

Synopsis
Human Rights Yearbook 2006
Embargo Till April 9, 2006

Alike previous years, the year 2005 also witnessed killings and violence throughout the country. This year the prolonged conflict claimed the lives of 1,524 persons- 815 from security persons and 709 from the Maoists.

The year was dominated by the direct rule of the King beginning from February 1. Since then the state was engaged in the violation of human rights and humanitarian laws in the name of ending the conflict. There was suspension of civil and political rights and the state used every measure to suppress the peaceful protest programmes of political parties and civil society. Furthermore, the formation of state-backed defense committee served more in the loss of lives and civilian property. As per INSEC record, the defense committee killed 39 persons.

This year Nepal witnessed unilateral ceasefire from the Maoists for four months. Though national and international communities appreciated it, the government was reluctant to reciprocate. This made clear that the government was not in the mentality to find peaceful solution to the ongoing crisis. During the unilateral ceasefire 85 persons were killed by the state and 24 persons by the Maoists. Notable thing was the reduction in the per day killings during the ceasefire.

Maoists were also involved in abuse of human rights and violation of international humanitarian laws. They abducted 32,857 persons this year, most of them being school children. Child rights was breached most from the Maoist activities this year.

The judiciary also did not remain out of criticism after February 1. The dispute between the bar and the bench time and again revealed this fact. Specially the appointment of the judges in the SC was controversial.

After February 1, the trend to re-arrest political activists and human rights defenders by defying the court verdicts increased dramatically. As per INSEC documentation, as many as 84 persons were re-arrested in 11 months of the King's direct rule. Some of them were re-arrested from the even Supreme Court. As many as 100 cases of re-arrest have been recorded in INSEC.

The absence of security institution in the rural areas helped the criminal groups operate freely. Such groups killed 371 persons out of 1,895 persons in the year 2005.

The positive change in the human rights situation was the establishment of OHCHR in the country. It must be taken as the affect of the establishment of the office at different regions that the number of disappearance this year reduced to 120 as compared to 313 in 2004.

This shows that UN bodies and other international human rights organizations should show more concern on Nepal.

NEPAL

HUMAN RIGHTS YEARBOOK 2006



HIGHLIGHT OF THE YEAR

Deepening National Crisis

Human Rights Yearbook 2006

ENGLISH EDITION

(This Report Covers the Period - January to December 2005)

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Frustration, Anticipation and Conviction

This compilation, on your hand, covers the time span from January 1 to December 31, 2005. The King seized human rights and democracy on February 1 through an unconstitutional move. The year 2005 was dominated by its consequences. Thus, this annual report has become the documentation of systematic and widespread violation of human rights specifically during the 11 months of King's direct rule.

The year witnessed the authoritarian attempt to institutionalize systematic violation of human rights. However, the history will not register it only as the year engulfed by the authoritarian regime. Rather, the year 2005 was the year of struggle for human rights. This year will be recorded in the history of Nepal as the year of struggle for the restoration of civil liberties and rule of law.

Earnest solidarity was expressed by the entire world to Nepali people on their struggle for human rights and dignity this year. The arrogance revealed on February 1, 2005 was limited amid the protest by the civil society, human right defenders and the democratic public. The whole world kept eyes on Nepal and such audacity could not move further.

On looking back, we can see how the people continued to move forward to achieve freedom defying any kind of restriction posed by the totalitarian state. Human rights defenders along with different spheres of civil society continued the human rights movement amid massive suppression. It is our devotion towards liberty, even during the most difficult circumstances, which limited the pace of autocracy in front of international community. It is our continuous struggle for human rights and democracy and the stance against tyranny that enforced our commitment to human rights.

In 2005, while the civil rights were curtailed within the country, grave concern over the deteriorating situation of human rights in Nepal was expressed during the 61st session of UN Human Rights Commission in Geneva. In the mean time, the United Nations High Commissioner for Human Rights and the Government of Nepal reached an agreement on establishing an office in Nepal. Then, Agenda Item-19 was passed on Nepal under the special procedure of UN.

The physical presence of the Office of the United Nations High Commissioner for Human Rights in Nepal has affected both the state and the Maoists in 2005. The office has been pressurizing both the warring parties to respect human rights. With the establishment of the office, national and international human rights community was optimistic that Nepal's vibrant civil society would continue to play crucial role in promoting, protecting and documenting human rights violation. It was expected that the office would cooperate and support them. Such cooperation began in 2005. There are expectations that more can be done in future. Notably, OHCHR has the mandate not only to monitor but also to investigate and prepare reports on human rights scenario. Pursuant to the MoU signed between the government of Nepal and UNHCHR, the office also has the mandate to advise the state on implementation of human rights policies.

In 2005, Nepal was a matter of concern for the entire world due to the deteriorating human rights situation. Such concern brought about some changes and human rights community of the world came to know the character of the state. They are not unaware of the fact that both the state and Maoists are indulged in violation of human rights and humanitarian laws. In this context, continuous observation and monitoring will certainly have significance on protection of human rights.

Collection and documentation of information on human rights violation is the fundamental aspect in the struggle for human rights. We did not let ourselves down despite the adverse realities in 2005 as well. This Yearbook is the results of such efforts. It has covered a disturbed present of the Nepali history.

Executive Summary

SITUATION OF HUMAN RIGHTS IN 2005

*Even though regime avows
Some beautiful words
They seem to carry gravity too
Yet ugly essence in them
I do not like at all
That I strongly oppose*

Bimal Niva

(Extract of a Nepali poem that implies
Disagreement)

1. The Year in Human Rights Prospective

1.1 Expectation and Frustration

State of human rights in Nepal deteriorated noticeably in the year 2005 completely destroying the democratic institutions restored by the pro-democracy movement of 1990. At the beginning of the year, the king took all executive powers 'to preserve our nationalism, national unity and sovereignty, as well as to maintain peace and security in the country and ensure that the state of the nation does not deteriorate any further.' Then, the king's direct regime started in the nation. The plan to end multiparty democracy, which was started in the year 2002, has surfaced when the king took all executive powers treading over the Constitution at the time of political turmoil that strangled democratic practice. There were few significant works in human rights sector in the year 2005 despite the king's intrusion over the Constitution of the Kingdom of Nepal, 1990 citing Article 27.

Human rights situation of Nepal remained a subject of concern to world community as per the universality of human rights in the year 2005. The 61st session of the United Nations Commission for Human Rights passed Agenda Item-19, on Nepal after February 1. Nepalese citizens, after the adoption of Agenda Item-19, have experienced a big relief. The Memorandum of Understanding (MoU) between United Nations High Commissioner for Human Rights and the government of Nepal was seen as a significant step towards protection of human rights of Nepali citizen.

The voice that Nepal could not be isolated considering universality of human rights has been raised from international community exactly after the February 1 royal takeover. The authoritarian regime has faced such pressure due to international concern during the year 2005.

Showing its willingness for peace process, CPN (Maoist) announced unilateral ceasefire for four months due to national - international pressure. At the same time, CPN (Maoist) and the seven political parties reached to the '12 points consensus' that includes restoration of the parliament and the election of constituent assembly to initiate peace process. These two developments gave Nepali a faint hope on establishment of peace in the country.

The state after February 1 royal proclamation completely neglected the spirit of rule of law. Prospect for dialogue and consensus was slammed with military power. There was a void for a short period after the state curtailed all civil and political rights. But the voices of disagreement raised by breaking the silence. Civil Society along with Human Rights Organizations came to frontline for restoring civil rights. Political parties started reorganizing. The year 2005 has been over with the ongoing attempt of the king's government to make the authoritarian regime stronger.

Though, Human Rights Yearbook 2005 includes the 12 months incidents and scenario, the last 11 months incidents have been substantial while describing the major trend.

1.2 Continuity of Violence and Restriction on Civil Liberties

Series of killings and violence continue, except for those four months, after February 1. As many as 1606 persons were killed by the state in 2004, whereas the Maoists killed 1113 persons in crossfire and attacks. There was four months unilateral ceasefire in the year 2005 from the Maoist's side. Still 815 persons were killed by the state and the Maoists killed 709 persons during those eight months of this year. (See Table A) There were some incidents of crossfire between the state and the Maoists after

the king announced that 'Our security forces have been mobilized to carry out their responsibilities more effectively to end terrorism and restore peace and security in the interest of the nation and people.' Trend of violation of human rights and humanitarian laws by the state during this period can be mentioned as following:

- Violation of humanitarian laws in the actions taken in the name of ending the violent conflict
- Suspension of civil and political rights and use of excessive force over peaceful protests

As in past years, the force used by the state could not be targeted against those involved in 'war against the state'. Instead, there was large number of civilian casualties in the name of war against the Maoists. In this context, the incidents of Palpa, Jhapa, Siraha and Rolpa included in this yearbook can be taken as examples.

Security forces after encircling villagers, indiscriminately fired at Dokantole of Bahadurpur VDC-7, of Palpa district on September 24. The locals later said to human rights activists that they felt the security forces were going to kill and spread terror among the locals. Five unarmed Maoist activists and an 18-year-old civilian were shot dead in the incident occurred during Maoist's unilateral ceasefire. There were many incidents where both the state and the Maoists had disregarded the humanitarian laws.

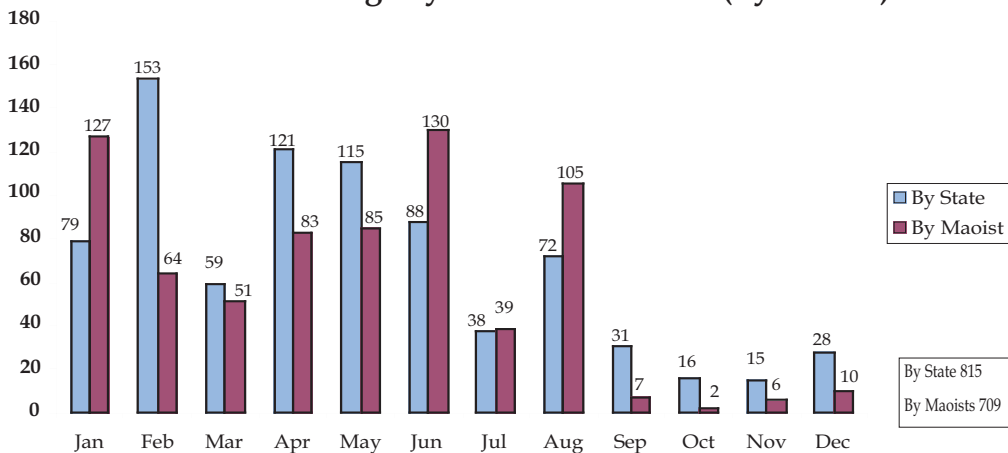
A group of Maoists abducted unarmed and civil dressed corporal Dev Bahadur Thapa, lance corporal Dhan Prasad Acharya and sergeant Krishna Bahadur Khadka of Sher Gan Battalion of Royal Nepali Army deployed for the security of Khimti Hydropower Station at Shahare VDC-4, of Dolakha district on March 26 at 10:15 am.. They were taken into captivity by the Maoists from Dundee of Japhe VDC-7. while they were going to Kathmandu on a public bus on the same day. They were handcuffed and beaten after being taken into control by the Maoists. They were killed two hours later.

Maoists killed one of them at Nunthala Tole of Japhe VDC-8 by slitting his throat. Another was stabbed on his chest and head crushed with stone at Okhardand. The third security person was killed at the jungle of Jukepani was stabbed in one eye and the legs and then slit to death.

Thirty-five civilians and three security persons had died in a landmine explosion triggered by the Maoists in a public bus at Badarmude river of Kalyanpur VDC of Chitwan district on June 6. The casualties included 16 women, 15 men and 7 children.

Rampant abduction by Maoists was the distinct feature of Human Rights violation in the year. Maoists continued abduction even during their unilateral ceasefire. (See Table H) Ceasefire Civil Monitoring Committee had

Table A. Killings by State and Maoists (By Month)



monitored the ceasefire. The committee formed in the initiation of Nepal Bar Association and comprised of various civil society and human rights organizations found that-'In some of the places, the Maoist central level directives were not followed. There were some incidents of the Maoist cadres involved, on the basis of individual complaints and revenge, extorting donation, threatening people, beating and killing by inflicting torture. Among such criminal incidents, they confessed their fault in Gulmi and the victim was compensated but such improvements were not seen at Parbat, Khotang, Udayapur, Dolkha, Sindhupalchowk, etc.'

The state continued infringing civil and political rights till the end of the year 2005. More than six thousand political activists and the opponents of the king's step were arrested during the 11-months period after February 1 royal takeover. Among them, 3,400 persons were detained. The state also barred peaceful demonstrations till the end of this year. (See Table F)

2. February 1: Obstacle on Peace and Human Rights

2. Futile Period of One year

The king's move was widely condemned by the international community. UN Secretary-General Kofi Annan in a statement, made public by his spokesman in the context of the suspension of civil rights and freedom of expression immediately after February 1 royal takeover called for an immediate restoration of democracy in Nepal. He was quoted by his spokesperson as -"He does not believe that they will bring lasting peace and stability to Nepal. Steps should be taken immediately to restore democratic freedoms and institutions. "

The February 1 royal takeover was initiated undermining the notion that the problems emerged in democracy could be solved in more democratic environment. The state became violent against the institutional development of peace and democracy after the royal takeover. The state established the year 2005 as a futile year by suppressing political forces, civil society and intellectuals those seeking peaceful and

democratic solution of the crisis.

The state was involved in grave violation of two rights mentioned in Article 9 of the International Covenant on Civil and Political Rights during the year even after the state of emergency was lifted.

- Article 9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- Article 9 (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Protesting the February 1 royal takeover in US Senate, the senior Democrat senator Party Patrick Leahy said on February 2 -"There is no military solution to this conflict." But the state neglected similar opinions' throughout the year.

2.2 Authoritarian Mindset

The state disregarded the provision under Article 3 of the International Covenant on Civil and Political Rights during the year 2005 including dialogue and criticism. Article 3 explains, 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.' (Please see Chapter 1 'Highlight of the Year' and Chapter 2.2 Executive and Human Rights for details)

Objectively, the king's address was just a reiteration of the authoritarian thought repeated in the history. The king started amending laws that were earlier formed by the sovereign parliament to strengthen his grip on power and to realize the centralized rule as concealed in the royal move. (Please see Chapter 2 'Highlight of the Year' and Chapter 3.2 Executive for details)

The king assumed all executive powers stating, 'Faced with this steadily declining situation, it is now time to bring to an end the ongoing acts of terrorist violence and pledge, in earnest, to fulfill the people's aspirations with

the restoration of peace and security in the country.' He had also stated that the centralization of authority is against democratic norms. But the centralized politics, which cannot give its ears to criticism, came right soon after the royal takeover. Independence of judiciary was challenged and the principle of rule of law was totally defied.

The king in his proclamation had stated that nationality, national unity and sovereignty were best safeguarded by the intimate relationship between the King and people. The proclamation has explained that the then cabinet was dissolved to activate democratic system and to reinstate peace and security according to spirit of the Constitution of the Kingdom of Nepal, 1990 pursuant to the Sub-Article (3) of Article 27 of the same Constitution.

The step said to be taken according to Article 27 of the Constitution was the straight violation of the constitution. There has been series of violation of human rights in Nepal after the attack over democracy from February. It began from one grave violation, and escalated.

Parallel organs were created in the name of good governance, sidelining the rule of law after February 1. (Please see chapter 2.2 Executive and Human Rights for details) Nominations of the local bodies were resumed after the royal takeover. After October 4, 2002

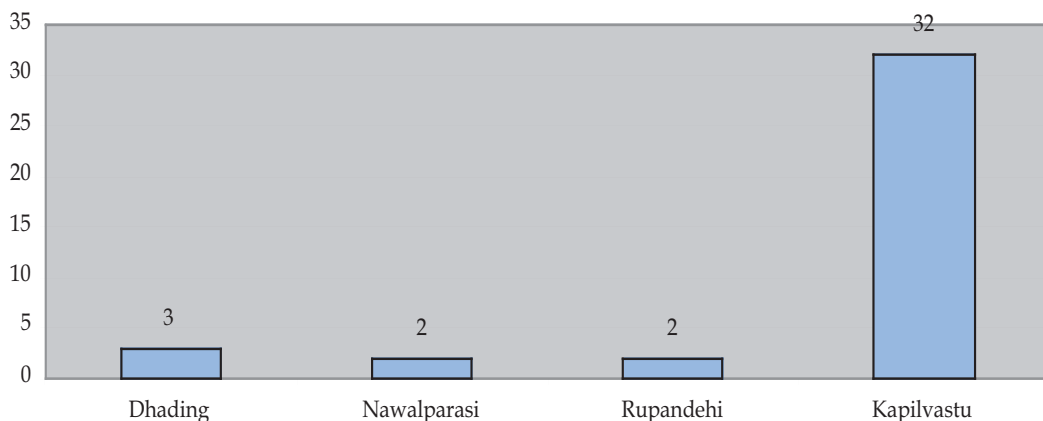
two governments nominated by the king in two different times had nominated the officials. But the four party-alliance government headed by Sher Bahadur Deuba could not reach to the consensus regarding the reinstatement of the officials in local levels. Then the responsibilities supposed to be performed by the elected officials shifted to the administrative staffs.

2.3 Clear Message of Regression

One cannot even imagine the respect for human rights in the absence of rule of law and civil liberties. The February 1 royal takeover was initiated by curtailing such civil liberties and rule of law. The clear message of regression became clear soon after the government's works and actions after royal takeover.

The re-emergence of the nearly vanished persons in politics of Panchayat background signaled that the king was attempting to resurrect the same regime in the country. In this context, the entry of the persons listed in a report about human rights violators named Mallik Commission remained significant. After the restoration of democracy in 1990, the government formed a three-member commission to investigate the loss of life and property during the pro-democracy Movement between the period of, March 20 to April 13, 1990. The three-member commission led by Justice Janardan Mallik, then chief judge of the Eastern Regional

Table B. Killings in the Name of Maoists Retaliation



Court, submitted its report on December 31, 1990. None of the post-1990 governments have tried to bring the violators of human rights to justice. Though, the state didn't take any action against them, most of them had been out national scenario. But, after October 4, 2003, when the word *pratigaman* meaning regression was becoming a buzz word of Nepali politics, these people were also becoming visible.

The Mallik Commission had divided the people involved in suppression of the Movement in two categories. The first category includes police and administrators, whereas the second category includes policy makers. The report named the then prime minister, council of ministers, central security committee, central security coordination committee and zonal administrators as the guilty under second category. The offenders included in second category have come to power with due respect after February 1 royal takeover. Among them, Parshu Narayan Chaudhary the then chief of Central Defense Committee, Dan Bahadur Shahi, the then Zonal Administrator, Niranjana Thapa, the then member of Central Defense Committee, Kamal Thapa, the then member of Central Defense Committee and Keshavraj Rajbhandari, the then Chief District Officer of Kathmandu re-emerged in the political arena as Chairperson of Rajsabha Standing Committee, Minister for Home, Minister for Law, Justice and Parliamentary Affairs, Minister for Home Affairs and Chief Election Commissioner respectively. The Mallik Commission's pointed out that Rajbhandari had violated national law by claiming deliberate firing by security persons at protestors during the 1990 Movement as within due process of law.

The Mallik Commission's report said that the offenders including then prime ministers, council of ministers, central security committee, central coordination committee, central coordination committee and Panchayat Policy and evaluation Committee and Zonal Administrators should be punished according to the gravity of their actions. The commission had also demanded actions against the culpa-

bilities named in the report as responsible for the destruction of life and property during the three weeks of the Movement. The state after February 1 royal takeover had ignored the responsibility towards international commitment and treaties. United Nations was informed about the state of emergency on February 15 by the government. Article 4 (3) of the International Covenant on Civil and Political Rights, 1966 to which Nepal is a state party states, 'Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated.'

2.4 Propagation of Fear

The state owned Radio Nepal had broadcasted news at 7:00 am on February 1 stating that the king is going to address the nation at 10:00 am on the same day. Telephone lines were cut off as the king's address began. The airways and roadways out to Kathmandu valley were stopped immediately.

The February 1 royal takeover, that was said to have been establishing sustainable peace and pertinent democracy, propagated terror nationwide. The administration and security institutions were in the condition that they could do anything. There was widespread abuse from security personnel especially in few districts outside Kathmandu valley during the state of emergency.

Three ministers of royal government, exactly after the royal takeover, visited and appealed to villagers of Ganeshpur VDC in Kapilbastu district to take action against the Maoists. The ministers went with the chiefs of Armed Police Force, Nepal Police and National Bureau of Investigation praised the activities of such 'Village Security Force'. The local offices of security forces had distributed weapons to security committees of the villages. The activities and speech of the ministers had attempted to violate the Article 20 (2) of International

Covenant on Civil and Political Rights. The Article reads as, 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.' National Human Rights Commission revealed that 31 persons belonged to retaliation committee, 14 Maoists cadre and a security person were killed by such groups backed by the state. As per the INSEC record 39 persons were killed in the allegation of being Maoists in 2005. (Please see Table B)

3. Effects of the Royal Takeover

3.1 End of the Peace Process

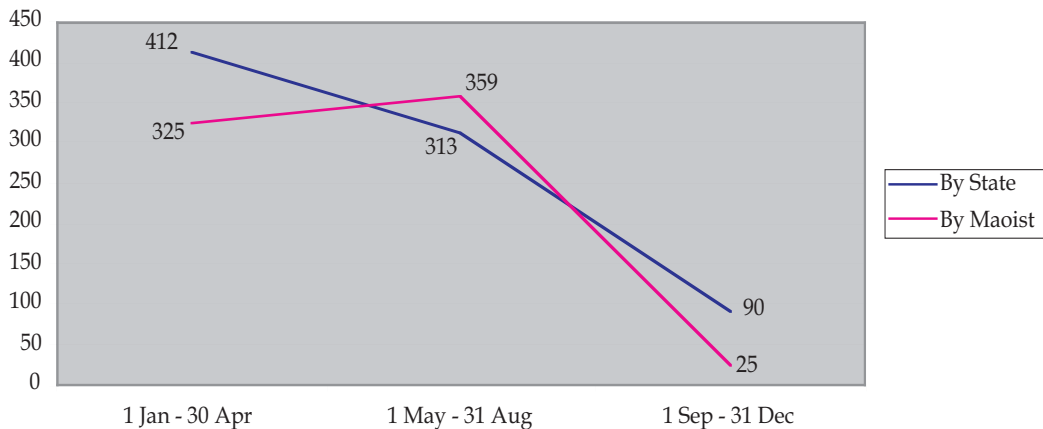
The state presented hostile mindset during the whole year 2005. There was significant decline in death toll after Maoists' unilateral ceasefire. As many as 651 persons were killed by the state whereas 558 persons were killed by the Maoists in the first seven months after February 1 royal takeover. But, 85 persons were killed by the state and 24 persons were killed by the Maoists during Maoists' four months unilateral ceasefire. Though the unilateral ceasefire was in place at the end of 2005, numbers confine within the 2005. (Please see Table C) It was obvious to expect bilateral ceasefire when the number of death went down significantly during the unilateral ceasefire. Thus, there had been widespread demand of bilateral ceasefire, but the state did not reciprocate.

The king's takeover had come with disregard towards dialogue and consensus. The king in his proclamation stated, 'We call upon all those who have gone astray, taking up arms against the nation and people, and those who are engaged in criminal activities against peace and democracy to return to the mainstream of national politics peacefully.' The appeal showed that the king wanted to solve the crisis by military powers.

On behalf of European Union, the Presidency issued a statement on December 1 about the 12-point consensus between seven political parties and Maoists as, "The EU recognizes the effort of the political parties in Nepal in securing an agreement with the Maoists which could form the basis for a peace process in Nepal." The EU welcomed the announcement of a unilateral ceasefire declared by the Maoists. Likewise, Government of India said that the accord between Maoists and seven political parties had shown sufficient ways for peaceful solution of the crisis on November 23. UN Secretary General Kofi Annan, on the same day, welcomed the accord between seven political parties and Maoists aimed at restoring democracy in the kingdom.

But the royal government has never shown willingness for peace during the year. For instance, Ceasefire Civil Monitoring Committee found such incidents within 2005-

Table C. Killings by State and Maoists at Different Period



'The Military was found to have killed the Maoist cadres after arresting, chasing or cordoning them off in Palpa, Morang, Sindhupalchowk, Nawalparasi, Kaski, Rasuwa, Sankhuwashava and Makawanpur. No cross-fire was recorded and no incident was found in which the military killed the Maoists in defense firing. The patrolling team of Royal Nepalese Army was found to be involved in all these incidents. In some of the incidents, the RNA was also found terrorizing the villagers by carrying guns while in plain clothes and they arrested and killed the Maoist cadres in tricky ways.'"(Please see also Table D)

3.2 Shadow on Judiciary

Nepal's judiciary also could not remain out of criticism after February 1. The Supreme Court could not take initiatives for constitutional remedy except not suspended rights during state of emergency. Legal experts then recognized that there was shadow of February 1 in judiciary.

Nepal's Supreme Court reserves the right to regulate the announcement of the state of emergency. Article 84 of the Constitution has provisioned the right to Courts to exercise Powers Related to Justice. Likewise the Article 88 (1) and (2) has mentioned about the Jurisdiction of the Supreme Court. Article 96 of the Constitution has provision as, 'Orders and Decisions of the Courts to be Binding.' The Supreme Court has right to check the rights non-derogable during state of emergency, but the Supreme Court did not even file the case of *habeas corpus* after the royal takeover.

There was a court hearing in the case of constitutional remedy on February 24 which was the first case filed after February 1 regarding non-derogable rights. The court administration issued a rejection order citing that the writ regarding contract agreement could not be filed on February 9. The writ was filed after the bench of Justice Paramanada Jha issued an order of registration on hearing of a writ against administration on February 23. The Supreme Court issued an order stating that the writ can be filed for non-derogable rights during emer-

gency on March 31. The 'special bench' has been formed after a writ was filed against the rejection of writ regarding non-derogable rights by the Supreme Court itself. The Supreme Court had been in confusion for months after February 1. (Please see Chapter 2.1 Judiciary and Human Rights for details)

The decisions of Supreme Court regarding *habeas corpus* to release detainees were welcomed by the civil society after February 1. At the same time, there were several questions raised upon impartiality of judiciary after the controversial opinions presented by the then Chief Justice Hari Prasad Sharma stating that the royal takeover had come due to failure of political parties to tackle terrorism. Though, the judiciary had embraced with controversy after February 1, some justices dared to stick to due regards for the Constitution.

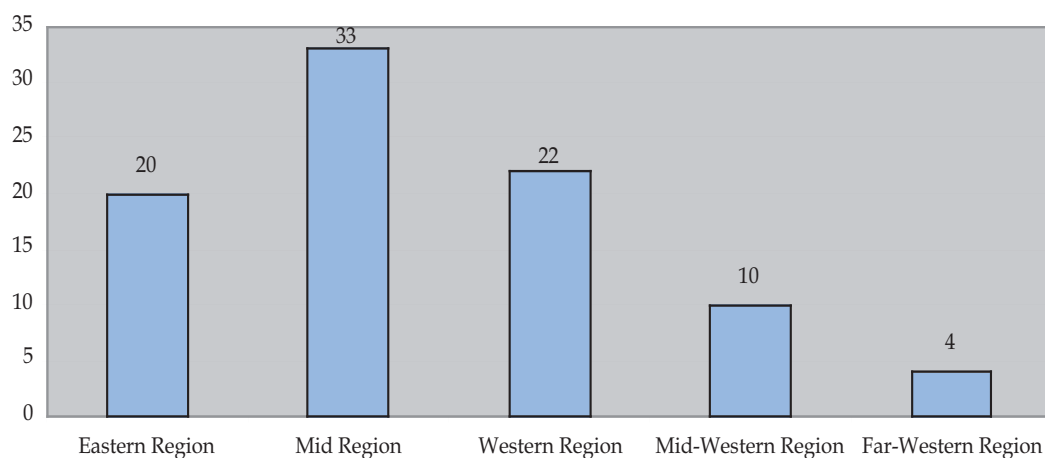
3.3 Prolonged Absence of Parliament

There was a constant demand for the restoration of parliament throughout the year 2005. The autocratic regime continued in the country due to absence of parliament. The multiparty democracy established by the People's Movement of 1990 has been paralyzed in its absence. (Please see Chapter 2.3 Legislature and Human Rights for details)

In the absence of parliament, there had been negative impacts in the effective implementation of the UN treaties ratified by Nepal. The 35th session of the Committee against Torture held from November 7 to 25 in Geneva recommended Nepal under the heading of factors and difficulties impeding the implementation of the Convention- 'The Committee regrets the adverse impact of the absence of the Parliament since May 2002 on the capacity of the State party to implement the Convention, and in particular in respect of enactment or amendment of legislation, as well as ratification of international conventions.'

The royal government continued to escalate conflict with main political parties during the year 2005. The government also carried on with widespread publicity of the municipal and parliamentary election in the year. The

Table D. Killings after Arrest



steps like restriction on peaceful demonstrations revealed that the royal government had not publicized such elections for democratic practice but for the continuation of the autocratic regime.

3.4 Autocratic Executive

After February 1, the trend to re-arrest the political activists and human rights defenders by defying the court verdict increased dramatically. As per the INSEC documentation, as many as 84 persons were re-arrested in the later 11 months of the king's direct rule. Some of them were even re-arrested from the Supreme Court premises. This reveals the encroaching tendency of the unelected executive after the royal takeover. As many as 100 cases of re-arrest have been recorded in INSEC.

Contrary to the principle of separation of power, the executive tried to maintain its unconstitutional influence over the judiciary throughout the year 2005. The absence of House of Representatives helped executive to be more autocratic. Since the February 1 move, the state rejected any kinds of dialogue to solve the burning problems of the nation. The civil administration was discouraged due to arbitrary activities after the king formed government under his chairmanship. Royal Commission for Corruption Control was formed for political reprisal. Independent media was attacked

repeatedly. Civil and political rights of the citizens were ruled out throughout the year. (See Chapter 2.2 Executive and Human Rights for details)

3.5 Provoked Impunity

Impunity remained a major problem even in 2005. This year, the Royal Nepalese Army promised to take action on some of the incidents publicized by human rights defenders. However, it required long struggle from human rights organizations from national-international level.

In 2004, the issue of killing of a minor girl Maina Sunuwar after torture in Kavre was raised in national-international level. This year, the Royal Nepalese Army said to have taken action against one colonel and two captains for violating human rights. But, mother of Maina raised concern that there was no transparency in the action. She demanded to persecute the accused in civil court.

The tendency of security institution and the government to hide the incident resulting from the atrocity of security persons instead of showing readiness to investigate was seen in 2005 also. The security persons did not show willingness to investigate the incident where four persons were shot dead at the security custody in Dholbaja tole of Janakpur. (Please see: Annex 1, Central region, Dhanusa for further details)

An armed group in plain clothe, locally known as Ghumuwa, took control of Trilochan Poudel, 22 on April 8, 2005 as he was having meal in the morning. Raising hands, he started pledging his innocence. He produced his identity card asking them to listen to him. But, no one gave heed to his plea. A group of 40 security forces arrive on motorcycles at Bhainsahi of Laxmaniya VDC-9 from Bankul Security Base Camp shot five bullets, first at his leg, then at his hands, in his chest and abdomen. After killing him, the security forces assaulted the civilians in their houses. They also thrashed the laborers working in the field.

Human Rights Treaty Monitoring Coordination Committee, a coalition of forty-four human rights organizations of the country-published a fact finding report on the incident. But the state did not take any at legal action against the perpetrators. The incidences where people were killed by the misuse of small arms came to the light in 2005 too. The infamous Nagarkot incident that took place by the end of the year can be cited as an example.

The residents of Nagarkot-6 were enjoying the festival with illuminating the traditional lights in the surroundings of a local temple. Suddenly, a soldier Bashudev Thapa appeared with a SLR Rifle. Thapa, working at Nagarkot Technical Institute of Royal Nepalese Army opened indiscriminate fire. As many as 11 persons were killed in the site. 19 sustained serious and four minor injuries. (See Annex 1,

Central Region, Bhaktapur)

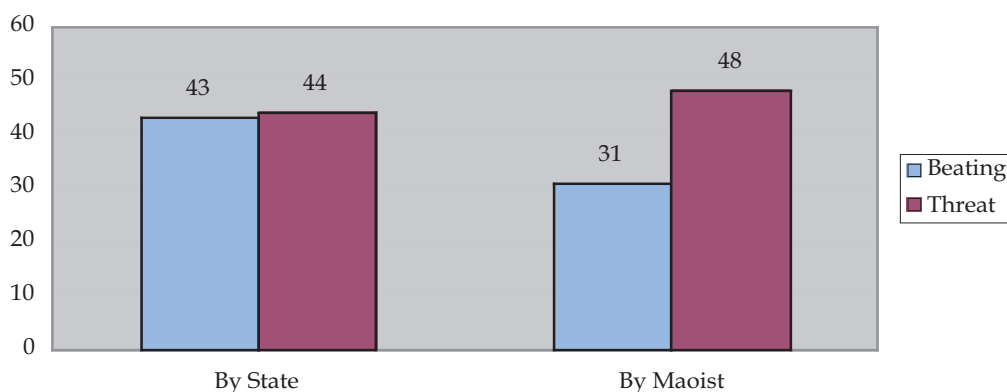
While discussing about impunity, we cannot forget the problem of security, the people of rural area face in absence of the state. In such areas, the atrocities on civilians from third party-other than state and Maoists- and criminal groups increased in 2005. Out of 1,895 killed in 2005, 371 were killed by such party.

3.6 State's Curbed Eye on Human Rights Movement

In 2005, human rights defenders had to face harsh behavior from the state. The prejudice of state was repeatedly revealed from the ministers' statement after February 1. The state has neglected the declaration on human rights defenders. The rights of human rights defenders to monitor incidents of human rights violation, publish factual report and demand punishment to the perpetrator was completely denied.

The then National Human Rights Commission was discouraged right after February 1, 2005. Later, the National Human Rights Act was amended and the formation procedure of the Commission was confined through an Ordinance. In the aftermath of the Royal Proclamation, the independence, transparency and accountability of the Human Rights Commission of Nepal was undermined at once by the appointment of the Chairperson and the new members, in accordance with the Ordinance, not in conformity with the original

Table E. Incidents of Threat and Beatings to Human Rights Defenders



act setting up the Commission. On the due course, the Social Welfare Act was amended through an ordinance to control the non-government human rights organizations. (See: chapter 1, "highlight of the year" and chapter 2.1 Judiciary and Human Rights)

After February 1, human rights defenders including Krishna Pahadi, Gauri Pradhan and Bishnu Nisthuri were arrested. Some of them were barred from traveling outside Kathmandu. Members of National Human Rights Commission were also barred in the course. Former speaker of HoR Daman Nath Dhungana and Laxman Aryal, one of the members of the constitution draft committee 1990, were also stopped from leaving Kathmandu and turned back from the Tribhuvan airport.

Member of National Human Rights Commission Kapil Shrestha was sent back from Tribhuvan airport on February 8 while he was heading for Biratnagar along with the chairperson to participate in the inauguration of Eastern Regional Office. The security persons said that he did not have permission to go outside the Kathmandu. Similarly, another member Sushil Pyakurel was also barred from going Bhairahawa on March 5 to monitor and investigate the violent activities at Kapilbastu district.

With the suspension of civil and political rights, the dialogue of human rights defenders with the state was completely stopped in the year 2005. The access of national

human rights organizations at detention centers was lessened. National Human Rights Commission, the International Committee of the Red Cross and the Representative of the UN High Commission of Human Rights were told to be allowed to meet the detainees.

The human rights movement faced complications due to planned attack over free press. The state introduced economic sanction to media and the journalists were arrested many times just for practicing their profession. The state summoned journalists and human rights activists of Lamjung, Dailekh, Bajhang and Bajura among other districts before local administration to threatened them. (Please see Chapter 1 Highlight of the year and Annex 1, district wise incidents of human rights for details) In 2005 human rights defenders were even manhandled and intimidated (Please see Table E)

4.1 International Concern

As per the commitment expressed in the Universal Declaration of Human Rights, 1948, that one shall strive by teaching and education to promote respect for fundamental rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, among the peoples of Member States, the international community was seriously concerned over situation of Nepal. The internation-

Table F. Arrest While Enjoying Rights to Expression/Assembly and Association

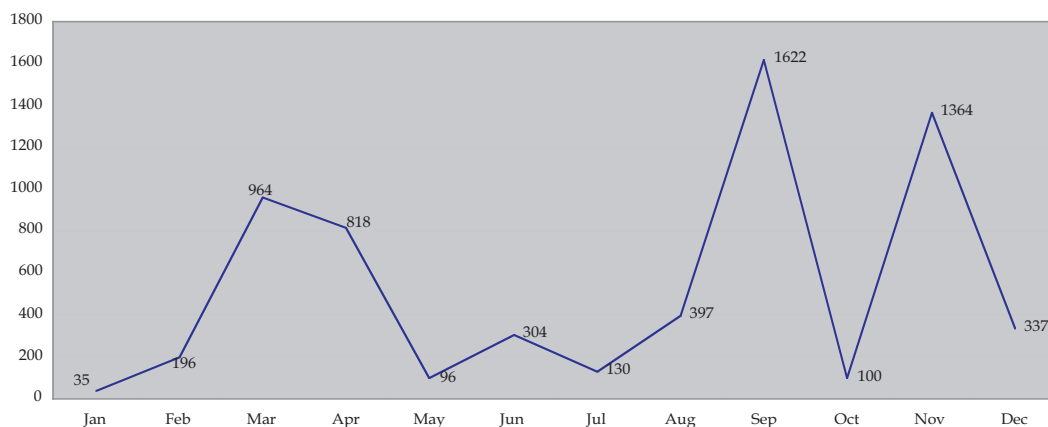
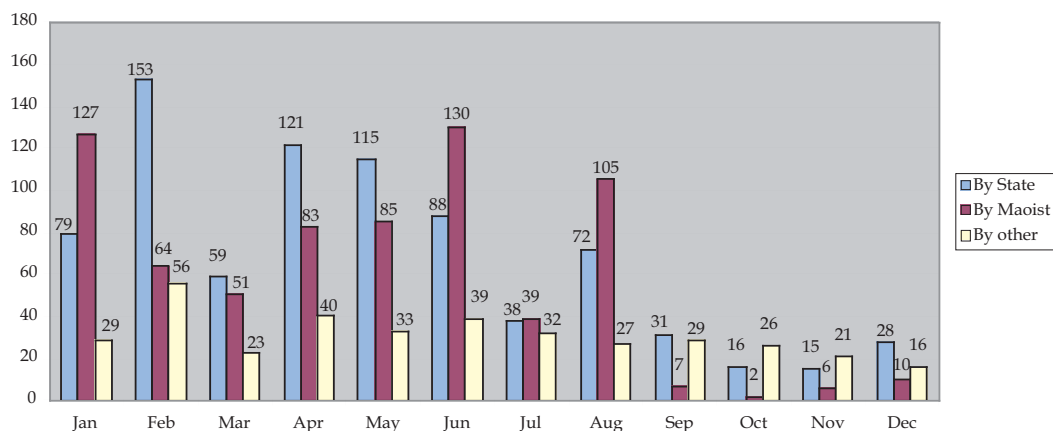


Table G. Killings by State, Maoists and Others (By Month)



al community accordingly pressured both the state and the Maoists in the year 2005.

The king, who earlier expected to get additional cooperation from neighboring countries, financial organizations and donor agencies, was distressed by the same community. The international community after February 1 has appealed to countries including United States of America, United Kingdom and India to stop arms assistance to Nepal until the democracy was restored. People who are concerned for Nepal including US Senator Patrick Leahy, in particular, raised this voice. Secretary General of the Amnesty International Irin Khan after her visit to Nepal from February 10 to 16, said to the media in New Delhi on 18 February 2005- "Donors should suspend all military assistance to the Government as a means of pressurizing it to change its human rights policies."

European Parliament on February 25, called for its council to impose smart sanctions against Nepal, as- 'Calls on the Council to impose smart sanctions against the ruling elites in government and the military until democracy is restored in Nepal.' The establishment of the Office of the United Nations Commission for Human Rights was also an achievement of the international concern towards Nepalese citizens. It is not difficult to understand that the respective office could not be established in Nepal in the absence of international pressure.

5. Conclusion and Recommendations

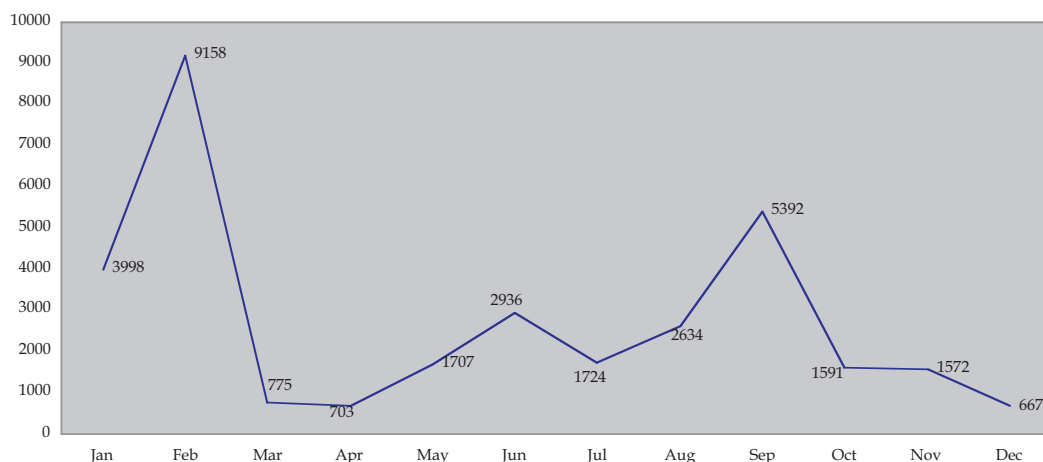
The preamble of autocracy that was drafted on February 1 has become a complete failure due to active endeavor of Nepalese people and watch by international community. But the conflict between establishment of political environment and the assurance of human rights remained undecided till the end of this year.

Countries including United States of America, United Kingdom and India saved Nepali conflict from becoming more violent by stopping arms assistance after February 1. The international community needs to exert such pressures to Nepali in the days to come for reinstating civil rights and pluralistic political environment.

Establishment of the Office of the field High Commissioner for Human Rights in Nepal was an important achievement for human rights campaign in the year 2005. This has also helped Nepali citizens and human rights defenders to fight against the planned violation of human rights, both by the state and the Maoists. There are some incidents in which the Office deserves credit as well. For instance, there were 313 persons disappeared in the year 2004, whereas this number has been reduced in the year 2005 and recorded as 120. The main cause behind reduction of disappearances is the physical presence of the respective office where needed.

Even though, the Office could get more

Table H. Abduction from the Maoists



cooperation from the civil society, in accordance with its mandate to 'maintain constant communication with civil society organizations for the promotion and protection of human rights.' Likewise, more could be done in line with its mandate to 'advise representatives of civil society and individuals on all matters related to the promotion and protection of human rights, including the use of national and international protection mechanisms.' In line with the provisions of the MOU with the government, the office could extend cooperation to enhance the confidence in the field of human rights with the Nepali civil society and human rights community that are working in difficult circumstances.

Both the state and the Maoists were involved in the violation of humanitarian laws. There is a question that whether the instances of the respect the humanitarian laws seen during some of incidences were only for publicity. There is a need of continuous pressure on both parties from international community to force them to abide by humanitarian laws.

The scheme to stop advocacy and support of information dissemination and human rights promotion is likely to be escalated as hinted by the ministers and security officials. Consequently, UN bodies and international human rights organizations and campaigns

need to concern about Nepalese human rights defenders.

The issue of realization of human rights was appeared intermingled with the struggle against the kings' attempt to suspended and peoples' attempt to restore civil and political rights in Nepal in the year 2005. The seven political parties have brought the Maoists closer to the consensus on ceremonial monarchy for the solution of both violent and nonviolent conflicts. At the moment, there is immediate need of the king's initiatives for peaceful solution of the crisis. The parliamentary political parties have predicted that the slogan of democratic republic will gain momentum if the king does not agree with their stand on of ceremonial monarchy.

Therefore, there is a need of worldwide pressure for the restoration of civil and political rights to ensure the way of sustainable peace in Nepal. If Nepal is not kept under continuous watch by the international community, we cannot deny the possibility of more bloodshed in the days to come.

Kundan Aryal
Chief Coordinator

