

HUMAN RIGHTS IN NEPAL
ONE YEAR AFTER THE COMPREHENSIVE PEACE AGREEMENT
December 2007

1. Introduction

Immediately after the April 2006 ceasefire and the restoration of the House of Representatives, significant progress was made in re-establishing democratic rights and in ending serious conflict-related abuses. The Comprehensive Peace Agreement was signed on 21 November and consolidated a series of commitments to human rights made in previous agreements. The commitments include many of the Government of Nepal's obligations under international law to respect, promote and ensure human rights of all persons within Nepal without discrimination. The CPA, in its preamble, commits all signatories "to create an atmosphere where the Nepali people can enjoy their civil, political, economic, social and cultural rights and ... to ensuring that such rights are not violated under any circumstances in the future." (7.1.2). These include ending discrimination, arbitrary detention, torture, killings and disappearances. The CPA separately mandates OHCHR and the National Human Rights Commission (NHRC) to monitor the implementation of the human rights provisions within the Agreement and requires all parties to collaborate with OHCHR in providing information and implementing recommendations.

The signing of the CPA and the human rights commitments made in the Agreement raised hopes that improvements in the human rights situation made immediately after the ceasefire would be built upon. Regrettably, in the past year, the initial gains have not been strengthened or consolidated and respect for, as well as the protection of human rights, has again deteriorated. Human rights have been marginalised and subordinated to political considerations in the peace process. Although human rights defenders, journalists, political parties and other sectors of civil society have been able to carry out their activities more openly than before the April 2006 ceasefire, they have been facing increasing risks and constraints over the past year.

Protection of the right to life in particular has been increasingly eroded in 2007.¹ As of the end of October, OHCHR has received reports of more than 130 killings of civilians since the beginning of the year, almost all in the Central and Eastern regions of the Terai. These killings include some 60 individuals killed as a result of criminal acts by armed groups, mostly since May; 14 killed as a result of violence in Kapilvastu in September; five killings in which CPN-M cadres were directly implicated²; and at least 24 people³ killed during the *Madheshi Andolan* in January/February. Nineteen of those killed during the *Madheshi Andolan* and a further ten killed in other incidents died as a result of police action, some of the incidents amounting to cases of excessive use of force. At least 45 CPN-M cadres have been killed, including 10 by armed groups and 27 brutally attacked during incidents related to violence following simultaneous protests by the Madheshi People's Right Forum (MPRF) and the Young Communist League (YCL) in Gaur. Seven alleged members of armed groups were

¹ The Government has challenged this conclusion – see *Observations of the Government of Nepal* appended to this report.

² In addition, OHCHR received reports of six other killings in which individual CPN-M cadres were reportedly implicated but where the information suggested that they were most likely linked to personal disputes.

³ OHCHR documented 24 killings of civilians plus one policeman, but other organizations have given higher figures.

also killed by local people in incidents of “popular justice” in the absence of police action. Many other individuals have been injured in the course of the year.

The emergence of armed groups and an expansion of their violent activities, as well as growing social unrest particularly around issues related to representation and discrimination, have posed serious challenges to the Government and state institutions responsible for maintaining law and order and protecting the rights of the population. The weakness or absence of state responses to deal with these issues has had a serious impact on the human rights situation, and contributed to a situation of lawlessness in which human rights are paid little attention. On-going violations by state entities (including through omission), as well as abuses by CPN-M cadres, have also impacted on the human rights situation.

Most seriously, perpetrators of killings and other violence enjoy almost total impunity whether in the case of human rights violations committed by the State, abuses committed by CPN-M cadres or criminal acts of violence committed by armed groups, those involved in violent protests or violence stemming from discriminatory practices. Likewise, those responsible for gross violations and abuses during the conflict have yet to be prosecuted. The lack of commitment on the part of the authorities to address these issues is deeply worrying. The final chapter of this report looks at some of the obstacles to addressing impunity and the little progress which has been made in overcoming them during the past year.

This report details the main human rights concerns since the signing of the CPA in November 2006 and serves as a reminder that human rights obligations and considerations must be at the forefront of the peace process. Ending discrimination and inequalities in terms of access to justice and resources, combating impunity and strengthening respect for human rights by state institutions – including through reform of the security and justice sectors – remain pressing priorities. Different organisations have announced mass protests, in some cases threatening to turn to arms, if their grievances are not addressed, posing additional challenges to strengthening human rights.

This report is based on OHCHR’s monitoring and investigations activities throughout the country, as well as its legal analysis of policies and legislation. In carrying out these tasks, OHCHR has enjoyed extensive cooperation from the NHRC and civil society groups, including Nepalese human rights organizations particularly in their sharing of information with the Office. The Office would like to take this opportunity to express its appreciation for that cooperation. Overall, OHCHR’s report reflects the concerns raised by these organizations.

In the course of its work, OHCHR also had many meetings with local, regional and national authorities and representatives of the CPN-M to obtain information, raise cases and concerns. Generally, OHCHR received good cooperation from the authorities with whom it has been able to engage in dialogue. In most instances, it was given extensive access to places of detention throughout the country. For the most part, it has also had access, when requested, to individuals held in captivity by the CPN-M and in a number of cases the CPN-M and authorities have responded positively to OHCHR’s recommendations.

The Office remains concerned, however, about its lack of access to key documents, especially in relation to investigations into human rights cases by both State institutions and the CPN-M, as well as lack of access to certain draft legislation. The Government has informed OHCHR that it would not be appropriate to provide OHCHR with such documentation (see appended *Observations of the Government of Nepal*). On a more positive note, after many months, the Nepalese Army (NA) finally agreed to provide copies of three Court Martials related to human rights violations, gave OHCHR staff access to the files of the three cases and invited OHCHR to observe a Court Martial related to a current case.

The report was submitted for comment to the Government of Nepal and to the CPN-M leadership on 30 November. The Government subsequently provided comments, which are appended to the report. The Government has challenged some of OHCHR's conclusions, including regarding the erosion of protection of the right to life, and has also questioned OHCHR's objectivity on certain issues. It has also described as "baseless" OHCHR's allegations of excessive use of force, torture and ill-treatment by police. The Government also informed OHCHR that it had approved and launched a new three-year national human rights action plan for Nepal effective from fiscal year 2007/8, a copy of which has yet to be sent to OHCHR. OHCHR will be responding to these comments as appropriate in the near future.

2. Interim Constitution and other new legislation impacting on human rights

The promulgation of the Interim Constitution on 15 January 2007 marked an important step forward in the peace process and provided a strengthened legal framework for guaranteeing human rights. The Interim Constitution contained a broader range of clauses protecting human rights than the 1990 Constitution, including more expansive due process rights such as the right to the presumption of innocence and the right to legal assistance upon arrest, as well as the prohibition of untouchability. The Interim Constitution also recognizes the right of traditionally marginalized groups to participate in State mechanisms on the basis of "inclusive principles". There are, however, certain serious limitations in the Interim Constitution including with respect to the rights of non-citizens and the coverage of rights such as non-discrimination, the right to liberty and security of persons and legal process related rights. It is also of concern that the provisions permitting derogation during a state of emergency do not contain all the safeguards required by international human rights law.

Several other new pieces of legislation were also promulgated which, if implemented appropriately, would strengthen human rights protection. For example, a Right to Information Act was promulgated in July 2007 which, for the first time, guarantees access to official documents, though with certain restrictive clauses which potentially significantly narrow the scope of human rights related documents which can be accessed. Amongst the categories of documents which are excluded are those which relate to the 'investigation, inquiry and prosecution' of crimes and those which jeopardize the 'harmonious relationship between various castes or communities'.

References to other new legislation, such as the Citizenship Act, the Constituent Assembly Electoral Act, the Human Trafficking Act and provisions allowing greater representation in the Civil Service are referred to under the appropriate thematic heading below.

OHCHR is, however, concerned about certain amendments, adopted in August 2007, to the Local Administration Act 1971 (LAA) which could be used in the future to limit freedom of assembly. Designed to prohibit the obstruction of the smooth operation of roads and the prevention of access to government, public authority and educational institutions, the amendments empower each Chief District Officer (CDO) to ban gatherings, and fine and imprison anyone committing acts of obstruction or violating bans on gatherings. Given the vagueness of the terms used and the significant discretion involved, the new provisions of the LAA could potentially be used to arbitrarily detain demonstrators, suppress non-violent assemblies and other peaceful expressions of opinion. Granting the CDO the power to fine and imprison also raises concerns in relation to individuals' right to a fair trial in terms of a hearing before an independent and impartial tribunal.

3. National Human Rights Commission

Under the Interim Constitution, the NHRC was transformed into a constitutional body. In early September, a Parliamentary hearing confirmed the nomination of five individuals as commissioners, who had been named by the Constitutional Council. Although there were concerns expressed that the appointments procedures themselves did not match international standards, OHCHR noted that the appointments were a very important opportunity for the NHRC to develop into an independent, credible and effective institution that works for the human rights of all Nepalese. The work of the NHRC had been seriously hampered for many months due to delays in appointing new commissioners since the previous commissioners appointed under the King's regime resigned in June 2006. As a result, the International Coordinating Committee (ICC) which monitors the status of national human rights institutions had also put under review the NHRC's accreditation to the ICC. However, in the light of the appointments and other progress made, the ICC, in October 2007, restored the 'A' status accreditation, with observations about certain issues that are still to be resolved and which will be reconsidered in October 2008. These include adequate funding and complete financial autonomy, as well as appropriate appointment procedures and the need to strengthen interaction with civil society.

Draft enabling legislation regarding the NHRC setting out its functions, duties, powers and working procedures in light of the new provision in the Interim Constitution is currently under discussion, and OHCHR has provided its observations and recommendations to the NHRC with a view to strengthening the bill. OHCHR is also working closely with the NHRC to identify strategies for cooperation and has over the past year carried out numerous activities to provide support and capacity-building to staff at the national level. There has also been close cooperation at the regional level, particularly in exchanging information.

4. Obligations of the State to provide security and protect the rights of the population

Under international human rights law, the State has an obligation to promote, protect and ensure the rights of all those within its territory or subject to its jurisdiction including with respect to the rights to life, security and physical integrity. The CPA reaffirms the role of the Nepal Police (NP) and Armed Police Force (APF) in maintaining law and order. However, in the course of 2007, the limitations of state institutions, including the law enforcement agencies, to protect the lives and security of the population has become increasingly apparent, especially in the Terai. Together with impunity and the failure to adequately address marginalisation, poverty and discrimination (see below) this poses one of the biggest threats to sustainable peace. These issues require comprehensive solutions based fully on human rights standards.

During the later years of the conflict, security had been in the hands of the Unified Command, including the NA, APF and NP whilst in many especially rural areas, police posts had been abandoned. Following the April 2006 ceasefire and the dismantling of the Unified Command, the NP began to re-establish the abandoned posts although with many obstacles, including CPN-M opposition. The pace of re-establishment quickened after the adoption of the Interim Constitution and directives given by the CPN-M Chairman that his cadres should not disrupt the process. Nevertheless the re-establishment of some posts has been delayed or reversed by the actions of armed groups in certain places and by threats and attacks by CPN-M entities in others. In some remote areas, especially in the Far Western Region, due to the absence of the State, the presence of police posts is effectively at the CPN-M's discretion.

As of the end of October, according to official police statistics, 153 old and 94 new posts were yet to be established. Many posts that have been re-established continue to suffer from a lack of infrastructure and equipment. Police and local authorities have regularly conveyed to

OHCHR that they are demoralized, including from what they perceive as the lack of support and directives from the national authorities. The lack of directives has been frequently cited by police and CDOs as a reason for not taking action which could protect human rights, improve law and order and reduce impunity and criminality. At the same time, the deployment of APF personnel throughout the Terai - to patrol the border, combat armed groups as well as provide security for the elections - has not always impacted positively in terms of human rights.

The limited impact or absence of police interventions to stop violence (whether by armed groups or in the context of protests or other actions), coupled with the use of lethal force by the police on some occasions when they have in fact intervened, often with fatal consequences, has resulted in a vacuum where the public feels insecure and has little confidence that it will be protected by the rule of law. OHCHR fully acknowledges that police forces have an obligation to take action to curb unlawful activities but they must be given the resources and directives and political support to do so in an independent manner and with full respect for human rights.

The High Commissioner, in her report to the General Assembly published in September 2006, had already warned of the risks created by weak or absent law enforcement agencies which risked being exploited by armed groups, whether criminal or political, including those wishing to spoil the peace process, as well as individuals taking law enforcement and justice into their own hands. The lack of police reform, and of measures to strengthen and increase the professionalism of the police, has facilitated the criminal activities of armed groups and increased insecurity. At the same time, police themselves have been responsible for serious human rights violations, particularly with regard to excessive use of force in controlling demonstrations and persistent torture and ill-treatment, all of which have been carried out with impunity.

Killings and abductions by armed groups

The most serious consequences of the security vacuum and limited state interventions have been felt in the Terai, where numerous armed groups have created a climate of fear and intimidation in certain districts which police have been unable or unwilling to control, placing lives and physical security at risk, as well as causing population displacement. While targets of killings by armed groups in mid-2006 were almost exclusively related to conflicts between *Janatantrik Terai Mukti Morcha* (JTMM) and the CPN-M in the Eastern Region, the armed groups and their activities proliferated especially after the *Madheshi Andolan* in early 2007, expanding also to the Central Terai. Other armed groups such as the Terai Cobra, *Madheshi Mukti Tigers*, and two other JTMM factions have also emerged in the two regions.

Unravelling the agendas and motivations of the groups is complex, even though most groups have articulated demands related to Madheshi issues, including an independent Terai. Underlying the violence there is often a complicated web of inter-relationships between personal, political, criminal and communal elements. Curtailing the illegal activities of the armed groups, as well as the need to address discrimination and lack of representation of marginalised groups is widely recognized as being among the requirements for an environment conducive to free elections and for sustainable peace in the Terai.

OHCHR has received reports of more than 75 killings, and 200 individuals being abducted by named or unidentified armed groups since December 2006; 67 of the killings and 160 abductions were reported in the last six months, since 1 May 2007. The killings included five people killed in bomb explosions⁴, including a schoolgirl and two others killed in Kathmandu

⁴ The majority of the approximately sixty incidents involving explosions which have been reported to OHCHR since December 2006 involved for the most part small or relatively small improvised explosive devices targeted at mainly civilian buildings. Three media houses were also targeted.

in September, and one individual killed in an explosion in Siraha in November. Others died mostly as a result of shootings. The JTMM-Jwala Singh faction was implicated in some 30 killings and 80 abductions, with eight killings and some 34 abductions being attributed to JTMM-Goit faction. Of those killed, 11 were reportedly members of armed groups, the rest civilians, including 10 CPN-M cadres (five killings attributed to JTMM-JS and five to JTMM-G), local government officials such as Village Development Committee (VDC) secretaries and District Development Committee (DDC) officers, a *Rastriya Prajatantra Party* (RPP) and a Nepali Congress (NC) Party member. Additionally, two Madheshi members of the NC party were also killed in Siraha in November. Four members of the NC Party were also arrested in connection with the July killing of a VDC secretary (see below) – also in Siraha - amidst unconfirmed but persistent allegations that some members of political parties were using the armed groups to settle personal and political scores.

Among those abducted were teachers (14), businessmen (ten), journalists (three), members of political parties (three) and local government employees (21 including 14 VDC secretaries), with ransom being a principal if not sole motivation. JTMM-JS was implicated in 64 and JTMM-G in 26 abductions. In several recent cases, JTMM-JS reportedly accused the victims of a particular crime or of spying. Some of the victims have been Madheshi. Apart from the two killings mentioned above, in the last week of October, for example, a Madheshi VDC secretary was abducted on accusations of corruption and embezzlement, and two other Madheshis were abducted on accusations of rape and of buying land from a *pahadi* (person of hill origin). For the most part, however, JTMM factions and other armed groups have targeted *pahadis*.

Incitement to communal violence and racial hatred

Even though, as indicated above, the underlying issues are complex, in articulating their demands, some of the armed groups have increasingly been using inflammatory language, blatantly inciting communal violence and racial hatred between the Madheshi and *pahadi* communities. Both the main factions of JTMM have ordered *pahadis* to leave the Terai, especially government employees, for example in a JTMM-JS press release on 17 July. A *pahadi* secretary of a VDC was subsequently abducted and killed. VDC and court staff stopped work in protest at the threats and the killing. Some VDC staff moved to the district headquarters because of security fears and in November, many threatened to resign, further weakening local governance and delivery of local services. VDC staff have continued to protest at the lack of security, as abductions of VDC and other personnel have continued. Many persons of hill origin have now left the southern Terai plains.

These threats and incitement to violence have been met in some places with counter-threats by the hill-dominated *Chure Bhawar Ekta Samaaj* (CBES) organization and have contributed to the cycle of unrest and rising communal tensions. The threats have also at times been fuelled by the apparently deliberate spread of false or unverified rumours of rape and other violence to incite hatred between communities. At times, OHCHR has noted that the media itself has been responsible for the spreading of inflammatory information. In August 2007, for example, OHCHR concluded that two radio stations transmitted news regarding incidents on the Mahendra highway involving Madheshi and *pahadi* communities in a manner that was divisive, partial and politicized. The radio stations broadcast unfounded rumours that female pilgrims had been raped by CBES supporters/*pahadi* demonstrators, thereby inflaming Madheshi responses.

It should be noted that, under the Convention on the Elimination of all forms of Racial Discrimination (CERD) and also the International Covenant on Civil and Political Rights (ICCPR), the State has an obligation to prohibit and punish advocacy of national, racial or religious hatred speech which constitutes incitement to discrimination or violence

Killings and other violence in Kapilvastu

The most serious recent outbreak of violence occurred in Kapilvastu and illustrated how easily underlying tensions and State neglect can result in an explosion of violence, revenge and hatred. Fourteen people were killed during retaliatory attacks and looting in September following the murder of a local Muslim landowner, former NC Party member and former member of the pro-monarchy vigilante group *praktikar samiti*⁵. Several thousand people were displaced as a result, and there was widespread looting and destruction of property. According to official figures, more than three hundred buildings were damaged or destroyed, including five mosques, and including more than 200 homes which were set on fire. Violence also spilled over to neighbouring Dang District where property, including a mosque, was also destroyed and many temporarily displaced. OHCHR has had an almost continuous presence in the Kapilvastu area since the violence, gathering information on the incidents and also liaising with humanitarian organisations, local authorities and civil society to identify responses both to the basic needs of the communities concerned as well as ways of preventing further violence.

The Office's investigations concluded that the minimal presence of security forces, and the slow and inadequate response of police, local and national authorities yet again contributed extensively to creating the conditions for lawless and fatal violence. State interventions to protect the civilian population not only comprise law enforcement but ensuring governance, as well as developing dialogue between communities to reduce tensions and address grievances. Civil society and local authorities are starting to undertake initiatives in this regard in Kapilvastu, and similar initiatives occurred in Nepalgunj after inter-communal violence led to at least one killing and destruction of property at the end of December 2006. However, without proactive and preventive measures by the Government and state authorities to address underlying causes of the tensions, there are further serious risks of violence in the Terai. In addition, the question of accountability for criminal violence must be addressed. As of the end of October, police investigations and also the Special Committee set up to look into the violence had focussed not on the killings and injuries but exclusively on the looting and destruction of property.

5. Rights to freedom of opinion, expression and assembly

Respect for freedom of opinion, expression and assembly are central to any process aimed at restoring democracy, including an electoral process, and are included in provisions of the CPA. Political and civil society activities have been more openly and extensively conducted than prior to the April 2006 ceasefire, and there have also been many rallies, protests and other demonstrations organised throughout the country. Nevertheless, in the course of 2007, there have been an increasing number of constraints and risks in exercising the rights to freedom of opinion, expression and assembly. Some have been described above in relation to armed groups. In addition, the manner in which state authorities have responded to aggressive or violent demonstrations – sometimes through a lack of response to protect demonstrators, at others through excessive use of force resulting in killings and injuries - has continued to be a concern. In addition, CPN-M cadres have contributed to creating an environment of fear and intimidation in relation to freedom of opinion, expression and assembly, through threats,

⁵ *Pratihar Samiti* are commonly referred to as vigilantes or self-defence groups. Such groups were active in some Western Terai districts in countering the CPN-M influence with at minimum the tacit support of the security forces, especially the (R)NA. Activities by *Pratihar Samiti* in the area resulted in the killing and the displacement of a large number of *pahadis* who were seen to be close to or supporting the predominantly *pahadi* initiated Maoist insurgency during the conflict. Following the end of the conflict, civil society and the CPN-M have many times raised the issue of weapons still being in the hands of former *Pratihar Samiti* members.

abductions, assaults and, in exceptional cases, killing and disappearance. Finally, incidents of violence or threats of violence by protestors against others in violation of their duty to respect the rights of others have also been frequently documented.

State authorities

Formal State restrictions on freedom of assembly, opinion, expression and association have been limited during this period to certain restrictions on demonstrations near the Government and Parliament grounds in Singha Durbar and curfew orders imposed following outbreaks of violence during protests. Nevertheless, the use of excessive force to control some demonstrations has impacted on freedom of assembly and the right to life. In September 2006, OHCHR issued a report on excessive use of force during the April 2006 protests. It contained a series of recommendations on steps to be taken with a view to preventing further similar violations. Most of the recommendations have not been implemented to date⁶. During its many meetings with police as well as in training sessions and briefings for police, OHCHR has continued to stress the importance of respecting human rights in the context of police operations, including during arrest and detention of suspects, crowd control operations and also in the context of the electoral process.

While a number of demonstrations monitored by OHCHR have been well policed, and although OHCHR acknowledges that police are sometimes faced with aggressive or very violent situations, use of force must be appropriate to the circumstances. Overall, the same type of violations have been documented as in the past, including in relation to the use of lethal force, indicating that behavioural change has yet to be institutionalised.

Interventions by the APF and the NP in the context of crowd control have resulted in at least 27 deaths and many injuries, either through the use of firearms or severe beatings, since the signing of the CPA. According to OHCHR's statistics, 26 people were killed in the Central (12) and Eastern Region (14) in 2007, as a result of police (NP and/or APF) using firearms or beatings in the context of demonstrations or protests. At the end of December 2006, a man was shot dead by police during looting and protests in Nepalgunj. Nineteen killings occurred during the *Madheshi Andolan*. In ten of these cases it was impossible to determine whether NP or APF personnel were responsible because of the nature of the police operation. At least four of the victims killed by police in connection with protests were under the age of 18.

In most of these cases, circumstances of the killings documented by OHCHR suggested that the individuals died as a result of excessive use of force. During the *Madheshi Andolan*, OHCHR directly observed both NP and APF firing directly into crowds or beating demonstrators severely without provocation. A 16-year-old youth was one of four people who died when NP and APF fired live ammunition directly into a crowd on 22 January. One of those who died in the context of the protests in the Central Region was a rickshaw driver severely beaten in Birgunj. In particular, OHCHR has raised continuing concerns about the use of curfew orders to justify the use of force whatever the circumstances. On a number of occasions, police have acknowledged using deadly force against demonstrators on the grounds that the use of such force was justified in order to enforce a curfew order. This was the case during the *Madheshi Andolan* and also in the case of the recent killing by the APF of a Limbuwan activist in October 2007. An APF official told OHCHR that the curfew order in effect gave them blanket authority to fire on the crowd. During a meeting with the Representative of OHCHR on 23 November, however, the Inspector General of the APF denied that this was APF policy. Nepal Police interviewed by OHCHR after another incident in June in the Eastern Region, during which a youth was shot dead, said that it was the first time they had been deployed for crowd control and claimed they had received no specific instructions or training on how to proceed.

⁶ <http://nepal.ohchr.org/en/index.html>

As indicated above, human rights violations relating to freedom of assembly also include situations where the authorities fail to act to prevent intimidation and violence prior to or during demonstrations. The most serious single such incident during this period related to the 21 March killing of 27 CPN-M cadres in Gaur, already documented in OHCHR's report on its investigations⁷. In spite of visible escalating tensions between the Madheshi People's Rights Forum (MPRF) and the CPN-M/Young Communist League (YCL) as they organised simultaneous rallies in the same place, local authorities were unable to control the situation, and several hundred APF, as well as NP who were present in the area subsequently did nothing to stop the brutal attacks on the CPN-M cadres when the crowd of MPRF supporters turned on them (see also impunity).

CPN-M

At the same time, CPN-M cadres themselves have been responsible for a number of abductions or assaults on journalists, members of political parties or others, as well as one disappearance. Of the five alleged killings by CPN-M cadres since the CPA, one of the victims was a journalist and another was a member of a political party.

Fourteen cases of incidents impacting on journalists and media were attributed to CPN-M cadres, mostly in the Far Western region (eight cases), but also in the Central Region (five cases). The most serious case involving a journalist was that of the killing of Bara District journalist Birendra Sah after his abduction by the CPN-M on 5 October 2007 (see below). The CPN-M acknowledged that some of its cadres were responsible. They said that they had expelled those responsible from the party and that they would cooperate with police in taking action against the perpetrators. Sah's body was found on 8 November. To date, the perpetrators remain at large. While noting the statement acknowledging the killing, OHCHR reiterated its concerns about on-going abductions by CPN-M cadres (see below) and the fact that disappearances and killings are the worst consequence of such abuses.

On 5 July 2007, a pro-monarchy journalist, Prakash Thakuri, was abducted in Kanchanpur and his whereabouts remain unknown. A group calling itself the National Republican Army claimed responsibility and said the journalist had been killed, but the body has not been found. The CPN-M denied responsibility, but one of its cadres was arrested in connection with the abduction shortly afterwards though subsequently released. Since the attention given to the Birendra Sah case and increased pressure on the authorities, in November the CPN-M cadre was rearrested, along with one other CPN-M cadre who has since been released.

A number of incidents have also been reported in the context of labour disputes by CPN-M affiliated trade unions, including in media houses such as Kantipur and the Himalayan Times. While trade unions have certain rights to take actions in labour disputes, there have been reports of threats and other illegal actions used in the context of the protests which are contrary to the law.

OHCHR also followed up 46 reports from 36 districts, mostly between July and October, of CPN-M cadres themselves involved in abductions (23 cases), assaults or acts of humiliation targeting members of political parties (23 cases). Whilst it was not always clear how far the motive of the incident related to the political affiliation of the individual concerned – in a number of cases the individuals were accused of corruption or had been involved in personal disputes – some were targeted due to their perceived royalist links. The impact of such incidents has been to create an atmosphere of intimidation against political party members and supporters. Such assaults and abductions also amount to human rights abuses and violations of human rights commitments made by the CPN-M.

⁷ <http://nepal.ohchr.org/en/index.html>

Thirty-six of the reported incidents involved NC/NC – Democratic (NC-D) supporters or members, 18 involved CPN-United Marxist Lenin (CPN-UML) members and 15 involved members of RPP parties. (It should be noted, however, that some of the incidents against the RPP parties also involved parties belonging to the Seven-Party Alliance (SPA) acting with the CPN-M as part of a series of anti-royalist activities.) As reported below, an abducted NC-D member was subsequently found dead, although DNA tests have yet to be carried out to confirm the identity of the body.

Among the other cases reported to OHCHR were the “blackfacing” and attempted expulsion from the district of an ex-RPP member and an ex-DDC Chairman (in July); the blackfacing, on 21 September, of a CPN-UML former VDC Chairman accused of corruption and financial irregularities with a school budget; the painting of graffiti on the walls of the home of a former DDC Chairman and current RJP District Secretary and the evicting of his tenants; and the painting of graffiti on the home of an alleged supporter of the royal regime.

Obligation of protestors to respect the rights of others

OHCHR has also been seriously concerned about the failure of members of political parties and of Madheshi, Janajati/Adivasi and other groups to respect the civil and political rights of others, particularly in the context of violent demonstrations. The ICCPR states that no State, individual or group has any right to destroy the rights of others enshrined in the Covenant. Organisations and individuals must respect the rights of others to peaceful assembly and to hold views and opinions different from their own.

Many protests have been peaceful during the period under review, including rallies with thousands of participants. Nevertheless, there was extensive violence, including brick-throwing and damage to property during the *Madheshi Andolan*, as well as in other demonstrations and protests. Journalists have occasionally been beaten up while covering protests organised by Madheshi or other organisations. In one case during the *Madheshi Andolan*, five journalists who were covering a “goodwill” rally to call for peace were suddenly attacked by an approaching group of MPRF supporters who reportedly accused them of not covering an MPRF event that had taken place the previous day. They were eventually rescued by the crowd, and two of them were hospitalised briefly after being beaten with *lathis* and iron rods.

In the face of announcements of mass protests in the coming weeks and also threats by some groups to take up arms if there is no solution to the demands of the different organizations, OHCHR continues to advocate very strongly that any protests, demonstrations or other activities to call on the Government to address their demands must be peaceful, and respect the rights of others.

6. Right to liberty, physical integrity, security

State institutions and CPN-M entities have violated provisions of the CPA and of international human rights law relating to the rights to liberty, security and physical integrity. Systematic torture in unacknowledged detention (especially in NA barracks) of those suspected of having links with the CPN-M had largely ceased prior to April 2006, but the torture and arbitrary detention of criminal suspects by police have persisted.⁸ In addition, OHCHR has noted that certain practices common during the conflict have occasionally reappeared – mostly in connection with the arrest of individuals accused of belonging to armed groups. These have included several cases of unacknowledged detention, beatings, failure to observe court orders regarding releases, several cases of illegal (unacknowledged) detention by the APF and one case of an extrajudicial execution after arrest. Although deaths

⁸ The Government has described OHCHR’s allegations regarding torture and ill-treatment as baseless (see appended *Observations of the Government of Nepal*).

related to abductions, ill-treatment and torture by the CPN-M dropped sharply after the signing of the CPA, abductions, torture and other abuses began to rise sharply again in April 2007, as well as in October.

Senior police officials (Nepal Police and Armed Police Force) have informed OHCHR that they are making efforts to address these violations, but these efforts need to be considerably reinforced to eradicate the practices and institutionalise changed behaviour. Likewise, recent statements, in November, by Chairman Prachanda that directives have been given to stop abductions and other abuses are very important, but must be matched with concrete steps to implement the directives, including cooperation in handing those responsible over to the State authorities for investigation and prosecution.

State authorities

OHCHR has been carrying out regular visits to police stations to assess respect for judicial guarantees and due process of those held in police custody as well as treatment of detainees and has carried out more than 110 such visits since the beginning of the year, including visits to District Police Offices (DPOs), Area Police Offices (APOs), other police stations and Metropolitan police range offices (inside Kathmandu valley).

The most serious cases of illegal detention by police relate to four individuals accused of involvement in three bombings in Kathmandu in September. The four were held in secret, unacknowledged detention for up to 11 days. During that time, police denied to OHCHR that they were holding them and OHCHR was denied access to them, even initially after their detention was eventually acknowledged. In spite of information gathered by OHCHR that confirmed their arrest on 10/11 September, police subsequently recorded the arrest date as the day on which they were presented to a judge. They were reportedly beaten while held in unacknowledged detention, and reportedly signed, under duress, “confessions” or documents which they were unable to read. These concerns have been raised with the highest police authorities.

During its visits to police stations and through other channels of information, OHCHR received almost 100 allegations of ill-treatment and sometimes torture of mostly criminal suspects, including six female detainees. Twelve were reportedly juveniles, including a 12- and a 14-year-old boy. The alleged torture/treatment has included slaps, beatings with sticks and *lathis* and pipes, kicks to the chest, soles of the feet and ribs, and in one case a mock execution. At times OHCHR witnessed injuries consistent with the allegations. In several cases, detainees were threatened not to talk to OHCHR and on several occasions detainees were reportedly hidden prior to OHCHR’s visits. Much of the ill-treatment and torture appeared to be related to the extraction of confessions during interrogation. In September, OHCHR raised with police officials the cases of six detainees, including that of a 14-year-old boy, who were subjected to torture/ill-treatment in Morang and Sunsari Districts. No criminal investigations have been launched, even though in one case an internal inquiry found four police responsible and imposed minor disciplinary sanctions.

One detainee held by police in Biratnagar is reported to have died as a result of torture, in February 2007, and another man was apparently beaten to death in the street in Kavre in June. On 16 November, OHCHR also wrote to the Inspector General of Police raising concerns about the findings of its investigations into the killing of an alleged armed group member after his arrest in Bara in August, which the Office concluded was an extrajudicial execution. No criminal investigations have been launched into the deaths to OHCHR’s knowledge.

In March 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presented a report to the Human Rights Council (A/HRC/4/33/Add.2) which included an evaluation of the follow-up to the recommendations of the report which he had made following his visit to Nepal in September 2005. Many of the

recommendations have yet to be implemented. He concluded in particular that the question of accountability for torture, the routine torture and ill-treatment of criminal suspects by police, and limitations on rights to due process as well as issues related to the use of excessive force remain to be addressed.

In the course of its visits to police stations, OHCHR has also documented many cases where detainees have not been provided with letters of arrest/detention, the detention of juveniles in inappropriate conditions, irregularly kept detention log books and detainees kept beyond the period by which they should be taken to court. Some of these irregularities have been addressed by police authorities following interventions by OHCHR, but in an ad hoc manner.

OHCHR has also raised a number of concerns about human rights violations, including torture and arbitrary detention, in National Park custody facilities, and is currently discussing ways of addressing these issues with national park authorities. (National park wardens have the authority to detain and sentence those suspected of committing crimes in national park property.)

In addition, OHCHR has been monitoring the arrest and detention of individuals accused of belonging to armed groups. Particularly following Home Ministry instructions on 2 April 2007 to local authorities and security forces to step up actions to control violence aimed at disturbing peace and security, there were sporadic signs of police taking more assertive action and arresting individuals accused of links with armed groups. A number of alleged members of armed groups have been arrested in the Central and Eastern Regions since April 2007. A significant number were released, some after “surrendering”, whereby no charges are brought against the individual provided they commit to not rejoining the armed groups and, in some cases, provided they report regularly to the authorities. This practice, which appears to have no legal basis, was common during the armed conflict.

The APF has become increasingly involved in arrests related to armed groups, and some detainees were illegally held and interrogated by the APF for short periods in the Terai districts of the Central and Eastern Regions. The APF do not have powers to detain or interrogate, nor do they have detention facilities or detention registers, thus creating the conditions for violations of the right not to be arbitrarily detained and the right to due process. Two cases were recorded by OHCHR in November in Rautahat where the APF held individuals suspected of belonging to armed groups and subsequently released them after a short period of time. The APF reportedly did not inform the NP of the arrests, nor did they hand them over to police prior to their release. In one of the cases, the suspects had been arrested with someone they had abducted. All were released, apparently on the grounds that they were not in possession of any weapons, even though the alleged JTMM-JS members had been caught *en flagrant delit* with an abductee. The abductee himself was later killed on 27 October, JTMM-JS claiming responsibility and accusing him of being a spy.

In May, OHCHR wrote to the Home Ministry to express concerns about the renewed practice of re-arrests after several individuals accused of links with armed groups were ordered to be released by court orders but immediately re-arrested on other charges. In one case in April, a detainee was held in unacknowledged detention for several days after a court had ordered his release. He was eventually taken from a police station to prison in another district. Only two such cases of re-arrests have been reported since May, in the Eastern Region in November.

Although the majority of CPN-M linked detainees arrested during the conflict and held under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO)⁹ – which subsequently lapsed – were released from prison, a number remain in detention mostly on

⁹ OHCHR had documented many irregularities in the cases of those detained under TADO and the ordinance itself was extensively criticised because it violated human rights principles.

criminal charges. At least 33 of these are reported to have been released in 2007, apparently after the Cabinet withdrew charges against them in accordance with provisions of the peace accord. OHCHR is aware of at least 29 detainees reportedly linked to the CPN-M who remain in detention, 17 convicted and 12 still in pre-trial detention, including three women who were juveniles at the time of their arrest. The three women have been held in pre-trial detention since 2000 and 2001 respectively, in violation of the right to due process. One detainee has been held in pre-trial detention since 1998 and two others since 2003.

OHCHR is nevertheless concerned that no-one accused of offences which may amount to serious human rights violations or abuses – whether state agents or non-state actors - should be amnestied, in accordance with international human rights standards. The Comprehensive Peace Agreement itself includes a clause allowing both parties to withdraw accusations and complaints against individuals for political reasons, to make public the state of those imprisoned and immediately release them. OHCHR opposes the dropping of charges against and release of anyone in cases where there are reasonable grounds to believe they were responsible for serious human rights violations or abuses. In November, CPN-M cadres abducted two court officials to pressure them to drop charges against other CPN-M cadres (see *Impunity/Accountability* below). OHCHR has also noted that some agreements in the context of the peace process have included clauses allowing the release of members of different organisations (for example a September agreement with CBES) without consideration as to the legitimacy of charges against the individuals.

After the release and apparent amnesty of some CPN-M detainees, detainees accused of criminal offences organized protracted protests in a number of prisons calling for a general amnesty. In some cases, prison authorities were locked out of prisons for prolonged periods and prison infrastructure was damaged. On 21 June 2007, the Home Ministry formed a high level committee on prison reform. The seven-member committee, including four MPs, two human rights activists and the Director General of the Prison Management Department (PMD), was to visit 50 prisons and focus on: responses to prisoners' amnesty demands; a review of existing laws and regulations on parole for well-behaved detainees; and an assessment of the need for improvements to the physical infrastructure of prisons. In September, OHCHR and the International Committee of the Red Cross (ICRC), with the PMD, conducted a four-day workshop on prison-related human rights issues for prison managers from throughout the country for the first time. It was also attended by members of the prison reform committee. OHCHR has raised concerns on a number of occasions about the lack of appropriate follow-up, including investigations, with regard to violent incidents inside prisons, in particular in Morang jail, which have resulted in serious injuries and at least one death.

CPN-M

Although the number of abductions, assault, ill-treatment and other abuses by CPN-M dropped significantly immediately after the signing of the CPA, there has been a resurgence since April 2007 and particularly in October/November, against the backdrop of the political crisis. A pattern of killings and suicides after abduction had ceased shortly before the signing of the CPA. Three such cases have been reported since then. In one case, an individual died in CPN-M captivity in December 2006 in Rolpa District. Sources contested the CPN-M claims that he had committed suicide. The other two cases of deaths following abduction since then have been the abduction and killing of Birendra Sah (mentioned above) – for which the CPN-M acknowledged responsibility - and the case of a member of the Nepali Congress-Democratic Party (NC-D) abducted by the CPN-M on 10 March in Humla, Mid-Western Region, who disappeared subsequently. The CPN-M claimed that he escaped. However, a body thought to be that of the victim was found in June and it is believed he most likely died as a result of injuries sustained in captivity. A CPN-M cadre has also been arrested by police for his alleged involvement in the abduction and disappearance of the Kanchanpur journalist in July 2007 (also mentioned above). Two CPN-M cadres were also reportedly expelled from

the party and – exceptionally – handed over to police after an 18-year-old youth was beaten to death for unknown reasons in Bhojpur District in March.

A member of the MPRF also disappeared after his abduction in Kathmandu on 13 June. However, OHCHR was not able to confirm initial reports that the YCL was responsible for his alleged abduction.

Since the signing of the CPA up to the end of October 2007, OHCHR has confirmed the abduction of 192 individuals in different parts of the country: 75 in the Central Region, 46 in the Western Region, 34 in the Mid-Western Region, 20 in the Far Western Region, and 18 in the Eastern Region. Abductions were primarily but not exclusively reported in the context of “law enforcement” activities, or enforcement of the CPN-M’s social norms, for example with regard to “illicit” sexual relations. Some also occurred during the disruption of political activities described above. In many cases, those abducted appear to have been interrogated – and sometimes severely beaten. In several cases, OHCHR experienced long delays in being granted access to those held. Furthermore, in one case in November 2007 a YCL leader blatantly repeated to OHCHR threats he had made to a victim to cause him physical harm. A report issued by OHCHR in June documented allegations of human rights abuses by the YCL, including abductions, ill-treatment and torture.

The period of captivity usually lasts for a few hours or several days although some have been held for up to a week or more, with the victims either then being handed over to police or released. It should be noted that since the CPA, CPN-M cadres have more frequently handed individuals suspected of crimes to the police and in some places police have described the collaboration as positive. Nevertheless, taking individuals to undisclosed locations for interrogation and sometime ill-treatment or torture violates the most basic of human rights principles. In several cases, individuals have been handed over to the police with visible injuries allegedly due to beatings without any action being taken to sanction the ill-treatment or torture. Disappearances and killings are the worst consequences of these practices, which undermine the commitments of the CPN-M to uphold human rights. OHCHR has repeatedly raised these concerns with the CPN-M at all levels and is reiterating its call on the leadership to ensure that these practices cease.

7. Parallel Structures

The CPA commits the parties to dismantling any parallel structures. After the signing of the CPA and in particular after the Interim Constitution was adopted, the CPN-M for the most part dismantled its People’s Government and “people’s courts”. A number of individuals who had been “sentenced” to long periods of forced labour by “people’s courts” were released or handed over to the police. Nevertheless, local mediation and “justice” mechanisms of various forms persisted in some places, for example “people’s justice committees” in Kailali and Baitadi (Far Western Region). Recently, CPN-M/YCL in some areas are increasingly reported to be carrying out parallel “police” patrols, including focussing on “social crimes” and enforcing bans on the sale and consumption of alcohol. There have also been concerns with regard to the CPN-M’s recent decision to establish United Revolutionary People’s Councils (URPC) down to the municipality level to “resolve people’s problems and help provide justice to the people”, as announced in a press release of 4 August 2007. As in the case of the “people’s justice committees”, OHCHR has begun to receive complaints of threats and intimidation in the context of such activities. (See also *Rights to liberty, security, physical integrity*)

The resumption of CPN-M activities with regard to donations from teachers, tourists and others recently is also of concern. Even if not explicitly accompanied by threats, knowledge

of the capacity of the CPN-M to exert pressure, threaten, intimidate and act with violence often results in the “donations” being given.

8. Non-discrimination/social inclusion/participation

Longstanding discrimination - on the basis of caste, ethnicity, gender, geographic and other considerations – has emerged as a critical issue affecting the peace process. The Government of Nepal has extensive international obligations with regard to non-discrimination and the right to participate, including in terms of individuals right to participate in the conduct of public affairs directly or through chosen representatives. These obligations are included – inter-alia - CERD, ICCPR, the Convention for the Elimination of Discrimination against Women (CEDAW), the International Convention on Economic, Social and Cultural Rights (ICESCR) and ILO Convention 169 relating to indigenous people.

New legislation has been passed and political agreements reached which should have had some impact on fulfilling the Government’s international human rights obligations. The CPA committed both parties to addressing discrimination. The Interim Constitution included for the first time provisions, in Article 14, defining the right to non-discrimination and the right not to be subjected to untouchability¹⁰ as fundamental rights. However, these provisions do not explicitly prohibit acts of discrimination in private places, nor do they include provisions to order the enforcement of laws which punish such acts and provide compensation. Without such provisions, implementation remains a challenge.

Another important piece of new legislation is the Citizenship Act, adopted in November 2006, which enabled many to obtain citizenship certificates for the first time, including in the Terai. This Act also removed some aspects of gender-based discrimination – for instance by permitting both mothers and fathers to transmit citizenship to their children. The Act, however, still contained some discriminatory provisions against women. In particular, the Act places additional requirements with respect to the spouses of, and children born to Nepalese women married to non-nationals than those required by the spouses and children of Nepalese men married to non-nationals. Some concerns remain about certain Madheshi, Dalit, and Muslim communities, and women from these communities not being able to obtain citizenship certificates, especially given the documentation requirements imposed by the Act, including land ownership/tenancy receipts, or in their absence, statements from three (existing) citizens.

Despite commitments to inclusiveness in the CPA, official statements and the Interim Constitution, social exclusion remains a major problem. Women, Madheshis, Dalits, Janajatis and other marginalized groups continue to be severely under-represented in most political party central committees, state structures such as courts and police, local authorities and other entities. In August, a new Civil Service Bill was adopted, requiring 45 percent of posts for women (33% of the 45%), Madheshi (22%), Janajati/Adivasi (27%), the so-called ‘backward regions’ (remote/underdeveloped areas) (4%), Dalits (9%), and physically challenged people (5%), but the legislation still needs to be implemented. The Government announced in October that quotas of posts in the NP and APF would be reserved for women and marginalised groups. In mid-November, the Nepal Police Regulation and the Armed Police Force Regulation were amended to incorporate the new provisions. OHCHR will monitor their implementation, although no new recruitment process has been announced which would enable these quotas to be implemented. It has nevertheless received reports that out of 35 Secretaries recently appointed by the Cabinet to 19 different ministries and eight committees and Offices, only one was a woman.

¹⁰ Untouchability already existed as a criminal offence, but the Interim Constitution defined the right against untouchability as a fundamental right for the first time, including the right to compensation.

In terms of the CA elections, two hundred and forty of 497 seats of the CA will be filled through the proportional representational system. The CA Election Act itself contains complicated provisions requiring marginalised groups to be proportionally represented in political parties' candidate lists and that at least 33 percent of candidates be women. Parliament recently passed a motion supporting the adoption of a fully proportional representational electoral system. However, this will require a constitutional amendment to be implemented. It is unclear how this would impact on the quota system if adopted. OHCHR does not advocate for or support any specific electoral or governmental system, but rather bases its advocacy on the need to respect the rights to adequate participation and non-discrimination in accordance with international standards.

The question of women's representation and participation in the peace process has barely been addressed. Security Council resolution 1325 reaffirmed the important role of women in the resolution and prevention of conflicts as well as stressing the importance of equal representation and full involvement of women in all aspects of maintaining peace and security. It called on member states to ensure the increased representation and participation of women at all decision-making levels in conflict resolution and prevention as well as in peace-building. In spite of recognition of the importance of women's rights and representation and the CPA and the Constitution, there has been little progress in practical terms of addressing the extreme lack of participation of women at all levels of government and in political parties. Women parliamentarians, activists and members of political parties have expressed their deep disappointment and frustration at this, and there is a need for affirmative action to demonstrate a genuine commitment to these principles.

In the context of talks with marginalised groups, the Government reached agreements with the Nepal Federation of Indigenous Nationalities (NEFIN), on 8 August, with the MPRF, on 31 August, and with the CBES on 13 September which relate, inter-alia, to representation, inclusiveness, respect for indigenous rights and participation of marginalised groups in public affairs. OHCHR notes, however, that the process of dialogue has not been fully participative and not entirely reflected the views of all marginalized groups. As a result, not all groups feel common ownership or that they have been genuinely consulted. At the same time, the organisations that signed the agreements are also challenging the slow pace of implementation. A comprehensive approach to the question of participation, non-discrimination and representation of Dalit, Madheshi, Adivasi/Janajati as well as other marginalized groups has been lacking, with the dialogue and talks taking place with different groups separately and agreements being reached piecemeal. In terms of the right to participation, the process of dialogue must ensure that it reflects the views of those at the geographical margins in remote and isolated parts of Nepal. Some of the Adivasi/Janajati groups are highly marginalized and in danger of losing their language, identity and culture. This threat to their individual and collective rights must be recognized and protected.

OHCHR has also noted the lack of participation of Dalits from remote parts of the country in the national dialogue, or at the district level. Dalit groups are the most under-represented in decision-making and state structures. Any discussions on the future of the state must ensure that minority rights are protected in Adivasi/Janajati areas, and that Dalit rights and representation are discussed thoroughly, including within Madheshi dialogue.

In the absence of perceived satisfactory solutions to these questions, protests, rallies and *bandhs* have continued throughout the year as marginalized groups press the Government to take more significant measures to address their demands for political participation, representation, self-determination and autonomy. Persistent *bandhs* along the Terai region have severely impacted on freedom of movement and access to basic services, including medical assistance and education. Numerous acts of violence have occurred in the context of the protests as protestors have at times resorted to stone-throwing and destruction of property, as well as physically assaulting others.

As already indicated above, the action of the security forces has also been called into question on numerous occasions, either because of the lack of action to intervene and stop the violence but also in the use of excessive force. Following the arrest and illegal detention of Madheshi activists for burning a copy of the Interim Constitution on 16 January, the MPRF organized Terai-wide strikes which gathered momentum over the following weeks and which were particularly sparked off by the fatal shooting, by a CPN-M cadre, of a protestor in Lahan on 19 January. At least 24 individuals died in the context of the sometimes violent protests, 19 of them as a result of police action (see above). One policeman was also killed during this period. The lack of redress for these incidents has also resulted in increased tensions. There have recently been new threats of violence by indigenous and other groups should the Government not accede to their demands. OHCHR calls on all such groups to use only peaceful means to advocate for their demands.

At the same time, it should be noted that deep-rooted discrimination cannot be eradicated by Constituent Assembly elections alone. Much can and needs to be done to implement existing legislation outlawing discriminatory practices and amending other discriminatory provisions which exist in the law. This includes also holding anyone responsible for discriminatory practices accountable for their actions before a court of law. Confidence-building measures and improved delivery of public services to communities which have suffered the most neglect and discrimination will also be important steps.

9. Economic, Social and Cultural Rights

The realization of economic, social and cultural rights (ESCR) is intimately linked to discrimination in Nepal. Enormous disparities in access to land, food, health, shelter, water and other basic needs were among the root causes of the conflict, and continue to be major issues in the transition process. The CPA contains a range of provisions committing the parties to fulfilling economic, social and cultural rights without indicating mechanisms and policies to do so. The focus on the political process leading up to CA elections, security and other issues has diverted attention from addressing issues affecting economic, social and cultural rights, particularly in the medium and long-term. In May, the Committee on Economic, Social and Cultural Rights presented its concluding observations on its consideration of the second periodic report by the Government of Nepal (E/C.12/NPL/CO/2). It welcomed a number of positive steps taken by the Government, but at the same time regretted that most of its 2001 recommendations had not been implemented. Its concerns included extreme poverty, especially in rural areas, continuing gender inequalities in spite of legislative guarantees, human trafficking, high unemployment, domestic violence and child labour. Concerns were also noted about the lack of a national housing policy, caste discrimination, the lack of access to justice and primary education, as well as poor health services. The Committee's concluding observations contained numerous recommendations including the development of a mechanism to evaluate progress in combating poverty.

A team of UN consultants who visited Nepal in February to examine possible OHCHR strategies with regard to poverty reduction also noted that while the representation of marginalized groups was an important focus of the transition, there was a widespread neglect of the poverty eradication agenda and other measures for addressing economic and social discrimination. The team concluded inter-alia that pervasive poverty and low human development¹¹ in Nepal was clearly linked to a failure to ensure that development reached all regions and to recognise the rights of Nepal's diverse groups.

¹¹ Human development is measured according to a comparative index compiled by the UNDP in relation to a series of criteria such as life expectancy, literacy, access to information, health and education, participation and standards of living.

OHCHR itself has been focussing its work on ESCR through the optic of discrimination. As part of its monitoring work, OHCHR has been looking at selected individual cases of discrimination including against Dalits and has identified four broad categories of discrimination and violence which has deeply impacted on their economic, social and cultural rights: enforced practices of caste-based occupations and the resulting patterns of untouchability stemming from these occupations, including prohibition of access to public places and water and other resources, as well as private places; imposing socio-economic blockades against Dalit communities, as well as violence at the individual or collective level from members of the non-Dalit community when they refuse such practices; forced evictions from/burning of housing; and sexual violence against Dalit women. This discrimination and violence is often followed by a refusal by authorities to register their cases and undertake necessary corrective action. Such situations constitute a violation of the right to an adequate standard of living, including food, clothing and adequate housing, and to the continuous improvement of living conditions.

In the context of its work on ESCR and discrimination, OHCHR has held a number of discussions with community groups across Nepal which show that there are countless other incidents against Dalits, indigenous groups and others that go unreported for a variety of reasons. These include: a fear of reprisal from the non-Dalit community; acceptance of caste-based discrimination by Dalits and its resultant stigma; a low level of awareness in many VDCs of human rights and procedures for access to justice; political pressure and mediation preventing access to justice; dismissal or refusal by authorities to entertain complaints of those facing discrimination; barriers to education and resources; and language barriers in the Terai.

Consultations with indigenous groups also included focus group discussions and interviews to assess the socio-economic impact of conflict-related disappearances on indigenous Tharu family members following the end of the conflict in Nepal. The assessment revealed a high level of food insecurity for many family members. The disappearances also had a direct bearing on the ability of family members to send their children to school and generate sufficient income for the family.

OHCHR has also been monitoring the situation of *ex-Kamaiyas* (freed bonded labourers). On 25 July, the Government signed an agreement which sets out a timetable for the allocation of land and other support measures to *ex-Kamaiyas* after protests in the Far and Mid-Western Regions and in Kathmandu. Although legislation was passed in 2002 which banned the use of bonded labourers and freed them from debt, compensation and rehabilitation measures have never been fully implemented. Some steps have been taken to begin implementing the agreement. As of November, according to reports, 700 out of 6,200 *ex-Kamaiya* families in the Kailali district (Far Western Region) had been allocated land and other support and local leaders expressed concerns about the slow pace of implementation, which must be completed, in accordance with the agreement, by April 2008.

The agreement with NEFIN mentioned in the section on discrimination included a government commitment to ratify ILO Convention 169, which it did on 14 August 2007. Implementation will require actions to be taken on culture, land, natural resources, education, traditional justice, recruitment and employment conditions, vocational training, social security and health for indigenous people, as well as the development of a mechanism for consultation and participation in governance. A few days earlier, the Government also ratified ILO Convention 105 which bans forced labour. The ILO is also assisting the Government, as well as trade unions and employers' organisations in undertaking labour market reform, including the need for reform of labour laws; social security laws; the trade union act; the establishment of institutions that facilitate the implementation of these laws; and the development of a monitoring mechanism to ensure implementation of the labour laws.

Land issues have come increasingly to the fore during this period, with some forced evictions, conflicts between landowners and landless, and land seizures by a range of organizations including Tharu-led groups and also the JTMM. The CPA included a commitment to establish “scientific land reform”. However, there is currently no land reform programme, or cohesive land policy or mechanisms to ensure either the effective return of land or property confiscated during the conflict or land disputes which are continuing to emerge. These issues are extremely complex and require in-depth examination, including from a rights perspective.

10. Gender issues¹²

In addition to the question of women’s representation addressed above, discrimination against women, including the double discrimination affecting women from marginalized groups, remains one of the major challenges. Gender-based violence, including domestic and sexual violence, the risk of trafficking, discriminatory laws, and especially a lack of access to justice to seek redress for abuse and/or discrimination continues to impact the lives of women.

The CPA contains a commitment to protect the rights of the women in a special way by immediately stopping all types of violence against women. Some 40 cases of sexual violence were reported to OHCHR this year, but it should also be noted that the taboos surrounding sexual violence mean that many cases are unreported. A particularly disturbing aspect is that 24 out of 38 victims whose cases were reported to OHCHR were girls under 18 years old. The cases include incidents of upper caste individuals reportedly raping Dalit women. Access to justice for victims of sexual violence continues to be a serious problem. It ranges from medical doctors refusing to give a medical examination in the absence of police report, the police refusing to file a First Information Report (FIR) in the absence of a medical report, to threats against the victim and her family to withdraw the accusations in the rare case that she manages to press charges. Although in a few cases individuals accused of rape have been detained, there is an increasing trend of settling the cases outside of formal justice mechanisms i.e. through community mediation where the victim receives meagre monetary compensation and the perpetrators remain at large. NGOs who support victims of sexual violence continue to be the targets of violence by members of local communities and others. For example, OHCHR investigated reports that MPRF supporters in one Eastern district threatened a local women’s organisation, demanding that they refrain from activities such as denouncing sexual violence.

The legislative framework related to gender issues also needs considerable strengthening. Supreme Court hearings of a petition to amend the statute of limitations for presenting complaints of rape (currently only 35 days) have been repeatedly postponed this year. A technical committee was set up in June by the Government to finalise a bill on domestic violence. A roundtable of experts raised the importance of criminalizing domestic violence, rather than focusing primarily on mediation. As of November, the draft bill had yet to be finalised. The Human Trafficking (Control) Act was passed in July which significantly strengthened measures against trafficking, including broadening the definition of trafficking, increasing penalties and enhancing victim protection as well as defining child victims as persons up to the age of 18. However, it placed the burden on the accused to prove his/her innocence. The impact of the new Act has yet to be assessed.

On 16 October, after a six-month campaign, a Memorandum of Understanding (MoU) was signed between the Badi community (from the West, Mid and Far West of Nepal) and the Ministry of Peace and Reconstruction. The Badis are the most marginalised group amongst the Dalit community and are looked down upon as sex workers, (though many of them are not

¹² In its observations, the Government of Nepal stated that this section was “subjective” and that the comment “needs to be objectively based on the facts and evidence.”

involved in prostitution.) Among the grievances addressed by the agreement are the right to take citizenship with the surname of their choice, an end to the forced use of derogatory surnames; and free schooling for children of the Badi community, possibly in some cases with boarding facilities. A working committee of government representatives and members of the Badi community was to be set up to monitor the implementation of the agreement and draft a report within six months.

Discrimination also continues to occur on the basis of sexual orientation. OHCHR has intervened on a number of cases of arbitrary arrests and alleged ill-treatment by police of Lesbian, Gay, Bisexual and Transgender (LGBT) individuals. On 21 and 23 November, the Supreme Court held a final hearing on a petition calling for a law on the protection of sexual minorities, with a decision expected in late December. Representatives of the transgender community have also been advocating for the inclusion of a third gender category on citizenship certificates in recognition of their identity.

11. Child rights

Since the ceasefire and especially since the signing of the CPA, certain types of violations and abuse against children have decreased significantly. Large recruitment drives have ended, the use of schools for military purposes has ceased with a few exceptions. In January 2007, the Government also ratified the two optional protocols to the Convention on the Rights of the Child - relating to children and armed conflict and to the sale of children and child prostitution - which it had previously only signed. However, there are many challenges to strengthening child protection and the protection of child rights, including strengthening coordination between all ministries responsible for implementing policies and legislation related to children. Although the CPA and the Interim Constitution recognise the importance of child rights, the legal framework still needs to be strengthened and a review of legislation has yet to be completed.

Birth registration – essential for access to services as well as to ensuring the right to an identity – is not compulsory and remains very low. OHCHR itself has documented a number of irregularities with regard to the detention of juveniles in police custody and in prisons. Children continue to be particularly vulnerable to trafficking in spite of new anti-trafficking legislation. A small number of others have been abducted by the CPN-M in the context of their “law enforcement” activities. In addition, the economic, social and cultural rights of children continue to be deeply affected by discrimination, inequalities and poverty. Although access to schooling has improved, further steps need to be taken to strengthen the right to education, for example making education compulsory at primary level. Children’s right to food is also being violated - according to UNICEF’s statistics, 49 per cent of children are malnourished in Nepal. The country also has the highest instance of child labour in South Asia, including as domestic workers. This includes the practice of *Kamlari* – the selling of Tharu girls between the ages of 7-16 to rich households to work as domestic helpers in the Mid and Far Western Regions – which continues despite the fact that it was banned by the Supreme Court in September 2006. This is blamed on the failure of the authorities to enforce the ban and to protect children against abuse.

The legacy of the conflict is also continuing to have an impact on children. Eight children have died since the signing of the CPA and 38 have been injured as a result of explosions from landmines and Improvised Explosive Devices (IED) left behind during the conflict. The delayed formal release of young people verified as being under 18 on 21 May 2006 from People’s Liberation Army (PLA) cantonment sites remains a concern as well as pressure on, and in several cases forcible return of young people under 18 to the cantonments after they have left on their own volition, the most recent case being in November 2007. The UN Secretary General’s report to the Security Council in October noted that substantial numbers

of young people under 18 had been identified in the verification of the first three PLA cantonment sites. No formal discharge has taken place so far, although it appears that many children may now have left the camps outside of a formal release process, which makes it more difficult for them to benefit from reintegration programmes. UNMIN is working with UNICEF and child protection agencies to organise the management of the formal programme to discharge those under 18 from the cantonment sites and reintegrate them into their families.

Large scale abductions by the CPN-M of children and teachers from schools which were prevalent during the conflict had ceased by mid 2006. However, as recently as mid-November, there have been cases of large numbers of schoolchildren, including young children, being taken in buses to participate in protests especially by the CPN-M. CPN-M including YCL have been using schools premises for political activities, as have other parties who have set up school unions. Closure of schools for political activities has also been reported in some places. An increasing concern over the last year has been the use of children by political parties and other groups such as the MPRF in protests where they risk being exposed to violence. At least five young people under 18, including one young woman, have been killed in the context of protests this year and others injured. (Four of them were killed by police, the fifth was a CPN-M cadre killed in Gaur.) While not opposing the right of young people to participate in protests, provided it is voluntary, child protection agencies have been advocating that political parties and the Government take special measures to prevent the exposure of young people to risks of violence, including in the context of any electoral process.

Overall, it should also be noted that few steps have been taken to ensure effective accountability for violations and abuses against children committed by both parties during and after the conflict, including the case of Maina Sunuwar mentioned below, as well as a number of young people who were arrested and disappeared and whose whereabouts remain unknown.

12. Internal displacement

Over the past year, many of those internally displaced by the armed conflict (IDPs) have either integrated where they currently reside or have already returned to their places of origin. In some areas, returning IDPs have been unconditionally allowed to return by the CPN-M and have had their property restored to them. In other regions, the return of displaced landowners and politically-active IDPs is hampered by the failure of the CPN-M to restore all confiscated property and to ensure a conducive, safe local environment.

Local CPN-M cadres effectively decide who can return and reportedly impose conditions on return, including public apologies for alleged “wrongdoing”. In many cases, confiscated land has not been returned to displaced landowners in an effort to reform land tenure patterns and avoid problems with secondary occupants. This has been exacerbated by the absence of a proper mechanism for resolving issues related to the return of confiscated land and property. The CPA made a commitment to pursue “scientific” land reform, but there has been no apparent progress on this.

Returns have largely been spontaneous, though some have been assisted by NGOs, and most returnees need assistance and often legal aid regarding documentation or land and property issues. The Government itself has not responded fully to IDPs’ needs upon return. Those IDPs who have returned did so despite the absence of a comprehensive plan addressing the assistance and protection needs of returning IDPs. This gap has allowed district officials to remain passive in relation to supporting local return processes. In the absence of state action, such responsibility has often been shouldered by local human rights NGOs, with limited funding from international donors. It was only in late 2007 that the Government announced a

relief package of \$5.6 million from the Nepal Peace Trust Fund to support those returning and opened a new registration process so that IDPs who had never registered could do so and become eligible for assistance. Local authorities in some areas have confirmed having received the funds and started disbursing them (for example, some 600 people are reported to have recently returned to Rolpa with travel support), although it would appear that the registration/distribution process is not consistent or necessarily inclusive.

The Government has nevertheless reviewed and modified its IDP policy, which is a clear improvement, but it remains to be seen whether it will be effectively implemented. For that reason, the UN worked closely with the Government to finalize a set of Directives, based on the UN Guiding Principles on Internal Displacement, to assist relevant ministries and local authorities to implement Nepal's IDP Policy and to help IDPs understand their entitlements.

Although the IDP Policy includes that provision will be made so that IDPs can cast their vote in an election, those who have chosen not to return to their place of origin – perhaps as many as 50,000 -- will be effectively disenfranchised in the forthcoming CA elections unless the CA Electoral Law is changed. The present law requires citizens to be resident in the constituency in which they vote, and there is no provision for absentee voting that would cover IDPs. Moreover, the procedures for transferring voter registration are likely to be insurmountable for IDPs, as they include the requirement that a person obtain a “migration certificate” from their place of origin. In addition, voter registration has been closed since December 2006. The Representative of the Secretary-General on the Human Rights of the Internally Displaced Persons has written to the Prime Minister on this issue urging that the situation be reviewed and remedied.

It is disturbing to note also that new forced displacement is currently taking place as a result of continuing violence in the Terai. Although accurate figures are not available, as indicated above, many people of hill origin (*pahadis*) have left the southern parts of the Terai temporarily or permanently, in fear of threats, abduction and other actions by armed groups. Several thousand people, including many children, were displaced as a result of the violence in Kapilvastu. While many have returned now, some are still in camps.

13. Impunity/Accountability

Tackling deeply entrenched impunity remains one of the key outstanding issues of the peace process and touches on all of the issues raised in this report. During her visit to Nepal in January 2007, the High Commissioner for Human Rights stressed the need to end impunity as an essential step to preventing future human rights violations, and to building a society which recognizes that no-one is above the law. Without concerted action to stop impunity, whether for killings, torture, disappearances, other forms of violence or discriminatory acts, there is no deterrent to those who are committing or who committed the acts and they act knowing that they will not be held accountable. Moreover, the right of victims to truth and justice remains unaddressed.

More than eighteen months after the ceasefire, there are almost no signs of any political will to address accountability for serious human rights violations and abuses committed either during or after the conflict. Not one member of the security forces or of the CPN-M has been held criminally accountable and convicted for killings, disappearances, torture or other abuses by the civilian courts. Offers of compensation have been made but not always disbursed to victims or their families, and usually without proper investigations to establish causes and responsibilities. Whilst reparations are important, they must not be regarded as a substitute for prosecutions. No steps have been taken to reform the security forces, a significant element of which should be the putting in place of strong measures to end impunity, including strengthening internal and external oversight mechanisms, as well as removing those involved

in serious human rights violations. Furthermore, no credible mechanisms have yet been put in place to address the broader issues, including underlying causes, of the conflict.

Truth and Reconciliation Commission

The CPA requires the creation of a Truth and Reconciliation Commission. A draft Truth and Reconciliation Commission Bill was circulated by the Peace and Reconstruction Ministry for comments in July but contained provisions which run contrary to Nepal's treaty obligations and to international principles. In particular, the provisions failed to guarantee independence of the TRC and would enable considerable leeway for government interference. In particular, it contains provisions which would lead to amnesties for those responsible for serious human rights violations and violations of international humanitarian law. Moreover, provisions within the draft failed to guarantee the independence of the commission and limits on the mandate of the Commission are proposed that would undermine its potential to provide a comprehensive account of the crimes committed during the conflict. To support the Government's efforts to establish the TRC envisioned in the CPA, OHCHR had submitted a paper to the Ministry of Peace and Reconstruction in April outlining possible next steps in the establishment of a TRC, highlighting the importance of lengthy, broad, nationwide consultations of all stakeholders, including victims, before the drafting of legislation. These consultations have not begun. It is also questionable, given the continuing violence and lack of security in the country, as to whether this is the appropriate time for a serene and effective truth-telling process. Following extensive criticism from civil society, OHCHR and the international community, the Peace and Reconstruction Ministry is now reviewing the comments it has received on the Bill and has announced five regional consultations, but the Government has not yet provided details on dates or methodology of the consultations.

Disappearances

Hundreds of cases of disappeared persons related to the conflict remain unclarified, including the torture and disappearance of individuals from the (R)NA Bhairabnath Battalion Barracks documented in OHCHR's May 2006 report, and almost two hundred who disappeared mostly after arrest by security forces in Bardiya District. A number of cases of individuals still missing after abduction during the conflict by CPN-M have also not been clarified.

During the reporting period there were several important developments with respect to enforced disappearances, but they have yet to result in real progress in clarifying the fate of the disappeared or in effective and independent investigations to establish perpetrators. In late April, the Government tabled a bill before the Interim Legislature-Parliament which would amend the Civil Code to make enforced disappearance (and abductions) a criminal offence under domestic law. Although an encouraging initiative, the bill needed significant improvement to comply fully with international human rights standards. Notably, the law would not apply to acts of disappearance committed during the conflict, and the maximum penalty for disappearance was to be five years imprisonment. Parliamentarians submitted a number of proposals to amend the bill.

In early June, the Supreme Court issued a ground-breaking decision in relation to a number of pending disappearance cases. This included an order that the Government enact a law to criminalize enforced disappearance in line with the International Convention for the Protection of all Persons from Enforced Disappearance; establish a high level commission of inquiry on disappearances committed during the conflict in compliance with international standards; conduct investigations and prosecutions of persons responsible for disappearances; and provide adequate compensation and relief to victims' families. The decision was a significant step forward in recognizing the rights of victims of disappearance and their families to truth, justice and reparations but has not been implemented by the Government so far. Furthermore, in July, the Government announced the formation of a commission of inquiry into the disappeared which provoked widespread criticism because it was not set up in accordance with the Supreme Court ruling and because it did not meet international standards.

In the latest development, in late November, the Peace Ministry announced the formation of a six-member panel to draft legislation in relation to disappearances, in particular a bill to support the establishment of a commission of inquiry. It was subsequently announced that the above-mentioned Bill on disappearances and abductions would be withdrawn. An amendment to the Civil Code was adopted criminalising abductions on 29 November and new legislation is in the process of being drafted to criminalise disappearances.

Prosecution of serious human rights violations and abuses

The legal framework concerning prosecution of serious human rights violations remains inadequate. Of particular concern is that serious human rights violations which should be subject to prosecution, are still not criminalised in Nepalese law. No laws criminalise torture or enforced disappearances, for instance. It will be recalled also that an Army Act adopted on 22 September 2006 continued to give court martials jurisdiction to try cases of disappearances and torture committed by Nepalese Army personnel, albeit with the possibility of appeal to the Supreme Court.¹³ The Government has drafted a law with respect to torture, but has not responded to OHCHR requests for a copy of the draft. There is currently no legislation which expressly criminalises war crimes, genocide or crimes against humanity. Addressing these vacuums in Nepalese law is vital for both the prosecution of past violations and to address any ongoing/future violations. The Government has also not yet acceded to the Rome Statute of the International Criminal Court, despite a Parliamentary Resolution calling upon the Government to do so and the Government's announcement of intention in 2006.

Attempts by victims, relatives of victims and NGOs to file complaints for past and on-going human rights violations by security forces and abuses by the CPN-M have met with little success. Many of the complaints were rejected by police for a variety of reasons which OHCHR considered not to be legitimate. Even when complaints were filed, they did not lead to full criminal investigations and not one member of the security forces or the CPN-M has been prosecuted and convicted as a result of a First Information Report (FIR).

By way of example, OHCHR has been following 15 FIRs which were registered in different districts up to mid-November 2007 for alleged extra-judicial killings of 18 persons, including one woman, by state security forces during the conflict. Six of them were registered in the Western region, five in the Central region, two each in Mid-Western and Far-Western regions. As of mid-November 2007, no FIRs were registered for violations and abuses committed during the conflict in the Eastern region. Eight of the FIRs name NA personnel as suspects, five FIRs accuse personnel belonging to Unified Command (i.e. belonging to different security forces, including the NA in joint operations), one FIR names "security forces personnel". So far there has been no outcome to any of the FIRs.

During the same timeframe, police also refused to register 12 FIRs alleging extra-judicial killings during the conflict period, nine of them in the Eastern region - six in Morang District and three in Khotang District. Police refused to register one FIR each in the Western, Mid-Western and Central region. One FIR which was rejected in Kavre district in Central region names CPN-M cadres as the suspects, while the remaining 11 FIRs are against the state security forces. Various reasons have been provided to OHCHR for the non-registration of these FIRs, for example that instructions from senior police officers are required, that the

¹³ The new Act also provided the exclusive jurisdiction of civilian courts in cases of rape and murder committed by Nepalese Army personnel but may allow the military, instead of civilian courts, to exercise jurisdiction over Nepalese Army personnel who commit other serious human rights violations, as well as torture and disappearances. The Act requires the Nepalese Army to cooperate with civilian authorities empowered to investigate military personnel who commit serious human rights violations, but fails to specify the individual rights of defendants in court martial proceedings to ensure a just and fair trial.

incidents had been previously reported as cross-fire by the district police office, or that the NP has to wait until the Government decides how to implement the Supreme Court's decision on disappearances.

In the case of the FIR related to the alleged extrajudicial execution by the CPN-M in Kavre, the authorities told OHCHR in October they had not registered the case because it falls within the mandate of a Truth and Reconciliation Commission and that there was an appeal pending before the Supreme Court. The victim, Arjun Lama, had been abducted on 12 June 2005 and his whereabouts have been unknown since then. The CPN-M claimed that he was killed the same day during a clash with security forces but other sources believe he was killed after abduction. Both the CDO and NP have refused to register an FIR about the case, despite an order from the Supreme Court to do so. The NP informed OHCHR that they had not received any instruction to register an FIR.

In another case which OHCHR has been monitoring since 2005, the Office is concerned that more than two years after the bus bombing in Madi, Chitwan District, in which the CPN-M acknowledged responsibility for killing 36 persons and wounding 72, no-one has been held accountable for this grave violation of international humanitarian law. Although an FIR has been registered in the case, the NP cannot be considered to be effectively carrying out investigations. The investigation has, according to OHCHR's understanding, not continued beyond taking initial witness statements. OHCHR is equally concerned about the CPN-M's lack of cooperation in assisting the police in arresting and interrogating all the suspects of the killings. They must make all internal records as well as cadres that participated in any part of the operations available for the investigation. The CPN-M's cooperation so far has been limited to accepting that individual cadres were responsible, but not assisting in bringing them to justice. The Police must, for its part, allocate resources and show political will to follow through the investigation and not let political considerations prevent them from pursuing the investigation and holding those responsible accountable.

With the lack or inappropriateness of police investigations and prosecutions at the local level, a number of human rights cases were taken before the Supreme Court for resolution. During the period, this has included a decision ordering the Government to institute a Commission of Inquiry for the Disappeared, a decision ordering the Nepal Police to complete investigations in the Maina Sunuwar case (see below) and limiting the power of Government to withdraw criminal charges. However, enforcement of judgments remains difficult, presenting significant challenges for individuals seeking a remedy for human rights violations to which they were subjected.

In the case of Maina Sunuwar, the 15-year-old girl who died after being tortured in the custody of the NA in 2004, the Supreme Court, in September 2007, ordered the police to provide a report on its investigations into the death within three months and also, using provisions of the Freedom of Information Act, ordered the Registrar of the Supreme Court to make available to the family of Maina Sunuwar, access to NA records including the Court Martial, which the NA had submitted to the Court. In another earlier development in the case, in March, in the context of the police investigation and after extensive advocacy including by the High Commissioner for Human Rights, a body believed to be that of Maina Sunuwar was exhumed by forensic pathologists from an unmarked grave at the NA Birendra Peacekeeping Training Centre. OHCHR provided technical support for the exhumation. The DNA sample taken from the skeletal remains in March was not sent to India for analysis until the last week of November, and the family have not yet been able to recuperate the body in the absence of official confirmation of her identity.

For many months, OHCHR had had serious difficulties accessing relevant official documents from the NA. In August, it was given copies of three Court Martials, including the one

related to Maina Sunuwar. In October OHCHR was given permission to read but not copy other associated documentation including the court of inquiry report and witness statements.

Attempts by victims of discrimination and related abuse have also largely been unsuccessful in seeking redress, with police often encouraging mediation, sometimes involving political parties, rather than prosecution. While mediation can be appropriate in some circumstances, the lack of punishment with regard to discriminatory practices banned by the law and other abuses against members of marginalised groups has reinforced the climate of impunity. Most victims, however, do not have the opportunity to access justice due to lack of means and other obstacles. OHCHR is currently studying the lack of access to justice for Dalits, and in particular Dalit women who are the victims of sexual violence.

Commissions of inquiry

Commissions of inquiry or Parliamentary Commissions have been set up to look into almost one hundred deaths over the past year, including 18 in the context of the April 2006 Protest Movement, the 27 Gaur killings and some 24 deaths which occurred during the *Madheshi Andolan*. Such commissions of inquiry do not have prosecutorial powers. In not one case has anyone yet been found criminally accountable and convicted by the courts for any of the deaths. In most cases the reports of the commissions have not been made public. The 1969 Commission of Inquiry Act which provides the framework for such commissions do not contain all the necessary safeguards to meet internationally established criteria for commissions of inquiry mandated to investigate human rights violations. For example, the Act does not set out any requirements for the competence (for example in terms of human rights expertise), independence or impartiality of the members of the commissions of inquiry, nor does it make special provision for the protection of victims and witnesses. Whilst in general, Commissions established under the Act are to issue public reports, there are a wide range of very broadly worded exceptions permitting non-disclosure of the reports, including where the contents would have an adverse effect on Nepal's sovereignty or national integrity; matters of military importance, public peace and order, amicable relations among various castes, creeds or communities, or relations with friendly relations.

In October, a commission of inquiry set up to investigate the killing of 27 CPN-M cadres in Gaur presented its report to the Government, but the findings have not been made public. To date, no-one has been arrested or charged with the killings. Police say that they have the names of 40 suspects in the case but have not been able to arrest them. On 27 November, an FIR was presented by the CPN-M and finally registered by NP at the Rautahat District Police Office (DPO). The police had previously refused to register an FIR presented by the CPN-M on the grounds that many of those named by the CPN-M were not implicated. There are continuing fears that should no action be taken to determine and hold accountable those responsible, CPN-M cadres may resort to taking action into their own hands.

In August, after intense public pressure, the Government finally and exceptionally made public the November 2006 report of the Rayamajhi Commission which had been set up to investigate, inter-alia, human rights violations committed during the April 2006 protests. It recommended action to be taken against named government and former government officers (including in relation to corruption) as well as the prosecution of some 30 members of the NA, APF and NP. The Government states that it has implemented most of the recommendations of the report and that some of the recommendations have been forwarded to the competent authority for further investigation. The Attorney General has taken no action to prosecute as he believes that the evidence gathered is insufficient.

Police, who are obliged to launch criminal investigations in each of the 18 killings which occurred in the context of the April 2006 *Jana Andolan* to determine whether or not a crime has been committed with regard to each death, have, to OHCHR's knowledge, not done so, even in the seven cases where FIRs were filed shortly after the deaths. In many of these cases

police had told OHCHR they would not take action until the results of the Rayamajhi Commission investigations were known, with the risk that vital evidence will have been lost. Some members of security forces have been subjected to internal disciplinary action on the basis of the Rayamajhi Commission report, although OHCHR has not been able to obtain details. One of them has challenged the basis of the action taken against them before a court.

As in many other instances, the failure of the state authorities to take action to investigate and prosecute cases of abuse creates a vacuum in which others take action into their own hands. In the absence of state action in relation to the Rayamajhi Commission report, CPN-M cadres launched a series of actions “to expose” those named in the report. OHCHR found that these actions were contributing to a climate of fear and intimidation. OHCHR field teams visited homes in Kathmandu where YCL cadres had painted graffiti on the walls and threatened people. Although CPN-M leaders assured OHCHR that no physical action would be taken against people named in the report, the Office documented a small number of cases where individuals were humiliated by having their faces smeared with black, and other instances where property was seized or damaged. In one case, cadres of CPN-M, YCL and sister organizations vandalized an office of the *Muskan Sena Nepal* Party office in Sindupalchowk. The police sent a team to prevent further damage and briefly detained nine people. The CPN-M accepted responsibility for the destruction of the office and told OHCHR that this action was part of the CPN-M response to the findings of the Rayamajhi Commission. They accused the party of being royalists and suppressing the *Jana Andolan*.

Political pressures and interference

A further obstacle to ending impunity is political interference. Political pressures on police – including threats and intimidation to release anyone arrested who is linked with the major political parties, particularly the CPN-M, have contributed to ongoing impunity for abuses and acts of violence. There have been numerous cases where detainees linked to the CPN-M, MPRF, mainstream political parties and other organizations were arrested only to be released following negotiations often involving the Seven-Party Alliance and/or the CPN-M and/or the CDO. Such releases are sometimes accompanied by an apology from the organization concerned and a commitment not to repeat the behaviour. While such mediation may serve to reduce immediate tensions locally, it has not fundamentally changed the patterns of abuses and violence overall, and the perception that such violence can be committed with impunity.

One of the most serious examples of pressure on local officials is that of the abduction by CPN-M cadres of two court officials in Rukum on 2 November while trying to implement a court verdict on a group of CPN-M related cases. The two court employees were released reportedly after being subjected to humiliation in a mass gathering by black-smearing their faces and by being forced to carry stones. OHCHR was informed that a five-point written understanding had been reached with the CDO, the district court judge and the CPN-M District representative on how to deal with the standing legal cases against the CPN-M in the district, including the withdrawal of all conflict-related cases against CPN-M cadres.

14. Conclusions

The positive and significant political developments that have occurred since 2006, including the CPA and the establishment of an Interim Government, have created great expectations, particularly in terms of ending discrimination, inequality and impunity. As the peace process advances, the complexities of bringing about such changes - which require political will and uprooting deep-seated traditional patterns of behaviour - have become more apparent. The holding of CA elections is a crucial step towards creating a more participatory, inclusive and equal society, but there are still obstacles to overcome to enable the elections to take place in a climate free of intimidation and fear. At the same time, the CA elections are only part of the

process needed to address many of these issues through strengthened respect for human rights, some of which will take time to change.

The lack of implementation of many CPA provisions and of new and existing legislation which could strengthen the protection of human rights has led to frustrations amongst many Nepalese people who see few dividends from the process. Of particular concern is the lack of comprehensive policies and strategies to deal with the questions of discrimination and participation, as well as steps towards addressing economic, social and cultural rights violations that underpin many grievances. While the Government has made advances in addressing some of these concerns, including the establishment of quotas for traditionally marginalised groups in the proportional representation segment of the CA election to ensure greater inclusion, a more comprehensive, participatory and inclusive approach needs to be undertaken to draw up policies and strategies to bring about greater respect for these rights. At the same time, it is essential to curtail the violent activities of armed groups in the Terai. Unless these concerns are resolved, there is a great risk of deepening social divisions and further violence.

A coherent programme to strengthen and reform the security forces and administration of justice is urgently needed. Law enforcement agencies have a special role to play in ensuring sustainable peace, including the creation of a climate for the elections which is free of fear and intimidation. In playing that role, they will need skill and professionalism to face difficult and sometimes violent situations. They must have the tools, training, support and leadership to ensure that they can meet such challenges.

Another pre-requisite for creating a climate free of fear and intimidation will be the commitment of all parties, organisations and their supporters to respect the peaceful views and activities of others. Building trust and dialogue must replace resorting to threats, intimidation and acts of violence to resolve differences. The CPN-M, in transforming from a military to an exclusively political organization, particularly in a multiparty democracy, must also take effective measures to end abuses by its cadres.

Transforming a climate of impunity into a culture of accountability will be essential to a successful transformation and sustainable peace. The lack of progress in addressing impunity is deeply worrying. It will require political will, courage and determination to move the process forward, but it is one that cannot wait. The peace process and the conduct of CA elections still provide a historic opportunity to create a fully inclusive and democratic state which protects the human rights of all and enables all Nepalese people to participate equally and effectively in society. It is the responsibility of all parties to ensure this promise is fulfilled for the enjoyment of human rights by all the people of Nepal.

15. Recommendations

A. OHCHR recommends that the Government:

- Draw up concrete measures - with a timetable for implementation - to address the human rights concerns related to police and security; these should include an immediate and thorough revision of instructions, on the basis of international standards, relating to the use of force, in particular the use of firearms, as well as political support to the police so that it can carry out its functions professionally, without political pressure or interference, with adequate resources and fully respecting human rights;
- Take steps to address impunity, including:
 - implementing the 1 June 2007 ruling in relation to disappearance cases including the establishment of a fully independent commission of inquiry to look into disappearances

during the conflict and the promulgation of a law to criminalise disappearances and abductions;

- issuing clear instructions to police that they must register First Information Reports relating to violations and abuses, whether conflict or post-conflict related, and whoever the alleged perpetrators; such FIRs must result in full criminal investigations and police should be given the technical support to carry out the investigations;
- carrying out full investigations into allegations of violations and abuses by security forces and CPN-M cadres and prosecuting those found guilty of serious breaches;
- developing independent external oversight mechanisms relating to investigations into allegations of human rights violations by police, prison authorities and others responsible for detention matters;
- ensure that any steps taken to address violations and abuses during the conflict do not include measures which amnesty those responsible for serious breaches of human rights and international humanitarian law;
- develop a comprehensive programme of participatory consultations with regard to the nature, composition and mandate of the Truth and Reconciliation Commission, including victims of violations and abuses, and also those most affected by the conflict in rural areas, women and young people under 18.
- ratify the Rome Statute of the International Criminal Court and ensure that the provisions are incorporated into domestic law.

- Fully implement the recommendations of the Special Rapporteur on Torture made in his 2006 and 2007 reports relating to torture in Nepal; this should include promulgating and implementing a law to criminalise torture so that those responsible are appropriately held accountable;
- Demonstrate a strong commitment to women's rights and especially representation by taking steps to implement existing legislation providing quotas for women's representation in the civil service and in the police force;
- Bearing in mind its international commitments and obligations under CERD, CEDAW, ICCPR, ICESCR and relevant ILO conventions, take comprehensive steps to address issues related to non-discrimination, representation and participation, including through the establishment of genuine participatory dialogue and confidence-building measures as a means of reducing violence, especially in the Terai;
- Refrain from exerting political pressures on police or the courts especially in cases of human rights violations and abuses;
- Develop a sequenced plan to implement the recommendations of the Committee on Economic, Social and Cultural Rights contained in its concluding observations (E/C.12/NPL/CO/2);
- Ensure adequate funding for the National Human Rights Commission so that it can carry out its functions and develop into a strong, independent body.

B. OHCHR calls on the CPN-M to

- Take all measures to ensure that its commitments to respect human rights enshrined in international human rights law are translated into concrete measures to end abuses such as abductions, assaults, ill-treatment and torture and in particular measures to prevent further cases of killings and disappearances;

- Collaborate with the State authorities to ensure that CPN-M cadres implicated in serious abuses are held accountable through criminal investigations and prosecutions;
- Collaborate with UN and child protection agencies to ensure the transfer and family/community reintegration of those under 18 who have been verified as such and remain in cantonment sites.

C. OHCHR is calling on all political parties, Madheshi, Janajati and other groups

- To ensure that political party and organisational structures are fully inclusive and participatory at all levels, especially from a gender perspective;
- To ensure that demonstrations and other forms of protest calling for their demands and rights to be addressed are peaceful, do not place others at risk of harm, and do not impede the right to freedom of movement of others;
- To refrain from exerting pressure through threats, intimidation or other acts on police or judicial authorities responsible for investigating acts of violence which occur in the context of protests or other related activities;
- Take special measures to ensure that anyone under 18 who wishes to participate voluntarily in the protests does not participate in violence and is not exposed in any way to violence; should there be a risk of violence, young people under 18 should not be allowed to participate;
- To refrain from using inflammatory language or statements which incite racial or ethnic hatred.

D. OHCHR is calling on the media

- To refrain from broadcasting inflammatory or unverified information, including such information intended to incite racial and ethnic hatred;
- To be guided by the principle of protection of victims, especially women and girls, by refraining to publish any information, including names, which might place those individuals at risk.

E. OHCHR is calling on all armed groups who claim to be pursuing political objectives

- To immediately end criminal activities such as killings, abductions, extortion and bombings and use peaceful means to achieve their stated objectives, given that such activities are having a serious impact on the human rights of others, including the right to life;
- To immediately end all statements and actions which may be interpreted as incitement to racial and ethnic hatred.