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### **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\***

#### *Summary*

The present report is the fourth submitted by the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in Nepal to the Human Rights Council. The report reflects some positive developments since the previous report (A/HRC/10/53), including in relation to policies on violence against women and reducing discrimination. Though Nepal's peace process — which began with a peace agreement that formally ended a ten-year internal armed conflict — has delivered improvements in the human rights situation since 2006, it has lost considerable momentum over the past year, giving rise to increasing concerns about longer-term peace and stability. Political instability, the impasse in the implementation of several key provisions in the Comprehensive Peace Agreement, de facto impunity for serious human rights violations and abuses, and deficiencies in the rule of law framework aggravate an already weakened public security situation and have a negative impact on the overall human rights situation. The widespread inequality and discrimination that gave rise to the conflict persist and expectations that the new political order signalled by the 2006 people's movement would foster greater respect for human rights and democracy have been severely tested. Despite many challenges, the peace process in Nepal continues to hold promise, provided all parties recommit themselves to the human rights principles at the centre of the peace agreement.

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\* The present report was submitted late in order that the latest developments in the peace process could be included.

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## I. Introduction

1. Political developments in recent months have drawn attention to the increasingly fragile state of the peace process in Nepal. Ongoing political uncertainty following the withdrawal of the Unified Communist Party of Nepal (Maoist) (UCPN-M) from Government in May 2009, led to a general stalling of the peace process which has hindered opportunities for Nepal to make progress on essential human rights issues.

2. Progress has been made through measures to improve social inclusion, in particular with regard to the representation of marginalized groups in the Constituent Assembly and steps to eradicate the practices of “untouchability” and bonded labour. A new act on domestic violence came into effect in May, one of only two pieces of legislation adopted by the Legislature-Parliament in 2009. The Government has also taken some positive steps in its preparation for a transitional justice process, and must now ensure their careful implementation.

3. The courts have instructed the Government to move forward on investigations into several conflict related cases, but minimal steps have been taken to end impunity, despite repeated commitments by the authorities. While the Government has provided reparation to a number of conflict victims, it has taken no visible steps to hold accountable any individual responsible for grave human rights violations and abuses committed during or after the conflict. According to the National Human Rights Commission, the Government has failed to implement the vast majority of recommendations issued by the Commission while cooperation by State security forces with human rights investigations, including investigations by the Office of the United Nations High Commissioner for Human Rights (OHCHR) into conflict-related violations, remains poor.

4. Criminal armed groups and militant organizations which espouse a political agenda continue to create a serious public security problem, particularly in the eastern and central Tarai regions. As the May 2010 deadline for the new Constitution approaches, protests and enforced general strikes (*bandhs*) are becoming more frequent and opportunities for constructive dialogue among all stakeholders are often overshadowed by narrow political interests. The Government has adopted a new security plan and other strategies to address the worsening public security situation and while the Government has reported subsequent improvement in public security, the implementation of the plan has given rise to a number of human rights concerns.

5. The ongoing political crisis has exposed fundamental differences between the major political parties on some of the most basic elements agreed to in the Comprehensive Peace Agreement. Protracted inter-party disagreements have prevented the Government and the Constituent Assembly from functioning fully. Despite some initially encouraging progress on human rights issues, including a Government proposal for amending a number of discriminatory laws, the Legislature-Parliament has produced few tangible results, due in particular to obstructions by UCPN-M, the largest party.

6. Though Nepal faces many considerable challenges, all major parties continue to express their commitment to the peace process. Real progress is possible if all parties dedicate themselves to fostering a productive working relationship focused on the greater good of the Nepali people, for which respect for human rights is fundamental. The presence of the United Nations, including OHCHR, remains crucial during this period of post-conflict transition, and provides support for emerging structures in Nepal whose aim is to build a more stable and inclusive political order based on respect for human rights and the rule of law.

## II. Centrality of human rights to the peace process

7. Historically embedded discrimination against marginalized groups, the lack of enjoyment of economic, social and cultural rights by a majority of the population and a deeply-entrenched culture of impunity contributed to the emergence of Nepal's ten-year conflict and continue to pose significant challenges to long-term peace and stability. By conferring a central place to human rights in the 2006 Comprehensive Peace Agreement, both parties to the agreement affirmed that respect for human rights must be a bedrock principle of the peace process.

8. Three years since the signing of the peace agreement, the situation in Nepal demonstrates that respect for human rights is critical for the sustainability of the peace process. To date, not a single perpetrator of major human rights violations or abuses committed during the conflict has been convicted. De facto impunity for conflict-related violations and abuses, combined with ineffective policing, undermines the trust of Nepalis in the State to enforce the rule of law, particularly against those with political influence. The persistent lack of accountability contributes to an environment in which private citizens are increasingly taking the law into their own hands.

9. There is also an increasing lack of faith in the ability of the State to deliver basic services and to reduce escalating socio-economic inequalities that are now the highest in South Asia.<sup>1</sup> Widespread poverty in Nepal remains a particularly pressing human rights concern, given its link to long-standing structural discrimination against historically marginalized communities. The diarrhea outbreak in the mid- and far western regions in 2009, which killed hundreds and severely impacted individuals from marginalized communities, including women, underscores the close connection between discrimination and poverty in Nepal.

10. The use of children for political purposes by the major political parties remains a significant concern, particularly with respect to UCPN-M, still listed in the annual report of the Secretary-General on children and armed conflict as a party to conflict which has recruited and used children. The plan of action for the discharge from the Maoist army, of 2,973 minors disqualified during the 2007 United Nations Mission in Nepal (UNMIN) verification process, which was signed by the Government of Nepal, UCPN-M, and the United Nations on 16 December 2009, is a welcome development.

11. If the Government does not translate its repeated human rights into meaningful action and address effectively the legitimate grievances of many in post-conflict Nepal, this has the potential to further destabilize the political situation and ultimately imperil the peace process. The establishment of effective transitional justice mechanisms that will address conflict victims' claims for truth and justice, as envisaged in the peace agreement, should support a broader transformation in Nepal from a culture of impunity to one of accountability and respect for the rule of law.

## III. OHCHR-Nepal operations

### A. Mandate

12. The mandate of OHCHR -Nepal was first set out in the 2005 agreement between the Government of Nepal and the United Nations High Commissioner for Human Rights. The

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<sup>1</sup> World Bank, Nepal Country Overview 2009.

agreement was renewed in 2007 for a further two years and in July 2009, following an interim three-month extension issued to allow the then newly-formed Cabinet to discuss a longer-term extension, the agreement was renewed until June 2010. In addition, the Comprehensive Peace Agreement of 2006 itself mandates OHCHR to monitor the human rights provisions of the agreement.

13. OHCHR-Nepal has maintained a continuous field presence since it was established in May 2005. Given its long-standing and extensive presence in regions outside of the capital, the networks it has developed with authorities, civil society and the general public, the knowledge of the country it has acquired, and the capacity of its monitoring teams to rapidly deploy to the districts, the office continues to fulfil a significant role at this stage of the peace process, including with regard to minimizing potential violence among political actors.

14. In light of earlier positive developments in the post-conflict context, OHCHR-Nepal made the decision to reduce and rationalize its operations and to concentrate on strengthening partnerships and the capacity of national institutions and civil society to better support a sustainable peace process. At the same time, OHCHR monitoring teams continue to be active across the country.

## **B. Preventive role**

15. One key impact of OHCHR's work in Nepal has been to help expand the space in which local actors — victims as well as human rights defenders — can safely raise human rights issues and concerns without fear of repercussions. The close contact that OHCHR maintains with local human rights defenders in all regions, combined with its ability to deploy quickly human rights monitors to the field, has on multiple occasions enabled OHCHR to help defuse local tensions before they could escalate into serious incidents.

16. In addition to its regular field visits, the Office has responded to requests from Government officials to deploy human rights monitors to particular districts during times of local crisis. For example, district and regional officials requested OHCHR to send monitoring teams to Ramechhap district in May and June 2009 to help ease tensions between UCPN-M and the Unified Marxist-Leninist (UML) party, which followed the resignation of the UCPN-M Prime Minister. In June 2009 an OHCHR team travelled to Kalikot district in the mid-western region in a joint mission with the UNMIN Political Affairs Office following several incidents between UCPN-M and cadres from the UML party and the Nepali Congress (NC) party which erupted into major clashes on 7, 14 and 15 June. In October 2009 the Chief District Officer of Bhojpur district requested OHCHR to visit the district to verify the facts regarding a recent clash between UCPN-M and other political parties and to help ease tensions between political actors. OHCHR field teams responded recently to tensions and violent incidents during confrontations between the youth wings of UCPN-M and UML in Dhankuta and Taplejung districts.

17. As human rights concerns relating to the security situation in the Tarai increased in the post-conflict context, particularly in relation to protests by marginalized communities, OHCHR has intervened in a significant number of cases relating to detention, abduction, and torture, and continues to follow-up on numerous alleged extra-judicial killings by the police. The monitoring conducted by OHCHR reveals the continuing need for reform in the security sector; OHCHR has provided concrete recommendations to the authorities on this issue on a number of occasions.

18. OHCHR has continued to monitor political protests and rallies throughout the country, engaging with security forces and protest organizers to ensure that both sides are clear about their respective rights and responsibilities during demonstrations. OHCHR,

together with a network of human rights organisations, deployed a large number of monitoring teams to sensitive sites during the UCPN-M mass protests in Kathmandu on 12 and 13 November 2009. The presence of human rights monitors in significant numbers appears to have had a moderating effect on actions by both security forces and demonstrators.

19. In all cases, work by OHCHR has benefited significantly from close collaboration with the National Human Rights Commission and local human rights defenders, who have long played an essential role in monitoring and reporting on the human rights situation in Nepal, often under very difficult circumstances.

### **C. Thematic approach**

20. In connection with monitoring human rights aspects of the peace process, OHCHR has adopted a more programmatic and strategic approach to address some long-standing issues which are among the root causes of the conflict.

21. The efforts to build a constructive relationship with the National Human Rights Commission have required striking a balance between strengthening the role and capacity of the Commission and ensuring against an interim gap in human rights protection. OHCHR and the National Human Rights Commission signed a set of guidelines for cooperation in February 2009, reflecting this balance and signaling a new phase of cooperation.

22. A key task of OHCHR-Nepal in 2009 was to support the Government to design and begin to implement a transitional justice strategy, as provided for in the Comprehensive Peace Agreement, to address impunity and the legitimate claims of conflict victims for truth, reparations and justice. With the establishment of transitional justice institutions still pending, ongoing dialogue with the Government and other major stakeholders on this issue has contributed to a higher level of awareness with regard to the necessary elements of an effective transitional justice programme.

23. With regard to issues of discrimination and economic, social and cultural rights in Nepal, the Office has significantly increased its advocacy activities with political actors and other partners in order to raise awareness and promote reforms. The far western region field office has been transformed into a project office devoted exclusively to anti-discrimination projects.

### **D. Cooperation with the United Nations country team and the donor community**

24. OHCHR continued to collaborate closely with UNMIN to ensure complementary and, where appropriate, joint activities on human rights issues. Since the closure of UNMIN field presences in July 2008, OHCHR field offices have taken on a greater role in providing information to the mission and other partners regarding the situation in the field.

25. Through the United Nations country team, OHCHR collaborated closely with United Nations agencies in Nepal to encourage a human rights-based approach for all United Nations activities in the country. Cooperation between OHCHR and the United Nations Development Programme (UNDP) has focused in particular on strengthening the capacity of the National Human Rights Commission. In its capacity as lead agency of the protection cluster of the Inter-Agency Standing Committee, OHCHR continued to monitor protection concerns with regard to floods, which have severely affected parts of the

country, and to build the capacity of national actors in the protection aspects of humanitarian disasters.

## **IV. Main human rights issues**

### **A. Impunity and transitional justice**

26. Despite the public and private made commitments by the Government, including those made by the Prime Minister before the General Assembly in September 2009, there has been no substantial progress in addressing impunity for conflict or post-conflict human rights violations and abuses. Both the Nepalese Army and UCPN-M continue to resist attempts to hold their personnel accountable for human rights violations and abuses and to withhold cooperation from civilian authorities responsible for investigating these cases. Progress made by the Government toward the establishment of transitional justice institutions is in danger of being undermined by insufficient political support and by shortcomings in draft legislation, which has yet to be approved by the Legislature-Parliament.

27. Persistent impunity for human rights violations has had a corrosive effect on rule of law institutions and has further damaged their credibility. Impunity has contributed directly to widespread failings in public security by sending a message that violence carries no consequences for the perpetrator. Nepal has relatively independent rule of law institutions, but they remain vulnerable to political pressure and manipulation and are in need of support.

28. This lack of progress notwithstanding, the coming year, which should see the promulgation of a new Constitution and the beginning of a transitional justice process, will present important opportunities to the Government and the UCPN-M leadership to make good on their repeated commitments to ensuring accountability and the rule of law, which political actors in Nepal have affirmed is necessary for the success of the peace process.

#### **1. Impunity for human rights violations**

29. The Government's lack of response to serious allegations of human rights violations involving Army personnel remains a concern, including with regard to the non-implementation of orders issued by Nepali courts. The Kavre District Court issued a decision in September 2009 ordering the Army to suspend an alleged perpetrator, against whom an arrest warrant is outstanding, in the torture and killing of 15-year-old Maina Sunuwar in 2004 and to produce relevant documents. The Army failed to comply with the order to suspend the suspect, whom it sent on a United Nations peacekeeping mission. The officer was subsequently repatriated by the United Nations. The Nepalese Army has refused to surrender him to civilian authorities for an independent investigation, despite requests from the Nepal Police and National Human Rights Commission. The Government has yet to arrest any of the four accused in the case, even though arrest warrants have been outstanding since July 2008.

30. The Nepalese Army has yet to take any action against personnel implicated either directly or through chain-of-command responsibility in acts of conflict-related torture and enforced disappearances at the Tenth Brigade's Maharajgunj barracks in Kathmandu and at the Chisapani barracks in Bardiya district, which have been extensively documented by

OHCHR in public reports released in 2006 and 2008 respectively.<sup>2</sup> One of the main alleged perpetrators of the violations in Bardiya district continues to serve with the Army and senior officers implicated in the Maharajgunj barracks violations have been promoted. OHCHR is seriously concerned by the recent Government decision to promote to Lieutenant General and second-in-command of the Nepalese Army Toran Bahadur Singh, who was Commander of the Tenth Brigade during the time of the Maharajgunj barracks disappearances in 2003-2004, without conducting a full, transparent and impartial investigation into his involvement in or responsibility for the disappearances.

31. The leadership of UCPN-M has likewise failed to cooperate with criminal investigations into the involvement of its cadres in serious human rights abuses during and after the conflict, including the killings of nearly 40 civilians in the bombing of a public bus in Madi, Chitwan district in 2005 and the killings of Ram Hari Shrestha, Arjun Lama, and the journalist Birendra Sah. OHCHR documented the lack of progress in each of these cases in a letter to the Chairman of UCPN-M in July 2009, following a meeting between the OHCHR Representative and the UCPN-M Chairman, and has yet to receive a response. UCPN-M has also failed to make good on its public commitment to inform the families of victims abducted by its cadres in Bardiya district during the conflict about the fate of their loved ones.

32. Gaps and ambiguities in Nepal's legal framework have further hampered the prosecution of human rights violations in Nepali courts. Despite years of advocacy by civil society organizations and the recent painful history of human rights violations and abuses in the country, neither torture nor enforced disappearance have been criminalized in Nepal. In the case of torture, the interim Constitution, the Convention against Torture (to which Nepal is a party) and decisions of the Nepal Supreme Court obligate the State to adopt laws criminalizing torture, yet the Government has taken no concrete steps to do so. These and other gaps in the legal framework place additional obstacles in the way of victims and families seeking accountability in an already impaired criminal justice system.

## **2. Transitional justice initiatives**

33. The Government has taken positive steps towards the establishment of transitional justice institutions, including a commission of inquiry on disappearances and a truth and reconciliation commission. Draft legislation criminalizing disappearances and establishing the framework for a commission was approved by the Council of Ministers and sent to the Legislature-Parliament for consideration in November 2009. The Ministry of Peace and Reconstruction made improvements to the draft following consultation with human rights organizations, including OHCHR. However, the bill still falls short of international standards, including through a restrictive six-month limitation on the filing of criminal complaints, and makes no reference to crimes against humanity or other international crimes.

34. The Ministry of Peace and Reconstruction conducted a series of public consultations on a draft bill establishing the framework for a truth and reconciliation commission, including special consultations with indigenous people's, children and women's organizations. These consultations received strong and consistent feedback from the public, including demands that no amnesties should be granted for serious human rights violations and that any commission should include substantial representation from victims themselves. After further consultation with human rights organizations, including OHCHR, the

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<sup>2</sup> See *Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003–2004*, OHCHR-Nepal, May 2006; and *Conflict Related Disappearances in Bardiya District*, OHCHR-Nepal, December 2008.



Government made substantial, positive changes to the draft, which is expected to be sent to the Council of Ministers and then the Legislature-Parliament for approval. The Government is confident that the process of approving the draft bills on the establishment of a commission on inquiry on disappearances and a truth and reconciliation commission will be finalized soon. OHCHR, through the implementation of a United Nations Peace Building Fund project, has been providing assistance to the Ministry.

35. The Government continues to distribute interim financial relief to families of individuals who were killed or disappeared during the conflict. Though the distribution of relief has been uneven, victims groups have had some success in securing relief for their members and relief payments have had a positive impact on many conflict-affected families. According to the Government, to date more than 1.43 billion rupees have been provided as interim relief payment to victims and their families. There remains a need for the Government to develop a comprehensive reparations policy.

### **3. Public security and human rights**

36. The Nepal Police and the Armed Police Force continue to make efforts to integrate human rights principles into their training and orientation programmes, including the dissemination of a Nepal Police standing order on human rights and Armed Police Force human rights handbook, developed with the support of OHCHR.

37. However, Nepal continues to experience serious challenges to law and order, particularly in the southern Tarai plains where armed groups engage in threats, extortion and abductions for ransom. In addition, the UCPN-M affiliated Young Communist League and other youth wings associated with political parties continue to engage in criminal activities, with little fear of being held accountable for their actions. In response to the deteriorating public security situation, the Government announced a new special security plan in July 2009 which includes an expansion of the Armed Police Force and an overall increase in police presence in troubled districts. The Government has indicated that violent criminal activity in some parts of the country has decreased since the Government began implementation of the plan.

38. In this context of poor public security and weak rule of law institutions, allegations of extra-judicial killings during “encounters” between police and members of armed groups continue to be reported. Though the Government is reluctant to acknowledge that extra-judicial killings may have been committed by members of the security forces, OHCHR has documented over 30 credible allegations of extra-judicial killings attributed to the police in 2008 and 2009. While some observers have linked recent killings to more aggressive policing under new Government security policies, there is to date no clear evidence that these are a direct consequence of the special security plan. In many of these cases, police refused to register complaints from victims’ families or conduct investigations. To date no one has been held criminally responsible for any of these alleged extra-judicial killings. OHCHR has urged the Government to set up a special investigative unit with sufficient independence to inquire into these grave allegations.

39. Political interference in the work of the police, prosecutors and judges remains of concern. OHCHR has documented numerous cases in which political parties at the local and national levels have exerted pressure on the authorities to secure the release of criminal suspects with political connections or have otherwise obstructed criminal proceedings. The Government continues to withdraw criminal cases that it characterizes as “politically motivated”, including charges for serious crimes such as murder. Such recent actions follow the withdrawal of hundreds of criminal charges in 2008, which drew widespread criticism from civil society and the international community. OHCHR continues to work closely with partners in the criminal justice system and to call on political actors to respect the integrity of all criminal proceedings and strengthen the rule of law.

## **B. Discrimination and the enjoyment of economic, social and cultural rights**

40. Long-standing discrimination and social exclusion remain deeply rooted in Nepal. Wide disparities in the enjoyment of economic, social and cultural rights were one of the factors giving rise to the armed conflict, and remedying them will be crucial for a successful post-conflict transition. Discrimination associated with gender, caste, class, ethnicity, disability and geography, continues to be among the major barriers to the effective realization of economic, social and cultural rights.

### **1. Discrimination**

41. Marginalised and disadvantaged groups such as the *haliyas* (bonded labourers working as land tillers), formally freed from bondage by a Government declaration in September 2008, continue to live in often deplorable conditions, while their access to food, health, education and fair conditions of employment remains a major challenge. In the mid-western Tarai, the practice of *kamalari*, by which girls (generally between the ages of 8 and 14) from poor Tharu families are sent to work for years at a time in the private homes of wealthy or privileged families, remains prevalent, and puts them at risk of severe exploitation, including sexual exploitation. The practice continues despite a Supreme Court decision on 10 September 2006 ordering effective implementation of existing laws that prohibit child exploitation. OHCHR continues to engage in regional and central level advocacy on this issue, including through joint efforts with other United Nations agencies, and has a project in Baitadi and Dadeldhura districts dedicated to addressing caste-based discrimination.

42. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people visited Nepal in December 2008. Among the issues discussed were the widespread concerns over appropriate implementation of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169). Some groups in Nepal have invoked Convention 169 as a basis for assuming control of business and development projects, and international non-governmental organizations and donor programmes have been affected. The development community has had several meetings with representatives of indigenous groups to clarify the situation and, with the input and support from OHCHR, recently published a new policy on Convention No. 169 and the approach of the international community. Reflecting the need for greater clarity regarding the appropriate implementation of Convention in Nepal, the Government formed a task force in September 2008 to develop a plan of action, a draft of which was submitted to the Cabinet on 28 October 2009.

43. A wide spectrum of civil society organizations representing discriminated groups, including Dalits, indigenous peoples, disabled and religious and sexual minorities, prepared a joint report that was submitted at the Durban Review Conference. The organizations have continued to advocate for these issues in meetings with the Government.

### **2. Right to health**

44. The Government continued to make progress with regard to ensuring the right to health, including the provision of free maternity care to all Nepalese women since 2009 and treatment of uterine prolapse. An outbreak of diarrhea occurred in the hill districts of mid and far western regions from mid-April to mid-October 2009. The outbreak reportedly claimed the lives of 367 people. Though Dalits constitute roughly 15 per cent of the population in the affected districts, they accounted for 39 per cent of the deceased.

### 3. Right to food

45. The effective enjoyment of the right to food remains a serious problem throughout the country. Natural calamities, including drought, landslides and floods, contributed to a significant decline in local food production in both 2008 and 2009, resulting in severe food shortages in several hill and mountain districts. Lack of infrastructure in the remote hill districts and frequent enforced general strikes (*bandhs*) imposed by political actors have further complicated food distribution, leaving the local population more vulnerable to hunger. According to the World Food Programme (WFP), approximately 3.7 million people are food insecure throughout the country.<sup>3</sup> The affected population has resorted to severe and unsustainable coping mechanisms, including skipping meals, removing children from school and selling assets.

46. Although food insecurity persists throughout the country, certain groups have been affected more than others. They include marginalised and vulnerable groups such as Dalits, indigenous peoples, former bonded labourers, persons with disabilities and people living with or affected by HIV/AIDS. In its proposed budget for the fiscal year 2009/10, the Government announced special programmes to address food shortage in 23 affected districts in the hill regions, but a delay in approval of the budget until the end of November 2009 meant that many of these communities continued to remain at high risk of severe food shortages.

### 4. Access to justice

47. Members of marginalized groups continue to face obstacles in accessing justice, largely as a result of discrimination. Main challenges include the obstacles faced by victims and their families when they attempt to register a formal complaint with the police. Complainants are often encouraged, and in many cases coerced, to reach a settlement outside the formal justice system, even in cases of serious crime. The police often play a primary role in these informal settlements, which tend to favour wealthier individuals in positions of influence. Even when victims succeed in filing a formal complaint, in many cases they are forced to withdraw the complaint by community leaders or political parties in the name of maintaining community harmony.

48. Reports of violence against women have been increasing, with a surge in cases of dowry deaths and abuse of women accused of practicing witchcraft. In many communities, legislative weakness and inadequate policing continue to make prosecutions for domestic and sexual violence extremely difficult. To address one of the worst forms of violence against women, OHCHR and the Office of the Prime Minister and the Council of Ministers jointly launched a short television segment highlighting the issue of violence against women accused of practicing witchcraft.

49. The new act on domestic violence removes the previous 35-day statute of limitations on filing a case of rape, but this has yet to be implemented in practice. In response to increasing reports of violence against women, OHCHR and the Office of Prime Minister and the Council of Ministers conducted a joint field mission to the five most affected districts in the eastern region in July 2009. Following the visit and other expressions of concern, the Prime Minister announced a year-long campaign to combat violence against women which was launched on 25 November. OHCHR welcomes this promising initiative, while noting the magnitude of the challenge.

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<sup>3</sup> WFP Nepal, Nepal Food Security Bulletin, Issue 25, July-October 2009.

### **C. Constitution drafting process**

50. The Constituent Assembly has made slow progress in drafting the new Constitution, one of the key pillars of the Comprehensive Peace Agreement. Despite repeated delays, 2009 saw an increase in activity by the Constituent Assembly, and the thematic committees have been actively engaged in deliberations on draft concept papers and texts. However, the Constituent Assembly Schedule has recently been revised for the eighth time in order to allow the thematic committees to finalize their respective concept papers. Out of 10 thematic committees, eight have finalized their concept papers and draft texts. Failure to meet the deadline raises a potential risk of constitutional deadlock, as the extension of the Constituent Assembly's tenure in a normal situation (a six-month extension is permitted by the Constitution in the event of state of emergency) would require an amendment to the interim Constitution, which is unlikely without political consensus. In addition, failure to meet the deadline may also erode public confidence in the Assembly and the political parties. Committees that have yet to complete their papers include those vested with the difficult topics of power and resource allocation under a federal structure.

51. The Constituent Assembly held a first round of public consultations in all districts of Nepal in February and March 2009. However, repeated amendments of the Constituent Assembly schedule have resulted in significantly less time being allocated to public consultations on the first draft (reduced from 12 to 4 weeks). This reduction raises questions about the quality of the public consultations, which are essential for ensuring national ownership of the Constitution.

52. OHCHR has noted the efforts made by the Committee on Fundamental Rights and Directive Principles and the Committee on the Rights of Minorities towards strengthening constitutional protection of all human rights in Nepal. The draft texts submitted by the committees include a number of provisions intended to strengthen human rights protection, including a more comprehensive non-discrimination clause; wider stipulation of economic, social and cultural rights; a number of collective rights including rights for minorities and the marginalized; and additional guarantees of the right to reparation for victims of crimes.

53. The drafting process for the new Constitution is under way and fundamental elements of the Constitution continue to be debated and discussed in the Constituent Assembly. It is crucial that the Constituent Assembly ensures the independence of the judiciary, particularly in the context of a recent proposal to shift the authority for determining the constitutionality of laws from the Supreme Court to a parliamentary committee. Shortcomings in the interim Constitution that should be remedied in the new Constitution include inadequate respect for the rights of non-citizens; inadequate guarantee of due process rights; limited coverage of the rights to liberty and security; lack of exception for retrospective criminal laws dealing with international crimes; provisions permitting broader derogations and limitations of rights contrary to the International Covenant on Civil and Political Rights; lack of guarantees in relation to effective remedy and reparations for victims of human rights violations; and the lack of enforceability of economic, social and cultural rights guarantees on an equal footing with civil and political rights.

### **D. National capacity to promote and protect human rights**

54. The key national institutions with specific mandates to promote and protect human rights — the National Human Rights Commission, the National Women's Commission and National Dalit Commission — have each faced considerable challenges in realising their respective responsibilities. Though in principle each has been given considerable scope to engage in the defence of human rights, in practice each institution has had to overcome

serious handicaps, including lack of resources, insufficient legal basis, lack of cooperation from Government and, at times, direct political interference.

## **1. The National Human Rights Commission**

55. The National Human Rights Commission, the principal constitutional body for the promotion and protection of human rights in Nepal, has had a particularly difficult year in its efforts to fulfil its mandate. Despite the Commission's elevation to the level of a constitutional body in 2007, new governing legislation has yet to be passed. The draft finally submitted to the Legislature-Parliament in October 2009 has been criticised by the National Human Rights Commission itself, civil society and the international community as being inconsistent with the Paris Principles. OHCHR shares the Commission's concerns that the bill as proposed would inhibit important powers of the institution, and that it removes a key reference to the 'independence and autonomy of the Commission.

56. The failure of the Government to implement the recommendations of the National Human Rights Commission remains one of the Commission's most significant challenges. According to the Commission, since its establishment in 2000, only 11 per cent of the Commission's recommendations have been fully implemented by Government bodies, while more than 40 per cent have received no response at all from the State. Concerns about this lack of implementation have been raised repeatedly by the Commission. In February 2009, the Chairperson threatened to resign if the Government continued to ignore the Commission's recommendations.

57. The National Human Rights Commission has yet to establish fully effective cooperation with other human rights actors and has yet to develop a coherent strategy to fully engage with civil society or other national institutions with a human rights focus. In a memorandum to the Prime Minister in June 2009, the Commission claimed to have exclusive jurisdiction over the promotion and protection of human rights in Nepal, and in effect called into question activities by civil society and other human rights actors, including OHCHR. Existing coordination mechanisms are largely under the auspices of civil society actors or the international community, and Commission participation is minimal. While the Commission's engagement with other human rights actors is more active at the local level, the absence of guidance from the national level has limited the development of these contacts.

58. In February 2009, OHCHR and the Commission agreed on a set of guidelines for regarding areas of future cooperation. The guidelines aim in particular at strengthening the Commission's role in monitoring and investigating human rights violations; OHCHR would henceforth refer new cases to the Commission and follow up with active cooperation and support in the investigation of those cases. While the guidelines have led to improved collaboration between the offices and to a number of joint monitoring activities, there have been concerns regarding the current capacity of the Commission to undertake its caseload properly, particularly in the volatile Tarai districts. The Commission has not initiated investigations into nearly 75 per cent of cases referred by OHCHR, including cases of alleged extra-judicial executions and torture. Further capacity-strengthening is required for the Commission to be able to fulfil its mandate effectively and this will be a core component of the \$2 million capacity-development project agreed in July 2009, which will be implemented jointly by OHCHR and UNDP.

## **2. The National Dalit Commission and National Women's Commission**

59. The National Dalit Commission and the National Women's Commission have been provided with insufficient resources to effectively realize their mandates to protect and promote the rights of Dalits and women respectively. The National Dalit Commission has also specific weaknesses in relation to its establishment due to the continuing absence of

governing legislation and is currently operating on the basis of a Government executive order. Although a draft bill was submitted to the Government in April 2009, there has been no subsequent progress, though a proposal has been tabled for both institutions to be given constitutional status when the new Constitution is promulgated.

60. The National Women's Commission faced direct political interference when the cabinet issued a decision on 7 October 2009, relieving the Chairperson and all five commissioners of their posts, even though they had two more years of their mandates remaining. The Supreme Court later issued a stay order, preventing implementation of the Government's decision until the court issues a ruling. However, the move can be viewed as direct political interference in the independence of a national institution, particularly when viewed alongside the decision of the Government not to extend the mandates of the Commissioners of the National Women's Commission in June 2009, the removal of the national land reform commissioners, and the weaknesses in the National Human Rights Commission Bill referred to above. In 2009, OHCHR Nepal attempted to develop active working relationships with both institutions, focusing on core capacity-building activities and facilitating the contacts of each institution with the grass-roots level. The National Women's Commission participated in a special regional consultation of seven similar specialised women's commissions in the Asia-Pacific region in Jakarta in December 2009. However, in relation to the National Dalit Commission these efforts were impeded following the end of the mandates of the previous commissioners in June 2009. To date, only a new chairperson has been appointed.

### **3. Civil society and human rights defenders**

61. Although the risks faced by civil society actors and human rights defenders have decreased since the signing of the Comprehensive Peace Agreement, the State's inability to provide adequate public security and the proliferation of armed groups and increased criminal activities in the Tarai, have left many rights defenders vulnerable. Political and communal protestors often impose restrictions on the freedom of movement of human rights defenders and prevent access to sites of alleged violations. Civil society actors have in some cases been perceived as protecting persons engaged in criminal activities and faced direct threats from local communities. Human rights defenders who raised concerns about the rights of the detainees faced significant threats and intimidation from both the police and members of the community.

62. Journalists have faced regular threats from armed groups and political parties for filing reports about their activities, and a female radio journalist in Janakpur was murdered in January 2009. Women human rights defenders and the group of defenders representing sexual minorities are particularly at risk in Nepal. Women human rights defenders face additional threats from within their communities and families in relation to their work in defence of women's rights, which is often viewed as a challenge to the existing social order.

63. Political parties and armed groups in the southern Tarai districts are among the main actors creating risks for human rights defenders. The fragile protection and security situation is compounded by the culture of impunity for violations committed against human rights defenders and journalists by both State and non-State actors, and in some cases by allegations of State actors colluding directly with perpetrators.

64. OHCHR is focusing its efforts on strengthening existing civil society networks through targeted capacity-building activities and developing tools for local rights defenders. At the national level, the European Union working group on human rights defenders involves collaboration between European Union missions in Nepal, OHCHR and other national and international stakeholders to produce practical recommendations for action and advocacy on protection issues on a local level; OHCHR supported a field visit by the

European Union working group to three districts of the eastern region in May 2009. Much is still to be achieved, particularly in the development of an effective safe house mechanism for human rights defenders at risk. Although the key donors have committed funds to supporting the development of a comprehensive framework, key civil society organisations have been unable to develop a joint proposal on this issue.

65. At the conclusion of her visit to Nepal in March 2009 the High Commissioner stated that the Government should take concrete steps to ensure the security of human rights defenders, including journalists, who are the first line in the defence of the human rights. The notable lack of progress on this issue requires the urgent attention of the Government.

## V. Challenges and opportunities

66. The Government continues to provide assurances that it is committed to upholding its human rights obligations, including the commitments agreed to in the Comprehensive Peace Agreement. OHCHR welcomes the Government's renewed commitment to human rights.

67. At the same time, OHCHR notes that, despite repeated human rights commitments made by the Government over the past four years, only a minimal number of measures have been taken to implement recommendations made by OHCHR, the National Human Rights Commission, treaty bodies (including recommendations regarding individual cases) and by the special procedures mandate holders.

68. For the past three years, successive reports submitted to the Human Rights Council by OHCHR have included recommendations with regard to impunity and transitional justice mechanisms; social inclusion; national institutions and human rights defenders; civil liberties, including freedom of expression and assembly; law and order and reform of the security forces, as well as specific recommendations to political parties, in particular to UCPN-M, regarding human rights abuses committed both during and after the conflict and the use of violence for political purposes.

69. While the Government has taken some steps to improve public security, particularly in the Tarai, very little progress has been noted regarding the reform of security forces and the Government has taken no significant measures to address the issue of impunity. Moreover, the absence of Government measures to strengthen national human rights institutions and to protect human rights defenders continues to have a negative effect on human rights protection at both national and local levels.

70. A great deal remains to be accomplished if Nepal is to reach a satisfactory level of human rights implementation and ensure a solid foundation for long-term peace. The Government and all relevant partners need to identify the steps which must be accomplished to reach this level of implementation, including within the framework of the national human rights plan of action. The identification of these steps will help to clarify the areas that require additional support. OHCHR stands ready to assist the Government in this process.

## VI. Conclusions

71. **Nepal has reached several major milestones in the past three years, including the signing of the Comprehensive Peace Agreement, the declaration of a republic, and the holding of Constituent Assembly elections, while political actors have maintained dialogue across party lines and displayed flexibility on some key issues. Although the report raises substantial human rights concerns, Nepal retains all of the elements**

necessary to meet its human rights commitments and conclude the peace process successfully.

72. The national human rights institutions established in recent years can, with adequate support, make considerable progress in the protection and promotion of human rights in Nepal. There are many civil society organizations engaged in human rights work and human rights defenders are active throughout the country, in spite of the multiple challenges and dangers they face. Concerted efforts to empower further these national actors, in particular the National Human Rights Commission, are of paramount importance for enhancing the impact of their work. The Commission agreed to the second phase of a comprehensive capacity development project with UNDP and OHCHR in July 2009, which represents one of several significant developments for strengthening the capacities of a human rights institution which is critical to the future of the country. Nepal will continue to benefit from a strong alliance of international and national actors engaged in efforts to support a safer environment for human rights defenders.

73. Key national actors are today well aware of the criteria which must be in place for a successful and just transitional justice process. A point emphasized by the High Commissioner at the conclusion of her mission to Nepal in March 2009 remains equally valid today: the demands of victims' families are not mere wishes, they are supported by law. Until these demands for justice are fulfilled and accountability for past and present violations is ensured, a truly new Nepal will not emerge, and the peace process could be jeopardised. With the launch of a "peace through justice" project in July 2009 under the United Nations Peace Fund for Nepal, OHCHR, in close coordination with the Government and civil society, has intensified its efforts to support the establishment of proper transitional justice mechanisms which will respect the needs of conflict victims and their families.

74. To address long-standing discrimination and the lack of implementation of economic, social and cultural rights, OHCHR, together with the Government, the United Nations country team and development partners, is fostering a rights based approach. With the help of human rights mechanisms, including treaty bodies and special procedures, it is in a position to offer concrete assistance to the authorities to enable the Government to meet its human rights obligations.

75. The Government thus has several significant sources of support for the peace process available to it and a unique opportunity to move the process forward in the interests of all Nepalis.

## VII. Recommendations

76. Acknowledging the progress made in taking steps towards establishing the transitional justice mechanisms named in the Comprehensive Peace Agreement, OHCHR urges the Government to take concrete measures to fulfill its repeated commitments to end impunity, including by implementing transitional justice mechanisms in accordance with international standards, investigating the disappearances at Maharajgunj barracks and Bardiya documented in OHCHR reports and prosecuting cases committed both by members of UCPN-M and the State security forces.

77. Noting the position of the Nepalese Army in the Maina Sunuwar case, where it is failing to comply with the directions of the Kavre District Court, which is acting pursuant to a Supreme Court directive, OHCHR calls on the Government to ensure that the Army complies with the court orders.



78. Similarly, OHCHR calls on UCPN-M to cooperate fully with police investigations and the court orders regarding allegations of crimes committed by its members.

79. Comprehensive reforms in the security sector institutions would enhance the protection of human rights. The establishment of an independent special unit to undertake investigations into serious allegations against the Nepal Police and the Armed Police Force, including the investigation of alleged extra-judicial killings, would be an important first step.

80. The Legislature-Parliament is encouraged to adopt legislation regulating the National Human Rights Commission in a manner consistent with the Paris Principles. The Government should also give serious consideration to all Commission recommendations and either implement them or provide a valid justification for not doing so. The National Dalit Commission and the National Women's Commission should also have their mandates strengthened.

81. The Constituent Assembly has an enormously important task to complete and is urged to do so on time. It should ensure that constitutional protections of human and fundamental rights are fully consistent with international human rights standards.

82. The Government's efforts to address long-standing discrimination, including the recent ratification of the Convention on the Rights of Persons with Disabilities, are welcomed. Further legislative and practical measures are encouraged, including implementation of the recently formulated national plan of action for the elimination of violence against women.

83. As in previous reports, OHCHR encourages the Government to put in place effective mechanisms to protect human rights defenders.

84. OHCHR stands ready to continue to provide all necessary support and technical assistance to the Government and people of Nepal in meeting their aspirations for the enjoyment of all human rights.

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