



**OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS**



Technical cooperation and advisory services in Nepal

Human Rights Resolution 2005/78

The Commission on Human Rights,

Recalling that Nepal, having ratified six major human rights treaties, has freely accepted the obligation to protect the human rights of the people of Nepal,

Recalling the importance of the implementation of Security Council resolutions 1265 (1999) of 17 September 1999 and 1296 (2000) of 19 April 2000 on the protection of civilians in armed conflict, 1325 (2000) of 31 October 2000 on women and peace and security and 1539 (2004) of 22 April 2004 on children and armed conflict,

Seriously concerned at the growing number of civilian victims of the ongoing conflict since the breakdown of the ceasefire on 27 August 2003,

Deeply concerned about the situation of human rights in Nepal, including violations attributed to the security forces, in particular unlawful killings, all forms of sexual violence, forced displacement and disappearances, and attacks against the physical integrity and safety of political leaders and party activists, human rights defenders, journalists and others and also deeply concerned about the prevailing situation of impunity,

Strongly condemning all acts of violence against civilians and other criminal acts such as attacks against life, physical integrity and personal liberty and safety, including unlawful killings, all forms of sexual violence and extortion, committed by members of the Communist Party of Nepal (Maoist),

Conscious of the fact that the Commission's appeals are mainly directed to the Government of Nepal as it is subject to international obligations; additionally gravely concerned at the serious breaches of humanitarian law committed by members of the Communist Party of Nepal (Maoist), which may constitute war crimes and crimes against humanity,

Recalling His Majesty's Government of Nepal's declaration of commitment on the implementation of human rights and international humanitarian law of 26 March 2004,

Bearing in mind the Chairperson's statement on human rights assistance to Nepal (E/2004/23-E/CN.4/2004/172, para. 716),

Taking note of the efforts of the Government of Nepal in establishing a Human Rights Promotion Centre in the Prime Minister's Office and human rights cells within the security forces,

Taking note of the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Nepal (E/CN.4/2005/65/Add.1) and the report of the Office of the United Nations High Commissioner for Human Rights on its activities in Nepal, including technical cooperation (E/CN.4/2005/114),

Expressing its deep concern about the serious setback to multiparty democracy and the weakening of the rule of law through the royal proclamation and the declaration of a state of emergency of 1 February 2005,

Deeply concerned about the arbitrary arrests and secret detention, in particular of political leaders and activists, human rights defenders, journalists and others, and about continued enforced disappearances, as well as allegations of torture,

Welcoming the signing of the Agreement between the Government with the Office of the High Commissioner concerning the establishment of an office in Nepal on 10 April 2005, while also taking into account actions taken by the Government in some cases of human rights violations,

Taking note of the visit of the Representative of the Secretary-General on human rights of internally displaced persons and the invitation extended to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

1. *Calls upon* the Government of Nepal urgently to restore the multiparty democratic institutions enshrined in the Constitution of Nepal and to respect the rule of law without exception;

2. *Requests* the Government of Nepal to bear in mind that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights, in particular the right to life and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, are recognized as non-derogable in all circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations, as stated in general comment No. 29 (2001) on derogations to the Covenant during a state of public emergency of the Human Rights Committee;

3. *Calls upon* the Government of Nepal to reinstate immediately all civil and

political rights, to cease all state of emergency-related and other arbitrary arrests, to lift the far-reaching censorship, to restore freedom of opinion, expression and the press as well as the freedom of association, to release immediately all detained political leaders and activists, human rights defenders, journalists and others, to allow all citizens to enter and exit the country freely and to respect all international and national obligations as well as the twenty-five points of the commitment of 26 March 2004, as freely undertaken by Nepal;

4. *Strongly condemns* the repeated practices of members of the Communist Party of Nepal (Maoist), such as:

(a) Unlawful killings, rape, extortions, forced displacement, mass abduction and forced recruitment and labour targeted at civilians;

(b) Persecution and attacks against the life, integrity and safety of political leaders and party members, human rights defenders, journalists, peace activists and others;

(c) Attempts to blockade Kathmandu and other urban areas with a view to cutting off supplies of food and other essential supplies to the civilian population;

5. *Firmly condemns* the recruitment and use of a large number of children in Maoist forces and urges the members of the Communist Party of Nepal (Maoist) to stop the recruitment of children as well as to demobilize immediately those currently participating in these groups, as set out in Security Council resolution 1539 (2004);

6. *Strongly urges* the members of the Communist Party of Nepal (Maoist) to comply with international humanitarian law and to respect the legitimate exercise of all human rights by the people of Nepal as well as immediately and unconditionally to cease and renounce violence, disarm, and enter into negotiations with the genuine intention of rejoining the political process, thereby helping to ensure that the people of Nepal are free to choose their own Government;

7. *Calls upon* all parties to the conflict to respect human rights and international humanitarian law, in particular common article 3 of the Geneva Conventions of 12 August 1949, as well as to act in conformity with all other relevant standards relating to the protection of civilians, particularly of women and children, and to allow the safe and unhindered access of humanitarian organizations to those in need of assistance;

8. *Urges* the Government of Nepal:

(a) To take all necessary measures to prevent and put an end to extrajudicial and summary killings, all forms of sexual violence, enforced disappearances, arbitrary arrests, illegal incommunicado detention as well as torture and other cruel, inhuman or degrading

treatment or punishment;

(b) To take all appropriate measures to clarify the fate of all cases of persons allegedly victims of enforced disappearance, including, where appropriate, taking into account the work of the national committee and international expert bodies in this field;

(c) To ensure that all anti-terrorism and security laws and measures are in accordance with all relevant international norms and standards as well as the Constitution of Nepal;

(d) To take appropriate measures to ensure the protection of the civil and political rights of political leaders and activists, human rights defenders, journalists and others;

(e) To take appropriate measures to protect women and girls from gender-based violence, as emphasized by the Security Council in resolution 1325 (2000), and to prevent and prosecute traffickers in women and children;

(f) To take all necessary measures to protect and respect the human rights of refugees, including the principle of non-refoulement;

(g) To combat impunity by ensuring that all allegations of violations of human rights and international humanitarian law are investigated promptly, independently and impartially and, as appropriate, prosecuted through the criminal justice system, in accordance with the Constitution of Nepal and international standards of justice, fairness and due process of law;

(h) To begin urgently a national dialogue with political parties to restore peace, stability, the promotion and protection of human rights and to safeguard democracy;

(i) To request the technical assistance of the international community and the United Nations in planning free and fair local elections, following their announcement;

9. *Calls upon* the Government of Nepal to provide urgent protection and assistance to internally displaced persons, taking account of the particular needs of women and children, to facilitate their safe return, reintegration and resettlement elsewhere in the country, as appropriate, and to develop appropriate policies and legislation in this regard, using the Guiding Principles on Internal Displacement;

10. *Also calls upon* the Government of Nepal to ensure the independence and effectiveness of the judiciary, and therefore urges the Government to safeguard effective judicial remedies, in particular respect of habeas corpus orders, and to comply fully and faithfully with all judicial orders;

11. *Further calls upon* the Government of Nepal:

(a) To ensure continued independence, institutional continuity and stability of the National Human Rights Commission of Nepal in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134 of 20 December 1993 (the Paris Principles) and the Human Rights Commission Act, 2053 (1997);

(b) To ensure full and unimpeded access without prior notice of the National Human Rights Commission of Nepal, the Office of the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross to all persons held in detention, including places of detention under the authority of the Royal Nepalese Army;

(c) To provide necessary support to the National Human Rights Commission of Nepal, including its regional offices, in carrying out its statutory mandate and to ensure the necessary protection by, and cooperation of, governmental entities, including the security forces, to enable the members of the National Human Rights Commission to promote and protect human rights in Nepal;

(d) To support the Office of the High Commissioner in its continued assistance to the National Human Rights Commission;

12. *Welcomes* the efforts of the Government of Nepal to comply with the obligation to submit periodic reports to the respective treaty bodies, in particular under the International Covenant on Civil and Political Rights, and urges the Government to implement their recommendations, particularly the recent recommendations of the Committee on the Elimination of Discrimination against Women of January 2004 and of the Committee on the Elimination of Racial Discrimination of March 2004;

13. *Encourages* the Government of Nepal to extend invitations to the special procedures of the Commission to visit Nepal, to cooperate fully with them and implement their relevant recommendations, in particular the recent recommendation of the Working Group on Enforced or Involuntary Disappearances, specifically the recommendation to enforce a complete prohibition on incommunicado detention in military barracks;

14. *Requests* the High Commissioner, in accordance with the Agreement signed with the Government of Nepal on 10 April 2005, to establish an office in Nepal with the mandate to assist the Nepalese authorities in developing policies and programmes for the promotion and protection of human rights, to monitor the situation of human rights and observance of international humanitarian law, including investigation and verification nationwide through international human rights officers and the establishment of field-based

offices staffed with international personnel, to report in accordance with the Agreement and to work in cooperation with other United Nations and other international organizations based in Nepal in this regard;

15. *Calls upon* the Government of Nepal to implement promptly and fully the Agreement with the Office of the High Commissioner and to extend its full cooperation to the

office of the High Commissioner in Nepal, to assist the office in the discharge of its mandate and to take all necessary steps to ensure that its officials and experts on mission have free and unlimited access to any persons in Nepal whom they might wish to meet;

16. *Encourages* the international community to assist the Government of Nepal in implementing the present resolution;

17. *Requests* the High Commissioner to submit a report on the human rights situation and the activities of her Office, including technical cooperation, in Nepal to the General Assembly at its sixtieth session and to the Commission at its sixty-second session;

18. *Decides* to continue its consideration of the situation of human rights in Nepal at its sixty-second session under the same agenda item.

*59th meeting
20 April 2005*

[Adopted without a vote. See chap. XIX, E/CN.4/2005/L.10/Add.1]