
**ADVANCE EDITED
VERSION**

Distr.
GENERAL

E/CN.4/2006/107
16 February 2006

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Agenda item 19 of the provisional agenda

**ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE
FIELD OF HUMAN RIGHTS**

**Report of the United Nations High Commissioner for Human Rights
on the situation of human rights and the activities of her Office,
including technical cooperation, in Nepal**

Summary

The present report is submitted pursuant to Commission resolution 2005/78 and in the context of the Agreement signed on 10 April 2005 between the Government of the Kingdom of Nepal and the High Commissioner concerning the establishment of an office in Nepal. The report focuses on the human rights situation in Nepal and the activities of OHCHR-Nepal in the period between 1 September 2005 and late January 2006.

The Government and its security forces have shown good cooperation to OHCHR-Nepal in terms of access and availability, and have responded to communications, although some responses have fallen far short of the information requested. The Communist Party of Nepal (CPN) (Maoist) has committed to allow OHCHR-Nepal staff freedom of movement and access. OHCHR-Nepal has met with CPN (Maoist) leaders and cadres and raised concerns with them. CPN (Maoist) has responded and taken action with respect to a number of individual cases, but the majority have not received any response.

During a four-month unilateral ceasefire by CPN (Maoist) from early September 2005 to early January 2006, there was a marked reduction in killings of all kinds. Other violations by CPN (Maoist) continued, including abductions, threats and extortion, as did violations by security forces. There was a marked decline in the number of disappearances reported in 2005, but investigations continued into many disappearances from previous years.

Arbitrary arrest, detention and re-arrests of suspected members or sympathizers of CPN (Maoist) continued to be a major source of concern, reinforced by the absence of guarantees required by international standards in anti-terrorist legislation. The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment reported that torture is systematically practised in Nepal and expressed deep concern about the prevailing culture of impunity. Allegations received by OHCHR-Nepal also indicated that torture is routine. The Government denies that torture is systematic in Nepal and maintains that it is taking appropriate action. OHCHR-Nepal regretted the serious inadequacy of efforts by security forces to investigate and hold accountable those responsible for violations of human rights and international humanitarian law, disproportionately light sentences in the few instances where action was taken, and insufficient availability of information on accountability in general.

Although the number of reported killings of civilians by CPN (Maoist) fell during its unilateral ceasefire, OHCHR-Nepal received information about killings of civilians and members of security forces who were *hors de combat*, abductions, other violence and threats to civilians, including Government officials, teachers, journalists and human rights defenders. The leadership of CPN (Maoist) stated that it was no longer their policy to kill any unarmed persons or to target the families of security forces personnel, and that it had taken or would take action against those responsible for violations, but OHCHR-Nepal was unable to ascertain or verify the punishment.

OHCHR-Nepal investigations in three districts found that illegal armed groups have committed threats, extortion, assaults, and killings against suspected Maoists and that, in some cases, the State either tolerated or colluded with their actions.

A sizeable population has been displaced by the armed conflict but there is continued uncertainty about the extent of forced displacement. An apparent capacity to cope with conflict-induced displacement may conceal the need for protection as well as rights at risk from displacement. Children's rights to life, physical integrity, health and education, were repeatedly violated by both sides to the conflict and there were reports of killings, beatings, arbitrary detention, recruitment or other use of children for military purposes, as well as attacks against schools and health facilities. OHCHR-Nepal investigated scores of conflict-related cases of human rights abuses against women and girls, including abuse and torture in the course of search operations by the security forces or during the presence of CPN (Maoist) in their villages. Human rights defenders, especially those working outside of the Kathmandu Valley, remained vulnerable to threats, intimidation and detention by State authorities and CPN (Maoist).

Blanket bans on demonstrations were imposed in many municipalities as a means to prevent the exercise of the right to freedom of peaceful assembly. Hundreds of political party and civil society activists were arrested in September and December during demonstrations and rallies across the country that were largely peaceful, despite attempts to enter prohibited areas and violence against police by some student demonstrators. Public protest intensified in January 2006, when authorities introduced an extensive ban to prevent a demonstration in Kathmandu and arrested more than 100 political and civil society leaders at their homes. Challenges to these restrictions and escalating protests against the arrests and the Government's intention to proceed with municipal elections increasingly involved acts of violence by demonstrators and excessive use of force by police in breaking up demonstrations and carrying out arrests. At the end of January 2006, hundreds remained detained.

A Media Ordinance entrenched Government efforts to ban the broadcasting of news on FM radio stations and other restrictions on freedom of expression. In rural districts there was a consistent pattern of threats and harassment of journalists by authorities. A government-imposed Code of Conduct for non-governmental organizations (NGOs) instituted constraints on the membership, objectives and functioning of NGOs active in Nepal, including human rights defenders.

Economic impoverishment, severe social inequalities and discrimination have been aggravated by the conflict, with the rights to health, food and other economic, social and cultural rights all at risk. Members of Dalit and indigenous nationalities continue to be the victims of harassment and severe discrimination. Women members of the Dalit communities suffer multiple discrimination and women in general continue to be affected by discriminatory legislation and practices, despite recent action by the Supreme Court. OHCHR-Nepal regularly found children detained with adults and without legal representation.

In addition to monitoring and investigating human rights violations, OHCHR-Nepal provided advisory services and support to a variety of partners, including authorities. It continued to work with the National Human Rights Commission (NHRC) and collaborated in a review of the United Nations Development Programme project for the capacity development of NHRC. OHCHR-Nepal convened and chaired the United Nations Inter-Agency Human Rights Protection Working Group.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 3	6
I. CONTEXT	4 - 16	6
A. Political context	4 - 8	6
B. Nepal and the United Nations human rights system	9 - 12	7
C. Government human rights commitments and cooperation	13 - 15	8
D. Communist Party of Nepal (Maoist) human rights commitments and cooperation	16	9
II. RESPECT FOR INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW	17 - 94	9
A. Respect for human rights and humanitarian law in the context of the armed conflict	17 - 18	9
1. State authorities	19 - 44	9
(a) Deliberate and arbitrary killings	19 - 21	9
(b) Disappearances	22 - 25	10
(c) Arbitrary arrest and rearrest, detention and fair trial	26 - 32	11
(d) Torture and cruel, inhuman or degrading treatment	33 - 37	12
(e) The responsibility to protect the civilian population	38 - 39	13
(f) Accountability	40 - 44	14
2. Communist Party of Nepal (Maoist)	45 - 56	15
(a) Killings of civilians and persons <i>hors de combat</i>	46 - 49	15
(b) Abductions	50 - 53	16

CONTENTS (continued)

	<i>Paragraphs</i>	<i>Page</i>
(c) Violence and threats to civilians	54 - 57	16
(d) Accountability	58	17
3. Vigilante groups - <i>Pratihar Samiti</i>	59 - 61	18
4. Groups of special concern	62 - 72	18
(a) Internally displaced persons	62 - 64	18
(b) Children	65 - 69	19
(c) Women	70 - 71	20
(d) Human rights defenders	72	20
B. Democratic rights	73 - 86	20
1. Freedom of movement and freedom of peaceful assembly	74 - 77	21
2. Arbitrary detention and fair trial	78 - 80	22
3. Freedom of expression	81 - 84	22
4. Freedom of association	85 - 86	23
C. Long-standing human rights concerns	87 - 94	24
1. Caste and ethnic discrimination	88 - 89	24
2. Gender-based discrimination	90 - 91	24
3. Child rights	92 - 94	24
III. OTHER ACTIVITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN NEPAL	95 - 98	25
IV. CONCLUSION	99	26

Introduction

1. On 10 April 2005, the Government of the Kingdom of Nepal signed an agreement (the Agreement) with the High Commissioner for Human Rights (OHCHR) concerning the establishment of an office in Nepal. The Agreement mandated the OHCHR-Nepal office, inter alia, to assist the authorities in promoting and protecting human rights, to monitor the situation of human rights and observance of international humanitarian law, and to report to the Commission on Human Rights and the General Assembly. On 20 April 2005 the Commission adopted resolution 2005/78 welcoming the signing of the Agreement.
2. The High Commissioner's Representative to Nepal arrived in Kathmandu on 7 May 2005 with an initial team of human rights officers and support staff, who began implementing the Office's mandate as well as preparing for the arrival of the full contingent of staff.
3. The present report is submitted pursuant to Commission resolution 2005/78 and focuses on the human rights situation in Nepal and the activities of OHCHR-Nepal between 1 September 2005 and late January 2006. It follows the report of 16 September 2005 (A/60/359) submitted by the High Commissioner to the General Assembly for the period to 31 August 2005.

I. CONTEXT

A. Political context

4. In February 1996 the Communist Party of Nepal (CPN) (Maoist) declared a so-called "people's war" against the State. The ensuing armed conflict escalated in succeeding years. In November 2001, the Royal Nepalese Army (RNA) was deployed and from November 2002 the Nepal Police (police) and the Armed Police Force (APF) were placed under the "unified command" of RNA for counter-insurgency operations. Two attempts at peace negotiations in 2001 and 2003 were unsuccessful.
5. In May 2002 Parliament was dissolved on the recommendation of the then Prime Minister and elections for its reconstitution have not been held since. Since October 2002 four Prime Ministers either resigned or were dismissed by His Majesty King Gyanendra Bir Bikram Shah Dev. The last Prime Minister was removed on 1 February 2005 when the King dismissed the Government, citing its failure to hold elections or to effectively combat the armed insurgency, and declared a three-month state of emergency. Many fundamental rights were suspended and hundreds of political leaders and activists, human rights defenders, journalists and others were imprisoned. The state of emergency was revoked on 29 April 2005 and those imprisoned were released by July, although some restrictions on civil liberties remained in effect or were reintroduced under other legislation.
6. From 1 February 2005 King Gyanendra assumed direct executive authority, as Chairman of the Council of Ministers, and legislates by promulgating Royal Ordinances and Orders, under articles 72 and 127 of the Constitution. According to the Constitution, Parliament has to endorse such ordinances and orders, which otherwise have limited validity in time. The constitutionality of the use of ordinances and orders as practised after 1 February 2005 has been challenged before the Supreme Court; by late January 2006, the court had not ruled on these challenges.

7. On 3 September 2005, CPN (Maoist) announced a three-month unilateral ceasefire. This was not reciprocated by the Government, which argued that the ceasefire was not addressed to the Government, that CPN (Maoist) was the party which had initiated the armed conflict, and that previous ceasefires had been used to prepare for intensified combat.

8. In early October 2005, the Government announced that municipal elections would be held on 8 February 2006 and parliamentary elections by April 2007. An alliance of seven political parties, which have opposed the royal takeover and refused to accept the King's executive role, decided to boycott elections called by the present Government and announced a campaign of protest rallies and demonstrations across the country. CPN (Maoist) declared that it would disrupt the elections. On 22 November 2005, the seven-party alliance and CPN (Maoist) announced their common adoption of a 12-point "Letter of Understanding", including a call for an "end to autocratic monarchy" and the election of a constituent assembly. The "Understanding" committed CPN (Maoist) to multiparty democracy, human rights and the rule of law, and stated that the armed Maoist force and RNA would be kept "under the supervision of the United Nations or any other reliable international supervision" during constituent assembly elections. The Secretary-General welcomed the Understanding, but it was strongly criticized by government ministers. The Secretary-General also encouraged CPN (Maoist) to extend its unilateral ceasefire and urged the Government to declare a reciprocal ceasefire. In early December CPN (Maoist) extended its ceasefire by one month, but the Government again rejected calls for it to be reciprocated. On 2 January 2006 CPN (Maoist) declared that it was ending its ceasefire.

B. Nepal and the United Nations human rights system

9. Nepal has not issued a standing invitation to the special procedures of the Commission, although it is to be commended for extending invitations to visit to several procedures. Visits have most recently been conducted by the Working Group on Enforced or Involuntary Disappearances (WGEID) in December 2004, the Representative of the Secretary-General on the human rights of internally displaced persons (IDPs) in April 2005, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in September 2005. A number of requests from other mechanisms, including those made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in December 2003, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in June 2004, the Special Rapporteur on extrajudicial, summary or arbitrary executions, in September 2004, and the Special Representative of the Secretary-General on the situation of human rights defenders, in December 2004, remain outstanding. The reports of the Representative on internally displaced persons and the Special Rapporteur on the question of torture will be presented before the Commission during its sixty-second session.

10. Nepal's second periodic report (CRC/C/65/Add.30) to the Committee on the Rights of the Child was examined in May 2005. In its concluding observations (CRC/C/15/Add.261), the Committee recommended the ratification of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict: Nepal was in the process of ratifying both instruments in January 2006. The Committee also recommended that the Government review its legislation and policies to ensure full implementation of juvenile justice standards and norms, to

amend or repeal the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) in this light, and to develop appropriate measures for children affected by conflict. In particular, it recommended the criminalization of abduction, recruitment and use of children for military purposes, and the establishment of a Rule of Engagement for the security forces with regard to children.

11. The Committee against Torture considered the report of Nepal (CAT/C/35/Add.6) in November 2005. In its concluding observations and recommendations (CAT/C/NPL/CO/2), the Committee recommended that the practice of preventive detention should be made consistent with international human rights norms and that the authorities should ensure fundamental rights of persons deprived of liberty are guaranteed, including the right to habeas corpus, the right to inform a relative, access to a lawyer and to a doctor of one's choice. The Committee also recommended that all detainees should be immediately transferred to legally designated places of detention which conform to international standards, and emphasized the need for systematic documentation of all arrests and detention, including the creation of a central register for persons deprived of liberty, to be made accessible to national and international monitors. It further recommended measures to be taken to ensure compliance by security forces of all orders of the courts, including habeas corpus, and the establishment of an independent body to investigate acts of torture and ill-treatment committed by law enforcement personnel.

12. Nepal's reports to the Human Rights Committee, pending since 1997, to the Committee on Economic, Social and Cultural Rights and to the Committee on the Elimination of All Forms of Racial Discrimination are in preparation.

C. Government human rights commitments and cooperation

13. The Government has provided regular opportunities to meet with the Representative and officers of OHCHR-Nepal, and members of security forces have made themselves available at short notice in Kathmandu and in the regions. The authorities continue to show good cooperation in assuring access for OHCHR-Nepal monitors visiting places of detention without prior notice.

14. OHCHR-Nepal maintains regular communication with the human rights cells in RNA and Nepal Police. Frequent communications were sent to security forces requesting urgent information on the whereabouts of persons reported to have been arrested. In most of those instances, security forces replied confirming the arrests and giving assurances in regard to concerns over risk of torture or disappearance. In the majority of cases concerning deaths in custody or alleged summary executions, the response fell far short of the information requested.

15. A new human rights coordination structure, comprising a national coordination committee chaired by the Minister for Foreign Affairs and two subcommittees chaired by the Chief Secretary and the Attorney-General, was set up by the Government in August. OHCHR-Nepal met with the Chief Secretary and the Secretary responsible for human rights coordination in the Office of the Prime Minister and Council of Ministers in the context of their coordinating responsibility.

D. Communist Party of Nepal (Maoist) human rights commitments and cooperation

16. The establishment of OHCHR's office in Nepal was welcomed publicly and in communications to the Representative by the leadership of CPN (Maoist), which committed itself to allow OHCHR-Nepal staff to travel freely, to investigate incidents and to meet with party members and others. In accordance with article V (1) (b) of the Agreement, OHCHR-Nepal met and raised concerns with CPN (Maoist) leaders and cadres. CPN (Maoist) has responded and taken action with respect to a number of individual cases, but a majority have not received any response.

II. RESPECT FOR INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

A. Respect for human rights and humanitarian law in the context of the armed conflict

17. Nepal has experienced gross violations of international human rights and humanitarian law committed by CPN (Maoist) in the course of its insurgency and by security forces in the State's response. During the period of the unilateral ceasefire, the National Human Rights Commission (NHRC) and non-governmental organizations (NGOs) reported a substantial reduction in killings to less than one sixth the number in the preceding period, although some killings did occur and other violations continued. There was a marked decline in the number of disappearances reported in 2005.

18. Following the ending of the unilateral ceasefire, on 5 January 2006 the High Commissioner appealed publicly to both parties to the conflict not to repeat the gross violations of international humanitarian law and human rights perpetrated during previous phases of the conflict. She warned that both immediate perpetrators and those in command of forces which commit such acts may be subject to individual criminal responsibility before a court of law.

1. State authorities

(a) Deliberate and arbitrary killings

19. There have been regular reports of killings by RNA, which it states were deaths during encounters instigated by members of CPN (Maoist). During its unilateral ceasefire, CPN (Maoist) alleged that RNA was attacking and killing its unarmed cadres. OHCHR-Nepal was unable to determine the circumstances of most individual killings, but noted the lack of RNA casualties during what RNA alleges to have been attacks on regular patrols by armed Maoists. Among the killings investigated by OHCHR-Nepal was that of four persons at Belbari, Morang District, on 15 October 2005, where an RNA operation was found to have been conducted by personnel in plainclothes who pretended to be injured members of CPN (Maoist), forcing two civilians to identify the house of a suspected Maoist. OHCHR concluded that at least two of those killed were deliberately targeted after they were wounded and that RNA did

not attempt to take them into custody. RNA maintained that it was compelled to act in its own defence after being attacked and to resort to further action when a person who was trying to escape ignored repeated warnings.

20. OHCHR-Nepal requested information about internal investigations into reported killings by security forces. These included the killings by RNA of Krishna Simkhada in Dhading District in May 2005, Bhim Prasad Poudel in Jhapa District in June 2005, and Rama Adhikari in Jhapa District in July 2005; and the killing by APF of Manoj Basnet in Biratnagar, Morang District, in August 2005. It also requested information about three cases of alleged suicides in RNA custody - in December 2004, May 2005 and July 2005. In the case of Krishna Simkhada, RNA responded by stating that he was killed while trying to escape the day after he was taken prisoner; no charges were brought or disciplinary action taken although his wounds suggested he was facing the soldiers when they shot him. In the case of Bhim Prasad Poudel, a court martial was taking place after a court of inquiry had found that two lance corporals, instead of arresting him, had used excessive force and shot him as he was trying to escape a cordon around his home. In the case of Rama Adhikari, a court of inquiry found that officers had used excessive force instead of trying to apprehend her and a court martial sentenced a lieutenant to three months' imprisonment, forfeiture of promotion for one year and the payment of compensation to the relatives. In the case of Manoj Basnet, police investigation was said still to be ongoing at the end of January 2006. OHCHR was awaiting further information about the cases of alleged suicides.

21. There was public outrage regarding the killings of 12 individuals and injury to 19 others by an off-duty RNA soldier at a festival at Shree Kalidevi Temple, Nagarkot, Bhaktapur District, on 14 December 2005. The Government appointed a judicial commission of inquiry, which concluded that RNA soldier Basudev Thapa was solely responsible for the shooting and that he subsequently committed suicide. The Commission did not, however, reach any conclusion regarding the presence of other soldiers before and during the shooting. Noting inadequate consideration of security arrangements, including internal RNA discipline, and lack of attention to a history of conflict between villagers and army personnel, the Commission recommended that RNA take steps to avoid such incidents in the future. The Commission concluded its work before an OHCHR-Nepal offer of a crime scene investigative expert could be taken up.

(b) Disappearances

22. From the opening of its office in May 2005, the largest category of complaints received by OHCHR-Nepal has been nearly 300 reports of disappearances of people arrested on suspicion of being members or sympathizers of CPN (Maoist). Most of these were from previous years, especially 2002 and 2003, and many had already been submitted to the Government by the Working Group on Enforced or Involuntary Disappearances. The cases included many members of the minority Tharu community in western Nepal, especially from Bardiya District. Many of the cases reported from Kathmandu were students. In almost all cases, the disappeared persons were reported to have been held in army barracks, a pattern confirmed by former detainees.

23. OHCHR-Nepal was able to establish, including from authorities, the whereabouts of 35 persons (31 found in custody and 4 confirmed to have been released). Twenty persons reported to have disappeared after arrest in 2005 remained unaccounted for in late January.

24. RNA told OHCHR-Nepal that RNA investigative teams sent to regions in mid-2005 had clarified around two thirds of the cases submitted to it and that in January three further teams were designated for Kathmandu and outstanding areas. It promised to provide details. The Ministry of Home Affairs said that it was reviewing the terms of reference of the Ministry's committee on disappearances to enhance its effectiveness.

25. The disappearances being investigated by OHCHR-Nepal include a large number of people known to have been detained at Bhairabnath Army Barracks, Maharajgunj, in Kathmandu in late 2003. RNA did not respond to a letter of August 2005 requesting information regarding allegations of the torture and extrajudicial execution of some of these people, but in January 2006 RNA told OHCHR-Nepal it would investigate these allegations as a matter of priority and share information. OHCHR-Nepal is continuing its own investigations.

(c) Arbitrary arrest and rearrest, detention and fair trial

26. Arbitrary arrest and detention of suspected members or sympathizers of CPN (Maoist) continued to be a major source of complaints. OHCHR-Nepal was concerned about the absence of guarantees required by international standards in TADO, which provides for preventive detention for up to one year and police custody for up to 60 days for investigation purposes (see A/60/359, paragraph 16). It also noted persistent failure to respect in practice even the requirements of this legislation.

27. The Ministry of Home Affairs was unable to inform OHCHR-Nepal of the numbers of people currently held under TADO or their places of detention. In late December 2005, the Government decided to establish "at the earliest" a Human Rights Central Registry Unit of all detainees within the Office of the Prime Minister and Council of Ministers.

28. Most TADO detainees were held in army barracks when first arrested, and some for long periods thereafter. Since OHCHR-Nepal began visiting army barracks, the number of detainees in RNA custody has decreased as both long-term detainees and some arrested recently have been transferred to civilian detention facilities. RNA established a central registry of those held in army custody and between May 2005 and January 2006 provided six lists of detainees. According to a list of 27 January 2006, 53 detainees including 2 women were held in 24 army barracks across the country; 11 had been held for over six months. RNA told OHCHR-Nepal that it did not want the responsibility for detainees but was obliged to assume it while the Government prepared five high-security detention centres in the five administrative regions. By January 2006, although five facilities had been identified by the authorities as places to house TADO detainees and work was under way on a new civilian detention centre in the eastern region, hundreds of TADO detainees continued to be held in overcrowded conditions in district jails and Sundarijal detention centre near Kathmandu.

29. Detainees were often arrested by security officials in plainclothes, without being informed of the reasons, and held in detention without notification to their families or access to their families or a lawyer. An analysis of cases where habeas corpus writ petitions were filed shows frequent denial of detention (giving rise to cases of disappearances), false or misleading information provided to the court by authorities or security forces, and rearrest after a court

ordered release. Many detainees have been held beyond the one-year maximum period, with TADO orders signed only on a date long after arrest or Chief District Officers (CDOs) of different districts issuing orders of detention in turns to the same person.

30. The long-standing pattern of immediate rearrest after a court had ordered a detainee's release persisted, despite instructions issued on 27 June 2005 by the Ministry of Home Affairs to CDOs that such rearrests should not be carried out. Over 75 such cases were reported to OHCHR-Nepal between May 2005 and late January 2006, 67 of them after 27 June. The authorities said that, in some of these cases, the rearrest was on the basis of a new case separate from the original grounds of detention, but OHCHR-Nepal noted that charges were brought only when the court had ordered release and no mention of alternative grounds for detention had been made to the court.

31. While TADO contains provisions for people to be charged and tried for "terrorist and disruptive activities", the overwhelming majority of TADO detainees have been held without charge or trial. Following criticism of detention beyond the legal limit and of rearrests following court orders, a committee was constituted under the aegis of the Crime Investigation Department at Police Headquarters involving all concerned agencies of the Government to initiate investigations in TADO cases. In the second half of 2005 charges were brought and trial proceedings commenced against a number of Maoist leaders or cadres.

32. New provisions imposing limitations on the right to a fair trial were introduced when TADO was re-promulgated in October 2005. Cases have to be heard in closed session, with only defence counsel, prosecutors, the accused, police personnel permitted by the court and court employees present. Only the prosecutor and the accused are given access to court documents, which are not provided to defence counsel. The burden of proof regarding possession of weapons, ammunition, explosives or toxic materials or "any documents, things or items relating to terrorist and disruptive acts" is shifted onto the accused, who must prove that these were not for criminal purpose. OHCHR-Nepal expressed concern that these new provisions constitute infringements of the rights of the accused to a fair and public hearing, to adequate time and facilities to prepare a defence and to the fundamental right to be presumed innocent until proven guilty.

(d) Torture and cruel, inhuman or degrading treatment

33. The Special Rapporteur on the question of torture visited Nepal in September 2005. He concluded that torture was systematically practised in Nepal by police, APF and RNA. He stressed that legal safeguards were routinely ignored and expressed deep concern about the prevailing culture of impunity for torture, especially the emphasis on compensation to victims as an alternative to criminal sanctions against the perpetrators.

34. OHCHR-Nepal has received numerous allegations of torture and ill-treatment of individuals by all three security forces. According to these complaints, torture is routine during interrogation of Maoist suspects in army barracks and police custody, as well as during interrogation of those accused of ordinary crimes, in order to obtain information or confessions or to intimidate detainees. Methods of torture reported include repeated beatings and kickings, beatings with batons and sticks on the soles of the feet, submerging under water, electric shocks

and sexual assault, including rape. In addition, there is a widespread practice of long-term hooding or blindfolding; long-term handcuffing behind the back for months on end; and mock executions, especially by RNA.

35. During visits to places of detention, OHCHR-Nepal has observed detention conditions amounting to inhuman and degrading treatment, particularly in some army barracks and police stations. In Hanuman Dhoka police station in Kathmandu, OHCHR-Nepal found that up to 10 prisoners were held in cells of 1 metre by 2 metres for several weeks, without any space to sleep. At Gorkha army camp, prisoners were held in a cell with an earth floor with no beds or blankets for months, and received inadequate food. At Sundarijal detention centre, around 70 security detainees, together with 20 common crime suspects, were held without access to fresh air. Several cases of deaths in custody were reported to OHCHR-Nepal, including two detainees who died in Kaski jail in October 2005 after their conditions were aggravated by delay in medical treatment as a result of obstruction by the prison administrator.

36. The Government denies that torture is systematic in Nepal. It maintains that it is not State policy to allow impunity and that action has been taken against a number of security officials in torture cases. Following the visit of the Special Rapporteur, the Ministry of Home Affairs issued seven-point directives to police and APF, and said compliance would be closely monitored. The Cabinet decided in January 2006 to make torture a criminal offence, subject to consultation on the draft legislation which had been prepared.

37. There were concerns regarding the effectiveness of the Torture Compensation Act 1996. According to lawyers representing victims of torture, around 200 cases under the Act are pending in the courts and in only 3 cases has compensation been paid. The Government states that only 25 cases have been decided in favour of the victims and most of these are pending in appellate courts.

(e) The responsibility to protect the civilian population

38. OHCHR-Nepal was concerned by failure to respect the principles of distinction and proportionality under international humanitarian law obliging parties to a conflict to distinguish between civilians and combatants, and to take all necessary measures to protect civilians during attacks on military targets. According to consistent witness testimony, gathered during OHCHR-Nepal investigations into an RNA operation in Bahadurpur, Palpa District, on 24 September 2005, three RNA units opened fire upon entering Bahadurpur village where five children were present among several adults, including some members of CPN (Maoist), in a central part of the village. Two children were injured by bullets and a third villager died as he was walking from his home to the centre of the village. RNA informed OHCHR-Nepal that a court of inquiry into the incident had been established and in late January it remained under investigation.

39. With the resumption of mutual hostilities, OHCHR-Nepal was concerned that RNA use of aerial bombardment from helicopters did not distinguish between civilian objects and military objectives, as required by international humanitarian law. On 21 January 2006 a 4-year-old child was killed in Phaparbari, Makwanpur District, when an RNA helicopter dropped several mortar bombs in an area well away from the engagement with CPN (Maoist) fighters.

(f) Accountability

40. OHCHR-Nepal continued to seek information enabling it to assess the efforts made by security forces to investigate and hold accountable those of their members alleged to be responsible for violations of human rights and international humanitarian law. Little information was provided, either to update the list of cases previously issued or to give more than brief summaries about cases of particular concern to OHCHR-Nepal. OHCHR-Nepal referred to article XIV (d) of the Agreement whereby its prerogatives include access to such official documents and material as may be needed for the proper discharge of the activities of the Office, and to the recommendation of WGEID that “the army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years (E/CN.4/2005/65/Add.1, para. 49)”. RNA stated that it was unable to release such details due to “operational confidentiality”, and would provide only summary information, which has not so far included the names of those convicted or the full text of the charges or verdicts.

41. Concern about the serious inadequacy of RNA investigations and punishments was underlined with the conclusion in October 2005 of a court martial concerning the death in custody in February 2004 of Maina Sunuwar. RNA, which had initially denied detaining the 15-year-old girl, acknowledged that she had died within three hours of having been taken from her home into RNA custody and that improper interrogation methods had been used. However, the colonel and two captains responsible were found guilty only of not following standard procedures and orders regarding reporting the death and disposal of the body. They were sentenced to six months’ imprisonment which they were said to have already spent in custody, as well as forfeiture of promotion over the next one to two years and payment of compensation. OHCHR-Nepal expressed its dismay over the verdict to the Chief of Army Staff and emphasized that the disproportionately light sentences would in no way serve to deter future such criminal acts. OHCHR-Nepal subsequently learned that the officer responsible for ordering “excessive use of force” amounting to the summary execution on 13 February 2004 of another girl, Reena Rasaili, in a related case had been court martialled and sentenced to only four months’ imprisonment and forfeiture of promotion for three years.

42. The Set of Principles for the protection of human rights through action to combat impunity adopted by the Commission on Human Rights and the General Assembly states that: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts” (E/CN.4/2005/102/Add.1, Principle 29). Under Nepal’s Army Act 1959, murder and rape are the only crimes excluded from the jurisdiction of military courts, and the exclusion does not apply when these crimes are committed during a “military operation”. OHCHR-Nepal is supporting efforts to prosecute the murder of Maina Sunuwar in a civilian court.

43. Police and other authorities display extreme reluctance to pursue investigations, or even to accept the lodging of a First Information Report, in cases involving security forces personnel. In addition to the case of Maina Sunuwar, this was found by OHCHR-Nepal to be the case in relation to the killing of Manoj Basnet by members of APF in Morang District in August 2005.

44. In December 2005 the Government informed the Special Rapporteur on the question of torture that police had taken action against 21 of its personnel in 11 cases relating to torture, 6 of which were being prosecuted in the courts. RNA stated that it has punished nine personnel in torture-related cases. OHCHR-Nepal was awaiting details of these cases.

2. Communist Party of Nepal (Maoist)

45. The number of reported killings of civilians by CPN (Maoist) fell during the unilateral ceasefire period, but previous patterns of violations continued, including abductions, violence, death threats and extortion. In its announcement of the ending of its ceasefire, the CPN (Maoist) leadership said that its military actions would be targeted at “the royal army and its paid informers”. The High Commissioner, in her 5 January 2006 public appeal, called upon CPN (Maoist) to declare publicly its acceptance of all that is required by its stated commitment to observe international humanitarian law and respect human rights, and to explain to its cadres their responsibility to respect them in practice. She reminded them that the prohibition of murder or violence to persons taking no active part in hostilities includes government officials, families of security forces personnel and persons alleged to be informers. The leadership of CPN (Maoist) informed the Representative that it was no longer its policy to kill any unarmed persons or to target families of security forces personnel.

(a) Killings of civilians and persons *hors de combat*

46. OHCHR-Nepal received information about at least 10 reported killings by CPN (Maoist) during the period of the ceasefire. RNA said it would provide details of 16 killings of civilians. Cases known to OHCHR-Nepal included unarmed civilians killed in the context of attempts to extort money or to punish individuals for perceived anti-Maoist activities, and targeted killings of members of the security forces who were *hors de combat*.

47. Reported killings of civilians by CPN (Maoist) included the apparent execution on 11 September 2005 of Navraj Thapaliya in Gorkha District after he had been accused of spying. Laxmi Yadav, who had earlier surrendered to RNA, was shot dead on 3 October 2005 in Rautahat District. On 1 November 2005, Laxmi Lal Poda was the victim of indiscriminate shooting directed at persons resisting extortion by CPN (Maoist) members in Kavre District. Chudamani Mainali was first beaten and subsequently shot dead on 7 November 2005 in Jhapa District after he publicly objected to extortion attempts by CPN (Maoist).

48. On 7-8 August 2005, both RNA and CPN (Maoist) suffered losses in a clash in Pili, Kalikot District (see A/60/359, paragraph 39). Autopsies of RNA soldiers killed during the action did not confirm torture or mutilation, and could not determine conclusively whether as alleged some had been killed after being captured, although they recorded a high proportion of firearm wounds to the head. CPN (Maoist) captives were later released to the International Committee of the Red Cross (ICRC) and interviewed by OHCHR-Nepal, which did not find evidence of ill-treatment in custody. According to RNA, five army personnel formerly stationed at Pili remain missing.

49. On 14 January 2006, CPN (Maoist) attacked police posts at Thankot and Dadhikot outside Kathmandu city, killing 12 policemen and wounding others. It was alleged that some of those killed at Thankot were unarmed and had surrendered themselves. OHCHR-Nepal was

investigating the incident to determine whether it involved violations of international humanitarian law. The leadership of CPN (Maoist) told OHCHR-Nepal that it did not intend to target unarmed police personnel when they could be distinguished from armed police.

(b) Abductions

50. CPN (Maoist) abducted civilians as a punitive measure leading to forced labour, ill-treatment or, in some cases, death. On 19 September 2005, the body of Man Bahadur Sunar was discovered one day after he was abducted in Kailali District along with three others whose whereabouts remain unknown. On 4 October 2005, Saraswati Parajuli was found dead following her abduction with two other individuals from Parbat District whose whereabouts remain unknown. Dev Narayan was abducted along with his parents on 10 November 2005 in Baglung District and found dead on 20 December; the whereabouts of his parents remain unknown. Ashta Bhuja Chaudhari, 70-year-old chairman of the Tharu Welfare Society, was abducted on 7 January 2006 from Rupandehi District; he was released the next day after he agreed to dissolve the Society.

51. OHCHR-Nepal sought clarification regarding over 60 incidents in which over 100 individuals were abducted. In January 2006 it received responses regarding some 30 cases from the eastern, central and western regions, mostly stating that those involved had been released. The leadership of CPN (Maoist) acknowledged that some of those abducted in the past had been killed and others detained, but maintained that a large proportion had in fact joined the CPN (Maoist) although families reported them as abducted to avoid reprisal by security forces.

52. Mass abductions of thousands of individuals, mostly students and teachers, were reported. National human rights organizations reported over 8,000 abductions between 3 September and 2 December 2005, including more than 5,000 from Rolpa District; large numbers of abductions from Rukum and Taplejung Districts; and over 3,000 child abductions from September to December 2005. Most of the children were released after short periods during which they were made to participate in political indoctrination programmes, but OHCHR-Nepal received credible information that some were recruited to take part in combat, become informants or serve other duties.

53. OHCHR-Nepal also sought clarification of cases of security forces personnel abducted by CPN (Maoist), including over 70 abducted while off-duty. No information had been received by late January 2006, when RNA believed that 32 of its personnel remained in CPN (Maoist) custody.

(c) Violence and threats to civilians

54. There were frequent reports of the use of violence by CPN (Maoist) against civilians. Representative cases include the abduction and beating of a secondary school teacher in Gulmi District on 30 October 2005 reportedly for failing to support CPN (Maoist). A human rights defender in Biratnagar, Morang District, was abducted on 15 September 2005 and released in an injured state shortly thereafter with orders from CPN (Maoist) not to leave his house for seven days. The Special Rapporteur on the question of torture said that, during his September 2005 visit, he received shocking evidence of torture and mutilation carried out by Maoists in order to

extort money, punish non-cooperation and intimidate others. Methods included beating with sticks on the legs, piercing of legs with metal rods, beatings with rifle butts on ankles and even mutilation, such as amputation of toes.

55. Government officials, teachers, journalists, development workers, members of NGOs and human rights defenders faced threats to physical integrity from CPN (Maoist), forcing some to resign from their jobs or to leave their homes. Such threats related to alleged anti-Maoist activity or a refusal to supply food, shelter, labour or money. OHCHR-Nepal received reports of such actions from Gorkha, Dailekh, Gulmi, Dolakha and Ramechhap Districts. On 18 October 2005, Kamal Neupane, reporter for *Nepal Samacharpatra Daily* in Dailekh District, was threatened by CPN (Maoist) to resign within three weeks or face consequences. The threat was later withdrawn and disciplinary measures promised by CPN (Maoist). On 22 November 2005, journalist Chandramani Kattel of *Blast Times* was reportedly abducted and held for five hours in Morang District by CPN (Maoist) members who accused him of spying.

56. RNA members and their families were particular targets of CPN (Maoist) threats: their homes were padlocked and marked with black flags, and their land seized. Among the districts from which such cases were reported in the last three months of 2005 were Bara, Mahottari and Khotang. RNA stated that 165 RNA personnel had their homes seized in the last three months of 2005. Families of police personnel were similarly affected.

57. In a press statement of 22 December 2005, the CPN (Maoist) leadership announced a series of action programmes in opposition to municipal elections, which included “special action against officials engaged in municipal elections and candidates”. The Representative wrote to the leadership asking to be informed what forms of action this referred to, and asking for an undertaking that it would not include threats to the life or physical integrity of individuals taking no active part in hostilities, or the taking of hostages, which would be a grave violation of the principles of international humanitarian law and of international human rights standards. The leadership replied that the announcement of their intention to disrupt the elections “should in no way imply that our cadres have been instructed to abduct or kill those participating in the elections”. However on 25 January 2006 Bijay Lal Das, prospective candidate for Mayor of Janakpur, was killed reportedly by two Maoists. OHCHR-Nepal condemned the killing and called on the leadership of the CPN (Maoist) to do so, and to state publicly and to all its cadres that such killing is against the policy of the Party. By the end of January there had been no response.

(d) Accountability

58. In a number of cases where CPN (Maoist) stated that actions by their cadres had been contrary to policy, they said that action was taken against those responsible, but OHCHR-Nepal was unable to ascertain or verify the punishment. In the Letter of Understanding with the seven-party alliance, a commitment was expressed to investigate incidents, take action against those responsible, and make such action public.

3. Vigilante groups - *Pratihar Samiti*

59. OHCHR-Nepal investigated the nature and extent of violence perpetrated by illegal armed groups known as *Pratihar Samiti* (retaliation groups) in Nawalparasi and Kapilvastu Districts. The investigations found that, starting around February 2005, some villagers have taken the law into their own hands against suspected Maoists, complaining the State had been unable to protect them. OHCHR-Nepal found a pattern of retaliatory threats, extortion, assaults, and killings perpetrated by both members of *Pratihar Samiti* and CPN (Maoist). In several instances, civilians were killed in the process. Retaliatory actions by *Pratihar Samiti* decreased by mid-2005 in both districts, but many cases including killings remained uninvestigated and those affected continued to fear the consequences of reporting these alleged crimes to the authorities. State officials encouraged this retaliatory violence when it began in Ganeshpur, Kapilvastu District, in February 2005, and OHCHR-Nepal expressed concern that, in some cases, the State either tolerated or colluded with the actions of the *Pratihar Samiti*. In January 2006 OHCHR-Nepal found that *Pratihar Samiti* groups, renamed "Peace and Development Committees", continued to exercise influence in both districts, but confirmed that from mid-2005 RNA made efforts to limit retaliatory actions by these groups.

60. OHCHR-Nepal also investigated reports of an illegal armed group in Dailekh District known as the Special Tiger Force led by former RNA personnel, which was said to have been responsible for the killing or handing over to the security forces of alleged Maoists. The existence of the group was denied by RNA and by the ex-sergeant said to be its leader, but there were further reports that it was responsible for killings of two CPN (Maoist) cadres on 30 December 2005.

61. In a response, the Government stated that it has no policy to encourage or assist the formation of such groups, which were organized spontaneously by local people; that it in no way acquiesces in their activities; and that it takes severe actions where there is credible evidence of anyone taking the law into their own hands.

4. Groups of special concern

(a) Internally displaced persons

62. While the existence of a sizeable population displaced by the armed conflict is an undisputed fact, there continued to be considerable uncertainty about the extent of forced displacement. Displacement in Nepal is less visible than in other countries, partly because those fleeing the armed actors often do not want to be identified as IDPs. They either integrate into urban communities or migrate across the open border to India. Consequently, there are few IDP settlements. This apparent capacity to cope with conflict-induced displacement may, however, conceal the rural population's need for protection from displacement as well as rights at risk from displacement, such as access to health care, schooling, documentation, loss of property or tenancy rights.

63. In the Letter of Understanding with the seven-party alliance, CPN (Maoist) "expressed its commitment to create an environment allowing the political activists of other democratic parties displaced during the course of the armed conflict to return to their former localities and live there with dignity, return their home, land and property seized in an unjust manner and carry out their

activities without let or hindrance". In the weeks that followed, there were reports of some families deciding to return to their villages in conflict-affected districts, but many remained reluctant to do so. Before this period, displacement was reported to have continued, and there were early reports of its resumption following the ending of the ceasefire.

64. The Government provides financial assistance to those displaced by CPN (Maoist) violence. Interministerial consultations continued on a comprehensive Government policy on IDPs which the Government said would take due account of the Guiding Principles on Internal Displacement and incorporate a wider definition of IDPs.

(b) Children

65. The rights of children under 18, including rights to life, physical integrity, health and education, were repeatedly violated by both sides to the conflict. There were reports of killings, beatings, illegal detention, recruitment or other use for military purposes, as well as attacks against schools and health facilities.

66. During the unilateral ceasefire, two deaths and eight injuries of children were attributed to CPN (Maoist). Children were also beaten or sometimes displaced from their homes for failing to support CPN (Maoist). Two boys, aged 12 and 15, were reportedly abducted on 16 November 2005 and ill-treated for four days by CPN (Maoist) in Tanahu District, accused of being informants; when the parents of the boys made inquiries with local CPN (Maoist) members, they were also reportedly abducted and beaten.

67. While CPN (Maoist) continued to deny that it used children for military purposes, many complaints regarding conscription of children for use as combatants, informants, cooks or porters were received. Children who had left CPN (Maoist) or who had surrendered to the security forces were at risk of being recruited again or being detained by the security forces.

68. The situation of children accused of being associated with CPN (Maoist) who were arrested by security forces was of concern, especially those detained under TADO without judicial oversight. OHCHR learned of at least 100 cases of children detained under TADO in prisons and police stations during 2005, some of them for long periods beyond the limits of the law; at least a quarter of this number were arrested when they were under 16, the definition of a child in Nepal's Children's Act 1992. Two girls who, according to the initial detention orders signed by the CDO, were 15 years old, were held under TADO in Kapilvastu District from 27 April 2005 and rearrested immediately after their release by a court on 5 September 2005; the District Police Office provided false information to the police human rights cell in response to OHCHR-Nepal's inquiries.

69. The right to education has continued to be severely undermined, including during the unilateral ceasefire. The "Children as Zones of Peace" campaign regrettably has yet to have a substantial effect on the use of schools for military or political purposes by the two parties. The widespread practice of forcing closure of private and community schools by CPN (Maoist) and its student wing affected the right to education, especially in rural areas of the eastern region.

In one representative case, on 16 October 2005, over 600 students reportedly were forced to leave private schools from the Arghakhanchi District following intervention by the CPN (Maoist)-affiliated All Nepal National Independent Students' Union (Revolutionary). Education was frequently disrupted by mass abductions of thousands of children along with their teachers for political indoctrination (see paragraph 50 above).

(c) Women

70. OHCHR-Nepal investigated scores of cases of human rights abuses against women and girls in the context of the conflict, including abuse during search operations by the security forces or during the presence of CPN (Maoist) in their villages, and cases of severe torture and ill-treatment in RNA custody and torture by CPN (Maoist). The prevalence of violations against women is believed to be under-reported due to their fear of retaliation or further victimization, and victims thus do not come forward for legal assistance and appropriate treatment.

71. Among the complaints of alleged State abuse which OHCHR-Nepal is actively following up are 26 cases of women who disappeared, 29 cases of torture and ill-treatment in detention, 3 rapes, 13 cases of detention under TADO, 4 rearrests, 7 extrajudicial executions, 3 victims of indiscriminate attacks and several death threats. In January 2006 OHCHR-Nepal confirmed reports of a series of cases of sexual violence and killings of women by unidentified armed groups in Siraha District.

(d) Human rights defenders

72. The environment for human rights defenders, especially those working outside the Kathmandu Valley, remained a difficult one, in which they were vulnerable to intimidation or action by State authorities and CPN (Maoist) on accusation of supporting the other party. Defenders who reported specific human rights concerns have been summoned by military, police and civilian authorities and interrogated about their sources, threatened or in some cases arrested and briefly detained. NGOs expressed particular concern that the Government-imposed Code of Conduct for NGOs would be used against those taking up State abuses, and the Media Ordinance appeared to intimidate some journalists into self-censorship (see paragraphs 82 and 85 below). Defenders continue to fear possible CPN (Maoist) reprisals in reaction to their human rights work, although the unilateral ceasefire and the commitments of the Letter of Understanding with the seven-party alliance may have had a positive effect on CPN (Maoist) respect for the rights of human rights defenders. Despite such concerns, human rights defenders maintained active monitoring and forthright criticism of violations by both State authorities and CPN (Maoist).

B. Democratic rights

73. The Government promulgated ordinances to increase regulation of the media and of NGOs in ways which raised serious concerns for freedom of expression and freedom of association. With the launching of the seven-party alliance's "democratic awareness campaign" and parallel civil society demonstrations, the authorities undertook a number of measures to restrict public assemblies and carried out arrests of leaders and activists.

1. Freedom of movement and freedom of peaceful assembly

74. In September 2005 OHCHR-Nepal expressed concern that district administrators were imposing blanket bans on public gatherings as a means to prevent the exercise of the right to peaceful assembly. Such bans were issued in several municipalities - Banke, Jhapa, Kailali, Kalikot, Rukum and other districts - often immediately after political parties or civil society organizations announced plans for peaceful demonstrations in those areas. The Government replied that gatherings had been prohibited in particular areas only to ensure the rights and security of the general public, but did not provide as requested copies of all such orders and an explanation of their necessity and legal basis.

75. OHCHR-Nepal monitored demonstrations and their policing, and promoted dialogue between the organizers and police, in order to avoid situations that might escalate into violence. It conveyed concern to the Inspector General of Police about the use of excessive force in the policing of demonstrations in August and September. OHCHR-Nepal recognized the difficult and sometimes dangerous position in which police may find themselves when the use of violence by demonstrators genuinely threatens public order, but it was particularly concerned by reports in September 2005 of the beating of some persons taken into custody, as well as the throwing of stones by police and the use of tear gas in ways which put the general public at risk. The monitoring of subsequent demonstrations and rallies to mid-January led OHCHR-Nepal to conclude that the policing of such gatherings had improved.

76. OHCHR-Nepal expressed concern to the Government over reports that members of zonal, regional and district administrations, as well as security forces, sought to obstruct people from exercising the rights to freedom of peaceful assembly and freedom of movement. In several districts, the local administrations were alleged to be responsible for threats to people not to participate. The organizers of demonstrations also claimed that security forces repeatedly barred or delayed the movement of buses to demonstrations, while the authorities maintained that it was necessary to carry out security checks. While OHCHR-Nepal recognized the need to ensure security, it urged the authorities to ensure that the rights to freedom of movement and peaceful assembly were respected.

77. OHCHR-Nepal's concerns grew in the second half of January 2006, as public protest intensified in opposition to the municipal elections called for 8 February 2006. On 16 January the authorities imposed a ban on all assemblies, processions and sit-ins within the Kathmandu ring road, ahead of a major demonstration called by the seven-party alliance for 20 January and other planned protest actions. The Government stated that the ban was made necessary by information that the 20 January demonstration would be used by CPN (Maoist) as an opportunity to incite or commit violence. While recognizing the serious security situation in the light of CPN (Maoist) attacks in the Kathmandu Valley on 14 January, OHCHR-Nepal regretted that the complete ban on demonstrations represented an extreme limitation on the right to freedom of peaceful assembly. Increasing restrictions on assemblies were imposed in other municipalities. Escalating protests at the arrests of political leaders and the Government's intention to proceed with municipal elections and challenges to these restrictions increasingly involved acts of violence by demonstrators and excessive use of force by police in breaking up demonstrations and carrying out arrests.

2. Arbitrary detention and fair trial

78. Hundreds of political party and civil society activists were arrested during two waves of demonstrations and rallies across the country in September and December 2005. Most of these assemblies were peaceful, although some attempted to enter prohibited areas, and some student demonstrators initiated violence against police. Most of those arrested were released after a few hours or overnight detention, but some were charged under the Public Offences Act 1970 for stone-throwing or other actions.

79. On 19 January 2006, two days after the ban had been imposed to prevent the 20 January demonstration in Kathmandu, security forces arrested more than 100 political and civil society leaders in Kathmandu at their homes in the early hours of the morning and served them with 90-day detention orders under the Public Security Act 1989 (PSA). The PSA allows for a person who allegedly threatens the “sovereignty, integrity or public tranquillity and order” of Nepal to be detained for up to 90 days without charge by order of the CDO (see A/60/359, paragraph 15). Other senior leaders were placed under house arrest. OHCHR-Nepal stated that concerns raised by the severe restriction on the right to freedom of peaceful assembly were compounded by mass arbitrary arrests of persons, many of whom had repeatedly spoken out against use of violence. In the following days, hundreds of further arrests took place as protests were held in Kathmandu and most towns, with some of those arrested being released but many others served with three-month detention orders under PSA. At the end of January hundreds remained detained.

80. Former Prime Minister Sher Bahadur Deuba and ex-minister Prakash Man Singh remained in custody in late January 2006 following their July 2005 conviction by the Royal Commission on Corruption Control (RCCC) (see *ibid.*, paragraph 57). RCCC’s powers are of a judicial nature, but the conditions of appointment and tenure of commissioners do not comply with international standards for the independence of judiciary and fair trial. RCCC acts as investigator, prosecutor and court, and its powers and functioning undermine the right to fair trial, including the right to all guarantees necessary for defence. A case challenging the constitutionality of RCCC was pending before the Supreme Court for several months. In early January the court postponed its final ruling until 13 February 2006.

3. Freedom of expression

81. Journalists and media workers continued to be subjected to frequent intimidation and harassment. While in Kathmandu a high degree of freedom of expression was exercised by the media despite the threat of restrictions, in the districts there was a consistent pattern of journalists being summoned and threatened by the local administration, police or RNA in response to critical reporting. Some reported death threats. There were several short-term arbitrary arrests of media workers, including that of Harihar Singh Rathour in Dailekh District on 19 September 2005, which OHCHR-Nepal investigated. In August 2005, two prominent editors were summoned by the CDO of Kathmandu and publicly threatened with legal action by the Minister of Information and Communications after they published a cartoon deemed offensive to the monarchy. Journalists were sometimes singled out for beatings in the course of their coverage of demonstrations.

82. In October 2005 the Government promulgated a Media Ordinance amending six separate statutes regarding the media. It strengthened already restrictive provisions contained in those Acts and introduced new restrictions on the exercise of freedom of expression and the right to seek and impart information. The Ordinance sought to entrench the Government's efforts to ban the broadcasting of news on FM radio stations; to limit criticism of public figures through ill-defined restrictions and by making defamation a criminal offence; to require Government permission for use of news from foreign news agencies; and to empower the Government-controlled Press Council to cancel journalists' licences. OHCHR-Nepal expressed concern that the restrictions violated international human rights standards and went beyond those permitted under the International Covenant on Civil and Political Rights.

83. Concern about the Government's commitment to freedom of expression and regard for due process of law was intensified by the manner of attempted enforcement action. Security forces acting under instructions of the Ministry of Information and Communications seized equipment from two radio stations in the capital (Kantipur FM and Sagarmatha community radio station) accused of broadcasting news. During the raid on Sagarmatha, five persons were arrested with no legal basis, four of whom were held overnight with no access to a lawyer or their family. Some radio stations in districts outside Kathmandu also experienced intervention by government authorities. OHCHR-Nepal expressed concern about the arrests and the seizures. In mid-December, the equipment taken from the Sagarmatha and Kantipur offices was returned.

84. The constitutionality of the Media Ordinance and the legality of attempted enforcement actions were challenged before the Supreme Court. The court issued a number of stay orders, and its decision on the constitutionality was pending as of late January 2006.

4. Freedom of association

85. In July 2005, an Ordinance granted the Social Welfare Council (SWC) powers to issue directives to and supervise the activities of social organizations, and to frame and implement a Code of Conduct, enforced by Government suspension or dissolution of organizations that do not observe the Code. In November, SWC issued a Code of Conduct under these powers. It introduced constraints on the membership, objectives, programming, functioning, access to funding and affiliations of national and international organizations active in Nepal, and required their general conformity to Government policy.

86. The Special Representative of the Secretary-General on the situation of human rights defenders and OHCHR-Nepal expressed concern that the proposed Code would constitute undue and unnecessary restrictions to freedom of association and other standards guaranteeing the status and work of human rights defenders as set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The United Nations Resident Coordinator wrote on behalf of donors and United Nations agencies to the Minister for Women, Children and Social Welfare, stating that the Code is inconsistent with Nepal's international human rights obligations and recommending that it be withdrawn. The constitutionality of the Code was challenged before the Supreme Court whose decision was pending as of late January.

C. Long-standing human rights concerns

87. Economic impoverishment, severe social inequalities and discrimination are among the human rights concerns that pre-date the crisis. They are, however, relevant to the conflict, both because they are seen by some to be among its root causes and because the armed conflict itself has aggravated an already serious situation. The rights to health, to food and to adequate shelter, and other economic, social and cultural rights, are all at risk.

1. Caste and ethnic discrimination

88. Members of Dalit and indigenous nationalities continue to be harassed and discriminated against. For example, members of the Tharu community have been held in bonded labour (under the so-called *kamaiya* system) and Dalits in the so-called *haliya* system. Although the *Kamaiyas* were officially set free in 2000, their access to housing, to land, education and work continue to be limited. Women members of the Dalit communities suffer multiple discrimination and some groups are victims of forced prostitution. Often women and children from these communities move to the cities for work where they experience sexual abuse and exploitation. In its 2004 concluding observations (see CERD/C/64/CO/5, paragraph 18), the Committee on the Elimination of Racial Discrimination recommended the enforcement of laws and programmes put in place to bring an end to the practice and to discrimination against *Kamaiyas*. Bonded labour systems similar to *Kamaiyas* nevertheless still exist.

89. As of late January 2006, no invitation had been issued to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to visit Nepal, following his June 2004 request.

2. Gender-based discrimination

90. Despite Nepal's being party to international instruments including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), there are still numerous discriminatory provisions contained in domestic legislation. Some progress was noted on 28 November 2005, when the Supreme Court directed the Government to issue passports to women under 35 years of age without the consent of their guardians, after petitioners challenged a 1995 cabinet decision. The Government is yet to undertake a comprehensive revision of laws, which should address such areas of discrimination as the right to citizenship by descent from the mother and the right to non-discrimination in inheritance of land and other property.

91. The long-standing problem of trafficking in women and girls from Nepal to India for the purpose of prostitution has been aggravated by increasing population displacement. The lack of prosecution of those involved in organizing the trade is of increasing concern.

3. Child rights

92. The treatment of children by law-enforcement and judicial authorities has been a long-standing concern in Nepal. Despite legal provisions prohibiting the arrest of anyone under 10 years old and the requirement for any children between 10 and 16 who have been arrested to be held in a juvenile detention centre, children suspected of petty crimes continue to be arrested and held for long periods of time by police. In the course of visits to

prisons and police stations, OHCHR-Nepal regularly found children detained with adults and without legal representation. It made representations about the detention of five children, including an 8-year-old, who were held in Hanuman Dhoka police station in December 2005 in overcrowded cells with adults. They had been remanded into police custody by a court without being produced before the judge, and lawyers who had tried to see them had been denied access.

93. OHCHR welcomed the efforts by the Government, supported by UNICEF and international NGOs, to promote the establishment of juvenile benches in 10 districts.

94. From April 2005, school enrolment campaigns resulted in large numbers of girls and children from disadvantaged communities enrolling in the school system for the first time. The campaign was able to be conducted nationally despite the conflict.

III. OTHER ACTIVITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN NEPAL

95. As of late January 2006, OHCHR-Nepal was nearing the full deployment of staff, with final arrivals expected in February. The initial deployment of staff to Nepalgunj took place in August 2005, to Biratnagar in December 2005, and to Pokhara in January 2006. The headquarters comprises the Office of the Representative, including a Senior Military Liaison Officer and Legal Adviser; a Protection and Information Management Section; a Capacity-building, Training and Best Practices Section; a Public Information and Outreach Unit; an Administrative Services Unit; and a Field Safety, Security and Liaison Unit. The staffing comprises 39 international staff, 20 United Nations Volunteers and 2 Junior Professional Officers, together with 22 National Professional Officers and 58 local support staff.

96. In accordance with the Agreement, OHCHR-Nepal provides advisory services and support to a variety of partners. During the reporting period, OHCHR carried out the following activities with the Government: it provided a human rights presentation at the Police Academy; undertook planning with the police with a view to organize a human rights training workshop for future human rights cell staff; agreed in principle on its participation in a regional human rights workshop for government officials; and undertook to provide comment to the Office of the Prime Minister on the draft report of Nepal under the International Covenant on Economic, Social and Cultural Rights. Activities undertaken in cooperation with NGOs included several human rights presentations, often on the role of OHCHR-Nepal or on reporting under the special procedures of the Commission on Human Rights.

97. The National Human Rights Commission is a major partner for advice and assistance from OHCHR-Nepal, as stipulated in the Agreement. An OHCHR mission focusing on NHRC, which took place in June-July 2005, recommended that the Government should reconsider its approach to the appointments process for Commissioners in the continuing absence of Parliament and consider any recommendations for its improvement, particularly as regards transparency and broad consultation. The mission also recommended that the donor community should maintain its constructive dialogue with NHRC and should continue to link assistance to the Commission's demonstrated independence and effectiveness. Pursuant to these and other recommendations, NHRC, its donors, UNDP and OHCHR agreed on a comprehensive review of

the implementation of the UNDP project for the capacity development of NHRC, which was to be undertaken in January-February 2006. Discussions between NHRC and OHCHR-Nepal were also under way with a view to concluding an agreement on cooperation between the two organizations.

98. OHCHR-Nepal convened and chaired the United Nations Inter-Agency Human Rights Protection Working Group. The Working Group established a Sub-Group on Child Protection, chaired by UNICEF. It and OHCHR agreed to co-chair a Task Force on a Monitoring and Reporting Mechanism on Children and Armed Conflict, to report to the Security Council Working Group established under Security Council resolution 1612 (2005). Inter-agency consultations on the situation and needs of IDPs led to agreement that United Nations agencies, including OCHA, OHCHR, UNDP, UNHCR, UNICEF and WFP, together with the Norwegian Refugee Council, would conduct a joint two-stage assessment, focusing on the need to protect persons in conflict zones from forced displacement, the capacity of the State to protect and assist its IDPs and the necessary conditions for return. The first phase was carried out in three districts in December 2005 and the second phase will be carried out in the first quarter of 2006.

IV. CONCLUSION

99. **This report is written at a time of renewed armed conflict and of confrontation between the Government and the main political parties. CPN (Maoist) has extended its stated commitments to observe international humanitarian law and respect human rights in its understanding with the political parties and communications with OHCHR-Nepal. Its leadership must now ensure that its cadres act in accordance with these commitments. Violations by CPN (Maoist) cannot excuse breaches by the State of its international legal obligations. Nepal's security forces must hold accountable perpetrators of violations within their ranks, who should be excluded from participation in United Nations peacekeeping operations. The Government's treaty commitments include respect for freedom of peaceful assembly, freedom of expression and freedom of association. It must end the arbitrary detention of political and civil society leaders, and ensure that its legislation and practice are in accordance with these rights. The cooperation of both parties with OHCHR-Nepal is a positive element in this difficult context. The best basis for building the full respect for human rights would, however, be the peace for which the people of Nepal continue to yearn.**
