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Rapport du Haut-Commissaire des Nations Unies aux droits de l'homme

Additif

Rapport sur la situation des droits de l'homme et les activités du Haut-Commissariat, y compris en matière de coopération technique, au Népal*

Résumé

On trouvera ci-après le sixième et dernier rapport présenté par la Haut-Commissaire au Conseil des droits de l'homme sur la situation des droits de l'homme et les activités du Haut-Commissariat au Népal. Le Gouvernement népalais a décidé de ne pas reconduire au-delà du 8 décembre 2011 le mandat qui permettait au Haut-Commissariat aux droits de l'homme d'y avoir une présence sur le terrain. Le présent rapport passe en revue la situation des droits de l'homme au Népal en 2011 au regard de 10 domaines prioritaires en la matière et de l'évolution générale des conditions. Bien qu'il subsiste de nombreux problèmes, le processus de paix engagé dans le pays continue de tenir ses promesses, avec de nets progrès dans le sens d'une conclusion positive. Le HCDH est prêt à rechercher des modalités appropriées pour continuer d'aider le Népal à faire avancer la cause des droits de l'homme.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui est joint en annexe au résumé, n'est distribué que dans la langue originale.

Merci de recycler

Annexe

Report on the human rights situation and the activities of the Office of the High Commissioner, including technical cooperation, in Nepal

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I. Introduction

1. The year 2011 saw a number of positive developments concerning Nepal's human rights protection framework. The Government started implementation of its three-year National Human Rights Action Plan and the Untouchability Act was passed in May, creating a more detailed and specific legislative framework for outlawing caste-based discriminatory practices. The Supreme Court of Nepal continued to show leadership in the promotion of human rights, with progressive decisions regarding economic, social and cultural rights, illegal arbitrary detentions and the promotion of accountability for perpetrators of human rights violations. Nepal participated in the universal periodic review in an open and serious manner, and accepted the majority of recommendations submitted by Member States. Although inter-party disputes continued to inhibit the achievement of peace process milestones, the parties remained genuinely committed to completing the peace process as a whole.

2. At the same time, there has been a concerning trend towards entrenching impunity for violations committed during the conflict, including withdrawing cases and granting amnesties and pardons. Of greatest concern is the indication that the laws establishing transitional justice mechanisms will likely include clauses allowing for amnesties in relation to serious violations of international human rights and humanitarian law. This has drawn significant opposition from civil society, national human rights institutions, the legal community and Nepal's international partners. Despite legal guarantees regarding freedom of expression, human rights defenders and journalists continue to face risks in conducting their activities across Nepal; they are often forced to practice self-censorship in the absence of appropriate mechanisms for their protection.

II. Human rights and the political situation

3. Nepal continues to consolidate peace in a post-conflict environment. However, a period of political uncertainty has persisted through much of 2011. Though the country did not witness any major political upheavals, differences in opinion among the three largest political parties persisted for most of the year. In August 2011, a senior leader of the Unified Communist Party of Nepal (Maoist) (UCPN-M), Baburam Bhattarai, was elected as the new Prime Minister, with the support of a coalition of several Terai-based political parties.

4. The Constituent Assembly elected in 2008 with a mandate to draft a new Constitution failed on three occasions during 2011 to meet drafting deadlines.[1] This was due to political disagreements concerning unresolved aspects of the peace process, particularly the integration and rehabilitation of the Maoist army. The Assembly's tenure was further extended on each occasion following agreements among the political parties to complete the outstanding tasks.[2] The new Prime Minister announced that immediate steps would be taken to move the peace process forward. On 1 November, there was a major breakthrough with the signing of a seven-point agreement between the main political parties. The agreement deals with key issues of the peace process, including provisions for

[1] Article 64 of the 2007 Interim Constitution gave the Assembly two years (until May 2010) to draft a new constitution. The deadline has been extended four times, through amendments to the Interim Constitution.

[2] At the end of May, the deadline was extended by three months to 31 August, when it was extended again to 30 November. On 29 November, it was further extended for six months.

the rehabilitation and integration of the former Maoist combatants, the establishment of two transitional justice commissions within one month, the return of property seized during the conflict and the drafting of the new Constitution.

5. Public security remains poor in several southern Terai districts. The local population, especially the business community, is frequently subjected to violent threats and intimidation by armed criminal groups, and kidnappings for ransom remain common. The response of the State also raises concerns as there have been allegations of extra-judicial killings by the police.

III. Office of the United Nations High Commissioner for Human Rights in Nepal

6. OHCHR-Nepal's mandate was extended in June 2011 for six months until 8 December 2011, despite the High Commissioner's request for a two-year extension. At the request of the Government, OHCHR submitted an exit strategy in which it proposed a continuation of its work until the promulgation of the new Constitution and the successful completion of parliamentary elections, expected by the end of 2012. OHCHR engaged in consultations with stakeholders regarding its future role. This revealed strong support from the National Human Rights Commission (NHRC), other national human rights institutions (NHRIs), civil society, most major political parties and the international community for the Office to remain in the country to support the completion of the peace process. However, on 7 December 2011, the Government of Nepal decided not to renew the mandate of OHCHR-Nepal. The Office is currently finalizing its activities and will draw down its operations in due course. OHCHR will discuss alternative modalities with the Government to provide continued support to the human rights agenda in Nepal.

7. During 2011, OHCHR-Nepal consolidated its presence in Kathmandu, following the closure of its four field offices at the request of the Government. It continued to discharge its tasks of monitoring the human rights aspects of the peace process as mandated by the Comprehensive Peace Agreement (article 9.1). The Office maintained links with local stakeholders and undertook regular field missions across the country: 122 between January and December. OHCHR teams monitored protests, particularly around the drafting deadlines of the new Constitution in May and August. The Deputy High Commissioner for Human Rights visited to Nepal in April to assess the situation in the country.

8. In 2011, OHCHR-Nepal placed special emphasis on strengthening the national human rights protection system. Strengthening the role of the NHRIs, including the National Women Commission (NWC) and the National Dalit Commission (NDC) was prioritized, and numerous activities were undertaken jointly with NHRIs, including publishing legal analyses on key human rights issues. OHCHR-Nepal continued to assist the Government, including on issues related to the fulfilment of economic, social and cultural rights in Government policies, and provided significant support to the transitional justice process towards meeting international standards. To this end, it developed proactive collaboration with Nepal's legal community and the judiciary on various issues, including public interest litigation. During 2011, OHCHR also strengthened its cooperation with the Office of the Attorney General.

IV. Universal periodic review

9. Nepal's first review by the Working Group on the Universal Periodic Review occurred in January 2011. This provided an opportunity for the Government, NHRIs, civil society organizations (CSOs) and United Nations agencies to critically examine the human

rights situation in the country. OHCHR-Nepal supported the Government in preparing its report in 2010; a number of consultations were organized by CSOs and NHRIs, in which Government representatives also participated. In addition to the Government's report, two joint reports were submitted by the three NHRIs and by a group of 238 CSOs, which encouragingly set aside political divisions to do so. OHCHR-Nepal facilitated the in-country pre-review process, disseminating information, connecting relevant actors and clarifying the roles of each stakeholder.

10. The review took place on 25 January 2011; Member States submitted 135 recommendations, to which the Government responded encouragingly by accepting 84 recommendations initially, and another 12 recommendations at the plenary session in June. The Government recognized gaps in its promotion and protection of human rights, citing various factors, including the continuing political impasse, challenges to the peace process and a weak economy. This acknowledgement indicated the Government's openness to engage in dialogue and its commitment to realize a series of human rights benchmarks over the coming four-year period. During the review process, civil society actors undertook proactive lobbying and advocacy, and effectively established a collective voice within Nepal's human rights community.

V. Structure of the report

11. The present report is structured around 10 human rights topics prioritized in the Comprehensive Peace Agreement (CPA), the National Human Rights Action Plan and, most recently, the universal periodic review. These issues have been the central focus of OHCHR's work in Nepal and the subject of many recommendations in its public reports. They have also been raised by the various human rights mechanisms, including the treaty bodies and special procedures. As Nepal proceeds towards the conclusion of its peace process, this report analyses the country's achievements and challenges in relation to these ten topics throughout 2011. The report also highlights the support provided by OHCHR to key partners and actors, in particular the NHRC and the other NHRIs, to strengthen the national human rights protection system.

A. Constitution

12. The ongoing Constitution-drafting process offers a historic opportunity to build strong foundations for the State, grounded on respect for human rights and justice, and to address longstanding discriminatory practices in Nepal. During the universal periodic review, a number of States made recommendations calling for the timely completion of the new Constitution in line with international standards, and the full participation of the different ethnic groups and castes in the consultation process prior to its promulgation.[3] The Government accepted all the recommendations of the review, except one on the issue of statelessness.[4]

13. The Constituent Assembly's mandate was to draft the new Constitution and the drafting deadline was extended three times in 2011. The Supreme Court upheld the legitimacy of the extensions, but expressed concerns with the lack of progress to date.

[3] Human Rights Council, Report of the Working Group on the Universal Periodic Review: Nepal (A/HRC/17/5), para. 106.1.

[4] Ibid., para. 109.12.

14. The current draft contains a number of important provisions, particularly with regard to non-discrimination and collective rights. However, gaps exist in relation to the protection of some rights, including the rights of non-citizens, the justiciability of economic, social and cultural rights and the right of women to enjoy equal access to citizenship. The possible inclusion of an amnesty clause for serious crimes in the draft bills to establish the transitional justice mechanisms – inconsistent with international law – is a major concern.[5] Furthermore, the unresolved issue of the principle of independent judicial review in interpreting the Constitution and the constitutionality of laws is of critical importance. The Constituent Assembly Committee on the Judiciary originally proposed that this authority should rest with a parliamentary committee; however, there has been growing consensus towards seeking an alternative that would maintain the principle of judicial review. Recognizing that discussions of these provisions are ongoing, the High Commissioner has called for the timely adoption of the Constitution, with provisions fully consistent with international human rights standards.

15. Once the draft is finalized, a nationwide public consultation and a clause-by-clause discussion within the Assembly should follow. Despite time pressures, these processes remain essential in order to garner genuine public ownership. OHCHR-Nepal continued to provide technical assistance on critical human rights aspects of the Constitution throughout 2011. During her visit to Nepal in April, the Deputy High Commissioner directly engaged with Assembly members and other national partners on key human rights concerns in relation to the Constitution.

B. Gender equality

16. The promotion and protection of the human rights of women in Nepal remains a significant challenge. Discrimination against women, especially those belonging to vulnerable groups such as Dalits, remains widespread and includes allegations of witchcraft. The persistence of practices such as *kamlari*, a form of bonded child labour affecting girls from the Tharu indigenous community, and the growth of the dowry system are of particular concern.

17. During 2011, the Committee on the Elimination of Discrimination against Women considered Nepal's fourth and fifth periodic reports. While commending some positive developments in gender equality, the Committee raised a series of concerns regarding legislative shortcomings, including discriminatory provisions related to the right of a Nepali mother to transfer citizenship to her child. This issue is also controversial in the current draft Constitution which states that Nepali citizenship shall be granted to a child only if both parents are Nepali citizens. This is a notable regression from the 2007 Interim Constitution which requires only one parent to be a citizen, an important recognition of the independent identity and ability of Nepali women to transfer citizenship. OHCHR-Nepal and the NWC jointly advocated for equal and independent rights of women in the new Constitution, including through a publication on citizenship. Furthermore, the important 2007 Supreme Court order to the Government to provide citizenship certificates to third

[5] There are no explicit provisions on amnesty or pardon, including in the context of serious crimes. The draft text contains a provision granting the President sweeping authority in relation to pardons and clemency. Under international human rights law, States may not grant amnesty for gross violations of human rights and any such provision should be subject to the State's overall responsibility to fulfil victims' rights to truth, justice and reparations. As such, the Constitution should explicitly provide for the impermissibility of amnesties, including pardon and withdrawal of criminal charges, for serious crimes such as enforced disappearance, torture, unlawful killing and rape.

gender persons[6] remains largely unimplemented, due to a lack of awareness among authorities and the failure of the Ministry of Home Affairs to issue clear directives on its interpretation. In July 2011, OHCHR-Nepal, in collaboration with civil society, organized a programme on challenges and best practices identified from the implementation of the 2007 ruling.

18. Gender equality was the subject of the largest number of universal periodic review recommendations for Nepal. The Government accepted all the recommendations, including those to implement a legal and policy framework to end gender-based discrimination,[7] investigate and prosecute cases of gender-based violence, protect victims and ensure their access to justice,[8] as well as a number of recommendations regarding sexual orientation, including the implementation of the 2007 Supreme Court decision.[9]

19. However, challenges remain and widespread impunity for perpetrators of gender-based violence continues. Key challenges include the lack of access to justice for women victims, due in part to ineffective implementation of existing laws and policies, the failure of the police to take a gender-sensitive approach and a frequent resort to "mediation". While the law allows for mediation in domestic violence cases with the consent of a victim, OHCHR found that pressure may be exerted on victims to accept mediation rather than to seek criminal justice in relation to other crimes, including sexual violence. Increased reports have been received of violence against women alleged to practice witchcraft. The victims are frequently women from weaker social-economic backgrounds, including single, older and/or Dalit women. Action against perpetrators is rare. One notable exception was the decision of a District Court to impose a prison sentence for the assault and displacement of a woman accused of practising witchcraft – the first custodial sentence for such a case.[10]

20. OHCHR, in partnership with the NWC, monitored the implementation of the Action Plan of the Office of the Prime Minister aimed at eliminating gender-based violence. The Government has established safe houses in 15 districts, and OHCHR supported capacity-building of the staff of the safe houses and of law enforcement officials. OHCHR-Nepal further supported local networks in responding to sexual and gender-based violence and other forms of discrimination, including an initiative to declare one entire development area as "witchcraft violence free".[11] To further combat gender-based violence, the Committee on the Elimination of Discrimination against Women recommended the reform and implementation of relevant legislation and policies, as well as building the capacity of key actors. The Government has since submitted a draft bill to Parliament with the aim of amending provisions in 19 different laws. The High Commissioner hopes that the Government will develop a comprehensive strategy, with concrete goals and timetables, in order to work towards implementing this recommendation.

[6] A/HRC/17/5, para. 106.23; also Supreme Court of Nepal (2007), *Sunil Babu Pant and others v. Government of Nepal and others*, writ no. 917 of year 2064.

[7] A/HRC/17/5, paras. 106.2, 4, 5, 10, 23 and 31; 107.11 and 12.

[8] Ibid., paras. 106.23, 28 and 31; 107.22 and 23.

[9] See footnote 6 above.

[10] On 19 June, the Lalitpur District Court sentenced the main perpetrator to six months imprisonment and gave fines to all seven perpetrators. This verdict is the first in Nepal handing out a prison sentence under the Civil Code for crimes committed in relation to witchcraft allegations.

[11] In November 2010, OHCHR, in collaboration with women human rights defenders and the local community, launched a one-year campaign in Amgacchi village, Morang district, as a pilot project to create a model village development committee (VDC). The VDC will combat sexual and gender based violence, with the aim of declaring the village "free of allegations of witchcraft and related violence against women" within one year.

C. Caste-based discrimination

21. During 2011, OHCHR-Nepal continued to receive reports of incidents of caste-based discrimination, including the killing – reportedly by the bride's family – of the father of a Dalit man who had married a woman from a dominant caste. While the seriousness of the case and the publicity it generated has resulted in the detention of a number of alleged perpetrators, in general, access to justice for victims of caste-based discrimination is limited, with very few prosecutions taking place.[12]

22. An inadequate legislative framework has significantly contributed to this situation. It is therefore noteworthy that the Constituent Assembly adopted the Caste-Based Discrimination and Untouchability (Crime and Offences) Act in May 2011.[13] This new law has been welcomed by Nepal's human rights community as a significant step forward. It followed concerted advocacy efforts by a coalition of actors, including OHCHR and the NDC, and serves to prohibit the commission or incitement of caste-based discrimination and untouchability in both the public and private spheres. Furthermore, it provides for harsher punishment for public officials breaching it, and requires perpetrators to provide compensation to victims. In a welcome signal of its commitment to combat this problem, the Government accepted all recommendations related to caste-based discrimination made during the universal periodic review.

23. Following the successful enactment of the Untouchability Act, emphasis has now shifted to its proper implementation. It is critical to raise both the awareness and capacity of law enforcement officials, CSOs and the general public. To this end, OHCHR-Nepal and the NDC produced a joint publication on the new law and, in September 2011, launched a "100 Days" campaign, with the slogan "I commit to end caste-based discrimination and untouchability". As part of the campaign, OHCHR-Nepal published a detailed report analysing the obstacles encountered by victims of caste-based discrimination in accessing justice and highlighting the critical role of the police in properly filing complaints, investigating cases and providing protection to victims and witnesses.[14] It is imperative that the Government issue guidelines on the new law for State officials, provide specific training to law enforcement officials and comprehensively disseminate the law, in partnership with the NDC. OHCHR is ready to support these actions through capacity building for Government officials and CSOs. The Government recently established a centre to monitor untouchability in Kathmandu, but more are required across Nepal.

D. Persons with disabilities

24. Although there is no centralized data collected on persons with disabilities in Nepal, they constitute one of the most disadvantaged groups in the country. This is reflected in the literacy and employment indicators. For example, children with disabilities have lower

[12] The man was killed on 30 August following the inter-caste marriage of his son in Dailekh district. Police arrested nine alleged perpetrators, five of whom remain in custody, while four have been released on bail.

[13] See A/HRC/17/5, paras. 106.24; 107.11, 12 and 13; 108.12.

[14] In December 2011, OHCHR organized an event to launch its report with participants from across the South Asia region. Best practices were shared and discussed and a Regional Action Plan developed to follow up recommendations in the report.

enrolment and higher drop-out rates at schools.[15] Gaps in physical facilities and information are the major obstacles for accessing the right to education, health and employment.

25. The Government took a significant step towards better protection and promotion of the rights of persons with disabilities by ratifying the Convention on the Rights of Persons with Disabilities in 2009, and the Optional Protocol in 2010. During the universal periodic review, the Government also accepted a number of general recommendations to protect the rights of persons with disabilities, although it rejected a specific recommendation to ensure their participation in vocational training, literacy and numeracy programmes, with measurable targets to be reached within one year.[16] However, the Government indicated that an action plan is being developed to ensure access to vocational training, together with a mechanism for regular consultation with representatives of organizations of persons with disabilities.

26. In 2011, the Ministry of Women, Children and Social Welfare initiated a programme to review and reform existing policies and legislation on disability to ensure consistency with the Convention. The Ministry of Health has undertaken a similar review in relation to the Mental Health Policy. OHCHR-Nepal continued its engagement with the Government and relevant organizations to support these reviews and to promote the consideration of disability issues throughout development planning.

E. Economic, social and cultural rights

27. Nepal remains on the United Nations list of least developed countries. Some progress has been made in the fulfilment of economic, social and cultural rights, for example, the net enrolment rate in primary education in 2010 was recorded at 94.5 per cent, an increase of 7 per cent over five years.[17] However, the lack of disaggregated data on the basis of caste, ethnicity, gender, age, disability, location and other economic and social factors makes it difficult to assess whether these improvements benefit all sections of society.[18]

28. Against this backdrop, a major accomplishment of OHCHR-Nepal in 2011 was the launch of a user's guide, with indicators for the realization of the rights to adequate food, housing, health, education and work, for use by national stakeholders. Work on the guide was conducted in collaboration with the Working Group on Economic, Social and Cultural Rights Indicators, comprising the NHRIs, the Ministry of Health and Population and the Community Self-Reliance Centre. Aimed at monitoring the progressive realization of the above-mentioned rights, the guide identifies gaps and resources for the more marginalized sections of the population. The Government's National Human Rights Action Plan for the next three years has already integrated some of these indicators. The Government is encouraged now to work towards establishing an effective data-generating mechanism and to identify appropriate national benchmarks for each indicator.

29. During the universal review process, the Government accepted recommendations for ensuring the enjoyment of economic, social and cultural rights by all, and for stepping up efforts to ensure the enjoyment of these rights by marginalized and vulnerable groups.[19]

[15] Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal* (Human Rights Watch, New York, 2011), p. 7.

[16] A/HRC/17/5, paras. 106.10 and 46; 107.12; 108.13 and 14.

[17] Information provided by the Ministry of Education.

[18] In 2011, the Government conducted a national census; although the results have yet to be published, it is expected that, unlike in the past, information will be disaggregated by a variety of categories.

[19] A/HRC/17/5, paras. 106.17, 41, 46 and 49.

Based on information collected by OHCHR, the number of indigenous peoples participating in decision-making processes of the Government remains low, particularly in relation to the management of national parks and neighbouring buffer zones where many indigenous peoples live. During 2011, OHCHR-Nepal continued its advocacy, thereby contributing to greater awareness among park authorities regarding the engagement of indigenous people, especially women, in park management. One result is the commitment by the head of the national park buffer zones in the Chitwan district to establishing one additional users' committee consisting of women, including indigenous women.

30. *Haliyas* represent another group that suffers in relation to the enjoyment of economic, social and cultural rights.[20] Despite a 2008 Government decree formally "freeing" the *haliyas* from debt bondage, their abject living conditions have largely remained unchanged. Most *haliyas* have received little, if any, rehabilitation support, and face difficulties in accessing basic needs including food, shelter and health services as they have not been provided with identity cards. Many are compelled to continue as debt labourers with their former landlords. OHCHR-Nepal continues to monitor the situation, advocate with the Government and support the Federation of National Haliya Liberation Society in their activities.

31. In 2011, the Supreme Court issued a number of decisions relating to the enjoyment of economic, social and cultural rights, including a directive to the Government to formulate a comprehensive housing policy, based on the right to adequate housing, and to enact a law that protects the rights of persons living in rented accommodation. The Court also issued an interim order to the Government to continue deploying graduate medical doctors under a scholarship scheme to remote areas of Nepal. While the effective implementation of positive court verdicts in relation to the denial of economic, social and cultural rights remains a major challenge, in its comments to this report, the Government indicated that it had established a special mechanism giving each Ministry specific responsibilities to execute such court orders. OHCHR-Nepal also undertook activities aimed at enhancing the justiciability of these rights, including through promoting dialogue between the legal community, Government and NHRIs. For example, a declaration by law students on this issue was adopted, following a national conference on enhancing the justiciability of economic, social and cultural rights, organized with the Nepalese Law Students Association.

F. National human rights institutions

32. Although the NHRC, NWC and NDC are playing an increasingly important role to promote and protect human rights in Nepal, a number of factors continue to inhibit their full effectiveness. Both the NHRC and the NDC bills remained pending during the year. The NHRC has publicly raised concerns about the NHRC bill and its inconsistencies with the Paris Principles. Indeed, both bills contain provisions that are inconsistent with the Paris Principles,[21] including the absence of an explicit designation as an "independent commission" and no explicit power to independently appoint their own staff. Insufficient financial and human resources further limit all three NHRIs from effectively discharging their mandates. Without the necessary legislation, the NHRC has been unable to recruit new staff and more than half of the posts remain vacant. The NWC remains active in protecting

[20] *Haliya* is a form of ancestral debt-bonded labour, mostly affecting the Dalit community in some hill districts of Nepal. Despite its abolition by the 2008 Government Decree, many *haliya* families remain trapped in debt-bonded labour relationships and extreme poverty.

[21] Principles relating to the Status of National Institutions (The Paris Principles), General Assembly resolution 48/134 of 20 December 1993

and promoting women's rights, but its dependency on the Ministry of Women, Children and Social Welfare for financial and human resources has limited its effectiveness. Similarly, the NDC plays a critical role in protecting the rights of Dalits, including its new role under the Untouchability Act to facilitate access to justice by victims of caste-based discrimination and untouchability. However, human-resource and financial constraints also hamper its work. While the NHRC maintains regional offices, the NWC and NDC do not have similar regional presences, which severely limits their reach outside of the capital.

33. After an extended period of review by the International Coordinating Committee of NHRIs in June 2011, the NHRC retained "A" status accreditation, albeit conditional on another review, once the NHRC bill is passed. During the universal periodic review, the Government made commitments to pass the law and to implement certain recommendations made by the NHRC, concerning prosecutions and departmental actions.[22] While neither commitment has been fully realized so far, in its comments to this report, the Government indicated that it had established a fast-track mechanism to ensure the implementation of recommendations related to compensation by the relevant Ministry, without having recourse to the Cabinet. Subsequently, the Government reported that as of May 2011, 28 per cent of NHRC recommendations issued in 2011 were fully implemented, a notable improvement on the 9 per cent reported between 2000 and 2010.[23] However, this increase only concerns recommendations to provide compensation to victims. No NHRC recommendations to initiate prosecutions against alleged perpetrators have been implemented to date.

34. OHCHR continued to directly engage and strengthen its partnership, as well as increasingly undertake joint activities with the NHRC. In 2011, OHCHR and the NHRC advocated against the Government's plan on the withdrawal of cases of human rights violations, and produced three joint publications and five press releases, including a publication on the NHRC bill. OHCHR also focused on developing the capacity of the NHRC, primarily through ongoing implementation of a programme in partnership with UNDP. In 2011, this included the development of the NHRC's internal guidelines on handling complaints, and training manuals on human rights for Government and law enforcement officials. The NHRC also conducted a number of training sessions for Government officials and human rights defenders at the regional level, with the technical support of OHCHR.

G. Human rights defenders and journalists

35. Inadequate public security continues to be a serious issue for human rights defenders, particularly in some southern Terai districts where armed criminal groups remain active. During 2011, OHCHR received reports of intimidation, harassment, defamation and serious physical assault targeting human rights defenders. Impunity for perpetrators, in some cases due to political protection or the involvement of law enforcement officers, have eroded public confidence and left human rights defenders, particularly women, and journalists vulnerable. From January to September 2011, OHCHR documented 20 such cases against journalists and six cases of threats against human rights defenders. While victims have filed complaints with the police, to date no prosecutions have taken place. Alleged perpetrators included political parties and their youth wings, the

[22] A/HRC/17/5, paras. 106.7 and 25; 107.5. A commitment was also made to review and adopt legislation on the NWC and NDC and to enhance their work through the provision of sufficient resources (paras. 106.8, 107.6, 108.11).

[23] National Human Rights Commission, *Summary Report of NHRC Recommendations upon Complaints in a Decade (2000-2010)* (Lalitpur, 2010).

police, armed groups and businessmen. Some human rights defenders remain reluctant to file formal complaints due to the perceived involvement of the police or influential political leaders.

36. In response to a series of high-profile threats and attacks against journalists, in September 2011, the Minister of Communications and Information publicly called for new legislation to provide protection for human rights defenders and journalists. Such a law would be welcome and consistent with the universal periodic review recommendations accepted by the Government to ensure the security of human rights defenders.[24]

37. During 2011, OHCHR-Nepal frequently raised concerns with State authorities about the protection of defenders at risk. Following interventions in the eastern Terai region in August, some positive and concrete steps have now been taken by the Nepal Police to protect human rights defenders. For example, in two cases monitored by OHCHR-Nepal, the police deployed officers to protect journalists, thereby setting a positive precedent to law enforcement officials in other districts and building the confidence of human rights defenders to pursue their work with an increased sense of security. OHCHR-Nepal also conducted a range of capacity-building activities for human rights defenders, including releasing a toolkit and supporting defender networks at district and national levels. The Office also engaged police as resource persons in training activities to allow police officers and human rights defenders to openly discuss their roles, the problems they face and measures to address them.

H. Human rights violations committed by security forces

38. The practice of extra-judicial killings by security forces continued during 2011, mostly in the southern Terai region. An OHCHR report from 2010,[25] documenting 57 alleged extra-judicial killings between January 2008 and June 2010, recommended that full criminal investigations be initiated. However, more than one year later, the State had not taken appropriate action, and allegations of 16 new incidents that resulted in the death of 24 individuals have been made. The Government continues to categorize the cases as accidental, "encounter" killings or self-defence. In April 2011, family members of victims filed a public interest litigation case with the Supreme Court demanding the establishment of an independent body to investigate the cases. The Supreme Court ordered the Government to respond, but has yet to give a final opinion. OHCHR-Nepal worked to build the capacity of human rights defenders and local offices of the Public Prosecutor to investigate these cases, although security concerns pose significant challenges.

39. During 2011, OHCHR-Nepal continued to receive allegations of ill-treatment of persons in custody. Fourteen cases were documented, including incommunicado detention, severe physical assault and the illegal use of private houses for interrogation by security forces. Despite sustained national and international advocacy, including recommendations accepted during the universal periodic review, Nepal has yet to criminalize torture. A new draft Criminal Code includes provisions to criminalize torture, but it has not yet been passed. The draft also contains a number of provisions, including the definition of torture, that fall short of international standards.[26] During the review, Nepal rejected the

[24] A/HRC/17/5, para. 106.26.

[25] OHCHR, *Investigating Allegations of Extra-Judicial Killings in the Terai: OHCHR-Nepal Summary of Concerns (July 2012)* (Kathmandu, 2010), available at http://nepal.ohchr.org.

[26] OHCHR maintains that criminalizing torture in the Criminal Code alone is insufficient, and that there is need for a specific law. The Government states that legislation is being drafted, but it has yet to share this publicly.

recommendation to ratify the Optional Protocol to the Convention against Torture.[27] In its comments to this report, the Government indicated that it is in the process of finalizing a comprehensive bill criminalizing torture.

40. During the universal periodic review, the Government maintained that recommendations relating to investigations and prosecutions of law enforcement officials for human rights violations had already been implemented or were in the process of implementation, and defended existing mechanisms,[28] such as internal inquiry, as adequate for dealing with complaints. Nevertheless, the Government stated that it would consider establishing a Police Service Commission to be responsible for, inter alia, recommendations for disciplinary action; to date there has been no progress on that front. OHCHR-Nepal continued to emphasize that internal investigation and disciplinary measures by the security forces could not replace independent and credible investigations under the regular criminal justice system nor satisfy the right of victims to an effective remedy, as required by international law.

41. One area where improvement has been noted is the policing of demonstrations. OHCHR-Nepal observed increasingly professional crowd-control by the Nepal Police and the Armed Police Force, with fewer examples of excessive use of force observed than in previous years. In general, the police now demonstrate greater restraint and focus on the prevention of possible violent incidents. However, in June 2011, there was an incident of excessive, indiscriminate and disproportionate use of force by the police at a Kathmandu university campus, which left more than 60 persons requiring medical treatment.[29]

42. OHCHR-Nepal continued to be concerned at the manner in which the police, under clear direction from the Ministry of Home Affairs, have prevented members of the Tibetan community from exercising their rights to freedom of movement, assembly and association. On key ceremonial occasions, including religious festivals and the birthday of the Dalai Lama, the police have prevented the participation of the Tibetan community in peaceful events through arbitrary arrests and other inappropriate methods. In June 2011, 12 Tibetans were detained for nearly three weeks under the Public Offences Act, after displaying the Tibetan flag. Their release was ordered by the Supreme Court, confirming that their detention had been illegal. That was the fourth time, at least, over the past three years that members of Nepal's Tibetan community have been detained under the Public Offences Act or the Public Security Act and subsequently released, following an appeal to the Supreme Court.

43. OHCHR-Nepal continued to collaborate with the security forces in capacity-building activities, including supporting a reprint of the internal human rights booklet for the Police and conducting training for Nepal Army officers prior to their deployment to United Nations Peacekeeping Operations. While these capacity-building activities have served to educate and sensitize security forces on their human rights obligations and appropriate accountability mechanisms, OHCHR-Nepal notes that training alone will not bring about lasting change in the conduct of security forces. Revision of internal codes of conduct and credible external oversight mechanisms are essential to ensuring the rule of law, including

[27] A/HRC/17/5, paras. 106.3; 109.1, 2, 3, 4, 10, 13 and 15.

[28] Ibid., paras. 106.38; 107.3 and 14.

[29] The incident took place at the Shankardev university campus in Kathmandu, following a demonstration by students protesting the arrest of a student leader. Demonstrators vandalized Government vehicles and threw stones at the police, who retaliated by chasing the students inside the campus. The police response left 63 persons requiring medical treatment, including several who had not been involved in the demonstration.

through effective investigations and prosecutions when security forces are responsible for violations.

44. OHCHR, in coordination with UNICEF, continued to monitor the compliance of the UCPN-M party with regard to the demobilization of former child soldiers from the Maoist army, in accordance with the Action Plan on Security Council resolution 1612 (2005). The Special Representative of the Secretary General for children and armed conflict found that, while the discharge of Maoist army personnel verified as minors has been completed, there are indications of some continued links with the Maoist army, and that a small number of verified minors have returned to the cantonment sites.

I. Transitional justice

45. A key engagement of OHCHR-Nepal in 2011 focused on providing support for the establishment of the transitional justice mechanisms committed to under the Comprehensive Peace Agreement, namely a Truth and Reconciliation Commission and a Commission of Inquiry on Disappearances. The Government of Nepal largely accepted the recommendations relating to transitional justice during the universal periodic review and committed to establishing the two commissions without delay, in accordance with international standards, ensuring independence from political interference, guaranteeing reparations to victims, and with no amnesty to perpetrators of grave human rights violations.[30] Moreover, the Government agreed to remove obstacles faced by victims trying to access justice, and to "prosecute those responsible" for crimes during the conflict era. However, the Government rejected recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.[31] The Government maintains that allegations of violations committed during the conflict are already being investigated under national laws, despite the fact that to date no, or very few, perpetrators have being prosecuted before the courts of Nepal.[32]

46. In recent months, OHCHR provided technical support to the parliamentary sub-committee tasked with reaching consensus on a number of key issues in the bills for the two commissions. Following concerted advocacy, progress was made at the sub-committee level towards consistency of the transitional justice mechanisms with international law. However, political agreements made towards the end of the year raised serious concerns that the transitional justice commissions would serve as amnesty mechanisms, with a proposal to remove clauses prohibiting amnesty for serious violations of international human rights and humanitarian law from the bills. These concerns were exacerbated by public statements from the Prime Minister emphasizing reconciliation rather than justice and prosecutions. Other provisions of the bills do not meet international standards, including those concerning witness and victim protection, sentencing, the statute of limitations period in the Disappearances Commission bill and the public selection process for Commissioners. In its comments to this report, the Government indicated that it was in the process of drafting a specific law on witness protection. There are further concerns that the current interim relief programme might compensate "conflict-affected persons" and

[30] A/HRC/17/5, paras. 106.33 and 34.
[31] Ibid., paras. 109.2, 4, 5 and 10.
[32] Ibid., paras. 108.25 and 30.

thereby undermine the creation of a comprehensive and meaningful reparations programme which would also seek truth and accountability for victims of gross violations and abuses.[33]

47. To realize effective transitional justice mechanisms and move forward with the peace process, the Government must fully support the promulgation of legislation for the two commissions in full compliance with international norms and standards, and undertake efforts to advance the right of victims to truth and justice. These should include a detailed reconnaissance, based on existing data, of alleged grave sites with a view to identifying sites for full-scale forensic exhumations. Furthermore, the Government should make a full commitment to prosecutions initiated in relation to serious crimes committed during the conflict.

48. OHCHR-Nepal finalized a reference archive of documentation related to violations and abuses committed during the conflict and established a public transitional justice resource centre where resource materials on transitional justice are available. A grant programme awarded funds to 25 NGOs to implement projects in support of the transitional justice process.[34] The Office further organized a series of workshops in Kathmandu on the bills concerning the two commissions, which culminated in a high-level interaction between victims and leaders of major political parties. The workshops provided a platform for victims to voice concerns regarding the bills and to submit their views and demands on the nature of the commissions. OHCHR-Nepal also assisted the Ministry of Peace and Reconstruction with the development of a comprehensive policy framework for reparations.

J. Impunity

49. Impunity remains an endemic problem in Nepal, denying access to justice and an effective remedy to victims, weakening the rule of law and perpetuating a cycle of further human rights violations and abuses. In 2011, OHCHR-Nepal continued to closely monitor and advocate for progress in the investigation and prosecution of serious human rights violations in a number of emblematic cases, including through frequent field missions and support to victims and their families. The Government accepted a number of general recommendations from the universal periodic review aimed at ensuring accountability and full respect for judicial decisions.[35] However, OHCHR's observations reveal that despite the commitments made by parties to the Comprehensive Peace Agreement to hold perpetrators of human rights violations to account, impunity continues for both conflict-related and post-conflict cases. The lack of political will to address systematic failures in the investigation and prosecution of high-profile crimes has allowed human rights-related cases to languish in the hands of the police, who have been unable or unwilling to proceed with cases. Furthermore, the police continue to instigate ad hoc "mediation" processes outside of the criminal justice system, through which cases are informally settled, including serious human rights cases such as caste-based discrimination. Nonetheless, even when the police make genuine efforts to investigate serious crimes, they may be hindered by political interference. For example, in Morang district, police investigating a series of violent attacks against journalists were allegedly prevented from serving arrest warrants due to the high-level political protection of a prime suspect.

[33] The interim relief programme has been in place since 2008 to provide monetary compensation to victims and families for certain types of human rights violations; the programme does not cover torture and sexual violence.

[34] Financed through the United Nations Peace Fund for Nepal.

[35] A/HRC/17/5, paras. 106.35 to 38.

50. One troubling trend has been the continued attempts by various Government actions to provide amnesties, withdraw criminal cases against politically connected individuals or seek pardons in the rare instances where perpetrators have already been convicted. Examples include the appointment to Ministerial positions of two persons named in a complaint registered with the police concerning abduction and murder, for whom arrest warrants had been issued. Withdrawal proceedings have been initiated in relation to hundreds of cases over recent years and the September 2011 agreement that formed the new Coalition Government also called for the withdrawal of cases and granting of amnesties for all "political cadres" in relation to the conflict and "other social justice movements." The promotion of members of the security forces allegedly implicated in serious human rights violations is also a cause for concern. Examples include the July 2011 promotion of a Nepal Army General facing allegations of command responsibility over multiple cases of torture and disappearances during the conflict, and the Government's decision in November 2011 to promote to the post of Additional Inspector General an officer of the Armed Police Force who was directly implicated in the killing of demonstrators during the 2006 pro-democracy movement, and for whom criminal prosecution was recommended by a Commission appointed by the Government. Furthermore, an alleged perpetrator in the disappearance of five students in 2005 was promoted to the post of Additional Inspector General of the Nepal Police in June 2011. In July 2011, the Supreme Court instructed the Government to guarantee the prompt and effective investigation of the charges against this officer, and to ensure that he did not interfere with the investigation. Nepal's human rights community has reacted strongly against moves towards impunity for conflict-related cases.[36] The most recent draft Criminal Procedure Code contains provisions that may serve to entrench impunity, including immunity from prosecution for State officials for "acts committed in the discharge of their duties". The draft further sanctions the withdrawal of criminal cases, unless explicitly prohibited, and fails to include, inter alia, torture and disappearances in the list of non-pardonable offences.

51. A positive development occurred in February 2011 when the Supreme Court ruled that formal permission from district courts is required for any withdrawal request by the Government; it ordered two district courts to review their decisions allowing case withdrawals. In June 2011, the Supreme Court further instructed that thorough and effective investigations could not be "deferred" to transitional justice mechanisms that have yet to be established, and that the police are obligated to carry out impartial investigations, at this time, that are free of political interference. Furthermore, in November 2011, the Supreme Court stayed a Government recommendation to pardon a member of the Constituent Assembly who had been convicted of murder, stating that such decision is subject to judicial review. Respect for the rule of law and accountability for serious crimes are necessary foundations for any transition into lasting peace. To guarantee the non-recurrence of such abuses, the Government must support cases advancing through the criminal justice system, prevent interference with the judiciary, and ensure that perpetrators are not receiving protection from political parties or State agents.

VI. Conclusions

52. A**lthough progress remains slow, Nepal's peace process has continued to advance. Commitments to completing the outstanding tasks, including the human rights elements, were expressed during the universal periodic review and Nepal has**

[36] In June 2011, OHCHR-Nepal and the NHRC jointly launched a legal opinion and organized a public discussion on the topic of case withdrawals.

achieved some progress towards improving the human rights situation, most significantly the passage of the new Untouchability Act.

53. **However, a number of obstacles to ensuring a strong human rights framework persist. Lack of accountability for human rights violations, whether perpetrated during the conflict or after, remains entrenched. During the year, there were moves to withdraw cases from courts and efforts to provide amnesties and pardons, including within the framework of future transitional justice mechanisms. Weak rule of law structures, such as a police force that systematically resorts to ad-hoc "mediations," rather than pursue criminal justice, serve to perpetuate this trend. The Government must undertake coherent and systematic measures to effectively protect the human rights of all persons in Nepal, including through the full implementation of the untouchability law, the establishment of transitional justice mechanisms consistent with international standards and ensuring that national human rights institutions are based on legislation that is fully consistent with the Paris Principles and able to properly fulfil their respective mandates.**

VII. Recommendations

54. **The High Commissioner urges the political parties in the Constituent Assembly to take concrete steps to finalize the Constitution and to ensure it complies with the international human rights commitments undertaken by Nepal. Pending draft laws, including those to establish the two transitional justice commissions and those to strengthen the NHRC and the NDC, should be adopted expeditiously and be in full compliance with international standards.**

55. **Pursuant to the recommendations of the Committee on the Elimination of Discrimination against Women, the High Commissioner calls on the Government of Nepal to develop a comprehensive strategy, with concrete goals and timetables, to ensure gender equality and address gender-based violence.**

56. **The High Commissioner calls for a time-bound plan to be developed to provide "reasonable accommodation" for persons with disabilities. Concerning indicators for the realization of economic, social and cultural rights, appropriate national goals and benchmarks should be identified.**

57. **The High Commissioner welcomes the new Untouchability Act and calls for the comprehensive training of law enforcement officials on the legislation. Full implementation should be undertaken as a priority, including ensuring that the police properly register and investigate all cases of caste-based discrimination and cease the practice of informally settling cases through ad-hoc and unsanctioned "mediations".**

58. **The High Commissioner calls for the implementation of an effective programme to protect human rights defenders and journalists at risk across Nepal, as committed to by the Government.**

59. **The High Commissioner calls on the Government to ensure that cases of serious human rights violations move expeditiously through the criminal justice system without political interference in the work of the judiciary. Furthermore, political efforts to withdraw such cases from prosecution, or to allow for amnesties or pardons of such cases, must cease. In relation to violations allegedly committed by security forces personnel, the High Commissioner stresses that departmental actions cannot replace independent and credible investigations under the regular criminal justice system.**

60. **The High Commissioner affirms to the Government and the people of Nepal that OHCHR is ready to find appropriate modalities to continue to support Nepal in the implementation of these important initiatives, the commitments made during the universal periodic review and the human rights provisions of the Comprehensive Peace Agreement.**