

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



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Summary

The present report covers the human rights situation and the activities of the office of the High Commissioner in Nepal (OHCHR-Nepal) during 2008. There have been very significant political developments since the report submitted by my predecessor last year, including the election of a Constituent Assembly, the declaration of a Republic and the formation of a new Government, as well as legislative and institutional reforms aimed at strengthening human rights protection. Challenges remain with regard to addressing the root causes of the conflict, which include impunity and deep-seated inequalities and discrimination. Priorities must also include improving public security and the protection of the population's rights to life, liberty and security which are threatened by the proliferation of armed groups operating in the Terai (plains).

The report highlights the need for all parties to the peace process to translate their public commitments into concrete actions to bring about lasting improvements in the human rights situation, including by ensuring that human rights and fundamental freedoms for all are enshrined in the future Constitution of Nepal. Durable improvements in the human rights situation and the strengthening of national institutions will require sustained efforts over an extended period, through concerted cooperation and dialogue among all relevant actors. OHCHR Nepal is ready to continue supporting the Government and people of Nepal in this endeavour.

UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS



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I. INTRODUCTION

1. This is the third report of the High Commissioner to the Human Rights Council since the establishment of the OHCHR country office in Nepal; my predecessor as High Commissioner submitted the first such report in January 2007 (A/HRC/4/97), and a second one in February 2008 (A/HRC/7/68). The present report contains an analysis of the human rights situation in Nepal and reports on the activities of OHCHR in the country during 2008.
2. Significant progress was made in 2008 in advancing the peace process, including the holding of Constituent Assembly elections, and formation of a democratically elected Government, one that is more broadly representative of the Nepalese population than any that has preceded it. The Government has made commitments to address the root causes and consequences of the conflict, including structural discrimination and inequality. It has also committed itself to implementing transitional-justice measures and tackling impunity for past and continuing violations. Nevertheless, some significant challenges still lie ahead, if these objectives are to be attained.

II. MANDATE AND ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS IN NEPAL, INCLUDING COOPERATION WITH OTHER UNITED NATIONS ENTITIES

3. The mandate of the office (OHCHR Nepal) is set out in the 2005 agreement between the Government of Nepal and the United Nations High Commissioner for Human Rights. It was renewed in June 2007 for a further two years, and allows OHCHR Nepal to apply a comprehensive approach in responding to human rights challenges. The Comprehensive Peace Agreement of 22 November 2006



endorses OHCHR Nepal's task of monitoring the implementation of its human rights provisions. Monitoring and capacity-building activities of the Office have been increasingly interwoven to adjust to developments and strengthen impact. Technical assistance was extended to the Government through analysis of legislation and policies, training, consultations and reports on cases or thematic issues. I would like to commend the authorities and other relevant stakeholders for the broad cooperation my Office has been enjoying over the years.

4. In 2008, OHCHR Nepal changed the structure of its programmes and activities in response to the positive evolution of the peace process, and increasingly focused on three areas considered to be of primary importance in sustainably improving human rights protection in Nepal: strengthening national human rights institutions and civil society with a focus on the transfer of skills; impunity, rule of law and accountability; and discrimination and economic, social and cultural rights. OHCHR Nepal focused particularly on collaboration with the National Human Rights Commission and on building the capacity of human rights defenders and other members of civil society to promote and protect human rights. OHCHR Nepal also continued investigations into serious and emblematic human rights violations in collaboration with national partners, and supported victims in their search for justice and remedial action. OHCHR Nepal worked closely with the security forces, providing advice and training to address particular human rights concerns. Legal advice continued to be provided on draft legislation to ensure its compliance with international human rights law.
5. OHCHR Nepal has been collaborating closely with the United Nations Mission in Nepal (UNMIN) since its establishment in January 2007 pursuant to Security Council resolution 1740 (2007). As an active member of the United Nations Country Team, OHCHR Nepal also cooperates closely with United Nations agencies in Nepal, in particular



with the United Nations Children's Fund (UNICEF) in the implementation of Security Council resolution 1612 (2005) on children and armed conflict, and with the United Nations Population Fund and the United Nations Development Fund for Women on gender issues, including on implementation of Security Council resolution 1325 (2000). Cooperation between OHCHR Nepal and the United Nations Development Programme has focused in particular on strengthening the National Human Rights Commission, while cooperation with the International Labour Organization (ILO) related to its Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989.

6. In its capacity as lead agency of the protection cluster of the Inter-Agency Standing Committee, OHCHR Nepal monitored protection concerns linked to the floods that affected large parts of the country in the Eastern and Far Western regions in August and September 2008. OHCHR Nepal facilitated a coordinated response with the Office for the Coordination of Humanitarian Affairs (OCHA), the World Food Programme, UNICEF and international and national relief agencies in support of the Government's assistance to the flood-affected population.
7. OHCHR Nepal facilitated the visit to Nepal in November 2008, at the invitation of the Government, of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Assistance was also provided to UNMIN and UNICEF during the visit of the Special Representative of the Secretary-General for Children and Armed Conflict, in December 2008.

III. HUMAN RIGHTS AND THE PEACE PROCESS IN NEPAL

8. There have been remarkable developments in Nepal since 2006. Emerging from a decade-long conflict in which some



13,000 people died, an estimated 1,500 disappeared and thousands were displaced, Nepal has grasped the opportunity to renounce armed conflict and move towards peace and democracy, based on the Comprehensive Peace Agreement (CPA) of November 2006 that committed all parties to respect human rights. The election of a Constituent Assembly that also functions as a legislature-parliament and is broadly representative of the people of Nepal constitutes an important advance. At its first session on 28 May 2008, the Assembly voted to end the 239-year-old monarchy of Nepal and to establish a Republic. In August a new Government, led by the Communist Party of Nepal (Maoist), or CPN(M), was formed. The Government has made important commitments to respect human rights. Its programme, presented to the Constituent Assembly in September and reflected in its first budget, broadly takes into account the progressive fulfilment of economic, social and cultural rights.

9. In his statement to the General Assembly on 26 September 2008, Prime Minister Pushpa Kamal Dahal "Prachanda" stated that, as a democracy, Nepal is fully committed to protect and promote the human rights of its people under all circumstances with constitutional and legal guarantees and implementation of the international human rights instruments to which Nepal is a party.¹

A. Discrimination and economic, social and cultural rights

10. The elections in April 2008 resulted in increased representation of historically marginalized groups.² The new Government took steps to end traditional discriminatory practices, such as banning the use of bonded labour, and committed itself to eliminating "untouchability". Many challenges remain, however.

1 See also para. 21.

2 See also para. 50 below.



Longstanding discrimination based on class, caste, gender, ethnicity, geography and other considerations remains deeply rooted in Nepal, and rampant inequalities persist. While the law provides for access to justice for all (Legal Aid Act 1998), many people face significant barriers to access to justice as a result of poverty and discrimination. Women in particular suffer from multiple forms of discrimination, which increases their vulnerability to sexual and gender-based violence. Marginalized and disadvantaged groups, such as former *Kamaiyas* (bonded labours), *Haliyas* (tillers), internally displaced persons and populations situated in remote areas, continue to be the most affected by inequalities in access to land, food, health and justice. Expectations among marginalized groups that these challenges would be addressed were raised with the formation of a Government led by the CPN(M). In a positive move, the Government has been holding consultations in all regions to review the existing National Human Rights Action Plan to bring it into closer alignment with the Millennium Development Goals.

11. Droughts and floods, combined with the challenges for the Government to ensure regular supplies, resulted in severe food shortages, particularly in remote hill districts.³ The scarcity was further exacerbated by frequent *bandhs* and rising fuel prices during part of 2008. In a landmark decision, the Supreme Court on 25 September directed the Government to immediately supply food to the population in 12 districts of the Far Western and Mid Western regions, which were particularly affected. In response, the Government launched a special programme to address food insecurity in 22 districts. However, chronic shortages in certain areas have led to long-term malnutrition and present considerable impediments to the realization of the right to health, particularly that of children.

3 A general strike in which all businesses, shops and schools are closed and public transport halted.



12. Access to land remains a pressing area of concern that, if unaddressed, has the potential to rekindle conflict. The CPN(M) garnered significant voter support in the Constituent Assembly elections, in particular in rural districts, by its promise to redistribute land in an equitable manner. On the other hand, there were repeated calls for the CPN(M) to return land and property confiscated during the conflict, which the party has so far only partially realized. Following protests in November by a group of organizations supporting landless persons, the Government took steps to set up a land reform commission with a view to adopting a policy for implementing a scientific land reform programme, as stipulated in the CPA. OHCHR Nepal developed guidelines on eviction based on international human rights standards and best practices, which assisted the authorities to adopt a rights-based approach to the handling of evictions, in particular in the Far Western region.
13. OHCHR Nepal has focused increased attention on the situation of historically marginalized landless communities, such as *ex-Kamaiyas* and *Haliyas*. The former were officially freed from bonded labour in 2002 but most were without access to land or economic means. In July 2007, the Government committed itself to establish a timetable for the allocation of land and other support measures. Similarly, the Government in September 2008 declared the emancipation of *Haliyas* and cancelled all inherited debts. A task force comprising government officials and *Haliya* representatives was formed to make recommendations to the Government on rehabilitation measures. These are positive developments, but concrete progress to implement commitments and recommendations is necessary, as most *Haliyas* remain in debt-bondage to landowners. Former bonded labourers must be ensured appropriate assistance and rehabilitation to enable them to acquire an adequate standard of living. Through advocacy, and support to bonded labourers, OHCHR Nepal contributed to strengthening their capacity to claim their rights.



14. Much remains to be done to eliminate discrimination against persons of indigenous descent, who constitute more than one third of the country's population. In August 2007, Nepal became the first country in Asia to ratify ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples. A task force of concerned line ministries and indigenous organizations was subsequently formed to develop a comprehensive action plan and to propose the revision of laws and implementation of policies and programmes to recognize the rights of indigenous peoples, including in the areas of land and natural resources, culture, governance and education. The action plan is being revised following an initial consultation on the draft in December 2008.

15. A key barrier to equality for victims of caste-based discrimination is the deeply rooted view that such discrimination is inevitable and that, in order to promote social harmony, incidents of discrimination should be mediated at the community level rather than pursued through the legal system. OHCHR Nepal received reports that the Nepal Police continues to coerce victims of discrimination to enter into settlements with perpetrators, thus denying them access to justice. The formation of a network in the Far Western region to address caste-based discrimination, facilitated by OHCHR Nepal, had a positive impact on the prevention of violence arising as a result of traditional discriminatory practices.

16. Social exclusion remains a significant problem; *Madheshis*, Dalits, *Janajatis*, women and other marginalized groups remain seriously underrepresented in most State bodies. However, in a positive step, the most recent recruitment by the Armed Police Force respected quotas established through the amendment of the Armed Police Force Regulations in November 2007 with the result that the 1,757 police officials recruited most recently included 150 women, 109 Dalits, 219 *Madheshis*, 234 *Janajatis* and 35 from remote or underdeveloped regions.



17. Although lack of access to justice to seek redress for abuse or discrimination continues to affect the lives of women, progress was made, particularly towards addressing violence against women. A bill on domestic violence, including a referral mechanism for survivors, was submitted by the Government to the Legislature-Parliament in August 2008, and is on its legislative agenda. Following an extended protest by women human rights defenders in July, initiated after the alleged murder of a female human rights defender and subsequent failure of police to properly investigate, the Government established a task force to make recommendations regarding violence against women and criminalization of domestic violence. The task force has yet to submit its report, which was due within two months.

18. The Supreme Court made important rulings in relation to the rights of women. In June 2008, the Court issued a judgement ordering equal remuneration for men and women for equal work. In July, the Government was ordered to review the law on marital rape, particularly its provision for a penalty of only three to six months imprisonment upon conviction. The Supreme Court directed the Government to extend the statute of limitations contained in the Country Code, which currently provides that a complaint of rape must be filed with the court within 35 days. In June, the Supreme Court had directed the Government to enact a law on reproductive rights, and in August, in response to a writ petition challenging the existing legal provisions giving women the absolute right to undertake abortion, it upheld that spousal consent was not required.

19. In line with a December 2007 directive by the Supreme Court ordering the Government to enact appropriate legislation or amend prevailing laws to allow sexual minorities to enjoy all rights without discrimination, including citizenship rights, an individual was given an identity card in September 2008 that described her sex as "third gender".



B. Transitional justice and impunity

20. In his statement to Nepal's Constituent Assembly on 1 November, Secretary-General Ban Ki-moon emphasized that sustaining peace would require efforts to heal the wounds of the conflict, including clarifying the fate of those who disappeared, and compensating victims, as well as enabling the return of displaced persons to their homes. He noted that this would entail undertaking an honest and inevitably painful acknowledgement of the truth for past human rights violations.
21. The Government has made repeated commitments to end impunity and to enforce the rule of law. In his statement to the General Assembly on 26 September, Prime Minister Pushpa Kamal Dahal "Prachanda" stated that the Government was committed to ending the environment of impunity, and that the proposed Truth and Reconciliation Commission would seek to reach a necessary balance between peace and justice.
22. There was some movement towards the establishment of a Truth and Reconciliation Commission as mandated by the CPA and as provided for in the Interim Constitution and subsequent political agreements. The Ministry of Peace and Reconstruction organized four regional consultations on the draft bill between December 2007 and December 2008, which were welcomed despite some reservations about their inclusiveness. The revised draft bill presented at these consultations included improvements on the mid-2007 version but requires further revision to ensure compliance with international human rights standards, including with regard to independence of the Commission, amnesties and increased witness protection. The Government requested the advice of OHCHR Nepal and transitional-justice NGOs on the consultative process, and subsequently revised elements of its approach, including broadening the number and scope of consultations.



23. In November, the Ministry for Peace and Reconstruction organized a public consultation on a draft bill on disappearances, containing provisions to criminalize disappearance and to establish the legal framework for a Commission to investigate and report on conflict-related disappearances. OHCHR Nepal shared comments on the revised draft bill with the Ministry and with Constituent Assembly members, pointing to amendments necessary to bring the legislation into harmony with international instruments.⁴
24. Most of the estimated 1,500 cases of conflict-related disappearances remain unresolved. In December 2008, OHCHR Nepal issued a report on disappearances in Bardiya district, documenting 156 cases of disappearances at the hands of security forces, the majority of which occurred between December 2001 and January 2003. OHCHR Nepal also investigated 14 similar cases attributed to the CPN(M). The report highlights the deeply adverse socio-economic impact of disappearances on the families of victims, and the urgency of establishing a Commission to investigate disappearances and provide reparations for victims.⁵
25. Despite repeated commitments to end impunity and to enforce the rule of law, no visible steps were taken in 2008 to hold accountable any individual responsible for human rights violations committed during or after the conflict.
26. In the case of Maina Sunuwar (see A/HRC/7/68, para. 73), a 15-year-old girl who died in 2004 while in custody of the

4 On 10 February 2009, the Government promulgated an Ordinance on Disappearance of Persons (Crime and Punishment), which included provisions for the establishment of a high-level Commission of Inquiry on Disappearances. The Ordinance must be approved by the Parliament within 60 days of its issuance.

5 See report entitled "Conflict-related disappearances in Bardiya district", available at <http://nepal.ohchr.org/en/index.html>.



Nepal Army, progress has been limited. Financial compensation has been offered to the family of the victim but judicial proceedings in the case have been stalled, due primarily to the Nepal Army's failure to produce relevant documents, suspects and witnesses, despite written requests by the Nepal Police to do so.

27. OHCHR Nepal is concerned at the lack of progress in investigations into the abduction and subsequent killing of a businessman at a Maoist army cantonment site in Chitwan in May. Of five arrest warrants issued by the police, only one person has been arrested, and, despite public commitments to do so, the CPN(M) failed to hand over the main suspect, a former Maoist army commander, who reportedly continued to exercise command responsibilities. The results of a judicial investigation into the killing were never made public.
28. Although special commissions were established to investigate the most serious human rights violations and crimes committed in 2008, the reports of these commissions, submitted to Parliament or to the Home Ministry, were not made public and there were no visible consequences for the alleged perpetrators.
29. In October 2008, the Government recommended the withdrawal of 349 cases "of a political nature", including cases against some senior CPN(M) members of the Cabinet. Charges withdrawn included murder and attempted murder, rape, robbery and arson, as well as violations of arms and ammunition laws. Seeking further information on the criteria for withdrawal of these cases, OHCHR Nepal stressed the importance of transparent, impartial proceedings to ensure that individuals responsible for gross violations and international crimes are not made subject of a de facto amnesty.
30. OHCHR Nepal received reports of frequent political interference in criminal justice processes, especially in



Terai districts. Political pressure, including threats and intimidation, to release individuals linked to major political parties arrested on criminal charges, to which the police have frequently succumbed, encourage impunity for abuses and acts of violence. These pressures not only undermine police morale and credibility, but also further erode public confidence in the rule of law.

31. In countries emerging from armed conflict, such as Nepal, reforming public security institutions is an important step in the transition to lasting peace and democracy. In order to ensure this transformation, security forces personnel as well as former combatants of the Maoist army responsible for human rights violations or abuses should be excluded from State institutions. This would help to break the cycle of impunity and send a strong message about commitment to human rights. There is a significant need for a credible and effective vetting process in the context of army integration and restructuring of public security
32. In addition to establishing internal vetting mechanisms, on which the Nepalese Army has reported some progress, OHCHR Nepal has repeatedly stressed that Nepalese security personnel against whom there are credible allegations of involvement in human rights and humanitarian law violations during the conflict, or in post-conflict human rights violations, must not be deployed to United Nations peace operations.

C. Public security and rule of law

Assessment of the security situation, including activities by armed groups

33. The commitment by the new Government to prioritizing improvement of public security was welcome, although progress has been slow thus far. Gaps in governance at



both the central and local levels are compounded by a police force that was often ineffective, particularly against the activities of armed groups operating in the Terai. This has resulted in a growing sense of lawlessness and a security vacuum in many parts of the Terai and some hill districts.

34. This public security vacuum contributes to the proliferation of armed groups, some of whom are connected to the *Madhesi* political parties, leading in turn to increased criminal activities, with daily reports of abductions, killings, explosions of improvised explosive devices and acts of extortion. Taking note of the lawlessness and criminal activities, the Government in October announced the formation of a three-member ministerial committee to engage in dialogue with some of the armed groups operating in the Terai.
35. The lack of public security, in particular in the Terai, has had a negative effect on the ability of many professionals to operate, including human rights defenders, who are sometimes reluctant to carry out investigations and issue public reports for fear of retaliation, either by State authorities or armed groups. OHCHR Nepal received numerous reports of threats and intimidation by armed groups against journalists, some of whom have been coerced to publish and disseminate unverified information that could increase tensions. The continuing challenges for the Government to protect the rights and security of its citizens, especially in the Terai, continues to undermine the human rights situation and hence the durability of the peace process.
36. The population continued to use street protests, roadblocks and strikes to force the Government to pay attention to their concerns, whether these were economic, including increases in the prices of fuel, or political. This action, known as *bandhs*, caused widespread disruption to daily life whenever it occurred, and curtailed freedom of



movement, access to education and health services, development programmes and activities of non-governmental organizations. The fact that the Government in most cases gives in to the demands of protestors, combined with the lack of structured alternative avenues to raise grievances, perpetuates the imposition of *bandhs* and threat of violence as the primary and most effective means to obtain a reaction from Government.

37. In February 2008, an alliance of Madhesi political parties, including the Madhesi People's Rights Forum, called a Terai-wide *bandh* demanding a constitutional amendment to establish an autonomous Madhesi state within a federal democratic republic and fair representation of Madhesis in all State organs, including the army. While the protests were called off after two weeks following agreements reached with the Government, the *bandh* paralysed daily life and led to violent confrontations between *bandh* supporters and both the Nepal Police and Armed Police Force (APF), in which six civilians and an APF officer were killed and hundreds of people injured, including police personnel. Whilst recognizing that demonstrators were on many occasions violent, attacking government offices, police posts and ambulances, the policing of the protests and the use of force raised serious concerns. OHCHR Nepal issued a report of its investigation into the policing of the *bandh* that included recommendations to the Government to improve respect for human rights in responding to situations of public disorder, including through relevant legislative reform and provision of
38. The Government developed various strategies to address the worsening public security situation, including deployment of special task forces of Armed Police Force and Nepal Police personnel in districts particularly affected by criminality. However, increased demands to tackle armed groups have coincided with an increase in illegal killings by police forces. In 2008, 23 cases were reported, for most of which the Nepal Police was responsible, as



compared to 12 cases in 2007. In most cases the security forces claimed self-defence and the deaths were generally recorded as “accidental”. In none of the cases investigated by OHCHR Nepal has there been any attempt to conduct credible, effective or impartial investigations.

39. While in some cases the Government has appointed commissions to investigate major incidents, these commissions often included members of the institutions whose personnel are implicated, raising concerns about their independence and impartiality, and about the possible perpetuation of impunity. The terms of reference of the commissions are generally not made public and the families of victims or legal representatives are not kept informed of proceedings. The reports and findings are seldom made public and there is little indication of any action taken by the Government.
40. One such commission was established to investigate one of the most serious incidents, which took place on 8 April, two days before the Constituent Assembly election. APF and NP personnel escorting a Nepali Congress (NC) candidate opened fire on CPN(M) vehicles in Dang district, killing 7 CPN(M) members and injuring at least 12 others. Based on its investigation into the incident, OHCHR Nepal concluded that the deaths constituted extrajudicial and arbitrary executions; it found no evidence to support claims by the APF and NP that they used lethal force in response to fire by CPN(M) members. Following a call by OHCHR Nepal, the Government established a commission on 4 May that included senior officials from the NP and APF. The findings of the commission were not made public and, to OHCHR Nepal’s knowledge, none of the security forces personnel implicated in the incident have been sanctioned to date.

1. Excessive use of force

41. OHCHR Nepal documented 15 deaths caused by



excessive use of force in the context of crowd control in 2008 as compared to 27 in 2007. In none of these cases have those responsible been held accountable. In addition to the deaths caused during the Terai protests in March 2008, three persons were killed and at least seven persons injured on 28 May 2008 when a Nepal Police officer opened fire on protestors outside the District Administration Office in Kailali district. In OHCHR Nepal's assessment, the use of force was excessive; internal disciplinary action was taken against the police officer implicated but there was no attempt to conduct a proper criminal investigation into the incident.

42. Excessive use of force by the Nepal Police was observed in March 2008 when police resorted to *lathi*-charges and tear gas to disperse peaceful protests in Kathmandu on Tibetan issues. The protests continued over 69 days⁶ between 10 March and 11 September, during which time a total of 12,958 persons were arrested and, in almost all cases, released the same day. Policing of later demonstrations showed improvement, which may be attributable in part to systematic interventions by OHCHR Nepal with police officials at all levels.

2. Arrest and detention by State authorities

43. In the course of monitoring detention conditions, OHCHR Nepal documented 93 cases of torture and ill-treatment, as well as a number of cases of unlawful detention. Reports of ill-treatment, sometimes amounting to torture are widespread, especially during interrogation. Detainees in police custody, including those who have been abused, often go without medical care, and health examinations are poorly documented. In an effort to reduce the

⁶ Protests were suspended for 10 days during the period of the Constituent Assembly Election and resumed on 15 April. They were suspended again on 1 June to show respect for the victims of the earthquake in China.



occurrence of ill-treatment, OHCHR Nepal and partners, including the NHRC, conducted several workshops on the principles and procedures governing health examinations for detainees, bringing together around 120 police officials and local authorities, as well as senior health professionals. The workshops identified key policy gaps that have contributed to a lack of accountability for police abuses. These workshops will provide the basis for an initiative by OHCHR Nepal and its partners to assist the Nepal Police in developing appropriate policies at the national level.

44. In May, the Supreme Court ordered the Government to undertake reforms with regard to the prison system, including improving prison conditions and the situation of children living with prisoners, as well as reforming policies on prison management and administration. The Government states that reform of the prison system is ongoing subject to available resources.

3. Abuses by individuals associated with political parties

45. Whilst OHCHR Nepal continued to receive reports of abuses by members of the CPN(M) and its youth wing, the Young Communist League (YCL), prior to the elections, the number of incidents reported diminished after April. However, abusive activity continued to be reported, particularly intimidation and interference in decision-making processes at the local level. In Kathmandu, OHCHR Nepal raised concerns with the YCL leadership about reports of abduction and ill-treatment of drug users and sellers who were forced to participate in a “rehabilitation centre”, after which the YCL promised to close the centre. Also of concern was the lack of any significant progress by the CPN(M) in returning land and property confiscated during the conflict, despite numerous public commitments.
46. The establishment of youth wings by other political parties raised concern, particularly when, as was the case with



the Youth Force, affiliated with the Communist Party of Nepal-Unified Marxist-Leninist (UML), they appeared to be competing with the YCL and claimed to conduct “law enforcement” activities in support of the police, including targeting of allegedly corrupt government officials. Confrontations between the YCL and Youth Force led to violence and political tension on a number of occasions.

47. The issue of the future of former Maoist army combatants, who are in cantonment sites in line with the agreement on monitoring of the management of arms and armies, has yet to be resolved. The verification process conducted by UNMIN in 2007 determined the total verified Maoist army personnel as 19,602, of whom 2,973 were below 18 years of age when the ceasefire agreement was signed. Following a visit by the Special Representative of the Secretary-General on Children and Armed Conflict to Nepal in December, the Prime Minister committed himself to discharging the former child combatants, whose presence was in violation of the Comprehensive Peace Agreement and child rights provisions, from the cantonment sites, by February 2009. In November, intensive discussions were launched on the integration of the two armies; however no agreement has yet been found on the process or possible options for reintegration or rehabilitation of combatants. By 31 December, the special committee to supervise, integrate and rehabilitate Maoist army combatants, as envisaged under the Interim Constitution, had yet to start its work, pending final agreement on its composition.

D. Democratic processes

1. Elections to the Constituent Assembly

48. The successful holding of the twice-delayed Constituent Assembly elections on 10 April 2008 constituted an important advance in the peace process. The high voter turnout - 63 per cent of 17.6 million eligible voters, of whom 53 per cent were women - and the largely peaceful environment in which the election was conducted, were



significant achievements. Amendments to the election laws ensured broad representation of previously marginalized groups, including women, Dalits, *Janajatis* (indigenous peoples) and other marginalized communities, in the Assembly. Out of the 575 seats of the Assembly, women hold 33 per cent, *Janajatis* 33 per cent, Dalits 8 per cent and *Madhesis* 34 per cent of the seats. After long years of conflict, the display of respect for democratic principles through an election which also accorded representation in unprecedented numbers to women and other historically marginalized groups is to be hailed as an historic accomplishment.

49. OHCHR Nepal monitored the electoral process to assess respect for human rights.⁷ The Election Commission and its staff made commendable efforts to ensure a peaceful and credible process, and the majority of candidates demonstrated political responsibility despite the difficult circumstances in which some were forced to campaign. However, some candidates and party supporters used intimidation to influence voters, and there were some serious incidents of violence. Ten people were killed during the week preceding the election and another four on polling day (see also paragraph 41). On polling day, intimidation, abductions, assault and electoral fraud, sometimes leading to confrontations between political parties, were observed in several districts of the central and western hills, as well as in the eastern and central Terai. In a number of instances, polling staff failed to prevent or report threats, intimidation and other electoral irregularities, mainly due to fears for their personal safety and although the police generally played a positive role in providing security for polling stations, they did not always respond effectively to incidents of violence. In total, OHCHR Nepal received reports of 21 deaths between 7 March and 9 April in

⁷ See OHCHR Nepal report entitled “Constituent Assembly Elections of 10 April 2008: summary of human rights monitoring”, as well as papers on election environment; available at <http://nepal.ohchr.org/en/index.html>.



incidents linked to the electoral process. Two of the deceased were candidates and 12 were CPN(M) members; 11 of the 21 victims were shot by the police. No one has been held accountable.

2. Formation of a new Government

50. In July, the Assembly elected two Madheshi representatives as President and Vice-President of Nepal. Following protracted political negotiations, a new Government took office in late August under the leadership of the CPN(M). Despite improved representation of women in the Assembly, there are only 4 women in the 23-member cabinet. Women Assembly members and political party representatives expressed their disappointment over the lack of representation in key State positions.
51. Commitments made by the new Government included the establishment of a Truth and Reconciliation Commission, a Commission to investigate disappearances, the formulation of a new public security policy, and the end of impunity. Considerable emphasis was also placed on poverty alleviation and the promotion of economic, social and cultural rights, in particular in the areas of education, health services and access to land. A commitment was also made to end the practice of “untouchability”, and to adopt measures to end all forms of discrimination against women. OHCHR Nepal also welcomes the 85 per cent increase in NHRC funding in the 2008-2009 budget.

3. Constitution-making process

52. The Assembly, which also functions as the Legislature-Parliament during the transitional period, has focused almost exclusively on the Constitution-drafting process, albeit at a slow pace. The rules of procedure of the Assembly were adopted in November after almost six months of deliberations. The rules outline the formation of a 61-member Constitutional Committee which has the core responsibility of preparing a draft Constitution and the



challenge of enabling its completion by the May 2010 deadline stipulated in the Interim Constitution. On 16 November, the Assembly adopted a detailed timetable outlining the stages of the drafting process.

E. Strengthening national capacity to protect and promote human rights

53. A crucial element to improving respect for human rights in Nepal is the development and strengthening of a comprehensive national human rights protection system. In addition to State protection mechanisms, including a Constitution guaranteeing human rights and fundamental freedoms, an independent judiciary and a parliamentary human rights committee, this system should rely on an independent, credible and effective National Human Rights Commission (NHRC) as well as other institutions established with a human rights mandate, such as the National Women's Commission, the National Dalit Commission and the National Foundation for Development of Indigenous Nationalities. A vibrant civil society, including human rights defenders and media, which can operate without fear and intimidation, are also key to the protection and promotion of human rights.
54. In 2008, to advance its objective of strengthening national capacity through advice and recommendations based on its monitoring and legal work, OHCHR Nepal undertook numerous training initiatives, workshops and briefings on specialized issues and provided on-the-job mentoring. The NHRC, civil society and law enforcement agencies were OHCHR Nepal's principal partners.

1. National Human Rights Commission

55. OHCHR Nepal collaborated with the National Human Rights Commission (NHRC) at the national and regional levels on joint capacity-building activities, and provided support on the conduct of investigations into allegations of human rights violations. Guidelines defining new forms of



cooperation between the two organizations are being finalized, as is the next phase of a donor-funded project on capacity development of the NHRC. OHCHR Nepal provided financial support in 2008 to enable participation of Commissioners and staff in various international courses and conferences, and provided training to NHRC staff on indicators to monitor the implementation of economic, social and cultural rights.

56. The NHRC enhanced its profile and public information work in 2008. It increased monitoring and investigation activities and organized events on child rights and violence against women. A gender focal point was established within its structure. However, in its annual report, as in meetings with the Government, NHRC regretted that no steps had been taken to implement its recommendations.
57. In November, the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights confirmed the A-status accreditation for NHRC but made observations on several matters reviewable after one year, including procedures for funding, selection and appointment of the commissioners, development of NHRC legislation that is in full compliance with the Paris Principles, and interaction with other human rights institutions and civil society organizations.

2. Civil society

58. In 2008, a total of 2,158 civil society and youth representatives participated in 60 activities organized by OHCHR Nepal in the five regions to strengthen national capacity to protect and promote human rights. These civil society members included men and women human rights defenders, youth and student leaders, representatives of indigenous peoples, Dalits, journalists and academics. OHCHR Nepal activities focused on issues critical to advancing human rights aspects of the peace process, including in the areas of rule of law, transitional justice and



addressing impunity, as well as monitoring of the Assembly election and participation of civil society in the Constitution-making process.

59. Training was provided on monitoring and investigation of human rights violations to, inter alia, human rights defenders from all districts of the central region. This was followed by specialized training, conducted with civil society representatives and security forces personnel, on the monitoring of public protests and the use of force. Other activities focused on the human rights-based approach to development, monitoring of economic, social and cultural rights through human rights indicators and human rights-sensitive journalism, including with regard to reporting on the Constituent Assembly. OHCHR Nepal also brought together youth associations, including those affiliated to political parties, to enhance their understanding of human rights, in particular democratic rights and mutual dialogue and interaction. OHCHR Nepal also conducted workshops on indigenous rights, representation and access to justice.
60. In order to enhance the impact of human rights defenders, OHCHR Nepal facilitated a network to combat caste-based discrimination in the Far Western region, a network to address human rights concerns in the central Terai and a network to monitor demonstrations in Kathmandu. OHCHR Nepal has also strengthened partnerships with leading human rights NGOs, including those engaged with transitional justice.

3. Constituent Assembly

61. The drafting of a new Constitution presents a unique opportunity to enshrine the human rights and fundamental freedoms of all Nepalis within the national legislative framework. In 2008, OHCHR Nepal, together with other United Nations agencies, offered support to the Constituent Assembly related to protection of human rights through the Constitution and in promoting participatory constitutionalism. OHCHR Nepal is supporting a NGO



Working Group on human rights and the Constitution, bringing together key organizations, including the NHRC, to coordinate assistance to the constitutional process. In cooperation with the United Nations Country Team, OHCHR Nepal supports a resource centre for both Assembly members and the public to increase access to expert services and public awareness related to the Constitution.

4. Security forces

62. OHCHR Nepal continued training and awareness-raising activities with the Nepal Police (NP) and Armed Police Force (APF), focusing particularly on human rights standards pertaining to law enforcement and the rule of law. In 2008, in-house capacity was developed through training of trainers, both within the NP and APF. In 2008, APF officials trained and monitored by OHCHR Nepal in cooperation with the International Committee of Red Cross and NHRC, conducted five training programmes for 167 APF officials. In addition, OHCHR Nepal contributed to predeployment training for 60 APF officials assigned to United Nations Peace Operations. Substantive advice was provided for the development of an APF human rights pocketbook, which is in the final stage of production. OHCHR Nepal also provided five human rights training courses for 170 Nepal Army officials.

5. Reporting obligations to international treaty bodies

63. Nepal has ratified six of the core international human rights instruments. Human rights defenders have advocated strongly for ratification of the Convention on the Rights of Persons with Disabilities, which Nepal signed on 3 January 2008, and for Nepal to become State party to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Rome Statute of the International Criminal Court.



64. The long transition period has contributed to delays in Government reports to United Nations treaty bodies. Reports to the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women and the Committee Against Torture are overdue. Initial reports under the two Optional Protocols to the Convention on the Rights of the Child have yet to be submitted. Engaging with relevant treaty bodies will assist the country in meeting the international obligations it has endorsed. OHCHR Nepal provided four days of training for Government officials on reporting to United Nations treaty bodies. Moreover, specialized trainings on the human rights treaty body system, including relevant reporting procedures and complaint mechanisms, were provided to representatives of Government and civil society in all five regions.

IV. CONCLUSIONS AND RECOMMENDATIONS

65. The human rights situation in Nepal has improved significantly since the conflict ended and important steps were taken in 2008 to consolidate the peace process. The people of Nepal voted for peace and change in April 2008. A mixed system ensured that the Constituent Assembly is much more reflective of Nepal's diverse society than any previous representative body. It is one third women and has a significant representation of historically marginalized groups, including *Madhesis*, indigenous peoples and "lower" castes.
66. The transformation in Nepal is profound; a new Government has come to power on the basis of a popular vote and monarchy has been replaced by a republic. However, the challenges to the consolidation of the peace process may be as daunting as those which have been surmounted thus far. OHCHR Nepal has repeatedly stated that a focus on addressing human rights issues that lay at the root of the conflict and are the key to durable peace



and development, including impunity, structural inequalities and discrimination, must remain central during the transition period.

67. The population has high expectations of the new Government and the Constituent Assembly. Many provisions of the Comprehensive Peace Agreement have yet to be implemented, including mechanisms for the monitoring of the peace process. Chronic electricity shortages and floods have compounded the problems presented by a slowing economy, deteriorating security, especially in the Terai, slow progress regarding the integration and rehabilitation of Maoist army combatants and the development of the constitution.
68. Recognizing that the Government faces many challenges, OHCHR Nepal urges that priority be given to strengthening public security, the rule of law and accountability, and addressing impunity as well as discrimination with the objective of protecting and promoting the entire range of human rights. Nepal is seen as taking the lead, particularly within South Asia, in committing itself to most of the key international human rights instruments. Now, with the conflict behind it, Nepal has the real possibility to grasp the historic opportunity to prove itself as a leader in implementing its human rights commitments. Above all, the Nepalese people, who have suffered long years of deprivation and denial as a result of the conflict, are entitled to have their human rights respected and fulfilled.
69. An effective national human rights protection system requires strong human rights institutions. OHCHR Nepal encourages the Government to implement the recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights that include the adoption of legislation that is in full compliance with the Paris Principles and ensuring that the National Human Rights Commission has adequate funding and financial autonomy. OHCHR



Nepal welcomes the Government's 85 per cent increase for the NHRC's budget in 2008/09, and it encourages the Government to respond promptly to recommendations submitted by the Commission. The Government must also ensure that the other rights-focused national institutions have the requisite support to become independent, credible and effective, with adequate funding, financial autonomy and a clear legal basis. In this regard, priority should be given to the passage of the Law on the National Dalit Commission, following a fully consultative process.

70. OHCHR Nepal urges the Government to put in place mechanisms to protect human rights defenders and allow them to undertake vital human rights work in an environment free from intimidation. To this end, OHCHR Nepal encourages the Government to invite the Special Rapporteur on the situation of human rights defenders to visit Nepal.
71. Ending impunity is a prerequisite for breaking with the violent past and preventing future violations. The Government's commitment to establish credible transitional justice mechanisms is welcome and my Office stands ready to support this process, including as part of activities carried out under the United Nations Peace Fund.
72. In addition to the establishment of transitional justice mechanisms consistent with international standards, OHCHR Nepal encourages the Government to move swiftly to investigate and prosecute the perpetrators of serious human rights violations that occurred both during and after the conflict, and to cooperate with ongoing investigations, including those identified in this report. This will require strong and independent rule of law institutions, including a police force, prosecutors, and a judiciary free from political interference. With that in mind, OHCHR Nepal urges the Government, including the Constituent Assembly in its deliberations over the new Constitution, to take measures to safeguard the independence of these institutions.



73. The broad representation of historically marginalized groups in the Constituent Assembly, including women, Janajatis and Dalits, is a commendable achievement. I encourage the Government to make concerted efforts to ensure that the voices of these groups are effectively heard, in particular in the context of the Constitution-drafting process. OHCHR Nepal will continue to support the participation of marginalized groups in State institutions, and provide technical assistance to the Government and other partners to address the economic, social and cultural rights violations that underpin many grievances. Unless these concerns are addressed, there is a risk of deepening social divisions which could lead to further violence.
74. OHCHR Nepal welcomes the steps taken by the Government to eradicate “untouchability” and the practice of bonded labour, and encourages the Government to establish a legal framework that would support the rehabilitation of former bonded labourers. Further steps to address long-standing discrimination are required, as current measures are not sufficiently far-reaching and agreements made with various groups have not been implemented. My office in Nepal will continue to assist marginalized groups, including by building the capacity of national institutions mandated to support these groups.
75. Conflict over land is one of the issues that lie at the root of the conflict. The establishment of a land commission is an important step forward and the Government is encouraged to ensure that the Commission has the requisite support and is able to function in a transparent, inclusive and impartial manner.
76. The OHCHR office in Nepal stands ready to continue providing all necessary support and technical assistance to assist the Government and people of Nepal in meeting their aspirations for the protection and enjoyment of all human rights.