Human rights commissions in times of trouble and transition: the case of the National Human Rights Commission of Nepal

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Abstract

Since the establishment of the United Nations Commission on Human Rights in 1946, national human rights institutions (NHRI) have been perceived as desirable and effective mechanisms for the implementation of international human rights standards and procedures at the national level. During the last decade, the establishment of national human rights commissions has taken on a role beyond the usual functions of complaint handling and monitoring of human rights violations and disseminating human rights norms via education and training. As countries emerge from protracted civil wars and regional conflicts, national human rights commissions are increasingly becoming significant players in the implementation and monitoring of peace agreements and post-conflict transitional arrangements. The creation of NHRI is often a pre-condition to the execution of such agreements, as in the case of Northern Ireland and Afghanistan, or a mandated institution under an interim United Nations transitional administration, as was the case with East Timor. The Nepal Human Rights Commission was already in existence when the Comprehensive Peace Accord (CPA) was signed in 2006 by the Government of Nepal and the Communist Party Nepal (Maoist) (the CPN-M). Under the CPA, the Commission took on an expanded mandate that required it to monitor adherence by the parties to its extensive provisions.

This paper considers the emergence and continued existence of a national human rights commission during periods of severe political instability and sustained human rights violations and explores the capacity of the NHRC to effectively contribute to the implementation of a peace process in a politically volatile and often rights-hostile environment. It argues that while the NHRC has maintained
its internationally ranked ‘A’ status before the ICC (a status which the govern-
ment can arguably invoke to bolster its own image and existence), the consistent
failure of the Nepalese government to implement crucial NHRC recommenda-
tions and provide it with sufficient resources and appropriate infrastructure, and
equivocal international support to complement and reinforce the Commission’s
ambitious mandate, has undermined the NHRC’s legitimacy and efficacy. The
paper concludes with some observations about the viability of a national human
rights commission participating in a peace-building initiative given the clear ten-
sion between its regulative function (which urges the implementation of justice via
human rights compliance) and its attempts to facilitate peace in countries where
the state is indifferent or resistant to human rights objectives.
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I support in principle the establishment of national human rights institutions, I support the Paris Principles. But I also think that the enthusiasm about national human rights institutions should be a little tempered with more consideration of the environment in which these institutions are to be established.

Hina Jilani, former UN Special Representative of the Secretary-General on Human Rights Defenders

We cannot afford to have human rights projects which end up being a distraction to the immediate protection crisis, if not an alibi for the continuation of human rights violations.


Introduction

Celebrating the 8th anniversary of the Nepal Human Rights Commission (NHRC) at a ceremony in May 2008, the representative from the office of the UN High Commissioner for Human Rights (OHCHR) in Nepal, Richard Bennett, congratulated the “important steps” taken by the Commission in “little more than 12 months” which had “placed (it) on a solid footing.” These steps, said Bennett, included constitutional recognition of the NHRC in the 2007 Interim Constitution; the development of a draft law specifying the NHRC’s functions

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The author is grateful to Liz Snell for her valuable and extensive research assistance and Stephanie De Lorenzo for her meticulous footnoting.

2 Interview with Hina Jilani, Sydney, 18 September 2009 <http://www.abc.net.au/pm/content/2009/s2688061.htm> accessed 1 April 2010


and powers; the appointment of and commencement of work by new Commissioners; the
drafting of a new three year strategic plan; and the regaining by the NHRC of ‘A’ status by
the International Co-ordinating Committee of National Institutions for the Promotion and
Protection of Human Rights (ICC).

The regaining by the NHRC of ‘A’ status accorded by the ICC – which indicates full
compliance with the Paris Principles relating to the Status of National Institutions⁵ - was not
an entirely accurate claim. From the time the Nepal Human Rights Commission sought
accreditation from the ICC in 2001 (a year after its establishment), the ranking of ‘A’ status
was accorded to and has been retained by the NHRC, although subject to intermittent reviews
by the ICC. The NHRC has held on to its ‘A’ status ranking despite functioning at varying
degrees of efficacy, under extraordinarily difficult and challenging periods of instability, with
both internal and external factors operating to divert and diminish its capacity and the
execution of its mandate, factors which have triggered the various reviews, but not demotion,
of the Commission’s status by the ICC.⁶

The progress attributed to the NHRC by the OHCHR has occurred against a backdrop of a
protracted civil war and enduring political conflict. Despite the positive assessment by the
UN OHCHR representative, on the day of publication of the 2008/2009 NHRC Annual
Report, a few months after the 8th anniversary celebrations, the Chairman of the NHRC,
Kedernath Upadhyaya, noted that the government had failed to implement “a single
recommendation of the Commission … giving justice to the victimized party and initiating
action against the guilty.”⁷ Chairman Upadhyaya added that the culture of impunity
“promoted” by the government had reduced human rights to a “disturbing

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⁵ Adopted by the General Assembly in United Nations General Assembly, Principles relating to the Status of
GAOR, 48th sess, 85th plen mtg, UN doc A/RES/48/134 (20 December 1993)
⁶ A year after its establishment in 2000 pursuant to the Human Rights Commission Act 1997, the NHRC applied
to the ICC for the highest ranking ‘A’ status (which denotes full compliance with the Paris Principles⁶ and
permits direct participation in meetings of the UN Human Rights Council). As no annual report or budget
information was submitted with the NHRC’s accreditation application, the NHRC was granted A(R) status by
the Sub-Committee on Accreditation, the reservation being withdrawn in 2002 with the submission of the
relevant documents and ‘A’ status accorded to the NHRC. Given concerns about the absence of a governing
body and the delay in the appointment of Commissioners, the ICC placed the NHRC’s ‘A’ status under review
in April 2006 and after considering requested documentation, the Sub-Committee recommended the NHRC’s
‘A’ status be reinstated in October 2007, subject to the Sub-Committee’s further review of identified concerns in
October 2008.
level.” He warned that “people committing heinous crimes against humanity cannot be
exonerated [on] the pretext of the incident taking place in the conflict period in the past,”
particularly given that “the peace process in the newest democracy of the region” remains
extremely fragile due to continuing tensions between the Maoists and the Nepalese Army.

In addition to the failure by the Nepal government to implement the Commission’s
recommendations, a consistent concern underlying the ICC reviews has been the failure by
the Nepalese government to provide the NHRC with adequate funding to ensure the
improvement of the organisation’s operations and fulfillment of its mandate pursuant to the
Paris Principles, with the ICC holding that the lack of financial autonomy of the NHRC was
“impeding its operations”.

Since the establishment of the United Nations Commission on Human Rights in 1946,
national human rights institutions (NHRIs) have been perceived as desirable and effective
mechanisms for the implementation of international human rights standards and procedures at
the national level. During the last decade, the establishment of national human rights
commissions has taken on a role beyond the usual functions of complaint handling and
monitoring of human rights violations and disseminating human rights norms via education
and training. As countries emerge from protracted civil wars and regional conflicts, national
human rights commissions are increasingly becoming significant players in the
implementation and monitoring of peace agreements and post-conflict transitional
arrangements. The creation of NHRIs is often a pre-condition to the execution of such
agreements, as in the case of Northern Ireland and Afghanistan, or a mandated institution
under an interim United Nations transitional administration, as was the case with East Timor.
The Nepal Human Rights Commission was already in existence when the Comprehensive
Peace Accord (CPA) was signed in 2006 by the Government of Nepal and the Communist

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8 “On June 26, 2009, the NHRC submitted a 10-point memorandum to the new Prime Minister to express
concern about ongoing human rights violations. It also drew the Prime Minister’s attention to the lack of
implementation of NHRC recommendations by successive governments. On August 12, 2009, the NHRC stated
it was encouraged to hear that the Prime Minister had instructed the Home, Defense, and Peace and
Reconstruction Ministries to provide information on the implementation of NHRC’s recommendations and had
asked the ministries to send information on the recommendations implemented and compensation provided. It
remains to be seen whether this will result in the compensation recommended by the NHRC being awarded any
http://www.hrw.org/en/node/86019/section/5#_ftn31
9 Ibid.
10 Written statement from the Asian Legal Resource Centre to the Human Rights Council (Eleventh Session),
see Australian Legal Resource Centre, NEPAL: The peace process and republic at risk without justice
institutions (2 June 2009) Australian Legal Resource Centre Internet Site
Party Nepal (Maoist) (the CPN-M). Under the CPA, the Commission took on an expanded mandate which required it to monitor adherence by the parties to its extensive provisions.

This paper considers the emergence and continued existence of a national human rights commission during periods of severe political instability and sustained human rights violations and explores the capacity of the NHRC to effectively contribute to the implementation of a peace process in a politically volatile and often rights-hostile environment. It argues that while the NHRC has maintained its internationally ranked ‘A’ status before the ICC (a status which the government can arguably invoke to bolster its own image and existence), the consistent failure of the Nepalese government to implement crucial NHRC recommendations\(^1\) and provide it with sufficient resources and appropriate infrastructure, and equivocal international support to complement and reinforce the Commission’s ambitious mandate, has undermined the NHRC’s legitimacy and efficacy. The paper concludes with some observations about the viability of a national human rights commission participating in a peace-building initiative given the clear tension between its regulative function\(^2\) (which urges the implementation of justice via human rights compliance) and its attempts to facilitate peace in countries where the state is indifferent or resistant to human rights objectives.

A short history of a protracted conflict

The root cause of the conflict in Nepal is a complex web of interacting factors which include uneven development within the country; endemic corruption; ethnic and caste inequalities; intense politicization; human rights abuse; social exclusion and deprivation, and inadequate infrastructure development.\(^3\)

In 1990, following decades of rule by an absolute monarchy, the ruling King Birendra


succumbed to protests and pressure from the Nepalese pro-democracy movement; a constitutional monarchy, with a multi-party political framework and prime ministerial system of governance, an independent judiciary and periodic elections, were guaranteed under the Nepal Constitution. The following year, Nepal held its first parliamentary elections in 50 years and the Nepali Congress Party formed the first elected government in three decades. Over the next few years, various prime ministers faced motions of no-confidence, and increased political dissatisfaction and volatility saw the emergence in 1996 of a Maoist faction of the Communist Party of Nepal that sought to replace a “feudal monarchy” with the “nationalization of the state’s resources and the redistribution of wealth and land”\textsuperscript{14}. Land inequality and wide-ranging poverty\textsuperscript{15}, the “inequalities of caste, regional discrimination against indigenous communities and the domination of Nepali polity by a narrow upper class”\textsuperscript{16}, combined to mobilize popular support for the Maoist insurgents, particularly in the rural areas. The insurgency escalated in 2001 when the Maoists attacked an army barracks and the Royal Nepalese Army (RNA) was sent in by King Gyanendra (who had assumed the role after the death of his brother, Birendra in June 2001) and the civilian government to crush and control the Maoist insurgents. After the failure of peace talks, the government imposed an extensive reign of control declaring a state of emergency and arresting and detaining thousands of civilians and in May 2002, parliament was dissolved.

In October 2002, the King removed the Prime Minister and assumed executive control, appointing a new Prime Minister a week later who was charged with convening local and parliamentary elections and facilitating the cessation of hostilities. After appointing a series of different (and former) Prime Ministers, in February 2005, King Gyanendra declared a state of emergency and with the support of the RNA, assumed executive authority, citing the inability of the civilian government to resolve the conflict, and ordered the detention of thousands of political activists, journalists, and human rights activists. In September 2005, the Maoists’ declared a four-month ceasefire that was rejected by the King. A month later, the Maoists began discussions with the seven main parties which opposed the King’s rule,


\textsuperscript{16} Ibid.
adopter a 12-point “Letter of Understanding,” which included a call for the election of the constituent assembly and committed the Maoists to multi-party democracy, respect for human rights, and the rule of law. Finally, in November 2006, the ‘People’s War’ ended with the signing by the Royal Government of Nepal and the Unified Communist Party of Nepal (Maoist) of the Comprehensive Peace Accord (CPA), with the Maoist rebels joining an interim government. The terms of the Accord were to be monitored by the United Nations Mission in Nepal and the UN OHCHR and the NHRC were assigned the role of monitoring and reporting on the human rights situation throughout the country. The Maoist demands to abolish the monarchy were finally agreed to by the Parliament in 2007, and in the 2008 Constituent Assembly elections, the CPN-M won the largest number of seats, although failing to achieve a majority.

Throughout the official ten-year civil war, which witnessed unsuccessful cease-fire attempts in 2001, 2003, 2005 and 2006, it is estimated that close to 13 000 people were killed, with both the government security forces and the Maoist rebels implicated in extra-judicial killings, abductions, torture, rape and disappearances, the destruction of development infrastructure and the displacement of tens of thousands of civilians in contested areas. The victims of the war have primarily been “civilians from the country's most vulnerable communities: the rural poor, Dalits (at the bottom of the Hindu caste system) and indigenous communities. … Refusal to provide shelter to the rebels puts villagers at risk from Maoists who are ruthless in their punishments, while providing such support leaves them vulnerable to reprisal attacks from state security forces.”

The extent of human rights abuses has been exacerbated by the acute poverty, extensive malnutrition and low literacy rates evident across the Nepali population, most of whom live in rural, mountainous areas where development is difficult and access to health services, education and clean water sporadic.

In a report released in October 2009, Human Rights Watch (HRW) claimed that “ongoing disputes over the implementation of key provisions of the CPA” – in particular the integration and rehabilitation of approximately 20 000 Maoist fighters and effective civilian control of the Nepal Army (which remains an agent of “insubordination to a democratically
elected government”\(^{19}\), had continued to erode the peace process. These disputes coupled with “an increasing lack of trust (and non-cooperation) between the main political actors” and continuing incidents of serious and extensive human rights abuses and violations had stymied, and in some cases suspended, adherence to commitments under the Accord.\(^{20}\) The HRW report, *Still Waiting for Justice*, concluded that this lack of progress and the absence of functioning and effective state institutions to secure accountability and provide reparation, would probably jeopardise the May 2010 deadline for the promulgation of the new Constitution (stipulated in the Interim Constitution) and that the promise of the “new Nepal” was fast fading.

**Coming through slaughter: the emergence of a human rights commission amidst a civil war**

The situation of conflict has affected our society, communities, the national economy, the quality of governance, and the basic human rights. … The whole country is under immense stress due to the prevailing conflict. The National Human Rights Commission, which is a small statutory organisation with the responsibility for the promotion and protection of human rights, has also been pre-occupied with manifold challenges due to the prevalent situation since its creation in 2000.\(^{21}\)

With the adoption of a new democratic constitution in 1990, several international human rights treaties were ratified by the government but no “corresponding changes in national legislation”\(^{22}\) were effected. Mounting pressure from civil society and human rights organisations - recognising the government’s lack of intent and the judiciary’s inability to offer comprehensive human rights protection in the face of increasing rights violations – eventually led to the enactment of the *Human Rights Commission Act 1997*, which created the National Human Rights Commission of Nepal (NHRC). The impetus for the NHRC came from the convening of a workshop in early 1993 by the Forum for the Protection of Human Rights.

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\(^{19}\) Australian Legal Resource Centre, *NEPAL: The peace process and republic at risk without justice institutions*, above n 10  
\(^{20}\) Human Rights Watch, *Still Waiting for Justice*, above n 8  
Rights (at which the establishment of an all-party national institution was raised) and the attendance by members of Nepalese NGOs at the 1993 United Nations World Conference on Human Rights which endorsed the crucial role played by national institutions in promoting democracy and “remedying human rights violations.” Following extensive lobbying of parliamentarians and an initial defeat of a bill to establish a commission, the Human Rights Commission Act 1997 was passed. The Commission was established in fact three years later in 2000, after legal proceedings initiated by civil society forced government compliance with the enabling legislation. At its inception, the NHRC faced two primary challenges: the protection of people from human rights abuses and the restoration of peace. Chapter 3 of the Act specified the key functions of the Commission in effecting its primary responsibility of human rights protection and promotion. These included conducting inquiries and investigations into human rights violations; inspecting any government authority, jail or prison and recommending reform of their functions, procedures and physical facilities necessary for the protection of human rights; studying international human rights treaties and instruments and making appropriate recommendations to government for implementation.

The first five members of the Commission set about its establishment against considerable odds. In the foreword to the NHRC’s first Annual Report, chairman, Nayan Bahadur Khatri noted that the Commission had to “face many legal, financial and physical challenges and bottlenecks.” The government’s initial failure to respond to the draft rules and regulations to establish the Commission, delayed commencement of NHRC operations by 9 months. The budget allocated by the government to the NHRC was “extremely small” and insufficient “to run the office and pay for the salaries and other facilities of the present post holders and...
Given the considerable workload of the Commission, its initial staff of 27, including the Chairperson and 4 Commissioners, was seen as inadequate, the NHRC proposed a minimum of 46 personnel to service the extensive investigative, monitoring, educative and administrative mandate of the Commission across various, often remote and inaccessible, regions and districts. In addition, financial resources were required to train Commission staff to effectively undertake human rights investigations and to develop educational tools. Importantly, the absence of an environment of “understanding, coordination and institutional cooperation between the Commission and His Majesty’s Government,” posed a significant challenge to the Commission’s substantive work and impact. In its first Annual Report, the NHRC noted that effective implementation of human rights required “sensitising” government to the content and significance of rights and ensuring that government was responsible for “taking the human rights education program to the people working in various (government) agencies and sectors as well as to the masses.”

Its second of year operation, 2001-2002, saw the re-emergence of the conflict between the government and the Maoists result in a declaration of emergency and the mobilisation of security forces across the country. As a result, the Commission was under increased pressure from civil society, human rights and international organisations to undertake extensive investigations into and monitor the escalation in human rights violations. Accordingly, the Commission requested the government to allocate additional funds to execute “even its basic administrative functions,” but to no avail. The NHRC’s Annual Report for this critical period highlights the impotence of the Commission:

This [the failure of increased government funding] has made the Commission [shrink] in its limited role as a silent spectator without being able to undertake inquiry and investigation on the matters of massive human rights violation. It has had to face a great difficulty in shouldering the increasing burden in the changing situation with limited employees and insufficient budget. The result was that this year too, the Commission was hindered in the accomplishment of its functions on study, research, protection and promotion of human rights.

30 Ibid para o)
31 Ibid paras b), o) and q)
32 Ibid para p)
33 Ibid para p)
as stipulated by the Human Rights Commission Act, 2053 (1997). 35

A similar assessment is repeated in the 2003 Annual Report which states that although the Commission initiated inquiries and investigations into complaints of “violation and abetment of human rights”, its role “remained insignificant because of the limitation in resources and facilities.” 36 Perhaps more importantly, the Report refers to a persistent concern that the Government had no “clear-cut” conception of the role and jurisdiction of the Commission and that government agencies, specifically the army, when questioned by the NHRC about alleged human rights violations, tended to “shift responsibility to other agencies” or argue that such violations are necessary for opposing Maoist insurgents and “may occur naturally while initiating action for stopping violence.” 37

Despite the considerable barriers which delayed and obstructed the NHRC’s operations during its first five years of existence – both internal to the organisation and the ongoing external political instability and violence - the Commission has generated important human rights initiatives and projects, often in collaboration with and the assistance of NGOs, UN agencies, such as the United Nations Development Programme (UNDP) and the OHCHR, international donor agencies and the regional human rights network, the Asia Pacific Forum of National Human Rights Institutions. These projects have included:

- the NHRC Capacity Development Project (since 2002) lead by the UNDP with funds from the OHCHR and international donor and aid agencies and assistance from the Danish Institute for Human Rights, UNICEF, the European Commission and the Ford Foundation. 38 The initial project was designed to enhance the capacity of the NHRC in relation to the promotion (via education and research) and protection (via complaint and investigation mechanisms) of human rights, and their effective implementation (via monitoring and advisory functions). The initial operational development focus of the project was revised after three years 39 and funding was

37 Ibid, 26
38 Ibid, 17
39 In September 2005, the project partners and the NHRC agreed to a review of the project. For the final report of the review, see John Dwyer, Greg Moran and Satish Kharel, Review of the Capacity Development of National
extended to develop capacity and expertise specifically on human rights approaches to conflict management and peace building;⁴⁰

- the establishment of the National Rapporteur’s Office on Trafficking of Women and Children to work with the Commission on issues relating to gender inequality, the exploitation of and discrimination against women, and increasing trafficking of women and children;⁴¹

- national programs on the human rights of the Dalits (Depressed People) and the formulation of the ‘Kathmandu Declaration, 2058’ which called on the Government to, inter alia, ensure proportional representation of Dalits in parliament and on various commissions, including the NHRC;

- prison inspections which have resulted in numerous recommendations to government on the security, cleanliness, physical structure and the health facilities and legal remedies available to prisoners⁴²;

- the development of ‘human rights cells’ to promote the protection of human rights within Nepal Police, the Royal Nepalese Army and Armed Police Force⁴³; and

- numerous ‘on-the-spot’ investigations into complaints of serious human rights violations, such as killings, abductions, disappearances⁴⁴, and property seizure.

In a sense, the Commission’s peace-building work began in 2003 with the cease-fire between the Government and the Maoists. Leading up to the signing of the cease-fire code of conduct between the Government and the Maoists, the Commission drafted a Human Rights Accord which envisaged the establishment of a monitoring mechanism for effective compliance with the agreement and monitoring breaches of human rights. During the ceasefire, the NHRC established investigation committees chaired by a former Supreme Court judge to investigate and report on complaints of killings, disappearances and torture across the country. The

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⁴¹Above n 34, 6-7
⁴²Ibid, 12
⁴⁴In June 2007, the Supreme Court of Nepal handed down a decision of “significant proportion” directing the government to compensate 83 families of individuals subjected to State-enforced disappearance, enact legislation to criminalise disappearances and establish a commission to investigate and prosecute perpetrators. The decision makes reference to an investigation report by the NHRC which was relied on in the formulation of the Court’s findings. See Kishor Uprety, ‘Against Enforced Disappearance: the Political Detainee’s Case before the Nepal Supreme Court,’ (2008) 7(2) Chinese Journal of International Law (2008), 429.
Commission’s ‘on-the-spot’ inspection report of the Investigation Committee into the murder of 18 Maoist activists and 2 civilians in the village of Doramba, in the Ramechhapin district, revealed that those killed were arrested by members of the Nepal army at a political/cultural meeting, marched “up and down” for nearly three hours with their hands tied behind their backs, lined up on a track and shot at close range in an execution-style killing, “aiming mostly at their heads.”

After removing the bags, watches and other goods from the dead bodies, they were pushed down the steep slope, one after another, whereby most of the dead bodies lay in heaps. …

It was believed that the team of the joint security forces, which was under the leadership of the army, had been probably led by a Major as well as one or more Captains.\(^{45}\)

The Investigation Committee concluded that “even in the national context’, the Doramba killings “ran contrary to the Constitution of the Kingdom of Nepal, the Army Act, the Police Act and the Armed Police Act.\(^{46}\) The Commission’s findings and recommendations on the Doramba incident were presented to the Nepalese Government - Article 10 of the Human Rights Commission Act excludes the Commission from instituting proceedings relating to incidents within military jurisdiction - and subsequently rejected by the Royal Nepal Army. Evidently after pressure was exerted on the government from international and national human rights organisations and donor governments, the Royal Nepal Army conducted an internal inquiry into the killings and suspended the lead officer.\(^{47}\)

The NHRC’s findings and recommendations contained in the Doramba report were part of a substantial list of minimum steps it recommended the Government and the CPN-M implement for the protection of human rights and the development of a culture of respect for human rights principles and international humanitarian law. These included practical measures for immediate implementation which related to civilian protection from execution, the cessation of disappearances, procedures for arrest and detention, the designation of educational institutes and activities as ‘peace zones’, the protection of children and women’s rights and the increased representation of women in the prevention, management and resolution of conflict, human rights training and requisite qualifications for security and law


\(^{46}\) Ibid, 13

enforcement personnel, and the establishment of a high level human rights protection committee to execute Commission recommendations.\(^\text{48}\) The recommendations included a specific set of minimum steps aimed at the CPN-M requiring its compliance with common article 3 of the Geneva Conventions.\(^\text{49}\) These recommendations remain largely unimplemented. Common to the Commission’s Annual Reports is a paragraph or statement which consistently points to the failure of the Nepalese Government and its agencies to provide information relevant to NHRC investigations and complaints, to implement Commission recommendations and to ensure Commission staff access to police stations, detention centres and army barracks.\(^\text{50}\)

In 2005, after dismissing the government and assuming direct executive power, King Gyanendra replaced the Commission’s first five commissioners with appointees of his own. After 2005, the NHRC’s evolution and capacity to undertake its core functions to broad effect continued to be impeded by the political conflict and the unpredictable machinations of government and its credibility as an independent institution, was further undermined with the appointment of the ‘King’s Men’ as Commissioners. With the restoration of Parliament in 2006, the King’s appointees were forced to resign from the NHRC under threat of impeachment and the Commission continued to operate in the absence of a President and Commissioners for 17 months. Following the implementation of the Comprehensive Peace Accord (CPA) in 2006 and the 2007 Nepal Interim Constitution, which heralded the emergence of parliamentary democracy, the NHRC was ‘upgraded’ from a creature of statute to a constitutional body. Five new Commissioners were appointed by the Prime Minister and the NHRC was given the expanded role of monitoring adherence by the Nepal Government and the CPN-M to the CPA human rights provisions.

In October 2009, the government developed draft legislation which sought to integrate provisions of the 1997 \textit{Human Rights Commission Act} and the new constitutional provisions, ostensibly to reflect the Commission’s new status and ensure its independent operation. NHRC officials criticised the draft legislation as failing to “incorporate most of the provisions included in the originally agreed-upon draft prepared after rigorous discussion and

\(^{48}\) National Human Rights Commission Nepal Annual Report 2004 above n 43, 85 - 103

\(^{49}\) \textit{Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field}, opened for signature 12 August 1949, 75 UNTS. 31, art 3 (Entered into force 21 October 1950).

\(^{50}\) National Human Rights Commission Nepal Annual Report 2004 above n 43, 80-81
consultation with the government and other stakeholders.”

Reference to the NHRC as an ‘independent and autonomous’ body included in the preamble of the 1997 legislation which established the Commission, was absent from the draft bill, words which the Minister for Law and Justice Prem Bahadur Singh advised the media were simply “redundant.” The lack of progress on the drafting of the proposed NHRC enabling legislation was considered at the November 2009 review meeting of the International Coordinating Committee (ICC) of National Human Rights Institutions. Although the Sub-Committee on Accreditation (SCA) recommended that the NHRC retain its ‘A status’, it requested the Commission’s return in March 2010 for a review of the draft legislation, suggesting that the NHRC “engage with government to promote the development of legislation in full compliance with the Paris Principles”. In addition, the SCA reiterated observations made in earlier NHRC reviews, including the need to ensure adequate funding and the financial autonomy of the Commission and encouraged it to “strengthen its interaction with civil society organisations” and engage with the United Nations Human Rights Treaty Bodies, the Human Rights Council and the ICC.

The promise of peace: the role of the NHRC under the Comprehensive Peace Accord, 2006

The Comprehensive Peace Accord (CPA) signed between the Prime Minister of the Government of Nepal, Girija Prasad Koirala and the Chairman of the CPN-M, Prachanda on 21 November 2006, declared the end of a ten-year armed conflict and committed the parties to the “Universal Declaration of Human Rights 1948 and other international humanitarian laws and values and principles of the human rights,” and to the transformation of the
ceasefire into “permanent peace.”

Under the CPA, the parties agreed to a substantial and ambitious program including the formulation of policies for the cessation and management of the conflict, which envisaged the integration and rehabilitation of the Maoist combatants and the storage of arms by both parties; the political, social and economic transformation of the country; the restoration of parliamentary democracy and the organisation and holding of elections for a Constituent Assembly; the ending of impunity and respect for and protection of civil, political and socio-economic rights. In addition, the parties agreed to establish a Truth and Reconciliation Commission to conduct investigations into gross violations of human rights and a National Peace and Rehabilitation Commission to ensure the successful implementation of a permanent peace. Paragraph 9 of the Accord assigned the management of arms and the armies to the United Nations Mission (Nepal), the supervision of the Constituent Assembly elections to the United Nations and the monitoring of the human rights provisions contained in the agreement to the OHCHR (Nepal) and the NHRC (in addition to its existing legislative responsibilities).

While the signing of the CPA seemed to yield an initial period of democratic activities and a decrease in killings, torture and abductions, one year after the signing of the Accord the Annual Report of the NHRC\(^\text{57}\) and a report by the OHCHR\(^\text{58}\) indicate a distinct lack of compliance with CPA commitments by the Government of Nepal and the CPN-M. Both reports illustrate the extensive monitoring and on-the-spot investigations undertaken by the NHRC\(^\text{59}\) and OHCHR pursuant to the CPA. Despite their commitment to human rights protection and the implementation of some improvements, (such as the return of confiscated properties, the resettlement of some internally displaced persons (IDPs), the Constituent Assembly elections in April 2008 and the introduction of legislation designed to protect human rights and promote democracy), the NHRC and OHCHR surveillance and reporting demonstrated a deterioration in human rights protection with human rights being “marginalised and subordinated to political considerations in the peace process.”\(^\text{60}\) With the

\(^{56}\) Preamble to the Comprehensive Peace Agreement, signed Kathmandu, 21 November 2006 by Prime Minister Girija Prasad Koirala and Maoist chairman Prachanda
\(^{60}\) OHCHR Nepal, above n 58, 1.
CPN-M winning the majority of seats in the 2008 Constituent Assembly elections, any political consensus which followed the signing of the Peace Accord, “was replaced by an increasing lack of trust between the two main parties,”\(^6\) and the “growing differences of opinion between the two main political parties” clearly undermined the implementation of the CPA.\(^6\)

Under the CPA, the work of the NHRC increased and its resources were stretched. However, in the absence of tackling the root causes of the conflict - discrimination, the absence of socio-economic and cultural rights, weak rule of law institutions and a culture of impunity,\(^6\) tasks beyond the capacity of a under-resourced commission-the CPA objective of transforming the ceasefire into a sustainable peace, appears unattainable. The establishment of the Ministry of Peace and Re-Construction and the Land Reforms Commission, the introduction of the Adoption of the Rights to Information Act (2007), the Human Trafficking and Control Act (2007), the Anti-Domestic Violence Act (2008), the provision of government loans and grants to facilitate the return of IDPs, have all been significant human rights initiatives\(^6\) and complementary to and supportive of the primary work of the NHRC and OHCHR. However, the fact that there has not been “a single prosecution in civilian courts for any of the serious crimes committed during the conflict”\(^6\) remains a serious barrier to the development of a political environment conducive to the attainment of peace. In a report which describes the monitoring of CPA human rights provisions over three years, the NHRC observed “that government action of withdrawing cases on murder, rape, kidnapping and other serious offences in (large numbers)”, was not only dismissive of its commitments under the CPA but promoted a culture of impunity. This culture, “that enabled abuses in the first place, [has] remained intact, further increasing public distrust and incentives to resort to violence”\(^6\) and suspending real progress towards peace.

In its review of its role under the CPA, the NHRC writes that there is “a significant relation

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\(^6\) Human Rights Watch, ‘Still Waiting for Justice: No end to Impunity’ in Nepal, above no 8, 2.
\(^6\) National Human Rights Commission, Three Years of the Comprehensive Peace Accord above n 62 at 4-5
\(^6\) Ibid
between human rights and peace” and in the absence of peace, “there could only be the imagination of security of human rights, stability in the country and the words of development.” While an obvious tension exists “between the pursuit of justice and the pursuit of peace” – ensuring accountability for past abuses may conflict with and obstruct the inevitable compromise required for political resolution – tackling impunity and improving accountability “has a direct and acute relevance to managing Nepal’s fractious transition.”

The NHRC can continue to monitor, expose, report and make recommendations on the need for the prosecution of human rights violations and the provision of compensation for victims of the conflict, but in the absence of any power (on the part of the Commission) to pursue these claims coupled with a clear resistance by government and its agencies to do so, the Commission’s contribution to the pursuit of justice and peace will be frustrated. The extent to which the NHRC can effectively alter the environment to the degree necessary for a ‘permanent peace’ to emerge, may ultimately not warrant the resulting cost on both its internal resources and its external legitimacy.

Measuring NHRC impact: an uneven record of achievement

In its 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, the Asia NGOs Network on National Institutions (ANNI), argued that while financial and operational independence, adequate funding and representative membership are key aspects of Paris Principles compliance, the ICC’s accreditation review process should consider the inclusion of ‘effectiveness’ as a further criteria for determining the status of a national human rights institution given the “overwhelming dissatisfaction of civil society on the ineffectiveness of NHRIs.”

In a review of the Capacity Development Project of the NHRC undertaken in February 2006 commissioned by the OHCHR, the authors note that while there were expectations that “in the absence of parliament and democratic structures”, the NHRC would “in part fill the void by advocating for the rule of

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67 National Human Rights Commission, *Three Years of the Comprehensive Peace Accord* above n 62, 32
68 In July 2009, the OHCHR-Nepal launched a nation-wide “Peace through Justice” project to facilitate accountability and sustainable peace in Nepal. Funded by the UN Peace Fund for Nepal, the project supports the establishment and effective functioning of a Truth and Reconciliation Commission and a Commission of Inquiry on Disappearances, required under the Comprehensive Peace Agreement.
71 The review was undertaken by John Dwyer, Greg Moran and Satish Kharel, above n 39
law, participatory approaches to decision-making, … (and) the provision of remedies, its
capacity to contribute to positive change had not been “sufficiently demonstrated.” The
authors recognised however that the “breakdown in democracy (including a denial and
substantial violations of most civil and political rights), the seizure of state power by the King
on 1 February 2005 and the ongoing and increasingly more violent conflict between the
security forces and the Maoist insurrection”, combined with internal operational
“weaknesses”, had undoubtedly contributed “to perceptions of slow delivery on the part of
the Commission.”

Political instability
The effectiveness of the work of the Nepal Human Rights Commission has been significantly
undermined by political events which:

- contaminated the procedure for and selection of Commissioners (the Government
  failed to appoint Commissioners for a period of 17 months in 2006; the previous year,
  the King established a 9-person Human Rights Committee headed by the Attorney-
  General and including various and Ministerial secretaries to complement in theory,
  and undermine in practice, the exposure by the Commission of human rights
  violations by the Royal Nepal Army);

- prevented the proper execution by Commission staff of the Commission’s mandate
  (for example, a NHRC Commissioner and Commission staff were intercepted by
  Nepalese security forces at the Kathmandu airport while attempting to board a flight
  to Kapilvastu District to investigate clashes between local people and Maoists
  involving the lynching and burning of 700 houses of alleged Maoists; Commission
  staff were denied access to army barracks and only permitted access to police stations
  with advance notice); and

- eroded the prospect of achieving impact, given the reluctance by “unresponsive
governments … to implement (Commission) decisions.”

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72 Ibid 1
73 Ibid 5
<http://peace4nepal.blogspot.com/> accessed 1 April 2010
76 Amnesty International, ‘Nepal: Rights must be restored along with the lifting of the State of Emergency’
77 Jyotsna Poudyal, OHCHR’s Challenge in Nepal, ACHR Weekly Review, 6 November 2008 at
Inadequate funding

In addition, the ongoing failure of the Nepal Government to adequately fund the NHRC has meant that the institution primarily responsible for improving Nepal’s critical human rights situation has effectively lacked the means to do so since its inception. A recurrent concern raised by the ICC during its various reviews of the NHRC, has been a failure to demonstrate adequate funding and to ensure the Commission’s financial autonomy. The ICC noted in particular that the Interim Constitution failed to contain any provision dealing with the financial autonomy of the NHRC and that the Commission’s lack of sufficient financial independence “impede(d) its operations and independence.” The NHRC acknowledged that given the government’s contribution to the budget would be insufficient to fund the expansion of programs anticipated by its 2008-2010 Strategic Plan, “bilateral and multilateral donor contributions (would be) crucial to its work.” Bipin Adhikari, in his 2004 study of the NHRC, notes that “the 1997 Act [made] no specific provision concerning the Government’s responsibility to provide sufficient financial resources to the Commission” and argued that the Act’s endorsement for the Commission securing financial support from external agencies (in section 15) was “implicit acceptance that the Government will not adequately fund the Commission in accordance with the Paris Principles.” Adhikari noted that the lack of a secure and adequate funding base for the Commission meant that it was unable to ensure “even the bare operating costs for its activities and that its “[h]igh staff turnover [was] attributed to an inability to pay sufficient wages from the budget provided to the NHRC by the Government.”

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79 s 15 of the Human Rights Commission Act 1997 (Kingdom of Nepal), headed Financial Management, provides that the Commission may obtain external funding for the performance of its functions. The 2009 ICC Sub-Committee on Accreditation’s General Observation on the provision of “adequate funding” states that “funding from external sources, such as from development partners, should not comprise the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI’s minimum activity budget in order to allow it to operate towards fulfilling its mandate and states that “financial systems should be such that the NHRI has complete financial autonomy with a separate budget line over which it has absolute management and control.” See para 2.6 ICC Sub-Committee on Accreditation, General Observations Adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009 (2009) at <http://www.nhri.net/2009/General%20Observations%20June%202009%20(English).pdf> accessed 1 April 2010
80 Adhikari above n 40, 27
81 Ibid
The existence of adequate funding is critical not only for the training and retention of competent staff, but also to devise and implement an ambitious but urgent work plan and address issues of human rights importance as they are identified across the country. While Adhikari concedes that the NHRC “would be unable to function without the support from foreign donors”, he warns that reliance on donor funding may undermine the development of a long-term comprehensive and coherent Commission policy and overall plan, given that donor funds are often linked to a specific program or purpose rather than provided to the Commission as a whole for allocation across its strategic plan in accordance with its own priorities. 82

Perhaps the most pressing and intractable problem which continues to undermine and divert the work of the NHRC, is the existence of a state which seems unable to secure or improve the provision of justice through human rights. The Government of Nepal, and particularly its security forces, while committing to human rights agendas and undertakings, lacks the capabilities and zeal to end or prevent the resurgence of Maoist rebellions and the lawlessness of its own security agents. Added to the Government’s maintenance of a significant security and defence commitment in an attempt to defeat the Maoists, is a lack of human, material and organisational resources to deliver comprehensive social and economic programs and effective political democracy to reduce Maoist influence and enhance support for the Government. Against this background, and the negligible success in ending a culture of impunity, the task of delivering human rights and “playing (a) role … to establish sustainable peace in the country” 83 by an under-resourced, minimally trained and evidently over-stretched human rights commission, seems overly ambitious if not unachievable.

International support

In January 2010, UN Secretary-General Ban Ki-Moon cautioned that “the major disagreements that have brought the peace process [in Nepal] close to a standstill remain unresolved, increasing the risk of its collapse.” 84 The role of the international community -

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82 Human Rights Watch, ‘Between a Rock and a Hard Place’, above n 17. In their report, Human Rights Watch urge “donors to use their leverage with the Nepali government, which depends on donor assistance for almost 60 percent of its national development budget, to insist on tangible improvements in the human rights record of government forces. Countries such as India, the United States, and the United Kingdom, that are providing military aid, should properly monitor the assistance, and ensure necessary professional and rights-friendly training so that civilians are protected.”

83 NHRC, Three Years of the Comprehensive Peace Accord, above n 64, 32

84 Asian Centre for Human Rights, ‘The Withdrawal of OHCHR-NEPAL: Agreeing an Alibi for Violation?’
UN agencies, international human rights organisations and donor countries - in supporting and building the capacity of the NHRC has made some difference to its functioning; however to build and sustain the work and impact of the Commission requires the international community to develop and maintain a political environment conducive to human rights promotion and protection. Military and political support to the Nepalese government, primarily from the United States and India, has largely “ignored the continuing abuses by state security forces and the failure to bring those responsible to justice.”

In a report on the struggle of civilians to survive the Nepalese civil war in 2004, Human Rights Watch observed that without an enduring political or military resolution of the war, “there [was] a substantial risk that in the absence of sustained international pressure Nepal could slide into the ranks of a failed state.”

Attempts to build and strengthen the capacity of the NHRC by international organisations and donor countries have been critical to the NHRC’s survival and work program. The UNDP capacity development project of the NHRC (referred to above) focused primarily on building and strengthening the operational capacity of the Commission to facilitate its substantive work. The UN OHCHR mission to Nepal, established in 2005, had a similar mandate to that of the NHRC in addition to supporting the work of the Commission. While potentially complementary, the relationship between the OHCHR - with a limited (in time) “internationally sanctioned mandate”, highly trained and skilled personnel and the resources, and “capacity and clout to deal strongly with political issues” - and the less endowed NHRC, became increasingly strained. Despite the enormity of the human rights project in Nepal - the urgent and ongoing need to resolve disappearance and abduction cases, to improve institutional accountability within the police and Nepal Army, to secure prosecutions and combat impunity and address the marginalization of communities in the Tarai district where divisions along ethnic and caste lines create acute political tensions - both organisations, keen to assert their legitimacy and prove their effectiveness, were essentially “sharing (and competing for) the same space for human rights work, performing similar functions and reaching out to similar national and international actors for support.”

85 Human Rights Watch, ‘Between a Rock and a Hard Place’, above n 17, 4.
86 Ibid, 7
87 John Dwyer, Greg Moran, Satish Kharel, above n 39, 19.
88 Ibid

clarify the relationship, and “guide (their) collaboration and cooperation”, a memorandum of understanding was signed by the OHCHR-Nepal and the NHRC in February 2009\textsuperscript{89} which also detailed how the OHCHR would “effect its obligation to support the NHRC.”\textsuperscript{90}

In mid-2009, the OHCHR-Nepal’s mandate was extended for one year until June 2010.\textsuperscript{91} The impending departure of the OHCHR from Nepal, “at a time when human rights are measurably deteriorating in Nepal,”\textsuperscript{92} would mean the absence of the major international human rights monitoring body, whose presence has provided “political protection for Nepal’s human rights defenders – including the NHRC.”\textsuperscript{93} The visit by Navi Pillay, UN Commissioner for Human Rights to Nepal in March 2009, renewed international focus on the country and exposed the Government’s prolonged failure to implement justice and accountability and its commitments under the CPA. In a statement to the media in Kathmandu, the High Commissioner said:

During my visit, I met several families whose loved ones were victims of serious human rights violations, both during and after the conflict and by the acts of both parties to the conflict. … I want to emphasise that human rights were violated in these cases in Nepal, and under international law the State has a responsibility to ensure that the families obtain truth and justice. The demands of victims’ families are not mere wishes; they are supported by law. And until these demands for justice are fulfilled and accountability for past, and in particular ongoing, violations is ensured, a truly new Nepal will not emerge, and indeed, the peace process could be jeopardized.\textsuperscript{94}

The Commissioner also encouraged the Government “to support the NHRC and respond in a timely manner to its recommendations, of which there is a considerable backlog” and

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\textsuperscript{89} Guidelines for cooperation between the National Human Rights Commission (NHRC) and the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal), signed 20 February 2009 at \url{http://nepal.ohchr.org/en/resources/Documents/English/other/2009/2009_02_20_NHRC_Guidelines_E.pdf}. The agreement raised a number of concerns within Nepal’s civil and international community, primarily that the high levels of monitoring responsibility agreed to by the NHRC, were beyond its capacity.

\textsuperscript{90} John Dwyer, Greg Moran, Satish Kharel, above n 39, 20.

\textsuperscript{91} OHCHR, ‘Voices of Victims – Transitional Justice in Nepal’, above n 63.

\textsuperscript{92} Asia Centre for Human Rights, “The Withdrawal of OHCHR-NEPAL: Agreeing an Alibi for Violation?”, above n 84, 1.

\textsuperscript{93} Ibid, 3.

reiterated a request that UN OHCHR mandate be renewed for three years.’95 A year later, in March 2010, the Government of Nepal announced that it would forward a draft proposal to the UN OHCHR for an extension, albeit “scaled down”, of the OHCHR-Nepal’s mandate. The proposal will give NHRC a “lead role” in monitoring the human rights situation and envisages the OHCHR playing an “advisory role to the National Women Commission and National Dalit Commission.”96 The visit by the UN Commissioner for Human Rights and the Government’s proposal for the OHCHR-Nepal’s extended mandate provide some optimism for human rights protection in Nepal. However, the anticipated reduced mandate of the OHCHR, the improbability of an end to impunity for past violence, the absence of any immediate signs of an increase in NHRC funding, the lack of government action on NHRC recommendations97 and overall appreciation of its role and jurisdiction and a flagging peace process as political violence is renewed98, point to an increased and untenable responsibility on an already faltering human rights commission to protect and promote human rights across a politically violent and economically fragile nation.99

Conclusion

In June 2009, the ICC adopted General Observations on the application and interpretation of the Paris Principles.100 Paragraph 5.3 of the Observations headed Functioning of an NHRI in a volatile context, provides:

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95 Ibid
96 “Govt to send proposal to OHCHR-Nepal term extension and mandate”, The Kathmandu Post (Kathmandu), 19 March 2010 <http://www.ekantipur.com/2010/03/19/top-story/govt-to-send-proposal-to-ohchr-nepal/310572/> at accessed 1 April 2010
99 In its 2007/8 Annual Report, the NHRC lists as its major challenges: “non-implementation of NHRC Recommendations in full-fledge; prevailing culture of impunity; failure to declare the status of disappeared and abducted persons during the conflicts; slow progress on the return of public and private properties seized by the CPN-Maoist; lack of conducive atmosphere to return the IDPs back home; delay in the formation of TRC and Peace and Rehabilitation Commissions”.
100 ICC Sub-Committee on Accreditation General Observations, drafted at a meeting of the ICC’s Sub-Committee on Accreditation in March 2009 and adopted by the ICC in June 2009 at http://www.nhri.net/2009/General%20observations%20June%202009%20(English).pdf, accessed 4 April 2010
The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI’s execution of its mandate in practice.\textsuperscript{101}

Paragraph 5.3 is an important acknowledgment of the constraints under which NHRI\text{s} have to function in politically volatile environments. It is also recognition that the establishment and work of NHRI\text{s}, although often constrained and impeded by political context, can contribute to the national advancement of international human rights principles and standards and the protection of civilians whose lives and property are at risk. The accreditation of NHRI\text{s} (particularly ‘A’ status ranking) is endorsement of their compliance with internationally accepted principles; a downgrading of status by the ICC not only signals a failure of full compliance with the Paris Principles, but may also undermine the legitimacy and effectiveness of an NHRI in the eyes of international bodies and civil society and deter potential or existing international donors from funding their operations or specific projects.

In countries gripped by conflict or negotiating difficult political transitions, NHRI\text{s} are often stretched beyond capacity and required to execute a broad and expanding mandate with insufficient human and financial resources. In addition, they work with governments who are more concerned with political security than human rights and accordingly, NHRI recommendations and advice to governments and its agencies, often based on extensive investigations and inspections, are not prioritised. Thus, while NHRI\text{s} may comply with the Paris Principles to warrant ‘A’ status accreditation, the political conditions under which they are expected to execute their mandate, can limit their effectiveness substantially. As is discussed earlier in the chapter, the Asia NGOs Network on National Institutions (ANNI) have argued for the inclusion of ‘effectiveness’ as a further criteria in determining the status of NHRI\text{s}. What this chapter has sought to illustrate is that the “effectiveness” of NHRI\text{s} operating in states of conflict, is often undermined by governments who permit a culture of impunity, disregard peace agreement commitments and maintain social and economic inequalities and exclusionary practices. These governments, with questionable or disquieting human rights records and dubious or wavering commitments to human rights agendas, may

\textsuperscript{101} Ibid [5.3]
stand to gain from ‘A’ ranking accreditation by an international body, particularly where they are keen to retain power, bolster their international standing or attract and maintain international funds and investment.

The United Nations, particularly the UN OHCR and the ICC and its regional sub-committees, such as the Asia Pacific Forum for National Human Rights Institutions\textsuperscript{102} has and continues to advocate for the establishment of Paris Principles-compliant NHRIIs as important and constructive partners in the promotion and protection human rights.\textsuperscript{103} Increasingly, in addition to their core mandates of human rights promotion and protection, NHRIIs are being assigned key roles in the implementation and monitoring of peace agreements and post-conflict transitional arrangements. While para 5.3 of the ICC’s General Observations permits some degree of latitude for Paris Principles compliance by NHRIIs operating in politically volatile environments, their effective and long-term functioning and contribution (and consequent legitimacy) is often dependent on the political agenda (rather than the human rights commitments) of their sponsoring governments which can derail and impede the critical execution of NHRI workplans.

Accordingly, in addition to compliance with Paris Principles criteria, ICC reviews of NHRIIs operating in volatile contexts should include an assessment of relevant government compliance with key factors which may serve to assist and strengthen the work and efficacy of NHRIIs in environments where, as in Nepal, the maintenance of impunity and conflict has undermined NHRC activity. These factors might include:

(i) the appointment of an international body to advise, monitor and report on the implementation of peace agreements and transitional arrangements. The body may report against set timelines within which key elements of agreements are to be realised, for example the establishment of a Truth and Reconciliation Commission;

(ii) the establishment of NHRI, NGO and government consultation mechanism which meets at regular intervals to ensure civil society participation in transitional

\textsuperscript{102} The ICC Co-ordinating Sub-Committees facilitate exchange of information between national institutions in defined regions, plan and co-ordinate regional NHRI activities, encourage and advise national governments on the establishment of new NHRIIs in conformity with the Paris Principles, and represent regional national institutions at international and other fora.

arrangements;

(iii) the development and conduct of annual comprehensive human rights training programs for NHRI commissioners and personnel and (training modules and proof of attendance should be required);

(iv) human rights training of government personnel involved in the development of operation of various post-conflict commissions, for example Land Reform Commissions and of army, police and prison personnel.

Even if the “core business” of NHRIs – complaints investigation and human rights education – is “optimally discharged” in post-conflict countries, this “may not make a significant positive impact if the root causes” which generate human rights violations are not addressed. If NHRIs are increasingly promoted and established as key actors in building and strengthening democracy and good governance in volatile states, it is incumbent on their advocates to ensure that NHRIs which assume the ambitious task of securing justice and transforming rights-resistant states, are appropriately supported by international human rights agencies and donor countries in a parallel enterprise to build political environments receptive to and respectful of NHRI objectives. In the absence of this commitment, national human rights institutions risk being set up to fail.

104 The Peace through Justice project implemented in July 2009 by the OHCHR- Nepal funded by the UN Peace Fund for Nepal (UNPFN) and the Governments of Norway, the United Kingdom, Denmark, Canada and Switzerland is an interesting initiative in this regard. See OHCHR-Nepal, ‘United Nations Peace Fund for Nepal’, <http://nepal.ohchr.org/en/resources/Documents/English/Peace%20through%20Justice/More_Information_E.pdf> at 4 April 2010


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