



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/114
31 January 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 19 of the provisional agenda

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

**Report of the Office of the United Nations High Commissioner
for Human Rights on human rights assistance to Nepal***

* The present report is submitted late in the interest of reflecting the most up-to-date information available with regard to OHCHR activities in Nepal.

Summary

The present report is submitted pursuant to a request contained in the statement of the Chairperson of the Commission on Human Rights at its sixtieth session, entitled "Human rights assistance to Nepal". As the statement marked the first time that the question of Nepal was taken up by the Commission, this is the first such report to be submitted by the Office of the High Commissioner for Human Rights (OHCHR).

This report includes a contextual overview of the deteriorating human rights situation in Nepal resulting from increased military activity on both sides of the ongoing conflict and which is characterized by widespread and systematic human rights violations, particularly among the civilian population. Grave human rights violations reportedly attributable to the Communist Party of Nepal-Maoist include mass abductions, particularly of children, executions, torture and disappearance. In addition, frequent *bandhs* and blockades, enforced through terror and the use of landmines, are creating immeasurable social and economic hardship among the already impoverished population. Grave human rights violations reportedly attributable to the security forces of His Majesty's Government include disappearances, summary executions, torture and arbitrary detention. Since the sixtieth session of the Commission, there have also been increasing reports of threats and reprisals against human rights defenders from both sides of the conflict.

The activities of OHCHR in Nepal are highlighted in the report, including advice and assistance to the National Human Rights Commission (NHRC). This year marked the signing of the memorandum of understanding between His Majesty's Government and OHCHR, the launch of a major project by the United Nations Development Programme supporting the expansion of the NHRC into the five regions and the deployment of the first OHCHR international advisers to the National Commission. At the time of writing, the ultimate success of those efforts were seriously threatened by two major problems facing the NHRC: the continued denial of effective access by its monitors to places of detention; and the uncertainty resulting from the imminent expiration of the terms of the NHRC members, including its Chairperson, by May 2005.

The activities of OHCHR in Nepal also included: support to the United Nations Resident Coordinator and the Country Team; advice to His Majesty's Government on human rights commitments; developing regular exchanges of information and views with civil society; and cooperation with regional and international partners.

The report concludes with a number of recommendations aimed at breaking the cycle of intensified violence and increasing militarization that is gripping the country. They chiefly concern: ending the climate of impunity that pervades both sides of the conflict, including by fully implementing the 25 points in the commitment announced by His Majesty's Government on 26 March 2004 on the implementation of human rights and international humanitarian law as well by both sides' signing the Human Rights Accord proposed by the NHRC; ensuring a strong and effective National Human Rights Commission that is able to carry out its legal mandate; ensuring a strong, confident and active civil society, particularly by protecting human rights defenders; and more active engagement by the international community, including the United Nations.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 2	4
I. HUMAN RIGHTS CONTEXT	3 - 12	4
II. ACTIVITIES UNDERTAKEN	13 - 31	7
A. Advice and assistance to the National Human Rights Commission	13 - 19	7
B. Support to the United Nations Resident Coordinator and the Country Team	20 - 23	9
C. Advice to the Government on human rights commitments	24 - 28	10
D. Developing regular exchanges of information and views with civil society	29	11
E. Cooperation with regional and international partners	30 - 31	11
III. CONCLUSIONS	32 - 37	11

Annexes

I. United Nations Press release of 14 July 2004	14
II. Statement by the Spokesperson for the Secretary-General of 24 December 2004	16

Introduction

1. The present report is submitted pursuant to the Chairperson's statement on "Human rights assistance to Nepal" adopted by the Commission on Human Rights on 18 April 2004 (E/2004/23-E/CN.4/2004/127, para. 716). In the statement, the Commission, inter alia, expressed its concern at the human rights situation in Nepal and at the growing number of civilian victims as a result of ongoing violence; condemned the indiscriminate violence perpetrated by the Communist Party of Nepal-Maoist (CPN-M), including the use of children in armed conflict; encouraged the Government in its efforts to investigate and prosecute all violations; welcomed His Majesty's Government's "commitment on the implementation of human rights and international humanitarian law" of 26 March 2004; and supported the efforts of the Government and those of the Office of the United Nations High Commissioner for Human Rights (OHCHR) aimed at developing technical assistance and advisory services to the National Human Rights Commission of Nepal (NHRC), including through the signing of a memorandum of understanding to develop its institutional capacity and human resources so that it can carry out its mandate, including nationwide monitoring and investigations, in an independent, impartial and credible fashion. The Commission also welcomed the submission of periodic reports by the Government and the fact that the Government of Nepal had extended invitations to the special rapporteurs of the Commission to visit Nepal; welcomed the signature by His Majesty's Government of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and encouraged the international community to assist the Government in its efforts to strengthen its national capacity to improve the present human rights situation.

2. The activities of OHCHR in Nepal focus chiefly on the provision of advice and assistance to the National Human Rights Commission; support to the United Nations Resident Coordinator and the Country Team on issues of human rights protection and promotion; the provision of advice to the Government on human rights commitments and action needed to address problems arising; developing regular exchanges of information and views with civil society; and cooperation with regional and international partners. These activities are primarily undertaken by the United Nations Senior Human Rights Adviser, who is based in Kathmandu.

I. HUMAN RIGHTS CONTEXT

3. The critical human rights situation in Nepal is a result of the continuing armed struggle since 1996 by the Communist Party of Nepal-Maoist (CPN-M) to wage what it calls a "Peoples' War". During 2004, the estimated number of persons killed in armed conflict surpassed the 10,000 mark, almost two thirds of whose deaths were the result of actions undertaken by the security forces. Over 20 per cent of those killed during the nine years of conflict were killed in 2004. For the most part, the conflict is not being waged in a traditional battle setting but rather in villages and even in homes, where civilians have been most exposed to the dangers of armed conflict and to systematic abuses by both sides. Although both sides profess to be trying to win the "hearts and minds" of the people, there appears to be a calculated pattern of terrorizing the population in order to gain temporary tactical advantage.

4. Serious human rights violations reportedly carried out by CPN-M forces in 2004 were especially centred around their policy of mass abduction, particularly of students, youths and teachers, with a view to indoctrinating impressionable young minds and enlisting the active

involvement of children in the conflict. As the CPN-M movement appears to be losing popular support - there were increasing incidents of villages revolting against the abusive behaviour and deadly tactics of the Maoists at the end of 2004 - they have sought to fill their ranks with children, whether as porters, camp followers, propagandists or soldiers. There are many reports of encounters with "Maoist" children as young as 12 who do not understand what they are fighting for, but who nonetheless are ready to kill and be killed. Children are also coerced into acting as porters of ammunition and equipment and, as such, are exposed to the same dangers as combatants. The systematic targeting of schools, students and teachers by the CPN-M has brought the educational system to a standstill in large parts of the country, which will have a devastating social and economic impact on the country far into the future.

5. During 2004, the CPN-M implemented a policy of targeted executions and terror aimed at forcing mass resignations from the village development committees (VDCs), aimed at closing down government presence at the local level, which it refers to as the "old regime". In the resulting administrative vacuum, the CPN-M have attempted to set up their own civil structures, often based on coercion and the extortion of exorbitant "taxes" aimed at sustaining the armed struggle. In some parts of the country, development activities carried out by international aid agencies have ground to a halt in the face of conflicting and unacceptable CPN-M demands. The rebels also frequently blocked major transportation arteries in the country with felled trees, landmines and explosive booby-traps. They also declared frequent *bandhs* (enforced general shut-downs of all commerce and transportation) in the various districts that were widely respected out of fear rather than sympathy. Kathmandu valley was subject to CPN-M blockades twice in 2004 and its swelling population will likely remain a highly vulnerable target for the insurgents in 2005. The national economy, already one of the poorest in the region, suffered further in 2004 under these pressures and thousands of labourers lost their jobs in the private sector.

6. On the side of the security forces, consisting of the Police, the Armed Police Force and the Royal Nepalese Army (RNA) under a unified command, reports of serious and systematic human rights violations have increased throughout 2004, particularly in regard to disappearance, torture, arbitrary detention and summary execution. A climate of impunity continues to pervade the security forces down to the lowest levels, despite an increase in investigations and courts-martial of alleged abusers. An intensification of the conflict throughout the year has produced pressure on local commanders to produce "results", which reportedly has produced higher body counts. To that end, there were reports throughout the year of security forces entering villages disguised as Maoists. Those who cooperated with the "false Maoists" - even out of fear - were sometimes executed by the security forces in front of their neighbours as an example and later reported as having been killed in an "incident". Reports persisted throughout the year of summary executions by the security forces of unarmed youths and even children who were suspected Maoists or of having cooperated with the Maoists.

7. In 2004, Nepal attracted international attention by having the highest number of new cases of disappearance of any country in the world. The use of disappearance by security forces is so widespread and consistent that many human rights organizations charge that it has become a major tool of the State for dealing with the insurgency. Despite a preliminary step taken by the

Government in July 2004 to set up a committee to “clarify” the status of several hundred cases reported by national and international human rights organizations, basic measures which would help to prevent disappearances (such as lists of detainees and unhindered access by monitors from the National Human Rights Commission) remain unimplemented.

8. Other major human rights violations reportedly committed by security forces include widespread arbitrary arrest and torture. As stated in the report on Nepal of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65/Add.1), most of the people who are detained in army barracks throughout the country are held incommunicado and under no legal authority, including the Terrorist and Disruptive Activities Ordinance (TADO), the much-criticized anti-terrorist ordinance that permits preventive detention for up to one year. Of those detainees who were released under habeas corpus writs, many were promptly rearrested after leaving the barracks or, in at least one recent case, even on the premises of the holding centre itself. Such rearrests, coupled with the many cases where court orders were either ignored or improperly responded to, greatly undermined the authority of the judiciary throughout the year and undermined its constitutional role to provide a remedy in cases of unlawful treatment and illegal detention.

9. Threats and reprisals against human rights defenders, including journalists, were reported throughout 2004. In one of the few cases that received much publicity, CPN-M forces seized journalist/human rights activist Dekendra Raj Thapa in August, tried him before a “peoples’ court”, sentenced him to death and then promptly executed him. Journalists working at the village and district level are particularly vulnerable to threats and reprisals from both sides. During 2004, the CPN-M also executed numerous political party activists across the country as well as three officers, including the President and the Vice-President, of the Maoist Victims Association. Meanwhile, human rights activists, particularly those carrying out investigations of violations attributable to the security forces, were often subject to various forms of intimidation and surveillance and, in some cases, physical abuse. Towards the end of the year, three human rights lawyers who feared reprisals from the security forces fled the country. In other cases, witnesses to summary executions went into hiding out of fear for their lives.

10. Many human rights violations allegedly committed by security forces could be effectively remedied or even prevented if existing human rights commitments were respected and implemented. Most of the 25 points contained in His Majesty’s Government’s “commitment on the implementation of human rights and international humanitarian law”, announced by the Prime Minister on 26 March 2004, have not been acted upon even though, in most cases, no additional resources are required. On the CPN-M side, there has been no similar reaffirmation of commitment to either human rights or international humanitarian law. In reality, most of their policies and operations carried out in 2004, such as mass abductions, the recruitment of children, summary executions, the targeting of schools, trial by incompetent courts for crimes inappropriately punishable by death, forced labour and forced evictions, were flagrant violations of international law and qualify as war crimes under the Rome Statute of the International Criminal Court.

11. The critical human rights situation in Nepal is reflected in the extremely high number of communications sent to the Government from the special procedures of the Commission on Human Rights. During 2004, Nepal had by far more such communications, including over 60 joint urgent appeals, than any other country. Joint statements of concern by mandate holders

over the human rights situation were issued twice in 2004. In the joint statement of 14 July 2004 (see annex I), serious concern at the extremely grave human rights situation in Nepal was expressed by the eight mandate holders concerned with torture; violence against women; extrajudicial, summary and arbitrary executions; the independence of judges and lawyers; freedom of opinion and expression; human rights defenders; enforced or involuntary disappearances; and arbitrary detention. During the year, invitations to visit the country were extended by the Government to the Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances; the latter visited Nepal during December 2004. During October 2004, visits were also requested by the Special Rapporteur on extrajudicial, summary and arbitrary executions and the Representative of the Secretary-General on the human rights of internally displaced persons. A request for a visit by the Special Representative of the Secretary-General on human rights defenders, submitted in 2003, is still pending consideration.

12. It would appear that, faced with the widespread and systematic violation of their fundamental rights, many Nepalese are fleeing their villages for the relative safety of towns and cities, or even across the open border to India. The continued militarization of what began in 1996 as a political conflict has led the country further and further away from political reconciliation and peaceful resolution. The United Nations system in Nepal considers the country to be in a human rights crisis wherein grave human rights violations must be frankly acknowledged and urgently addressed. It is in this challenging and deteriorating context that the Office of the High Commissioner for Human Rights is trying to carry out a number of activities, within its limited resources and mandate, to improve the respect for fundamental human rights in Nepal.

II. ACTIVITIES UNDERTAKEN

A. Advice and assistance to the National Human Rights Commission

13. In June 2004, the first two OHCHR international advisers (provided for under the joint OHCHR/United Nations Development Programme (UNDP) project, "Capacity development for the National Human Rights Commission") were deployed to the National Human Rights Commission in Kathmandu to advise and assist in two key areas of the Commission's work: monitoring and reporting; and training. They arrived in post just as the NHRC began preparations for a major expansion through the setting up of five regional offices. The first of those offices, located in Nepalgunj, was officially opened in November 2004. Since then, the advisers have worked closely with the Commission to identify priority needs and develop policies and detailed work plans for the regional expansion. They have also provided the NHRC with comparative information and lessons learned from other national human rights commissions in Asia and elsewhere. Recruitment of several additional international advisers, including those to be based in the regional offices, was under way at the end of the year.

14. The memorandum of understanding (MOU), which aims to facilitate and establish the conditions for the provision of technical assistance to the National Human Rights Commission, was concluded and signed by the Minister of State for Foreign Affairs and the High Commissioner for Human Rights in December 2004. The MOU guarantees that, in the course of carrying out their duties, the international advisers will have the same freedom of

movement and of access (e.g. to places of detention) as staff of the NHRC, as defined and stipulated in the Human Rights Commission Act of 1997 and the commitment on the implementation of human rights and international humanitarian law announced by the Government on 26 March 2004.

15. The OHCHR team, including the Senior Human Rights Adviser based at United Nations House and the international advisers based at the NHRC, worked closely with UNDP to finalize and launch, in October 2004, the revised global five-year project of support by the United Nations to the National Human Rights Commission. In the course of doing so, the Commission clarified that its approach to the field expansion will be to have the monitoring carried out by its own core staff rather than United Nations staff who were to be seconded to the Commission. These monitors will be assisted by one or more international advisers who will be based in each of the five regional NHRC offices.

16. By January 2005, two major problems had emerged that potentially threaten the continuity, credibility and effectiveness of the NHRC. The first of those problems concerns effective access by NHRC monitors to places of detention throughout the country. Limited progress in securing that access came in December 2004 but was abruptly reversed the following month when the NHRC was barred from visiting the facilities at the Sundarijal Detention Centre in Kathmandu. A restrictive procedure was announced by the Home Ministry that allowed the NHRC to visit specific detainees by advance request and in the public meeting room only. The Home Ministry's decision arguably contravenes the spirit and the letter of article 9 (e) of the Human Rights Commission Act, which gives the NHRC the right and responsibility to "visit, inspect and observe any authority, jail or any organization under His Majesty's Government and submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities" The decision of the Home Ministry would unlawfully restrict the NHRC to visiting detainees rather than places of detention. The decision also arguably contravenes the Government's commitment on the implementation of human rights and international humanitarian law of 26 March 2004. Point 24 (c) of that commitment states that His Majesty's Government will provide the necessary facilitation to the National Human Rights Commission while "visiting, observing and inspecting any agency under HMG or prison or any other institutions and recommending to HMG any measures required for improvement in the physical or any other facilities at prisons for protection of human rights".

17. It had been widely hoped that the unhindered access of the NHRC to places of detention, including army barracks where hundred of detainees are reportedly held incommunicado, would be a powerful tool in helping to prevent disappearances, arbitrary arrest, torture and even extrajudicial executions. If the NHRC were to be restricted from carrying out its monitoring mandate, there are strong indications from the international community that it would reconsider its support for national human rights monitoring in Nepal.

18. The second problem that, by the end of 2004, threatened to seriously undermine the NHRC concerns the expiration of the terms of the present commissioners, including the Chairperson, by May 2005. Unfortunately, as Parliament has remained dissolved since 2002, the Recommendations Committee for the selection of commissioners cannot be constituted in accordance with the Human Rights Commission Act. Given the legal complexities and the political sensitivities surrounding the appointment of new commissioners under these conditions, it was felt by many that the terms of the present commissioners should simply be extended until

such time as there is a Parliament in place and the requirements of the Human Rights Commission Act may be fulfilled. Above all, a situation must be avoided where the quality or independence of the commissioners is compromised; the credibility of the Commission is undermined by the procedure followed in addressing this problem; or the Commission's membership is allowed to lapse, leaving a secretariat with no leadership, authority or direction.

19. The continued effectiveness of the technical assistance provided by OHCHR to the NHRC depends on a satisfactory resolution of those two problems.

B. Support to the United Nations Resident Coordinator and the Country Team

20. Under his terms of reference, the Senior Human Rights Adviser advises the United Nations Resident Coordinator and the United Nations Country Team (UNCT) with a view to strengthening the capacity of the United Nations in Nepal to address human rights issues, as part of the coordinated and integrated peacebuilding efforts of the United Nations system. During 2004, the UNCT adopted two public statements, one on the occasion of the International Day in Support of Victims of Torture (26 June) and the other on the occasion of the International Day of the Disappeared (30 August). In those statements, which were carried in the media, the United Nations system in Nepal expressed its concern at reports of continuing human rights violations on both sides of the conflict and called for concrete steps to be taken in order to prevent further such abuses. Strong public speeches on the human rights situation were delivered by the Resident Coordinator on several occasions during the year, including United Nations Day and Human Rights Day.

21. In August 2004, the UNCT decided to establish an Inter-Agency Working Group on Protection, which is chaired by the Senior Human Rights Adviser. The purpose of the Working Group is to analyse protection-related information, develop a comprehensive protection strategy and provide recommendations to the Resident Coordinator and the Country Team on appropriate responses and interventions. As part of an effort to identify current trends, particularly in conflict-related human rights problems, the Senior Human Rights Adviser maintains close contact with human rights counterparts in the Government as well as with the NHRC and national non-governmental organizations.

22. In October 2004, the Senior Human Rights Adviser participated, along with selected UNCT members, in a regional workshop in Bangkok hosted by the United Nations Development Group for country teams that are scheduled to start, in 2005, a common country assessment/United Nations Development Assistance Framework (CCA/UNDAF) process. The Country Team subsequently decided that the CCA process in particular would have a strong human rights-based approach. The Senior Human Rights Adviser and the Inter-Agency Working Group on Protection were accordingly requested to play a lead role in the drafting process. By the end of the year, steps had been taken to set up a steering committee, co-chaired by the Government and the Resident Coordinator. The CCA is to be completed in the first half of 2005 and the analysis contained therein will determine the priorities for the United Nations system as a whole.

23. As part of an effort to implement action 2 of the Secretary-General's second reform programme, the Senior Human Rights Adviser and the OHCHR Adviser on Training to the NHRC are also working closely with other agencies, particularly UNDP and the United Nations Children's Fund (UNICEF), to implement a human rights training programme for United Nations staff. The training is in follow-up to a general training session conducted last year by the previous Senior Human Rights Adviser and focuses on implementing a rights-based approach to programming. During 2004, two such training sessions for UNDP programme staff were held.

C. Advice to the Government on human rights commitments

24. Regular consultations are undertaken between the Senior Human Rights Adviser and the Director of the Human Rights Promotion Centre of the Prime Minister's Office, which is responsible for coordinating a wide range of human rights-related activities of Government. A very constructive relationship has been forged to provide information and support to the Centre in its work. Consultations were also held with the Secretariat for the National Human Rights Action Plan, which is also within the Prime Minister's Office, with a view to identifying key areas of the plan where international support can be provided for implementation.

25. Regular meetings are also scheduled with the Human Rights Cells in the Police, the Armed Police Force and the Royal Nepal Army. The Senior Human Rights Adviser provides the cells with information on cases of special concern with a view to encouraging their work and strengthening their effectiveness. As a result, a number of new investigations into serious human rights abuses were undertaken, particularly by the Royal Nepal Army. Reports of threats to human rights defenders, including suspected surveillance, are also communicated by the Senior Human Rights Adviser to the Army Human Rights Cell, which has often responded with timely and effective follow-up. The Senior Human Rights Adviser further met with the Chief of Staff of the Army to raise key human rights concerns, including the need for the Royal Nepal Army to develop clear rules of engagement that distinguish between adults and children, including those suspected of carrying out non-combatant roles for the CPN-M. This remains a serious problem.

26. Consultations were held between the Senior Human Rights Adviser and the Director of Prisons Management with a view to supporting possible prison reform. Follow-up consultations were held with Penal Reform International, which is working closely with the Home Ministry on a related project. Nepal is one of the few countries in the region with no professional prisons service, with the result that conditions in prisons across the country are chaotic, particularly with regard to security. Unfortunately, the ongoing conflict has severely limited the Government's capacity to undertake major reforms in this key area.

27. Consultations were also held with the Human Rights Cell in the Home Ministry with a view to providing information on reporting obligations under the human rights treaties. In that connection, it should be noted that in May 2004 the Government of Nepal submitted its second periodic report to the Committee against Torture (CAT/C/33/Add.6) which may be examined by the Committee in 2005. The second periodic report of Nepal under the Convention on the Rights of the Child (CRC/C/65/Add.30), submitted in December 2002, will be examined by the Committee on the Rights of the Child at its May 2005 session. Lastly, the Government is expected to finalize in early 2005 its periodic report to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights. It should also be

noted that the non-governmental organizations in Nepal have organized a Human Rights Treaty Monitoring Coordination Committee that submits alternative reports to the treaty bodies and works constructively with the Government to improve treaty reporting and awareness.

28. Meetings were held between the Senior Human Rights Adviser and the Chairperson of the Investigative Commission on Disappearances, which was established by the Prime Minister in July 2004 to locate persons who are reported to be disappeared by the security forces. The Senior Human Rights Adviser prepared folders of pertinent information and documentation for all members of the Commission, which includes representatives of the Home Ministry, the Ministry of Defence, the National Investigation Department, the RNA, the Police and the Armed Police Force. The folders included cases that had been forwarded to the Government by special procedures mechanisms as well as information on relevant international standards and obligations and was intended to assist the Commission in its work. During 2004, the Commission issued four reports detailing the status of 320 persons. Unfortunately, since the first report was issued in August 2004, all of the subsequent reports have been kept confidential and were not made available to the Senior Human Rights Adviser, the NHRC or any of the organizations that are reporting on disappearances.

D. Developing regular exchanges of information and views with civil society

29. The Senior Human Rights Adviser meets regularly with the Nepal Bar Association and many of the human rights non-governmental organizations, particularly those who are engaged in monitoring and protection work. Special emphasis is given to protecting human rights defenders and to following up on any reports of threats or reprisals. In that connection, regular contact is made with the Federation of Nepali Journalists in view of the ongoing threats against local journalists, who are considered by many to be among the most vulnerable human rights defenders.

E. Cooperation with regional and international partners

30. Regular consultations are held with the European Union (EU) with a view to coordinating to the maximum extent the ongoing support being provided to the NHRC from the EU and from the United Nations. Throughout 2004, the Senior Human Rights Adviser also participated in regular meetings held by the major donors to the NHRC.

31. Lastly, the Senior Human Rights Adviser participates in regional human rights meetings as necessary. During 2004, he participated in a one-day meeting of the OHCHR field presences in the Asian-Pacific region in August 2004 and as a resource person in the intersessional expert meeting on national human rights action plans and human rights education in the Asian-Pacific region, which was organized by OHCHR in Bangkok during October 2004.

III. CONCLUSIONS

32. **The human rights crisis in Nepal deepened throughout 2004 and risks deteriorating even further if opportunities for a peaceful solution to the conflict are not seized. In the immediate term, the protection of civilians and non-combatants must be the main and overriding priority for any human rights initiatives taken in today's Nepal. OHCHR stands ready to provide human rights support as an essential part of peacebuilding**

efforts in Nepal. However, no amount of technical support or advice can replace the Government's paramount responsibility to take prompt and decisive action to end grave human rights abuses and ensure that there can be no impunity for such violations. In the immediate term, there are four essential elements that are indispensable if the cycle of intensified violence and increasing militarization is to be broken.

33. The first element is respect for fundamental human rights, including an end to the pervasive climate of impunity on both sides of the conflict. Human rights violations are not only intolerable, but they are counterproductive for anyone who claims to be fighting for the people. Enforcing respect for human rights, in a strict and consistent manner, is an essential tool for any military commander wishing to instil discipline, command and control over his troops. The present climate of impunity must be combated actively and with determination by ensuring proper investigations and timely prosecution of offenders. The 25 points contained in the commitment on the implementation of human rights and international humanitarian law of 26 March 2004 must be implemented by the Government without further delay. Additionally, both sides need urgently to reverse the involvement of children in the conflict: the CPN-Ms by ending their abductions, indoctrination and recruitment of children; the security forces by ensuring the special treatment and protection of children in their rules of engagement aiming at the rehabilitation and reintegration of the child. The Government needs to ensure that the NHRC and lawyers representing detainees have access to places of detention, and that court orders, including habeas corpus, are respected and implemented by the law enforcement authorities. Both sides should urgently consider signing the Human Rights Accord drafted and proposed by the National Human Rights Commission, which aims at ending the abuses and atrocities that are emptying the countryside. The Human Rights Accord, whether signed separately or together by the Government and CPN-M, could establish an important turning point in the conflict. Its implementation would be monitored and verified by the National Human Rights Commission.

34. The second essential element for breaking the cycle of violence is a strong and effective National Human Rights Commission. This means that, above all, the Commission must be allowed to carry out its work as mandated under the Human Rights Commission Act and as provided for in the commitment of 26 March 2004. This should include full and unhindered access, without prior notice, to all places of detention, which is recognized internationally as vital to any effective human rights monitoring. Such visits would go far in helping His Majesty's Government, including the security forces, to prevent disappearances, executions, arbitrary arrest and torture. The issue of expiring terms of the commissioners must be dealt with urgently and through a process that takes into account the political sensitivities and the legal complexities of the present situation. The cornerstone of effective national human rights monitoring in Nepal is an effective National Human Rights Commission, one that is not only active and independent, but also one that is seen by all to be active and independent.

35. The third essential element is to ensure a strong, confident and active civil society in Nepal. Any curtailment or suspension of basic rights, including the right to peaceful assembly, or fundamental freedoms, including the freedoms of expression as well as of movement, must be avoided in order to safeguard democracy in Nepal. The Government must shoulder its responsibility in this regard. The continued imposition by the CPN-M of

blockades and *bandhs* must be strongly condemned by the international community. The rights and responsibilities of human rights defenders, including lawyers, party workers, human rights activists and journalists, must be fully respected by both sides of the conflict and determined action taken to investigate any threats or reprisals against them and to punish the offenders.

36. The fourth and final essential element for breaking the cycle of violence is more engagement by the United Nations and the international community. While very constructive cooperation by the Government with the special procedures of the Commission on Human Rights was evidenced in 2004, that cooperation needs to be broadened to include other key mandates that have requested invitations, and deepened to ensure active, consistent and prompt follow-up to their conclusions and recommendations. The international community should continue to support the Government in undertaking that follow-up, while encouraging further participation in that regard from the National Human Rights Commission and civil society. A clear signal from the international community must also be sent to the CPN-M that specific and unequivocal human rights commitments must be made without further delay and enforced down to the regional and local levels.

37. The Secretary-General of the United Nations, in the statement issued by his Spokesperson on 24 December 2004 (annex II), expressed his concern over continued grave human rights violations in Nepal and reaffirmed his willingness to assist in supporting a national effort to initiate a dialogue of all political and civil forces. As a concrete step in demonstrating the increasing engagement of the United Nations in Nepal, the High Commissioner for Human Rights scheduled a visit there from 23 to 26 January 2005. She did so in order to see the situation first-hand, take ownership over OHCHR activities in the country and engage directly with His Majesty's Government, the National Human Rights Commission and civil society on pressing human rights concerns. The High Commissioner's visit signals her personal involvement and commitment to helping national partners in Nepal to work together towards the common goal of a peaceful and democratic Nepal where the fundamental human rights of all are fully respected. Now, more than ever, the future of the country depends on the success of those efforts.

Annex I

UNITED NATIONS PRESS RELEASE OF 14 JULY 2004

**“UNITED NATIONS COMMISSION ON HUMAN RIGHTS EXPERTS
REITERATE GRAVE CONCERN OVER SITUATION IN NEPAL**

14 July 2004

“The following statement was issued today by the Special Rapporteur on torture, Theo van Boven; the Special Rapporteur on violence against women, Yakin Ertürk; the Special Rapporteur on extrajudicial, summary and arbitrary executions, Asma Jahangir; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo; the Special Representative of the Secretary-General on human rights defenders, Hina Jilani; the Chair of the Working Group on Enforced or Involuntary Disappearances, Diego García-Sayán, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leïla Zerrougui:

“Eight independent experts of the United Nations Commission on Human Rights reiterate today their serious concern regarding the extremely grave human rights situation in Nepal.

“The experts indicate that since the beginning of 2004, they have transmitted 146 urgent appeals and other communications to the Government of Nepal regarding reported violations of human rights. Many of the communications concern individuals arrested by security personnel, often on suspicion of supporting or being involved with activities of Maoist groups. It is reported that these individuals are subsequently taken to undisclosed locations, which puts the detainees at risk of being tortured or of suffering other forms of cruel, inhuman or degrading treatment, including rape. The experts regret that the Government has failed to respond to many of their appeals, and that it has provided virtually no information on the fate or location of people detained in unknown locations. The experts recall their previous public statements on human rights violations in Nepal issued on 12 November 2003 and 9 March 2004, as well as statements by the Acting High Commissioner for Human Rights made in the last year.

“The experts also express serious concern over the significant increase in reports of abuses and attacks against civilians by insurgents.

“The independent experts acknowledge the Government’s commitment on the implementation of human rights and international humanitarian law announced on 26 March 2004. They strongly urge the Government to live up to its commitments and implement fully and without delay the 25 undertakings contained in this most important document. They welcome the establishment of an investigative commission under the Ministry of Home Affairs to probe the cases of disappearances, in accordance with point 22 of the Government’s commitment. They emphasize the need for the investigative commission to address the serious issue of disappearances immediately.

“The experts again urge all parties to the conflict to find a peaceful solution that would put an end to the widespread suffering in Nepal. In particular, the experts take this opportunity to urge the Royal Nepalese Army to cooperate with the courts and the National Human Rights Commission in providing information about the conditions and whereabouts of those held in its custody.

“They recall article 3 common to the four Geneva Conventions of 1949, which is binding on all parties to a non-international conflict and enshrines the protection of life and the physical integrity of the human person, including the prohibition of cruel treatment and torture at any time in any place. Article 3 applies to all persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. The experts also refer to international human rights norms that strictly prohibit the use of torture and other forms of ill-treatment under any circumstances. They recall that according to these general principles of international law, rape during armed conflict is considered to be a war crime and that States have an affirmative duty to prevent, punish and prosecute perpetrators of such crimes at all times.

“The independent experts call on all parties to the conflict to comply strictly with these international human rights and humanitarian norms.”

Annex II

**STATEMENT BY THE SPOKESPERSON OF THE SECRETARY-GENERAL
OF 24 DECEMBER 2004**

“The Secretary-General is deeply troubled by reports of an escalation of fighting in Nepal and of continued grave human rights violations. The conflict is undermining democracy and human rights and seriously hindering development activities.

“Reports that human rights defenders in Nepal face grave threats to their safety and security are very disturbing. The safety and ability of the National Human Rights Commission and all human rights activists to carry out their essential work should be guaranteed. In that regard, the recent signing of a memorandum of understanding between His Majesty’s Government of Nepal and the Office of the High Commissioner for Human Rights is a welcome step.

“The Secretary-General once again calls for an urgent cessation of fighting and the initiation of dialogue between the Government and the Communist Party of Nepal (Maoist), with the participation of all political and civil forces. He stands ready to assist such a national effort.”
