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### **ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL**

#### **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**

The present document is my second report on the human rights situation and the activities of my Office in Nepal to be submitted to the Human Rights Council; the first (A/HRC/4/97) was submitted in January 2007. Although there have been significant political developments since my first report, including the establishment of an interim Government and Parliament, and legislative and institutional reforms aimed at strengthening human rights protection, respect for and protection of human rights have diminished. In particular, there are concerns at the lack of political will to end impunity for past and ongoing human rights abuses by the State and the Communist Party of Nepal (Maoist) (CPN(M)), insufficient action to address discrimination and, against a backdrop of increased violence by armed groups in the plains, to address the State's obligation to protect the rights of the population to life, liberty and security. The report highlights the need for all parties to translate their public commitments to human rights into concrete actions to bring about lasting changes in the human rights situation.

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\* There was a delay in the submission of the report in order to reflect the latest information.

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## **I. INTRODUCTION**

1. This is my second report to the Human Rights Council, the first having been submitted in January 2007 (A/HRC/4/97). It contains an analysis of the human rights situation in Nepal since then and reports on the activities of my Office in the country. Political developments which have had an impact on human rights are examined with a focus on issues critical to the peace process, including discrimination and representation of marginalized groups, democratic rights and the question of impunity.

## **II. MANDATE AND ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS IN NEPAL**

2. I am pleased to report that the agreement of 10 April 2005 between the Government of Nepal and the Office of the United Nations High Commissioner for Human Rights (OHCHR) was renewed for two years until June 2007, maintaining the comprehensiveness of its mandate. The Office undertook monitoring and capacity-building activities, with such work being increasingly interwoven to ensure relevance to local realities and to strengthen impact. These activities were also linked to technical assistance to the Government through detailed analyses of legislation and other official rights-related documents, as well as letters, reports and meetings on case- or thematic-related issues. In 2008, the Office's work will be increasingly reoriented towards building national capacity and technical assistance, focusing on four core themes: discrimination, impunity, democratic rights (including human rights and the elections) and security/rule of law.

3. With some exceptions, the Office enjoyed the cooperation of the authorities and the Communist Party of Nepal (Maoist) (CPN(M)) in terms of meetings and access to places of detention or captivity. However, it is concerned that many of its recommendations have not been implemented, especially at the national level. The Office also faced some difficulties in gaining access to documentation, especially draft legislation and reports of investigations, with authorities arguing that only public documentation could be provided, contrary to provisions of the agreement with OHCHR.

4. Since the establishment of the United Nations Mission in Nepal (UNMIN) in January 2007 pursuant to Security Council resolution 1740 (2007), OHCHR has been coordinating closely with the Mission to ensure complementary - and where appropriate joint - activities on issues of mutual concern, as well as regular exchanges of information. The Office collaborated with United Nations agencies, in particular the United Nations Children's Fund (UNICEF) and child protection agencies on the implementation of Security Council resolution 1612 (2005) on children and armed conflict, with the United Nations Population Fund and the United Nations Development Fund for Women on gender issues such as the implementation of resolution 1325 (2000), and with the United Nations Development Programme, particularly with regard to the National Human Rights Commission.

### **A. Strengthening national human rights capacity**

5. A critical measure of the impact of OHCHR lies in the strengthening of national human rights mechanisms, including State institutions and civil society organizations. In addition to strengthening national capacity through advice and recommendations resulting from its monitoring and legal work, OHCHR undertook numerous training initiatives, workshops, briefings on specialized issues and on-the-job mentoring. The National Human Rights Commission, civil society and law enforcement agencies were targeted as priority beneficiaries.

6. Among the major initiatives were workshops in 11 districts on the theme “Human rights and the peace process”, which brought together local authorities, police, political parties, civil society and others to encourage dialogue and coordinate responses to human rights problems, especially in the Terai districts.

7. Following Parliament’s confirmation, in early September 2007, of five commissioners, OHCHR worked with the National Human Rights Commission to identify strategies for strengthening cooperation. Although concerns were expressed that the appointment procedures did not fully reach international standards, OHCHR viewed the appointments as a significant opportunity for the Commission to develop into an independent, credible and effective institution. In October, after an 18-month review, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights recommended A-status accreditation but made observations on several matters reviewable after one year, including financial autonomy, interaction with the United Nations human rights system and with civil society.

8. OHCHR organized training sessions for Commission staff on, inter alia, human rights investigation, documentation, elections, economic, social and cultural rights, transitional justice, advocacy, legislative review, human rights education, litigation and anti-trafficking. OHCHR trained 15 staff members to help establish a training unit, and provided its recommendations to the Commission on strengthening draft legislation defining the Commission’s functions, duties, powers and working procedures in the light of its new status as a constitutional body.

9. Some 700 civil society actors participated in a range of capacity-building activities organized by the Office, including human rights non-governmental organizations, youth and student leaders, women human rights defenders, media and academic institutions. Issues covered included human rights law and protection mechanisms, human rights and the media, documentation, discrimination, and the rights of internally displaced persons and indigenous peoples. OHCHR also facilitated the establishment of working groups on human rights indicators and common vocabularies to improve reporting.

10. OHCHR continued its training and awareness-raising activities with the Nepal Police and Armed Police Force. Substantive advice was provided for the drafting of Nepal Police human rights standing orders, 58,000 copies of which were officially handed to police officials in January 2008. Training on human rights issues directly concerning police work and on protection mechanisms was provided to 35 Nepal Police trainers, as were specialized sessions for around 100 police officials. Five regional training sessions for some 150 Armed Police Force

members were given by officials trained and monitored by OHCHR and the International Committee of the Red Cross (ICRC), focusing especially on human rights standards pertaining to law enforcement and crowd control.

## **B. Human rights and the peace process**

11. In my previous report to the Council, I noted that progress had been made in re-establishing democratic rights and in ending conflict-related abuses, but also highlighted challenges which needed to be addressed to end human rights abuses. Protracted political wrangling and delays in implementing the Comprehensive Peace Agreement of November 2006, together with deepening violence and a worsening security situation in the Terai, had a negative impact on the human rights situation in 2007, while human rights should have been at the heart of the process. Despite political progress and legislative reforms, which, if implemented, would have a positive impact, respect for and the protection of human rights have generally diminished compared with the initial significant improvements after the ceasefire in May 2006.

12. The Comprehensive Peace Agreement commits all parties to an extensive range of civil, political, economic, social and cultural rights including ending discrimination, arbitrary detention, torture, killings and disappearances. It also mandated OHCHR to monitor the implementation of the human rights provisions and requires parties to collaborate with OHCHR by providing information and implementing recommendations, although this has not frequently been the case.

13. Additionally, a national body has never been established to monitor implementation of the Agreement and other peace agreements, including of human rights provisions, thus preventing effective oversight and enforcement.

14. In December 2007, OHCHR published a report entitled “Human rights in Nepal one year after the Comprehensive Peace Agreement”, in which the implementation of the Agreement and the Government’s international human rights obligations were assessed. Noting that over 130 people<sup>1</sup> had been killed since November 2006, more than half as a result of violence by armed groups, others by the security forces, by CPN(M) or in incidents of social unrest, the report concluded, inter alia, that human rights had been subordinated to political considerations in the peace process. The Government, in its comments on the report, questioned the Office’s accuracy and objectivity on certain issues. In particular, it contested the finding that protection of the right to life had diminished and described those on torture and excessive use of force as “baseless”.

## **C. Political developments affecting human rights**

15. Since my previous report, there have been significant political developments. The peace process has proven challenging on many levels, including from a human rights perspective. Following the Comprehensive Peace Agreement and the adoption, in January 2007, of an interim Constitution, an interim Legislature-Parliament was formed of 209 members elected

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<sup>1</sup> More than 45 of those killed were CPN(M) cadres.

in 1999, 73 appointed by the CPN(M) and 48 appointed by the political parties which had signed the peace accord. Following extensive negotiations between the parties, a 22-member interim Government was formed on 1 April, including 5 CPN(M) ministers.

16. Following a subsequent agreement on monitoring of the management of arms and armies, more than 31,000 Maoist personnel were placed in cantonment sites, and their weapons stored and registered. UNMIN undertook a verification process using two criteria agreed by the parties: those who had joined the Maoist army before 25 May 2006; and those who were born before 25 May 1988. Upon completion in December, UNMIN determined the total verified personnel as 19,602. A total of 2,973 individuals were verified as born after 25 May 1988, therefore below 18 years of age when the ceasefire agreement was signed. Their presence was in violation of the Comprehensive Peace Agreement and child rights provisions. Although reintegration programmes have been developed by child protection agencies, official discharge of the children was not forthcoming. Many other children reportedly left the camps outside a formal release process, making it more difficult for them to benefit from reintegration programmes. Some children who had left were forced to return to cantonment sites.

17. Constituent Assembly elections, initially scheduled for June 2007, were postponed until November, after the Election Commission's announcement in April that it could not technically organize the elections in time owing to political delays. The political climate deteriorated as CPN(M) and the Seven-Party Alliance (SPA) accused each other of not implementing the Comprehensive Peace Agreement. In August, CPN(M) announced 22 demands, including the declaration of a republic. Accusing the Government of unwillingness to meet these demands, the CPN(M) ministers resigned in September, and elections were again postponed.

18. CPN(M) ministers subsequently rejoined the Government after a major breakthrough in negotiations on 23 December, when the parties reached a 23-point agreement recognizing Nepal as a federal democratic republic, to be adopted at the first meeting of the Constituent Assembly, and including a road map to hold Constituent Assembly elections by 12 April 2008. While maintaining a mixed electoral system, it expands the number of seats to 601, 335 of which by election through proportional representation.

19. While the electoral impasse between the parties was eventually unblocked, questions of representation and discrimination in relation to Madheshi, indigenous (*Janajati*) and other excluded groups remained unresolved, resulting in ongoing, sometimes violent unrest, especially in the Terai. Several Madheshi parliamentarians, including a minister, resigned in December, amidst continuing accusations that the parties were not taking Madheshi grievances seriously. New Madheshi alliances were formed, including a new Madheshi political party (see paragraphs 47-55 below).

20. Following widespread and sometimes violent demonstrations to demand respect for Madheshi rights early in 2007 (see A/HRC/4/97), protests, and the practice of *bandhs* - transportation and commercial stoppages often forcibly imposed through threats or violence - continued especially in the Terai, and repeatedly curtailed freedom of movement, access to education and health services, development programmes and activities of non-governmental organizations, as well as political activities.

21. At the same time, the weakness of law enforcement agencies and delays in security sector reform not only consolidated impunity but also deepened a security vacuum. The majority of Nepal Police posts abandoned during the conflict were re-established in 2007, despite obstacles that included initial CPN(M) opposition and the actions of armed groups.

22. Nevertheless, many still suffered from a lack of infrastructure and equipment. Many police and local authorities complained about lack of support and directives from the national authorities, frequently citing insufficient resources and directives as the reason for not taking action to protect human rights, improve law and order and reduce impunity.

23. Lack of trust in the will or ability of law enforcement agencies to protect the population encourages lawlessness. In one of the worst incidents of social unrest, 14 people were killed, several thousand displaced and property extensively damaged as a result of communal violence which erupted after the killing of a local leader in Kapilvastu District, western Terai, in September 2007. Investigations by OHCHR concluded that local authorities had been ill-prepared and failed to intervene promptly to stop or prevent the spread of violence. These events highlighted the need for local government and civil society initiatives to address long-standing grievances and build trust among communities.

24. Although “people’s courts” and other CPN(M) parallel structures were mostly dismantled by 1 April 2007, parallel CPN(M) “law enforcement” activities intensified again and there were persistent reports of abuses, especially by the Young Communist League (YCL), which was re-established in December 2006 as a militant political organization under the direct leadership of CPN(M). Largely composed of former Maoist army and militia members, its leaders often described security and law enforcement as one of its main functions.

25. Armed groups also exploited the security vacuum and expanded their activities in the central, eastern, western and mid-western Terai. Their actions and the failure of State authorities to address them adequately had a severe impact on the protection of human rights in the Terai plains, especially the rights to life, security and physical integrity, and deepened the climate of fear and intimidation as well as divisions between Madheshi and Pahadi (people of hill origin) communities. The activities of journalists and human rights defenders, mostly from hill areas, were particularly restricted due to insecurity, threats and intimidation from armed groups, and some were displaced as a result.

26. OHCHR received reports of over 200 abductions and 85 killings, including of local government officials, by named or unidentified armed groups, principally by the Janatantrik Terai Mukti Morcha (JTMM) factions, since December 2006. An increasing number of mostly small explosive devices were planted largely in the Terai (almost daily by January 2008 after the announcement of an election date), the worst incidents killing three people in Kathmandu in September 2007. The delivery of services to local populations by local authorities and non-governmental organizations was drastically reduced, particularly in the rural Terai areas. Many persons of hill origin have now left the southern Terai plains.

27. Unravelling the agendas and motivations of the armed groups is complex, even though most groups have articulated demands related to Madheshi issues. Such demands have sometimes been articulated in inflammatory language blatantly inciting communal violence

between the Madheshi and Pahadi communities. Underlying the violence there was often a complicated web of interrelationships between personal, political, criminal and communal elements. In December, the Government sought to address the security situation in the Terai with special police task forces, with limited results to date. Curtailing the illegal activities of the armed groups and the need to address discrimination and inadequate representation of marginalized groups are widely recognized as being among the requirements for an environment conducive to free elections and sustainable peace.

#### **D. Legislative framework**

28. The interim Constitution, promulgated on 15 January 2007, includes provisions intended to strengthen human rights protection, especially clauses providing for more expansive due process rights, the prohibition of “untouchability”, the right of traditionally marginalized groups to participate in State mechanisms and the criminalization of torture. Shortcomings in the interim Constitution include inadequate respect for the rights of non-citizens, limited coverage of the rights to liberty and security and provisions permitting derogation of rights during a state of emergency.

29. In 2007, the Government signed the Convention on the Rights of Persons with Disabilities and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and International Labour Organization (ILO) Conventions 169 (rights of indigenous and tribal peoples) and 105 (abolition of forced labour). The Rome Statute of the International Criminal Court has yet to be ratified.

30. The Right to Information Act was promulgated in July 2007 which, for the first time, guarantees access to official documents, though with certain restrictive clauses. The Human Trafficking (Control) Act, passed in July, broadened the definition of trafficking, increased penalties, enhanced victim protection and defined child victims as persons up to the age of 18. However, it requires suspects to prove their innocence. A bill criminalizing torture has not yet been tabled before Parliament. OHCHR also raised concerns with the Government about amendments to the Local Administration Act, adopted in August, provisions of which violated the rights to freedom of assembly and to a fair trial.

31. In addition, the Supreme Court issued several orders directing the Government to enact rights-related legislation, including on disappearances (see paragraph 69 below), torture, the rights of sexual minorities and protection of identity of HIV/AIDS sufferers, and women and children during judicial processes.

#### **E. Democratic rights**

32. Respect for freedom of assembly, expression and association are central to any process aimed at restoring democracy, including electoral processes. Political and civil society activities were more openly and extensively conducted than prior to the ceasefire of April 2006, and many rallies and protests were organized. Nevertheless, there were a number of constraints in exercising these rights; some due to State responses, some to abuses by the CPN(M), others to violence from armed groups.

33. Formal State restrictions on these rights were limited to restrictions on demonstrations near the Government/Parliament grounds or curfew orders imposed following outbreaks of violence during protests. Nevertheless, the use of excessive force to control some demonstrations had an impact on freedom of assembly and the right to life. A number of demonstrations monitored by OHCHR were well-policed, and OHCHR acknowledges that police were sometimes faced with aggressive or violent situations. Nevertheless, interventions by the Armed Police Force and the Nepal Police to control protests since the Comprehensive Peace Agreement resulted in at least 27 deaths and many injuries, either through the use of firearms or severe beatings. Nineteen of the deaths occurred during the *Madheshi Andolan*.

34. Violations of the freedom of assembly also include situations where the authorities have failed to prevent violence; numerous reports were received of police passivity in the context of violent demonstrations. In April, OHCHR published the findings of its investigations into the killing on 21 March of 27 CPN(M) cadres in Gaur.<sup>2</sup> In spite of known escalating tensions between the Madheshi People's Rights Forum (MPRF) and CPN(M)/YCL as they organized simultaneous rallies in the same place, local authorities were unable or unwilling to control the situation. Several hundred members of the police forces present did not intervene to stop the fatal attacks when the crowd of MPRF supporters armed with sharpened bamboo sticks turned on the retreating CPN(M) cadres. Almost one year later, no one has been held criminally accountable for the murders. In December, MPRF and CPN(M) rallies in Gaur during the same weekend were peaceful and well-policed.

35. CPN(M) cadres also contributed to creating an environment of fear and intimidation through abuses targeting members of political parties, including two killings and one disappearance. OHCHR investigated 46 reports from 36 districts, mostly between July and October, of involvement of CPN(M) cadres in abductions (23 cases), assaults or acts of humiliation (23 cases). While it was sometimes unclear how far the motive related to the political affiliation of the individual concerned - in some cases victims were accused of corruption or were involved in personal disputes - some were clearly targeted for their perceived royalist or other political links. The body of one political party member who disappeared in Humla after abduction by CPN(M) in March was reportedly found in June. CPN(M) denied any involvement in the death.

36. A total of 14 incidents involving the media, mostly in the far western and central regions, were attributed to CPN(M). CPN(M) exceptionally acknowledged the responsibility of its cadres for the killing of Bara District journalist Birendra Sah after his abduction on 5 October. The perpetrators remain at large despite CPN(M) assurances that they would cooperate with police in holding them accountable. The whereabouts of another journalist, abducted by CPN(M) cadres in July in Kanchanpur, remain unknown. OHCHR was also concerned about reports of threats and other illegal actions during labour disputes by CPN(M)-affiliated trade unions, including in several national media houses.

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<sup>2</sup> See the website of the Office of the United Nations High Commissioner for Human Rights in Nepal at <http://nepal.ohchr.org/en/index.html>.

37. Protection concerns were also raised regarding risks of violence and exploitation facing children under 18 who participate in rallies and protests. At least five young people under 18 were killed, mostly by the police, and others injured in protests in 2007.

## **F. Right to liberty, physical integrity and due process**

### **Arrest and detention by State authorities**

38. During its regular visits to police stations and from other sources, OHCHR received around 100 allegations of ill-treatment and sometimes of torture of criminal suspects, at times witnessing injuries consistent with the allegations. Methods included beatings and near-drowning. One detainee reportedly died as a result of torture in custody of the Nepal Police. Several detainees were threatened to not talk to OHCHR and on several occasions detainees were reportedly hidden prior to OHCHR visits. OHCHR also noted that certain practices common during the conflict occasionally reappeared, mostly in connection with detained individuals accused of belonging to armed groups. These included several cases of unacknowledged detention, beatings, release in return for “surrender” (the detainee undertaking not to rejoin the armed group), failure to observe court orders regarding releases and one case of an extrajudicial execution after arrest.

39. The most serious case of illegal detention by police relates to four individuals accused of involvement in the Kathmandu bombings. The four were held in secret, unacknowledged detention for up to 11 days, during which police denied to OHCHR that they were holding them. OHCHR was also initially denied access to them after their detention was acknowledged. Despite OHCHR information confirming their arrest on 10 and 11 September, police subsequently recorded the arrest date as the day they appeared before a judge. They were reportedly beaten while held in unacknowledged detention, and reportedly signed, under duress, confessions or documents which they were unable to read. These concerns were raised with the highest police authorities.

40. The Armed Police Force became increasingly involved in arrests related to armed groups, and some detainees were illegally held and interrogated by them. The Armed Police Force does not have the power to detain or interrogate, nor do they have detention facilities or registers, thus creating the conditions for violations of the right not to be arbitrarily detained and the right to due process. In December 2007, in response to the activities of armed groups and criminal gangs, special task forces, which included Nepal Police and Armed Police Force personnel, were deployed to eight Terai and three Kathmandu districts. Arrests of suspected criminals, including alleged armed group members, were made by the special task forces. At times, the obligation to respect legal procedures, especially arrest and detention procedures, appeared to be subordinated to the need for rapid, visible results in tackling insecurity. Some detainees were also allegedly beaten. However, measures have not amounted to the indiscriminate crackdown that was originally feared. Senior police officials have informed OHCHR that they are making efforts to address violations, but those efforts need to be considerably reinforced to eradicate the practices and to institutionalize changed behaviour.

41. Although the majority of CPN(M)-linked detainees arrested during the conflict and imprisoned under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance

(which subsequently lapsed) were released from prison, at least 29 remained in detention, mostly on criminal charges, including 3 women who were juveniles when arrested and who have been held in pretrial detention since 2000 and 2001. At least 33 others also facing criminal charges were reportedly released in 2007, apparently after the cabinet withdrew charges against them in accordance with provisions of the peace accord, regardless of whether they were involved in serious human rights abuses. The agreement of 23 December required all remaining CPN(M) detainees to be released by mid-January 2008.

42. After the release and apparent amnesty of some CPN(M) detainees, detainees accused of criminal offences organized protracted protests in a number of prisons calling for a general amnesty. Prison authorities were sometimes locked out of prisons for prolonged periods and prison infrastructure was damaged. Violent incidents inside prisons, in particular in Morang jail, resulted in serious injuries and at least one death. OHCHR raised its concern on a number of occasions about the lack of appropriate follow-up, including investigations, into these incidents.

43. On 21 June, the Home Ministry formed a high-level committee on prison reform to focus on responses to prisoners' amnesty demands; a review of existing laws and regulations on parole for well-behaved detainees; and an assessment of the need for improvements to the infrastructure of prisons. In September, OHCHR and ICRC, with the Prison Management Department, conducted for the first time a four-day training session on prison-related human rights issues for prison managers from throughout the country.

#### **Abductions, torture and related abuses by CPN(M) members**

44. The statements in November 2007 by Chairman Prachanda that directives had been given to stop abductions and other abuses were very important, but were not fully complied with and need to be matched with concrete steps to implement the directives, including cooperation in handing those responsible over to State authorities for investigation and prosecution. Abductions, ill-treatment and torture, as well as deaths related to abductions by CPN(M), dropped sharply after the Comprehensive Peace Agreement, but there has been a resurgence in abuses since April 2007, and particularly in October and November, against the backdrop of the political crisis. The previous section has already examined abuses related to freedom of assembly and expression, including killings. Other abuses by CPN(M) and affiliated entities include abduction, threats, intimidation, physical assault, ill-treatment, torture and forced labour, especially in the context of parallel law-enforcement activities. Many of these abuses have been attributed to YCL, as documented in the OHCHR report of 22 June 2007 entitled "Allegations of human rights abuses by the Young Communist League".<sup>3</sup> Beatings in some cases were so severe that they amounted to torture.

45. In several cases, OHCHR experienced long delays in obtaining access to those taken into captivity. It should be noted nevertheless that the period of captivity was generally much shorter than in the past, usually from a few hours to several days, although some were held for up to a

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<sup>3</sup> Available from the website of the United Nations High Commissioner for Refugees, [www.unhcr.org](http://www.unhcr.org).

week or more, then handed over to police or released. Perpetrators of abuses were largely not held accountable. Two CPN(M) cadres were also reportedly expelled from the party and, exceptionally, handed over to police after an 18-year-old youth was beaten to death for unknown reasons in Bhojpur District in March.

46. OHCHR has repeatedly raised its concerns regarding abductions and related abuses with CPN(M) at all levels, stressing that such abuses undermine CPN(M) commitments to respect human rights.

### **G. Non-discrimination**

47. Long-standing discrimination, on the basis of caste, ethnicity, gender, geographic and other considerations, has emerged as one of the most critical issues affecting the peace process. The Government has extensive international obligations with regard to non-discrimination, including with regard to the right of individuals to participate in the conduct of public affairs directly or through chosen representatives. Resolving this issue, including political participation and representation, to the satisfaction of the different groups concerned will be central to creating an environment conducive to free and fair elections. Deep-rooted discrimination cannot, however, be eradicated by Constituent Assembly elections alone. Long-term measures are needed, including the implementation of existing legislation outlawing discriminatory practices and the amendment of other discriminatory legal provisions.

48. The Comprehensive Peace Agreement committed both parties to addressing discrimination and women's rights. The interim Constitution included, for the first time, provisions prohibiting untouchability and racial discrimination. The Citizenship Act adopted in November 2006 allowed more than 2 million people to obtain citizenship certificates for the first time, including in the Terai. Some concerns remained about discriminatory provisions against women in the Act, and about certain Madheshi, Dalit and Muslim communities, and women from these communities being unable to obtain citizenship certificates.

49. A total of 335 of the 601 seats of the Constituent Assembly will be filled through the proportional representation system. The Constituent Assembly Election Act contains complex provisions requiring marginalized groups to be proportionally represented in political parties' candidate lists, with 50 per cent of those elected through proportional representation to be women. At least 33 per cent of all candidates are to be women. Many groups, however, have deemed these steps insufficient and protests have continued as marginalized groups press the Government to take more significant measures to address their demands.

50. Despite commitments to inclusiveness, social exclusion remains a major problem. Madheshis, Dalits, Janajatis and other marginalized groups continue to be severely underrepresented in most political party central committees, and in most State and civil service structures including courts, law enforcement agencies and local authorities. Some measures have been taken, including the nomination in January 2008 of five Madheshis as chief district officers; a new Civil Service Bill adopted in August, reserving 45 per cent of designated posts for women, Madheshi, Janajati/Adivasi - the so-called "backward" (namely, remote or underdeveloped) regions - Dalits, and disabled persons; and in mid-November, the amendment of Nepal Police and Armed Police Force regulations to reserve quotas of posts for women and marginalized groups.

51. In the context of talks with marginalized groups, on 8 August, the Government reached agreements with the Nepal Federation of Indigenous Nationalities; on 31 August, with MPRF; and on 13 September, with *Chure Bhawar Ekta Samaj*, which relate, inter alia, to representation, inclusiveness, respect for indigenous rights and participation of marginalized groups in public affairs. However, as the process of dialogue has not been fully participatory, not all groups feel common ownership or that they have been genuinely consulted. The signatory organizations have also challenged the slow pace of implementation, and Madheshi and Janajati discourse became more radical towards the end of the year. Several have established self-defence, volunteer or youth brigades. While the organizers insisted that they were not armed, they described security as one of their key roles and there are concerns about how the groups might be used, including in an electoral context. Possible use of under-18s in such activities is also a concern.

52. A comprehensive approach to the participation, non-discrimination and representation of marginalized groups has been lacking; dialogue and talks have taken place with different groups separately and agreements have been reached piecemeal. With regard to the right to participation, the process of dialogue must ensure that it reflects the views of those at the geographical margins in remote and isolated parts of Nepal. Some of the Adivasi and Janajati groups are highly marginalized and in danger of losing their language, identity and culture. This threat to their individual and collective rights must be recognized and addressed, as should be the lack of participation of Dalits - highly underrepresented in decision-making and State structures - in the national dialogue and at the district level.

53. Despite recognition of women's rights, including representation, in the Comprehensive Peace Agreement and the Constitution, in practice there has been little progress towards addressing the extreme lack of participation of women at all levels of Government, State and political parties. For example, of the 35 secretaries appointed by the Cabinet late in 2007 to 19 ministries and 8 committees and offices, only 1 was a woman. Women parliamentarians, activists and members of political parties have expressed their deep disappointment and frustration at the lack of progress in representation, and there is a need for affirmative action programmes.

54. Other forms of discrimination against women, including the dual discrimination affecting women from marginalized groups such as Dalits, are also of concern. Gender-based violence, including domestic and sexual violence, the risk of trafficking, discriminatory laws, and especially a lack of access to justice to seek redress for abuse and/or discrimination, continue to affect the lives of women. In 2007, a total of 38 cases of sexual violence - 24 of the victims being girls under 18 - were reported to OHCHR, though many other cases are thought to have gone unreported. They included reports of upper-caste individuals raping Dalit women and girls. Victims who seek justice and non-governmental organizations who support victims of sexual violence continue to be the targets of violent reprisals. Supreme Court hearings of a petition to amend the statute of limitations for presenting complaints of rape (currently only 35 days) were repeatedly postponed in 2007. OHCHR participated in several discussions on a bill on domestic violence currently under consideration by Government.

55. Discrimination also occurs on the basis of sexual orientation. OHCHR intervened in a number of cases of arbitrary arrests and alleged ill-treatment by police of individuals linked to

sexual minorities. In December 2007, in response to a petition from a non-governmental lesbian, gay, bisexual and transgender rights organization, a Supreme Court ruling ordered the Government to amend discriminatory laws and enact legislation to uphold the rights of sexual minorities.

## **H. Economic, social and cultural rights**

56. In Nepal, the realization of economic, social and cultural rights is intimately linked to discrimination. Enormous disparities in access to land, food, health, shelter, water and other basic needs were among the root causes of the conflict, and continue to be major issues in the transition process. The Comprehensive Peace Agreement contains provisions committing the parties to fulfilling economic, social and cultural rights. However, the focus on the political process leading up to Constituent Assembly elections, as well as instability in the Terai, diverted stakeholders from addressing issues affecting economic, social and cultural rights, particularly in the medium and long term.

57. In May, the Committee on Economic, Social and Cultural Rights presented its concluding observations on its consideration of the second periodic report by the Government of Nepal. It welcomed a number of positive steps taken by the Government, but at the same time regretted that most of its recommendations made in 2001 had not been implemented. Its concerns included extreme poverty, especially in rural areas, continuing gender inequalities in spite of legislative guarantees, human trafficking, high unemployment, domestic violence and child labour. Concerns were also noted at the lack of a national housing policy, caste discrimination, reduced access to primary education and poor health services. The Committee's report contained numerous recommendations, including the development of a mechanism to evaluate progress in combating poverty. A team of United Nations consultants who visited Nepal in February to examine possible OHCHR strategies with regard to poverty reduction also noted similar findings. Nevertheless, UNICEF reported considerable progress in reducing infant mortality rates, and ILO has announced programmes to assist labour market reform and address child labour.

58. Land issues increasingly came to the fore in 2007, with forced evictions, conflicts between landowners and the landless and land seizures by various organizations, including Tharu-led groups and JTMM. The Comprehensive Peace Agreement included a commitment to establish scientific land reform, but there were delays in setting up an appropriate mechanism.

59. On 25 July, the Government signed an agreement establishing a timetable for the allocation of land and other support measures to ex-Kamaiyas (freed bonded labourers) after protests in the far and mid-western regions and in Kathmandu. Although legislation was passed in 2002 banning the use of bonded labourers and freeing them from debt, compensation and rehabilitation measures have never been fully implemented.

## **I. Internal displacement**

60. Many of those internally displaced by the armed conflict have either integrated where they currently reside or have already - mostly spontaneously - returned to their places of origin. In some areas, returning internally displaced persons have been allowed to return unconditionally

by CPN(M) and have had their property returned to them. In others, the return of displaced landowners and politically-active internally displaced persons is hampered by the failure of CPN(M) to restore all confiscated property and to ensure a safe local environment.

61. Local CPN(M) cadres effectively decide who can return and reportedly impose conditions on return, including public apologies for alleged “wrongdoing”. In many cases, confiscated land has not been returned to displaced landowners in an effort to reform land tenure patterns and avoid problems with secondary occupants. The situation has been exacerbated by the absence of a mechanism for resolving issues related to the return of confiscated land and property. The 23-point agreement of 23 December (see paragraph 18 above) required a committee to be established within one month to make recommendations on land reform. In a meeting in January 2008 with OHCHR, the CPN(M) Chairman confirmed he had given directives that land should be returned “except in a few complicated cases”.

62. Those internally displaced persons who returned did so despite the absence of a comprehensive plan to support their needs. The Government announced a relief package of \$5.6 million from the Nepal Peace Trust Fund only in late 2007 to support those returning and a new registration process so that internally displaced persons who had never registered could do so and become eligible for assistance. Some local authorities have confirmed receiving the funds and started disbursing them, although there have been allegations that the registration and distribution process is not consistent or necessarily inclusive.

63. United Nations agencies worked closely with the Government to finalize a set of directives based on the United Nations Guiding Principles on Internal Displacement, to assist relevant ministries and local authorities to implement the revised policy on internally displaced persons and to help internally displaced persons to understand their entitlements.

64. The internally displaced persons policy includes a provision for those persons to vote in elections, but those who have chosen not to return to their place of origin (perhaps as many as 50,000) will be effectively disenfranchised in the upcoming Constituent Assembly elections, unless the relevant electoral law is changed. The current law requires citizens to be resident in the constituency where they vote, and there is no provision for absentee voting for internally displaced persons.

65. It is disturbing to note that, while many persons displaced by the armed conflict have integrated locally or returned, new forced displacement is currently taking place as a result of continuing instability in the Terai. Although accurate figures are not available, many people of hill origin have left the southern parts of the Terai temporarily or permanently, in fear of threats, abduction and other actions by armed groups. Others have been displaced because of threats from CPN(M).

## **J. Transitional justice and impunity**

66. During my visit to Nepal, I stressed the importance of ending impunity if future violations were to be prevented and an environment in which no one was above the law was to be created. The continuing lack of political will to take effective measures to address this issue is deeply

disturbing. In January 2008, I wrote to the Prime Minister urging the Government to redouble its efforts to end impunity and expressing my concerns at the lack of progress since my visit in January 2007.

67. The Government circulated a draft truth and reconciliation commission bill in July, but it contained provisions contrary to the treaty obligations of Nepal and international principles. In particular, it failed to guarantee the commission's independence, providing considerable leeway for Government interference. It also contained provisions which would lead to amnesties for those responsible for serious human rights violations and violations of international humanitarian law. Moreover, limits on the mandate would undermine its potential to provide a comprehensive account of conflict-related violations.

68. OHCHR submitted comments on the bill to the Government and highlighted the importance of broad-based consultations of all stakeholders, including victims. Limited regional consultations on a slightly improved version of the bill began in December, but substantial OHCHR concerns about the original bill had not been addressed. Following the agreement undersigned by SPA on 23 December requiring it to establish the commission within one month, there were fears that the bill would be expedited. Following intense national and international pressure, the Government announced that, given the gravity of the issue, further consultations were necessary. OHCHR offered to provide technical assistance for designing a national consultations strategy.

69. Hundreds of cases of conflict-related disappearances remain unresolved. They include almost 200 people who disappeared mostly after arrest by security forces in Bardiya District in 2001 and 2002, and the cases of individuals tortured and disappeared from the (Royal) Nepalese Army Bhairabnath battalion barracks documented in an OHCHR report in May 2006, to which OHCHR has never received a full Government response. In December, human rights defenders, including the National Human Rights Commission, revealed a site where one of the individuals who disappeared from the Bhairabnath battalion barracks may have been cremated by the Nepalese Army and called for protection of the site pending investigations. Cases of individuals still missing after abduction by CPN(M) have also not been clarified. In June 2007, the Supreme Court issued a ground-breaking decision on several cases of disappearance, by which it ordered the Government to enact a law to criminalize enforced disappearances in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance; to establish a commission of inquiry on conflict-related disappearances in compliance with international standards; to prosecute those responsible for disappearances; and to provide compensation to victims' families. The decision, although a significant step towards recognizing the right of victims of disappearance and their families to truth, justice and reparation, has not yet been implemented by the Government.

70. The Government tabled a bill before the interim Legislature-Parliament in April to make disappearance, abduction and hostage-taking criminal offences under domestic law. Civil society, OHCHR and others welcomed the initiative in principle, but raised a number of concerns about the bill, including that it might not apply retrospectively and that it imposed a maximum penalty of only five years' imprisonment for disappearances. Provisions on disappearances were withdrawn from the bill in November 2007, as was a Civil Code

amendment adopted to criminalize abductions and hostage-taking. The Minister for Home Affairs announced that new legislation on disappearances would be introduced shortly thereafter; however, as at January 2008, no draft had been submitted to Parliament.

71. The Government had announced the formation of a commission of inquiry into disappeared persons after the Supreme Court ruling in June, however the initiative was suspended following widespread criticism that the commission as envisaged would not be in accordance with international standards, including those relating to its independence, powers and functions, and to public dissemination of reports. The 23-point agreement subsequently required the establishment of a commission of inquiry for disappearances within a month.

72. Attempts by non-governmental organizations, victims and their relatives to file First Information Reports for past and ongoing human rights violations by security forces and abuses by CPN(M) met with little success. Many of the reports were rejected by police for reasons which OHCHR considered to be inappropriate, including that perpetrators were not named. When complaints were filed, they did not lead to full criminal investigations and not one member of the security forces or CPN(M) has been convicted as a result of a First Information Report.

73. In the case of Maina Sunuwar (A/HRC/4/97, para. 51), in September 2007, the Supreme Court ordered police to report on its investigations into the 15-year-old girl's death within three months. As at January 2008, one year since the Chief of Staff of the Nepalese Army and the Home Minister had given me assurances that justice would be done in this case, police have been very slow to investigate, and the Nepalese Army has failed to give police access to documents, suspects and witnesses.

74. After extensive advocacy, including during my visit, a body believed to be that of Maina Sunuwar was exhumed from an unmarked grave at the Birendra Peacekeeping Training Centre of the Nepalese Army, for which OHCHR provided technical forensic support. However, the DNA sample taken from the skeletal remains in March was not sent for analysis until the last week of November, and the body has not been returned to the family in the absence of official confirmation of its identity.

75. OHCHR continued to experience difficulties in gaining access to official documents on investigations from the Nepalese Army and, at times, the police. In August, the Nepalese Army gave OHCHR copies of the court martial decision on Maina Sunuwar and two other cases. OHCHR was later given access to read but not copy other associated documentation on Maina Sunuwar; it deems the access inadequate. Most seriously, many documents seen by OHCHR were relevant to the criminal investigation but have not been transmitted to police.

76. Attempts by victims of discrimination and related abuse to seek redress were also largely unsuccessful; police would often encourage mediation, sometimes involving political parties, rather than prosecution. While mediation can be appropriate in some circumstances, the lack of punishment with regard to discriminatory practices prohibited by law and other abuses against members of marginalized groups has reinforced the climate of impunity. Most victims, however, have no access to justice owing to lack of means and other obstacles.

77. Commissions of inquiry were established to investigate several major incidents in 2007, including killings in Lahan in January, the killing of CPN(M) cadres in Gaur in March, and killings and loss of property during the Madheshi protests and during the Kapilvastu violence. Commissions did not lead to perpetrators being held accountable, nor have their reports been made public. In the case of Kapilvastu, subsequent police investigations focused not on the killings but on damage to property. The special committee established to investigate the violence submitted its report to the Government in January 2008.

78. In August, after intense public pressure, the Government published the report of November 2006 of the Rayamajhi Commission created to investigate, inter alia, human rights violations committed during the protests in April 2006. It recommended action against named Government and former Government officers (including for corruption) as well as the prosecution of 31 members of the Nepalese Army, the Armed Police Force and the Nepal Police mostly for killings during the April protests. The Government stated that it had implemented most of the recommendations of the report and that some recommendations had been forwarded to the competent authorities for further investigation. However, the Attorney-General took no action to prosecute, claiming that evidence gathered was insufficient. In reaction to the absence of State action, CPN(M) cadres publicly humiliated some of those named in the report and damaged or defaced property.

79. A report by the parliamentary commission established to investigate the rape and killing of a woman and the killing of six protestors in Belbari in April 2006 was published in January 2008. The commission recommended that the Government should take legal action against 28 members of the Nepalese Army, including the Brigade Commander, police personnel and a chief district officer.

80. Political pressure on police, such as threats and intimidation to release those arrested who are linked to the major political parties, particularly CPN(M), have contributed to ongoing impunity for abuses and acts of violence. OHCHR documented numerous cases in which detainees linked to CPN(M), MPRF, mainstream political parties and other organizations were arrested, only to be released following negotiations often involving SPA/CPN(M) and/or the chief district officer. While such mediation serves to reduce immediate tensions locally, it has not fundamentally changed the patterns of abuses and violence, and has reinforced the perception that violence may be committed with impunity, therefore also undermining police morale.

### III. CONCLUSIONS

81. **The positive and significant political developments since 2006, including the Comprehensive Peace Agreement and the establishment of an interim Government, have raised great expectations, particularly with regard to an end to discrimination, inequalities and impunity. As the peace process advances, the complexities of bringing about such changes, which require political will and the uprooting of deep-seated traditional patterns of behaviour have become more apparent. The holding of Constituent Assembly elections is a crucial step towards the creation of a more participatory, inclusive and equal society, but there are still obstacles to overcome in order for the elections to take place in a climate free of intimidation and fear. The lack of implementation of many provisions of the Comprehensive Peace Agreement and of new and existing legislation that could strengthen the protection of human rights has led to frustrations among many Nepalese people.**

82. Of particular concern are the long delays in fully resolving the question of participation of marginalized groups in the Constituent Assembly and in State institutions, and in the steps towards addressing economic, social and cultural rights violations that underpin many grievances. While the Government has made significant advances in addressing some of these concerns, including the establishment of quotas for traditionally marginalized groups in the proportional representation segment of the Constituent Assembly election, negotiations with a number of key marginalized groups are incomplete and agreements need to be implemented. At the same time, it is essential to curtail the violent activities of armed groups in the Terai. Unless these concerns are addressed, there is a great risk that social divisions deepen and that further violence will occur, including communal violence.

83. A coherent programme to strengthen and reform the security forces and administration of justice is urgently needed. Law enforcement agencies have a special role to play in ensuring the creation of a climate for the elections that is free of fear and intimidation. In playing that role, they will need skills and professionalism to face difficult and sometimes violent situations. They must have the tools, training, support and leadership to ensure that they can meet such challenges.

84. Another prerequisite for creating a climate free of fear and intimidation will be the commitment of all parties, organizations and their supporters to respect the peaceful views and activities of others. Building trust and dialogue must replace resorting to threats, intimidation and acts of violence to resolve differences. CPN(M), in its transformation from a military to an exclusively political organization, must also take effective measures to end abuses by its cadres.

85. Transforming a climate of impunity into a culture of accountability will be essential to a successful transformation and sustainable peace. The lack of progress in addressing impunity is deeply worrying. It will require political will, courage and determination to move the process forward, but it is one that cannot wait. The peace process and the elections still provide a historic opportunity to create a fully inclusive and democratic State which protects the human rights of all and enables all Nepalese people to participate equally and effectively in society. It is the responsibility of all parties to ensure that this promise is fulfilled.

86. My Office in Nepal stands ready to provide all necessary support and technical assistance, in accordance with its mandate, to achieve those ends, and particularly through working on its core priorities. Strengthening national capacity through closer integration of monitoring, capacity-building, legal and other advice and support for national institutions will be an essential component of the Office's strategy to support the process of change in Nepal.

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