

Distr.
GENERAL

الجمعية العامة



A/HRC/7/G/7
10 March 2008

ARABIC
Original: ENGLISH

مجلس حقوق الإنسان
الدورة السابعة
البند ٢ من جدول الأعمال

التقرير السنوي لمفوض الأمم المتحدة السامي لحقوق الإنسان
وتقارير المفوضية السامية والأمين العام

مذكرة شفوية مؤرخة ٦ آذار/مارس ٢٠٠٨ موجهة من البعثة الدائمة لنيبال
لدى مكتب الأمم المتحدة في جنيف إلى أمانة مجلس حقوق الإنسان

تهدي البعثة الدائمة لنيبال لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف تحياتها إلى أمانة مجلس حقوق الإنسان، وتتشرف، فيما يتعلق بتقرير مفوضة الأمم المتحدة السامية لحقوق الإنسان عن حالة حقوق الإنسان وأنشطة المفوضية، بما فيها أنشطة التعاون التقني، في نيبال (A/HRC/7/68)، بأن تشير إلى الاجتماع الذي عقده ممثل المفوضية السامية مع السلطات في كاتماندو، في الأسبوع الماضي، والذي أفاد فيه بعدم قدرة المفوضية إدراج آراء حكومة نيبال التي أرسلت إليها في شباط/فبراير ٢٠٠٨ نظراً لضيق الوقت.

ولهذا السبب، قررت حكومة نيبال أن تقدم ملاحظاتها* على تقرير المجلس المذكور أعلاه. وستكون البعثة الدائمة لنيبال ممتنة لو تفضلت أمانة المجلس بتعميم هذه الملاحظات كوثيقة من وثائق الدورة السابعة للمجلس.

* استُنسخت في المرفق كما وردت وباللغة التي قُدمت بها فقط.

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)

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 national 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. In our view **It believes that consolidation capacity building and strengthening** of national institutions is key to institutionalize our efforts by enhancing our capacity and consolidating sustainability. **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 document instrument to highlight the factual human rights situation in Nepal which should, besides mentioning challenges, also reflect all wave of positive developments and important measures taken towards the promotion and protection of human rights in the country in an objective and fair manner. However, the present report runs with all negative as well as sheer subjective, unsubstantiated, vague and often self-refuting comments on many of the issues highlighted under the report. The report fails not only to uphold the marginal appreciation of the efforts of the Government but also tries to pass on baseless comments on purely internal process of the sovereign Government before the issue under consideration bears any result. Apparent disbelief and attempt to discredit every sincere effort of the Government and its machinery is not only unwarranted but also unacceptable. The report has passed in an incredible way subjective and prejudgment which should have no place in the work of the OHCHR under its defined mandate. We are dismayed to see references that unwarrantedly try to question the good intention of the Government and its law enforcement agencies. GoN finds difficulty in agreeing with a number of references made to 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 historic 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. It must be understood that it is with the all spirit of cooperation and faith that the Comprehensive Peace Accord spontaneously recognized the role of the OHCHR in monitoring the human rights component of the Accord. There can be no stronger testimony of Government's total cooperation to implement its recommendations under the law of the land.
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 stress 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. We also feel it a State prerogative to allow any internal process fully developed and attain the stage where it could be shared with stakeholders for their input, if any. If OHCHR intends, by this reference to lack of access to the documents, that any initiatives need to be scrutinized by the OHCHR before the Government completes its homework, it goes beyond the mandate agreed with the Government and we do not feel this can constitute the job and mandate of the organizations like OHCHR. Seeking access to the documents related to an undergoing investigation process of any incidence or criminal cases falls neither within the mandate of the OHCHR nor it can be deemed legal and appropriate to share such investigation with any agency which is not part of the investigation process under the laws of the land. In Nepal, flexibility and receptivity on the part of the Government and its authorities transcends all legitimate doubts of the relevant stakeholders which is well known, and Government would like to reassure that such an utmost degree of cooperation and flexibility should not be construed as ground to transcend acceptable norms of practice. 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 and relevant laws of the land. GoN is fully committed to follow the agreement with OHCHR subject to the constitutional and legal frameworks of the country. At the same time Government has all abiding duty to protect and follow the legal and constitutional course of the country and respect it as its cardinal obligation. 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 elevation of the NHRC to a constitutional body, the best and highest level of constitutional protection of the independence and impartiality of national institution that can be guaranteed under the new Interim Constitution, the report unfairly unnecessarily raises the issue of comments 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, subject to parliamentary scrutiny, and have adopted the best available avenue to ensure independence and impartiality of the Commission. The procedures may vary from country to country depending on their constitutional and legal arrangements and one cannot but observe the best constitutional arrangements made to give effect to the national human rights institution in its own country. Passing on subjective assessment to discredit the country's legal and constitutional system neither confers to the mandate of the Office nor and is warranted. GoN considers that the constitutional provisions of the NHRC are fully consistent with the given framework of the Paris Principles. 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. The Special Task Force assigned to control crimes and illegal activities in some districts have resulted with reduced crimes and nabbing of notorious criminals which has helped enhance level of security and environment for people to enjoy human rights and fundamental freedom free from fear and intimidation. 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 2009/010 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 a crucial phase of transition, the comments made by OHCHR carry much significance and therefore GoN requests OHCHR to be more objective and fair in its reporting and take into account the complexity of a post-conflict transition. There have been enormously significant, comprehensive and far reaching changes and improvements both in the political, constitutional, legal as well as governance process of the country which have wide ranging direct positive implications to the promotion and protection of human rights and fundamental freedom. It cannot be realistic to expect any switch button effect to the socio-economic and political process. The Government is working under pressing competing demands and priorities and trying to address them all with utmost sincerity and to the best of available time and resources. We, however, cannot forego major objectives by remaining obsessive to nay one specific issue at a time.
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 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 laws. 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. Government has a doubt over the intent of such assertion GoN is of the opinion that such comments which would only create difficulties to the state authorities in maintaining law and order. Questioning of intention rather than act of the law enforcement agencies and denigrating them does not help in our efforts to improve and strengthen law and order and protect life and liberty of our people. 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. We do not agree with any assertion of the “security vacuum” contemplated in the report. The law enforcement agencies are working seriously to curb the delinquencies of criminal and other elements that are trying to exploit the liberal political environment and mislead the sentiment of ordinary people in some pockets of the country to satisfy their ulterior motives.
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. GoN does not agree with the assertion that the Interim Constitution provides limited coverage of right to liberty and security without specifying those limitations. 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 state 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 which is itself is a guarantee of the right to life. 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 review. The report does not elaborate on how this amendment violates the rights to freedom of assembly and fair trial but hastens to pass on its subjective prejudgment that it violates the rights. All intention of the amendment is to better protect the right of the people to assemble and express their opinion. In fact, it is too early to comment on this provision of the amended 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. This is a process which takes time and requires considerable amount of work to develop fully worked out draft to be sent to the legislative process.
13. GoN does not agree at all that there has been excessive use of force in controlling some demonstrations. The statements made in paragraph 33 and 34 of the report on the Terai unrest including the Gaur incident are contradictory and self-refuting. 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 excessive use of force to control riots. The 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. Mentioning of such an approximate figure in a generalized term “mostly” to indict the entire police force is biased and all intended to humiliate the force which compels to seriously doubt the credibility of the report and its contents. An organization such as OHCHR should be careful in making such unfair 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. The Interim Constitution has provided for half of the seats of the Constituent Assembly to be filled through proportional representations in order to ensure the participation of the people from all segments of live including the Dalit, women, Janjatis, Madheshi and marginalized groups. The Civil Service Act and the regulations governing the recruitment in the police force have been amended to ensure the inclusion of the women and people from all geographic and ethnic groups to have opportunity to enter into these services under quota arrangements.

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 reference to the use of torture (para. 38) is baseless and unfounded. It is a general tactic applied by the accused everywhere to blame prosecutors of employing torture or ill treatment with an objective to gain concession in the legal proceedings or garner sympathy against the criminal charges they are facing with. Highlighting with importance of such allegation can not constitute a worthy point in such important report. 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. The Interim Development Plan (2064-2067) clearly sets our priorities and programs to be implemented with an objective of reducing poverty and enhancing the wellbeing of the people. Nepal, despite entangled into tragic armed conflict during the last decade, managed to reduce the incidence of poverty by almost 10 percent between 1992 and 2004. This was due to the broad-based targeted and focused projects and programs implemented to reduce poverty in all its manifestations. This remains to be a continuing priority of the Government.
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 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. A legal process has already been initiated and arrest warrants have been issued against the suspects. 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 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.

- - - - -