Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in the report of its visit to Nepal from 6 to 14 December 2004 (E/CN.4/2005/65/Add.1, par. 58)

Recommandations (E/CN.4/2005/65/Add.1, par. 58)	Situation during the visit (E/CN.4/2005/65/Add.1)	Observations: steps taken / current situation
(a) As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance	33. There is no specific provision in the Nepalese Country Code creating a crime of enforced or involuntary disappearance. There is such a provision in proposed reforms to the Penal Code, but in the absence of a sitting parliament there is little likelihood that such a provision will be enacted in the short term.	The Comprehensive Peace Agreement signed between the Government and the UCPN-Maoists in November 2006 for the establishment of Truth and Reconciliation to make public the information about the people disappeared by parties to the conflict within 60 days from the date of signing of the accord.[1] The Interim Constitution, promulgated on 15 January 2007 states for providing relief to the families of the disappeared persons in accordance with the recommendations of the report of the Investigation Commission.[2] On 1 June 2007, the Supreme Court directed the government to form a powerful commission to investigate the whereabouts of the disappeared persons after compiling 83 habeas corpus writs filed on behalf of people detained and disappeared at different times, to draft and implement the law criminalising enforced disappearance and to provide compensation to the families of the victims subjected to enforced disappearance. The court also recommended the government to immediately become the party to the Convention for the Protection of All Persons from Enforced Disappearance. However, even after the four years, the government has not taken any action on it. Interim Legislature-Parliament has made a welcome provision by incorporating the reparation to the families of the enforced disappeared persons in the Article 33 (q) of the Interim Constitution.

[1] Clause 5.2.3 of the CPA

[2] Article 33 (q) of the IC: To provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict.

In the course of implementation of the court order, the government tabled an amendment Bill comprising of "enforcing disappearance" in Country Code Chapter 8 (a) and "abducting and taking the body hostage" in 8 (b). The Bill was presented as a provision of Country Code and it was also written so. This was not compatible with the international standard. The parliament management committee returned the Bill saying it fails to criminalise the act of enforced disappearance and prosecute those responsible and asked the government to make public the new draft Bill incorporating the said concerns within one month. After the huge pressure from national and international actors, Bill on disappearance commission was tabled but is pending at the parliament since April 2010.

Proposed criminal code and a penal code have, for the first time, tried to bring the act of enforced disappearance in the category of crime.[3] The draft was tabled at the parliament in June 2011 however, it has not been debated. The provision of the criminal code contradicts with the provisions of the draft Disappearance Commission bill.[4]

In January 2011 while undergoing review under the Universal Periodic Review, government accepted the recommendation for the establishment of accountability for conflict-era human rights abuses through the formation of the Truth and Reconciliation Commission and Disappearance Commission, as agreed to in the Comprehensive Peace Agreement[5]; to ensure that the laws relating to the Truth and Reconciliation Commission, as well as to the Commission on Disappearances are in line with international standards and continue its efforts in order to clarify the crimes perpetrated during the armed conflict, in particular regarding enforced disappearances and extrajudicial killings and prosecute those responsible[6] . However, the government reserved the recommendation to implement the decision of the Supreme Court of 2007 that requires the

[3] Articles 200 and 201 of the draft criminal and penal code, 2010
[4] Criminal Code imposes a maximum penalty of 15 years however, the draft disappearance commission bill imposes for 7 years
[5] Point 106.33, Report of UPR Working Group on Nepal
[6] Ibid, Point 106.34

State to criminalize enforced disappearances and sign and ratify the CED[7]. However, the government rejected the recommendation related to the ratification of CED.[8]

(b) The Army Act be amended to provide that security forces personnel accused of enforced or involuntary disappearance in relation to a civilian be tried only in civilian courts; that this amendment also cover the crimes of murder and rape when committed by security forces personnel against a civilian; and furthermore, that no exception be made for crimes alleged to have been committed by security force personnel against civilians during a military operation;

34. Once a crime of disappearance is created, a further problem must be addressed. In all countries, whenever security forces personnel are accused of serious crimes against civilians, the legitimacy of the legal process is strongly determined by whether the adjudication of guilt falls within the jurisdiction of military or of civilian courts. Military courts should have restrictive jurisdiction relating primarily to military offences, such as dereliction of duty, or to offences where the accused and the victim are both within the military.

None of the suggestions of the working group was taken up till the armed conflict came to an end. Following the establishment of Loktantra on 24 April 2006, the Government of Nepal amended the Army Act and it was endorsed unanimously by the Legislature-Parliament on 24 September 2007. As per the amendment, the hearing on human rights violations including killing and rape would be conducted by other (civil) court instead of army court. Section 62 of Army Act 2007 also has special provisions regarding corruption, theft, torture and disappearance. However, the act neither provides definition nor the sanctions for these crimes. It merely refers to "act which are defined an offence of corruption, theft, torture and disappearance by existing legislations. Still the act of disappearance and torture are yet be criminalized by Nepali legislations.

Section 62 (1) of the Army Act 2007 mentions that there shall be a committee comprised of the Deputy Attorney General prescribed by the Nepal Government as chairperson, chief of legal section of the Ministry of Defence and a representative of Office of Judge Advocate General, not below the rank of Major, as members for the purpose of conducting an investigation and inquiry into the offences provided by Subsection (1). No information is available about the number of the cases that have been investigated by the committee so far.

Likewise, Section 66 (1) of the Army Act, 2007, mentions that except in the event that a person under the jurisdiction of this Act commits offences mentioned in Sections 38 to 65 and those offences are committed by a military personnel against a military personnel, if the person under the jurisdiction of this Act commits homicide or rape, the cases which arise thereto shall fall under the jurisdiction of other courts. The Act further says "Other court" shall mean other courts established in accordance with

[7] Ibid, Point 108.26
[8] Ibid, Point 109.2,4, 5 and 10

prevailing laws except the Court Martial.

The Act provisions that the offences committed by persons under Subsection (1) against citizens of a country in which he has been deployed while engaged with a peace-keeping force of the United Nations shall fall under the jurisdiction of other courts. But, apparently, amendment of the Act has been limited. Specially, there is no retrospective provision to address the past human rights violation including enforced disappearance when there were more violations including extra-judicial killings. Action cannot be taken against the army personnel involved in the violation in the past as per this Act. It cannot make the past violators answerable. This is likely to support impunity.

(c) The army release full and complete details, including any written judgements, of all court-martial proceedings undertaken in the last two years, and in the future; and, furthermore, that the Judge Advocate General undertake more aggressive prosecution of army personnel accused under the existing law of kidnapping and torturing civilians;

35. In addition, the civilian authorities of Nepal must work hard, in close cooperation with the Royal Nepal Army, the Armed Police Force and the Nepal Police, to address what was described to the Working Group time and again as a "culture of impunity" for human rights abuses by the security forces of Nepal. Although the Army Act currently provides for parallel civilian or military jurisdiction over army personnel accused of murder during times of military operations, under which would be included extrajudicial killings of civilians in army custody, not a single prosecution has been launched in the civil courts since the breakdown of the ceasefire between the Maoists and the Government in August 2003, even though a large number of such killings have been credibly reported. Some police officers have been punished for human rights violations. Reportedly, 39 military courts-martial have been held. In specific cases, however, the facts made public after these courts-martial are significantly at variance with eyewitness accounts of the circumstances of the

The decisions of the court martials conducted by the army have come out in media but it has not been known of army making public the full text of the decisions. Such texts remain unavailable even when requested by the civil society members and the victim families. Along with this, the army personnel, accused of abducting and torturing the civilians, have not been prosecuted by the judges and attorney general.

Some of the documents related to the Maina Sunuwar case were made public. The NA is not making public its court martial judgments though from time to time, it announces its decision through a press release. In case of Maina, on 8 May, 2007, the Supreme Court ordered that the NA Headquarters produce the original file concerning the military court proceedings but Army Headquarters sent only a copy of the Court Martial report to the Supreme Court marking it "very confidential". Despite the order of the Supreme Court to the army to provide the full file, to date the NA has failed to comply.

After the ruling of the Supreme Court in September 2007 clearly stating that the case should be dealt with in a civilian court, on 31 January, 2008, the Kavre Public Prosecutor finally filed murder charges in the Kavre District Court against the four army officers including Major Niranjan Basnet. The court also issued summons for the arrest of the four accused. However, none

disappearance, which undermines the credibility of the military court process in the eyes of the public. Moreover, the number of prosecutions and disciplinary actions involving the police and army is small in comparison with the scale of disappearances in the country.

of them were arrested. Instead, Niranjan Basnet was deployed with the United Nations (UN) Peacekeeping Mission in Chad. Later when United Nations received information about his involvement in killing, he was deported in December 2009. He was immediately taken under control of the NA upon arrival in the country. He was never handed over to police, despite initial orders from the Prime Minister to do so.

On 10 March 2010, the NA was allegedly involved in the killing of two women and a child in Banspani, Bardiya National Park. However, no investigation has taken place. The government has provided NRs 25,000 (US $ 340) per victim to the families. It was also reported that the families and witnesses were threatened by the army personnel involved and coerced into signing an agreement to withdraw the FIR.[9] The NHRC has carried out an investigation and recommended to the government that those involved be identified, and criminal cases against them be filed in civilian courts. It also recommended taking action against those who tampered with the evidence. To date no steps have been taken to enforce these recommendations. On 16 August, the Parliamentary Committee for Women and Children ordered the government to identify and punish the army personnel involved. An army spokesperson responded that the army was not involved in the incident so there is no need to punish army personnel over this incident.[10]

On 23 June 2011, government promoted Deputy Inspector General (DIG) Kuber Rana to the post of Additional Inspector General (AIG) of Nepal Police. Rana was posted as the district police chief of Dhanusha when the police arrested and disappeared five students there in October 2003.

(d) The Government of Nepal and the security forces of Nepal ensure

40. Human rights defenders in Nepal have tried to use the writ of habeas corpus to address the problem of disappearances. Obviously, this remedy is only relevant to persons unlawfully and secretly detained by

No information on persons detained in undisclosed detention centres and army barracks was provided to the families, NHRC and civil organisations during the conflict. Jails normally paste the names of their inmates. At a time, when hundreds of civilians remain missing, the hope that they might be still

[9] Fact Finding Mission Report, Informal Sector Service Centre and Advocacy Forum, March 2010

[10] National Human Rights Commission, A summary report on the 1 March 2010 incident in which a child and two women were killed in Baspani, Bardiya National Park by a patrol of Jwala Dal Battalion, Nepal Army, April 1, 2010.

that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. These lists should include detainees held in formal detention centres (i.e. Sundarijal) and in informal places of detention such as army barracks. The lists should be held locally, with a national registry created to bring together the names and locations of all detainees;

the security forces, and is of no use to combat disappearances allegedly perpetrated by the Maoist insurgents. Even in relation to the security forces, however, habeas corpus has been only marginally successful. The most obvious problem is that there are no accessible, accurate and fully up-to-date lists of persons held in detention by the army in barracks across the country. Because there are no accessible official lists of detainees, experience from around the world suggests that the chances of torture and other abuse are significantly heightened.

in some such undisclosed location is still alive.

Nepal was on the top of list of countries where persons were being disappeared after arrest on suspicion of being rebels or in the name of security operation. Nine times the government made public the whereabouts of the disappeared persons as per the recommendations by the working group. The government formed two government committees between 2004 and 2006 and both made the whereabouts the disappeared persons separately. The human rights community and the families of the victims had dissatisfaction about the working procedures and findings of the committees.

The first government investigation committee on disappeared persons had the representative of the Ministry of Defence and was formed in June/July 2004. The committee was formed with the then home secretary Narayan Gopal Malego as coordinator following national and international pressure on increasing trend on disappearance after arrest. Known as Malego Committee, it made public the status of total of 382 persons in five instances. On 11 August 2004, status of 24 disappeared persons and in 14 September 2004, 54 were made public. In the third report on 13 October 2004, 126 names were published, in fourth report on 13 January 2005, there was 116 disappeared persons' status made public. On the fifth report, Malego Committee made public the whereabouts of 62.

The other committee formed was, with Home Ministry's joint-secretary Keshavraj Ghimire as the coordinator, on 28 February 2005. The committee made public a total of 199 persons' whereabouts- 60 persons in 7 April 2005, 48 in 3 June 2005 and 91 persons in 15 August 2005. Making the whereabouts of the persons disappeared after arrest by the security persons remained in the priority list of the post-Loktantra government too. The meeting of Council of Ministers on 25 May 2006 formed a one-member committee comprising of Home secretary Baman Prasad Neupane. The committee submitted its report to the parliament sending a letter to Foreign Relations and Human Rights Committee on 17 July 2006. The report named 602 persons as still disappeared and the whereabouts of 174 being known.

Some of the names of the reports were repeated and the ones said to be released were yet to come into contact with the families. One Bidur Regmi of Jeevanpur VDC-2 in Dhading district, who was arrested from Suraj Arcade in Kathmandu on 13 January 2004 was said to have been released on 16 August 2005 but he remains out of contact till date. Baikuntha Bhujel of the same district, who the report said was released, is still missing. Such instances questioned the credibility of the report. The committee might have published whatever information was furnished to it by the security authorities. There are certain procedures to find out the whereabouts of the disappeared persons. People remained unaware about the committees' working procedures. None of the committees was found to be adopting any of standard investigation procedures. Thus, the reports were received as incomplete ones. The families of the victims complained that the one-member committee set up after Loktantra had no clear legal status and the single member committee was incomplete. Exclusion of the victims' families, human rights defenders working for these families and their issues in such committees, lack of consultation with stakeholders were the concerns while the government disregarded the need to coordinate between the committees, and OHCHR-Nepal and NHRC.

During the conflict, the security authority did not provide any reason for the arrest of a person to his/her family members. Many of such persons became the victims of enforced disappearance. Security persons in plain clothes would not even give their names. They would not reveal where the persons, being arrested in a manner of abduction, were being taken to. There was no need of any warrant and location. INSEC's Nepal Human Rights Yearbooks and the reports documented by other national and international organisations substantiate this fact. The family members who reached the security authority after somehow acquiring the whereabouts of the relatives would be told that there was no such person arrested. This prevented the family members of finding out anything about the arrestees. The family members who faced the similar situation are still on the streets demanding truth.

(e) The Supreme Court consider a more active

41. In most cases of detention by security forces in Nepal, knowledge of the whereabouts of a person

Several judgments have been made by the Supermen Court against the security agencies for their human rights violations, However, lack of

application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court;

seized by the army or other security forces comes only through rumour, testimony of released detainees, or leaks from security personnel to families of the disappeared. So applications for habeas corpus are inevitably speculative, and without a foundation of solid information. This implies that success of the writ is entirely dependent upon the admission of the security forces that the person is in their custody. Only then can the Government even be asked to show the cause why the person should remain in detention.

42. A central difficulty in these habeas corpus cases is that the Nepalese law on perjury is defective. Although "witnesses" can be liable for perjury, government officials are not considered to be witnesses. This means that such officials, including security forces personnel, are not constrained by any legal provision to tell the whole truth. In a number of notorious cases the army has flatly denied before the Supreme Court that a particular person is in detention, only to reverse that position later when forced to do so by revelations in the media, in political debate, and even in official documents issued by other branches of the public authority. Such cases undermine the power and dignity of the judiciary, a very troubling phenomenon, especially in the absence of a functioning parliament. In Nepal today, the judiciary is one of the only remaining counterbalances to the power of the army.

43. A similar attack on judicial power arises in cases where the Supreme Court grants a habeas corpus application and orders the release of a detained person, only to find that the person is re-arrested immediately

cooperation by the security agencies and weakness of the court to set up strict mechanisms are its major problems. Despite obvious and repeated lies and misinformation from soldiers and army officials in court, none has ever been prosecuted or otherwise disciplined by the courts for perjury. This contributes to escalation of impunity in the country.

On 1 June 2007, Nepal's Supreme Court ruled on 83 Habeas Corpus Writs, and ordered the government to immediately set up a commission of inquiry to investigate all allegations of enforced disappearances and to provide interim relief to the relatives of the victims. The court ordered that the commission of inquiry must comply with international human rights standards. However, this order to set up a commission of inquiry is yet to be implemented.

As stated above, the Army has failed to cooperate with orders issued by the Supreme Court to produce documents from the Court Martial in the Maina Sunuwar case, and to comply with arrest orders. However, there have been no measures taken against those who have failed to comply with these orders.

On 22 March 2009 the Supreme Court called on the Secretary of Home Ministry, Dr. Govinda Prasad Kusum, and Inspector General of Police, Ramesh Chandra Thakuri, to provide clarification for Contempt of Court for telling a lie in the case of Nandu Giri and Dev Bikram Sah, both of whom were arrested from the Capital, and taken to Pyuthan district. In the reply, the Home Secretary claimed that he did not have any motive to tell a lie, as the police did not arrest Giri and Sah until the day they had submitted the written reply to the Court. Similarly, the IGP replied that the weakness was due to a miscommunication, and that they did not have any motive to tell a lie. In an earlier written reply to a Habeas Corpus Writ, they stated that Giri and Sah had not been arrested, and that the Writ was a fraud. They demanded for the termination of the case. There is no doubt that the recurrence of non-cooperation on the part of government authorities like during the Royal Regime makes a mockery of democracy.[11]

[11] INSEC Human Rights Year Book, 2010

upon release. Such a case occurred during the visit of the Working Group to Nepal, but credible reports by numerous lawyers suggest that the practice is widespread.

On 12 July 2011, the Supreme Court issued an order to continue investigation on the case related to AIG Kuber Singh Rana who was promoted to the post of AIG by the government on 23 June 2011. Rana is charged for his alleged involvement in the disappearance and subsequent killing of five students in Janakpur on 8 October 2003.

A petition was filed at Supreme Court demanding nullification of the promotion of Rana, who was accused of being involved in human rights violation, to the post of Additional Inspector General (AIG) of Nepal Police.

(f) The Terrorist and Disruptive Activities (Control and Punishment) Ordinance be rescinded immediately by the Government of Nepal;

45. One of the main legal concerns of human rights advocates in Nepal and of international observers is the existence and application of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance of 2004 (TADO). The Ordinance replaced an Act of the same name, passed in 2002, which criminalized certain "terrorist and disruptive acts" and established "special powers to check" terrorist and disruptive acts, including widely extended rights of search and seizure and of the lawful use of force by security personnel. In addition, and most controversially, the former Act provided for preventive detention "upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act". The detention was limited to 90 days. Given the sweeping powers granted in the Act, it was appropriately made subject to a two-year sunset clause. With the suspension of parliament in May of 2002, the Act was transformed into an Ordinance issued by the executive authority, and the period of lawful preventive detention was extended for up to one year. Preventive detention orders under TADO must be issued by a civilian

Despite the recommendation, the then government did not withdraw the TADO. It was not done immediately after the end of the conflict. Terrorist and Destructive Action (Control and Punishment) Ordinance was effected in Nepal in 26 November 2001 when the state of emergency was imposed after talks with the Maoists broke down. In 10 April 2002, the then parliament enacted Terrorist and Destructive Action (Control and Punishment) Act. Two years later, the Act was implemented as an Ordinance in 10 April 2004. The Ordinance was re-enacted in 13 October 2004, 9 April 2005, 2 October 2005 and 27 March 2006. It was annulled on 26 September 2006, about five months after the end of the conflict.

However, there is another security legislation that remains in force, more specifically the Public Security Act (PSA), which gives Chief District Officers (CDOs) powers to make detention or internment orders of up to an initial period of 90 days (which can be extended by further administrative decisions at a higher level up to 6 months, and one year). Section 3 (1) of the Act provides discretion to make such an order as long as "adequate and appropriate grounds to prevent any person from doing anything which may immediately undermine the sovereignty, integrity or public tranquility and order of Nepal". The provisions of the Act are overbroad and vague which was seriously misused during the armed conflict to keep people in administrative detention for long periods of time. Section 22 of the PSA provides immunity for any acts committed by state officials "in good faith

authority, the "security officer", who, in most cases, is defined as the Chief District Officer (CDO).

46. Government officials claim that TADO should be seen in a positive light. It was stated expressly by a number of senior government figures that allowing detention for up to one year would reduce the number of disappearances and extrajudicial killings. This argument is worrisome. It supposes that the security forces will engage in such acts unless they are given more "flexibility" in detaining suspects without any need to adduce proof of immediate danger to society. This is contrary to the Nepalese Constitution, which stipulates, as noted above, that preventive detention cannot be authorized "unless there is sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal". It would seem that rather than watering down this important protection, it would be better to exert proper disciplinary control over the security forces to limit disappearances and killings.

47. In any event, even the small degree of civilian control that is provided for in TADO, through the requirement of action by the CDO, is in practice largely illusory. In many cases, the CDO is not a truly independent force in the countryside. His security is so threatened by the Maoist insurgents that he is totally dependent upon the army for his safety. Credible reports suggest that CDOs sign detention orders under TADO without any serious consideration of the necessity of the detention. Indeed, some may sign during the course of duty" including egregious human rights violations. These laws may be misused to shield soldiers, police officers and their superiors, who can merely assert "good faith" to escape legal liability.

The Government of Nepal introduced the Special Security Plan (SSP) at the end of July 2009. The Government of Nepal claims that the SSP was prepared in the context of a deteriorating public security situation, in order to effectively maintain peace and security, to end impunity, and to protect human rights. It sets the objective of 1) protection and promotion of human rights, 2) guarantee of (public) security through full implementation of laws and strengthened security forces, 3) end impunity by holding law-breakers accountable, 4) easy access of citizens to essential services, 5) rebuild public confidence (in the Government) by awareness programs and security management 6) increase public partnership in security management.

Though the Plan incorporates a commitment to protecting human rights, credible allegations of unlawful killings have continued to surface and have gone uninvestigated.[12] Allegations of extra-judicial killings are not new, and human rights organisations have raised many serious cases with the authorities during the past several years. However, in the context of the Government's commitment to implement its Special Security Plan and in view of the intense political pressure being placed upon security personnel in the field to take action against suspected armed group members, it is important to address the human rights implications of special security operations, and it is necessary to establish an independent mechanism to investigate allegations.

[12] Investigating Allegations of Extra-Judicial Killings in the Terai, OHCHR-Nepal Summary of Concerns (July 2010)

blank orders to be filled out by security forces personnel without supervision. Moreover, the constitutional and international law right of access to legal counsel is systematically denied.

48. It is also argued by lawyers and human rights activists that TADO has added to the general culture of impunity. Because detentions can now be ordered for a full year without any judicial scrutiny, and because in practice there is no effective civilian control over the issuance of the orders, security personnel can act without careful consideration to detain people with no proven link to terrorist or disruptive activities. Mere suspicion can and does extend all too easily to innocent people. Security forces are also reaffirmed in the presumption that their judgement is unquestionable.

49. It is suggested that TADO at least requires the creation of up-to-date lists of detainees in the office of the CDO, thereby allowing for some external scrutiny. In practice, even this possible benefit is of little relevance. Very few detainees are actually held under TADO. While the Working Group was in Nepal, it was told by the Government and the army that the number of TADO detainees stood at 47. Some of these people are held in army barracks which, by any reasonable interpretation, do not qualify as humane places of detention, as required by TADO itself. Nonetheless, the vague definition of what is a legal place of detention has been used by the military to justify detention in barracks, resulting in a denial of access to lawyers and relatives. Many, many more people are held incommunicado at army barracks under absolutely no legal authority.

50. TADO does not appear to be effective. Reportedly, fewer than 100 prosecutions have been launched under its terms. Relatively few people are held in preventive detention under its provisions. Yet its negative psychological effect is great. It adds to the culture of impunity that encourages abuses by the security forces, and it adds to the deep insecurity felt by many innocent Nepalese.

(g) The Government and the security forces ensure that human rights defenders are protected from persecution for their work, as required under international law;

51. Human rights defenders are widely reported to be under constant threat for their work on disappearances, in particular in the regions of Nepal outside Kathmandu. One human rights defender who works on disappearances reported having an army officer come to his office and point a gun at his head. In accordance with the mandate of the Working Group, it will continue to follow such threats against human rights workers closely and with great concern. In addition, the Working Group will raise the issue of threats to human rights defenders in Nepal with the Special Representative of the Secretary-General on the situation of human rights defenders.

The government and the security persons have not taken any step to protect or to provide security to the human rights defenders as mentioned in international laws for the threats they might attract due to their work. Instead, they are being targeted by either state or non-state actor involved in the human rights violations. The government has not yet formulated any legal or organisational mechanism to protect the defenders or to minimise the possible threats for their work. In the absence of protection mechanism, the human rights defenders have neither been able to feel secure for their rights nor has the campaign for it been able to reach to logical conclusion.

HRDs are at great risk of violation of their rights including that of the right to life and liberty as they are always in the front for the protection and promotion of human rights. During the armed conflict, many HRDs were deprived of life and liberty and while others faced assaults and threats.

The state, cadres of the political parties, police, government officials and unidentified groups have been violating the rights of the human rights activists exploiting impunity and prolonged transitional period prevalent in Nepal. They were involved in killing and abduction of the HRDs, physical attacks on them and life threats. The lives of HRDs who are fighting for others' lives are also in peril. INSEC documentation shows that 706 HRDs had their rights violated between the period of 2007 and 2010. Among them, 18 were killed. Women Human Rights Defenders (WHRDs) remain in the front for protection and promotion of human rights. They have to face all the

challenges that their male colleagues face but in addition to that, they also have to face sexual, psychological violence and mistreatment meted out to them by the society. Since 2007, 3 WHRDs were killed and 160 had their rights violated.

There is no separate national level legal or institutional mechanism in Nepal for the protection of the HRDs. Although, some laws are useful for the HRDs, yet the right to protection enjoyed by the citizens is the one that the HRDs are also subjected to.

(h) The Government continue to make every effort to strengthen the role of the National Human Rights Commission and to facilitate its work; and that, in addition, the Government ensure the continuity of the Commission even in the absence of the regular parliamentary appointments process;

52. In its relatively short life, the National Human Rights Commission has emerged as a crucial tool for combating human rights violations in Nepal, including disappearances. The NHRC has established a special unit to focus upon disappearances, and has built up important contacts with families of the disappeared and with civil society organizations working in this area. Nonetheless, the NHRC remains fragile. Its staff is young, and requires both more training and clear political support. The terms of all members of the Commission will soon expire. It is imperative that the work of the NHRC continue in an uninterrupted fashion.

The NHRC was established under the NHRC Act in 2000. The chairperson and the commissioners, appointed for the second tenure during royal regime, resigned on 2006. The positions remained vacant 14 months resulting in no possibility of any decision on human rights violation and subsequent recommendations. The delay in appointment of the commissioners had serious effect in its functioning. The Commission could not recommend on any incidents of human rights to the government. The normal work of NHRC resumed following the appointment of its commissioners on 9 July 2007.

Though the NHRC has been a constitutional body, uplifted to be so by the Interim Constitution, 2007, nothing has been changed in the real life of the Commission as well as in its functioning and associated results at the ground. Government's reluctance towards the implementation of the directive order of the Supreme Court and the recommendations of National Human Rights Commission has further undermined rule of law and human rights in the country. Government delay in passing the draft bill on NHRC questions its motive of ensuring independence to the NHRC. On the other hand, the NHRC amended NHRC Regulation 2000 in the light of 1997 NHRC Act to recruit and upgrade the staffs at the NHRC which has raised moral and legal question on that amendment. The amendment was made on the basis of the NHRC Act which has been rendered defunct since the Interim Constitution upgraded its status.[13]

[13] "Enabling Law: A way to enhanced effectiveness Human Rights Commission of Nepal (NHRC)", a report submitted to Asian NGOs Network on National Institutions, July 2009

Even after four years of making the watchdog constitutional, the NHRC is still functioning under the NHRC Act 2000. The spirit of the Paris Principles provides that independence and autonomy are prerequisites to ensure the protection and promotion of human rights by a human rights institution. As mentioned above, the draft NHRC Bill will rob the NHRC of those provisions and even remove the actual words 'independent' and 'autonomous' from the mandate of the NHRC. Independence of the commission was a challenge for the NHRC in 2010 and the Bill will be a major challenge for the Commission in 2011 if passed as it is.

Yet, there has been limited success in the recommendations made by the Commission to the Government of Nepal. In 2010, the NHRC published its report on the last decade (2000-2010). In the report number of complaints that they had received during the period was included. According to the report, a total of 10,507 complaints were received by the Commission as up to May 2010. Of which 2,872 were settled while the other 7,635 were still under investigation.[14] The report also included a statistical and thematic breakdown of the status of the recommendations made to the Government of Nepal between May 2009 and May 2010. There were a total of 102 non-implemented recommendations and five partially implemented recommendations. Of the recommendations, 107 were centred on the thematic issue of extra-judicial killings whereby 32 were made against security forces and 13 other were against the Maoists. The second highest number of recommendations was on enforced disappearances, with a total of 20 recommendations. All these recommendations were made after receiving 343 complaints and *sou moto*.[15]

This shows that the NHRC had not been effective in getting its recommendations implemented by the Government. The Commission would place blame for its ineffectiveness on the shoulders of the Government

[14] NHRC, "Summary Report of NHRC Recommendations upon Complaints in a Decade (2000-2010), NHRC, Haribhawan, Lalitpur, Nepal; at nhrcnepal.org///publication/doc/reports/Sum-Report-NHRC-Recommendation.pdf (accessed 12 January 2011). Pg 8.

[15] NHRC, "Summary Report of NHRC Recommendations upon Complaints in a Decade (2000-2010), NHRC, Haribhawan, Lalitpur, Nepal; at nhrcnepal.org///publication/doc/reports/Sum-Report-NHRC-Recommendation.pdf (accessed 12 January 2011). Pg 5-9.

claiming that the latter failed to adequately implement the recommendations, nurturing impunity in the country by not disciplining those accused of serious human rights violations. In addition to this, contrary to the recommendations of the Commission, the Government has removed 348 serious cases from the courts.[16]

Government allocated NPR 70.535 million (around 904,295 USD) for the fiscal year 2009-10 to the NHRC for its general administration and delivery of services. This makes up only 0.25% of the national budget by sectoral distribution, leaving the NHRC last among constitutional bodies in terms of funding. Although the amount is 0.21 % more than the amount allocated to it for the previous fiscal year, this amount is still insufficient to cover the needs in monitoring and investigating human rights violations. This is a reflection of the government's lack of interest in developing the NHRC into an effective mechanism by strengthening its resources.[17]

(i) The National Human Rights Commission be given unhindered access to all places of detention, including all army barracks, without prior notification or permission;

53. The National Human Rights Commission has the authority to visit places of detention, but is prevented from visiting detainees in army barracks without prior notification. Progress on an agreement for cooperation between the NHRC and the Royal Nepalese Army, which took place during the Working Group's visit, is welcome and its implementation will be watched closely.

In general, the NHRC was not found to be prohibited from sudden visit and monitoring of the detention centres. But there were some obstructions for such monitoring after 1 February 2005. NHRC report *Sankatkalma Manavadhikarko to Awastha*, 2062 (Human Rights Situation During the State of Emergency, 2005) mentions that it faced obstructions time and again from the government while visiting the detention centres. According to the report, the NHRC team heading to detention centres to collect information on human rights status of the detainees and the condition they were kept in were turned back several times. Former NHRC member Prof. Kapil Shrestha was denied a meeting with the detainees at Ward Police Office, Baneshwar in Tinkune on 8 April 2006. Likewise, NHRC team was barred from meeting the detainees in Tripureshwar citing 'order from above'.

The NHRC has faced a lack of cooperation by the government. It does not have the capacity to systematically visit detention centres in Nepal; it has

[16] Prasun Singh, "Govt treads on NHRC recommendation toes", Kathmandu Post, May 27 2010.
[17] "National Human Rights Commission of Nepal (NHRC): Flaws and Challenges", a report submitted to Asian NGOs Network on National Institutions, July 2010

also been slow to conduct and conclude investigations and for those cases where it has made recommendations, the government has time and again failed to implement them.

(j) The United Nations Department of Peacekeeping Operations evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions, assessing the suitability of such participation against progress made in the reduction of disappearances and other human rights violations attributed to the Nepalese security forces, and seek the cooperation of the Office of the High Commissioner for Human Rights to review progress.

54. The Working Group was informed by army commanders of the high percentage of the Nepalese armed forces who had served in United Nations peacekeeping operations, and their pride in that service. Yet, the Working Group heard concerns from civil society and the international community in Nepal regarding the Royal Nepalese Army's reported human rights abuses and their future participation in such operations. It is important to recall that a basic premise of all United Nations peacekeeping is that the fundamental principles and rules of international humanitarian law are applicable to military forces under United Nations command and that military forces under United Nations command must make a clear distinction between civilians and combatants and direct military operations only against combatants and military objectives.

55. Moreover, the United Nations Code of Personal Conduct for Blue Helmets stipulates clearly that all peacekeeping personnel should "*respect and regard the human rights of all*". And "not act in revenge or with malice, in particular when dealing with prisoners, detainees or people in your custody" (rule 5, emphasis added). It would seem odd, at the very least, for security personnel known to have committed widespread human rights abuses to be engaged in such missions.

UN Peacekeeping Operation Department has been taking support of OHCHR for involving the Nepal Army personnel in the mission. The names of the personnel enlisted for the mission are sent to OHCHR and OHCHR recommends removing anyone found to be involved in human rights violation including enforced disappearance.

Major Niranjan Basnet, suspect in a murder case of Maina Sunuwar, was sent on peacekeeping duties and served in the UN Peace Keeping Mission in the Republic of Chad, until he was repatriated on December 12, 2009 after the UN was informed of the fact that murder charges were pending against him in the Nepal courts relating to his involvement in the death in army custody of Maina Sunuwar.