



UNHCR's POSITION ON THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM NEPAL

A. Introduction

1. Since the signing of a peace agreement in late 2006, there have been several major developments in Nepal that fundamentally affect the international protection needs of Nepalese refugees and asylum-seekers.
2. This paper provides an update of the situation for purposes of assessing various categories of asylum claims of individuals from Nepal.

B. Update on Developments in Nepal

(i) The Signing of a Comprehensive Peace Agreement

3. On 21 November 2006, the Government of Nepal and the Communist Party of Nepal-Maoist (CPN-M) signed a Comprehensive Peace Agreement (CPA), bringing to a formal end the Maoist insurgency that began in 1996.¹
4. The signing of the CPA marked the conclusion of a movement undertaken by a coalition of pro-democracy parties (the Seven Party Alliance, or SPA) and the CPN-M in early 2006. After ten years of conflict, they jointly opposed the royal regime through a campaign of widespread mass protests and a country-wide strike, which became known as the People's Movement II.² This People's Movement led King Gyanendra to restore Parliament on 25 April 2006 and to relinquish the absolute power he had retained since February 2005.³
5. Following the restoration of the Parliament, the SPA formed a new Government on 28 April 2006 that immediately announced an indefinite unilateral ceasefire. In May 2006, the CPN-M announced its own unilateral ceasefire (initially for three months but subsequently extended for additional three month periods in July and October respectively)

¹ *Comprehensive Peace Agreement*, 21 November 2006, online at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6VSHK8?OpenDocument&rc=3&emid=EVIU-6AKEJJ>.

² The first People's Movement in Nepal occurred in 1990, when popular protests resulted in the re-establishment of democracy in Nepal after several decades of royal rule.

³ For the text of King Gyanendra's statement, see: *Proclamation to the Nation from His Majesty King Gyanendra Bir Bikram Shah Dev*, 24 April 2006, online at http://www.satp.org/satporgtp/countries/nepal/document/papers/King_Gyanendra_Proclamation_Apr24.htm.

and negotiations began to bring the decade long insurgency to an end. The outcome of these negotiations was the CPA.

(ii) CPN-M Enter the Political Mainstream

6. Continuing on the positive path, an Interim Constitution was promulgated on 15 January 2007.⁴ Shortly afterwards, Parliament was dissolved and replaced by an Interim Parliament, which included Maoist representatives, in addition to those political parties represented since the last elections in 1999.⁵ As agreed under the CPA, a new Interim Government including the CPN-M was formed and sworn in on 1 April 2007. The Maoists hold five of 22 ministerial posts. Participation in the Government has marked the process of the Maoists' entry into mainstream politics. Nationwide elections for a Constituent Assembly⁶ were scheduled for June 2007, but these were subsequently postponed at the request of the Election Commission, which needed more time in preparation for the polls. The elections are now set for 22 November 2007.⁷

(iii) UNMIN and the Arms Management Process

7. On 23 January 2007, the United Nations Security Council mandated a United Nations Mission in Nepal (UNMIN) to monitor arms and armed personnel management, to assist in monitoring of ceasefire arrangements, and to provide technical support and monitoring for the elections of the Constituent Assembly.⁸

8. As per the terms of the CPA, CPN-M forces are to be assigned to cantonments and their arms stored. Likewise, it was agreed that the Nepalese Army would store an equal amount of arms and ammunition, and would be restricted to its barracks.

9. In March 2007, UNMIN completed the first phase of the cantonment and arms management process, registering over 30,000 CPN-M fighters and storing approximately 3,500 weapons in seven cantonment sites. In April, an equal number of Nepalese Army weapons were registered and stored, and the Nepalese Army was restricted to its barracks.⁹ A Joint Monitoring Coordination Committee formed of UNMIN, Nepalese Army, and

⁴ *Interim Constitution of Nepal*, 2063, 15 January 2007, online in English and Nepali at http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf.

⁵ The only exceptions were those representatives from parties that had supported the King during his direct rule, who were not permitted to join the new House of Representatives.

⁶ Under the Interim Constitution, it is agreed that a Constituent Assembly will be formed to draft a new constitution. The Constituent Assembly will decide whether Nepal is to be a monarchy or a republic, and – it is hoped – will address many of the root causes that led to the insurgency. See: Part 7 of the Interim Constitution of Nepal (Articles 63 and following).

⁷ See: P. Tighe, *Nepal Sets Election Date in November; Rebels Reject Any Delay*, Bloomberg.com, 25 June 2007, online at <http://www.bloomberg.com/apps/news?pid=20601080&sid=aivTNBNzbB6g&refer=asia>. See also: The Times of India, *Nepal Maoists register as political party for assembly polls*, 17 July 2007, online at http://timesofindia.indiatimes.com/World/Rest_of_World/Nepal_Maoists_register_as_political_party_for_assembly_polls/_articleshow/2209537.cms.

⁸ For announcement of this decision and text of United Nations Security Council Resolution 1740 (2007), see: United Nations Department of Public Information, *Security Council establishes political mission in Nepal*, 23 January 2007, online at <http://www.un.org.np/pressreleases/UN/2007-1-23-UN-SC-UN-political-mission2nepal.pdf>.

⁹ IRIN, *Nepal: Registration of Weapons Completed with UN's Help*, 17 April 2007, online at <http://www.irinnews.org/report.aspx?ReportId=71653>.

Maoist army representatives continues to monitor implementation of arms management agreements. The spirit of cooperation in the Committee is reported to be excellent.¹⁰

(iv) Improvements in the Security and Human Rights Situation

a) Violations of Human Rights during the Conflict

10. The ten year conflict claimed the lives of more than 13,000 Nepalese.¹¹ In addition, serious violations of international humanitarian law and grave human rights abuses were reported to have taken place during the conflict. The violations and abuses reportedly included extrajudicial executions, unlawful detention, individual and mass abductions, disappearances, torture, extortion, forced recruitment (including of children) and use of child soldiers.¹²

11. The conflict, the general insecurity that it created and the human rights violations and abuses perpetrated by the fighting parties also resulted in the internal displacement of an estimated 100,000 to 200,000 Nepalese and caused thousands more to flee the country.¹³

b) Key Improvements Resulting from the Peace Process

12. The end of the King's direct rule, the signing of the CPA, and the inclusion of the CPN-M in the Interim Government have together led to a marked improvement in the human rights situation in the country, with positive changes observed both immediately after the King relinquished his absolute power and following the formal end of armed conflict. The progress made, which has taken place in a relatively compressed period of time, has been characterized by the following main developments:

- Conflict-related violations reportedly attributed to the (then "Royal") Nepalese Army, including extrajudicial executions, detention, torture, and ill-treatment in army barracks of persons suspected of CPN-M affiliation, came to an end.¹⁴

¹⁰ UN Security Council (UNSC), *Report of the Secretary General on the request of Nepal for United Nations assistance in support of its peace process*, S/2007/235, 26 April 2007, online at <http://www.un.org/Docs/sc/sgrep07.htm>.

¹¹ Informal Sector Service Committee (INSEC), *2006 Human Rights Yearbook*, also online at http://www.inseconline.org/hrvdata/Total_killings.pdf.

¹² See, e.g., United Nations Office of the High Commissioner for Human Rights (OHCHR), *Investigations into violations of international humanitarian law in the context of attacks and clashes between the Communist Party of Nepal (Maoist) and Government Security Forces, Findings and recommendations January – March 2006*, online at http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006-04-18_IHL_report_English_version.pdf. See also: OHCHR, *Human Rights Abuses by the CPN-M: Summary of Concerns*, September 2006, online at http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_09_21_Human_Rights_Abuses_by_the_CPN-M.pdf; Human Rights Watch (HRW), *Children in the Ranks: The Maoists Use of Child Soldiers in Nepal*, February 2007, online at <http://hrw.org/reports/2007/nepal0207/>; HRW, *Clear Culpability: 'Disappearances' By Security Forces in Nepal*, February 2005, online at <http://hrw.org/reports/2005/nepal0205/>.

¹³ For information on conflict-related displacement, see: United Nations Office for the Coordination of Humanitarian Affairs (OCHA) Nepal's Thematic Report, *The Internally-Displaced Persons: Current Status*, September 2006, online at <http://www.un.org.np/reports/OCHA/2006/IDP-thematic-report/2006-9-7-OCHA-Nepal-Thematic-Report-IDPs.pdf>. See also: Internal Displacement Monitoring Centre (IDMC), *Nepal: IDP Returns Still a Trickle Despite Ceasefire*, 16 October 2006, p. 64, online at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/DDDDE17440C134D7C125720900397F78/\\$file/Nepal%20overview%2016oct%202006.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/DDDDE17440C134D7C125720900397F78/$file/Nepal%20overview%2016oct%202006.pdf).

- Prisoners held under the Terrorist and Disruptive Activities Ordinance (TADO) and Public Security Act (PSA) were released, including more than 1,000 persons detained for suspected Maoist association, as well as all those detained under the PSA (including political leaders, human rights defenders, and others).¹⁵
- Rights to freedom of association, expression and assembly, which were suspended during the royal regime, were restored by mid-2006, and a free press, open political discourse, and other forms of expression of a free civil society have been re-introduced in the country.¹⁶
- Members of the CPN-M and its associated organizations have been able to undertake peaceful political activities generally undisturbed throughout the country for the past year, opening offices in every district capital and holding public demonstrations.
- There has been a marked reduction in extortion, threats, and intimidation by the CPN-M. From December 2006 to January 2007, Maoist extortion was reported in only 3 of Nepal's 75 districts. In March 2007, only one incident of extortion was reported.¹⁷
- Promises of high salaries, eventual inclusion in the Nepalese Army and other economic incentives persuaded many Nepalese to join the CPN-M, which resulted in a noticeable increase in the number of fighters in its ranks prior to registration and cantonment. However, all armed personnel have now been registered and placed in cantonments; additional recruits may not be added to the lists of those already registered. UNHCR is not aware of reports of forced recruitment following the conclusion of the cantonment process.
- As agreed in the CPA, parallel administrative structures set up by the CPN-M during the conflict (including militias, "People's Governments" and "People's Courts") have been formally dissolved, and the CPN-M's quasi-governmental activities greatly reduced.¹⁸
- By January 2007 more than ninety percent of the police posts that were abandoned during the conflict had been re-established.¹⁹

¹⁴ OHCHR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal*, A/HRC/4/97, 17 January 2007, para. 7, online at <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>

¹⁵ OHCHR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal*, A/61/374, 22 September 2006, paras. 9 and 25-26, online at http://nepal.ohchr.org/en/resources/Documents/English/reports/SG/2006_09_15_OHCHRGeneralAssemblyReport_E.pdf.

¹⁶ See: *OCHA Nepal Situation Overview*, 19 February 2007; *OCHA Nepal Situation Overview*, 5 April 2007. These regularly-issued situation overviews, and many other useful documents, are online on the UN Nepal Information Platform website, <http://www.un.org.np/>.

¹⁷ *Ibid.*

¹⁸ BBC News, *Nepal Maoists Disband Government*, 18 January 2007, online at http://news.bbc.co.uk/2/hi/south_asia/6273535.stm. Despite the formal dissolution of the Maoist parallel government structures, there are continuing reports of quasi-governmental activities by Maoist-affiliated organisations, including in particular the Young Communist League (YCL). See, for concerns related to the YCL, para. 27 below.

¹⁹ Kantipur News, *Government unable to re-establish police posts due to financial crunch: Sitaula*, 15 May 2007, online at <http://www.kantipuronline.com/kolnews.php?nid=109653>.

- Reflecting the improved situation in the country, return of internally displaced persons (IDPs) gained momentum immediately following the ceasefires of April and May 2006, increasing further after the signing of the CPA in November 2006. By July 2007, many IDPs had returned to their homes, although there were regional variances in the rate of return and an estimated total of 50,000 – 70,000 IDPs had yet to return,²⁰ with many citing economic considerations as the impediment to return. UNHCR's experience in the field confirms that those IDPs who fled to avoid being caught "between two fires" (i.e., those under pressure from one or both sides but aligned with neither side) have already returned or are now able to return without facing threats to their security.

(v) Challenges Facing the Peace Process

a) Need to Consolidate Results Already Achieved

13. Nepal's peace process has made significant gains that could not have been foreseen in early 2006. However, as is expected in the typical transition to peace after a long conflict, obstacles exist and new ones could arise before already achieved results are fully consolidated and the peace process successfully concluded. The situation continues to require a degree of caution and continuous monitoring, as it cannot be ruled out that these obstacles, if unaddressed, might undermine or derail the ongoing peace process.²¹

b) Postponement of Constituent Assembly Elections

14. On 13 April 2007, the Election Commission announced that it would be technically impossible to hold the elections scheduled for 20 June 2007 on time.²² The Election Commission stated that it needed at least 110 days to adequately prepare for the polls and requested the Government to set a new date. Recently, the elections were set for 22 November 2007.²³

15. The holding of elections for the Constituent Assembly is a common objective of all parties and is of vital importance for the strengthening of the peace process. Continued delays threaten the current cooperative spirit among the political parties. For example, Maoist Chairman Prachanda, upon learning of the Election Commission's announcement, questioned the continuing relevance of the eight-party coalition and stressed that the only possibility to maintain its unity would be for the Interim Parliament to declare Nepal a republic as early as possible.²⁴

²⁰ OHCHR, January 2007, see above footnote 14, paras. 57-58; *Nepal Common Appeal for Transition Support 2007, Mid-Year Review*, 17 July 2007, p. 1, online at <http://ochaonline.un.org/cap2005/webpage.asp?Page=1578>.

²¹ For analysis of the peace process, see: International Crisis Group (ICG), *Nepal's Peace Agreement: Making It Work*, Asia Report N° 126, 15 December 2006, online at <http://www.crisisgroup.org/home/index.cfm?l=1&id=4577>.

²² UNSC, see above footnote 10, paras. 12-13.

²³ See above footnote 7.

²⁴ Chitra Tiwari, "Nepal Headed Toward Constitutional Crisis", *The Washington Times*, 19 May 2007, online at <http://wpherald.com/articles/4854/1/Nepal-heading-toward-constitutional-crisis/Maoists-supporters-form-3-mile-long-human-chain.html>.

c) *Monarchy or Republic?*

16. The CPN-M has been insistently demanding the abolition of the monarchy. Other parties share this position to varying degrees. The King's February 2005 move and subsequent absolute rule contributed greatly to general and widespread disillusionment within the population with regard to the monarchy. This is reflected in the procedure for either abolishing or retaining the monarchy, set forth in the Interim Constitution which stipulates that the monarchy's future will be decided by a simple majority during the first meeting of the Constituent Assembly.²⁵ Meanwhile, the Government of Nepal is no longer "His Majesty's," the Nepal Airlines are no longer "Royal," and new currency notes will feature Buddha and Mount Everest rather than the King.²⁶ Throughout the country, statues of the King have been wrapped in Maoist flags or vandalized. To many, the abolition of the monarchy appears a foregone conclusion, with only the timing being in question.

17. It remains to be seen how or whether the King will react to any move to end the monarchy, and to what degree he enjoys support among the population or the Nepalese Army.²⁷ This uncertainty continues to pose some threat to the stability of the country and the positive continuation of the peace process.

d) *A New Challenge: Unrest in the Tarai*

18. From the beginning, the CPN-M insurgency aimed to break what the Maoists termed a "feudal" system and to change Nepal into a more inclusive society. This goal was in part reflected in the early achievements of the peace process, including the CPA and the Interim Constitution. However, already in December 2006, when the first drafts of the Interim Constitution were being circulated, dissatisfaction over the degree of inclusion of the Madhesi people of the Tarai region manifested in violent protests.²⁸

19. The fertile plains of the Tarai comprise 20 of Nepal's 75 districts, with a population of approximately 11 million. The majority of Tarai-dwellers (63 percent) are from the Madhesi social group, which is made up of a variety of communities in the Tarai (or Madhes) region, while 36 percent are people originating from the hills, known as Pahadis. The Madhesis – often referred to as being of Indian origin – claim exclusion and discrimination by the Pahadi population with regard to representation in local and national government, access to citizenship documentation, and participation in economic and cultural aspects of life.

20. At the end of 2006, the Nepal Sadbhavana Party (a Madhesi party, and member of the SPA) started to assert Madhesi demands more aggressively. The Madhesi movement rapidly gained momentum, with the Madhesi Janadikar Forum (MJF) quickly emerging as

²⁵ *Interim Constitution of Nepal*, 2063, Part 23, Section 159, see above footnote 4.

²⁶ See: BBC News, *Erasing the 'royal' in Nepal*, 19 May 2006, online at http://news.bbc.co.uk/2/hi/south_asia/4998666.stm. See also: The Times of India, *Off With His Head: Nepal Kicks Ruler Off Currency*, 25 January 2007, online at <http://timesofindia.indiatimes.com/articleshow/1461115.cms>.

²⁷ The ICG recently estimated that the King now enjoys the support of only several small political parties, a 3,000-strong Palace Guard, and scattered international supporters. See: ICG, *Nepal's Maoists – Purists or Pragmatists?*, Asia Report N° 132, p. 22, 18 May 2007, online at <http://www.crisisgroup.org/home/index.cfm?id=4842&l=1>.

²⁸ ICG, *Nepal's Troubled Tarai Region*, Asia Report N° 136, 9 July 2007, online at <http://www.crisisgroup.org/home/index.cfm?id=4941&l=1>.

the most important organization to represent Madhesi goals, which include autonomy, full proportional representation and a democratic republic.²⁹ Since January 2007, the MJF has orchestrated strikes and massive demonstrations in the eastern Tarai districts, some of which have been marked by violence.³⁰

21. While the MJF is the largest of the Madhesi groups, two armed factions of the Janatantrik Tarai Mukti Morcha (JTMM) have put forward more rigorous demands. The JTMM split from the CPN-M in 2004, citing lack of concern for Madhesi issues, and subsequently divided into Goit and Jwala Singh factions. JTMM demands include an independent Tarai state, fair representation of Madhesis in the army and the Government, and departure of Pahadis from the Tarai region. Other small armed groups have also emerged, including the Madhesi Liberation Tigers, the Madhesi Cobras, and the Nepal Defence Army (a Hindu fundamentalist group).³¹

22. The situation is particularly tense in Sunsari, Siraha and Saptari districts in eastern Tarai, where violent clashes have been frequent (and where both Maoists and Pahadis have been newly displaced). At present, the situation in the rest of the Tarai is marked by a tension that has, on occasion, resulted in violence.

23. Tarai Pahadis have (largely in reaction to the Madhesi movement) formed the Chure Bhawar Ekta Samaj (CBES) to demand an autonomous region for Tarai Pahadis and investigate the loss of Pahadi property during the protests in early 2007.³²

24. There are serious concerns that the tension in the Tarai could spread, or cause further delays or disruption of the Constituent Assembly elections. Government proposals to placate the MJF by, for example, allocating 49 percent of Constituent Assembly seats to Tarai districts (establishing full proportional representation for the region, and agreeing to a federal system) have, to date, been only partially successful.³³

(vi) Current Human Rights Concerns

a) CPN-M Extortion

25. Although the magnitude of Maoist extortion has decreased, some extortion continues to take place.³⁴ Recent instances have targeted wealthy individuals or businesses

²⁹ For a description of the rise of the MJF, also known as the Madhesi People's Rights Forum (MPRF), see: Nepali Times, *The Rise of a Party*, 18 May 2007, online at <http://www.nepalitimes.com/issue/349/Nation/13537>.

³⁰ The Tarai region comprises all of the plains districts along Nepal's southern border with India. However, those districts most affected by the current crises include Parsa, Bara, Rautahat, Sarlahi, Mahottari, Dhanusa, Siraha, Saptari, Sunsari, and Morang.

³¹ Nepali Times, *All Fired Up and Nowhere to Go*, 2 March 2007, online at <http://www.nepalitimes.com/issue/338/Nation/13294>.

³² ICG, *Nepal's Troubled Tarai Region*, see above footnote 28; Nepal Human Rights News, *Indefinite Chure Bhawar Strike Called Off*, 1 May 2007, online at <http://www.nepalhumanrightsnews.com/news.asp?id=861>.

³³ See, e.g., Nepali Times, *Fuelling Change*, 9 February 2007, online at <http://www.nepalitimes.com/issue/335/Headline/13199>; Nepali Times, *Plain Speaking*, 2 February 2007, online at <http://www.nepalitimes.com/issue/334/Headline/13173>.

³⁴ IRIN Asia, *Nepal: Villagers Suffering Extortion, Intimidation at Hands of Maoists*, 3 May 2007, online at <http://www.irinnews.org/Report.aspx?ReportId=71939>.

in urban areas, and occasionally involve abduction or beatings.³⁵ This is, however, a considerable change from the broad-based extortion of rural populations that was common practice during the conflict, and from the frequent abductions, beatings and widespread confiscation of property previously reported.

b) Lack of Effective Law and Order Institutions

26. The dissolution of the CPN-M's parallel administrative structures, including the "People's Courts", which were established and functional in rural areas during the conflict, has contributed to increased insecurity in some areas, and has created a public order void that police forces and the judiciary are not yet fully able to fill.³⁶ During the conflict rural areas were largely controlled and, to varying degrees across regions, administered by the Maoists. Although, the Government has formally re-established the majority of previously abandoned police posts, effective law enforcement remains a challenge. Consequently, much of the rural population is deprived of access to fully effective law enforcement and administration of justice.³⁷

c) Violations by the Young Communist League (YCL)

27. The Young Communist League (YCL) – composed of former members of CPN-M militias – has in certain instances taken advantage of the lack of adequate police forces and has continued to carry out quasi-governmental activities.³⁸ While the YCL has in part focused on public service activities – such as cleaning streets or directing traffic – their activities have also included abductions, beatings, and punishments directed primarily against those suspected or considered guilty of common crimes. These YCL "law enforcement" activities fail to provide guarantees of fairness or due process. The CPN-M has publicly condemned such abuses by the YCL. However, the CPN-M reportedly appears unable or unwilling to completely end these activities.³⁹

d) Impunity

28. Impunity remains a concern, as significant efforts have not yet been made to identify, apprehend and prosecute those responsible for serious human rights abuses or violations of international humanitarian law during the conflict. Efforts to establish transitional justice mechanisms, including a truth and reconciliation commission envisaged in the CPA, remain at the early stages. The findings of an earlier commission – which recommended action against persons involved in the suppression of the People's Movement – have not been implemented.

³⁵ See, e.g., Agence France Press, *Talks Fail to End anti-Maoist Strikes in Nepal*, 21 March 2007, online at http://www.publicinternationallaw.org/docs/PNW7/PNW_march29_07.html#Nepal. See also: American Chronicle, *The Anatomy of a Maoist Extortion*, 21 September 2006, online at <http://www.americanchronicle.com/articles/viewArticle.asp?articleID=13832>.

³⁶ OHCHR, January 2007, see above footnote 14, para. 18.

³⁷ *Ibid.*

³⁸ J. Child, *Nepal's Maoist Militia In Mufti*, News Blaze, 2007, online at <http://newsblaze.com/story/20070512091024nnnn.nb/newsblaze/TOPSTORY/Top-Story.html>.

³⁹ *Ibid.*

e) *Impediments to Return of IDPs*

29. While many IDPs have returned, some remain unwilling or unable to go back to their homes. Economic factors are very frequently cited as an obstacle to return, with IDPs stating that they are unwilling to until they have been guaranteed full restitution of property confiscated during the conflict. The Maoists have agreed in the CPA and other agreements to return all property confiscated during the conflict and have stated on several occasions that they will comply with these commitments.⁴⁰ However, all their commitments have not yet been fully upheld in all districts, and are subject to local cadres' interpretation and implementation. Resolution of this issue has been further complicated by the fact that some landowners refuse to return based on an initial offer of partial return of property, and continue to condition their return on full restitution of their pre-war property.

30. Some IDPs continue to face threats or intimidation from local CPN-M cadres that prevent them from returning to their villages. Those unable to return are generally landowners whose political party affiliations are seen as anti-CPN-M. Such persons may be labelled as "feudal", "royalist" or "criminal" by the Maoists, and they may be prohibited from returning to their homes or repossessing their properties.⁴¹ In Nepal, significant land ownership and political party affiliation are often closely-linked, and such politically-aligned landowners who attempt to return or to repossess pre-war property may face physical threats and violence in rural areas, and may be forced back into displacement.⁴²

f) *Tarai Violence*

31. The protests and violence in the Tarai have involved killings, extortion, intimidation and beatings, and there are reports of an increasing forced displacement of both Pahadis and Madhesis.⁴³ JTMM factions and the smaller Tarai-based groups are reported to be responsible for much of this violence, including killings, abductions, attacks on members of the CPN-M and extortion and intimidation of government officials.⁴⁴

C. Assessing International Protection Needs

32. With the end of the conflict and progressive achievements of the peace progress, aspects of the security and human rights situation in Nepal have improved significantly. Hostilities have been ended by the CPA, the Interim Constitution has been promulgated and the arms and armed personnel of both sides have been registered and confined to

⁴⁰ See, e.g., Zee News, *Prachanda Asks Maoists to Return Property*, 14 May 2007, online at <http://www.zenews.com/znnew/articles.asp?aid=371307&sid=SAS>.

⁴¹ OHCHR, *CPNM failing to meet commitments to allow safe return of IDPs*, Press Release, 30 April 2007, online at http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/APR2007/2007_04_30_HCR_CPNM_IDP_E.pdf; United Nations News Service, *UN rights office calls on Nepal's Maoists to allow return of internally displaced persons*, 30 April 2007, online at <http://www.un.org/apps/news/story.asp?NewsID=22401>; OCHA Nepal's Thematic Report, *The Internally-Displaced Persons: Current Status*, 18 July 2007, online at <http://www.reliefweb.int/library/documents/2006/ocha-npl-06sep.pdf>.

⁴² OHCHR, *ibid.*; OCHA, *ibid.*

⁴³ ICG, *Nepal's Troubled Tarai Region*, see above footnote 28, p. 12.

⁴⁴ See: OHCHR, January 2007, see above footnote 14, at paras. 38-40. See also: Nepali Times, *Terror in the Tarai*, 4 May 2007, online at <http://www.nepalitimes.com/issue/347/Nation/13502>.

cantonments and barracks. Civil and political rights have generally been restored, and large numbers of IDPs have either returned or are now able to return to their homes.

33. Despite the positive developments, the degree to which the change in circumstances will endure remains dependent on continued progress in the peace process. CPN-M forces are in the cantonments and their arms stored and monitored. However, UNMIN only plays a monitoring role in the storage of arms, and it remains logistically possible for the CPN-M forces, or renegade segments, to take up arms again should the peace process falter or fail. While efforts have been made to address the concerns of the Madhesi and other minority groups, inclusion issues continue to cause violence, particularly in the Tarai region. Furthermore, a final decision on the future role of the monarchy remains to be reached.

34. The essential next step for lasting peace in Nepal is to hold free and fair Constituent Assembly elections. Although the June 2007 elections have been postponed until November 2007, observers are cautiously optimistic that the overall peace process is not endangered by the delay.⁴⁵

35. All parties appear to be fully committed to the democratic process currently underway. In view of the elections and the obvious desire of each party to gain in popularity among voters prior to the elections, the political parties have an evident interest in avoiding alienating the electorate with unpopular decisions and actions. It is expected that this commitment to the democratic process will continue to support improvements in the human rights situation throughout Nepal.

36. The end of the armed conflict and the improvements in the human rights situation brought about by the conclusion of the royal regime in April 2006 have significantly reduced international protection needs of Nepalese. Fear of systematic and repeated extortion, forced recruitment, persecution due to real or imputed pro-Maoist or pro-government views or persecution due to expression of political opinions (such as by political party members, journalists, students or human rights defenders) is now in the large majority of cases unlikely to be well-founded. However, individual circumstances may in specific instances justify a continued need for international protection, such as in the case of persons for whom the situation remains largely unchanged (for example, wealthy landowners from rural areas with anti-Maoist political affiliation).

37. In contrast to the improvements occurring in most areas of the country, the situation in the eastern Tarai region has deteriorated since late 2006. Strikes and demonstrations in this area have frequently turned violent, with loss of life and damage to property reported on several occasions. The activities of both armed and unarmed groups (including but not limited to the JTMM factions and the MJF) have resulted in serious violations of human rights and displacement. Those targeted or displaced include persons from the Pahadi and, to a lesser degree, Madhesi communities. Should the situation in the eastern Tarai deteriorate further or spread to additional areas, significant additional displacement could occur.

⁴⁵ For comments on the implications of the postponement of the elections and evaluation of the current status of the peace process in Nepal by Ian Martin, Special Representative of the Secretary General on Nepal, see: UN Department of Public Information, *Press Conference by Special Representative on Nepal*, 4 May 2007, online at http://www.un.org/News/briefings/docs/2007/070504_Martin.doc.htm

38. In relation to those who flee targeted violence or human rights abuses by non-state agents, the issue of an internal flight or relocation alternative needs to be addressed.⁴⁶ The Kathmandu valley (and in many instances other urban areas) may be considered a relevant internal flight or relocation alternative for the majority of those fleeing non-state agents. At present, organizations affiliated with the CPN-M are not known to pursue or target persons who have fled or relocated to the Kathmandu valley or to the main urban centres such as Biratnagar, Nepalgunj or Pokhara. Similarly, Tarai-based organizations are not known to pursue or target persons who have fled or relocated to areas outside of the Tarai region. IDPs who fled during the conflict and have yet to return to their homes continue to live in apparent safety in urban areas and district headquarters throughout the country.

39. Whether internal flight or relocation is reasonable will depend on an individual analysis of personal circumstances, including experiences of past persecution, capacity for economic survival, and other factors. Internal and external migration traditions are well-established in Nepal, and persons from nearly all of the country's communities migrate or relocate within the country with relative frequency and with few restrictions. During the armed conflict, IDPs in Nepal demonstrated a capacity to integrate with relative ease in their locations of displacement. Those who fear persecution by non-state agents on the basis of their prominent political profile, status as wealthy landowners or for being Pahadis residing in the Tarai region, often have sufficient economic resources or family links to support their relocation.

D. Conclusion

40. Given the above information, UNHCR's assessment is as follows:

- a) Any international protection needs of asylum-seekers from Nepal should be examined individually based on the merits of the case, taking into account the information contained in this document.
- b) As this document sets out, the situation in Nepal has improved significantly. Fear of conflict-related violations – including but not limited to systematic and repeated extortion, forced recruitment, persecution due to real or imputed pro-Maoist or pro-government views or persecution due to expression of political opinions – is now in the large majority of cases unlikely to be well-founded.
- c) However, there could be continued international protection needs for certain categories of persons, such as wealthy landowners with anti-CPN-M political affiliation.

⁴⁶ For additional information on the criteria to be used in the assessment of internal flight or relocation alternative, see: UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, online at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3f2791a44>.

- d) In addition, in contrast to the rest of the country, the situation in the Tarai region has deteriorated since late 2006, which may give rise to international protection needs among persons from that region.⁴⁷
- e) More generally, an internal flight alternative is more likely to be available now than in the past, especially in the urban areas of Nepal.

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⁴⁷ See: ICG, *Nepal's Troubled Tarai Region*, see above footnote 28.