



UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS IN NEPAL



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High Commissioner Tables Report on the Human Rights Situation and the Activities of her Office in Nepal to the Human Rights Council

The report that we are releasing today has been submitted by High Commissioner for Human Rights Louise Arbour to the fourth session of the UN Human Rights Council, which is meeting 12 March – 5 April 2007. It examines the human rights situation in Nepal in the context of the peace process up to the beginning of January 2007.

The report documents many positive changes since hostilities ceased in 2006, including an end to conflict-related violations and widespread restoration of the rights to freedom of assembly and expression. However, these gains are precarious, as recent events in the Terai have shown. The report also describes many challenges that lay ahead. Ending impunity for serious human rights violations, defeating deep-rooted discrimination and other abuses against marginalised groups and restoring law and order and citizens' sense of security ahead of the planned constituent assembly elections in June rank high among them.

The report is based on information gathered by the Office of the High Commissioner for Human Rights (OHCHR) in its monitoring and investigation work throughout the country. This includes meetings with authorities, security forces, political parties, including the CPN-M, civil society, victims of rights violations and their families.

Since the ceasefire, staff from OHCHR's regional offices in Biratnagar, Kathmandu, Pokhara and Nepalgunj, and a temporary office in Dadeldura, have increased travel to many districts and villages. Overall, the authorities and CPN-M have cooperated with us. However, OHCHR has been disappointed at the continued lack of response to a number of reports and requests to the Government and to CPN-M, and by their failures to implement many recommendations for ending abuses and strengthening human rights protection.

As you know, last year's peace talks resulted in a request from the parties for United Nations support to the peace process. OHCHR was particularly asked to monitor the human rights provisions of the 21 November Comprehensive Peace Agreement (CPA). It contains broad provisions on human rights, including ending discrimination, arbitrary detention, torture, killings and disappearances, as well as economic and social rights.

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The High Commissioner's report points out that while the human rights provisions in the CPA are to be welcomed, the Agreement does not contain specific measures for their implementation. While both parties have made full commitments to respecting human rights in previous agreements and understandings, implementation has been poor.

Lack of accountability for past serious human rights violations, including killings and disappearances by the Nepal Army, remain among OHCHR's main concerns. The Army leadership has informed this Office that it is tackling the question of accountability. However, OHCHR remains deeply critical of the lack of transparency and impartiality of military probes and the continued impunity enjoyed by most perpetrators, with risk of threats to those who try to pursue justice.

For instance, in December 2006, OHCHR published *The Torture and Death in Custody of Maina Sunuwar: Summary of Concerns*, a report documenting obstacles to justice in the case of Maina, the 15-year-old girl killed within hours of her arrest in 2004 by the Nepal Army. During her visit here in January, the High Commissioner discussed the case with the Home Minister and COAS and later reported, "I was informed that orders will be given to launch a thorough police investigation, with the full cooperation of the Nepal Army, to clarify the circumstances of her death so that those responsible can be held accountable."

In fact, the Nepal Army has failed to provide us copies of any court of inquiry (investigation) reports or court martial judgments relating to human rights violations involving the NA, contrary to our Agreement with the Government.

On 26 June 2006, OHCHR urged the 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 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, 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".

Perfunctory internal punishment such as this is wholly inadequate given the wilful disregard for human life displayed by the CPN-M cadres responsible. Not only must the Maoist leadership take action to end impunity, it is essential that State authorities investigate and if necessary prosecute cases of human rights violations by the CPN-M as well as the security forces.

As pointed out by the High Commissioner during her visit, 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 as the elections approach.

To cite a personal example, last weekend I travelled to Birgunj to meet members of civil society. There I learned that residents had been blocking the highway north of the town for two days to protest the killing of a community member. Such actions, which have become almost commonplace, indicate how little trust the average person has that the police and the judicial system will thoroughly and impartially investigate such incidents and provide appropriate remedies if necessary. Re-establishing law and order, particularly as the constituent assembly elections approach, continues to be a priority for this Office.

The report points out that creating a climate conducive to those elections 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. I am particularly concerned about recent reports of disruption by CPN-M cadres of legitimate political party meetings. Such attempts to stifle freedom of expression and assembly are inconsistent with multi-party democracy, to which the CPN-M has committed itself, and must stop.

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. Some legislation has been passed to end such discrimination, for example by improving gender equality in terms of property rights and criminalising “untouchability”, but more improvements are necessary.

A Citizenship Act adopted in November 2006 is already giving 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 require amendment.

Equality for Madhesis 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. As you know, the recent protests in the Terai resulted in extensive damage to public and private property, widespread threats to journalists and human rights defenders, serious injuries to demonstrators and police, and a substantial loss of life, with OHCHR confirming 24 deaths to date.

At times, the Nepal Police and the Armed Police Force responded to the demonstrations with excessive, and sometimes lethal, force. OHCHR teams documented cases of the Nepal Police and Armed Police Force beating protestors on the head with *lathis*, entering homes to beat residents, obstructing the passage of ambulances and emergency vehicles, and on several occasions, firing live ammunition directly into crowds of demonstrators when there was no credible threat to life.

OHCHR believes that there must be prompt and credible investigations into all killings and injuries that have occurred to determine those responsible, and prosecutions launched, if appropriate, in order to ensure accountability of security forces.

As the High Commissioner's report makes clear, 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, increasing threats to the peace process and newly-found progress in the enjoyment of human rights, and leading, ultimately, to violence.

While OHCHR stands ready to do its part to tackle these major challenges facing the nation, real, substantial changes must come from the Nepalese people themselves.