

**United Nations
Office of the High Commissioner
for Human Rights**



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Final briefing to media

22 June 2007

Tomorrow is my last day in Nepal, after a challenging and fascinating eight-month period as Representative of the United Nations High Commissioner for Human Rights. I have been privileged to represent the High Commissioner in Nepal during this historic period of national peace building, and I would like to begin by thanking the Government of Nepal, Nepalese human rights organisations and activists, the many communities I have visited, the diplomatic community and my colleagues at OHCHR and within the UN system here.

I arrived just before the signing of the Comprehensive Peace Agreement, when things looked easier than they do today. My experiences of peace processes and transitions are, however, that the signing of a peace agreement, even if it is comprehensive, is just the beginning of a bumpy road. You have come far, but you have still many challenges to overcome.

I want to use this last opportunity I have with you, the representatives of media in Nepal, to outline what I consider to be some of the major trends and challenges in the Nepalese peace process that are directly or indirectly affecting the human rights situation. I want also to highlight some of the recommendations of OHCHR-Nepal to address these trends and challenges.

It is not possible to support the peace process, and to monitor the human rights provisions of the Comprehensive Peace Agreement (CPA) from Kathmandu only. OHCHR-Nepal is now well established in the five development regions. Our regional teams carry out regular visits to the districts, and whenever possible, to Village Development Committees (VDCs).

During my time in Nepal, I have tried at every opportunity to travel outside of Kathmandu and to visit districts and communities all over the country. In all, I have visited some 20 districts, in all five regions, many of them in connection with workshops we have been organizing with the support of the National Human Rights Commission (NHRC). The workshops have focused on "Human Rights in the Peace Process" and have brought together political parties, the Chief District Officer (CDO) and representatives from the police and other district authorities as well as civil society, including from the traditionally marginalized communities. Together with the extensive monitoring missions OHCHR-Nepal teams have made to the districts, the workshops have given OHCHR-Nepal a greater understanding of the local dynamics in the peace process, including both threats to human rights and action which can be taken to reduce these threats.

Lack of trust and the need for dialogue

One issue that has always been raised, no matter where the workshops or other meetings have been held, is the issue of trust, or more precisely the lack of trust; mutual distrust between the parties as to their commitment to elements of the peace process, in spite of the CPA, and a consequent lack of dialogue. Many people have also told OHCHR-Nepal they do not trust the political parties to respect their human rights commitments; traditionally marginalized groups have voiced their lack of trust in the promises made in the CPA to end discrimination and ensure inclusion of all in the New Nepal. This lack of trust can only be overcome through constant dialogue and sincere and concrete action.

While trust is not always directly linked to human rights, there is no doubt that this lack of trust and dialogue contributes to an environment of confrontation in which violence frequently occurs.

The lack of trust also makes it more difficult for the parties to join together and take difficult, but necessary decisions on how to proceed in the implementation of the process leading up to the Constituent Assembly election, including many issues of utmost importance to human rights.

Political tolerance: intimidation and violence

OHCHR's district workshops also indicate that in many parts of the country political parties are still facing certain constraints with regard to conducting political activities, especially in the villages. The reasons for this vary from place to place. In areas of the Terai, the continued intimidation and violence of armed groups presents an obstacle to normal political activity. In its workshops in the Mid-West, OHCHR-Nepal was advised by members of political parties that the CPN (Maoist) in that region was preventing other political parties from conducting activities outside the district capital. In a few places, political activities of some parties viewed as "regressive forces" have sometimes been disrupted by the CPN-M along with SPA parties.

This is a problem which, if not addressed, could worsen as political activities are intensified in the lead-up to the CA election. It is essential that political parties at the central level renew commitments to promote political tolerance, respect pluralism and to conduct activities without intimidation and violence. Moreover, OHCHR-Nepal is convinced, especially after the first workshops, that a mechanism is needed at the local level to ensure that the political actors cooperate together to fulfill these commitments. However, it is also probably true that politicians would be more welcome in the villages if they can show some tangible process of relevance to the people living there. The participants in the OHCHR-Nepal workshop in Dang, in the Mid-West, strongly recommended that a local coordination mechanism be established in order to ensure that a free and fair atmosphere could be created across the district for the CA election. In the workshop in Kalikot, participants said that there was greater space for political activities but many stressed the importance of conducting similar workshops at VDC-level to strengthen dialogue.

An inclusive democratic process

There can be no question that in the last six months at least, the issue of building a truly inclusive state in Nepal has become a central theme of the peace process. After the April 2006 *Janaandolan*, mainstream political actors intent on cementing an end to the decade-long conflict did not initially recognize the significance of this issue. The broad commitments of the CPA were a positive signal, but the follow-up to implement these commitments has left many groups disappointed. It is clear today that consolidating the gains of this peace process will depend to a large extent on how Nepal's political leaders, and its many different traditionally marginalised groups, are able to resolve legitimate claims to fair representation and participation in the State.

The issues underlying these claims initially came to the attention of OHCHR-Nepal through its work on discrimination, a major threat to the human rights of many Nepalese people. In the past six months, in particular, these human rights grievances have become expressed in an increasingly political context. The fundamental claim for an equal place in the Nepalese State has as its basis the principle of human dignity and equality, itself the foundation of human rights law. This claim cannot be ignored, if the peace process is to go forward. There must be a genuine framework for dialogue, which addresses both the urgent issues related to an electoral system which is broadly acceptable to all groups, and which provides a process for dealing with longer term issues.

Traditionally marginalised groups must also commit themselves to only peaceful means of advocacy and protest, and also work to ensure that their communities understand that while it must start now, lasting change must take place over time.

From the district workshops facilitated by OHCHR-Nepal over the last months, it is apparent that in most areas local political parties have not made sufficient practical efforts to ensure that their political structures are inclusive. In different workshops in the east, which took place in Sunsari, Saptari and Panchtar Districts, OHCHR was told of the tendency toward slogans and tokenism about discrimination, and a lack of real commitment to take practical action. It was also clear that the district representatives of the political parties feel they have very little power to influence the policy of their respective parties. In the Far Western Region as well as in other regions, OHCHR-Nepal has monitored the extreme marginalisation of Dalit communities, as well as indigenous Tharu communities in the Terai, and traditional practices related to women and girls which exclude them from public life and opportunities. In some districts, OHCHR-Nepal has also monitored the discrimination faced by sexual minorities. As the peace process develops, and local structures are formed, such as district and village peace councils, these must be inclusive and representative of the diversity of communities, including with adequate representation of women from all communities.

Creating and sustaining this framework for continuing dialogue remains one of the most fundamental challenges for the long term success of the peace process.

Local governance

In order to ensure effective local administration and rule of law, thereby strengthening human rights protection, it is essential that the State structures for local governance be in place and functioning. Seven months after the CPA, and with the Interim Legislature-Parliament and Interim Government formed, OHCHR-Nepal still observes that the State is yet to re-establish functioning governance structures. District administration staff are in place in most areas, but are often confined to their offices, or even residences, due to the security situation. Village administration structures are yet to be re-established in any functional way in many parts of the country. In the Terai, in Janakpur in the Central Region, the authorities, civil society and political parties told OHCHR-Nepal that there has been an exodus of administrators due to Madheshi-Pahadi tensions.

Public security, law and order

The State's obligation to establish public security is one of the most fundamental of its human rights obligations. In order to fulfill this obligation, it is essential that the State structures for local governance be in place and functioning, including its police forces.

In our workshops, participants repeatedly raised concerns about security issues and the lack of effective policing which is impacting on human rights. While it is reported that police have returned to many police posts throughout the country, it is clear that police are not adequately fulfilling their obligations to protect the civilian population in a large part of the country. OHCHR-Nepal's monitoring has determined that there are a range of reasons for this: fear for their own security especially in the context of the continued operations of armed groups, interference from political parties, lack of the wider governance structures which support professional community policing, lack of public confidence in police, a severe lack of resources in many cases and lack of support from central government.

Of particular concern in the context of Constituent Assembly election preparations are the reports to OHCHR-Nepal by senior police officials that political parties routinely seek to interfere in law enforcement activities, including the appointment of police officers. Objective, non-political policing is essential to establish the conditions for a free and fair atmosphere for the CA election.

I have been told on several occasions that OHCHR-Nepal, in its reports on the violations committed by police, has not been consistent, since we sometimes criticize the police force for excessive use of force while at other times we criticize them for not intervening enough to protect the population. There is no inconsistency in this.

Despite its conclusive findings on the excessive use of force by police during the 2006 *Janaandolan*, OHCHR-Nepal has continued to document police use of excessive force in demonstrations across the country. The Terai *Andolan* earlier this year saw over 24 people killed, mostly through police action. Demonstrators must use only peaceful means, but it is the obligation of the State to ensure that its security forces do not violate the rights of its citizens through excessive use of force. This highlights the role of the Armed Police Force; after the April 2006 *Janaandolan* and the Terai *Andolan* it is apparent that the APF is not properly prepared for the role of professional crowd control. If the APF is to be expected to play such a role in law enforcement, then urgent measures need to be taken to ensure that its personnel have the knowledge, skills and resources to do so in accordance with professional standards in relation to the proper use of force.

At the same time, we have documented many instances of lack of police intervention to prevent or stop violence particularly in the context of rallies and protests. The most blatant, I believe, was the failure of the police to prevent the killings in the Gaur incident. But lack of law enforcement is a common problem all over the country. Police must act when the situation requires law enforcement and they must do so with full respect of human rights. In addition, my staff have regularly documented cases of arbitrary detention and beatings in police custody which are also not acceptable.

While the challenges for protection of human rights are great across the country, OHCHR-Nepal has placed particular emphasis in its monitoring work over recent months in the Terai where it seems to us that the situation is most volatile and where the immediate threat to human rights is most acute. The overarching political, social and public security issues of the Terai need to be addressed, and be seen to be addressed, in order to secure sustainable peace. The situation in the Terai varies from east to west, and any solutions need to take into account local histories and conditions. In the east and central Terai, in particular, OHCHR-Nepal is concerned that the pattern of lawlessness and especially the violence of armed groups is indicative of the State failing to re-assume its responsibilities in establishing law and order.

The continued violence of armed groups, especially but not only the two factions of the *Janatantrik Terai Mukti Morcha* (JTMM) in the eastern and central Terai, presents a major threat to public security and human rights. These groups must renounce violence. Especially in the many parts of the eastern and central Terai there is a pervasive atmosphere of fear and lawlessness. In this atmosphere, normal governance cannot operate. This has serious consequences, not only for the delivery of basic services such as healthcare and education, but also for the efforts to ensure an environment for the upcoming elections that is free and fair, and also free from fear.

It is, however, essential that police, including the APF, use only legal means in seeking to combat the activities of these groups and that they do not resort to the pattern of human rights abuses prevalent during the armed conflict. OHCHR-Nepal monitors have reported an emerging pattern of arrest, release and re-arrests of suspects in the eastern Terai, similar to those which occurred during the latter period of the armed conflict. These violations of due process represent a grave threat to legitimate use of police authority and the rule of law. It is the path which can lead to further violations. The State must ensure that it uses only legal means to provide public security.

Parallel “law enforcement” activities of the Young Communist League (YCL)

The lack of law enforcement also creates a vacuum which has been used as justification by others to take on law enforcement activities. While the CPN-M “people’s courts” in general seem to have been dismantled, its youth organization, the YCL has taken upon itself to perform “law enforcement” activities without legal basis and in a way that is not acceptable. The YCL has the same rights as all Nepalese people to act as citizens cooperating with the police to assist them in law enforcement but this must be done in accordance with the law. An OHCHR report on alleged abuses by the YCL will be published shortly and I will therefore not go into too many details here. However, YCL “law enforcement” activities constitute human rights abuses. They are part of the many worrying trends and threats to human rights that burdens the peace process. YCL members “arresting” people they consider to be wrongdoers, holding such people for one or more days in places which are not official detention centres before they hand them over to the police, interrogating and at times beating them and confiscating money or property. These are not legitimate “citizens’ arrests”, but cases of unlawful deprivation of freedom. It is essential that the CPN (Maoist) gives clear and public directives to the YCL that such actions are against CPN-M policy and practice; and that it ensures that YCL activities be limited to legitimate activities of a youth wing of a political party. Doing so would also contribute to building trust between the political parties.

Violence against women

Another trend observed by OHCHR-Nepal regional teams is that violence against women appears to be increasing and that women continue to lack access to justice, especially in rural areas. In workshops conducted in the Mid-West, participants told OHCHR that police and local authorities often failed to apply the law in relation incidents of violence against women, and rather than offer women the protection of the law, local authorities often pressure women to accept mediated “solutions” for even serious crimes such as rape. This is a pattern that OHCHR-Nepal has observed in all regions. At the same time, NGOs seeking to help victims of sexual violence have themselves come under attack, for example threats of harm if they don’t stop their activities or damage to their property. This is unacceptable, and the authorities must ensure that NGOs are able to carry out their activities without fear.

Internally displaced persons and return of property and land

Despite commitments made in the CPA, internally displaced persons have not been able to return safely throughout the country. Return is often mixed up with the issue of the return of land and property, as well as the political affiliations of those who seek to return and the local political context in their home areas. In OHCHR-Nepal’s workshop in Dang, it was clear that in this district other issues related to consolidating the peace process at the local level could not be addressed without finding a proper solution to the IDP issue. In Kalikot, however, the progress that had been made in IDP returns to the area had had an overall positive effect on the political climate in the district. It is essential that all parties fulfill their commitments to allow safe and unconditional return of IDPs.

The issue of return of land and property could be facilitated by the establishment of a government mechanism to manage all aspects of claims or disputes at the local level in order to ensure that the needs of secondary occupants also be taken into account.

The CPA also commits the parties to end all forms of feudalism, promote greater inclusion of marginalized groups and prepare for the socio-economic transformation of Nepal, including the implementation of land reform. It is important to bear in mind that these commitments have created expectations for change for many people, and it is crucial that the issues of return of land and property are addressed in a way that respects human rights. I believe that demonstrating some tangible positive change at VDC-level would contribute to building trust in the peace process.

Disappearances

Following a number of commitments to resolve all cases of disappearances related to the conflict, more than a year after the April 2006 ceasefire, the Government yesterday took a welcome decision to establish a commission to investigate the disappearances. OHCHR has not yet received details of the terms of reference of the commission. It is essential that this commission be fully independent, credible and adequately resourced, and that the issue of witness protection be addressed. It must also not exclude state prosecutions of those responsible, and its findings must be made public.

Those missing include many individuals arrested by the security forces, especially the Nepalese Army, and also those whose whereabouts remain unclarified after abduction by the CPN (Maoist). It is clear that there continues to be reluctance to deal with these issues. For example, the Government has not launched any serious investigations into the cases of arbitrary detention, torture and disappearances at Maharajgunj RNA barracks which were documented in a report published by OHCHR-Nepal in May 2006.

Among the other cases I wish to highlight are some two hundred cases which occurred in Bardiya and which OHCHR-Nepal has been investigating. Many of the victims were from the Tharu community, and OHCHR-Nepal has documented the impact disappearances have had on families and communities, including serious consequences for families' capacity to afford food and shelter, healthcare, and education. We have seen the continuing anguish of families, needlessly prolonged by the lack of action by the State, as they seek clarification of what happened to their loved ones.

The Supreme Court has now ordered the Government to enact a law to criminalize disappearances, and to establish a commission of inquiry to look into all disappearances which occurred during the conflict, which must be in compliance with international standards. There can be no excuse for further delays.

Impunity

Since it established its office in Nepal in May 2005, OHCHR has pointed to the link between the lack of accountability for those responsible for serious human rights abuses and the continuation of patterns of violations. Perpetrators go unpunished, and in many cases are promoted within the ranks of State security forces or their political apparatus. Patterns of violations, such as excessive use of force in policing of demonstrations, continue without check. While the State has established a number of commissions of inquiry, the commissions established since April 2006 have for the most part completed their work without any follow-up to hold accountable those responsible for violations of human rights and crimes.

At the same time, the commissions' reports have not been made available to OHCHR-Nepal or made public. Consequently, public trust in the rule of law and the State mechanisms to protect human rights is diminished.

Holding perpetrators of human rights violations and crimes accountable is a fundamental step in rebuilding effective law enforcement and rule of law in Nepal. Without sustained action by the State to bring perpetrators to account, there is a risk that other steps to improve law and order, such as training and more resources, will have only a cosmetic effect. Ending impunity is the foundation for rebuilding rule of law and public trust and for ensuring the dignity of the institutions. It is also essential in order to support all those members of the security forces that are committed to doing their work with full respect for human rights.

In this context, OHCHR-Nepal supports in principle the Government's efforts to establish the Truth and Reconciliation Commission (TRC) envisioned in the CPA. However, the establishment of the TRC requires wide and careful consultation with civil society, victim's groups and other stakeholders which will take time. And it can only serve its purpose if there is a genuine feeling among people that the conflict has really ended and that peace is secure. The design of the TRC must also be in accordance with international human rights standards, as outlined in a paper OHCHR-Nepal submitted to the Ministry of Peace and Reconstruction in April 2007. In particular, the TRC must not be used as a substitute for prosecutions for serious human rights violations, but rather, as only one of many possible transitional justice mechanisms to address past human rights violations and thereby facilitate sustainable peace and reconciliation in Nepal.

Conclusion

It is clear from our dialogues in the districts that a major challenge facing the peace process is the dangerous lack of trust in communities, between political parties, by the population toward political elites, between traditionally marginalised groups and political parties, and between different groups in society. Part of the cause of this lack of trust is, I believe, previous disappointments, as well as the expectations raised after the 2006 *Janaandolan* and the CPA: the contrast between expectations of the promise of the "New Nepal" with full respect for human rights with the realities six months after the signing of the CPA has given rise to a lack of trust that promises will be delivered. This in turn creates an inflammable situation in communities, with groups quick to turn on each other. Combined with the inability of the State to effectively re-establish itself in many district and rural communities, this leaves the way open for groups such as the YCL to operate as they see fit.

The experience of the OHCHR-Nepal human rights district workshops shows an urgent need for the Government to establish district and village peace councils as a mechanism to promote dialogue and cooperation among all local actors in the transition process. In addition, I would reiterate the words of the Special Representative of the Secretary-General, Mr Ian Martin, who has consistently called for the establishment of an independent monitoring body to monitor the implementation of the parties commitments under the CPA. OHCHR-Nepal, as well as the NHRC, is mandated to carry out human rights monitoring, and UNMIN with monitoring the management of arms and armed personnel. UNMIN, through its civil affairs component, also has the mandate to assist such an independent national monitoring body. I am convinced, from my visits to districts across the country, that it is needed now more than ever in order to contribute to creating a free and fair atmosphere for the CA election, including respect by all parties for human rights. A fully functional and independent NHCHR, with Commissioners appointed in accordance with the Paris Principles, would also be an important contribution to a successful conclusion of the peace process and the holding of elections.

OHCHR-Nepal is very fortunate to have such a committed and capable leader as Richard Bennett to lead its office in the challenging times ahead. I am sure that the Nepalese people will find Richard to be a strong and supportive defender of human rights. And I am equally sure that Richard will find, as I did, tremendous commitment and capacity among the human rights community in Nepal. I leave Nepal with great admiration for the spirit and perseverance of the Nepalese people, who continue to work to build a peaceful, democratic country which places the highest priority on respect for human rights. Respect for human rights and lasting peace does not come about only through words and documents: the commitment must be realized in the everyday life of all Nepalese people, in the actions of individuals and communities as well as the decisions of those with power. It is necessary to ensure that Government institutions, not only the Government, are democratic and respect human rights. I believe that Nepal is in the early days of achieving these most important goals, and while I am leaving Nepal, I continue to offer my solidarity and support. I wish you all success and I will continue to follow your efforts from abroad.

Thank you.

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