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CONSEJO DE DERECHOS HUMANOS

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Tema 2 de la agenda

**INFORME ANUAL DEL ALTO COMISIONADO DE LAS NACIONES
UNIDAS PARA LOS DERECHOS HUMANOS E INFORMES DE LA
OFICINA DEL ALTO COMISIONADO Y DEL SECRETARIO GENERAL**

**Nota verbal de fecha 6 de marzo de 2008 dirigida a la Secretaría
del Consejo de Derechos Humanos por la Misión Permanente
de Nepal ante la Oficina de las Naciones Unidas en Ginebra**

La Misión de Nepal ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra saluda atentamente a la Secretaría del Consejo de Derechos Humanos y, con referencia al informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de los derechos humanos y las actividades de su Oficina, incluida la cooperación técnica, en Nepal (A/HRC/7/68), tiene el honor de aludir a la reunión que tuvo lugar la semana pasada en Katmandú entre el representante de la Alta Comisionada y las autoridades, durante la cual el representante comunicó que, debido al escaso tiempo disponible, la Oficina no podría considerar las observaciones del Gobierno enviadas en febrero de 2008.

Por esta razón, el Gobierno de Nepal ha decidido presentar al Consejo sus observaciones* sobre el citado informe. La Misión Permanente de Nepal agradecería que la Secretaría del Consejo se sirva distribuir esas observaciones como documento del séptimo período de sesiones del Consejo.

* Se reproduce en el anexo, en el idioma en que se presentó solamente.

Annex

Observations of the Government of Nepal on the Report of the United Nations High Commissioner for Human Rights on the human rights situation and OHCHR activities in Nepal (A/HRC/7/68) February 2008

The Government of Nepal (GoN) appreciates the efforts of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in supporting our commitment to promoting respect for human rights and in monitoring the human rights situation through its Office in Nepal as per its mandate.

GoN recognizes that the present report covers the first and at the same time the most challenging year of Nepal's transition towards peace following the signing of the Comprehensive Peace Agreement between GoN and the Communist Party of Nepal (Maoist) (CPNM) on 21 November 2006. It must be recalled that OHCHR is mandated to monitor the observance of human rights and international humanitarian law, bearing in mind the climate of past 10 years' of violence and the internal armed conflict in the country, with a view to advising the authorities of Nepal on the formulation and implementation of policies, programmes and measures for the protection and promotion of human rights in Nepal.

GoN is unequivocal in its commitment to the promotion and protection of human rights in the country consistent with the Interim Constitution of Nepal 2007 and the international human rights instruments to which Nepal is a party. GoN's commitments on the implementation of human rights and international humanitarian law have also been reaffirmed in its annual policies and programs for the year 2007-08.

GoN appreciates the support of OHCHR in strengthening national human rights mechanisms including the state institutions and the civil society. GoN expects the OHCHR to scale up technical and other cooperation and support to its institutions including the National Human Rights Commission of Nepal (NHRC) which is a constitutional body and an independent national institution dedicated for the protection and promotion of human rights in the country. It believes that consolidation of national institutions is key to institutionalize our efforts by enhancing our capacity, which makes such efforts sustainable. GoN also expects an enhanced level of support in strengthening the capacity of other government agencies for promoting and protecting human rights in the days to come.

GoN would expect the report under reference to be an important instrument to highlight the factual human rights situation in Nepal. GoN, however, finds difficulty in agreeing with a number of references made in the report on the human rights situation in Nepal and on the intentions of the governmental agencies and therefore, wishes to clarify its position as follows:

1. GoN does not agree with the statement in the report that (para. 3)many of its recommendations were not implemented, especially at the national level. GoN is serious about implementing the recommendations made by UN agencies including OHCHR subject to availability of resources and the constitutional and legal frameworks of Nepal.

GoN reaffirms its commitment towards human rights and humanitarian laws. After the second popular movement of 2006, GoN has been working to further improve the observance of human rights in the country. It is also working hard to maintain a better law and order situation. It has also been working closely with the OHCHR Office in Nepal to promote human rights and improve the human rights situation in the country.

2. The report says (para. 3)the Office also faced some difficulties in accessing documents, especially draft legislation and report of investigations. With regard to this allegation, the GoN would like to state that the related government agencies have been trying to support and facilitate OHCHR in its human rights monitoring and investigations activities in all possible ways. As for the reported lack of access to certain draft legislations, if what OHCHR means by this is the lack of access to the full text during the draft stage, GoN feels that it should be understandably so when the domestic legislative process itself is in progress. GoN firmly believes that it would not be appropriate to share an immature and preliminary draft of any legislation or the documents related to the investigation of any incident or a crime. In this regard, GoN stands by its commitment that OHCHR will have access to such official documents and material as may be needed for the proper discharge of its activities, except for those documents containing privileged information, and as stipulated by the Constitution. GoN is fully committed to follow the agreement with OHCHR subject to the constitutional and legal frameworks of the country. It is necessary to understand the fact that the GoN needs to pursue the constitutional and legal frameworks of the country.
3. Instead of appreciating the upgradation of the NHRC to a constitutional body, the highest level of national institution under the new Interim Constitution, the report unnecessarily raises the issue of appointment procedures of the members of NHRC (para. 7). The Interim Constitution of Nepal 2007 has transformed NHRC into a constitutional body from a statutory one. GoN is fully committed to comply with the constitutional provisions in regard to NHRC and it has followed the provisions of the constitution while making appointment of the members of the NHRC. The appointment procedures of the constitution are transparent and subject to parliamentary scrutiny. The procedures vary from country to country. GoN considers that the constitutional provisions of the NHRC are fully consistent with the Paris Principles within the given framework. GoN welcomes OHCHR's observations and recommendations with respect to the NHRC bill with the understanding that it is the legislative parliament of Nepal which has the sole authority to make laws applicable in the country.
4. GoN is working hard to maintain better law and order situation in the country. Recently, it has commenced a special programme to improve the general security situation in some sensitive parts of the country so that the people could enjoy their freedom and other constitutional rights without any hindrance. Likewise, it has approved and launched a new three-year national human rights action plan for Nepal effective from fiscal year 2007/08. GoN has also integrated human rights into the three-year interim national development plan which is being implemented from 2007/08 to 2009/10 by incorporating various human rights programmes of action in it. It has also been supporting the work of National Human Rights Commission of Nepal and providing financial support for its smooth functioning. As the country is passing through the crucial transitional phase, the comments made by OHCHR carry much significance and therefore

GoN requests OHCHR to be more objective in its reporting and take into account the complexity of a post-conflict transition.

5. The report says (para. 14) over 130 people had been killed since November 2006, ... others by security forces. GoN deeply regrets this loss of precious human lives but does not agree at all with OHCHR's observation that the police had killed some of the civilians. Meanwhile, GON wishes to reaffirm and reiterate its full commitment to the protection of the right to life of the people as per the Interim Constitution and other laws of Nepal. Furthermore, GoN considers that there should be a clear-cut distinction between the criminal acts and the incidents of violation of human rights.
6. GoN has held, and continues to hold, talks with the agitating political parties and various other groups in the country to arrive at a negotiated settlement of the issues and demands raised by them. GoN, consisting of the seven political party alliance, remains committed to comply with the provisions of CPA. GoN has always been open for dialogue so as to come to an agreeable political solution without compromising the sovereignty and territorial integrity of the country.
7. GoN firmly believes that impunity should not exist in any case. However, for any accused to be brought to book the due process of law has to be followed under the law of the land. Reforms in the existing legal provisions and mechanisms are underway to further strengthen the domestic law. GoN expects support from the international community including the OHCHR for enhancement of its capacity to develop and strengthen democratic legal framework in the country.
8. GoN expresses its concern over the statement of the report that lack of faith in the will or ability of law enforcement agencies to protect the population encourages lawlessness (para 23). This statement is not based on reality, and is baseless. GoN is of the opinion that such comments would only create difficulties in maintaining law and order to the state authorities. GoN is trying hard to maintain law and order and protect the civilians from criminal activities.
9. There is no ground at all to believe that the state authorities including the police have failed to address the armed groups who exploited security vacuum (para 25). The police are making dedicated efforts to curb social crimes and maintain the law and order situation in a country which is just emerging out of a decade-long violent conflict. Many of the criminals who were involved in killings, abductions, extortions, planting bombs and terrorizing people have been arrested. GoN is firmly committed to reform the security sector for its effective and efficient functioning.
10. The report makes an unwarranted and untimely comment on the Interim Constitution saying, there are shortcomings in the Interim Constitution... (para. 28) as limited coverage of the right to liberty and security and provisions permitting derogation of rights during a state of emergency. While GoN does not wish claim the interim constitution to be perfect in all respects, it is of the view that constitution making is a continuous process and that constitutional provisions could be amended and improved as required in future. GoN does not visualize any specific provision of the Constitution that is incompatible with international human rights norms or with ICCPR provisions. It is an internationally

accepted principle that during the times of emergency some of the constitutional rights could be derogated for public interest. GoN is of the view that the right to live with dignity automatically inheres in it the right to life. The Interim Constitution explicitly prohibits capital punishment. Furthermore, the right to seek legal remedies by the competent court has been well protected by the Constitution even during the state of emergency. Hence, the above comment is not relevant and reasonable.

11. The provision of the Local Administration Act, 1971 referred to in the report was incorporated through a recent amendment. The sole objective of the amendment is to maintain the law and order whereby the people can enjoy their rights without any hindrance. The Chief District Officer is the quasi-judicial authority empowered by law and his decisions are subject to judicial control. The report does not elaborate on how this amendment violates the rights to freedom of assembly and fair trial. In fact, it is too early to comment on this provision of the Local Administration Act, 1971 as it has been only recently enacted.
12. As for the directive orders of the Supreme Court, GoN is in the process of developing legislations on disappearances, torture, rights of the sexual minorities and protection of HIV/AIDS sufferers, women and children.
13. GoN does not agree at all that there has been excessive use of force in controlling some demonstrations. The statements made at pages 14 and 15 of the report on the Terai unrest including the Gaur incident are contradictory and confusing. GoN is fully committed to take departmental actions against those who are found to have exceeded their legal authority and used excessive force in violation of the law.
14. The report contradicts itself in some of the places. At times, it talks about the non-representation of security forces and at others it refers to the use of force to control riots. Our security personnel have been provided with clear guidelines for the minimum use of force to control riots and forced closures and in self defense.
15. The statement that at least five young people under 18 were killed, most by police... (para. 37) is baseless and vague. An organization such as OHCHR should be careful in making such allegations. Unless supported by concrete facts and figures, such allegations will only have the unintended consequence of demoralizing the security personnel working hard to maintain peace and order in the country.
16. The rights to freedom of opinion, expression and assembly are fully guaranteed as fundamental rights under Part 3 of the Interim Constitution 2007.
17. GoN considers any existence of parallel state structures as illegal and a clear violation of the Comprehensive Peace Agreement and therefore subject to legal action.
18. The Interim Constitution declares Nepal as an inclusive and fully democratic state. The Interim Constitution is quite explicit on this matter. The new legal provisions announced in October 2007 that quotas for women and marginalized groups in civil service, Nepal Police and the Armed Police Force vacancies are a clear manifestation of GoN's commitment to inclusive democracy. Recently GoN has also directed the concerned

authorities to make similar provisions in any public corporation and other government financed agencies and even in the Nepal Army. In fact, GoN looks forward to receiving an enhanced level of support from the international community by providing more resources to organize programs to implement its inclusive policies.

19. Nepal is a state party to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (1984) and remains committed to abide by its obligations. Torture is neither the part of criminal investigation system nor the punishment of the country. It is not the policy of Nepal to condone torture of any kind. The Army Act, 2006 provides for undertaking investigations into the cases of torture, disappearance and serious human rights violations by the civilian court. The Act conceives of an investigation committee for this purpose under the chairmanship of the Joint Attorney General. This proves the commitment of the Government to deal with such serious violations of human rights.
20. The Government is equally committed to guarantee the economic, social and cultural rights to its people. Fighting poverty remains one of the topmost priorities and agenda of GoN.
21. It has been the effort of GoN to create an atmosphere whereby IDPs could return to their place of origin without fear from any quarter. The Government is providing financial support to the best of its ability to the displaced families to facilitate their return and rehabilitation. The Ministry of Peace and Reconstruction of GoN has also made public the National Policies on Internally Displaced Persons 2063 (2007).
22. GoN is fully occupied by the overarching national objective of establishing peace in the country. As the peace process moves on, with the facilitation of the United Nations in the mandated areas through UNMIN, GoN is of the opinion that it is only logical for the Government's primary focus to be on the peace process itself at the present time. The ongoing exercise to create several commissions including the Truth and Reconciliation Commission mark an important step to promote reconciliation and leave behind the violent past and make a forward movement towards sustainable peace and social harmony. GoN is in the process of drafting a legislation to create a impartial and effective TRC in Nepal. To this end the Ministry of Peace and Reconstruction has made public a preliminary draft, posted it on its web site and has also been holding consultations with the stakeholders. GoN would welcome any comments and feedback on the draft before giving it a final shape.
23. GoN is serious about the reported cases of disappearance during the conflict period and thereafter as well. GoN is in the process of drafting a legislation to criminalize the incidents of disappearance and take legal action against the perpetrators. An inquiry commission on cases of disappearance along with a clear-cut ToR is in the process of being formed. Very recently, the Legislative-Parliament has enacted a strong law against hostage taking and kidnapping by amending the Country Code.
24. Regarding the Maina Sunuwar's case, Public Prosecutor in Kavrepalanchok District has filed a case of homicide to the local court against those who were involved in the incident. The Government is committed to promptly investigate and take action against

any cases of torture and ill treatment. GoN is in the process of drafting a new legislation to criminalize torture and make provisions for punishment.

25. GoN is fully aware of its duty to maintain law and order in all parts of the country. Given the shortage of the police personnel and other logistics constraints, it is not always possible for the police to instantly arrive at the crime scenes or at the demonstration sites. However, various initiatives have been taken to provide more resources as well as training to the police personnel to deal effectively with such crimes and violent behaviour.
26. With a view to giving full assurance of safety and security to the people by improving the general law and order situation in the country, the Legislative –Parliament has enacted an Arms and Ammunition (Second Amendment) Bill in January 2008 which provides for prosecuting persons possessing illicit arms and ammunitions. This law is expected to be an effective legal instrument to carryout search and seizure of the illicit arms and ammunitions and to book and take legal action against the offenders.
27. GoN denies any charge of political interference as an obstacle to ending impunity. Rather, it has been the Government’s constant effort to prepare and mobilize the police in a fully professional manner so as to maintain the law and order in the country with the full assurance of safety and security to the people of Nepal. GoN has implemented or are in the process of implementation through concerned authorities most of the recommendations of the Rayamajhi Commission's Report. Some of the recommendations have been forwarded to the competent authority for undertaking further investigation and action.
28. Finally, the big political transformation that has taken place in Nepal following the Comprehensive Peace Agreement has ended the conflict, restored so many political rights to the people, committed itself to state restructuring and opened the way for creating an inclusive, peaceful and stable country. Similarly, many of the decisions of the government, which are of far reaching importance to the people of Nepal, should have found due recognition in the report. The mixed proportional representation system of constituent assembly election, guarantee of women, Dalits, janajatis, marginalized groups and communities in political and administrative systems of the country to make them inclusive are some of the steps, which have no equal precedence in the South Asian region. The Government and people of Nepal look forward to a better appreciation by the international community of the transitional nature of the time and the hopes and aspirations of the people to durable peace and sustainable development of the country in the days ahead.
