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Presentation and Question and Answer Session

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"(W)hat I hear is not the message I would like to hear from the Government: that peaceful protest is a right and should be upheld and security forces should use only absolute minimum force in maintaining the law and order. Those are the messages I would like us to hear."

Opening Presentation

It is pleasure to be at the Reporters' Club for the second time. I know you have just celebrated your 9th Anniversary, so let me congratulate you and your colleagues on that.

I want to begin by explaining the implications of the decision of the General Assembly of United Nations to establish a Human Rights Council and having done so to end the work of the Commission on Human Rights, because many people have asked me about this and of course in particular about the implications for consideration of human rights situation in Nepal.

The proposal to establish the Human Rights Council is in fact the proposal of Secretary-General Kofi Annan, as part of his proposals for the reform of United Nations, and it is a proposal to increase the status and effectiveness of discussion on human rights within the UN. So now the Human Rights Council will come into existence on the 19th of June, and will stand alongside the Security Council and the Economic and Social Council as one of three main areas of the United Nation's discussion.

The Human Rights Council will in a number of ways be more effective than the old Commission on Human Rights. It will meet longer and more frequently. The Commission on Human Rights met just once a year for six weeks in Geneva. The Human Rights Council will hold at least three sessions a year, totalling at least ten weeks. It will be easier for there to be special sessions when there is a grave human rights crisis in some part of the world, and most importantly the system of election for member states to serve on the Council is intended to make it more difficult for those governments which themselves seriously violate human rights to be members of the Council.

With the Commission on Human Rights a government only needed to have the support of its regional group, Asia for Asia, Africa for Africa and so on. Now a government will have to have the positive votes of a majority of the General Assembly, 96 member states, to be elected. The General Assembly is charged to take into account the contribution of the government to the protection of human rights in considering its candidacy. Governments that are elected will be among the first to have their human rights records considered, and governments can be removed from the Human Rights Council by two-thirds of the General Assembly if they commit grave human rights violations.

So, I think you can understand why the change has been welcomed by the Secretary-General, although it is not exactly the form that he proposed, welcomed by the High Commissioner for Human Rights, Madame Louise Arbour, whose statement we have available for you as a major stride forward for human rights in the UN. Although of course everything depends on whether the governments elected to the new Human Rights Council will take that opportunity.

But what does it mean for Nepal? The first thing it means is that the report which the High Commissioner submitted to the old Commission on Human Rights on the 16th of February will not now be considered until the Human Rights Council has taken up its work after the 19th of June. It will be considered, because all the reports that were outstanding for the Commission on Human Rights have been referred on to the Human Rights Council. But I can't tell you when, because first the new Human Rights Council has to be elected on the 9th of May and then it has to decide how to order its business and priorities. So, many in civil society here were anticipating a discussion in Geneva round-about now, because it's a year ago that the previous Commission on Human Rights considered Nepal and in that context the Agreement establishing our office was negotiated. Although civil society was expecting that discussion now, it will take place sometime after the 19th of June. But the other thing that I want to stress very strongly is that the work of OHCHR in Nepal is not affected by this change. Our mandate was not the result of a resolution from the Commission on Human Rights, although it was welcomed by the Commission on Human Rights. Our work rests on the Agreement which the Government signed with the High Commissioner in April last year, which was a two-year agreement which continues until April 2007. So there is no uncertainty about the continuation of our work here in the same way, up until that date.

Now you have invited me to, of course, say something about the present situation, and the report of the High Commissioner was written in late January. And although that report itself, of course, sets out very serious human rights concerns, I have to say that in the three months of the renewed conflict after the end of the Maoist unilateral ceasefire in the beginning of January, it's now been three months in which

that conflict has intensified, and I think the concern of all of us about the effect of that conflict on civilians and the violations of the international humanitarian law that are being committed in the conflict have deepened a great deal since the High Commissioner submitted that report.

The Communist Party of Nepal (Maoist), in this phase of the conflict, has been increasingly targeting urban areas, that means areas that are more highly populated. They have been making use of civilian buildings, indeed targeting civilian buildings, and I want to stress particularly how great is the concern of not just OHCHR but the United Nations as a whole and the international community at the use of schools and the impact on the schools of this conflict. The fact that urban areas are being targeted means that is where the clashes are taking place and the risk to civilians has become greater.

The Maoists are also, we all know, making use of bombs or improvised explosive devices; many of those have been placed in locations where they were likely, or there is serious risk that it would be civilians as well as perhaps members of security forces who will be injured or killed as a result. We have seen that in Pokhara, and again I want to deplore in the strongest possible terms the bombs placed at the Saraswati Boarding school in Dailekh District. I note, of course that there have been a number of denials from spokespersons for the Maoists that this was carried out by them, that it was not in accordance with their policy, and one of those statements say that there will be a serious investigation by the Maoists and a public report and strong action. But we have been promised investigations before and without there ever being a clear statement as to who was responsible and what action is being taken. So, there must be that serious investigation and we, of course along with others, will be conducting our own investigation.

Among the other concerns about the breaches of international humanitarian law by the Maoists is the continuing use of children within the PLA. Despite denials that they recruit children under 18, we continue to interview many such children who have been in their ranks. And the continuing abductions of civilians, although I hope we are increasingly able to bring about the release of those civilians who are abducted by the Maoists. We all know that at least one civilian has died in custody, the Deputy Regional Administrator of the Eastern Region, and others continue to be held in circumstances that cause their families great concern.

And finally, in relation to breaches of international humanitarian law by the Maoists, we are investigating a number of killings, including some of civilians and others involving security forces personnel outside of situations of combat, when they allegedly had already been taken under control.

Turning then to the response by security forces, one of the things that troubles us most in the RNA response is the use of helicopters to fire upon areas where Maoists have allegedly been operating, even more of concern is the dropping of mortar bombs from those helicopters. Such action cannot properly distinguish, as is required by international humanitarian law, between those who are legitimate targets because they are Maoists fighters, and civilians. And most recently of course we have seen the use of helicopters at Sindhupalchowk, where one villager, an elderly civilian in his 60s, was killed. We are continuing to investigate. In that particular case, the PLA had chosen to hold their event on the premises of a school, so again that falls into the pattern of using schools. But the fact that the Maoists are using schools or school

premises, or other civilian buildings, still leaves the RNA with the responsibility not to choose themselves to target schools or civilian buildings.

Also, regarding the RNA, we are investigating a number of alleged killings of Maoists allegedly already captured or in circumstances where they could have been captured without being killed, which if confirmed is again a breach of international humanitarian law.

And even if there is fortunately relatively little evidence of the deliberate targeting of civilians, there continue to be disturbing reports of abuse of the civilian population, in some cases by the RNA and the security forces, in other cases by the Maoists. I note in fact that the RNA is reported to be taking action against those of its personnel responsible for abuse of the civilian population in Kanchanpur district recently. But we are far from seeing the full accountability of RNA personnel and other security forces personnel for violations of international humanitarian law and human rights. Although the RNA, the Police and the Armed Police Force offer statistics as to how many of their personnel have been investigated and disciplined, we are unable to get the kind of information that satisfies us that there are effective investigations and appropriate punishments.

Our office, of course, very much shares I think now widespread public concern at the number of lethal shootings that have taken place by the police and other security forces recently. I am not now thinking of combat situations but other situations. From the shooting by the RNA of Umesh Thapa in Dang to the shooting by police of Dayaram Pariyar of NHRC and Ram Chandra Yadav of RPP in Janakpur on the 24th of March, there have been numbers of cases of shootings by the police and the others. In that situation, what one would want to hear from the Government, from Ministers, is a very strong reminder to the security forces that they must use only minimum force in any law and order situation, and that it is their duty and that of the Government, to uphold the right of peaceful assembly and take action only to prevent violence.

I want, in that context, to quote and read some of the international obligations that security forces have and the kind of requirements that I think that Ministers need to be making clear that they support and expect the security forces to follow. These are parts of what are called the Basic Principles of Use of Force and Firearms by Law Enforcement Officials. These are not drawn up by human rights activists. These are drawn up and agreed by governments within the framework of United Nations.

- "Law enforcement officials, in carrying out their duty, shall as far as possible, apply non-violent means before resorting to the use of force and firearms...
- "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life...
- "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

- "Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles..."
- "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where this is not practicable, shall restrict such force to the minimum extent necessary."
- "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary..."
- "Persons affected by the use of force or firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly."
- "Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use..."
- "Obedience to superior orders shall be no defense if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders."

Those are the obligations of the governments that I would hope to see Ministers reminding their security forces that they must observe. And of course I say that, conscious that we are on the eve of protests whose organisers say are intended to be peaceful. I deplore again today as I have deplored before the fact that seven of the people arrested before the planned demonstration of January are still, more than two months later, held under the Public Security Act, despite the fact that the Supreme Court has consistently found such detentions to be unlawful. OHCHR has many concerns about the use of the PSA, as well as of TADO which was due for review yesterday and I regret, though we asked to be consulted on how TADO ought to be brought in line with human right standards, we have not had opportunity to see the latest draft of TADO that we expect to be issued now.

I conclude by reminding that just as it is important to prevent further human rights violations in the present, it is also important not to forget those human rights violations of the past. And I think in particular about the need to clarify the fate of those who disappeared in recent years. It is the responsibility of the State not only to clarify the circumstances of those who disappeared in custody, but also to hold accountable those responsible.

And finally, since I am at the Reporters' Club, I hope you know that we continue to be alert to the many threats that continue to be reported against journalists doing their job throughout the country. And I applaud again the determination of many journalists to ensure, in particular, that human rights violations are reported, and I

assure you that our Office will continue to do whatever we can to protect those who may be threatened with victimisation whoever it may be, by Maoists, or State security forces, for their journalistic activity.

Thank you very much.

Questions and Answers

Question 1: If the High Commissioner...has already submitted a report on human rights in Nepal, when it will be considered after June 19th? Will there be any additions on further developments after January?

Ian Martin: That's a good question. The question referred to the report of High Commissioner on Nepal which has not been considered by the Commission on Human Rights. The Commission on Human Rights held only a very short session to wind up its business and to pass matters on to the Human Rights Council, so it is not that it didn't consider just Nepal, it didn't consider any country situation. So the question then is when the report is considered by the Human Rights Council, when will that be and will there then be an update on the report of the High Commission.

I can't say when it will be because the Human Rights Council itself has to decide how it is going to organise and prioritise its business, and we won't know that, I guess, until the 19th of June, because first they have to elect themselves and they have to have discussions as to how to go about their business. So I can't give you any idea at the moment as to how soon after the 19th of June the report will be considered. As for whether we will be asked, or the High Commissioner will be asked, or will there be initiative in presenting an update to the report, that too I can't answer for sure. But, whether there is more time to present a formal update, or whether we will update our information by a public report issued directly from our office here, I don't know. We will go on making sure the international community has up-to-date information coming out of the monitoring of our office. I can't say whether that will take the form of a formal further report.

Question 2: What exactly are your concerns before the strike and the planned rally for this week?

Ian Martin: Our concerns are firstly that the right to peaceful assembly should be respected and nobody should be arbitrarily arrested and detained for exercising their right to peaceful assembly. If we go back to what happened in January, it is our view that both the preemptive arrests that took place on the 19th of January and many of the arrests that then followed were arbitrary detentions contrary to the Nepali law as the Supreme Court found, and also contrary to international human rights standards. The further concern, of course, is there should not be the improper and unnecessary use of force, and in particular, use of firearms in contexts that do not justify that, and the quotations that I gave you from the United Nations Basic Principles on that matter, I hope may serve as a reminder.

Question 3: [inaudible: asking whether OHCHR-Nepal would send someone to the meeting to be held by the Swiss Government on the human rights situation in Nepal, in April 2006]

Ian Martin: [inaudible: confirmed that he had an invitation to attend and that "circumstances here allowing I hope to attend".]

Question 4: Will you be monitoring the general strike?

Ian Martin: We will be very actively monitoring what goes on during this period. We have already starting the monitoring with some of the activities that have been taking place already, not only in Kathmandu but around the country. Obviously, with the limited number of personnel we have, we can't be everywhere all the time. So we will have to choose where we monitor, but we have consistently tried to monitor demonstrations to ensure that they are properly policed and not the subject of excessive use of force and also, of course, our presence encourages those demonstrating to restrict themselves to peaceful protest. We will be monitoring the arrests and detentions that take place and will monitor any violence or threat of violence. So, we will be very actively monitoring throughout that period.

Question 5: Just to play devil's advocate ... the RNA and the Government are giving out the similar messages to those given before the January demonstration, which were that there has been Maoist infiltration in Kathmandu, the measures that they took in January were necessary to prevent violence. Is there any justification from your point of view in these kind of explanations for the arrests and for the curfew and all the rest of it?

Ian Martin: I mean I can't give specific information because that is not something that the Government has shared with us. So I don't know what the nature of the information is, nor do I know what the nature of that information was before the 20th of January. International standards certainly allow a government to place some restrictions on public order grounds, on the basis of the legitimate security concerns. That, of course, is the case. But I observe that those arrested, particularly on the 19th of January ahead of the 20th of January demonstration, those who continue in detention, are people with the record of organising peaceful protest activity, whether that is political party leaders or civil society leaders, and in many cases are those who have been firmest in their opposition to the use of violence whether that be by the Maoists or others.

Question 6: Some of the responsible Ministers of the Government are saying that in the coming peace protest rally, those participating in the rally, all will be treated like Maoists. How are you concerned about these things? And today, one newspaper has published that the Assistant Home Minister has said something in Birgunj that the Government will not be hesitate to give a shoot warrant to the participants of the peace demonstrations.

Ian Martin: I have seen statements reported such as you have referred to and I have seen other statements indicating that the political parties will not be treated in the same way as Maoists.

The distinction in terms of human rights and humanitarian law is between those who are taking part in armed struggle where, of course, it is the role of the security forces to combat that by appropriate means, and those who are engaging in only peaceful protests. And the reason that I told you what messages I would like to hear from the Ministers is because although I am not going to comment on and I don't know the precise nature of every statement the Ministers have made, what I hear is not the message I would like to hear from the Government: that peaceful protest is a right and should be upheld and security forces should use only absolute minimum force in maintaining the law and order. Those are the messages I would like us to hear.

Question 7: Do you see any implications for the Nepali Government on Human Rights Council?

Ian Martin: I don't know, first of all, whether the Government is deciding to offer itself for membership to Human Rights Council. The total membership is some 47 member states, of which 13 will come from Asia. Which is actually a slight increase over the Asian membership of Commission on Human Rights.

But as I said, a government that will be elected now has to have not just the support of its region which was often on the basis of rotation, not having regard at all to the government's human rights record. Now, specifically, the government's human rights commitment is supposed to be taken into account and the Government needs 96 votes, the votes of the majority of the General Assembly. So if the majority of the General Assembly are concerned about a particular government's human rights record, they can withhold their support.

It's not for me to say what view the Government is going to take about offering itself. The election is then entirely in the hands of the member states, not of the High Commissioner or any one else.

Question 8: You said you welcome the RNA punishing some of their own people but you say it is not enough. What particularly do you want to see the Army do, specifically?

Ian Martin: We want of course to be satisfied, in every case where there are allegations of serious violations by RNA personnel, that there is effective investigation and a proper trial. Now one question is should that trial be internal to the security forces or should it be in a civilian court? And increasingly, the international standard is when the security forces in any country commit violations against civilians, those should be subject to the ordinary civilian criminal justice process. And in Nepal, under the Army Act, murder and rape, unless committed during military operations, are supposed to be prosecuted in civilian courts...But, the problem our office has at the moment is we have asked the RNA to allow us to see the detail of the investigations that they have carried out in some of those significant cases, as well as proceedings of the court martials, and we have not been given access to that information. And without that degree of transparency, at least towards

our Office, we cannot make a proper judgement, and in fact what we do know we have a lot of concerns whether current investigations really are sufficiently independent and effective.

Interjection: So not even a single case, you have not been given information on the investigations of the RNA?

Ian Martin: We have not seen the full investigation and court martial proceedings in any single case. We have been provided the summary of the information in some cases.

Question 9: Have you been given the text of the draft of the Government law on torture?

Ian Martin: To give a little background, both the Committee Against Torture and the Special Rapporteur on torture noted that there was not a specific offence in Nepali law of torture and recommended that there should be a specific criminal law to deal with torture. The Government stated that it accepts that recommendation and is going to introduce a law to criminalise torture and I, of course, welcome that. The text has been drafted and it is under discussion within the Government. We have asked to see that text so we can contribute our own comments on whether it fully complies with the international standards. We have been told we will be consulted but we haven't, up to now, seen the text.

Question 10: Despite the requests of political parties to the Maoists to declare a unilateral ceasefire, Maoists are still continuing the violent activities like blasting bombs in the SLC exam. So, do you not think that on behalf of your organisation, you are going to request to declare a unilateral ceasefire as soon as possible?

Ian Martin: My organisation in this case is the United Nations as a whole, not just the Office of the High Commissioner for Human Rights, and it is the Secretary-General who has repeatedly called for the cessation of hostilities and mutual ceasefire. And as you all recall, during the Maoists' unilateral ceasefire, the Secretary-General called on the Government to reciprocate that ceasefire and called on the Maoists to extend that ceasefire. So, I don't think there is any doubt that the United Nations would like to see a further ceasefire, and preferably a full mutual ceasefire. These really are matters for the Secretary-General. From my point of view what I can say is that even the unilateral ceasefire brought about some improvement in the human rights and humanitarian law situation and now, of course, with full-scale hostilities resumed, we are seeing the deterioration that I am referring to. So, obviously a ceasefire would be positive in respect of observing human rights and humanitarian law.
