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**Promotion and protection of human rights: human rights  
situations and reports of special rapporteurs and representatives**

### **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**

#### **Note by the Secretary-General\***

The Secretary-General has the honour to transmit to the members of the General Assembly the 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, submitted in accordance with Commission on Human Rights resolution 2005/78.

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\* The submission of the report is delayed in order to reflect the most updated information and owing to consultations.



### *Summary*

On 16 September 2005, the High Commissioner for Human Rights submitted to the General Assembly her report on the human rights situation and the activities of her Office, including technical cooperation, in Nepal (A/60/359) covering the period from May 2005 until August 2005. A subsequent report to the Commission on Human Rights covered the period up to January 2006 (E/CN/2006/107). This latest report looks at improvements in the human rights situation in Nepal since the April 2006 protests, as well as ongoing violations. Many challenges remain with regard to upholding and strengthening respect for human rights which must be addressed in the short and long term, including impunity, deep-rooted discrimination and other abuses against vulnerable groups.

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## I. Introduction

1. On 16 September 2005, the High Commissioner for Human Rights submitted to the General Assembly her report on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/60/359), which covered the period from May 2005 to 31 August. She prepared a subsequent report for the Commission on Human Rights, which covered the period up to January 2006 (E/CN/2006/107).
2. Since these last reports, there have been significant developments impacting on human rights, which were precipitated by the last stage of a protest movement launched by the Seven-Party Alliance (SPA) on 5 April 2006. The protest movement culminated in a cessation of military operations in the conflict, the restoration of democratic rights and other important political changes, as well as the re-launching of peace talks between the Government and the Communist Party of Nepal-Maoist (CPN-M). Both parties have requested the United Nations to provide assistance in the areas of management of arms and armed personnel, constituent assembly elections, ceasefire monitoring and continued human rights monitoring.
3. This report examines the protest movement's impact on human rights and the resulting political changes, as well as key human rights issues which need to be addressed in the course of the still fragile peace process. It is based on information gathered in the context of the Office of the High Commissioner for Human Rights' (OHCHR) monitoring and investigation work throughout the country, including a wide range of meetings with authorities, security forces, CPN-M, civil society, victims and families. Since the ceasefire, staff from four regional offices of OHCHR – in Biratnagar, Kathmandu, Pokhara and Nepalgunj – and its new sub-office in Dadeldhura have intensified travel to many districts and villages. Overall, OHCHR enjoyed the cooperation of the authorities and CPN-M. However, OHCHR has been disappointed at the lack of response to a number of letters to the Government and to CPN-M. In addition, the Nepalese Army maintained its refusal to provide access to documents relating to military investigations and court martial proceedings into abuses. Breaking the climate of impunity in Nepal remains the single most difficult human rights challenge.
4. The report was submitted to the Government and to CPN-M on 4 September and both provided their comments.

## II. Context: the April protest movement, related political developments and their impact on human rights

### A. The April Protest Movement

5. On 5 April 2006, SPA launched a four-day strike, which turned into a 19-day protest movement of unprecedented proportions (known as the *Jana Andolan* or People's Movement). The Government, tried from the outset to prevent the protests, severely curtailing rights to freedom of assembly and association. A ban on public gatherings inside the Kathmandu Ring Road was declared and curfews imposed from 5 April. Similar measures were imposed in other cities. These measures were taken, according to the Home Minister, to stop CPN-M "infiltration" into Kathmandu. A subsequent CPN-M-declared ceasefire was described as "a ploy" by the Minister. Several hundred political party and civil society leaders were placed under preventive detention under the Public Security Act (PSA) (as had occurred in January - see E/CN.4/2006/107, para.79 and A/60/359 para. 15)), with many others, including juveniles, held for short periods.
6. Protests planned for January 2006 had been curtailed by curfews and arrests, but in April political party and civil society activists, along with many others, challenged the bans, taking to the streets in tens of thousands. Unlike previous SPA protests, this time there was tacit understanding with and support from CPN-M. The protests were spread throughout the country, and many leaders avoided arrest and continued to organize the protests without necessarily being present.

7. At times, security forces -- the Royal Nepalese Army (RNA, renamed the Nepalese Army on 18 May), the Armed Police Force (APF, a paramilitary police force) and the Nepal Police -- who were deployed to quell the protests, faced a difficult task of dispersing groups of violent demonstrators intent on destroying public property. Many police were injured by stones thrown by demonstrators. However, many peaceful protests were also broken up. Numerous clashes were provoked by the security forces trying to disperse demonstrators exercising their right to freedom of assembly. On the basis of its monitoring of demonstrations throughout the 19 days and subsequent investigations into 18 deaths which occurred, OHCHR concluded that all branches of the security forces were responsible for excessive use of force. More than 4,000 demonstrators were reportedly injured, many of them children. While not all injuries were due to security forces' violence, many suffered injuries from baton charges, live and rubber bullets, as well as teargas canisters fired at close range.

## **B. Related political developments**

8. Protests continued to spread, with almost 200,000 people defying both the curfew and the ban on assemblies on 20 April 2006. SPA rejected an invitation from the King to nominate a prime minister to form a government on 21 April. On 24 April, the eve of what was likely to have been the largest demonstration in Kathmandu and amidst serious concerns as to the potential response of the security forces, King Gyanendra announced the reinstatement of the House of Representatives. On 27 April, the King appointed the unanimous choice of SPA, Nepali Congress (NC) leader Girija Prasad Koirala, as Prime Minister. The following day, the House of Representatives convened for the first time since 2002 and an SPA coalition Government was formed.
9. A major improvement in the human rights situation was observed immediately after the establishment of the new Government. The right to freedom of association, expression and assembly were largely restored, with bans on demonstrations lifted except in one area of Kathmandu. All political detainees held under PSA were released within days. CPN-M declared a three-month ceasefire on 26 April and the Government an indefinite ceasefire on 3 May. Both sides agreed on a 25-point code of conduct on 26 May. The ceasefire resulted in a complete cessation of the Nepalese Army and People's Liberation Army (PLA) offensive operations. The Nepalese Army has since limited its movements to routine patrols around barracks, to maintaining some checkpoints and some street patrols in Kathmandu. PLA has remained in CPN-M "base areas" and set up some temporary camps elsewhere.

## **C. Impact on Human Rights**

10. The cessation of hostilities resulted in an absence of conflict-related violations, including extrajudicial executions, detention, torture and ill-treatment in army barracks of those suspected of links with CPN-M. Violations of international humanitarian law also ceased. (In March, OHCHR had published *Investigations into violations of international humanitarian law in the context of attacks and clashes between the Communist Party of Nepal (Maoist) and Government Security Forces. Findings and recommendations. January – March 2006*). The pattern of long-term disappearances which dominated previous years ended during 2005. Many prisoners held in preventive detention under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) on suspicion of being members or sympathizers of CPN-M (see A/60/359, para. 16)) or who were facing charges were released, including many juveniles accused of belonging to CPN-M.
11. There are, however, many challenges remaining with regard to upholding and strengthening respect for human rights which still need to be addressed in the short and long term, including on-going violations and impunity, as well as deeply-rooted discrimination and other abuses against vulnerable groups such as women, children and ethnic minorities.

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

12. For peace to be sustainable in Nepal, human rights must underpin the peace process throughout. Talks between SPA and CPN-M have led to a series of agreements between the two parties some of which have included broad references

to human rights. In the 12-point “Letter of Understanding” adopted in November 2005 both sides expressed their commitment to “fully respect the norms and values of human rights”. Two-thirds of the vaguely-worded provisions of the Ceasefire Code of Conduct refer to international humanitarian law and human rights concerns. An eight-point Agreement between the Government and CPN-M (signed on 16 June 2006) includes a broad commitment to “democratic norms and values including competitive multi-party system, civil liberties, fundamental rights, human rights, press freedom, and the concept of the rule of law”. None of these agreements, however, contain specific measures to achieve these objectives nor do they include specific references to children affected by conflict.

13. The Government and CPN-M negotiation teams also agreed to form an Interim Constitution Drafting Committee (hereafter “the Drafting Committee”) which became operational on 6 July 2006. After widespread protests that the six-member all-male Committee, led by a former Supreme Court Justice, was not sufficiently representative, an additional ten members (including four women and a Dalit representative) were added. Although the Interim Constitution is only to serve until a new constitution is drafted by a constituent assembly, it presents an opportunity to strengthen human rights protection. OHCHR submitted recommendations to the drafting Committee which would strengthen existing human rights provisions, regarding the right to life; retroactive criminal laws and amnesty; freedom from torture and from arbitrary arrest or detention (including disappearances); rights regarding fair trial and juvenile justice and the independence of the judiciary. The Committee also received recommendations from civil society. On 25 August, Drafting Committee submitted its draft to the parties to start discussions on remaining key issues, including the status of the monarchy, the nature of any interim government and parliament and the process leading to the formation of a constituent assembly.
14. An agreement reached on 15 June set up a 31-member Ceasefire Code of Conduct National Monitoring Committee (hereafter “National Monitoring Committee”) and included a request for OHCHR to provide assistance, as well as to monitor human rights. Like the Ceasefire Code of Conduct itself, the terms of reference of the National Monitoring Committee lack clarity and specificity. The National Monitoring Committee has started to carry out field visits, but it lacks resources and will need to establish its credibility as an independent monitoring committee. A Joint Committee with Government and CPN-M representatives to which the National Monitoring Committee would report and which would be responsible for ensuring the implementation of the National Monitoring Committee’s recommendations has not yet been established.
15. In addition, three other draft agreements are currently under discussion between the parties: *Agreement on the Observance of Human Rights and Humanitarian Law*, a draft *Ceasefire Agreement* and a proposal for the establishment of Local Peace Councils at district level. These drafts were prepared by a 10-party Peace Committee, established by the Government on 3 July 2006. All drafts refer to human rights and monitoring mechanisms. OHCHR submitted comments to the Peace Committee and to the two parties on 7 August, highlighting the need to clarify the mandates, powers and working procedures of the different existing or proposed mechanisms for monitoring human rights and the relationships between them, to avoid overlap and potentially competing functions. OHCHR also recommended, inter alia, that the parties ensure that any human rights monitoring mechanisms are adequately funded, with full-time investigators, and staff who are competent, impartial and independent.
16. The draft agreements recognized the role of the National Human Rights Commission without specifying responsibilities in relation to the peace process. During the reporting period, the National Human Rights Commission continued to be severely criticized by civil society because of the manner in which the Chairperson and Commissioners were appointed by the King in May 2005. Many human rights organizations expressed the view that the Commission was not independent and restricted their cooperation. The Chairperson and the Commissioners eventually resigned on 9 July 2006. According to the draft Interim Constitution, the National Human Rights Commission would become a constitutional body. In numerous meetings with Government officials, OHCHR continued to press for a transparent and consultative appointments process. It urged that commissioners should not be appointed on the basis of political party affiliation, which would undermine the independence and non-partisanship of the Commission, and that the appointments should reflect the balance of gender and ethnic diversity in Nepali society.

17. Recognizing the key role to be played by a strong, independent and effective national human rights institution, OHCHR has continued to assist the Commission during 2006. As the single largest human rights monitoring presence in Nepal, the National Human Rights Commission could play a key role in monitoring human rights aspects of the peace process and the implementation of the Ceasefire Code of Conduct.

### **III. Respect for international human rights and humanitarian law**

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

18. The installation of the new Government, together with the ceasefire declarations, has had a significant and positive impact on the conduct of the security forces in terms of human rights but these gains remain precarious. Institutional weaknesses, as well as the need for political will to instill professionalism based on full respect for human rights, are challenges which need to be met.
19. The role of the army--and the need to subject it to full civilian control and scrutiny--is one of the most contentious issues in the peace process and one which could have a significant impact on it being held accountable for its actions. Lack of accountability remains one of the main concerns of OHCHR with regard to the Nepalese Army. As already indicated, international humanitarian law and human rights violations by the Nepalese Army – which were principally conflict-related – have declined dramatically. Sporadic abuses, including allegations of rape or sexual violence, and the killing of a group of demonstrators in April, have been reported. OHCHR raised with the Nepalese Army its concern regarding the illegal practice of obliging individuals formerly detained in the Nepalese Army barracks to report regularly after their release. In late August, the Supreme Court was considering a petition to end these obligations and to quash any declarations signed by detainees while held by the Nepalese Army. In one isolated case, an off-duty Nepalese Army captain from the Bhairabnath Battalion led up to twenty armed soldiers in an assault on a Nepal Police station in Kathmandu on 29 July, releasing one detainee and abducting and beating three police officials. The incident was sparked by a minor traffic altercation. Two separate committees of inquiry were established to investigate the case, one under the Home Ministry, the other under the Nepalese Army. The Government informed OHCHR that the captain had been dismissed and sentenced to one year imprisonment. OHCHR has been denied access to him, in violation of its agreement with the Government. The Nepal Police launched a criminal investigation against a civilian accompanying the officer but not against the Nepalese Army captain.
20. In this transition phase, the crucial role of the Nepal Police as principal law enforcement agency has been brought to the fore, but as an institution it faces many challenges. Many police posts were destroyed or abandoned during the conflict after police were killed or threatened. Police have been redeployed to 72 posts, according to the Government, but the Nepal Police is unable or unwilling to respond to the need for re-establishing many other former police posts, often being prevented from doing so by CPN-M. The absence of effective policing in rural areas quickly emerged as a major human rights challenge in the context of the ceasefire. OHCHR prioritized the investigation of widespread reports of coercive and sometimes violent action by local CPN-M cadres aimed at maintaining “law and order”. The perceived weakness and often inaction of the police facilitated the extension of CPN-M “law enforcement” activities and “people’s courts” to district headquarters.
21. OHCHR has been systematically advocating for individuals held by CPN-M to be released or handed over to police. In many cases, CPN-M refused to do so. In other areas, however, it has been more open to handing over criminal suspects to the Nepal Police. At the same time, CPN-M has, at times, successfully demanded the handover of suspects from the Nepal Police or succeeded in suspending Nepal Police’s investigations into certain cases. When asked directly about this pattern, local Nepal Police state that their refusal to take action against even serious abuses by CPN-M is due to their fear of what future political change may bring as well as a lack of adequate policy direction from the central level.
22. The issue of the future role of APF emerged not only from its role in April but again following excessive use of force by APF at Tatopani, Sindhupalchowk District on 30 July, when an APF revenue patrol posted at the Nepal-Chinese border confronted violent demonstrators with live ammunition, killing a bystander and wounding several others. The

Nepal Police refrained from intervening. Internal APF and Home Ministry investigations were initiated, and APF reportedly recommended disciplinary action and compensation. Beyond APF responsibility for this specific case, OHCHR is concerned that APF continues to be assigned policing functions despite a demonstrated and acknowledged lack of training to perform this role. OHCHR training for APF has addressed human rights issues, particularly regarding the appropriate use of force but the law enforcement role of APF needs further clarification.

23. The transitional period presents an enormous challenge for ensuring the protection of human rights through adequate policing and the effective administration of justice. Current indications suggest that much of the civilian population remains deprived of these fundamental public services, essential to the protection of human rights, because the state lacks the capacity or at times the will to undertake law enforcement and judicial functions, even in areas not previously controlled by CPN-M. This security vacuum risks being filled in a number of ways: through communities taking “justice” into their own hands – as has already happened in several cases with fatal consequences; through CPN-M’s arbitrary and sometimes violent system of “people’s justice”; through exploitation by criminal elements or organized crime groups, some of whom might be politically manipulated; and also by vigilante groups.
24. The capacity of both the Nepal Police and APF to deal with crowd control and at the same time fully respect human rights remains under intense scrutiny by OHCHR. Since April, OHCHR has documented further instances in Kathmandu where police baton charges caused head and other injuries to demonstrators. At the same time, violent protestors – including many youths -- throwing stones and burning tyres, effectively brought Kathmandu to a standstill for two days on 19 and 20 August. The lack of police presence and intervention during the August protests raises serious questions about its role in maintaining law and order.

## **B. Detention**

25. As noted above, conflict-related arrests under TADO and also political arrests under PSA have stopped since the ceasefire. The only exception under PSA was the preventive detention of the former Home, Foreign and Communication Ministers and two other former officials in May. OHCHR criticized the new Government for using the same arbitrary measures as the previous Government at a time when it should be setting new standards. The three were eventually released by court order and PSA has not been applied since. The Government has given assurances that it will not be “misused while maintaining law and order”.
26. The majority of alleged members or sympathizers of CPN-M who had been held under TADO were released, but others continue to be held under common criminal charges. According to the Government, 1,082 TADO detainees were released, 692 from preventive and 390 from pre-trial detention. OHCHR had conducted a TADO review by interviewing 336 TADO detainees in private in five High Security Centres in Morang, Kaski, Kathmandu, Dang and Kanchanpur Districts. The main findings showed serious violations of the rule of law, including illegal arrests and detention, disregard for fundamental due process guarantees. Many had been tortured in army barracks before transfer to prison.
27. OHCHR is presently assessing the legality of the current detention of previous TADO detainees or other CPN-M associated detainees now held for ordinary criminal offences. It is also examining whether they might have been charged with offences which would amount to violations of humanitarian or human rights law. A few cases concern juveniles who were among some 100 children whose detention under TADO during 2005 had been documented.
28. TADO, PSA and other laws which clearly are in breach of human rights treaties, are still awaiting review, in spite of international and national appeals for their repeal or amendment. The continued absence of a fully-functioning national central detention register despite its announcement by the Government in December 2005 (see E/CN/2006/107, para. 27), as well as the lack of accurate and up-to-date record-keeping at many prisons and police stations around the country make it difficult to monitor the legal status and releases of detainees and remain issues which still need to be addressed.

29. Following the release of most TADO detainees, detainees held for common crimes around the country began protests calling for a general amnesty for all prisoners, including hunger-strikes and destruction of prison infrastructure. Five prisons closed as a result. Detention conditions are often overcrowded and inadequate. OHCHR is continuing periodic visits to ensure appropriate interventions regarding improvements in prison conditions.
30. Police detention of criminal suspects has yet to be assessed systematically by OHCHR in terms of respect for human rights of detainees, though individual cases of children and juveniles in police custody, torture and ill-treatment of criminal suspects have been documented. OHCHR also started investigating allegations of arbitrary detention, ill-treatment and two deaths in custody in national park detention facilities.

### **C. CPN-M and human rights**

31. Following discussions with OHCHR on human rights issues, CPN-M leadership on 17 April 2006 published a statement declaring general respect for and commitment to international humanitarian law and human rights principles and norms. It further committed CPN-M to continuing its cooperation with OHCHR-Nepal.
32. After the ceasefire declaration, CPN-M established parallel structures, most notably “people’s courts”, in district headquarters and villages where they had previously not been present. Following a 3 July “special directive” by CPN-M Chairman Pushpa Kamal Dahal alias *Prachanda*, most of the “people’s courts” stopped hearing complaints in district headquarters, including Kathmandu, but continued to function in rural areas and close to district headquarters. Many allegations of abuses by CPN-M investigated by OHCHR relate to “law enforcement” activities and “people’s courts”.
33. Of specific concern was a series of eight killings following actions by “people’s courts” in the Central Region in May and June 2006 which were attributed directly to CPN-M cadres, or indirectly through their encouragement of villagers. Most of the victims were accused of “crimes” or “offences” and were apparently under CPN-M “investigation” at the time they were killed. OHCHR concluded that CPN-M cadres encouraged and actively participated in the assaults by villagers that led to the death of six men in four incidents. In the other two cases, the victims were killed in CPN-M custody. Although CPN-M initially denied responsibility, in some cases local CPN-M leaders have since accepted responsibility. This pattern ceased after CPN-M national leadership gave assurances to OHCHR that such killings are not CPN-M policy, and after OHCHR had made its concerns public.
34. Nevertheless, OHCHR is investigating five new deaths reported between May and September 2006 -- in Ilam, Banke, Bardiya, Lamjung and Tanahun Districts -- attributed either to CPN-M or former CPN-M cadres. It was also investigating five alleged suicides of individuals previously abducted by CPN-M. OHCHR continues pressing for full investigations into all the deaths.
35. Since the ceasefire declaration, OHCHR confirmed almost 200 reports of abductions allegedly carried out by CPN-M, many of them in the context of CPN-M “law enforcement” activities through the “people’s courts”. A large number of the victims were released. The whereabouts of several others remained to be clarified. In several cases, OHCHR confirmed allegations of ill-treatment, including severe beatings, either during the abduction or in captivity. Reasons for the abductions included robbery, murder, rape and posing as CPN-M to collect “donations” or “taxes”. A number were accused of having violated certain cultural traditions, mostly by engaging in “illicit sexual relations”.
36. Victims also included at least 16 political party members though the abduction was not necessarily related to their party affiliation. Fourteen people were reportedly targeted for their affiliation with the previous regime. In four cases, CPN-M alleged that the abductees were army informants. Some were former members of CPN-M abducted for unclear reasons. At the same time, it would appear that some businessmen and others were abducted to pressure them to pay “fines” which appeared to amount to extortion.
37. A significant number of those abducted were reportedly accused of gender-based violence. OHCHR is also looking into the manner in which “people’s courts” treat victims of sexual violence. In one group of cases investigated in early



2006, the “people’s court” compelled female victims to provide detailed accounts of the violence perpetrated against them in front of large crowds, as well as in the presence of the alleged perpetrators.

38. Initially after the ceasefire, the relationship between Government local administrations, including the security forces, and CPN-M was characterized by mutual distrust. Although the relationship between CPN-M and the Nepal Police differs significantly from district to district, this initial trend is evolving. There was an increase in the number of suspects captured by CPN-M being handed over to the Nepal Police. In some districts, meetings developed between local administrations and CPN-M to resolve tensions and conflicts related to CPN-M activities, including in relation to “people’s courts”.
39. OHCHR has raised its concerns regarding the use of “people’s courts” directly with CPN-M and publicly, indicating that abductions, related investigations and punishments (often forced labour) fail to provide minimum guarantees of due process and fair trial or the right to physical integrity, and therefore violate international human rights standards. It has consistently called on CPN-M to either release all those held or hand them over to the police. The 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 deliver justice.
40. OHCHR has also received reports of individual abductions of children, often on suspicion of involvement in crime. Some 30 children were abducted accused of robbery, rapes or murder. Large-scale group abductions have decreased possibly due to the fact that CPN-M can conduct activities openly.
41. Nevertheless, children were still collectively taken for short periods of time by CPN-M cadres or members of its student union organization, the All Nepal National Independent Student Union – Revolutionary (ANNFSU- R) to take part in mass political gatherings. In Kathmandu, on several occasions, thousands of children were taken from schools to participate in programmes organized by ANNFSU-R.
42. Despite the ceasefire, dozens of children – including some as young as 12 – were reportedly recruited to actively take part in PLA and militia activities, in violation of international principles. In August and September 2006, such allegations were received from Chitwan, Dolakha, Gorkha, Ilam, Nawalparasi, Nuwakot, Ramechhap, Kaski, Baglung, and Kathmandu Districts. In all instances, CPN-M insisted that recruitment was voluntary.
43. In the context of the peace process, including discussions regarding management of arms and armed personnel, the withdrawal of children from armed forces and armed groups is a key issue. Children support PLA in various roles, through direct participation or activities organized through students, women’s or cultural groups as well as the militia. Lack of access and the systematic denial by CPN-M that it recruits or uses children, makes it difficult to assess the numbers involved, though through increased access more information is becoming available. CPN-M leadership acknowledged, in a meeting with OHCHR and UNICEF on 24 August, that there were thousands of children in the CPN-M “for good reasons”. CPN-M also agreed to child protection agencies undertaking assessment missions for the first time.
44. OHCHR has continued to receive many reports that members of CPN-M are taking “taxes” or “donations” from local communities, government officials, NGOs, schools, business people and teachers. OHCHR has been particularly concerned when individuals were abducted or threatened with abduction if they refused to pay. In cases where there is no explicit threat and individuals appear to comply and pay “donations” or “taxes” without question, the threat is often implicit given the patterns of abuses in other cases.

On 11 September 2006 OHCHR submitted a report of its concerns to CPN-M, calling on them to ensure full compliance with the leadership’s 2 September directives to stop abductions, killings, beatings and forced donations.

## D. Abuses by other armed groups

45. In the months following the April protest movement, OHCHR received increased reports of killings and abductions attributed to an illegal armed group in the Terai districts of the Eastern Region, known as the *Terai Janatantrik Mukti Morcha* (TJMM). TJMM advocates armed struggle for self-determination of the Madhesi community which has been traditionally marginalized in Nepalese society. (The Madhesi, who originate from the Terai plains, represent a significant percentage of the population, with many of them being indigenous peoples and Dalits.) Violations peaked in July and August, with the abduction of two Government customs officials and the killing of several CPN-M cadres by TJMM. CPN-M retaliated by abducting and torturing several TJMM-affiliated persons and killing at least one.
46. With few exceptions, the police have not investigated or intervened to stop acts of violence involving TJMM, or illegal acts of retaliation by CPN-M. The absence of law enforcement has led to the continuation of retaliatory killings and abductions, creating a climate of fear and uncertainty particularly throughout the eastern districts of Saptari and Siraha where TJMM is most active.
47. The Terai districts of the Western Region are also areas where hostility among illegal “retaliation groups” (known as *Pratihar Samiti*), CPN-M and Government authorities is likely to continue – although there is significant local variation in the intensity and frequency of alleged abuses (see also E/CN/2006/107, para. 59-61). In Kapilbastu District, OHCHR received reports of tensions between *Pratihar Samiti* and CPN-M, and of acts of violence and extortion by both groups against local communities. On 1 June 2006, a three-year-old child was killed and two other children were severely injured, reportedly, by members of a vigilante group in retaliation against their father, member of the CPN-M. In Nawalparasi District, there have been indications that *Pratihar Samiti* members are turning over weapons and surrendering directly to the CPN-M, instead of to Government authorities, although there have been efforts to mediate between all parties. As in the eastern Terai, the police are reluctant to investigate or intervene to prevent acts of violence involving illegal armed groups and CPN-M.
48. The extent of the threat to human rights posed by these groups is difficult to assess. At this stage they are localized, but the issue itself of Madhesi demands for citizenship, as well as the absence of State law enforcement actions, leaves a vacuum which is easily filled by such groups.

## IV. Accountability

49. Transitional justice, including accountability for past violations, has become part a key issue of debate in the context of the peace process. The relatives of hundreds of people who disappeared in the custody of the security forces throughout the armed conflict, victims of abuses by CPN-M and relatives of members of the Nepal Police killed during the conflict are among various groups lobbying for more attention to their demands for truth, justice and reparation. However, neither party appear to be giving the issue much attention.
50. Immediately after taking office, the new Government appointed a five-member High-Level Commission of Inquiry chaired by former Supreme Court judge Krishna Jung Rayamajhi to investigate human rights violations and abuse of State funds since 1 February 2005, including those committed during the April protests. OHCHR provided the High Level Commission of Inquiry with a paper on international criteria for such a commission of inquiry mandated to investigate human rights violations. In September, OHCHR submitted an 80-page report of its own findings into excessive use of force by security forces during the April demonstrations. Without waiting for the findings and recommendations of the Commission of Inquiry, the Government is proceeding with providing ex gratia payments to the relatives of people who died during the protests and thousands who were injured.
51. Ensuring accountability for hundreds of disappearances by the security forces and by CPN-M respectively is a key concern of OHCHR. The Ceasefire Code of Conduct commits both parties to make public “at the earliest” the whereabouts of citizens who have been disappeared. The draft Human Rights Agreement provides that both parties shall make public the status of every individual allegedly disappeared and kept in captivity and shall provide

information to their family members, legal counsel and other authorized persons. The draft Ceasefire Agreement provides that both parties should inform the families of people disappeared and killed during the conflict about where they were killed, buried or cremated within 30 days of the Agreement coming into force. The draft Ceasefire Agreement also provides that “both parties are committed to finding the truth of incidents during wartime and finding various solutions to restore normalcy”. However, to date, there is no clarity on any mechanism to establish the truth in relation to past violations, nor have the parties made a commitment assuring justice and reparations for all the victims of the conflict and their families.

52. The Government has yet to respond to many demands to ensure justice in relation to human rights violations in this transitional phase. A directive given to the Government by the Parliamentary Committee on Foreign Affairs and Human Rights to form an “all-powerful commission to solve the issue of disappearances once and for all” on 25 July has not yet been implemented. As per the directive, the Commission of Inquiry should be made up of parliamentarians, civil society members and human rights defenders and should be given the authority to probe into the acts of the Nepalese Army, identify perpetrators and recommend punishment for those found guilty.
53. As of September, OHCHR had not received any written response from the Government to a report it submitted in late May documenting the arbitrary arrest, torture and disappearance of at least 49 people held by the Bhairabnath battalion in Maharajgunj, Kathmandu in late 2003 and early 2004. The Nepalese Army indicated that it was investigating the cases and provided information on a few individuals. OHCHR confirmed that two detainees had been released and that the body of another was handed over to the family. However, in another case, it found evidence contradicting the Nepalese Army’s claims that the victim had died in a bomb explosion. OHCHR does not consider the Nepalese Army’s investigations to be transparent or impartial and is continuing to press for an independent commission of inquiry into all these cases.
54. The only body created to deal with past human rights violations is a one-person Disappearances Committee established in the Home Ministry in early June 2006. He presented his preliminary findings to the House of Representatives’ Committee on 25 July, claiming the fate or whereabouts of more than 100 disappeared persons had been established as either “released” or “killed in crossfire” according to information provided by the security forces. A further 601 people remain unaccounted for. However, he stated that he did not have the capacity to carry out investigations and has not yet submitted a final report to the Home Minister.
55. In early September, in addition to the 49 above-mentioned cases (para. 53), OHCHR submitted 450 past cases of disappearances to the relevant security forces. All cases have also been submitted to the United Nations Working Group on Enforced and Involuntary Disappearances.
56. Strengthening the legal framework to reinforce accountability for any future violations is also an issue to be addressed. As stated above, OHCHR submitted recommendations related to impunity to the Drafting Committee. In August, in a letter to the Speaker of the House of Representatives, it highlighted major concerns relating to provisions of an Army Bill before the House of Representatives regarding jurisdiction for serious violations committed by the military. OHCHR recommended the early ratification of the Rome Statute of the International Criminal Court. A directive was issued by the House of Representatives on 25 July 2006 ordering the Government to sign the Rome Statute immediately but the process of ratification is in its early stages.
57. Since the ceasefire, families of victims of present and past human rights abuses have been more willing to present complaints (First Information Reports, FIRs) to police for criminal investigation. OHCHR is monitoring 17 cases filed with the police in relation to past human rights violations around the country. All of them are stalled due to lack of political and institutional will, and real or perceived legal obstacles.
58. In some cases, the police have argued that it is not proceeding with criminal investigations because an independent or parliamentary investigation is ongoing. For instance, police in Belbari, Morang District would not start an investigation into the alleged rape and killing of a woman and subsequent killing of six demonstrators in late April by

the Nepalese Army, until a Parliamentary Probe Committee had issued its report and they received authorization from the Government.

59. In the case of Maina Sunuwar, a 15-year-old girl who died within hours of her arrest by the Nepalese Army in 2004, the Nepal Police finally visited the Nepalese Army Birendra Peace Operations Training Center in Phanchkal in June to obtain information regarding her death and to secure the site where her remains are believed to be buried. Since then, however, the process has stalled completely due to the Nepalese Army challenging the police's jurisdiction, and protracted delays in the authorities' response to the Nepal Police's request for legal advice as to whether the investigation can proceed. OHCHR continues to advocate for an independent investigation and has offered to facilitate the assistance of international forensic experts in the exhumation of the remains in this and other cases.
60. The reluctance of authorities to proceed with criminal investigations relating to past human rights violations is not limited to cases involving the Nepalese Army. In Dhanusha District, an FIR was filed in July regarding the disappearance of five students in October 2003 and naming police officers and the then local administrator as the main suspects. While the alleged burial site has been secured, no further investigative steps have reportedly been taken despite pressure from the relatives, local and national non governmental organizations (NGOs) and OHCHR and despite Government claims that it had given "stern directives" to proceed.
61. The judiciary's role in pursuing accountability for human rights violations to date remains very limited. Numerous habeas corpus petitions relating to long-term disappearances have remained pending before the Supreme Court for many years. Writs filed since the start of the peace process, in which the petitioners are seeking the intervention of the courts to push relevant authorities to start investigations, award compensation or provide information also remain pending. Two contempt of court cases initiated by families of the disappeared against senior Nepalese Army officers for providing misleading information on the whereabouts of disappeared persons were dismissed by the Supreme Court on 29 July 2006. However, on 28 August, for the first time, the Supreme Court, ordered that an "all-powerful probe committee" be set up to investigate the disappearance of a lawyer and two students after their arrest by security forces in 1999 and 2002 respectively.
62. In addition to advocating accountability for human rights violations by the state, OHCHR has urged CPN-M to take responsibility for abuses by its members. As stated above, OHCHR raised concern about a series of killings in the Central Region which had resulted in the death of eight individuals in May and June 2006. Despite assurances that CPN-M would investigate these killings and punish anyone found guilty, no information had been received by OHCHR, as of late August, regarding any action taken, although in some cases local CPN-M leaders have accepted responsibility.
63. OHCHR has repeatedly raised with CPN-M its concerns about more than 150 abductions reported during the period of the conflict where the fate or whereabouts of the person has remained unknown. It is thought that among them are scores of parliamentary political party members, teachers, members of the security forces and alleged informants.
64. On 26 June 2006, OHCHR urged CPN-M to set up a mechanism at the national level to oversee internal investigations into allegations of abuses by CPN-M cadres to ensure that they are impartial and complete, and do not result in further violations. OHCHR also made clear its position that such "internal investigations" cannot substitute for independent investigations and prosecutions carried out in a civilian state court.
65. OHCHR noted with special concern that although the leadership said that action was taken against those responsible for the 2005 attack on a public bus in Madi, Chitwan District (see A/60/359, para. 37), resulting in the death of at least 35 civilians and members of the security forces, some of those responsible were freed after "serving sentences" of apparently two to three months "corrective punishment".

## V. Internal displacement

66. Until the ceasefire, forced internal displacement was the result of violations of human rights and international humanitarian law committed by both parties during the conflict. Forced recruitment, extortion and credible threats of other violations against politically-affiliated civilians, vulnerable professional groups and those seen to be collaborating with either party to the conflict have led to long-term displacement from rural areas to the district headquarters and from the hill-districts to the Terai, India and further abroad.
67. Since the ceasefire, forced internal displacement has largely come to an end. Some limited new displacements have been triggered by increased CPN-M extortion drives and “law enforcement” activities, but many internally displaced persons (IDPs) are now exploring return possibilities. Actual return is so far small-scale but steadily increasing, its pace determined by progress in the peace process and the degree of acceptance of returnees by local CPN-M cadres.
68. CPN-M central leadership has repeatedly made commitments – in statements and agreements – to the safe return of IDPs and to the restitution of their confiscated land and property. This commitment is often repeated by regional commanders but not fully adhered to by local CPN-M leaders at the Village Development Committees where most returnees are arriving. In some regions, CPN-M local cadres effectively decide who can return and impose conditions on return, including payments and/or public apologies for alleged IDP “wrongdoing”. In other areas, returning IDPs have been unconditionally welcomed back by CPN-M and have had their property returned to them. As spontaneous and NGO-facilitated returns are increasing, OHCHR is monitoring return movements, and in conjunction with UNHCR and OCHA, advocating with CPN-M at the local and central level to ensure that formal commitments to safe and dignified return are respected at the local level.
69. The Government itself has so far failed to respond to IDPs’ increasing interest in return. The United Nations’ offers of technical support and calls for a comprehensive policy and concrete planning for return have been not yet been addressed. In its budget for 2007, the Ministry of Finance has included limited monetary support for returning IDPs and other conflict victims, but so far there is no plan addressing the concrete assistance and protection needs of returning IDPs. This gap allows most officials at the district level to remain passive in relation to planning and support of local return processes. In the absence of state action, such responsibility is often shouldered by local human rights NGOs, with limited funding from international NGOs.
70. The return of IDPs in Nepal is unlikely to be immediate and massive but rather gradual and individual (or in small groups). Safe and sustainable return – effectively supporting peace and reconciliation – is therefore achievable. However, the above-mentioned challenges must be addressed urgently: the Government must design a concrete, comprehensive plan for return, technically and financially supported by the international community, and CPN-M must ensure compliance at the local level with its commitments regarding the return of IDPs.

## VI. Social exclusion/marginalization

71. Caste, ethnic and gender discrimination are longstanding human rights issues with profound implications in terms of civil and political as well as social, economic and cultural rights. Many marginalized communities suffered disproportionately during the armed conflict. The April protest movement included their active participation throughout the country.
72. OHCHR has held wide consultations with representatives of Dalit, indigenous and Madhesi communities and sexual minorities’ organizations as well as women’s groups, to better identify their human rights concerns and how to address these. Workshops have been conducted with Dalit organizations on the issue of access to justice, and with women from the Tharu community to increase the engagement of OHCHR with this community. Many of these groups see the political transition as a critical juncture in the struggle for their rights and equal place in society.

73. Representation of marginalized groups in the peace process continues to be an issue only partially addressed. As indicated above, only after protests were women and a Dalit representative brought into the Drafting Committee. Only two of the members of the National Monitoring Committee are women. Neither the Government nor CPN-M peace talk teams include women.
74. Dalits, indigenous and ethnic communities and Madhesi have become more vocal to ensure that their rights-based political demands are heard in the transition. Demonstrations have been organized by women's groups, ex-kamaiyas (ex-bonded labourers) and sexual minorities, among others. In the Terai, the issue of citizenship for up to four million Madhesi people is emerging more publicly. The question of citizenship is one of the issues raised in the recommendations of OHCHR to the Drafting Committee as well as the need to extend the prohibition on discrimination to include, inter-alia, ethnic or social origin and to broaden the right to equality before the law, which currently does not apply to non-citizens. In line with the House of Representatives' proclamation of 18 May, the Cabinet tabled a citizenship bill before the House of Representatives on 10 September 2006, which for the first time would grant citizenship rights based on maternal lineage and would reportedly grant citizenship to those who can prove permanent residence in Nepal since 1990.
75. The Cabinet also announced on 22 August 2006 that 45 percent of civil service jobs would be reserved for Dalits, Madhesi and other ethnic groups as well as for women. The Government informed OHCHR that 33 percent of those jobs were reserved for women.
76. There is increasing debate about gender equality, including violations against women and girls, although fear of retaliation or further victimization continues to be an impediment to reporting, especially in the most vulnerable communities. OHCHR recorded a total of 108 allegations of gender-based violence during the first seven months of 2006, some of which have been raised by OHCHR with local authorities. Only a handful of cases were reported to police and women have little hope of obtaining justice. There is a need for monitoring bodies which can, in collaboration with operational partners, provide support to victims, further investigate sexual violence inflicted on women and girls and identify solutions.
77. The issue of social inclusion and equality is a central consideration of many people's support for political transition. Unless these concerns are seriously addressed, there is a danger of deepening social divisions and further violence. Real and sustained change, including the recognition and enjoyment of rights by traditionally marginalized groups, will be an important factor in building a stable and sustained democracy during the transition. Particularly crucial will be the electoral process established for the Constituent Assembly, including the issue of eligibility to vote, candidate selection and representation within the Constituent Assembly.

## VII. Conclusion

- 78. Since the last report to the General Assembly, in October 2005, there have been considerable improvements in the human rights situation in Nepal. The Government and CPN-M have recognized in their agreements that human rights are core elements to the peace process. Civil society, in its broadest sense, has framed many of its demands in human rights terms. There are expectations that the peace process will bring solutions to long-standing human rights issues, especially deeply-engrained discrimination, prejudices and abuse against marginalized groups, as well as economic disparities.**
- 79. The current improvements remain fragile and any setback to the peace process risks a negative and potentially devastating impact on the human rights situation. It is essential that all stakeholders are committed to the peace process and address human rights issues at every stage to ensure a sustainable peace with justice. Many challenges remain, a major one being the issue of law enforcement and the administration of justice. The current weakness (and in many places absence) of law enforcement agencies, their limited capacity or will to maintain law and order and to protect the civilian population from violence, limited Government support and the resistance of CPN-M, will facilitate the emergence of elements who wish to undermine the peace process**

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unless these problems are urgently addressed. The strengthening of law enforcement and justice capacity will be essential to ensuring that the electoral process for a Constituent Assembly, from its early stages, can be organized without fear, intimidation or more serious abuses. In this context, parties will need also to recognize the demands of marginalized groups to adequate representation.

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