#### **17. Property Deemed to be Acquired Illegally:**

- (1) In case the statement of property submitted in accordance with prevailing laws by a public servant deemed to have held a public office in accordance with prevailing laws seems to be incompatible or unnatural or in case he maintains an incompatible or unsuitable lifestyle or it is proved that he has given someone a donation, gift, grant, present or has lent money beyond his capacity, he shall prove the sources from which he has acquired such property and if he fails to do so, such property shall be deemed to have been acquired in an illegal manner.
- (2) In case it has been proved that a public servant has acquired property in an illegal manner as referred to in sub-section (1), he shall be liable to a punishment of imprisonment for a term not exceeding two years as per the

amount of the property acquired in such a manner, and a fine according to the amount of property and the illegal property acquired in such a manner shall also be confiscated.

#### **18. Punishment for Committing Attempts:**

Except otherwise provided for in this chapter, whoever attempts to commit an offense punishable under this Act shall be liable to half of the punishment to be imposed on the public servant or any other person committing such offences.

#### **19. Punishment to Accomplices:**

Except otherwise provided elsewhere in this Act, the accomplices to any offense punishable under this Act shall be liable to half of the punishment to be imposed on the public servant or any other person committing such offences.

Provided that the accomplice who has given cash or kind or made available any other type of benefit to the public servant or any other person committing an offence or who has taken such benefit shall be liable to the punishment as equal to the person committing the offence.

#### **20. Principal to be Deemed to have Committed the Offence in case a Corporate Body Commits Offence:**

In case any firm, company or corporate body commits any act that is deemed to be an offence under this chapter, the partners at the time of commission of the act in case of a firm and the person acting as the principal official in case of a company or a corporate body shall be deemed to have committed the offence.

Provided that in case it is proved that such act has been committed prior to the appointment of the person acting as the principal official, the person who has committed the act shall be deemed to have committed the offence.

**Explanation:** For the purpose of this Section, the "the person acting as the principal official" means the Chairman, Board Member, General Manager, Managing Director or the Official of a company or corporate body working in the same capacity.

#### **21. Additional Punishment:**

In case the offences under this chapter have been committed by an office bearer of a constitutional organ or body to be nominated or appointed by His Majesty, officer belonging to the special class of His Majesty's Government or officers of equivalent rank; Head, General Manager or officer of a public institution of equivalent rank, such person shall be liable to the punishment of imprisonment for a term of three years in addition to the punishment prescribed for such offence.

### **Chapter - 3**

#### **Investigations, Inquiries and Filing of Cases of Corruption**

#### **22. Investigations and Inquiries:**

- (1) In case the investigating authority comes to know, through any information, source or a complaint lodged by any person, that any person has committed or is going to commit corruption, it shall initiate necessary investigations, inquiries and other actions in this regard.
- (2) Notwithstanding anything contained in sub-Section (1), in case the investigating authority has received an information from any source that any person has committed or is going to commit corruption, such authority may take immediate actions including raid, seizure of documents or goods and materials or arrest of person.

#### **23. Preliminary Inquiry:**

The investigating authority shall, upon having received a complaint or an information that one has committed or is going to commit an offence under this Act, initiate preliminary inquiry confidentially as may be necessary.

#### **24. Seeking Explanation:**

While conducting preliminary inquiry pursuant to Section 26, in case the investigating authority is of the view that the information received is based on facts, it may, having provided particulars relating thereto, seek for comment or explanation from the concerned body or person as may be necessary.

#### **25. Powers of Investigating Authority:**

- (1) The investigating authority may, while conducting investigations and inquiries into offenses of corruption under this Chapter, exercise the following powers:-
  - (a) To order a government body, public institution, public servant or any other person to send or to submit within a certain time any relevant document, documentary evidences or any other things before it;
  - (b) To conduct inquiry with, or to record the statement of, the public servant or any other person accused of corruption or the person to whom the investigating authority deems to having information on the relevant facts;
  - (c) The investigating authority may, upon having taken explanation from or upon completing inquiry or recording the statement of a public servant or any other person accused of corruption, release such person having executed a bond from him to appear as and when required, or having required him to appear on the prescribed date or, in case there is a reasonable cause to believe that such public servant or person may disappear or there has been a loss of an amount, the investigating authority may ask from him to submit a deposit or guarantee and require him to appear in the prescribed date or in case no deposit or guarantee is produced, keep him in custody.

- (2) In case the investigating authority has sent a letter having fixed a time limit to the concerned body, public servant or other person requiring to submit any document or any other material or to provide information on any matter or requiring a public servant or any other person to appear before it, it shall be done accordingly and in case not done, it shall be as follows:-
  - (a) In case the concerned government body or public institution does not submit such document or material or does not provide information within the time prescribed, the investigating authority may send a letter to the concerned government body or a public institution to take departmental action against the chief officer of the concerned government body or a public institution and in case such a letter is received, the concerned government body or a public institution shall take actions immediately.
  - (b) In case the concerned public servant or any other person does not submit the document or material or does not provide information or does not appear within the prescribed period, the investigating authority may impose a fine not exceeding one thousand rupees on such person.
  - (c) In case any government body, public institution, public servant or any other person does not do as required to do in writing by the investigating authority even after the departmental action or imposition of a fine pursuant to clauses (a) or (b), the investigating authority may issue arrest warrant to get the chief officer of such body or institute or such public servant or other person appeared and get such document or material produced or acquired necessary information from him. In case the chief officer of a body or institution, public servant or any other person so arrested does not submit such document or material or does not give information relating thereto, the investigating authority may order for keeping him in custody for a period of up to seven days.
- (3) After the investigating authority's order for departmental action or payment of the fine pursuant to sub-section (2), in case the chief officer of the concerned body or the concerned public servant or any other person submits an application along with reasonable causes for being unable to do as required, and if the causes are satisfactory, such order or order of fine may be cancelled.
- (4) The investigating authority may conduct or cause to conduct a search at any place and seize any necessary materials or document or photostat copy thereof while conducting the search. A receipt of the material or document so seized shall be given to the concerned person.

## **26. Appointment or Designation of Investigation Officer:**

The investigation authority may, in order to conduct investigation and inquiries into the offenses punishable under this Act, appoint or designate any officer under it or any government officer or any officer of a public institution as the investigation officer.

Provided that, while appointing or designating any government officer, or officer of a public institution as the investigating officer, consultation shall be held with His Majesty's Government or with the Chief officer of the concerned body, depending on circumstances.

## **27. Functions, Duties and Powers of the Investigation Officer:**

- (1) Functions, duties and powers of the investigation officer shall be as follows:-
  - (a) To arrest the offender immediately and to take necessary actions;
  - (b) To conduct or cause to conduct search at any office, house, building, godown, vehicle or any other places while conducting investigation and inquiries or while collecting evidences into offenses punishable under this Act;
  - (c) To exercise other powers conferred on the investigation officer.
- (2) While conducting investigation and inquiries into offenses punishable under this Act, the investigation officer shall have all such powers, duties, facilities and obligation as the police is having under the prevailing laws in respect to recording statements of the accused persons, and preparing reports of public inquiries.
- (3) While carrying out functions under sub-Section (2), the investigation officer may exercise the powers equivalent to the powers of a court to require the accused to appear on prescribed date or to release him on deposit or on guarantee or detain him in case he is unable to furnish such deposit or guarantee as may be necessary.

#### **28. Keeping Accused in Custody:**

- (1) The investigation officer may, in case there is sufficient ground that any person having been taken action for an offence under this Act may lose or destroy any evidence or cause hindrance in the process of investigation or inquiries or cause adverse impact thereon, keep him in custody having given him an order of detention in accordance with the prevailing laws.
- (2) In case the investigation or inquiries with regard to a person is not completed within twenty four hours and it appears that the investigation needs to be continued having him detained, the investigation officer shall detain him after having him presented before the authority hearing the case and only after getting approval therefor from the authority hearing the case. While seeking for approval with the authority hearing the case, the charges against the person detained, its bases, the reason for continuing investigation having him detained and if his statement has been recorded, the contents of such statement shall be clearly stated.
- (3) The person who has been presented before the authority hearing the case for approval of detention pursuant to sub-section (2) may submit an application while being presented there requesting for his physical checkup.
- (4) In case a permission for detention is sought pursuant to sub-section (2), the authority hearing the case may, having considered whether or not the investigation has been carried out in a satisfactory manner and if it is found that the investigation is being carried out satisfactorily, give approval for detention for a maximum period of six months not exceeding thirty days at once or time and again.
- (5) While seeking for a permission for extension of time duration of detention pursuant to sub-section (4), the person under the custody may, if he so wants, submit an application to the authority hearing the case mentioning the reason or basis for his not being in detention any longer.

### **29. Cooperation of Other Bodies May be Required:**

- (1) The investigating authority may, in course of investigations and inquiries into offenses punishable under this Act, ask any government body or public institution or any person for cooperation as may be necessary and it shall be the duty of such body, institution or person to cooperate as and when required.
- (2) The investigating authority may, in course of conducting investigation and inquiries into offenses of corruption under this Act, take the help of police forces as well. While engaging police personnel in the work, the order issued by the investigating authority shall, with regard to the police, be equivalent to the order of the concerned Inspector General of Police.
- (3) The investigation officer may ask the police officer or police personnel subordinate to him for help. It shall be the duty of the concerned police officer or personnel to assist him in case the investigation officer requires such assistance.
- (4) In case the investigating authority deems it fit that because of the very nature of the offence under investigation and inquiry, it is necessary to consult an expert engaged in any agency to be involved in such investigation and inquiry; the investigating authority may ask the concerned body to make such expert available on a temporary assignment for a specific period of time; and in case such a demand is made, such body shall, notwithstanding anything contained in the prevailing laws, make available the concerned expert.

### **30. Automatic Suspension:**

In case any public servant is detained pursuant to clause (c) of sub-section (1) of Section 28, sub-section (3) of Section 30 and Section 31, he shall ipso facto be suspended until the period of detention and if a case is filed against him pursuant to Section 36, he shall ipso facto be suspended unless and until the proceedings of the case is over.

### **31. Accepting Services:**

- (1) The investigating authority may, while conducting investigation, inquiries and taking any other actions relating thereto, require services of experts of the concerned subject or of specialized agencies.
- (2) The investigating authority shall, in order to get the services referred to in sub-section (1), appoint the concerned expert or specialized agency and while appointing as such, the investigating authority shall have to enter into an agreement having stated the functions to be carried out by such expert or specialized agency, the powers that may be exercised, the terms and conditions to be fulfilled, the procedures and remuneration and other benefits which such expert or specialized agency is entitled to.
- (3) In case the investigating authority is in need of the service of employees of His Majesty's Government or of a specialized agency, notwithstanding anything contained in the prevailing laws, such employees shall be deputed for a period required by the investigating authority.

**32. Keeping in Postponement:**

While inquiring and investigating under this Act, in case it appears that the alleged offense could not be proved on the basis of the collected evidences, the investigating authority may keep the complaint in postponement having published an order slip along with reasons thereof and in case of decision of postponement, the information thereof shall be given to the accused person and the complainant.

Provided that nothing in this section shall be deemed to have prevented to investigate and re-inquire on such complaint if any new evidence is found later on.

**33. Filing of cases:**

In connection with an accusation of commission of corruption, in case there is a reasonable cause to believe that the accused has committed the said offence, the investigating authority shall file a case before the authority having powers to hear the case under the prevailing laws.



## Chapter - 4

### Provisions Relating to Prevention of Corruption

#### 34. National Vigilance Center:

- (1) His Majesty's Government may establish a National Vigilance Center under the direct control and supervision of the Prime Minister in order to effectively control corruption-oriented acts and to promote people's awareness against corruption.
- (2) His Majesty's Government may designate any special class officer of the civil service as the chief of the center referred to in sub-Section (1), and there shall be other officials of the services of His Majesty's Government in the center as may be necessary.

#### 35. Functions, Duties and Powers of the National Vigilance Center:

The National Vigilance Center established under sub-Section (1) of Section 37 shall have following functions, duties and powers:-

- (a) To collect information on whether or not the functions to be carried out by the Ministries, Departments, offices of His Majesty's Government and public institution are being regularly carried out;
- (b) To alert Ministries, Departments, Offices of His Majesty's Government, or public institution in case the functions to be carried out by them are not found to have been carried out;
- (c) To monitor the statement of property and income given by persons assuming the office of public responsibility as per the prevailing laws;
- (d) To make necessary provision for regular surveillance, surprise check and investigation in corruption prone places or works;
- (e) To make necessary recommendations to His Majesty's Government with regard to the policies, strategies and reformation on laws to be adopted for corruption control;
- (f) To make provision of a complaint box in the Ministries of His Majesty's Government, Departments, Offices or public institution;
- (g) To provide any suggestion or direction to the concerned bodies with the objective of preventing corruption as may be necessary;
- (h) To collect necessary description or information concerning corruption from the body or authority working for investigation into offenses of corruption and to maintain them updated;
- (i) To forward any information concerning corruption received to it to the concerned bodies;
- (j) To carry out or cause to carry out other incidental functions with regard to corruption control;
- (k) To carry out or cause to carry out other functions prescribed by His Majesty's Government.

**Chapter - 5**  
**Miscellaneous**

**36. Statement May be Taken or Transaction or Account May be Frozen:**

(1) Notwithstanding anything contained in the existing law, if it appears from any source during the course of investigation into offences of corruption that there has been financial transaction or operation of an account in the name of any person with any bank or financial institution within the country or in any foreign country, the investigating authority may order to freeze such transaction or account. The concerned bank or financial institute shall freeze such transaction or account in accordance with the order of the investigating authority.

Provided that in case such transaction or account to be frozen is with a bank or financial institution in a foreign country, the investigation authority may cause to freeze the operation of transaction or account through the diplomatic channel.

- (2) The investigating authority may impose a fine of fifty thousand rupees in maximum to the chief of the concerned bank or financial institution located in Nepal not freezing transactions or accounts pursuant to sub-Section (1).
- (3) The investigation authority may, if it deems fit in the course of investigation, according to the need, ask for the statement of property belonging to persons holding an office of public responsibility or freeze such property.

**37. Banning to Issue or Freezing Passport:**

Notwithstanding anything contained in the prevailing laws, the investigating authority may, on the basis of the gravity of the offence, the condition, circumstances in which the accused committed the offence, degree of the offence and the punishment in case of conviction of the offence, issue an order to the concerned bodies for not issuing passport to any accused or for withholding it if it has been already issued.

**38. Restriction to Leave Places:**

In case an action has been taken against any person under this Act, the investigating authority may, on the basis of the gravity of the offence, the condition and circumstances in which the accused committed the offence, the degree of the offence and the punishment in case of conviction of the offence, issue an order to any accused not to leave any place or not to go any particular place without the approval of the investigating authority.

**39. Provision Relating to Service of Summons:**

- (1) Notwithstanding anything contained in the existing law, while servicing summon in the name a foreigner in any offence under this Act, the summon may be served to the office or representative of such person within the Kingdom of Nepal, if any, and service of summon in that manner shall be deemed to have duly made.

- (2) In case there is no office or representative referred to in sub-Section (1), the summon shall be served to the main place of transactions, or to the address of such person where he resides permanently, or to the address of correspondence given by such person in connection with his business transaction through the means of telex, fax or any other means of telecommunication in written form or through registered post, and the summon served in any of such manners shall be deemed to have been duly made.
- (3) Notwithstanding anything contained in sub-Sections (1) or (2), this Section shall not be deemed to have hindered the service of summons according to the provisions of a treaty in case there is a separate provision for service of summons in the name of persons living in a foreign country in any treaty to which His Majesty's Government or the Kingdom of Nepal is a party.

#### **40. Publication of Notice:**

Notwithstanding anything contained in the prevailing laws, in case it has been reported that no notice could be served while sending a notice or servicing a summon in the name of any person in accordance with this Act or other prevailing laws for not finding the address of such person or for any other reasons, a public notice shall be published least for twice in a national level newspaper (in case of a foreigner in a English Daily) having given him/her a time limit of 30 days and having given short description as to whether the investigation is underway or the case is already filed at the authority hearing the case; and in case a notice has been published in such a way, the notice shall be or summon deemed to have been duly delivered or served to such person notwithstanding anything contained in the prevailing laws.

#### **41. Obligations of government bodies and public institutions:**

The chief of a government body and public institution shall, in case any information has been received that corruption has been committed at his office or any other office under him, immediately take the related documents or file under his custody and keep it safe, and upon having inquired with the persons and officials related to such subject and upon having known the reality, if there appears any reason of commission of corruption, he shall forward such documents to the concerned body for investigation and inquiry.

#### **42. Case May be Filed against Retired Person:**

Nothing in this Act shall be deemed to have prevented filling of a case against a retired public servant in connection with commission of corruption having embezzled or causing loss to government or public property or the property belonging to an organization owned by His Majesty's Government even after such public servant is retired from the service.

**43. No Hindrance to Initiate Proceedings and Finalize Case:**

Notwithstanding anything contained in the prevailing laws, there shall be no hindrance to initiate proceedings and finalize a case even if the accused or defendant dies before or after a case under this Act is filed.

**44. Confiscation of Property:**

In case it is proved that any person has earned property having committed any act which is deemed to have committed corruption under this Act or other prevailing laws and has kept such property and the property accrued therefrom in his own name or in the name of anybody else such property shall be confiscated.

Provided that, in case the ownership of such property is transferred to any person and in case the price of such a property is quoted, the transaction involving such amount shall be treated as a simple loan deed.

**45. Order to Freeze Property of Foreigner:**

- (1) In case any foreigner who does not appear before the investigating authority in pursuance of a notice sent by the investigating authority or summon served pursuant to section 42 is having any property, entitlement, interest or concern within the Kingdom of Nepal, the investigating authority may order to maintain a status quo with regard to them or not to allow to take such property, entitlement, interest or concern outside of King of Nepal unless and until such a person appears before the investigating authority, and it shall be the duty of all concerned to abide by such an order.
- (2) The investigating authority may impose a fine of one thousand rupees in maximum to the person who does not abide by the order made pursuant to sub- Section (1) and in case any type of loss or damage is caused to His Majesty's Government or a public institution because of non observance of such an order, such loss shall also be recovered from him.

**46. Punishment for Filing False Complaint:**

In case it is found that any person has filed a false complaint against any public servant or person without having any reasonable ground for filing a complaint and with the intention of causing any type of loss, damage or harassment, the investigating authority may impose a fine not exceeding five thousand rupees on him.

**47. Provision Relating to Statement of Property:**

- (1) Whoever joins a public office shall, within sixty days from the date of joining the public office, and whoever is engaged in a public office on the date of commencement of this section shall, within sixty days from the date of commencement of this Act, and thereafter within sixty days from the date of completion of each fiscal year, submit the up dated statement of property in his name or in the name of his family members along with the sources or

evidence thereof to the body or authority prescribed by His Majesty's Government having published a notification in the Nepal Gazette.

- (2) In case the person assuming a public office who is unable to submit the statement of property within the time limit referred to in sub-section (1) makes a request for extension of the time limit having stated therein the reasons for his not being able to submit such statement, the concerned body or authority may extend the time limit for a period of thirty days in maximum.
- (3) The person assuming a public office who does not submit the statement of property within the time limit extended pursuant to sub-section (2) shall be liable to a fine of five thousand rupees and the concerned body or official may investigate having suspected that there is illegal property in his and his family member's names.
- (4) The statement of property submitted under this section shall be confidential. Provided that if statement of property is required in connection with investigation and inquiries under this Act, such statement may be made available to the concerned authority.

#### **48. Punishment to Persons Causing Hindrance and Obstruction:**

The authority hearing the case may, on the basis of the report of investigating authority, impose a punishment of imprisonment of a term of six months in maximum or a fine up to five thousand rupees in maximum or both to a person who causes hindrance or obstruction in actions relating to investigation and inquiries under this Act.

#### **49. Confidentiality of Information:**

- (1) No notice, information or evidences received to, collected by, the investigating authority in connection with investigation and inquiry in an offence of corruption shall be publicly notified before filing of case.
- (2) Notwithstanding anything contained in sub-section (1), the investigating authority may publicize particulars of inquiry and investigation of any matter of public importance which it deems fit as may be necessary.

#### **50. Departmental Action to Employees Involved in Inquiries and Investigation:**

In connection with execution of this Act, in case it is proved that the investigation officer or other employee engaged in investigation and inquiries has committed any act knowingly with the intention of causing harassment to any person, departmental action shall be taken against such employees.

#### **51. To be subjected to Imprisonment:**

Notwithstanding anything contained in the prevailing laws, the person having been punished by a court with a term of imprisonment shall be subjected only to imprisonment.

**52. Remission in the Claim of Punishment:**

The investigating authority may give complete or partial remission in the claim of punishment with regard to the accused who assists in the process of investigation carried out under this Act having himself presented as a witness on its behalf.

Provided that in case other evidences do not prove his assistance or in case he becomes hostile later on, the case may be filed against him again notwithstanding anything contained in this Act or in other prevailing laws.

**53. No Action to be Taken:**

Notwithstanding anything contained in the prevailing laws, no action shall be taken against a public servant for disclosing confidentiality under the law relating to the terms and condition of his service who gives information for taking legal action in case of corruption committed or going to be committed or for preventing to be committed.

**54. Delegation of Power:**

- (1) The investigating authority may, by publication of a notification in the Nepal Gazette, delegate its all or any power conferred on it by this Act to any of the His Majesty's Government's gazetted level officers.
- (2) While delegating power pursuant to sub-Section (1), the territorial jurisdiction for the powers to be exercised by such officer shall be as prescribed in such notification.
- (3) The officer exercising the power conferred on him under sub-Section (1) shall, for that purpose, be responsible to the investigating authority.

**55. Provision Relating to Rewards:**

The investigating authority may give an appropriate reward to the person assisting it in connection with inquires, investigation or collection of evidences in the offences punishable under this Act.

**56. Special Provisions Relating to Cases of Corruption:**

Notwithstanding anything contained in the prevailing laws, it shall be as follows in the following matters with regard to the cases filed under this Act:-

- (a) In case any public servant or any other person has, while committing or in connection with committing an act that is deemed to be an offence under other prevailing laws, there shall be no hindrance to file separate case in accordance with other prevailing laws.
- (b) In case there has been adverse impact caused on the rights, property or interests of any person while committing or in connection with committing an act that is deemed to be an offence under this Act by a public servant or any other person, there shall be no hindrance for such person to file a separate case.

- (c) In cases where a case has been filed against a person for an offence under this Act and it appears later on, after having examined the evidences, that the case must be filed against other person as well, there shall be no hindrance to file a separate charge-sheet against such person.
- (d) Nothing shall be deemed to prevent filling of a separate case against any public servant or person for offenses to be liable under this Act, even if the separate case has been already filed against such person in order to recover injury and damages made by such person to His Majesty's Government or public institution illegally;
- (e) In case where a case has been filed under this Act against any public servant or other person, there shall be no hindrance to file a case under this Act or the case filed shall not be dismissed merely for the reason that there is a legal provision of recovery of the loss caused to His Majesty's Government or a public institution from such public servant or other person.
- (f) No cases filed under this Act shall be withdrawn or compromised.

**57. Informer and his details to be kept confidential:**

The name or address of an informer providing information that an offence under this Act has been committed or going to be committed shall be kept confidential in case he so requests.

**58. Unclaimed goods to be entitled to His Majesty's Government:**

- (1) In case no owner of the goods related to the offence punishable under this Act is traced, the investigating authority shall publish a public notice requiring the claimant, if any, of the goods so seized to claim the goods, within a time limit of 35 days.
- (2) In case no claim is made within the time limit referred to in sub-section (1) or even if the claim is made but in absence of proof the claim is not tenable, such goods shall be the property of His Majesty's Government having treated such goods as unclaimed goods.

**59. Goods may be sold:**

- (1) In case it appears that any goods seized in connection with an offence punishable under this Act would be damaged or broken for storing for a long time due to rust or for any other reason or would be rotten or damaged or price of such goods would go down for being old or would be useless or it could not be stored or maintained for lack of space, such goods may be sold having completed the process thereof in accordance with the prevailing laws.
- (2) The amount received from the sale pursuant to sub-section (1) shall be deposited to security deposit accounts. In case it has been decided that such goods has to be given to the concerned owner, he shall be entitled only to the amount received from the sale.

**60. No Hindrance to Exercise Powers:**

Nothing in this Act shall be deemed to have hindered any authority or officer to exercise powers under other prevailing laws with regard to investigation, inquires, other actions and filing or cases relating to corruption.

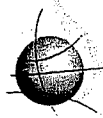
**61. Power to Frame Rules:**

His Majesty's Government may frame necessary Rules for implementing the objectives of this Act.

**62. Amendment, Repeal and Saving:**

- (1) The following Sections of the Revenue (Investigation and Control) Act, 2052 have been repealed,-
  - (a) Clause (c) of Section 2;
  - (b) Sub-Section (2) of Section 6;
  - (c) The terms "or employee" appearing in sub-Section (4) of Section 9;
  - (d) Sub-Section (2) of Section 18;
  - (e) Sub-Section (2) of Section 21;
  - (f) Sub-Section (2) of Section 23;
  - (g) The terms "or corruption" frequently used in place to place;
  - (h) Section 5, chapter 4 and Section 25.
- (2) The Prevention of Corruption Act, 2017 has been repealed.
- (3) All actions taken and proceedings initiated under the Prevention of Corruption Act, 2017 shall be deemed to have been taken or initiated under this Act.





# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*"dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"*

October 10, 2003

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**Vice-President**

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Prof. Vilmas VADAPALAS, Lithuania  
Prof. Theo VAN BOVEN, Netherlands  
Dr. José ZALAQUETT, Chile

His Majesty King Gyanendra Bir Bikram Shah Dev  
Narayanhiy Royal Palace,  
Kathmandu,  
Nepal

By fax: 00 977 1 4227 295

Your Majesty,

The International Commission of Jurists (ICJ) is a non-governmental organisation devoted to promoting the understanding and observance of the rule of law and legal protection of human rights throughout the world. As you may recall, the ICJ undertook a mission to Nepal from 27 January to 3 February 2003 and issued a report on its findings in June 2003.

The ICJ would like to call to your attention grave concerns it has regarding the deteriorating situation in the rule of law and human rights in your country. We have been monitoring in particular the developments regarding the extrajudicial killing of 19 persons in Doromba, Ramechhap District on 17 August. As you are aware, the National Human Rights Commission (NHRC) established an independent inquiry into the incident, empanelling a 5-person team coordinated by former Supreme Court Justice Krishna Jung Rayamajhi. The Investigation Committee visited Ramechhap in late August and reported its findings to the Chairman of the NHRC on 5 September. The report concluded that the 19 victims, who were unarmed, had been detained by soldiers from the Royal Nepalese Army (RNA) dressed in civilian clothes for some three hours before being summarily executed. The conclusions contradict the initial account given by the RNA asserting that the victims were Maoist rebels killed in an armed exchange.

Such executions by the above mentioned military personnel constitute a clear violation of international humanitarian law, including Common article 3 to the Geneva Conventions which embodies the minimum standards in the conduct of armed conflict. They also violate the non-derogable right to life as protected by article 6 of the International Covenant on Civil and Political Rights, to which Nepal is a party.

The RNA has since reopened an inquiry into the case. Given the initial response by the RNA and the fact that it has systematically failed adequately to investigate or punish soldiers in respect of numerous allegations of human rights abuses which have occurred since it became engaged in the civil armed conflict, it is difficult to see how the families of the victims and the Nepali citizenry can have confidence in this investigation. Moreover, it is a well-established principle that serious

human rights crimes must be investigated and prosecuted by civilian, not military, authorities. Yet there has been no police investigation or judicial involvement either in the Ramechhap killings nor in numerous other cases of serious human rights violations alleged to have been committed by the RNA.

The ICJ is also concerned at reports of various statements made by high-level RNA officials aimed at discrediting the work of the National Human Rights Commission. For example, on 25 August, the Himalayan Times has quoted Army Advocate General Brigadier BA Kumar Sharma as saying that "the RNA is surprised how biased the NHRC...have been while monitoring human rights violations...how can I teach my soldiers that the NHRC is an independent human rights watchdog body?" On 3 October, Judge Krishna Jung Rayamajhi accused the army of seriously distorting the findings of the NHRC Committee. Such attacks on the only national institution available to monitor the human rights situation in Nepal could undermine the proposed Human Rights Accord and so impede prospects for resumption of the peace process. In allowing them, the Government of Nepal is in contravention of the Principles relating to the status of national institutions embodied in the General Assembly resolution 48/134 that protect the independence of national institutions.

The ICJ in its mission report had concluded that there was near total impunity for officials of the Army who engage in serious human rights violations including torture, unlawful killings and war crimes. We recommended that the Government, including the Minister of Law and Justice, the Attorney General, prosecutors and police should investigate and prosecute serious violations of human rights, including extrajudicial killings and torture. We also found that the Army was holding a substantial number of persons in prolonged incommunicado detention beyond judicial control and without lawful authority to do so. We recommended that all person detained should be handed over to the civilian authorities and charged with a cognisable crime or released. Since the release of the report, no action has been taken in respect of these and other recommendations.

The ICJ believes that impunity is a root cause of human rights violations in Nepal and that respect for fundamental human rights is an integral element of a solution for ending the armed conflict in the country. To restore the rule of law, we urge that your Excellency take measures to ensure that the RNA is brought under effective Governmental, i.e. civilian, control. The ICJ emphasizes that under the duty to guarantee, the State has the obligation to prevent human rights violations and, if such violations occur, to investigate them, judge and punish the perpetrators and provide full reparation to the victims. With respect to the killings at Ramechhap, the Minister of Law and Attorney General should use the NHRC findings as basis for investigating and prosecuting the alleged army personnel responsible, including those bearing command responsibility. The alleged responsible military personnel should be tried in the ordinary courts and not military tribunals, as recommended by the Human Rights Committee and the Committee against Torture. Finally, with or without a peace settlement, we believe that the proposed Human Rights Accord should be implemented. In particular, it is essential that systematic human rights monitoring be instituted by the National Human Rights Commission, with the assistance of the Office of the United Nations High Commissioner for Human Rights. Such monitoring would serve not only to stem the patter of impunity presently enjoyed by human rights violators, but also play an elemental role in the prevention of future human rights violations.

Please accept, your Majesty, the assurances of my highest consideration.

Yours sincerely,



Ernst Lueber  
Acting Secretary-General

Cc.:  
Mr. Surya Bahadur Thapa  
Prime Minister  
Prime Minister's Office  
Singha Durbar,  
Kathmandu, Nepal

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Cc.:  
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Permanent Mission of the Kingdom of Nepal  
Rue de la Servette 81  
1201 Geneva

**Fax: 022 733 27 22**

Cc.:  
Brig. Gen. BA Kumar Sharma  
Judge Advocate General  
Royal Nepalese Army

**Fax: 00 977 1 4242 168**

Cc.:  
Mr. Nayan Bahadur Khatri  
Chairman  
National Human Rights Commission  
Harihar Bhavan  
Pulchowk, Lalitpur

**Fax: 977 1 5454 79 73**

# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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## COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

14 October 2003

IMMEDIATE

### NEPAL: PROSECUTE ARMY KILLINGS AND END CLIMATE OF IMPUNITY

The ICJ has urged the Government of Nepal to prosecute the Royal Nepal Army personnel responsible for the summary killings on 17 August of at least 19 unarmed persons in Ramechhap District.

Army responsibility for the killings was confirmed by an independent inquiry convened by the Nepal's National Human Rights Commission (NHRC). The inquiry team was headed by former Supreme Court Justice Krishna Jung Rayamajhi.

In a letter addressed to King Gyanendra, the ICJ expressed concern that there has been no police investigation or judicial involvement either in the killings or in numerous other cases of serious human rights abuses allegedly committed in recent years by the RNA. The ICJ reminded the King that summary executions by military personnel violate the right to life and are prohibited under international human rights and humanitarian law.

The ICJ also denounced attacks made against the NHRC by senior officials of the RNA, including its Advocate General.

The RNA initially claimed that the victims died in an armed confrontation, but following the report of the independent inquiry it has decided to open an internal investigation. The RNA has consistently failed to investigate or punish army personnel accused of human rights abuses, which have been increasing alarmingly. Given the RNA's record, it is unlikely that the families of the victims and the Nepali people will have confidence in the present investigation. Moreover, it is a well-established principle that serious human rights crimes must be investigated and prosecuted by civilian, not military, authorities.

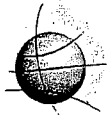
The past several days have been the deadliest since the recent collapse of the cease-fire between the Government and Maoist rebels, with more than 90 persons reportedly killed.

"Peace cannot be achieved within a climate of systematic impunity for human rights violators", said Ian Seiderman, ICJ Legal Adviser. "Protection of human rights is an integral element to any solution for ending the armed conflict in the country."

The ICJ urged the King to restore the rule of law by taking measures to ensure that the RNA is brought under effective civilian control. It also called on the Government to investigate and punish serious human rights violations and provide reparation to the victims.

The ICJ requested the Government to implement an NHRC-proposed Human Rights Accord and to mandate systematic human rights monitoring by the NHRC with the assistance of the Office of the United Nations High Commissioner for Human Rights.

For further information, please contact Ian Seiderman (+4122-979-3823) or Hassiba Hadj Sahraoui (+4122-979-3817).



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The ICJ undertook a fact-finding mission to Nepal from 27 January to 3 February 2003 and issued a report on its findings in June 2003. The ICJ concluded that there was near total impunity for officials of the Army who engaged in serious human rights violations including torture, unlawful killings and war crimes. The ICJ recommended that the Government, including the Minister of Law and Justice, the Attorney General, prosecutors and police should investigate and prosecute serious violations of human rights, including extrajudicial killings and torture. It also found that the Army was holding a substantial number of persons in prolonged incommunicado detention beyond judicial control and without lawful authority to do so. It recommended that all persons detained should be handed over to the civilian authorities and charged with cognisable crime or released. Since the release of the report, no action has been taken in respect of these and other recommendations.

# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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## COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

30 October 2003

IMMEDIATE

### **Nepal: Arrest and Disappearance of Lawyer**

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) today condemned the arrest and disappearance of Nepalese lawyer, Shyam Kumar Shrestha, and called for his immediate release.

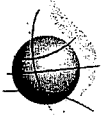
Mr. Shrestha, a member of the Nepal Bar Association, was arrested by security forces at 9:00 pm on 23 October at his home in Bagbazar, Kathmandu. The security forces stated that they were taking Mr. Shrestha to Maharajgunji in Kathmandu for questioning. They then took him away in a taxi without giving any further reasons for his arrest. Calls from the Nepal Bar Association to the Home Ministry and the human rights investigation bodies within the army and the police have not been answered. To date, the reasons for Mr. Shrestha's abduction remain unknown.

"The arrest and enforced disappearance of Mr. Shrestha constitutes a grave violation of his right to liberty and security", said Linda Besharaty-Movaed, Legal Advisor of the ICJ/CIJL. "He must be immediately released and if any charges are brought against him, they must be in strict conformity with Nepalese law and international human rights standards."

The ICJ/CIJL conducted a fact-finding mission to Nepal in January 2003. It has denounced the army killings and the increase in the number of disappearances by the security forces and abductions by the Maoists since fighting between the two sides resumed in August.

*For further information, please contact: Linda Besharaty-Movaed at 41 22 979 38 09.*

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# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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## COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

12 November 2003

IMMEDIATE

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### **Nepal: Second Arrest and Disappearance of Lawyer in Two Weeks**

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) today condemned the arrest and disappearance of Nepalese lawyer Gopi Krishna Thapaliya, and called for his immediate release.

Mr. Thapaliya was arrested by security forces at 6:30 am on 4 November at his home in Koteshwar, Kathmandu. The security personnel, who were in plain clothes, refused to let the lawyer's family know where they were taking him. The whereabouts of Mr. Thapaliya, as well as the charges against him, remain unknown. All attempts by the lawyer's family to locate him, including contacting the National Human Rights Commission and the International Committee of the Red Cross, have failed.

The apparent reason for Mr. Thapaliya's arrest is his membership in the Rastriya Janamorcha Nepal (People's Front of Nepal) political party.

"The human rights situation in Nepal is extremely worrying", said Linda Besharaty-Movaed, ICJ/CIJL Legal Advisor: "Mr. Thapaliya's arrest and enforced disappearance adds to the list of lawyers abducted by the security forces".

Mr. Thapaliya's disappearance is the second disappearance of a lawyer in the last two weeks. Shyam Kumar Shrestha, a member of the Nepal Bar Association, was arrested by security forces on 23 October at his home in Bagbazar, Kathmandu. The security forces stated that they were taking Mr. Shrestha for questioning. His whereabouts remain unknown.

In July 2003, the ICJ/CIJL released the report of its fact-finding mission which had taken place in January 2003. The report denounced the army killings and the increase in the number of disappearances by the security forces and abductions by the Maoists since fighting between the two sides resumed in August.

*For further information, please contact: Linda Besharaty-Movaed at 41 22 979 38 09. End.*

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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## COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

13 November 2003

IMMEDIATE

### NEPAL SHOULD ABANDON PLANS FOR CIVILIAN MILITIAS

Plans announced by the Government to enlist civilians to perform security tasks in Nepal's civil war could enormously aggravate an already dire human rights situation and place the lives of rural Nepalis in grave jeopardy.

In a major policy statement addressing "future goals, strategy and plan of action", Prime Minister Surya Bahadur Thapa announced on 4 November that the Government would be instituting "Rural Volunteer Security Group and Peace Committees" for the purpose of "promoting the role of the general citizens in maintaining peace and security."

"Civilian militias have had catastrophic human rights consequences wherever they have been employed", said ICJ Legal Adviser Ian Seiderman. "Nepal should not repeat the mistakes experienced in such countries as Guatemala and Algeria."

The ICJ considers that non-professional security forces will function beyond accountability and could lead to uncontrolled vigilante activity. Moreover, while nominally voluntary, the militias may become de facto obligatory because those who decline to join may be viewed with suspicion and become the targets of persecution.

The ICJ is also concerned that a plan announced in the statement to establish a "human rights promotion centre" under the direct supervision of the Prime Minister will undermine the independent National Human Rights Commission (NHRC). Government controlled human rights bodies, such as the non-functional "human rights cells" instituted in the armed forces and police are clearly inappropriate to undertake national human rights work.

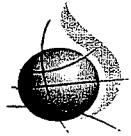
Since the collapse of the cease-fire in August, there has been a renewed waive of extrajudicial killings, disappearances and arbitrary arrests, particularly by the armed forces. The ICJ has repeatedly stressed the urgent need for human rights monitoring in conjunction with UN assistance to address the human rights crisis. The NHCR has proposed a human rights accord, which would provide the basis for such monitoring. The key elements of the accord should be implemented with or without a formal peace settlement.

For further information, please contact: Ian Seiderman at 41-22-979-3823



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INTERNATIONAL  
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COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

24 November 2003

IMMEDIATE

**NGOS AND GOVERNMENTS SAY HUMAN RIGHTS MONITORING URGENTLY NEEDED IN NEPAL**

Seven international human rights organisations have strongly endorsed the call by the Nepal's National Human Rights Commission (NHRC) and eight Governmental donor agencies and Embassies in Kathmandu for international monitoring of the human rights situation in Nepal and have urged the international community to fully support this appeal. The organisations, Amnesty International, the Association for the Prevention of Torture (APT), Human Rights Watch (HRW), the International Commission of Jurists (ICJ), the International Federation of Human Rights (FIDH), the International Service for Human Rights (ISHR), and the World Organisation against Torture (OMCT) also have called on the Government of Nepal to extend invitations to visit the country to the human rights experts of the United Nations Human Rights Commission.

On 18 November, the NHRC issued a call for United Nations human rights experts, including those charged with examining arbitrary detention and torture, to visit the country. The NHCR has presented a proposal for a Human Rights Accord to the Government and the Maoist rebels which would provide for five NHRC regional monitoring units in the country to operate in cooperation with the United Nations High Commissioner for Human Rights.

In a joint statement of 18 November, the Canadian Embassy, the United Kingdom Department for International Development (DFID), the French Embassy, the German Society for Technical Cooperation (GTZ), the Royal Danish Embassy, the Royal Norwegian Embassy, the Swiss Agency for Development and Cooperation and the Netherlands Development Organisation have expressed concern about "the rapidly deteriorating human rights situation" and declared that there is an "urgent need" for the Government and the Maoist rebels to sign the proposed Human Rights Accord.

The Nepal Bar Association and many Nepalese human rights organisations have made similar calls for an international monitoring presence.

**Background**

Since the breakdown of peace talks in August, the incidents of extrajudicial killings, enforced disappearances, torture, and arbitrary detentions in Nepal have risen dramatically. A large number of persons have been held incommunicado in army barracks. Officers at army barracks have been refusing to accept habeas corpus notices issued by the Nepal Supreme Court, on behalf of detainees.

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The Government of Nepal has recently sought to undermine the independent NHRC by proposing the establishment of a parallel human rights unit directly under the supervision of the Prime Minister. Army officials have challenged the NHRC over the findings by its independent experts that at least 19 unarmed persons were extra-judicially executed by army personnel in Ramechhap District on 17 August 2003.

For further information, please contact

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FIDH: Isabelle Brachet at + 33 1 43 55 25 18

HRW: Rory Mungoven at +1 212 216 1276

ICJ: Ian Seiderman at +41 22 979 38 23

ISHR: Christopher Sidoti at +41 22 733 51 23

OMCT: Michael Anthony at + 41 22 809 49 39

## Relevant Websites

### **Government:**

- Prime Minister's Office: <http://www.pmo.gov.np/index.html>
- Ministry of Home Affairs: <http://www.moha.gov.np/>
- Ministry of Law, Justice & Parliamentary Affairs:  
<http://www.moljpa.gov.np/index.html>
- Ministry of Foreign Affairs: <http://www.mofa.gov.np/>
- Ministry of Women Children and Social Welfare:  
<http://www.pmo.gov.np/women/index.html>
- Supreme Court of Nepal: <http://www.supremecourt.gov.np/index.html>
- Commission for the Investigation of Abuse of Authority (CIAA):  
<http://www.akhtiyar.org.np/>
- National Human Rights Commission: <http://www.nhrc-nepal.org/>
- On the NHRC: [http://www.nepalresearch.com/human\\_rights/hr\\_commission.htm](http://www.nepalresearch.com/human_rights/hr_commission.htm)
- Nepal Police: <http://www.nepalpolice.gov.np/index.php>
- Royal Nepalese Army: <http://www.rma.mil.np/>

### **Embassies:**

- American Embassy: <http://www.south-asia.com/USA/>
- British Embassy: <http://www.britain.gov.np/>; Department of International Development: <http://www.britain.gov.np/dfidn.htm>
- Embassy of Japan: <http://www.np.emb-japan.go.jp/>
- German Embassy:  
<http://www.deutschebotschaft-kathmandu.org.np/en/home/index.html>
- Royal Danish Embassy: <http://www.denmarknepal.com/index.htm>
- Especially Danish Development Co-operation:  
<http://www.denmarknepal.com/danida/index.htm>
- Royal Norwegian Embassy: <http://ud26.mogul.no/cgi-bin/wbch3.exe?p=3772>

### **Law:**

- Nepal Bar Association: <http://www.nba.org.np/>  
<http://www.law.org.np/DefaultEng.asp>
- Laws of Nepal: [www.lawsofnepal.com](http://www.lawsofnepal.com)
- Legislation in Nepal: <http://www.labournepal.org/labourlaws/legislation.html>

**Human Rights Organisations:**

- Centre for Legal Research and Resource Development: <http://www.celrrd.com/>
- Centre for Victims of Torture Nepal (CVICT): <http://www.cvict.org.np/>
- Forum for Women, Law and Development: <http://www.fwld.org.np/>
- Human Rights Organisation of Nepal (HURON): <http://www.huron.org.np/>
- Human Rights and Peace Campaign (HURPEC): <http://www.hurpeconline.com/>
- Human Rights and Peace Society (HURPES): <http://www.peacesocietynepal.org/>
- Informal Sector Service Centre (INSEC): <http://www.insec.org.np/>
- INHURED International: <http://www.inhured.org/>
- MAITI (Prevention of Girls Trafficking, Rescue, Rehabilitation and Reintegration of Trafficked Victims) <http://www.maitinepal.org/>

**News:**

<http://www.nepalnews.com.np/>

**Political Parties:**

- Nepali Congress: <http://www.nepalicongress.org.np/index.php>
- Communist Party of Nepal (Unified Marxist-Leninist): <http://www.cpnnuml.org/>
- Information on the Communist Party of Nepal (Maoist) at International Nepalese Solidarity Forum: <http://www.insof.org/>

**Miscellaneous:**

- - Nepal Research, Website on Nepal and Himalayan Studies: <http://www.nepalresearch.org/law/index.htm>
- Nepal Democracy: <http://www.nepaldemocracy.org/>
- National Human Rights Action Plan –Nepal: <http://www.nhrapnepal.org/>
- Friedrich-Ebert-Stiftung (FES) Nepal Office: [www.fesnepal.org](http://www.fesnepal.org)

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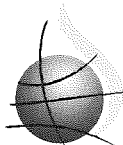
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Human rights violations are rampant and the Nepalese people are poorly served by the administration of justice, concludes this report of a fact-finding mission undertaken by the International Commission of Jurists' Centre for the Independence of Judges and Lawyers (ICJ/CIJL). In the context of a civil conflict with Maoist insurgents, the Royal Nepalese Army has engaged in a pattern of secret detentions without legal authority. Torture by the Army and police is systematic. Impunity for human rights offenders is near absolute. Most criminal suspects lack access to justice and do not receive a fair trial. Although Nepal has an independent judiciary, the Government has engaged in a pattern of disregarding court orders it considers unwelcome. The ICJ/CIJL has issued 38 recommendations with a view to reinvigorating the rule of law in Nepal, including a call for the establishment of a robust system of human rights monitoring with international assistance.



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