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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

#### **Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal**

#### **Summary\***

On 16 February 2006, the High Commissioner for Human Rights submitted to the Commission on Human Rights her report on the human rights situation and the activities of her Office, including technical cooperation, in Nepal (E/CN.4/2006/107) covering the period from May 2005 to January 2006. A subsequent report covering the period up to September 2006 was submitted to the General Assembly (A/61/374).

The present report, established pursuant to Human Rights Council decision 2/114, looks at the human rights situation in the context of the peace process in Nepal and covers the period up to the beginning of January 2007. With the cessation of hostilities, conflict-related violations ended and the rights to freedom of assembly and expression were largely restored. However, many challenges remain with regard to ending ongoing serious abuses, upholding and strengthening respect for human rights, which must be addressed in the short and long term. Ending impunity for gross human rights violations as well as deep-rooted discrimination and other abuses against marginalized groups are among those challenges.

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\* The report was submitted after the deadline so as to include the most recent developments, including within the Security Council.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 8	3
II. HUMAN RIGHTS AND THE PEACE PROCESS .....	9 - 14	5
III. RESPECT FOR INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW .....	15 - 41	6
A. Conduct of the security forces with regard to human rights .....	15 - 21	6
B. Detention and torture .....	22 - 28	8
C. CPN(M) and human rights .....	29 - 37	9
D. Abuses by other armed groups .....	38 - 41	11
IV. ACCOUNTABILITY .....	42 - 56	12
V. INTERNAL DISPLACEMENT .....	57 - 61	15
VI. SOCIAL EXCLUSION/MARGINALIZATION .....	62 - 67	16
VII. CONCLUSION .....	68 - 70	17

## I. INTRODUCTION

1. The present report is established pursuant to Human Rights Council decision 2/114 in which the Council decided to request the High Commissioner to submit a report on the human rights situation in Nepal and the activities of her Office, including technical cooperation, to the Council at its fourth session. On 16 February 2006, the High Commissioner for Human Rights submitted to the Commission on Human Rights her report on the human rights situation and the activities of her office, including technical cooperation, in Nepal, which had been established pursuant to Commission resolution 2005/78 and covered the period from May 2005 to January 2006 (E/CN.4/2006/107). She subsequently prepared a report for the General Assembly (A/61/374) covering the period up until September 2006.

2. This latest report, covering the period up to the beginning of January 2007, examines the political changes since the protest movement in April 2006 and their impact on the human rights situation, as well as key human rights issues which need to be addressed in the course of the still fragile peace process. It is based on information gathered in the context of the Office of the United Nations High Commissioner for Human Rights (OHCHR) monitoring and investigation work throughout the country, including meetings with authorities, security forces, Communist Party of Nepal (Maoist) (CPN(M)), civil society, victims and families. Since the ceasefire, staff from the regional offices of OHCHR in Biratnagar, Kathmandu, Pokhara and Nepalgunj, and the new sub-office in Dadeldhura, have intensified travel to many districts and villages. Overall, the authorities and CPN(M) have cooperated with OHCHR. However, OHCHR has been disappointed at the continued lack of response to a number of reports and letters to the Government and to CPN(M), and by the failure to implement many recommendations for ending abuses and strengthening human rights protection. CPN(M) at times delayed access to those held in captivity. In addition, the Nepalese Army maintained its refusal to provide documents relating to military investigations and court martial proceedings into abuses. Ending impunity in Nepal remains the most difficult human rights challenge.

3. Ongoing peace talks in Nepal resulted in a request from the parties for United Nations support for the peace process. In addition to OHCHR being requested to monitor the human rights provisions of a 21 November Comprehensive Peace Agreement (CPA), the United Nations was requested to support the peace process, including through arms and troop management, and technical assistance for the elections. In December, OHCHR participated in a Technical Assessment Mission, headed by the Office of the Personal Representative of the Secretary-General (OPRSG) to make recommendations to the Security Council as to the nature of the United Nations presence. OHCHR will coordinate and collaborate very closely with the new mission to ensure complementarity of activities.

4. The year 2006 saw extensive developments in the political situation and in the conflict. These changes were precipitated by 19 days of nationwide protests (known as the *Jana Andolan* or People's Movement), which were organized by the Seven-Party Alliance (SPA) with Communist Party of Nepal - Maoist (CPN(M)) support. The demonstrations began on 5 April and took on unprecedented proportions. The Government tried from the outset to prevent the protests, severely curtailing rights to freedom of assembly and association, with several thousand arrests, and many political party and civil society leaders placed in preventive detention under the Public Security Act. While acknowledging that security forces - the Royal Nepalese Army (renamed the Nepalese Army on 18 May), the Armed Police Force (APF), and

the Nepal Police - at times faced a difficult task of dispersing groups of violent demonstrators, OHCHR concluded that all branches of the security forces were responsible for excessive use of force. Eighteen people died in the context of the demonstrations, mostly as a result of bullet wounds, and many more were injured from beatings, bullets or stones.<sup>1</sup>

5. On 24 April 2006, the eve of what was likely to have been the largest demonstration in Kathmandu and amidst serious concerns as to the potential response of the security forces, King Gyanendra announced the reinstatement of the House of Representatives. On 27 April, the King appointed the unanimous choice of SPA, Nepali Congress leader Girija Prasad Koirala, as Prime Minister. The following day, the House of Representatives convened for the first time since 2002, an SPA Government was formed and the King's powers subsequently curtailed.

6. Significant improvements in the human rights situation were observed immediately after the establishment of the new Government. The right to freedom of association, expression and assembly were largely restored, with bans on demonstrations lifted except in one area of Kathmandu. All political detainees held under Public Security Act (PSA) were released. Both parties declared ceasefires, and on 26 May 2006, agreed on a 25-point code of conduct. The ceasefire has held since April 2006 and resulted in a complete cessation of the Nepalese Army and People's Liberation Army (PLA) offensive operations.

7. With the cessation of hostilities, conflict-related violations also ended, including extrajudicial executions, detention, torture and ill-treatment in army barracks of those suspected of links with CPN(M). Violations of international humanitarian law ceased. The pattern of long-term disappearances which dominated previous years ended during 2005. Most prisoners held in preventive detention or facing charges under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) on suspicion of being members or sympathizers of CPN(M) (see A/60/359, para. 16) were released, including many juveniles. The TADO was not renewed when it lapsed in October.

8. Despite these improvements, as this report documents, many challenges remain with regard to ending serious ongoing abuses such as arbitrary detention, abductions, torture and ill-treatment, and to upholding and strengthening respect for human rights. Challenges include also the failure of both parties to address impunity for past and recent violations in any meaningful way, and deeply-rooted discrimination and other abuses against women and other marginalized communities such as Dalits, Madhesi and ethnic groups. While there have been gains in democratic space, creating a climate conducive to Constituent Assembly elections - due to be held in June 2007 - without threats or violence will be extremely difficult unless there is the political will on the part of all parties to strengthen rule of law and to respect the political rights of all.

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<sup>1</sup> See *Findings of OHCHR-Nepal's Monitoring and Investigations: The April Protests: Democratic Rights and the Excessive Use of Force*, published in September 2006.

## II. HUMAN RIGHTS AND THE PEACE PROCESS

9. Following the political developments, peace talks between SPA and CPN(M) were relaunched and resulted in the signing of a series of agreements. The talks culminated in an 8 November timetable for steps leading to Constituent Assembly elections, and on 21 November 2006, SPA and CPN(M) signed a Comprehensive Peace Agreement (CPA), which effectively ended the 11-year conflict. Consolidating previous agreements signed between the two parties since November 2005, it contains broad provisions on human rights, including ending discrimination, arbitrary detention, torture, killings and disappearances, as well as economic and social rights. It also mandates OHCHR to monitor the human rights provisions contained in the Agreement and requires both parties to collaborate with the Office in providing information and implementing recommendations.

10. OHCHR has repeatedly stated that human rights must be central to the peace process. While the human rights provisions are to be welcomed, the Comprehensive Peace Agreement does not contain specific measures for their implementation. Both parties have made full commitments to respecting human rights in previous agreements and understandings, but implementation has been far from satisfactory. To date, the Agreement also fails to address the question of justice for past human rights violations (see below).

11. Following the signing of the Comprehensive Peace Agreement, a 31-member Ceasefire Code of Conduct National Monitoring Committee, set up on 15 June 2006, which OHCHR had been requested to assist with regard to human rights monitoring, was dissolved. An alternative monitoring body has yet to be set up. Human rights provisions of the Ceasefire Code of Conduct were mostly incorporated into the Comprehensive Peace Agreement.

12. The Comprehensive Peace Agreement also accords an important monitoring role to the National Human Rights Commission (NHRC). However, the future of NHRC remained uncertain throughout the reporting period. Following the 9 July resignation of NHRC Chairperson and members, OHCHR and others strongly advocated for a timely, transparent and consultative process for the selection of new commissioners which would take into account the views of civil society. In communications with senior government officials, OHCHR urged that provisions be incorporated into the draft Interim Constitution and a draft revised Human Rights Commission Act to ensure that the selection and appointment process, among other issues, conformed with international standards. It also urged that the new NHRC be put on a firm, non-partisan footing in order to carry out its work independently and with the broad support it needs from civil society. None of these recommendations were incorporated into the relevant legislation. In December 2006, the Government named a new Chairperson and commissioners under the revised Human Rights Commission Act. The lack of consultation in the selection process was widely criticized. By the end of the year, the appointments had yet to be approved.

13. Against this backdrop, OHCHR continued to assist NHRC staff and organized trainings with the Commission to further build its staff's professional capacity and to better prepare it for the key role it should play when new Commissioners are finally appointed.

14. To pave the way for the formation of an Interim Government and Parliament, a draft Interim Constitution was signed by the two parties on 16 December 2006, and promulgated on 15 January by the outgoing Legislature and by the incoming Interim Legislature. It had been

drafted by the Interim Constitution Drafting Committee (hereafter “the Drafting Committee”) set up in July 2006. After widespread protests that the six-member all-male Committee, led by a former Supreme Court Justice, was not sufficiently representative, an additional 10 members (including four women and a Dalit representative) were added. The Interim Constitution presents an opportunity to strengthen human rights protection until the drafting and adoption of a new constitution by the Constituent Assembly. Although the latest draft does include improved human rights provisions, OHCHR is concerned that some of the recommendations it had submitted to the peace talk negotiation teams on 27 September had not been incorporated into the 16 December document. The draft does not, for example, clearly protect the rights to life, liberty and security. Some provisions are incompatible with international human rights standards, including a clause which would allow the Government to derogate from certain fundamental rights during a state of emergency.

### **III. RESPECT FOR INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW**

#### **A. Conduct of the security forces with regard to human rights**

15. The April change in Government, together with the ceasefire, has had a positive impact on the conduct of the security forces, particularly in terms of conflict-related violations, but these gains remain precarious. Institutional weaknesses, as well as the need for political will to instil professionalism based on full respect for human rights, are challenges which still need to be met. In the coming months, the extension of State authorities into areas where they have been absent and the strengthening of law enforcement agencies will be critical to ending violations and upholding law and order, especially during the electoral process.

16. As already indicated, conflict-related violations by the Nepalese Army ceased following the end of hostilities. Sporadic abuses, including allegations of rape or sexual violence, and the killing of a group of demonstrators in April, were reported. However, reform of the army - especially the need to subject it to full civilian control and scrutiny - has yet to be tackled in a satisfactory manner. An Army Act passed in September has resulted in only limited change. Lack of accountability for past gross human rights violations, including disappearances, by the Nepalese Army remains one of the main concerns of OHCHR. Its leadership has informed OHCHR that it is tackling the question of accountability. However, OHCHR remains deeply critical of the lack of transparency of military investigations and the continued impunity enjoyed by most perpetrators, with the risk of threats to those who try to pursue justice (see paragraphs 42-56 below).

17. In this transition phase, the crucial role of the Nepal Police as the principal law enforcement agency has been brought to the fore, but as an institution it faces many challenges. Over 1,000 police posts were destroyed or abandoned during the conflict after police were killed or threatened. The Government has given instructions that all police posts must be reopened by mid-January 2007. The Nepal Police is facing numerous obstacles, including lack of infrastructure and funds, as well as obstructions by CPN(M), even after the signing of the Comprehensive Peace Agreement. Referring to the 8 November timetable, CPN(M) has opposed reopening police posts before the Interim Government in some areas. In at least two cases in December, there were clashes when reopened police posts were attacked. A 3 January 2007 directive by the Chairman of CPN(M) to cadres to support the re-establishment

of police posts resulted in a speeding up of the process. As of 17 January 2007, according to the Government, 1,019 posts were re-established, but obstacles were still being reported in some areas.

18. The absence of effective policing in rural areas quickly emerged as a major human rights challenge after the ceasefire, a void which has repeatedly been filled by the often abusive parallel “law enforcement” activities and “people’s courts” of CPN(M) (see paragraphs 29-34 below). The perceived weakness and often inaction of the police and courts, and the resulting lack of confidence in the State’s capacity to enforce law and order, facilitated the extension of CPN(M) “law enforcement” activities and “people’s courts”. The transitional period presents an enormous challenge for ensuring the protection of human rights through adequate policing and the effective administration of justice. The strengthening of the State law enforcement system and administration of justice will be crucial to convincing local populations that State authorities are able to maintain law and order and to deliver justice. Current indications suggest that much of the civilian population remains deprived of these fundamental public services, essential to the protection of human rights, because the State lacks the capacity or at times the will to undertake law enforcement and judicial functions, even in areas not previously controlled by CPN(M). This security vacuum risks being filled in a number of ways: through communities taking “justice” into their own hands - as has already happened in several cases with fatal consequences; through CPN(M)’s often abusive system of “people’s justice”; through exploitation by criminal elements or organized crime groups, some of whom might be politically manipulated; and also by vigilante groups.

19. In the context of the electoral process, it will be essential that the police maintain law and order in an impartial manner, including to ensure that marginalized groups are treated equally before the law (see paragraphs 62-67 below). In this regard, access to justice for women, as well as Dalit and other marginalized groups remains a major concern. A small number of more than 100 cases of gender-based violence reported to OHCHR were filed with police for investigation, especially where members of the security forces were allegedly responsible. Impediments to victims accessing justice were fear of stigmatization and retaliation, the 35-day statute of limitations for filing rape cases, as well as little evidence of justice in such cases when they are reported.

20. OHCHR continues to monitor the capacity of both the Nepal Police and APF to deal with crowd control with full respect for human rights. Since April, many protests, on issues ranging from accountability to discrimination, education and health, have been organized, especially in the capital. OHCHR has documented - and in some cases witnessed - further instances where police baton charges caused head and other injuries to demonstrators. Though in some cases the demonstrations were violent, OHCHR concluded that the use of force was at times excessive, and that lessons have not been drawn from the handling of the April protests.

21. The issue of the future role of APF emerged not only from its role in April but again following the excessive use of force by APF at Tatopani, Sindhupalchowk District, on 30 July, when an APF patrol posted at the Nepal-Chinese border confronted violent demonstrators with live ammunition, killing a bystander and wounding several others. The Nepal Police refrained from intervening. Although investigations carried out by OHCHR concluded that excessive force was used, the internal APF investigation did not and an APF officer initially suspended returned to office. Beyond APF responsibility for this specific case, OHCHR is concerned that

APF continues to be assigned policing functions despite a demonstrated and acknowledged lack of training to perform this role. OHCHR training for APF has sought to address human rights issues, particularly regarding the appropriate use of force, but the law enforcement role of APF needs further clarification.

## **B. Detention and torture**

22. Conflict-related arrests under TADO and also political arrests under PSA have stopped since the ceasefire. The only exception under PSA was the detention of the former Home, Foreign and Communication Ministers and two other former officials in May. OHCHR criticized the new Government for using the same arbitrary measures as the previous Government at a time when it should be setting new standards. All were eventually released by court order and PSA has not been applied since. The Government has given assurances that it will not be “misused while maintaining law and order”. Demonstrators, including civil society activists, were arrested by police briefly while holding a peaceful sit-in outside the Prime Minister’s residence in January 2007.

23. The majority of alleged members or sympathizers of CPN(M) who had been held under TADO were released. According to the Government, 1,082 TADO detainees were released, 692 from preventive and 390 from pretrial detention. OHCHR interviewed 336 TADO detainees in private in five High Security Centres in Morang, Kaski, Kathmandu, Dang and Kanchanpur Districts. The main findings of the review showed serious violations, including illegal arrests and detention, as well as disregard for fundamental due process guarantees. Many alleged they had been tortured in army barracks before transfer to prison.

24. OHCHR is presently assessing the legality of the current detention of previous TADO detainees or other CPN(M) associated detainees now held for ordinary criminal offences. It is also examining whether they might have been charged with offences which would amount to violations of humanitarian or human rights law. A few cases concern juveniles who were among some 100 children whose detention under TADO had been documented (see E/CN.4/2006/107, para. 68).

25. Following the release of most TADO detainees, detainees held for common crimes around the country began protests, including hunger-strikes and destruction of prison infrastructure, calling for a general amnesty for all prisoners. Detention conditions are often overcrowded and inadequate. OHCHR is continuing periodic visits to ensure appropriate interventions regarding improvements in prison conditions and accountability with regard to abuses occurring inside prisons, in particular in relation to the system of using prisoners to maintain internal discipline.

26. Police detention of criminal suspects has yet to be assessed systematically by OHCHR in terms of respect for human rights of detainees. Nevertheless, cases of ill-treatment and torture of criminal suspects were documented. OHCHR was particularly concerned about the death in custody of an Indian national in October 2006, reportedly as a result of torture. A police officer was suspended but not charged. In October also, one individual was shot dead by the Nepal Police as he was being arrested. Investigations carried out by OHCHR challenged the official version that he had been shot in self-defence.



27. The continued absence of a fully functioning national central detention register, despite its announcement by the Government in December 2005 (see E/CN.4/2006/107, para. 27), as well as the lack of accurate record-keeping at many prisons and police stations around the country make it difficult to monitor the legal status and release of detainees and remain issues which need to be addressed. OHCHR is also concerned that poor record-keeping of detentions in police custody and delays in handing over detainees to judicial authorities facilitated arbitrary detention. It is also concerned about individual cases of children and juveniles in police custody.

28. OHCHR also investigated allegations of arbitrary detention, ill-treatment and three deaths in custody in national park detention facilities in 2006, one of them allegedly as a result of torture. Two park wardens were detained in connection with the latter case.

### **C. CPN(M) and human rights**

29. In addition to provisions in the peace agreements, CPN(M) made other commitments to respect human rights, including a 17 April 2006 statement declaring general respect for and commitment to international humanitarian law and human rights norms, as well as 2 September 2006 directives for action to be taken against those responsible for beatings, abductions, killings and forced donations. Conflict-related violations by CPN(M) ended after the ceasefire, but in the following months there were serious concerns about abuses particularly related to its “law enforcement” and “people’s courts” activities, as well as child recruitment. Many of these concerns were raised in a report published in September 2006 in which OHCHR called upon CPN(M) to end such abuses and hold those responsible accountable.

30. After April, CPN(M) extended its parallel structures, most notably “people’s courts”, to district headquarters and villages where they had previously not been present. Following a 3 July “special directive” by the CPN(M) chairman most of the “people’s courts” stopped hearing complaints in district headquarters, but continued to function in rural areas and close to district headquarters. OHCHR confirmed almost 350 reports of abductions, including some 30 children, carried out by CPN(M) from April to November. Since the signing of the Comprehensive Peace Agreement, there was a sharp drop in abductions except in the Central region where 36 abductions were confirmed up to 5 January. Most of those abducted whose cases were monitored by OHCHR were released. Some remained in captivity after being “sentenced”, usually to forced corrective labour.

31. CPN(M) accusations against those abducted included robbery, murder, and drug-related incidents. Some were accused of violating cultural traditions, mostly by engaging in “illicit sexual relations”. A significant number of those abducted by CPN(M) were reportedly accused of gender-based violence. A small number of abductees were reportedly held because of their links with the army or previous regime.

32. Abductees were often moved from one place to another, being held in private houses, factories or other such buildings. At times, CPN(M) delayed OHCHR access to such captives, especially in Kathmandu Valley. Cases of ill-treatment and torture were reported and OHCHR sometimes witnessed injuries consistent with allegations. Some abuses were carried out by CPN(M) organizations such as the CPN(M) trade union, All Nepal National Trade Union Federation (Revolutionary), and the Youth Communist League.

33. Of particular concern to OHCHR were deaths related to “law enforcement” abductions. Between May and October 2006, OHCHR documented 13 killings or deaths in suspicious circumstances of individuals abducted and in some cases beaten by CPN(M). The cases included a series of eight killings in the Central region in May and June 2006 which were attributed directly to CPN(M) cadres, or indirectly through their encouragement of villagers. Although CPN(M) initially denied involvement, in some cases local CPN(M) leaders subsequently acknowledged responsibility. Such killings in the Central region ceased after CPN(M) leaders gave assurances to OHCHR that they are not CPN(M) policy, and after OHCHR had made its concerns public. OHCHR also investigated the cases of eight individuals, including a 13-year-old boy accused of rape and a woman accused of an illicit relationship, all of whom allegedly committed suicide while in or shortly after being held in captivity by CPN(M) between May and October 2006. All cases of killings, deaths in suspicious circumstances and alleged suicides were raised with CPN(M), including the national leadership, but OHCHR has not received any response to its requests for detailed information about investigations carried out by CPN(M) into these cases. There have been no such cases reported since October.

34. OHCHR also repeatedly raised its concerns regarding “law enforcement” activities and the use of “people’s courts” directly with CPN(M) and publicly, indicating that abductions, related investigations and punishments fail to provide even minimum guarantees of due process and fair trial or the right to physical integrity, and therefore violate international human rights standards. It has consistently called on CPN(M) to either release all those held or hand them over to the police. The relationship between CPN(M) and the Nepal Police differs significantly from district to district, but there has been an increase in the number of suspects captured by CPN(M) being handed over to the Nepal Police. CPN(M) has, at times, successfully demanded the handover of suspects from the Nepal Police or succeeded in suspending the Nepal Police’s investigations into certain cases. Local Nepal Police told OHCHR that their refusal to take action against even serious abuses by CPN(M) is due to fear of what future political change may bring as well as a lack of adequate policy direction from the central level. In some regions, CPN(M) has stated it will not hand over captives until the interim Government is formed. CPN(M) repeatedly stated it would only end the parallel structures when the interim Government became functional.

35. OHCHR has continued to receive many reports that members of CPN(M) are taking “taxes” or “donations” from local communities, government officials, non-governmental organizations (NGOs), schools, business people, tourists and teachers. OHCHR has been particularly concerned when individuals were abducted or threatened with abduction if they refused to pay. In cases where there is no explicit threat and individuals appear to comply and pay “donations” or “taxes” without question, the threat is often implicit given the patterns of abuses in other cases.

36. Despite the ceasefire, recruitment and use of children - some as young as 12 - by CPN(M) has been a continuing major concern, with 56 cases of recruitment documented in November 2006 alone, in violation of international principles. Some were reportedly recruited to actively take part in People’s Liberation Army (PLA) and militia activities. In all instances, CPN(M) insisted that recruitment was voluntary. A small number have since escaped or been allowed to return home. In the context of the peace process, including discussions regarding management of arms and armed personnel, the withdrawal of children from armed forces and armed groups is a key issue. Children support PLA in various roles, through direct participation

or activities organized through students, women's or cultural groups as well as the militia. Lack of access and the systematic denial by CPN(M) that it recruits or uses children, makes it difficult to assess the numbers involved. CPN(M) leadership acknowledged, in a meeting with OHCHR and UNICEF on 24 August, that there were thousands of children in CPN(M) "for good reasons" but has consistently denied their presence in PLA in spite of evidence to the contrary. OHCHR has been collaborating with UNICEF and child protection agencies to advocate for the separation of all children from CPN(M).

37. Large-scale group abductions of teachers and schoolchildren have decreased since April 2006. Nevertheless, children were still collectively taken for short periods of time by CPN(M) cadres or members of its student union organization, the All Nepal National Independent Student Union - Revolutionary (ANNISU-R) to take part in mass political gatherings. In Kathmandu, thousands of children were taken from schools to participate in programmes organized by ANNISU-R. OHCHR, UNICEF and others have called on all political parties not to disrupt education in schools through political activities and, not to force children to participate in political programmes, and urged them to develop a code of conduct regarding the appropriate participation of children in political activities.

#### **D. Abuses by other armed groups**

38. Following the April 2006 protest movement, OHCHR received increased reports of killings and abductions by the *Janatantrik Terai Mukti Morcha* (JTMM), an illegal armed group which started operating in 2004 as a splinter group of CPN(M). In August 2006, JTMM split into two factions: the original group led by Jaya Krishna Goit, and the other led by Jwala Singh. Both factions advocate armed struggle for self-determination of the Madhesi community, which has been traditionally marginalized in Nepalese society.

39. JTMM has extended its influence from a few Eastern Terai districts to other districts in the Eastern, Central and possibly Mid-Western regions. JTMM abuses in the East continued up to the end of 2006, including the abduction of some 30 Pahadis (people of hill origin who migrated to the Terai); while most of them were released after paying a ransom, several remain in JTMM captivity. Some abductions occurred during transport and commercial strikes (*bandhs*) called by JTMM. A *bandh* from 16 to 30 December was the first which targeted exclusively Pahadis. A bus passenger was fatally shot by JTMM in one incident on 28 December.

40. JTMM and CPN(M) also engaged in an open conflict particularly between June and September 2006. At least five CPN(M) members were shot by JTMM (two of them fatally in July), while at least three JTMM members were shot by CPN(M) (one fatally, also in July). Both groups have abducted members of the other accusing them of spying. With few exceptions, the police have not investigated or intervened to stop acts of violence involving JTMM or CPN(M). The absence of effective law enforcement has led to a climate of fear and uncertainty in districts where JTMM is most active and could impact on the electoral process, especially if Madhesi demands are not adequately met. In January 2007, one JTMM faction announced it would stop constituent assembly elections in the Terai.

41. Hostility among illegal "retaliation groups" (known as *Pratihar Samiti* (PS)), CPN(M) and government authorities in the Western region Terai districts has also resulted in acts of violence and extortion. However, by the end of 2006, reports of such abuses by PS were

infrequent. An agreement between CPN(M) and PS in Nawalparasi brokered by NHRC contributed to this, though some PS members remain armed and a potential threat. As in the Eastern Terai, police are reluctant to investigate or intervene to prevent acts of violence by such groups.

#### IV. ACCOUNTABILITY

42. Transitional justice, including accountability for past violations, has become a key issue of debate in the context of the peace process. The Comprehensive Peace Agreement includes the establishment of a Truth and Reconciliation Commission to investigate human rights violations and to “build an atmosphere for reconciliation in society”. The Agreement further commits the parties to pursue impartial investigations, to “not encourage impunity” and to ensure the right of victims to “relief”. In response to increasing interest in the issue, OHCHR is providing information and advice to policymakers and building capacity among civil society actors, stressing the need for an extensive period of awareness-building and consultations with broad constituencies, including victims’ groups, before the terms of references of the Truth and Reconciliation Commission are developed by an interim Government. OHCHR continues to stress the important link between truth-seeking mechanisms and the prosecution of perpetrators, providing reparations to victims and reforming malfunctioning institutions. The Comprehensive Peace Agreement does not address the issue of prosecutions for past human rights abuses.

43. Immediately after taking office, the new Government appointed a five-member High-Level Commission of Inquiry, chaired by former Supreme Court judge Krishna Jung Rayamajhi, to investigate human rights violations and abuse of State funds since 1 February 2005, including those committed during the April 2006 protests. Its report was submitted to the Government on 22 November, reportedly with over 200 names of individuals against whom action was to be taken. The Council of Ministers appointed a committee to study the findings. However, the Government has resisted repeated calls to make the report public and OHCHR has been unable to obtain a copy. In September, OHCHR had submitted to the Commission the report of its own findings of investigations into excessive use of force by security forces during the April demonstrations.

44. Clarifying and ensuring accountability for hundreds of disappearances by the security forces and by CPN(M) is a key OHCHR concern. The Comprehensive Peace Agreement committed both parties to taking strong measures to address issues related to disappearances, reaffirming commitments made in previous agreements. These included making public the status of people in their captivity and releasing them all within 15 days, and to make public within 60 days names of those disappeared or killed during the conflict and inform the family members. As of the beginning of January 2007, these provisions had yet to be implemented. In addition, the 8 November Agreement included a provision to “form a high-level commission to investigate and publicize the whereabouts of the citizens stated to have been disappeared by the state and the Maoists in the past”.

45. A directive given to the Government by the Parliamentary Committee on Foreign Affairs and Human Rights to form an “all-powerful commission to solve the issue of disappearances once and for all” on 25 July 2006 has not been implemented either. As per the directive, the

Commission of Inquiry should be made up of parliamentarians, civil society members and human rights defenders and should be given the authority to probe into the acts of the Nepalese Army, identify perpetrators and recommend punishment for those found guilty.

46. As of January 2007, OHCHR had not received any detailed written response from the Government to a report it submitted in late May 2006 documenting the arbitrary arrest, torture and disappearance of at least 49 people held by the Bhairabnath Battalion in Maharajgunj, Kathmandu in late 2003 and early 2004. The Nepalese Army indicated that it was investigating the cases and provided information on a few individuals. OHCHR confirmed that two detainees had been released and that the body of another was handed over to the family. However, in another case, it found evidence contradicting the Nepalese Army's claims that the victim had died in a bomb explosion. The Nepalese Army did not transmit to OHCHR the report of its task force set up to investigate the 49 cases.

47. In September, in addition to the 49 above-mentioned cases, OHCHR submitted some 330 past cases of disappearances to the relevant security forces and to the United Nations Working Group on Enforced and Involuntary Disappearances. The Nepalese Army provided a response on 42 out of 315 cases which it said were clarified. In all but one of the cases followed up subsequently, OHCHR found no evidence to support the army's version that they had either been killed in security force operations with CPN(M) or released. OHCHR does not consider the Nepalese Army's investigations to be transparent or impartial and is continuing to press for an independent commission of inquiry into all cases.

48. A one-person Disappearances Committee was established by the Home Ministry in early June 2006. He presented his preliminary findings to the House of Representatives' Committee on 25 July, stating that the fate or whereabouts of more than 100 disappeared persons had been established as either "released" or "killed in crossfire" according to information provided by the security forces. A further 601 people remain unaccounted for. However, he stated that he did not have the capacity to carry out investigations.

49. Strengthening the legal framework to reinforce accountability for any future violations must also be addressed. OHCHR submitted recommendations related to impunity to the Drafting Committee and to the Speaker of the House of Representatives on concerns regarding an Army Bill under review. On 22 September 2006, the bill was unanimously adopted. Notably, the new Act provides for the exclusive jurisdiction of civilian courts in cases of rape and murder. However, the provisions give court martials jurisdiction over cases of torture and disappearance with the possibility of appeal to the Supreme Court, and may allow the military, instead of civilian courts, to exercise jurisdiction over Nepalese Army personnel who commit other serious human rights violations. The Act requires the Nepalese Army to cooperate with civilian authorities empowered to investigate military personnel who commit serious human rights violations, but fails to specify the individual rights of defendants in court martial proceedings to ensure a just and fair trial. OHCHR also recommended the ratification of the Rome Statute of the International Criminal Court. A directive was issued by the House of Representatives on 25 July 2006 ordering the Government to sign the Statute immediately. As of January 2007 a task force report on the matter was being considered by the Deputy Prime Minister and the Minister of Foreign Affairs.

50. Relatives of victims of past and recent human rights abuses have been more willing to present complaints (First Information Reports) to police for criminal investigation. OHCHR is monitoring more than 23 cases filed with the police in relation to such violations around the country. Most are stalled due to lack of political and institutional will, and real or perceived legal obstacles. In some cases, the police have argued that it is not proceeding with investigations because an independent or parliamentary investigation is ongoing. For instance, police in Belbari, Morang District would not start an investigation into the alleged rape and killing of a woman and subsequent killing of six demonstrators in late April by the Nepalese Army, until the Parliamentary Probe Committee had issued its report and they received authorization from the Government. The Committee has now completed its report and, according to the Government, it is now before the Interim Legislature.

51. In the case of Maina Sunuwar, a 15-year-old girl who died within hours of her arrest by the Nepalese Army in 2004, the Nepal Police finally visited the Nepalese Army Birendra Peace Operations Training Centre in Panchkhal in June 2006 to obtain information regarding her death and to secure the site where her remains are believed to be buried. Since then, however, the process has stalled due to the Nepalese Army challenging the police's jurisdiction, and protracted delays in the authorities' response to the Nepal Police's request for legal advice as to whether the investigation can proceed. In December 2006, OHCHR published a report, "The Torture and Death in Custody of Maina Sunuwar, Summary of concerns", documenting obstacles to justice in this case, including the Nepalese Army's attempts to cover up the violations, and called again for an independent investigation. The reluctance of authorities to proceed with criminal investigations relating to past human rights violations is not limited to cases involving the Nepalese Army. In Dhanusha District, a First Information Report was filed in July regarding the disappearance of five students in October 2003 and naming police officers and the then local administrator as the main suspects. While the alleged burial site of the five has been secured, only limited further investigative steps have been taken despite pressure from the relatives, local and national non-governmental organizations (NGOs) and OHCHR, and despite Government claims that it had given "stern directives" to proceed with the investigation but now considers the case closed.

52. The judiciary's role in pursuing accountability for human rights violations to date remains limited, though there have been some recent developments. On 19 December 2006, the Supreme Court finally heard 22 of 27 habeas corpus disappearance cases which had been pending for many months and in some cases years, and is scheduled to render decision in early 2007. On 28 August 2006, for the first time, the Supreme Court ordered that a task force be created to investigate the disappearance of four individuals after their arrest by security forces in 1999 and 2002 respectively. In January 2007, the Supreme Court ordered the task force to investigate the 49 disappearance cases mentioned in report established by OHCHR on Maharajgunj. Three contempt of court cases initiated by families of the disappeared against senior Nepalese Army officers for providing misleading information on the whereabouts of disappeared persons were nevertheless dismissed by the Supreme Court, in July and December 2006.

53. In addition to advocating accountability for human rights violations by the State, OHCHR has urged CPN(M) to hold its members accountable. As stated above, OHCHR raised concern about a series of killings in the Central region which had resulted in the death of eight individuals in May and June 2006. Despite assurances that CPN(M) would investigate these

and other subsequent killings or deaths in captivity, and punish anyone found guilty, as of the end of 2006 no information had been received by OHCHR from the national leadership regarding any action taken.

54. OHCHR has repeatedly raised with CPN(M) its concerns about more than 120 abductions reported during the period of the conflict where the fate or whereabouts of the person has remained unclarified. It is thought that among them are scores of political party members, teachers, members of the security forces and alleged informants.

55. On 26 June 2006, OHCHR urged CPN(M) to set up a mechanism at the national level to oversee internal investigations into allegations of abuses by CPN(M) cadres to ensure that they are impartial and complete, and do not result in further abuses. OHCHR also stressed that such internal investigations cannot substitute for independent investigations and prosecutions carried out in a civilian State court. OHCHR has noted that four CPN(M) cadres were handed over to police for their alleged involvement in abuses.

56. OHCHR noted with special concern that although the leadership said that action was taken against those responsible for the 2005 attack on a public bus in Madi, Chitwan District (see A/60/359, para. 37), resulting in the death of at least 35 civilians and members of the security forces, some of those responsible were freed after “serving sentences” of apparently two to three months of “corrective punishment”. In December 2006, OHCHR wrote to CPN(M) leadership requesting documentation and further information about investigations into the incident.

## **V. INTERNAL DISPLACEMENT**

57. Since the ceasefire, forced internal displacement has largely ended and many internally displaced persons (IDPs) are now returning. Both parties have committed to the safe and sustainable return of IDPs and to the restitution of confiscated land and property. In some districts NGOs and local authorities estimate that most IDPs have already returned, while in others, return is just beginning. Many IDPs from the rural areas are also likely to integrate into urban communities where they currently reside, hoping for better access to jobs, schooling and other social services.

58. However, there are a number of challenges to the implementation of the parties' commitments regarding returns, including protection concerns for IDPs in political opposition to CPN(M) and lack of material assistance upon return. CPN(M) national leaders' commitments are often not fully adhered to by CPN(M) leaders at village level where most returnees are arriving. In some areas, returning IDPs have been unconditionally welcomed back by CPN(M) and have had their property returned to them. In other regions, local CPN(M) cadres effectively decide who can return and reportedly impose conditions on return, including public apologies for alleged “wrongdoing”. As spontaneous and NGO-facilitated returns are increasing, OHCHR is monitoring return movements and advocating that the CPN(M) respect formal commitments to safe and dignified return at the local level.

59. The Government itself has so far failed to respond to IDPs' increasing interest in return. There is no comprehensive plan addressing the assistance and protection needs of returning IDPs, only a request from the Home Ministry to the Chief District Officers for proper

registration of IDPs. This gap allows most district officials to remain passive in relation to planning and support of local return processes. In the absence of State action, such responsibility is often shouldered by local human rights NGOs, with limited funding. In its 2006/07 budget, the Finance Ministry has included monetary support for returning IDPs and other conflict victims. A funding request has also been forwarded to the international donor community. OHCHR and other United Nations agencies underline the need for a comprehensive and integrated Government reparations programme for all conflict victims, including IDPs.

60. The Government is currently undertaking a review and modification of its overall IDP policy from March 2006 in order to produce a policy in line with the Guiding Principles on Internal Displacement (as contained in E/CN.4/1998/53/Add.2, annex). A task force made up of members of the Home Ministry and the Peace Secretariat produced several drafts, which the United Nations agencies were invited to comment on. In addition to providing technical advice on content, the United Nations has suggested an inclusive process for the design of the new policy, including consultations with CPN(M) and civil society. OHCHR welcomes the development of a new IDP policy but stresses the urgent need to prioritize the development of resourced-backed operational plans to guide local authorities in relation to concrete solutions for IDPs, including safe and sustainable return.

61. OHCHR is also concerned that the new IDP policy was not taken into consideration in the recently approved Bill to Amend and Consolidate the Law Regarding the Electoral Roll. Important provisions allowing IDPs to vote in their areas of displacement were removed from the initial draft.

## **VI. SOCIAL EXCLUSION/MARGINALIZATION**

62. Deep-rooted discrimination in Nepal has profound implications in terms of civil and political as well as economic, social and cultural rights. Discrimination on the basis of caste, ethnic, gender, geographic and other considerations has marginalized and excluded millions of Nepalese people from full participation in political processes and State institutions as well as equal access to housing, water, land and other such rights. Many marginalized communities suffered disproportionately during the armed conflict. Such groups actively participated in the April 2006 protests and have since increasingly articulated their demands for equality, and a fundamental restructuring of the State as the way to achieve this. The election process for the Constituent Assembly, representation within the Constituent Assembly, the constitution-making process and the Constitution itself will be important steps in developing a stable democratic society in which the protection of human rights is guaranteed for all.

63. Inadequate representation of marginalized groups in the peace process, including in peace talks teams and political party leaderships, continues to be of concern. Marginalized groups are also increasingly identifying the lack of representation in State institutions, such as local government and security forces as obstacles to their participation in all aspects of public life. The Government informed OHCHR that 33 per cent of civil service jobs would be reserved for women, but no implementing legislation has been passed yet. The Comprehensive Peace Agreement included commitments to address discrimination and women's rights, and some clauses are included in the draft Interim Constitution, but there has been little concrete action by the parties so far. The Government decided to establish District Coordination Committees for



the Uplift of the Dalit Communities, and Indigenous Ethnic Nationalities District Coordination Committees in each of the 75 districts. Another positive measure is the inclusion in the provisions of the Government's tenth Development plan.

64. Some legislation has been passed which, inter alia, improves gender equality in terms of property rights and criminalizes discriminatory behaviour with regard to "untouchability". A Citizenship Act adopted in November 2006 will give citizenship to many of those living in the Terai plains and enables a Nepalese mother to pass on citizenship to her children in certain circumstances. However, the implementation of these laws has yet to be tested and many other discriminatory legal provisions which require amendment. OHCHR raised serious concerns that neither the Citizenship Act nor the Draft Interim Constitution incorporated its recommendations to amend certain discriminatory provisions.

65. Equality for Madhesi is emerging as a central issue in the peace process. The Madhesi people make up some 30-40 per cent of the population of Nepal, and see the electoral process as a critical step in addressing historical discrimination. The Citizenship Act only partially addressed their lack of citizenship. The draft Interim Constitution also creates a relative imbalance between electoral constituencies in the plains and in the hills, requiring greater voter population per seat in the Terai.

66. Towards the end of 2006, Madhesi groups organized a series of strikes to prevent the movement of Pahadis freely moving in the Terai (see also above, paragraphs 38-40). Serious communal violence between Madhesi and Pahadis broke out in the Mid-Western town of Nepalgunj in December 2006 following a strike called by the Madhesi political party, Nepal Sadbhawana Party (NSP). One person was killed, and there was widespread looting and destruction of Madhesi property in particular. Police failed to intervene adequately to maintain law and order, and to protect Madhesi property. The central Government acknowledged the gravity of these events, but the incidents highlighted the potential for further communal violence in the Terai region, the urgent need to strengthen the professional capacity of law enforcement authorities to maintain law and order, and to develop inter-community dialogue.

67. The process leading up to Constituent Assembly elections is likely to involve considerable public campaigning and mobilization around issues of discrimination. Addressing the growing demands for a State structure which protects the human rights of all and enables all Nepalese people to participate equally in society is a fundamental challenge of the peace process and the Constituent Assembly. Unless concerns are seriously addressed, there is a great risk of deepening social divisions and, ultimately, violence.

## VII. CONCLUSION

68. **Since the last report to the Commission on Human Rights in February 2006, there have been considerable improvements in some aspects of the human rights situation in Nepal. The Government and CPN(M) have recognized in the Comprehensive Peace Agreement that human rights are core elements to the peace process. Civil society, in its broadest sense, has framed many of its demands in human rights terms. There are expectations that the peace process will bring solutions to long-standing human rights issues, especially deeply-engrained discrimination, prejudices and abuse against marginalized groups, as well as economic disparities.**

69. However, there remain serious concerns regarding ongoing human rights abuses, and the current improvements which have taken place remain fragile. Any setback to the peace process risks a negative and potentially devastating impact on the human rights situation. It is essential that all stakeholders are committed to the peace process and address human rights issues at every stage to ensure a sustainable peace with justice. Many challenges remain, a major one being the issue of law enforcement and the administration of justice. The current weakness (and in many places absence) of law enforcement agencies, their limited capacity or will to maintain law and order and to protect the civilian population from violence, limited Government support and the resistance of CPN(M), will facilitate the emergence of elements who wish to undermine the peace process unless these problems are urgently addressed. The strengthening of law enforcement and justice capacity will be essential to ensuring that the electoral process for a Constituent Assembly, from its early stages, can be organized without fear, intimidation or more serious abuses. Likewise, political parties have a responsibility to ensuring that their own members fully respect the right of others to hold different political opinions. In this context also, parties will need also to take concrete steps to recognize the demands of marginalized groups to adequate representation. The lack of modalities for establishing local interim Government structures and the continuing obstacles to the return of Village Development Committees in many parts of the country must be urgently resolved through dialogue to ensure the establishment of rule of law in areas where it has most been absent.

70. Holding those responsible for violence and for human rights violations to account, thereby effectively ending the current climate of impunity at the level of the State and by CPN(M) must be a priority. Hundreds of thousands of lives have been affected by the conflict with many still bearing the scars, having lost their loved ones; as a result of torture and detention; maiming by bombs and improvised explosive devices; displacement and economic hardship; the psychological trauma of conflict. The peace process offers hope of recovery, but it lies with the parties to the conflict to translate their written commitments to human rights into effective, long-lasting action. OHCHR stands ready to assist regarding human rights matters related to the peace process.

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