

**National Human Rights Commission Of Nepal :**  
**Government Launches Operation Scuttle**

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**ASIA PACIFIC HUMAN RIGHTS NETWORK**  
Secretariat: South Asia Human Rights Documentation Centre  
B-6/6, Safdarjung Enclave Extension, New Delhi - 110029, India  
Tel/Fax: +91-11-2619 2717, 2619 2706, 2619 1120  
Email: [secretariat@aphrn.org](mailto:secretariat@aphrn.org)  
Home Page: <http://www.aphrn.org>

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Home Page: <http://www.aphrn.org>

## **NATIONAL HUMAN RIGHTS COMMISSION OF NEPAL: GOVERNMENT LAUNCHES OPERATION SCUTTLE**

### **Introduction**

Since its inception in May 2000, Nepal's National Human Rights Commission (the Commission) has confronted the unenviable task of attempting to promote and protect human rights in a society shattered by internal conflict. The ambivalence of the Nepalese Government towards the Commission, and towards human rights generally, has not helped in the process of transforming the theoretical basis of the Paris Principles into reality. The Commission has made some progress despite formidable difficulties; what remains to be seen is whether those difficulties will soon become insurmountable.

During the life of the Commission, Nepal has experienced ongoing and devastating internal conflict between the Maoist insurgents and the Nepalese government.<sup>1</sup> While estimates vary, more than 8,000 people are believed to have been killed since the conflict commenced in early 1996.<sup>2</sup> Connected to this ongoing conflict, a state of emergency was declared and subsequently extended.<sup>3</sup> In May 2002, King Gyanendra Bir Bikram Shah Dev dissolved Parliament.<sup>4</sup> Later that year, in October 2002, the King sacked Prime Minister Sher Bahadur Deuba, assumed executive power, and subsequently appointed a new cabinet headed by Lokendra Bahadur Chand.<sup>5</sup>

The Nepalese government's human rights record over recent years has been seriously questionable.<sup>6</sup> The dissolution of Parliament and the general political environment in

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<sup>1</sup> See, for example, Amnesty International's 2003 Report, accessible at <http://web.amnesty.org/report2003/Npl-summary-eng>; and *Human Rights in Nepal: A Status Report 2003* (Kathmandu: National Human Rights Commission, June 2003).

<sup>2</sup> See *Human Rights in Nepal: A Status Report 2003* (Kathmandu: National Human Rights Commission, June 2003), pp14-15; and "Nepal urged not to set up the cover up commission", Statement by the Asian Centre for Human Rights, 14 November 2003. Accessible at <http://www.achrweb.org/press/2003/November2003/NEP011103.htm>.

<sup>3</sup> See, for example, BBC News Report, "Nepal emergency declared", 26 November 2001.

<sup>4</sup> See BBC News Report, "Nepal parliament dissolved", 22 May 2002, accessible at [http://news.bbc.co.uk/1/hi/world/south\\_asia/2003085.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2003085.stm)

<sup>5</sup> See BBC News Report, "Nepali politicians seek to meet king", 7 October 2002, accessible at [http://news.bbc.co.uk/1/hi/world/south\\_asia/2305671.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2305671.stm); see also *NHRC Summary of Annual Report 2003*, p23.

<sup>6</sup> See, for example, *NHRC Summary of Annual Report 2003*, p20; see interview of Sushil Pyakurel in *Nepal Samacharpatra*, 13 November 2003.

Nepal have made the Commission, and human rights generally, a low priority for the Nepalese government.<sup>7</sup> This is exacerbated by a general lack of understanding about human rights in the community,<sup>8</sup> and a general confusion over the role and jurisdiction of the Commission.<sup>9</sup> In essence, as the state is challenged by the Maoist insurgents and democratic processes are challenged by political leaders, the environment in which the Commission operates is one of uncertainty and instability.

### **Establishment of the Commission**

The Commission was established by the Human Rights Commission Act 1997 (the Act).<sup>10</sup> Despite the Act coming into force in 1997, government delays meant that the Commission itself was not constituted until May 2000.<sup>11</sup>

Under the Act, the five members of the Commission are appointed by the King on the recommendation of a committee consisting of the Prime Minister, the Chief Justice and the Leader of the Opposition in the House of Representatives.<sup>12</sup> Members are appointed to a five-year term and are eligible for reappointment.<sup>13</sup> The five members of the Commission are to be chosen from certain groups:

- one is to be a retired Chief Justice or Judge of the Supreme Court (this Member is the Chairperson);
- three are to be people who have made an outstanding contribution in the field of law, human rights, social work or communications and journalism, with representation from all of these fields to the extent that this is possible;
- one is to be a retired person who has served in any office of constitutional bodies or who has served as a special class officer in the Government (i.e. a retired civil servant).<sup>14</sup>

Each member must also fulfill various other requirements: they must be citizens of Nepal, at least forty years of age and must not have been convicted “of any criminal offence involving moral turpitude.”<sup>15</sup> Moreover, any person appointed as a Member of the Commission is thereafter ineligible for appointment to any other government position; they must also not continue their own professional business while they hold office.<sup>16</sup>

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<sup>7</sup> For details of specific problems that the dissolution of Parliament has caused the Commission, such as the fact that there has been no review of the Commission’s Annual Report during this period, see the *NHRC Summary of Annual Report 2003*, p25.

<sup>8</sup> See *National Human Rights Commission Strategic Plan 2004-2008*, p21: “There is a serious lack of awareness and education on human rights at all levels....Many people, including the highly educated, take the notion of human rights as a foreign concept and not applicable to Nepal....political party leaders and cadres are not aware of the relationship between good governance and human rights”.

<sup>9</sup> See the discussion in the *NHRC Summary of Annual Report 2003*, p26.

<sup>10</sup> A translated version of the Act is accessible at [http://www.hurights.or.jp/database/E/nhri\\_law/nepal.html](http://www.hurights.or.jp/database/E/nhri_law/nepal.html)

<sup>11</sup> For a more detailed discussion of the delays, see “Human Rights Commission of Nepal: A Long Road to Nirvana” in *National Human Rights Institutions in the Asia Pacific Region* (New Delhi: Asia Pacific Human Rights Network, 2002).

<sup>12</sup> Human Rights Commission Act 1997, Articles 3 and 4.

<sup>13</sup> Human Rights Commission Act 1997, Article 5.

<sup>14</sup> Human Rights Commission Act 1997, Article 3(1).

<sup>15</sup> Human Rights Commission Act 1997, Article 3(2).

<sup>16</sup> Human Rights Commission Act 1997, Article 3(3) and Article 3(4).

While these provisions are aimed at ensuring transparency and accountability, the fact that one of the Commission members must be a former civil servant may raise some concerns over the Commission's independence.<sup>17</sup> Under the Act, the Commission must normally meet twice a month; the Chairperson may decide the time and place of such meetings.<sup>18</sup>

The Commission's primary responsibility under the Act is the promotion and protection of human rights.<sup>19</sup> In performing this responsibility, the Act allows the Commission to undertake a variety of initiatives.<sup>20</sup> The Commission may conduct inquiries, inspections and investigations. It may also conduct research into, or reviews of, matters of domestic or international law or matters of human rights. The Commission may encourage the functioning of non-governmental organisations, and the publicising and propagating of human rights education efforts. The Commission may also evaluate the human rights situation of Nepal. However, while the Commission has extensive investigative powers, it lacks the ability to enforce its recommendations.<sup>21</sup>

Importantly, the Act also specifies matters that are *not* within the Commission's jurisdiction. Thus Article 10 of the Act states that the Commission has no power to inquire into, or institute proceedings relating to, matters which fall within military jurisdiction, matters that may have an adverse affect on treaties to which Nepal is a party, and matters which may have an adverse affect on a criminal investigation.<sup>22</sup>

## **Challenges facing the Commission**

### ***I. Funding***

The Commission is inadequately funded. For any organisation to be effective and credible, it must have appropriate financial support. In the case of the Commission, that support should be provided primarily by the Nepalese government.<sup>23</sup> It must be acknowledged from the beginning that Nepal is a developing nation with limited fiscal resources; the World Bank reports that Nepal's GDP per capita is approximately

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<sup>17</sup> The Paris Principles stress the importance of independence, with particular reference to the membership of the Commission (see Principles 4, 5 and 6).

<sup>18</sup> Human Rights Commission Act 1997, Article 8.

<sup>19</sup> Human Rights Commission Act 1997, Article 9(1).

<sup>20</sup> Human Rights Commission Act 1997, Article 9(2).

<sup>21</sup> See *Human Rights and Administration of Justice: Obligations Unfulfilled: ICJ Report on its Fact Finding Mission to Nepal, June 2003* (ICJ Report), Paragraph 22. Accessible at [http://www.icj.org/news.php3?id\\_article=2950&lang=en](http://www.icj.org/news.php3?id_article=2950&lang=en)

<sup>22</sup> Human Rights Commission Act 1997, Article 10.

<sup>23</sup> See Paris Principles, Principle 5: "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence". The Act itself states, with some ambiguity, "The Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its functions" (Article 15(1) of the Act).

US\$230.<sup>24</sup> As such, any expectations imposed on the Nepalese government must be realistic.

According to its Strategic Plan, the Commission anticipates that the Government will provide it with 6,300,000 Nepalese Rupees (US\$85,290) per year until 2008.<sup>25</sup> The Commission estimates that, over the period 2004-2008, its operations will cost between 38,680,000 Nepalese Rupees (US\$523,657) and 64,830,000 Nepalese Rupees (US\$877,680) per year.<sup>26</sup> There is plainly a significant disparity between the Commission's running costs and the Government's planned spending.

Since it began its operations in 2000, the Commission has operated without adequate government assistance.<sup>27</sup> As such, the Commission has relied on foreign donors to provide much of its financing, and its Strategic Plan has been formulated on the basis that this will continue to be the case. Indeed, over the period 2004-2008, the Commission anticipates that 87% of its funding will need to come from money that is "Available/Likely to be Available from External Sources".<sup>28</sup> In the past, the Commission has received financial and organisational assistance from a variety of governments, non-government organisations and intergovernmental organisations.<sup>29</sup> The Commission's 'Capacity Development Project', which is aimed at assisting the Commission with its general operations, also relies on a variety of governments and organisations.<sup>30</sup>

While the Commission would be unable to function without the support of foreign donors, its reliance on this form of funding creates further complications. Specifically, problems arise because donors often link funds to a specific program or purpose rather than donating the funds to the Commission and then allowing the Commission to determine where its resources are best allocated.<sup>31</sup> Thus, rather than setting its own agenda, the Commission is forced to follow the proposals of various donors. While these proposals may often be worthwhile and well intentioned, they do not help create a policy approach for the Commission that is comprehensive and coherent in the long term. Rather, the result is that the Commission's policy approach may be perceived as a

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<sup>24</sup> World Bank, "Nepal Data Profile", accessible at <http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=NPL&CCODE=NPL&CNAME=Nepal&PTYPE=CP>. For reference purposes, as of 27 January 2004, 1 US dollar was worth approximately 73.5 Nepalese Rupees. See <http://www.bm.com.np/bm/foreign/index.php>

<sup>25</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p32.

<sup>26</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p32. While there are varying figures for each year of the Plan, the average for the period 2004-2008 is 48,802,200 Nepalese Rupees per year.

<sup>27</sup> National Human Rights Commission Annual Report 2000-2001, pp39-42; *NHRC Summary of Annual Report 2003*, p5; *National Human Rights Commission Strategic Plan 2004-2008*, pp 7-8.

<sup>28</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p32.

<sup>29</sup> These have included the UNDP, Norway, Denmark, the OHCHR, the Danish Institute of Human Rights, the German Technical Agency, the Norwegian Refugees Council and various other entities. See, for example, the *National Human Rights Commission Annual Report 2000-2001*; *NHRC Summary of Annual Report 2003*, pp6, 10.

<sup>30</sup> The Capacity Development Project includes involvement from Australia, Canada, Denmark, Finland, Norway, Switzerland, UNICEF, UNHCHR, ILO, APF, UNDP, and a variety of NGOs. *NHRC Summary of Annual Report 2003*, p17.

<sup>31</sup> See, for example, the range of very specific donor-funded programs in *National Human Rights Commission Annual Report 2000-2001*; *NHRC Summary of Annual Report 2003*, pp6, 10.

collection of short-term, unconnected efforts.<sup>32</sup> Indeed, the Commission itself has recognised the importance of securing “unconditional” external funds and has identified “impediments in the plans and programmes run under the assistance of donor agencies.”<sup>33</sup> Moreover, even the programs over which the Commission has control – those funded by Government grants – budgetary constraints have meant that the Commission has been forced to adopt a “short-term” and non-systematic approach to human rights policy.<sup>34</sup> The Commission thus finds itself in an unenviable position: it needs donors’ funds to supplement the Government’s inadequate funding, but the donors’ funds limit the Commission’s independence and long-term planning and create a culture of “donor dependency.”<sup>35</sup>

Inadequate funding creates very tangible problems for the Commission. Perhaps most importantly, it is unable to deal with complaints efficiently. The Commission itself has acknowledged that up to 90% of complaints made since the Commission began operations are still “in the process of investigation”; the US State Department reports that the figure may be as high as 94%.<sup>36</sup> It has been suggested that, in addition to funding problems, these low efficiency levels may be due to the fact that the Commission is not “acting vigorously in cases brought to its attention. Indeed...the vast majority of complaints received are not acted upon at all.”<sup>37</sup> Yet it would seem difficult for the Commission to act effectively or vigorously in the absence of sufficient fiscal support.

Another consequence of the inadequate funding regime is that without adequate funding, the Commission struggles to pay the wages of its existing staff and cannot attract new staff.<sup>38</sup> As the Commission has noted, “it is next to impossible for the Commission to recruit the required personnel.”<sup>39</sup> In fact, as of December 2003, the Commission had just 27 staff whereas the initial task force on the Commission recommended a staff of 67.<sup>40</sup> The Commission’s staffing problems, however, extend beyond the fact that there are not

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<sup>32</sup> “The dependence on short-term funding almost inevitably leads to a short-term vision; hence the fundamental importance of establishing adequate government core funding”. *National Human Rights Commission Strategic Plan 2004-2008*, p8.

<sup>33</sup> See *National Human Rights Commission Strategic Plan 2004-2008*, p32; *NHRC Summary of Annual Report 2003*, p5.

<sup>34</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p7.

<sup>35</sup> “Lack of adequate funding from the...Government is going to create donor dependency and [a] lack of sustainability. Thus, the state’s fulfillment of its financial obligations from core fund is necessary for [the] effective functioning of the Commission in [the] long-term.” *National Human Rights Commission Strategic Plan 2004-2008*, p8.

<sup>36</sup> The NHRC estimated that of 1072 complaints, 969 were still in the process of investigation as of December 2002 (“The Monitoring and Protection Division”, NHRC, accessible at <http://www.nhrc-nepal.org/?ID=136&AFD=0>); the US State Department estimated that 805 out of 861 complaints remained in the process of investigation as of March 2003 (“Nepal Country Report on Human Rights Practices 2002”, US State Department, accessible at <http://www.state.gov/g/drl/rls/hrrpt/2002/18313.htm>).

<sup>37</sup> ICJ Report, Paragraph 137.

<sup>38</sup> Reports of difficulties paying Commission staff their wages may be found in *National Human Rights Commission Annual Report 2000-2001*, pp39-42; *NHRC Summary of Annual Report 2003*, p5.

<sup>39</sup> *National Human Rights Commission Annual Report 2000-2001*, p42.

<sup>40</sup> See *National Human Rights Commission Strategic Plan 2004-2008*, p4 and “Human Rights Commission of Nepal: A Long Road to Nirvana” in *National Human Rights Institutions in the Asia Pacific Region* (New Delhi: Asia Pacific Human Rights Network, 2002), p94.

enough staff: the Commission appears to have a high staff turnover rate. Indeed, according to Commission Chairman Nayan Bahadur Khatri, no Commission Secretary has stayed in office for more than a year<sup>41</sup> As the Chairman notes, this is in part due to the fact that many of the Commission's staff were staff from other government departments deputed to the Commission on a short term basis.<sup>42</sup> The Commission's staffing problems have serious ramifications for the functioning of the Commission, and for the promotion and protection of human rights in Nepal. If its staff is made up of short-term employees, it will continue to be extremely difficult for the Commission to develop collective expertise, to build a sense of identity, and to maintain continuity in its programs and policies. Naturally, staffing problems also make a substantial contribution to the Commission's apparent inefficiency.

Beyond the problem of efficiency, there are other tangible concerns. The Commission does not yet have its own dedicated office building; instead its office is located in "an old, narrow, dark and insufficient building."<sup>43</sup> Additionally, the fact that the Commission has only one office, located in Kathmandu, has led to criticism that the Commission "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."<sup>44</sup> Again, financial concerns may make such regional programs difficult to implement.

Nepal is not a wealthy nation. Nonetheless, in the most recent Budget Speech, delivered on 18 July 2003, the Government allocated 503,900,000 Nepalese Rupees to the development of the industrial sector, 5,390,000,000 Nepalese Rupees to the road and transport sector, with further large allocations made to other sectors and departments.<sup>45</sup> In comparison, the Commission expects that its allocation will remain at 6,300,000 Nepalese Rupees per year for the foreseeable future.<sup>46</sup> If the Nepalese Government reallocated just 0.7% of its road and transport budget to the Commission each year, the Commission would be able to fund its operations without any foreign assistance or donations.<sup>47</sup> Furthermore, this funding should be provided directly and unconditionally; if the Commission is to be truly independent the Government should not order the manner in which this funding is to be used.<sup>48</sup>

If the Commission is to flourish and succeed, its present funding arrangements cannot continue. Foreign donors should contribute aid to the Commission as unconditionally as possible and the Nepalese Government should increase the level of funding provided to

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<sup>41</sup> See Chairman Khatri's Speech at the Third Anniversary of the Commission, 6 June 2003, Informal translation available at <http://www.nhrc-nepal.org/docs/Chairman%20Khatri%20Speech%20of%20Commission%203d%20Anniversary%20.PDF>

<sup>42</sup> Ibid.

<sup>43</sup> *NHRC Summary of Annual Report 2003*, p5.

<sup>44</sup> ICJ Report, International Commission of Jurists, Paragraph 138.

<sup>45</sup> The Budget Speech is accessible at <http://www.bm.com.np/bm/news/index.php?newsid=1108>

<sup>46</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p32.

<sup>47</sup> This figure is based on the estimates contained in the *National Human Rights Commission Strategic Plan 2004-2008*, p32. More specifically, 0.7% of the road and transport budget would equate to 42,502,200 Nepalese Rupees per year, which is the average disparity between Government funding and running costs.

<sup>48</sup> Concerns over the Government providing some direction as to spending was raised in *National Human Rights Commission Annual Report 2000-2001*, pp39-42.

the Commission. Moreover, the nations and organisations that have demonstrated their support for the Commission through their financial assistance should apply pressure on the Nepalese Government to provide the Commission with adequate funding.

## ***II. The Human Rights Promotion Centre***

In late 2003, the Nepalese Government announced that it intended to establish a ‘Human Rights Promotion Centre.’ There is some uncertainty over precisely what role the Centre will fulfill in Nepalese civil society, and there is particular ambiguity over the proposed interaction between the Centre and the Commission.<sup>49</sup> The Government has insisted that the role of the Centre will be to complement and assist the Commission in the Commission’s efforts to promote and protect human rights rather than to act as a rival.<sup>50</sup> It appears, however, that the reality may be very different.

The Government’s “Directive on the Establishment, Work, Duties and Rights of the Human Rights Promotion Centre, 2003” (the Directive) details the planned role of the Centre. Despite the Government’s insistence that the Centre will not encroach on the Commission’s jurisdiction, the Directive lists a number of objectives and goals that are strikingly similar to those expected of an organisation formed and operated under the Paris Principles. Not only do these objectives overlap with the Paris Principles, they also share readily evident commonalities with the objectives outlined in Article 9(2) of the Human Rights Commission Act 1997. The objectives outlined in the Directive include:

- “To launch promotional programmes in an effort to securing the fundamental rights of the people as envisaged in the 1990 Constitution”,<sup>51</sup>
- “To provide concrete recommendations to the [Government] regarding its roles and responsibilities on the essential laws, policies and programmes to be implemented also in accordance with the international agreements of which Nepal is signatory to”,<sup>52</sup>
- “To preach nationally and internationally all the HR [sic] promotion and preservation initiatives carried out by [the Government]. And to launch effective HR promotional programmes by co-ordinating with the reputed international sectors and organisations”,<sup>53</sup>

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<sup>49</sup> There is such uncertainty that the Commission, together with “Amnesty International and other national and international human rights [organisations] have expressed their dissatisfaction and have written to the [P]rime [M]inister to clarify the government position” on the Centre. See “Nepal Government’s Human Rights Body formally established”, Annapurna Post, 9 December 2003, p1.

<sup>50</sup> “The government says the function of the center will be only to coordinate”: Sanjaya Dhakal “Miserable Solution”, *Spotlight*, Vol 23, No 21, 19 December 2003, accessible at <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2003/dec/dec19/national3.htm>); “The centre will only implement the commission’s decision[s]”: Centre Director Kul Ratna Bhurtel quoted in “Nepal Government’s Human Rights Body formally established”, Annapurna Post, 9 December 2003, p1.

<sup>51</sup> Unofficial Translation of “Directives on the Establishment, Work, Duties and Rights of the Human Rights Promotion Centre, 2003” (The Directive), Paragraph 2(A). This paragraph seems analogous to Principle 3(a) of the Paris Principles and to Article 9(f) of the Act.

<sup>52</sup> The Directive, Paragraph 2(B). This paragraph seems analogous to Principles 3(a), (b) and (c) of the Paris Principles and to Article 9(g) of the Act.

<sup>53</sup> The Directive, Paragraph 2(C). This paragraph seems somewhat analogous to Principles 3(e) and (f) of the Paris Principles and analogous to Article 9(i) and (j) of the Act.

- “To carry out effective HR programmes in co-ordination with the National Human Rights Commission, National Dalit Commission, National Women’s Commission, National Janajati Upliftment Academy, and civil society.”<sup>54</sup>
- “To maintain contact and co-ordination with the civil society on behalf of [the Government]”;<sup>55</sup> and
- “To inform the general public of all the HR initiatives and programmes conducted by [the Government]”.<sup>56</sup>

The effect of the Directive is to outline a series of objectives and goals for the Centre. These objectives and goals are almost identical to those set out in the Paris Principles and in the Act. What, then, distinguishes the Centre from the Commission and why is the Government intent on creating a second human rights promotion body?

The distinguishing factor is that the Centre appears to be dramatically less independent than the Commission. Indeed, according to the Directive:

- the Centre is subject to a ‘Direction Committee’ made up of civil servants;<sup>57</sup>
- the Centre’s Secretariat is to be located in the Office of the Prime Minister and Council of Ministers;<sup>58</sup>
- the Centre is obliged to promote the Government’s human rights initiatives;<sup>59</sup>
- the budget for the Centre is allocated via the Office of the Prime Minister;<sup>60</sup>
- the Government selects the Centre’s Director and its Legal Advisors;<sup>61</sup> and
- the Government “will be in a position to provide essential directions to the Centre.”<sup>62</sup>

Thus it appears that the Government has created a human rights watchdog with objectives very similar to those of the Commission but without the independence that is crucial for the successful and transparent functioning of any human rights institution.<sup>63</sup> At the very least, the similarities between the mandates of the Centre and the Commission may create the *appearance* that the Centre is designed to undermine the Commission and the credibility of the Commission.

The Centre has been heavily criticised. The Commission’s Chairman, Nayan Bahadur Khatri, has expressed concern that the Government is attempting to interfere with the work of the Commission; Khatri also noted that the Commission was created by Act of Parliament whereas the Centre has been established by executive order, something that

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<sup>54</sup> The Directive, Paragraph 2(D). This paragraph seems analogous to Principles 3(e), (f) and (g) of the Paris Principles and Article 9(j) of the Act.

<sup>55</sup> The Directive, Paragraph 2(E). This paragraph seems analogous to Principles 3(e) and (f) of the Paris Principles and Article 9(i) and (j) of the Act.

<sup>56</sup> The Directive, Paragraph 2(F). This paragraph may be analogous to Principles 3(f) and (g) of the Paris Principles and Article 9(i) of the Act.

<sup>57</sup> The Directive, Paragraph 3.

<sup>58</sup> The Directive, Paragraph 1(2).

<sup>59</sup> The Directive, Paragraph 2(C) and (F).

<sup>60</sup> The Directive, Paragraph 7(A).

<sup>61</sup> The Directive, Paragraph 8(1) and (3).

<sup>62</sup> The Directive, Paragraph 10.

<sup>63</sup> The crucial importance of independence for any human rights monitoring organisation is stressed in, *inter alia*, Principles 4, 5 and 6 of the Paris Principles

may prove crucial in the event of a clash of jurisdictions.<sup>64</sup> The International Commission of Jurists has reported that by establishing the Centre, “the Government of Nepal has...sought to undermine the independent [Commission].”<sup>65</sup> Further, *The Kathmandu Post* argues that “it is certain that [the Centre] would be nothing but the [G]overnment’s mouthpiece.”<sup>66</sup> The creation of the Centre has also been seen as a sign of the Government’s “desperation.”<sup>67</sup>

The first Director of the Centre is Kul Ratna Bhurtel, formerly of the Water and Power Commission. While Bhurtel has stated that the Centre “will only implement the Commission’s decision[s]”, Bhurtel’s vision of the Centre includes tasks previously conducted by the Commission, such as ensuring that laws comply with international obligations and sending reports to international organisation.<sup>68</sup> There remains real uncertainty over the role that the Centre will play. As Commission Member Sushil Pyakurel has stated, “the necessity of the Centre has not been proven....suspicions arise on whether this Centre was implemented to limit the role of HR organisations.”<sup>69</sup>

It appears that, based on a comparison of the Centre’s Directive and the Commission’s Act, the Centre has the potential to assume the Commission’s jurisdiction and powers. There is also great potential for the Government to exert significant control over the activities of the Centre. The credibility and reputation of the Commission may be jeopardised by the existence of an alternative – but not totally independent – source of human rights information. What will be crucial is whether the Government will continue to fund and provide support to the Commission if the Centre is willing to provide reports and policies that are more favourable to the interests of the Government than those provided by the Commission. The Nepalese Government should immediately clarify the role of the Centre, and if the Centre is to remain part of Nepalese civil society, it should be independent from the Government and its responsibilities clearly distinguished from those of the Commission.

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<sup>64</sup> “Nepal Government’s Human Rights Body formally established”, Annapurna Post, 9 December 2003, p1.

<sup>65</sup> See “NGOs and Governments Say Human Rights Monitoring Urgently Needed in Nepal”, International Commission of Jurists Statement, 24 November 2003, accessible at [http://www.icj.org/news.php?id\\_article=3190&lang=en](http://www.icj.org/news.php?id_article=3190&lang=en). Similar comments are made in “Nepal urged not to set up the cover up commission”, Statement by the Asian Centre for Human Rights, 14 November 2003: the Centre is “a direct attempt to undermine” the Commission. Accessible at <http://www.achrweb.org/press/2003/November2003/NEP011103.htm>

<sup>66</sup> Editorial, “NHRC Empowerment”, from *The Kathmandu Post*, 26 November 2003. Accessible at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2003/nov/nov26/editorial1.htm>

<sup>67</sup> “Yet Another Human Rights Entity!”, article by Bipin Adhikari, from *Spotlight*, Vol 23, No 18, 28 November 2003, accessible at

<http://www.nepalnews.com.np/contents/englishweekly/spotlight/2003/nov/nov28/national7.htm>

<sup>68</sup> “Nepal Government’s Human Rights Body formally established”, Annapurna Post, 9 December 2003, p1.

<sup>69</sup> Translation of Interview of Sushil Pyakurel, Nepal Samacharpatra, 13 November 2003. Similar criticism, based on the fact that the Government has not proven the need for the Centre, is reported in “Miserable Situation” by Sanjaya Dhakal, *Spotlight*, Vol 23, No 21, 19 December 2003, accessible at <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2003/dec/dec19/national3.htm>.

### **III. The Military & Human Rights**

Members of the Nepalese armed forces who abuse human rights routinely go unpunished. They have substantial impunity. One of the great weaknesses of the Commission is its inability to deal with these abuses. According to Article 10 of the Act, in general, “The Commission shall have no power to inquire into or institute any other proceeding on....Any matter within the jurisdiction of the Military Act.” By way of contextualisation, it should be noted that the Military Act, enacted in 1959-60, has not been updated to accord with the principles contained in the Constitution of Nepal of 1990; under the Military Act’s provisions, effective command of the military is vested in the King rather than in civilian government.<sup>70</sup>

In place of the Commission, the police, the armed police and the armed forces have instituted ‘Human Rights Cells’ that are designed to facilitate internal resolution of human rights issues. There has been substantial criticism levelled at the Cells on the basis that the interests of justice and transparency are not served by internal disciplinary procedures.<sup>71</sup> Notwithstanding the existence of these Cells, numerous human rights violations, ranging from extrajudicial executions to torture to arbitrary arrest and detention, continue to be perpetrated by the armed forces and recorded by the Commission and external monitors.<sup>72</sup> Often, the Government and the armed forces characterise these violations as being necessary for the purposes of fighting the Maoist insurgents.

A full examination of the record of human rights abuses conducted by the Nepalese government and armed forces is beyond the scope of this paper.<sup>73</sup> One representative example, however, occurred at Doramba, in the Ramechhap region, on 17 August 2003. In the course of investigating that incident, the Commission found that the armed forces perpetrated a number of human rights violations, including the extrajudicial execution of at least 19 suspected Maoists.<sup>74</sup> The armed forces’ response was to question the validity of the Commission’s report and to launch an internal investigation.<sup>75</sup> It has also been

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<sup>70</sup> The Military Act has been described as “one of the most obsolete laws needing urgent democratisation” in Nepal: “Human Rights and Inhuman Wrongs” by Bipin Adhikari, *Spotlight*, Vol 23, No 19, 5 December 2003, accessible at

<http://www.nepalnews.com.np/contents/englishweekly/spotlight/2003/dec/dec05/perspective.htm>

<sup>71</sup> “It is not satisfactory that the army and the police use internal disciplinary procedures to deal with serious human rights violations caused by their personnel”. *National Human Rights Commission Strategic Plan 2004-2008*, p22. See also the International Commission of Jurists Statement, “Nepal Should Abandon Plans for Civilian Militias”, 13 November 2003, [http://www.icj.org/news.php3?id\\_article=3191&lang=en](http://www.icj.org/news.php3?id_article=3191&lang=en)

<sup>72</sup> While the Act limits the Commission’s jurisdiction over the armed forces, the Commission is often forced to report on abuses committed by the armed forces when investigating an incident.

<sup>73</sup> For further discussion of the human rights situation in Nepal in general, see *Human Rights in Nepal: A Status Report 2003* (Kathmandu: National Human Rights Commission, June 2003); the *INSEC Situation Report*, accessible at [http://www.insec.org.np/download/situation\\_report.pdf](http://www.insec.org.np/download/situation_report.pdf); Amnesty International’s *2003 Report on Nepal*, accessible at <http://web.amnesty.org/report2003/Npl-summary-eng>.

<sup>74</sup> National Human Rights Commission, “Doramba Incident, Ramechhap” Report, accessible at <http://www.nhrc-nepal.org/docs/Reprot%20of%20Doramba.PDF>

<sup>75</sup> “Doramba killings were ‘cold blooded’”, *The Kathmandu Post*, 18 September 2003, accessible at <http://www.kantipuronline.com/php/kolnews.php?&nid=66>

alleged that the Commission's stance on the Doramba incident was one of the Government's motivations for creating the Human Rights Promotion Centre.<sup>76</sup>

Such incidents are often exacerbated when the armed forces refuse to recognise that their actions constituted abuses of human rights. An example of such denial was evident in the armed forces' response to the Mudbhara incident, in which the Commission alleges that four school students were killed in an army operation.<sup>77</sup> The armed forces are reported to have simply refused to answer any of the Commission's queries.<sup>78</sup> The Army's Human Rights Cell then apparently conducted an inquiry into the incident; the results of this inquiry were never made public.<sup>79</sup>

Generally, a sceptical attitude towards human rights, and towards the Commission, seems to pervade the armed forces. Thus Brigadier BA Kumar Sharma, of the Nepalese Army, has been reported as saying that the Army "is surprised how biased the [Commission]...have been while monitoring human rights violations...how can I teach my soldiers that the [Commission] is an independent human rights watchdog body?"<sup>80</sup> The International Commission of Jurists also notes that "the Nepal Army is feudal in its outlook, contemptuous of human rights, and operating as a law unto itself."<sup>81</sup>

Given the general attitude towards human rights in the armed forces, it is perhaps unsurprising that the Human Rights Cells have been vehemently criticised as being ineffective. The International Commission of Jurists reports that the Army's Human Rights Cell 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."<sup>82</sup> The ICJ offers a similar indictment for the Armed Police Forces Human Rights Cell: the "Cell had a largely public relations function designed to impress critics such as international organisations and aid donors. Unless it can be transformed...it should be disbanded."<sup>83</sup>

Brigadier Sharma has recently claimed that the armed forces have improved their record, with reports of numerous investigations being launched.<sup>84</sup> Indeed, in late January 2004, it

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<sup>76</sup>"Nepal urged not to set up the cover up commission", Statement by the Asian Centre for Human Rights, 14 November 2003: the Centre is "a direct attempt to undermine" the Commission. Accessible at <http://www.achrweb.org/press/2003/November2003/NEP011103.htm>

<sup>77</sup> Editorial, *The Kathmandu Post*, 26 November 2003, "NHRC empowerment". Accessed at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2003/nov/nov26/editorial1.htm>

<sup>78</sup> Ibid.

<sup>79</sup> "An agony that was" by Arjun Bhandari, *The Kathmandu Post*, 29 October 2003, accessible at <http://www.kantipuronline.com/php/kolnews.php?&nid=1928>

<sup>80</sup> Comments of Sharma from *The Himalayan Times* of 25 August 2003, reported in the International Commission of Jurists' open letter to the King of Nepal of 10 October 2003.

<sup>81</sup> See ICJ Report, Paragraph 157.

<sup>82</sup> See ICJ Report, Paragraph 157.

<sup>83</sup> See ICJ Report, Paragraph 147.

<sup>84</sup> References to or reports of recent improvements include "Nepal Promises Restrained War After Civilians Take Hit", by Keshab Poudel, *OneWorld South Asia*, 23 December 2003, accessible at <http://www.oneworld.net/article/view/75764/1/>; "Briefs: The Royal Nepalese Army", *Spotlight*, Vol 23,

was announced that a number of armed forces troops had been court-martialed for human rights violations, and that 17 of those court-martialed were imprisoned.<sup>85</sup> The Commission also reports that the Human Rights Cells have recently made efforts to cooperate with the Commission.<sup>86</sup> But even if the Human Rights Cells begin to function more effectively and fairly, internal inquiries can never be – and can never *appear* to be – as transparent and accountable as external inquiries.

There are also questions about the rest of the world's approach to the abuses perpetrated by the Nepalese armed forces. Britain has recently donated two aircraft to the Nepalese armed forces, with the Foreign Office stating that the British Government made the donation fully aware of human rights abuses within Nepal.<sup>87</sup> The British position, it appears, was that the Foreign Office was aware of human rights abuses within Nepalese armed forces but was pressuring the Nepalese Government about these abuses.<sup>88</sup> The United States has also given military support to the Nepalese armed forces.<sup>89</sup> If the governments of Britain and the United States are to continue in their donations of military equipment, infrastructure and military training, they should implement concomitant human rights sensitization programs within the Nepalese armed forces to assist in reducing human rights abuses.

It appears that a culture of impunity pervades the Nepalese armed forces, and that the introduction of Human Rights Cells has done little to change this culture. Impunity is dangerous not only because it means that criminals go unpunished, but because it sends a message to members of the armed forces that it is acceptable to violate human rights. The superficial and ineffective nature of the Human Rights Cells only underscores the message that human rights are not an important consideration for the Nepalese military. Moreover, the fact that the armed forces are outside the Commission's jurisdiction means that the ability of the Commission to promote and protect human rights across the country is seriously hampered. The credibility of the Commission is undermined when it is legally unable to address a significant source of human rights abuse. The Commission should be granted jurisdiction over the armed forces, and the Human Rights Cells within the armed forces should be either dramatically reformed or abolished altogether.

#### ***IV. Maoist insurgents & human rights***

In Nepal's internal conflict, human rights violations are by no means the sole preserve of the Government or the armed forces. Indeed, the Maoist insurgents are responsible for a

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No 17, 14 November 2003, accessible at

<http://www.nepalnews.com.np/contents/englishweekly/spotlight/2003/nov/nov14/briefs.htm>

<sup>85</sup> "Nepalese Army courtmartials 23 soldiers" *The Hindu*, 30 January 2004, accessible at

<http://www.hinduonnet.com/thehindu/holnus/00330181560.htm>. See also "Nepal soldiers jailed for abuses", by Sushil Sharma, BBC News, 29 January 2004, accessible at

[http://news.bbc.co.uk/2/hi/south\\_asia/3440639.stm](http://news.bbc.co.uk/2/hi/south_asia/3440639.stm)

<sup>86</sup> *National Human Rights Commission E-Bulletin*, Vol 1, No 35, 31 October 2003. Accessible at

<http://www.nhrc-nepal.org/?IDEA=212&AFD=0>

<sup>87</sup> "Row as Nepal Gets Peace-Fund Jets", BBC News, 23 January 2004, accessible at

[http://news.bbc.co.uk/1/hi/uk\\_politics/3423253.stm](http://news.bbc.co.uk/1/hi/uk_politics/3423253.stm)

<sup>88</sup> *Ibid.*

<sup>89</sup> "Nepal to receive US military aid", BBC News, 22 April 2002, accessible at

[http://news.bbc.co.uk/1/hi/world/south\\_asia/1942353.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1942353.stm)

significant number of human rights violations. The challenge facing the Commission is how best to discourage the Maoists from violating human rights: how does the Commission, an institution designed to play a key role in Nepalese democratic civil society, confront human rights abuses perpetrated by an organisation that aims to fundamentally challenge that civil society?

The Commission has issued several reports in which the Maoist forces have been explicitly or implicitly criticised for human rights violations. In its report on the Nagi Incident of 5 July 2003, the Commission concluded that the Maoists were responsible for an explosion which resulted in several deaths and that the explosion had occurred “in contravention of the provision contained in Article 3 of the Geneva Convention of August 12, 1949.”<sup>90</sup> In particular, the Commission raised concerns over the death of a non-combatant civilian.<sup>91</sup> Similarly, in its report on the Zeromile Incident of 19 August 2003, the Commission identified actions constituting breaches of common Article 3 of the Geneva Conventions.<sup>92</sup> While the report could not reach a definitive conclusion on whose responsibility the incident was, the Maoists were suspected of being responsible.<sup>93</sup>

Clearly, the Maoist forces have a questionable human rights record. What is less clear is what effective steps the Commission can take to address the situation. As the Commission has noted, there is no real mechanism “to bring to justice the Maoists who have committed heinous crimes like rape, murder, abduction, extortion....As a result, the faith of the people in the rule of law has declined.”<sup>94</sup> The Nepalese military views the Commission as somewhat biased in this regard: Brigadier Sharma claimed that despite being eager to critique the armed forces, human rights organisations “are silent when our personnel are brutally killed by the Maoists.”<sup>95</sup> However, as has been noted by Commissioner and human rights activist Sushil Pyakurel:

“Maoists are anti-Constitutional and illegal. But the State security forces are legal. So, [all of the security forces’] activities should be in accordance with the law. If the State goes for illegal actions, it will help to make the illegal activities of the Maoists look legal. So, the [Commission] asks the legal institutions not to carry out illegal activities.”<sup>96</sup>

If the human rights violations that plague Nepal’s internal conflict are to be minimised, then the Government’s forces may need to take the first step. Otherwise, Nepalese society will continue to experience a significant number of serious human rights abuses. That being said, the Commission should also take all reasonable measures to encourage the Maoist insurgents to act with respect for human rights. Particularly, the Commission

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<sup>90</sup> “Nagi Incident, Panchthar”, Report of the National Human Rights Commission, 2003, p10. Accessible at <http://www.nhrc-nepal.org/docs/Report%20of%20Panchthar.PDF>

<sup>91</sup> Ibid.

<sup>92</sup> “Siraha District, Dhangadhi VDC-2, Zeromile Incident,” Report of the National Human Rights Commission, 2003, p12. Accessible at <http://www.nhrc-nepal.org/docs/Report%20of%20Siraha.PDF>

<sup>93</sup> Ibid.

<sup>94</sup> *National Human Rights Commission Strategic Plan 2004-2008*, p22.

<sup>95</sup> “Post-truce body count: Maoists 700, Army 170”, *The Kathmandu Post*, 6 November 2003, accessible at <http://www.kantipuronline.com/php/kolnews.php?&nid=2301>

<sup>96</sup> Interview of Sushil Pyakurel in *Nepal Samacharpatra*, 13 November 2003.

should encourage the Maoists to conform with the principles of Optional Protocol II to the Geneva Conventions.<sup>97</sup>

**Conclusion: The challenge facing Nepal**

This paper has outlined some of the significant challenges that have confronted the Nepalese National Human Rights Commission since its creation in 2000. The Commission has received inadequate funding from the Nepalese Government. The Commission is now being undermined by the Government's creation of the Human Rights Promotion Centre and by the armed forces' continued insistence on internal reviews of human rights abuses. The Commission's credibility is also threatened by a perception that it is unable to deal with the human rights abuses perpetrated by the Maoist insurgents. This paper has made a series of recommendations for strengthening the position of the Commission and the position of human rights in Nepal.

Viewed as a whole, the Government's stance on human rights and on the Commission could be construed as being a concerted campaign to weaken the Commission. The Nepalese Government may argue that this is an unfair characterisation of its policy stance, particularly in light of the internal conflict that has troubled Nepal since 1996. Attacks on the State, however, are no excuse for failing to protect the people of the State from attacks on their fundamental rights and freedoms. The Nepalese Government faces a challenge. It is the challenge of proving to the world and to the Nepalese people that human rights need not be sacrificed in the name of 'national security.'

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<sup>97</sup> The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.