

VETTING IN NEPAL

Challenges and Issues



Advocacy Forum - Nepal
July 2014

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First Published July 2014
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Published by

Advocacy Forum-Nepal
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Cover Illustration: Sushil Thapa

Layout & Cover Design: Kishor Pradhan

Printed in Kathmandu, Nepal

With the support of the Asia Centre for Human Rights (ACHR),
C-3/441, Janakpuri, New Delhi, India

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List of Abbreviations

ACHR	Asia Centre for Human Rights
AIG	Assistant Inspector General
APC	Armoured Personnel Carrier
APF	Armed Police Force
AMS	Assessment for Mission Service
ASRs	Army Service Regulations
BPOTC	Birendra Peace Operations Training Centre
CDO	Chief District Officer
CoAS	Chief of Army Staff
CoS	Chief of Staff
CIVPOL	Civilian Police
CA	Constituent Assembly
CPA	Comprehensive Peace Agreement
CIAA	Commission for the Investigation of Abuse of Authority
CPA	Comprehensive Peace Agreement
CPN-M	Communist Party of Nepal-Maoist
CRT	Compensation Relating to Torture Act
DIG	Deputy Inspector General
DPKO	Department of Peacekeeping Operations
DSP	Deputy Superintendent of Police
FPU	Formed Police Unit
GPOI	Global Peace Operations Initiative
IC	Interim Constitution of Nepal (2007)

ICRC	International Committee of the Red Cross
IGP	Inspector General of Police
INGO	International Non-governmental Organization
IPO	Individual Police Officers
IPPOS	International Police Peacekeeping Operations Support Program
MoD	Ministry of Defence
MoHA	Ministry of Home Affairs
MoFA	Ministry of Foreign Affairs
MS	Mission Services
MPV	Multipurpose Vehicles
NA	Nepal Army
NGO	Non-governmental Organization
NHRC	National Human Rights Commission
NP	Nepal Police
OHCHR	Office of the High Commissioner for Human Rights
PR	Permanent Representative
PSC	Public Service Commission
RNA	Royal Nepal Army
SC	Supreme Court
SAAT	Selection Assessment and Assistant Team
SPAT	Special Police Assessment Teams
SP	Superintendents of Police
SRS	Selection and Recruitment Section
SSP	Senior Superintendent of Police
TRC	Truth and Reconciliation Commission
UCPN-M	Unified Communist Party of Nepal-Maoist
UN	United Nations
UNDOF	United Nations Disengagement Observer Force
UNMIN	United Nations Mission in Nepal
UNPKOP	United Nations Peace Keeping Operations
UNPOL	United Nations Police

INTRODUCTION

Over the last few years, there have been several high profile cases where the United Nations (UN) Department of Peacekeeping Operations (DPKO) has ordered the return of Nepali peacekeepers after it became known that there was prima facie evidence of their involvement in serious human rights violations in Nepal.

Two of the most emblematic cases were that of Captain Niranjan Basnet of the Nepal Army (NA) and Deputy Superintendent of Police (DSP) Basanta Kunwar. Captain Basnet was one of those accused in September 2009 of the murder of Maina Sunuwar.¹ Despite the fact that the case was pending before the Kavre District Court, Captain Basnet was sent on a peacekeeping mission to Chad in 2009. Similarly, DSP Kunwar had a case pending against him under the Compensation Relating to Torture Act 2053 (1996) (CRT) in the Kathmandu District Court, when he was sent on a peacekeeping mission to Liberia in August 2011.² Both were

¹ Advocacy Forum, “Maina Sunuwar: Separating fact from fiction”, February 2010, available at: <http://www.advocacyforum.org/downloads/pdf/publications/maina-english.pdf>.

² See Advocacy Forum, “Arjun Gurung”, available at <http://www.advocacyforum.org/torture-compensation/2011/10/arjun-gurung.php>.

repatriated once the information concerning their violations came to light.³

In early 2013, Nepal Army (NA) Colonel Kumar Lama was serving as an expert on a UN mission in South Sudan when he was arrested during a visit to the United Kingdom (UK) under universal jurisdiction powers. He has been charged with two counts of torture relating to the armed conflict period and remains in the UK where he is now awaiting trial. It is clear from these and other examples that the current system for the selection of peacekeepers in Nepal is in dire need of reform.

On 23 January 2013, the Government announced new Army Service Regulations (ASRs).⁴ These followed in the wake of an August 2012 order by the Supreme Court of Nepal (SC) for the Government to establish vetting laws to regulate the recruitment, promotion and transfer of government officials, including those from the security services. The SC directed the Government to follow Article 126 (5) of the Interim Constitution of Nepal (IC) which expressly provides that the Public Service Commission (PSC) be consulted in matters of promotion and other issues involving government officials.

The ASRs also followed the introduction of a UN policy for the human rights screening of UN peacekeeping personnel (adopted in December 2012). This policy was communicated to troop and police contributing

³ Investigations into serious violations of UN rules are conducted by members of the UN Office of Internal Oversight Services. The final decision to repatriate individuals is made by the New York Headquarters of the Department of Peacekeeping Operations. The cost of repatriations is born by the contributing nation. See Nina Rastogi, "Peacekeepers on Trial", Slate Magazine, 28 May 2008, available at: http://www.slate.com/articles/news_and_politics/explainer/2008/05/peacekeepers_on_trial.html last accessed on 26 May 2013. Also see Column Lynch, "Is Nepal sending accused criminals to serve in UN peacekeeping missions?", Turtle Bay, 11 November 2011, available at: http://turtlebay.foreignpolicy.com/posts/2011/11/11/is_nepal_sending_accused_criminals_to_serve_in_un_peacekeeping_missions, last accessed on 26 May 2013.

⁴ Kathmandu Post, "New regulations change Nepal Army promotion criteria, 14 February 2013, available at <http://www.ekantipur.com/the-kathmandu-post/2013/02/14/top-story/new-regulations-change-nepal-army-promotion-criteria/245301.html>. The SRs can be accessed at www.mod.gov.np.

countries (TCCs and PCCs) in 2013 with a request that they put in place the necessary systems to uphold the new policy.

While the NA's increasing transparency in relation to recruitment and promotion of personnel is welcome, it remains a shame that the NA's internal Directives for Selection of Peacekeepers (2008) were never made public and that the selection of peacekeepers is still handled as an internal affairs. However, the new ASRs have set basic guidelines for the selection of peacekeepers and committed that the Ministry of Defence would formulate and implement a detailed policy for selection of peacekeepers. As of early 2014, the ministry was yet to start the process of drafting the selection procedure. With the introduction of the ASRs, the basic selection criteria of peacekeepers are now public; however, the selection process is as yet not very transparent. In contrast to the NA, the Nepal Police (NP) and the Armed Police Force (APF) are more transparency in their decision making processes for the selection of peacekeepers; however human rights and gender issues need to be incorporated more clearly into these policies.

This report will present and analyze the current policies and practices for the recruitment and promotion of security forces personnel into the Nepal Army (NA), Nepal Police (NP) and Armed Police Force (APF). It will further examine how each of the institutions currently recruits and select personnel for UN peacekeeping duties overseas. It will also set out the role of the various oversight mechanisms in place in Nepal and what actions the Nepal Government, the NA, NP and APF have taken in response to their human rights-related recommendations.⁵ It briefly touches on the mandate of the Truth and Reconciliation Commission and the Commission on Enforced Disappearances as set out in a new Act adopted in April 2014. The Act does not set out any powers for the commissions to consider the vetting for public office of those whom it finds to have been involved in serious human rights violations. It remains to be seen whether the commissions will consider the issue of vetting.

⁵ The report does not include information regarding the appointment and promotion of civil servants, as this is beyond the scope of this research.

It is hoped that this report will assist the Nepal authorities in the implementation of the SC's decision and uphold its responsibilities under the UN Charter (1945) by putting in place transparent systems of appointment and promotion for security forces personnel and their selection for peacekeeping duties, excluding anyone against whom there is credible evidence of their involvement in serious violations of international human rights or humanitarian law.

METHODOLOGY

The research for this report was carried out by a team of consultants whose identities are not made public due to the sensitivities involved in the work.

For this research, the laws and regulations governing the recruitment and appointment of security forces personnel into the NA, NP and APF were analysed and evaluated. In addition, more than 100 interviews were conducted with officials working for each of the three institutions, as well as government officials in the Ministry of Defense (MoD) and the Ministry of Home Affairs (MoHA). Interviews were also conducted with personnel working for human rights orientated bodies such as the National Human Rights Commission and civil society groups.

The comments and views of both senior and junior personnel of the security services were taken into account in this study. Most contributed anonymously due to the sensitivity of the topic. Many stated that issues regarding reforms to the security forces had become a marginalized issue, with political parties now more in favour of strengthening these institutions politically, rather than pushing forward the reform agenda. Many officials also shared sympathy with the state security forces, arguing that it would be wrong to challenge them over issues of impunity, when former Maoist rebels have not been held accountable

for their conflict-era human rights abuses. It was also felt by some that issues relating to accountability for conflict-era human rights abuses should be dealt with under the jurisdiction of forthcoming transitional justice mechanisms, once they are formed. None of these more political issues are addressed in this report; they are included here by way of setting the context within which the research took place.

As discussion on human rights vetting is a very new issue of debate within Nepal, the research was unable to include any historic literature on the subject. However, contemporary media reports and publications have been included where possible. The contents of internal publications and communications by the NA, NP, NPF and other institutions were also included in the research and when necessary, contact was made with concerned officials as part of the research. Some of the security agencies were not transparent enough to share their policy documents on selection of peacekeepers and did not respond to requests for information.

CHAPTER 1

VETTING IN THE NEPAL ARMY

HISTORY OF THE NEPAL ARMY

The Nepal Army (NA) traces its history to the Gorkhali Army, which in the 1740s under King Prithvi Narayan Shah initiated the process of the unification of the country. It acquired modern weapons and got recognition as the Royal Nepal Army (RNA) after the capture of Kathmandu in 1768. The RNA fought against British expansionism from 1814 to 1816 and battled against Tibetan troops in 1788, 1792, and 1855. It also participated in two world wars under the British regime. In 1974, it conducted an operation to disarm the Khampas (Tibetan tribesmen resisting Chinese authority) operating from Nepal's Upper Mustang region.

In November 2001, in the middle of the armed conflict period (1996-2006), a state of emergency was declared and the RNA was mobilized and deployed to curb the Maoist insurgency, in the aftermath of a Maoist attack on an army barracks in Dang district. Up to that point, this task had been in the hands of the ill-equipped and poorly trained Nepal Police (NP).

RNA tactics developed during the state of emergency carried over into the later stages of the conflict. Typically, the Army would refrain from

engaging with the Maoist People's Liberation Army directly – instead retaliating against individuals and communities suspected of providing them assistance. Enforced disappearances and extrajudicial executions became common - especially in the immediate aftermath of Maoist attacks. These retaliations sometimes included the use of rape, as occurred in the aftermath of a Maoist attack on the army at Mangalsen, Achham in February 2002.⁶

In February 2005, King Gyanendra imposed direct rule with the backing of the RNA; however the King was forced to step down in April 2006 under pressure from a People's Movement jointly led by the rebel Communist Party of Nepal-Maoist (CPN-M) and the mainstream political parties.

The King used to be the supreme command of the RNA. The RNA was always identified as the King's army rather than an army for the protection of the people. The Rana oligarchy ruled Nepal for 103 years until 1951 with the backing of the military. It also supported King Mahendra's disbanding of political parties in 1962 and prolonged the Panchayat regime until 1990. People also argue that the army helped to curb the democratic movements of 1990 and 2006. The 'royal' prefix was removed from the name and its ties with the palace formally cut through a historic parliamentary proclamation of 18 May 2006.

A Comprehensive Peace Agreement (CPA) was signed on 22 November 2006, bringing the decade long insurgency to an end. The insurgency had claimed the lives of over 17,000 people while thousands were tortured and displaced and hundreds raped. Since the signing of the CPA, the NA has been largely confined to its barracks except for its mobilization in development works, the protection of nation parks and wildlife sanctuaries, UN peacekeeping missions, rescue and relief operations and for a short period in 2012-2013 the control of the

⁶ Frederick Rawski and Mandira Sharma, 'A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal', in von Einsiedel, Malone and Pradhan, 'Nepal in Transition', 2012, p.178-9.

cantonments camps with Maoist combatants during the final phase of their integration process into the NA. In addition, the NA was deployed during October – November 2013 to provide additional security during the elections for a Constituent Assembly.

A new Nepal Army Act (2006) (NA Act) was introduced to ensure the government's control over the military. Article 4 states that the NA is established for the protection and defense of the independence, sovereignty, territorial integrity and national unity of the state of Nepal.⁷ The NA is responsible for internal security duties including counter-insurgency and counter-terrorism operations, security of VIPs and vital installations, rescue and relief operations, protection of environment and heritage sites, national level infrastructural development, involvement in world peace and other responsibilities allocated by the Government.⁸

The size of the Army had almost doubled from its 46,000 strength in 1998 by the time the conflict ended in 2006. Its current budgeted strength is 92,753 and the Government has created 4,171 additional vacancies to integrate 1,460 former rebel soldiers into the NA. Of the fighters opting integration, 1,352 completed training and took the oath of the Nepal Army on 5 July 2013.⁹

The Interim Constitution of Nepal (2007) (IC) envisaged the formulation of an extensive work plan for the democratization and restructuring of the NA. Article 144(3) and 144(4) provide for the development of its democratic structure, national and inclusive character and implementation of training in accordance with the norms and values of democracy and human rights. Sadly, although a Cabinet Committee headed by the then Defense Minister in 2010 formulated a draft action plan for the democratization of the NA, the plan was never approved.

⁷ Nepal Army Act (2006) available at: <http://www.lawcommission.gov.np/ne/documents/func-startdown/721/>, last accessed on 16 May 2013.

⁸ Report regarding the MoD and NA submitted by the MoD to the State Affairs Committee of the Legislature Parliament on 7 October 2009.

⁹ The Kathmandu Post, "1,352 ex-combatants now Army personnel", 6 July 2013, available at <http://www.ekantipur.com/the-kathmandu-post/2013/07/05/top-story/1352-ex-combatants-now-army-personnel/250813.html>.

In 2010, the NA was engaged in active lobbying against the presence of the United Nations Mission in Nepal (UNMIN), with Army Chief General Chhatra Man Singh Gurung distributing documents calling for the removal of UNMIN, accusing it of siding with the Maoists and obstructing the Nepal government and the NA in fulfilling their national duties.¹⁰

The NA maintains strong and traditional ties with the Indian army, which has played a key role in its organization and modernization since the 1950s. As the largest donor of military logistics to Nepal, India suspended its defense support to the NA after the royal takeover of 2005. In 2009, India signaled its willingness to re-establish its commitment¹¹ and in April 2013, the Government decided to allow the NA to resume the procurement of arms and ammunitions. Soon after, in July 2013, there were reports of an agreement for India to supply arms and ammunition.¹² Nepal also receives military assistance from China, the US, Pakistan, the UK and other European countries, particularly for education and training.

NEPAL ARMY AND UN PEACEKEEPING

The NA's association with UN peacekeeping operations dates back to the deployment of five military observers with the UN Observer Group to Lebanon in 1958.¹³ It deployed its first full contingent, led by the

¹⁰ UNMIN was a special political mission in support of the peace process in Nepal, established in response to requests by the then Seven-Party Alliance Government and the then CPN-M for UN assistance in creating a free and fair atmosphere for the election of the Constituent Assembly and the peace process. UNMIN was established on 23 January 2007 and was mandated to stay in Nepal until 15 January 2011.

¹¹ See DNA India, "India to resume military cooperation with Nepal", 7 December 2009, available at http://www.dnaindia.com/world/report_india-to-resume-military-cooperation-with-nepal_1320993, last accessed on 11 May 2013.

¹² Security Risks, "Khurshid's Nepal Visit – Resuming Military Supplies to NA", 12 July 2013, available at: <http://www.security-risks.com/security-trends-south-asia/nepal/khurshid's-nepal-visit---resuming-military-supplies-to-na-1992.html>.

¹³ The delegation was made up of: Major Tika Shamsher Rana, Captain Ganga Bahadur Bista, Captain Bodendra Bahadur Rayamajhi, Lieutenant Arjun Narshimha Rana and Lieutenant Kanak Shamsher Rana.

Purano Gorakh battalion, to Egypt in 1974. In 2007, Nepal signed a Standby Arrangements System Agreement with the UN Department of Peace Keeping Operations (DPKO) for the quick deployment of peacekeeping troops, pledging to contribute a maximum of 5,000 troops at any one time. By late 2013, over 100,000 personnel have served as UN peacekeepers.¹⁴ As of 30 April 2014, Nepal had 4,612 personnel under the DPKO on 12 UN missions, of which 3,799 were army troops.¹⁵

Since 1958, the NA has contributed senior military personnel to various UN peacekeeping missions around the world. Major General Krishna Narayan Singh Thapa was the first Nepali senior army officer to be given the post of force commander in the UN Iraq-Kuwait Observation Mission (UNIKOM) in 1993. Lt. Gen. Victory Rana served as force commander in Cyprus (UNFICYP) in 1999. Lt. Gen. Balananda Sharma served as force commander in the Golan Heights during the Syrian – Israeli border conflict (UNDOF) from 2004 to 2007. Maj. Gen. Paban Jung Thapa served in Sudan (UNMIS) between 2008 and 2010, and Lt Gen C B Gurung served as deputy military advisor to UN Secretary General Kofi Annan from 2000 to 2002.

The NA has not held any commanding posts on UN missions since Maj. Gen. Paban Jung Thapa's appointment in 2008. Both the military leadership and the Nepal government have attempted to secure more top posts, with the then army chief Gen. Chhatra Man Singh Gurung lobbying the UN during his visit to New York in 2011¹⁶ and Prime Minister Baburam Bhattarai in his address to the 66th session of UN General Assembly in September 2011.¹⁷

¹⁴ Nepal Army website, "NA in [UN] Peace Support Operations", available at: http://www.nepalarmy.mil.np/na_un.php?, last accessed on 11 May 2013.

¹⁵ See "Contributions to U.N. peacekeeping operations", available at: http://www.un.org/en/peacekeeping/contributors/2014/april14_1.pdf, last accessed on 21 May 2014.

¹⁶ Kathmandu Post, "[UN] peacekeeping: Gen Gurung rues NA brass sidelining", 9 April 2011, available at: <http://www.ekantipur.com/the-kathmandu-post/2011/04/09/top-story/un-peacekeeping-gen-gurung-rues-na-brass-sidelining/220405.html>, last accessed on 11 May 2013.

¹⁷ See Address by Baburam Bhattarai, Prime Minister of Nepal, to the 66th session of the UN General Assembly, available at: <http://www.baburambhattarai.com/content.php?update=52>, last accessed on 17 May 2013.

It is clear that the UN is greatly appreciative of the professional performance of NA personnel serving on peacekeeping missions. When UN peacekeeping forces were awarded the Nobel Peace Prize in 1998, Ratna Gurung of the NA was personally selected as part of the Secretary General's official delegation to Oslo. In 2008, in his message to commemorate the 50th anniversary of Nepal's participation in peacekeeping operations, UN Secretary General Ban Ki Moon termed Nepali peacekeepers as a "shining example".¹⁸

From Nepal's position, the contribution of troops to UN peacekeeping missions is an integral part of its commitment to support efforts to maintain international peace and security. As a result of its participation, the NA has also undoubtedly benefitted professionally as a result of training in modern weapons, equipment and warfare.¹⁹

In addition to the positive impact it has on the image and recognition of Nepal in the international arena, the economic benefits for both the NA and individual soldiers are also key advantages. Participation in peacekeeping is a cherished dream for NA soldiers. The pay is lucrative and it provides an opportunity to work in foreign countries with foreign troops. It is a major source of income for the NA, which it uses to fund various welfare schemes including for the operation of a military hospital, college of medicine, college of nursing and other educational institutions for soldiers and their families.²⁰

¹⁸ Gorkhapatra, "Nepal firm to work with UN for peace", June 2008, available at http://www.gorkhapatra.org.np/gopa.detail.php?article_id=1706&cat_id=14.

¹⁹ NA Col. Asha Bahadur Tamang, "The Role of Nepal Army in the [UN] Peacekeeping Operations 1958-2009".

²⁰ In 1973 army personnel participating in peacekeeping operations were provided a monthly allowance of US\$ 500 per person. This allowance was steadily increased to US\$ 988 by 1991 and now stands at US\$ 1028 per person per month. From this wage, each soldier contributes 22% (US\$ 226.16) to the Welfare Fund. By 2012 the fund amounted to Rs21.13 billion (US\$1,257,328). Besides the money contributed by army personnel, the income made from provision of medical facilities to civilians, interest from banks and financial institutions, income from Birendra Military High School and income from various other sources go into this fund. See Kathmandu Post, "As Nepali peacekeepers' number fall, army turns to govt. for help", 14 September 2012, available at <http://www.ekantipur.com/the-kathmandu-post/2012/09/13/top-story/as-nepali-peacekeepers-number-falls-army-turns-to-govt-for-help/239580.html>.

The lack of transparency and accountability in the running of the Welfare Fund has been challenged, but this has met with considerable resistance from the NA. This was demonstrated by the way in which a petition filed in 2001 at the Supreme Court by Amar Bahadur Thapa Magar, president of the Nepal National Independent Ex-Servicemen's Council has been handled. Mr Thapa demanded transparency in the use of the Fund and sought the court's intervention to return the money deducted by the NA from all peacekeepers' salary and put into the Army Welfare Fund. During the hearings, it transpired that the financial records of the committees had not been audited for 22 years.²¹ After he was ordered to do so by the Supreme Court, the Auditor-General found several serious irregularities in the way the NA had been using the Fund and he reported as such to the Supreme Court on 30 December 2005. The written response from the Attorney General (on behalf of the government) revealed that the army did not keep any record of the income and expenditure while deploying troops to missions in East Timor and Yugoslavia. The report also revealed that there was no systematic accounting of the income generated through business ventures like gas stations and cafeterias for a time spanning over two decades. The court also directed the Ministry of Foreign Affairs and the Headquarters of the NA several times to furnish a copy of the agreement with the UN. On 23 August 2005, the Supreme Court issued a fresh directive to the concerned parties to furnish a copy of the agreement within 15 days or face contempt of court action. But the court failed to get a reply. On 21 November 2005, the Ministry finally submitted a copy of the said agreement before the court. It is significant that the NA never responded to the court and indeed that the Ministry had earlier told the SC that no pact on peacekeeping had been signed with the UN.²² The case remains pending in the SC.

Responsibility for the management of NA personnel involved in UN peacekeeping activities shifted from the Department of Military

²¹ Nepali Times, Issue No. 288, 3- 9 March 2006.

²² Asian Centre for Human Rights, "SAARC Human Rights Report 2006". Also available at http://www.achrweb.org/reports/saarcar2006/nepal.htm#_ftn46#_ftn46.

Operations to the Office of the Chief of Staff (CoS), with the establishment of the Peacekeeping Directorate in August 1984. The CoS is now responsible for all UN peacekeeping operations, as well as nature conservation, wildlife preservation and welfare schemes within the Army.

NEPAL ARMY'S SELECTION POLICIES

RECRUITMENT AND PROMOTION IN THE NEPAL ARMY

The NA executes recruitment of junior rank soldiers and officers as per the Army Act (2006) and the General Directives for Recruitment and Promotions, prepared in 2007 after consultations with the Public Service Commission (PSC). An NA recruitment board conducts recruitment of officers, junior rank soldiers and non-combatant employees. The entry point for officer level appointments is the rank of second lieutenant. Of the total vacant posts for second lieutenants, 70% are filled through open competition and 30% through internal promotions. Since 2008, after the fifth amendment of the Interim Constitution in 2008, 45% of junior ranks are reserved for “inclusive quotas”, i.e. for people from backgrounds that have traditionally been under-represented.²³

Either the Chairman of the PSC or a member of the Commission designated for this purpose by the Chairman heads the Board responsible for the recruitment of officers. An adjutant general who serves in the rank of a major general and a first class officer of the Ministry of Defense (MoD) are members while the head of the directorate of recruitment of the army is an ex-officio member.

²³ Of the total reserved seats, 32% are for indigenous groups, 28% for Madhesis, 20% for women, 15% for Dalits and 5% from the Far-and Mid-Western districts of Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla. The Fifth Amendment of the Interim Constitution, can be viewed here: <http://un.org.np/unmin-archive/downloads/keydocs/2008-07-15-Interim.Constitution.Fifth.Amendment.ENG.pdf>, last accessed on 11 May 2013.

The chief of the directorate of recruitment of the NA heads the Board responsible for the recruitment of private and non-combat personnel. An under-secretary of the PSC, a representative of the MoD and a second-class officer of the military services are also members.

The Army Act (2006) prohibits the recruitment of non-Nepali citizens, as well as individuals convicted of a criminal offence that shows his/her moral turpitude. Individuals disqualified from joining government services and individuals convicted of human rights violations are also excluded. In order to prove compliance the aspiring candidate must submit a certificate from a government officer in the rank of a section officer or above stating that he/she is not involved in human rights violations or any activities that shows moral turpitude.

Despite this requirement being an integral part of the recruitment process, a joint secretary who has certified a number of NA and NP applications has stated that he has done so without proper verification and simply at the requests of friends and relatives.²⁴ This worrying admission suggests that the verification of human rights records is not treated as seriously as it should be.

All candidates for the NA must also pass a physical fitness test, an IQ test, a detailed medical examination and a board interview as part of the recruitment process. Candidates applying for the post of officer must in addition pass various psychological tests. Individuals aspiring to join the NA should not be member of any political party; should not be married and cannot marry during their period of training. Applicants for junior ranks must have completed eighth grade and should be between 18 to 22 years. Non-commissioned officers, cleaners, hairdressers, etc. need general education and should be between 18 to 25 years. For officer positions, the NA has set an 18-21 years age criteria for individuals with intermediate degree (12th grade) and 18-24 years for individuals with bachelor's degree. Those promoted to officer level positions through internal competition should be below the age of 26.

²⁴ Interview with MoD official, April 2013.

Until recently, the NA system for promotion was based on seniority and training. This changed in January 2013, with the introduction of the new Army Service Regulations (2013), which changed the system to one based on performance and appraisal. Officers in the rank of major and lieutenant colonels are now classified into “excellent”, “very good” and “good” categories. Those with a score of 70% are classified as excellent and are given priority in promotion.²⁵

Soldiers against whom departmental action has been ordered (i.e. suspension, demotion, a halt on promotion, among others) are not eligible for promotion during the period they face punishment. Similarly, soldiers who are demoted or admonished will not be eligible for promotion for a year from the date of action taken against them.

The NA maintains that this new system is merit based and will be instrumental in the removal of incompetent officers from within the institution. The new system has however already been challenged by eight army officers who took their case to the SC in March 2013, arguing that it encourages unfair promotions. In response, the SC issued a stay order against those promotions on 1 April 2013. However, as the order came a day after the promotions that were being challenged was implemented, it has not been taken on board in these specific promotions by the NA.²⁶ The eight officers retired on 4 July 2013, while the case was still under consideration of the court.²⁷

²⁵ Out of the total of 100 total marks 10 are for seniority in the officers’ cadet, 17 for years spent in their current rank, 33 for work performance, 28 for training, 6 for service in remote/challenging areas, 3 for awards and 3 for the discretion of the promotion board. Those in the “excellent” category must fill 20% of the total vacant seats and will be entitled to fast track promotions irrespective of seniority. Sixty percent of vacant seats will be filled up from the ‘very good’ category and 20 percent from the “good” category.

²⁶ Kathmandu Post, “Govt approves fast track NA promotions”, 29 March 2013, available at http://www.ekantipur.com/the-kathmandu-post/2013/03/29/related_articles/govt-approves-fast-track-na-promotions/246980.html.

²⁷ Kantipur, “8 Army officers against ‘fast track’ promotions retire”, 5 July 2013, available at <http://www.ekantipur.com/2013/07/05/top-story/8-army-officers-against-fast-track-promotions-retire/374322.html>.

The Nepal government is directly responsible for promotion of all ranks from colonel to lieutenant general. The COAS is responsible for ranks from captain to lieutenant colonel; the adjutant general for the post of subedar and major; the division commander for promotion of warrant officers and respective unit chiefs for ranks from lance corporal to sergeant.²⁸ The new regulations do not allocate a decision-making role to the Ministry of Defence (MoD) in promotions.²⁹

SELECTION CRITERIA FOR UN PEACEKEEPERS

The NA in 2008 developed operating guidelines for the selection of peacekeepers called the Directives for Selection of Peacekeepers. These are reportedly under review, but to date no new Directive has been made public. The 2008 document is confidential, and was not available from the MoD when a request was made in November 2012. An NA general when asked about the confidentiality of the document maintained that it does not need to be made public because it covers policy regarding internal affairs of the institution, which is not a matter of public interest.³⁰ Despite this barrier, information gathered through many interviews does establish some facts about how NA personnel are selected for peacekeeping positions.

Seniority is clearly the main basis for the selection of NA personnel and units to be dispatched for peacekeeping operations. Any battalion that is sent on a peacekeeping mission must be at least five years old and should get its turn by rotation on the basis of seniority. The battalion makes up the main nucleus of the contingent, while the remaining soldiers in the contingent are selected individually from other departments, divisions, brigades, battalions, depots and factories. All military personnel who serve on UN peacekeeping missions must be physically fit and must

²⁸ Army Service Regulation 2013, published in the Nepal Gazette of 23 January 2013.

²⁹ Interview with MoD official, February 2013.

³⁰ Interview with NA brigadier general, November 2012.

pass a medical examination.³¹ Any personnel, who would retire during the course of the mission, are excluded.

Each individual soldier selected should have completed six years of service in the NA to be eligible for service on a peacekeeping mission. The selection process for these individuals is overseen by a selection board, which includes representatives of the directorate of peacekeeping operations, the military secretary department, the directorate of military operations and the directorate of recruitment. The Selection Board is formed under the chairmanship of the most senior officer and includes the head of operations, the senior most commissioned officer and a representative of other ranks.

The NA maintains that it accords top priority to soldiers who have met the six- year service criteria but have not been given an opportunity to serve on a UN peacekeeping mission. The commander of each of the units selected to fill the quota can also recommend a soldier with an excellent performance record for a second mission, after two years have passed since their first deployment. The final decision on the acceptance of individual personnel is made on the basis of the unanimous approval of the selection board. In case a soldier is found to have been selected in breach of the Directive for Selection of Peacekeepers (2008), the candidate is sent back to his unit and the quota provided to the unit is withdrawn. This decision rests with the directorate of peacekeeping.³²

The military secretary's department headed by a Brigadier General is responsible for the career development of officers within their peacekeeping roles, including their selection and deployment in staff

³¹ The Army conducts physical tests including two-mile battle order run, monkey crawl and fire man lift battle for the selected candidates. Only the candidates who pass those physical tests will be referred for medical test and those who fail will be sent back to their units.

³² Soldiers holding technical positions are eligible to go on UN missions after completing two years of service. A board headed by an officer from the logistics department is responsible for selecting candidates for the positions of drivers of heavy and light vehicles, armed personnel carriers (APCs) and multipurpose vehicles (MPVs) in the mission.

appointments and posts of military advisers. These positions are normally for a year. Personnel who fill these vacancies must undergo professional tests including language, computer and driving skills. More lucrative pay is given for these positions compared to troops mobilized in contingents, as the UN pays a mission substitute allowance to cover food and accommodation.³³

The NA maintains that discipline and behavior of soldiers will also be taken into account while selecting peacekeepers. According to the directorate of public relations for the NA, guidelines for the selection of peacekeepers state that those who are greedy, have cunning attitudes, serious disciplinary violations and drunkards are prevented from serving on peacekeeping missions.³⁴

The standard process is for UN DPKO to forward a request for peacekeepers to Nepal via Nepal's permanent representative in New York. This is communicated to the Ministry of Foreign Affairs (MoFA), which forwards the letter to the NA via the MoD. Then the NA headquarters conducts a feasibility study before deciding on the request. The NA then sends a letter for approval to the Cabinet through the MoD and the approval decision is sent back to Nepal's permanent representative. Troops are deployed only after the UN and the Government sign a memorandum of understanding.

The role of the Government in this process is very limited. For its part, the MoD provides consent to the names of peacekeepers nominated by the NA and helps them to acquire passports through the MoFA. Immediately after the deportation of Maj. Niranjana Basnet from Chad in 2009, the MoD developed a form that the NA headquarters must complete when nominating any candidate for deployment. The NA must

³³ The amount varies from country to country, for example a daily rate of US\$ 164 was paid for services in Congo, US\$136 in Sudan, US\$143 in Darfur, US\$150 in Haiti, US\$128 in Liberia, US\$86 in Lebanon and US\$ 99 in the UN Disengagement Observer Force (UNDOF) on the Israel-Syria borders. 5% of this sum is paid to the NA Welfare Fund on soldier's return to Nepal.

³⁴ Interview with and hand-outs regarding guidelines for selection of peacekeepers provided by Directorate of Public Relations of NA, August 2012.

complete the form and send it to the MoD. Apart from personal details including history of participation in UN peacekeeping operations, the form asks the NA to stipulate whether seniority or any other criteria was applied when the decision to grant the deployment was taken. The form also asks whether or not the recommended candidate faces any charges of human rights violations. Both the candidate and the head of the peacekeeping general directorate have to sign the form. (Requests for promotion, term extension and transfer of officers from the rank of lieutenant colonel or above must be forwarded to the Cabinet for approval by the MoD³⁵).

NEW ARMY SERVICE REGULATIONS (2013)

As stated, the Government introduced new Army Service Regulations (ASRs) in January 2013, establishing some new provisions regarding selection of peacekeeping contingents and commanders, staff officers and military observers, military advisors and floating appointments. These new rules are now the only guidelines for the selection of all new peacekeepers.³⁶ Many of the selection criteria remain unchanged; however new emphasis has been placed on the responsibility of the MoD for the development of selection criteria. The MoD will also now have greater powers to monitor and evaluate the selection process and give recommendations and instructions to the NA in this regard.³⁷ The ASRs bind the Army to prepare a shortlist of personnel to be deployed in the peacekeeping mission during the following fiscal year and forward it to the Ministry of Defence by mid-August every year.³⁸

³⁵ The format of the personal information form to be sent along with the promotion, transfers, term extension request is set out in an annex of the ASRs 2013, pages 80-81. These are available at: www.mod.gov.np, last accessed on 11 May 2013.

³⁶ Interview with MoD official, February 2013.

³⁷ See ASRs (2013), Article 51, page 22.

³⁸ See ASRs (2013), Article 48(3).

The Ministry of Defence officials think that this provision would provide room for greater oversight and discourage any practice of favoritism and nepotism.³⁹

The ASRs contain the following provisions:

a) Selection of contingents and commanders

- Any battalion to be included in a contingent must be at least five years old and should get its turn by rotation on the basis of seniority.
- The commander of the battalion to be deployed in the mission should have the experience of commanding a battalion, unit or a parent unit for at least a year.
- Seniority is the basis of selection of deputy commander and other officers.
- Non-commissioned officers would also be selected on the basis of seniority.
- All other ranks should have completed at least six years of service and would be selected on seniority basis.
- All candidates should be capable of conducting their roles in the context of the international environment.
- Individuals punished for human rights violations or declared unfit by their commanders would not be eligible for service on a UN mission.
- Candidates who are close to their retirement get priority.

³⁹ Interview with MoD official, February 2013.

- No soldier should serve on a second peacekeeping mission if there are candidates who have not received a single chance to serve in a mission.
- Individuals serving for a second time must have completed at least two years of service after their return from the previous UN mission.⁴⁰
- The MoD is to develop a more detailed selection procedure for participation in UN peacekeeping missions, which must stipulate the requirements that contingent commanders, contingent deputy commanders, officers, non-commissioned officers and other ranks should fulfill.

b) Selection of staff officers and military observers

- Officers will be selected based on seniority, from among those who have completed their staff college course and those who have not.
- Officers from other trades would be selected on the basis of seniority in their trades.
- Candidates should fulfill the qualifications defined in the UN standard norms and the terms of reference.
- Candidates should not have faced [internal army] punishment for human rights violations.
- Candidates who have been convicted by any court should have completed the punishment before being accepted on a mission.

⁴⁰ There would however be no restriction on selecting someone earlier than two years in special trades where there is manpower shortage.

- Candidates must be fluent in written and spoken English and be able to work in international environment.
- Candidates who are close to retirement would get priority.
- A committee at the NA headquarters is to be established for selecting staff officers and military observers. (The ASRs does not set out the composition of this committee.)
- Selection is based on the work performance, honesty, morality, faithfulness and contribution to the nation and the institution.

The MoD will finalize the nomination after monitoring whether the candidate fulfills the criteria defined in the procedure.

c) Military advisors and floating appointments:

- Candidates should have an undergraduate degree and should be fluent in written and spoken English.
- Candidates should have completed at least one year of service and should not have crossed more than four years of service in one particular rank.
- Candidates should not have received any punishment for human rights violations.
- Candidates should be able to execute duties demonstrating diplomatic skills and should be the senior-most among those who fulfill these norms.
- The NA will nominate a list of candidates for positions, which must be sent to the MoD for consent. The MoD will check whether the proposed candidate has met the set standards

before appointing him or her as military advisor and making nominations in the case of floating appointments (which are appointed by the UN itself). A MoD official confirmed that the ministry in almost all cases endorses nominations made by the Army.⁴¹

The ASRs categorically state that soldiers convicted for human rights and international humanitarian law violations will not be eligible for promotions. It also states that soldiers against whom an inquiry over any offence is ongoing before an army court of inquiry or who are being investigated or against whom a case has been filed before a committee headed by deputy attorney general under a special provision in Article 62 of the Army Act (2006) relating to offences of corruption, theft, robbery, torture and disappearance, would not be promoted until they will be proved innocent by a special court martial board headed by the judge of the appellate court which includes the secretary to the MoD and the head of the NA legal department.

PRE-DEPLOYMENT TRAINING

In 1986 the NA established an ad-hoc peacekeeping training camp, which was subsequently restructured in 2001 and renamed the Birendra Peace Operations Training Centre (BPOTC). The center is located at Panchkhal, Kavre district, 45 km east of Kathmandu. It is under the operational command of the 26th brigade, led by a colonel, who is responsible for providing training assistance to all peacekeepers, conducting evaluations and validations of peacekeeping training and for advising the directorate of peacekeeping operations and army headquarters on peacekeeping training affairs.

The training camp provides an orientation course for staff officers and military observers over a 15 days period and a pre-deployment training course for new peacekeeping contingents, which lasts for three

⁴¹ MoD official interview, July 2013

months and combines the nucleus battalion and troops from other units together. Pre-deployment training includes physical fitness training, weapons training, basic military skills and peacekeeping training, lane training,⁴² mission-specific training and command post exercises. The standard subjects of any generic training schedule also include human rights, child protection and prevention of sexual exploitation and gender equality in peacekeeping.⁴³ The training is imparted by trainers from the NA however sometimes representatives of the UN and the International Committee of the Red Cross (ICRC) provide lectures on issues including those relating to gender.⁴⁴

According to its website, it is the aim of the NA to develop the BPOTC into a “centre for excellence in peacekeeping affairs.”⁴⁵ Specialized training offered by the centre includes a UN military observers’ course, UN staff course, UN logistics officer course, UN civil military liaison course, UN peace support operations instructor course and UN liaison course. The training centre is also coordinating with the Global Peace Operations Initiative (GPOI) of the US Pacific Command and conducted multinational peacekeeping exercises in 2000 and again in 2013, when 875 army officers from 23 countries attended it.⁴⁶

The centre is organized into a headquarters, training division and administration and logistics division. As of 2012, it had provided 36 instructors to other schools of instructions abroad.⁴⁷ It has the capacity to conduct training to three battalions to be deployed on UN missions

⁴² Lane training covers checkpoint training, cordon and search, patrol, disarmament, demobilisation and reintegration, convoy operations and protection of distribution sites for humanitarian operations. Units are also trained on how to handle displaced civilians and refugees.

⁴³ NA Col. Asha Bahadur Tamang, “The Role of Nepal Army in the [UN] Peacekeeping Operations 1958-2009”.

⁴⁴ Interview with NA lieutenant colonel, March 2013.

⁴⁵ BPOTC, “Voice of Commandant”, available at <http://www.bpotc.mil.np/commandant.php>.

⁴⁶ Republica, “Harbiners of Peace” by Maj. Abhaya Chhetri, 8 April 2013, available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=52767.

⁴⁷ See: Birendra Peace Operations Training Centre, Pre-deployment Training, available at: <http://www.bpotc.mil.np/predeptraining.php>, last accessed on 11 May 2013.

at any one time. The NA plans to develop its capacity to train up to five battalions at a time in the future. Forces that have undergone training at the centre are kept in strategic reserve so that they can be mobilized in case of emergency.

ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS AND SELECTION OF PEACEKEEPERS

Government documents state that “soldiers involved in human rights and international humanitarian law violations” have been ineligible to serve on the UN peacekeeping missions since 15 May 2005.⁴⁸ In contrast to this assertion, the Directive for Selection of Peacekeepers (2008) only bars the deployment of soldiers convicted for human rights violations by the NA's military court. The ASRs now states that in order to be eligible for serving on a UN mission, soldiers must not have been punished for human rights violations; however it does not specify which authorities have the power to find a person guilty of such violations and exclude them accordingly.

According to the NA Human Rights Journal published in 2010, 169 military personnel were punished for human rights violations as of 1 January 2010. Among these 169 cases, 30 officers and 139 other ranks were convicted and 115 of were given more than one punishment. 116 soldiers were punished with prison sentences ranging from one month to seven years. 58 were discharged from service, 40 were demoted to a lower rank, 23 forfeited their grades, 29 forfeited promotion, 9 were issued warnings and 8 were ordered to pay compensation to the victims' family.⁴⁹

⁴⁸ Three Year Human Rights National Action Plan 2010-2013, Efforts of the Nepal Army for protection and promotion of human rights and international human rights law, page 84. Available in Nepali at: <http://www.opmcm.gov.np/np/resources/index.php?c=7>.

⁴⁹ Human Rights Journal, 2010, Human Rights Directorate NA. Interview with official at the Law and Human Rights Division of the Office of the Prime Minister and Council of Ministers, 15 April 2013.

The NA maintains that the majority of these cases were related to excessive use of force by soldiers during the Maoist insurgency.⁵⁰ Others include punishment for petty criminal activities like quarrelling with locals, breaching discipline and violating the human rights of other people to live in peace and tranquility.⁵¹ The NA has so far not publicized a detailed list of names of its personnel punished for human rights violations. The National Human Rights Commission (NHRC) has requested the details from the Government but is yet to receive them.⁵²

According to its own figures, the NA reports that it has punished 51 officers and 115 other ranks for human rights violations and breaches of discipline while on peacekeeping operation, with four repatriated from mission areas.⁵³ The NA maintains that most of the violations on missions are related to gender and sexual abuse, indiscipline during quarrels between two or more soldiers and careless driving resulting in accidents, among others.⁵⁴

According to the NA, the battalion conducts an investigation in the mission area itself when it receives complaints of abuses committed during peacekeeping. Upon return to the home country, the NA then forms a court of inquiry and if required can request the chief of army staff to form a court martial for further action. The investigation of the court of inquiry will recommend punishment and has the power to recommend whether the alleged soldier should be permanently disqualified from UN peacekeeping or not. When asked for a detailed breakdown on the nature of cases in which soldiers were punished for human rights violations at home and abroad, the NA did not make available the information. It also did not provide the details of soldiers

⁵⁰ Interview with NA officer of the Human Rights Directorate, April 2013.

⁵¹ Interview with NA officer, April 2013.

⁵² Interview with Gauri Pradhan, member of the NHRC, November 2012.

⁵³ A letter sent by the MoD to the Prime Minister's Office on 4 January 2010 states that 51 officers and 115 junior ranks were punished for violation of human rights and humanitarian laws committed while serving on UN missions and that four were repatriated.

⁵⁴ Interview with NA Directorate of Human Rights, April 2013.

who are barred from peacekeeping duties for their involvement in human rights violations.

Despite measures designed to prohibit the involvement of soldiers guilty of human rights violations from serving on UN peacekeeping missions, Nepal has a worrisome history of allowing military personnel responsible of such violations to participate in peacekeeping missions.

During the years of insurgency, the then RNA adopted a tacit policy of rewarding units and soldiers who successfully executed Maoists, with peacekeeping jobs. For example, the Bhairabnath Battalion is allegedly responsible for torture and disappearance of 49 suspected Maoists in 2003, but was still sent on peacekeeping duty to Burundi from 5 August 2004 to 19 February 2005.⁵⁵ The 850-member contingent was under the command of Lt. Col. Raju Basnet, who according to a report by the Office of United Nations High Commissioner for Human Rights (OHCHR) in 2006 played a key role in the Bhairabnath battalion operations, including the torture of detainees.⁵⁶

The RNA has also sent soldiers allegedly involved in the killing of unarmed Maoist activists at Doramba, Ramechhap district in August 2003, on peacekeeping duties. Army officials told Amnesty International that the delay in the court martial of soldiers allegedly involved in these

⁵⁵ The international community currently has no consistent policy on the vetting of military personnel, or on the granting of visas to military personnel who are sent abroad for training from Nepal. However, the US Embassy in Kathmandu and Washington both conduct vetting for security personnel nominated by the Nepali authorities for training in the US, in line with their own policies. Furthermore, in 2006 the US government terminated Captain Indibar Rana from US-based training due to concerns that he served at the Bhairabnath Battalion, Maharajgunj, Kathmandu during September–December 2003. See leaked diplomatic cables of the U.S. Embassy, Kathmandu by whistleblower website Wikileaks, available at: <http://wikileaks.org/cable/2006/06/06KATHMANDU1426.html>, last accessed on 11 May 2013.

⁵⁶ OHCHR-Nepal, “Report of investigation into arbitrary arrest, torture and disappearance at Maharajgunj army barracks, Kathmandu”, May 2006, available at: http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/Pages%20from%202006_05_26_OHCHR-Nepal.Report%20on%20Disappearances%20linked%20to%20Maharajgunj%20Barracks_Eng.pdf last accessed on 11 May 2013.

killings had been due to the suspects being on UN peacekeeping duties.⁵⁷ Eventually, one commanding major was sacked from service and given a two-year prison sentence, while all other soldiers were acquitted.

VETTING AS A PREVENTATIVE MEASURE

In the absence of effective accountability and Nepal's failure to conduct effective investigations into reports of serious human rights violations by military personnel, national non-governmental organizations (NGOs) and international non-governmental organizations (INGOs) turned to the international domain to find other ways to prevent military personnel guilty of human rights abuses from operating on UN peacekeeping missions. It is in this context that the use of human rights vetting was first mooted.

In the immediate aftermath of the royal coup of February 2005, Amnesty International wrote to UN Secretary-General Kofi Annan expressing concern that it had received reports that Nepali soldiers involved in the killing of Maoists had been rewarded with peacekeeping duties by the Nepali state. It stated that such a policy would not only fuel the extremely high level of extrajudicial killings of suspected Maoists committed by the army, but could also facilitate the "export" of human rights violations. Amnesty International said that insisting on thorough vetting by the UN would not only help protect the UN from attacks on its peacekeeping troops' record but would also send a powerful signal to the NA that the international community will not tolerate the gross and persistent human rights abuses committed by it.⁵⁸

The human rights standards of UN peacekeepers from Nepal were also raised as a concern by the then High Commissioner for Human Rights,

⁵⁷ Amnesty International, "Nepal Military Aid Contributing to Grave Human Rights Violations"; April, 2005, available at: <http://www.amnesty.org/en/library/asset/ASA31/047/2005/en/a866bcb9-d4e4-11dd-8a23-d58a49c0d652/asa310472005en.html>, last accessed on 11 May 2013.

⁵⁸ Amnesty International, "Nepal: A decade of suffering and abuse", 10 February 2006, available at <http://www.amnesty.org/en/library/asset/ASA31/009/2006/ar/fae1b374-fa0c-11dd-b1b0-c961f7df9c35/asa310092006en.pdf>.

Louise Arbour, and her representative in Nepal, Ian Martin, in 2005. They made public statements declaring their intention to recommend to the UN DPKO that they ban any units involved in serious human rights violations from peacekeeping missions. Using the threat of exclusion from UN peacekeeping missions as leverage without doubt achieved some success, with reports of enforced disappearances and civilians deaths both decreasing considerably during this period.⁵⁹

The end of the armed conflict did not bring an end to the culture of impunity that continues to persist in Nepal even today. Security agencies and the Unified Communist Party of Nepal (Maoist) (UCPN-M, the new name of the main party representing the former Maoist combatants) continue to insist on impunity for perpetrators of human rights violations within their ranks. Moreover, it is clear that military personnel allegedly involved in conflict-era human rights violations continue to be entrusted with UN peacekeeping roles.

EMBLEMATIC CASE 1: THE MURDER OF MAINA SUNUWAR

Major Niranjan Basnet was one of four soldiers charged in absentia by Kavre District Court, with the murder of 15-year-old Maina Sunuwar, but was nevertheless sent on a UN peacekeeping mission to Chad in 2009.

Maina Sunuwar was arrested by a group of soldiers in February 2004, although the NA initially denied her arrest. After she died in custody her body was buried illegally in the grounds of the Panchkal Army Camp. It was later exhumed from a shallow grave at the outskirts of this camp.

After a long legal battle, on 13 September 2009, Kavre District Court ordered the NA headquarters to immediately proceed with the automatic suspension of Niranjan Basnet (the only one of the four accused still serving at that stage and who had since been promoted from captain

⁵⁹ Commission on Human Rights, OHCHR-Nepal report, E/CN.4/2006/107, para 99.

to major) and for the army headquarters to submit all relevant files to the court. The NA, ignoring court orders, instead sent Niranjan Basnet abroad on UN peacekeeping duties. He was eventually repatriated in December 2009, when it became publically known that he had indeed been sent on a UN mission.

Despite the public awareness surrounding his return, the NA took him under its control and refused to hand him over to the police, despite orders from the then Prime Minister Madhav Kumar Nepal to do so. On 13 January 2010, UN Secretary-General Ban Ki-moon urged the NA to comply urgently with the court order and suspend Major Basnet. The NHRC also urged the NA to hand him over. To date, Basnet remains under NA protection and has not been handed over to the civilian authorities. The NA defended Basnet alleging that he had been proved innocent by its internal board of inquiry under the chairmanship of Major Gen. Kiran Shamsher Thapa in 2005 and that therefore he was not charged and tried before the court martial. It is unclear on what basis the internal board of inquiry decided not to recommend him for prosecution.

In regards to the other three alleged perpetrators, the court martial chose not to charge Colonel Bobby Khatri and Captains Sunil Adhikari and Amit Pun (the son of a senior RNA general) with torture, or murder. Instead they were convicted of failing to follow proper interrogation procedure and for disposing of the body. The three officers were sentenced to six months' imprisonment and given temporary suspensions of their promotions.

The court martial ordered Col. Khatri to pay the equivalent of US\$697 as compensation to the family of the victim and the captains to pay the equivalent of US\$348 each. Captains Pun and Adhikari subsequently left their jobs in the NA after completing their sentences and are understood to have left the country. An Army Headquarters proposal to extend the term of Col. Khatri in the post of colonel was turned down by the MoD in 2009, forcing him to retire from military service.

Despite the overwhelming amount of evidence against Major Basnet, senior military officials of the NA continue to deny the truth, instead accusing NGOs and human rights groups of wanting to make money by tarnishing the reputation of the military. Responding to pressure over the handover of Major Basnet to a civilian court in 2009, the then head of the legal department of the NA Kumar Sharma had said, “Controversy over Basnet is a falsity. It is a game to make money in pounds and dollars.”⁶⁰

EMBLEMATIC CASE 2: COLONEL KUMAR LAMA

It became clear in early 2013 that Nepal had not improved its human rights vetting practices, when Colonel Kumar Lama was arrested in the UK on 3 January 2013 under universal jurisdiction legislation for his alleged involvement in torture at the Gorusinghe barracks in Kapilvastu in 2005. Despite the fact that Kapilvastu District Court found that Lama was involved in illegally detaining and torturing an alleged Maoist supporter and recommended departmental action against him in November 2007, Kumar Lama was still serving as an expert on a UN mission in South Sudan when he was arrested while on vacation from his duties at his family home in the UK.

The MoD has claimed that action was taken against Kumar Lama and that his promotion was delayed for a year after the District Court’s verdict.⁶¹ For their part, the UN DPKO has stated that the onus is on the member state contributing personnel to ensure that these experts have no relevant convictions, judicial or other disciplinary procedures pending, or any pending allegations of serious human rights violations.

⁶⁰ Nagarik Daily, “Army forms court of inquiry on Basnet”, 21 December 2009. The court of inquiry in July 2010 concluded that Basnet was innocent and he was repatriated by the UN against all international norms. See also Republica, “Army gives Basnet clean cheat, claims [UN] Violated Norms”, 14 July 2010, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=20995, last accessed on 21 May 2013.

⁶¹ Private interview and Kathmandu Post, “Govt fumes at NA Colonel’s [U.K.] arrest”, 5 January 2013, available at: <http://ekantipur.com/2013/01/05/related-article/govt-fumes-at-na-colonels-uk-arrest/365153.html>, last accessed on 21 May 2013.

DPKO Spokesman Kieran Dwyer was quoted as saying that the UN would follow up on this matter with the government of Nepal.⁶² In late June 2013, Kumar Lama pleaded not guilty to the charges brought against him. As of mid-2014, he remains in the UK where he is released on bail awaiting trial.

POLICIES ON SEXUAL EXPLOITATION AND ABUSE

Although other serious human rights violations committed during the Nepal conflict period have been extensively investigated and reported, the documentation of sexual violence remains scarce. This does not however indicate that sexual violence was not committed. Rather, it is a reflection of the reality in Nepal; that sexual violence remains a taboo subject and is rarely reported.

Positive steps taken by the NA include the incorporation of UN Security Council resolutions 1325 and 1820 into its human rights training, both of which emphasize the impact of war and conflict on women and girls and the important role they play in building sustainable peace and security.⁶³ The MoD has also signed a Memorandum of Understanding (MoU) with the UN Development Fund for Women (UNIFEM) in June 2010, promoting a gender responsive security sector, gender equality and the two aforementioned UN Security Council Resolutions. A white ribbon campaign has been conducted at the NA headquarters to create awareness on sexual violence. The NA says that it is educating troops to prevent sexual harassment and abuse and that it has imposed legal sanctions on perpetrators of sexual crimes; however no further information on any actions that have been taken was available when requested from NA headquarters.

⁶² Kathmandu Post, “[UN] to question Nepal peacekeepers’ vetting basis”, 6 January 2013, available at: <http://ekantipur.com/2013/01/06/related-article/un-to-question-nepal-peacekeepers-vetting-basis/365186.html>, last accessed on 21 May 2013.

⁶³ Available at: <http://www.un.org/en/peacekeeping/issues/women/wps.shtml> last accessed 28 June 2013.

In April 2012, NA Colonel Raju Nepali was accused by locals of the sexual harassment of a girl in Nepalgunj.⁶⁴ Col. Raju Nepali in 2003 was the commander of the RNA's Kali Prasad Battalion in Beni Barracks and served as the head of the RNA's Human Rights Unit when he was lieutenant colonel. The NA initially defended him; however following protests it announced the formation of a court of inquiry to investigate the matter. The three-member inquiry constituted under Brig Gen Raj Rana started its work on 20 April 2012, but its report has not been publicized.⁶⁵ According to an army officer who wishes to remain anonymous, Col. Nepali left his job shortly after the beginning of the investigation, after the NA leadership demanded his resignation.

The NA states that it maintains a written record of all cases of sexual harassment crimes and has barred perpetrators from participating in UN peacekeeping missions. The NA has not publicized the statistics or names but maintains that soldiers convicted of gender-based violence have faced actions including suspension, the withholding of promotion and grades, demotion and forced retirement.⁶⁶

The NA has introduced a number of policies to ensure gender equality, including a directive on gender conduct and a women military directive.⁶⁷ It also has mechanisms in place at its barracks to hear complaints on sexual abuse and exploitation by soldiers. Furthermore, the human rights directorate has put in place a mechanism under which complaints can be directly registered at the NA headquarters. An army officer said

⁶⁴ Republica, "Colonel Raju Nepali threatens journo over girls incident", 18 April 2012, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=34036, last accessed on 11 May 2013, and eKantipur.com, "Colonel, hotelier trade charge of brutal attack", 19 April 2012, available at: <http://www.ekantipur.com/2012/04/19/top-story/colonel-hotelier-trade-charge-of-brutal-attack/352623.html>, last accessed on 11 May 2013.

⁶⁵ NA Directorate of Public Relations, "A court on inquiry board formed", 20 April 2012, available at: <http://nepalarmy.mil.np/view-news.php?newsid=267&type=press&lang=nep&year=2012>, last accessed on 11 May 2013.

⁶⁶ Interview with Suresh Raj Sharma, NA spokesperson, January 2013.

⁶⁷ Republica, "Nepal Army implements directives on gender conduct", 3 January 2014, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=67331, last accessed on 3 February 2014.

that complaints of sexual abuse have declined as a result and that those that are registered relate to abuses committed by soldiers when they are on home leave. The officer also stated that there is less awareness among junior ranks regarding sexual exploitation and abuse.⁶⁸

EXISTING PRACTICES AND PROBLEMS WITH IMPLEMENTATION

1. The need for more Government intervention

The Government's role in the management of Nepal's peacekeeping obligations remains limited to the formal approval of troop provisions. Successive governments formed since the Comprehensive Peace Agreement (2006) have also failed to play their part in helping to bring alleged perpetrators of human rights abuses to justice. For example, Maoist leader Balkrishna Dhungel,⁶⁹ who faces life imprisonment and Agni Sapkota⁷⁰ who faces an arrest warrant from Kavre district court are both currently enjoying their freedoms.

The Government is also not responsible for the purchase or provision of logistics required for UN peacekeeping operations. Instead the NA procures all equipment, such as weapons and armored personnel carriers (APCs) using money from its welfare fund, the costs of which are reimbursed by the UN, directly back to the NA. In May 2011, a task-force headed by a joint secretary to the Prime Minister's Office Sharad Chandra Poudel reportedly urged the government to expand its role by financing the purchase of logistics for peacekeeping missions; however the panel's report is neither published nor implemented.

⁶⁸ Interview with NA officer, April 2012.

⁶⁹ The SC sentenced Balkrishna Dhungel, the former Maoist CA member for the conflict era killing of the Okhaldunga based businessman Ujjan Kumar Shrestha. Details on the case are available at: <http://www.advocacyforum.org/fir/2011/10/ujjan-kumar-shrestha.php>, last accessed on 11 May 2013.

⁷⁰ Agni Sapkota is the spokesperson of the UCPN-M and faces an arrest warrant over murder of Arjun Bahadur Lama during the conflict. Details of this case are available at: <http://www.advocacyforum.org/emblematic-cases/2011/01/arjun-bahadur-lama.php>, last accessed on 11 May 2013.

Despite the measures recently introduced such as the filling out of a form for each candidate (see above), it is questionable whether the existing system is effective in preventing human rights violators from being appointed or promoted within the NA or into peacekeeping roles. For example, in Colonel Raju Basnet's case, the request for promotion to the rank of a brigadier general, which was forwarded to the MoD included a form that declared that he had no allegations of human rights violations against him.⁷¹ The Maoist-led government put the promotion request of Col. Basnet on hold for four months, before endorsing it on 4 October 2012. The Government supported the NA's position, saying that the decision was "in the spirit of the ongoing peace process" and that the Truth and Reconciliation Commission (TRC) would look into any allegations of human rights violations.⁷²

The MoD has no database of personal information for all NA personnel. Instead, the ASRs place an obligation on the NA to send the MoD biographical data on all officers with the rank of colonel and above during any process of promotion, term extension or transfer. There is however a shortage of manpower to verify the details furnished by the NA headquarters.

The MoD has a separate department headed by a Joint Secretary to look after human rights and the enforcement of court verdicts regarding the NA. The human rights section is responsible for promoting human rights, facilitating the implementation of the recommendations of the NHRC and maintaining an archive of human rights violations. The legal section is responsible for providing legal recommendations to the MoD, furnishing written replies to the courts and implementing verdicts. Despite this mandate, the officials at the department are reluctant to make any interventions regarding abuses committed by the NA during

⁷¹ Interview with MoD official, November 2012.

⁷² Government spokesperson and Minister for Information and Communication Raj Kishore Yadav said Basnet was promoted after concluding that just a single person who fought on behalf of the state should not be victimized. Kathmandu Post, "After all the hue and cry, Basnet gets a promotion"; 4 October 2010, available at: <http://www.ekantipur.com/the-kathmandu-post/2012/10/04/top-story/after-all-the-hue-and-cry-basnet-gets-a-promotion/240378.html>, last accessed on 11 May 2013.

the armed conflict period. An officer working for the department also suggested that recommendations of the NHRC could not be trusted completely because the truth about human rights violations during the conflict era is yet to be established.⁷³

The ASRs provide that the MoD will draft a new policy on the selection of peacekeepers from the NA.⁷⁴ According to an official, though the rules stipulate that the MoD will formulate it, the draft of the policy would be prepared by the NA and would be forwarded to the MoD for approval.⁷⁵ The ASRs pledge transparency in selection by submitting a shortlist of personnel to be deployed as peacekeepers every year to the government, the implementation of which is yet to be assessed.

2. Favoritism persists

In comparison to the time of the King's rule when the palace made regular “requests”, the selection of peacekeepers in the NA is now far fairer. There is however, still undoubtedly manipulation and maneuvering. Politicians and senior bureaucrats still send lists with names to the NA, though the latter appears to have largely resisted this pressure.⁷⁶

In 2011, the annual report of the Parliamentary State Affairs Committee noted that the committee had heard grievances regarding discrimination in the selection of peacekeepers.⁷⁷ Formal procedure dictates that each of the lieutenant generals, major generals and brigadier generals get the chance to nominate one candidate for a peacekeeping mission every year. The CoAS also has leverage to recommend a number of officials. Mostly, candidates with the “best performance” are put forward this way.

⁷³ Interview with MoD official, April 2013.

⁷⁴ ASRs, page 21.

⁷⁵ Interview with MoD official, February 2013.

⁷⁶ In an interview on 4 November 2001, an NA General told of being given names of Madhesi soldiers to be sent on peacekeeping, by MoD personnel; however he declined to accept the request saying that the selection process has its own norms.

⁷⁷ State Affairs Committee, Parliament, annual report 2011, page 20.

Soldiers in technical jobs including drivers, engineers, doctors, nurses get more frequent opportunities to serve on peacekeeping missions as their numbers are less and there is a need for such specialized manpower in every mission. This means that some technical personnel are able to use their connections and positions to secure as many as four or five peacekeeping missions during their service.⁷⁸

The department of the military secretary, which selects officers, is also often criticized for influencing the selection process. For example, the variation in the mission subsistence allowance for each mission country means that the seniority hierarchy is sometimes adjusted to ensure that certain personnel get the better positions on the best-paid missions. As vacancies keep arising, there is little protest against this from contending candidates. For their part, the MoD and the parliamentary state affairs committee maintain that they hear very few complaints, and rarely receive written ones, from military personnel regarding dissatisfaction on the selection process. The strict chain of command in the institution could be one of the reasons for the silence.⁷⁹

3. Lack of transparency

The NA does not maintain transparency regarding the policy documents relating to peacekeeping operations. It also does not provide names of perpetrators convicted for human rights violations or against whom disciplinary action was taken. The action plan for democratization of the NA, prepared by the then government in 2010, stressed the need to enhance transparency and increase accountability within the system. It envisaged the development of a work procedure, policy and standards to bring uniformity in work, effectiveness and transparency of the institution including career development and nomination for peacekeeping. The plan also committed to release the records of hearings regarding incidents of human rights violations/complaints and

⁷⁸ Interview with MoD official, September 2012.

⁷⁹ Interview with senior bureaucrat, July 2012.

findings of independent inquiries and decisions, though the plan was never formally approved by the parliament.

4. Varying commitments towards human rights

In 2009, then CoAS Gen. Chhatra Man Singh Gurung announced that the NA would adopt a zero tolerance on human rights violations. In contrast, the first expression of commitment to human rights by the current commander, Gaurab Shamsher Rana, came on the occasion of the International Human Rights Day on 9 December 2012; however he had made no reference to this commitment in his policy address to the NA rank and file after assuming the post of army chief on 5 September 2012.

The NHRC in its annual report published in 2012 states that the NA has refused to share important information with the NHRC. This has been justified on the basis that information on the mobilization, operational order, briefings and information about commanders is provided only to required institutions and officials. The NHRC called this response by the NA “an irresponsible act” and reminded the authorities about the commission’s power to publicize the names of those who refuse to cooperate with its investigations. The NHRC has also asked the Government to maintain records of the then head of the Human Rights Directorate of the NA and the officers who refused to cooperate with its investigations.⁸⁰

5. The need to formulate vetting laws

On 12 August 2012 the SC ordered the government to formulate appropriate vetting laws regulating the promotion and transfer of Government officials including those from the security forces. A joint

⁸⁰ NHRC annual report submitted to President Ram Baran Yadav on 7 December 2012, available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%202068-69-Nep.pdf, last accessed on 11 May 2013.

bench of Justices Kalyan Shrestha and Tarka Raj Bhatta further directed the Government to follow Article 126(5) of the Interim Constitution, which expressly provides for consultation with the PSC in matters of promotion and other issues regarding government officials. In response, the NHRC Spokesman Gauri Pradhan said the court's ruling was a positive step towards ending impunity.⁸¹

The development of the ASRs and the drafting of new Directives by the MoD are encouraging steps. It is hoped that this will result in more transparency and accountability in the selection of peacekeepers from the NA.

⁸¹ Interview with Gauri Pradhan, November 2012.

CHAPTER 2

VETTING IN THE NEPAL POLICE

HISTORY OF NEPAL POLICE

The history of the Nepal Police (NP) dates back to the Rana regime of the 19th Century, when Prime Minister Janga Bahadur Rana deployed 69 units in nine regions to guard rural areas.⁸² After the collapse of the Rana regime in 1951, the “freedom fighters” of the first democratic movement were integrated in the police force.⁸³

The Police Act (1955) places all personnel at district level under the authority of the Chief District Officer (CDO)⁸⁴ and defines the roles and responsibilities of all personnel. Accordingly, police can enforce orders and execute warrants, gather information on criminal activities, arrest and detain persons who are suspected of criminal activity when there are sufficient reasons to do so, prosecute alleged criminals in order to uphold the law. They should also provide assistance to victims of crime, as well as people with disabilities, addicts and people with mental illnesses, provide for the needs of persons in detention, assist the general public and demonstrate a sense of respect and decency while dealing

⁸² See Nepal Police, “Police History”, available at: <http://www.nepalpolice.gov.np/police-history.html>, last accessed on 30 January 2013.

⁸³ Nepali Congress Background and Important Landmarks, available at: <http://www.nepalicongress.org/index.php?linkId=2>, last accessed on 28 January 2013.

⁸⁴ Police Act (1955), Chapter 2, Section 8.

with women and children.⁸⁵ It also authorizes the NP to arrest anyone without obtaining a warrant under special circumstances,⁸⁶ maintain traffic and manage public assemblies and gatherings.⁸⁷

During the initial phase of the armed conflict, the Government relied heavily on the NP to restore order. As a consequence, NP personnel were amongst the first and biggest casualties of the war, as police posts were attacked as symbols of government authority in areas where the Maoists sought control.⁸⁸ In the face of these hostilities, the under-equipped police force gradually withdrew from areas of Maoist influence, leaving just under 600 out of nearly 2,000 police posts functioning by the time the conflict ended in November 2006.⁸⁹

The NP was responsible for serious human rights violations during the conflict. In the early phase, these included rape and enforced disappearances. For instance, during Operation Romeo in Rolpa district in 2006, gross human rights violations were reported.⁹⁰ Once the police was brought under the unified command of the army, it was jointly responsible for thousands of cases of arbitrary arrest and detention, torture, enforced disappearances and extrajudicial executions. Furthermore, during the Jana Andolan, police personnel were responsible for excessive use of force and beatings during demonstrations. The systematic and widespread use of torture by police remains a major concern, as demonstrated by the findings of the Committee against Torture in 2012.⁹¹

⁸⁵ Police Act (1955), Chapter 3, Section 15 (a-m).

⁸⁶ Police Act (1955), Chapter 3, Section 17 (a-g).

⁸⁷ Police Act (1955), Chapter 3, Section 17-19.

⁸⁸ See OHCHR, "Nepal Conflict Report", October 2012, page 15, available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf, last accessed 30 January 2013.

⁸⁹ Saferworld, "Policing in Nepal a collection of essays", available at: <http://www.saferworld.org.uk/downloads/pubdocs/Policing%20in%20Nepal%20-%20essays%20English.pdf>, last accessed on 30 January 2013.

⁹⁰ Human Rights Watch, 'Between a Rock and a Hard Place. Civilians Struggle to Survive in Nepal's Civil War', October 2004, p. 10, available at www.hrw.org/reports/2004/nepal1004/.

⁹¹ Committee against Torture, 'Report on Nepal adopted by the Committee against Torture under article 20 and comments and observations by the State Party, October 2012,

The NP today falls under the jurisdiction of the Ministry of Home Affairs.⁹² It is headed by an Inspector General of Police (IGP) and has regional and zonal offices. The administrative department, operations department, central investigation bureau, technical assistance bureau, national police academy, human resources department, metropolitan police commissioner's office and police hospital are each headed by an Assistant Inspector General (AIG).⁹³

The current budgeted strength of the NP is 67,246 of which 58,802 were filled by August 2013.⁹⁴ In 2012, it had 4,123 women, which is equal to almost 6%.⁹⁵ In April 2014, there were four women Senior Superintendents of Police (SSP), three women Superintendent of Police (SP), 14 women Deputy Superintendent of Police (DSP), 46 women inspectors and 157 women sub inspectors.⁹⁶ In 2012, The Nepal Government created 1,041 new vacancies with the aim to recruit more women police to deploy specifically to address crimes related to women and violence against women.

HISTORY OF THE NEPAL POLICE'S INVOLVEMENT IN UN PEACEKEEPING

The introduction of multi-party democracy in 1990 played a key role in opening up avenues for the NP to participate in UN peacekeeping

available at <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>.

⁹² The jurisdiction of the Ministry of Home Affairs has been defined by Government of Nepal (Allocation of Functions) Rules, (1996).

⁹³ See Nepal Police, Departments, available at: <http://www.nepalpolice.gov.np/departments.html>, last accessed on 30 January 2013.

⁹⁴ See 'Annex 1, Positions of Nepal' Nepal Police HQ, August, 2013. See also, NP Organization Structure, available at: <http://www.nepalpolice.gov.np/organization-structure.html>, last accessed on 30 January 2013.

⁹⁵ Republica, "Gov't embarks on recruiting 1.035 more women police", 7 August 2012, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=39301, last accessed on 30 January 2013.

⁹⁶ Current status of women police, available at: <http://www.nepalpolice.gov.np/women-children-directorate.html>, last accessed on 23 May 2014.

activities.⁹⁷ The first UN deployment of NP personnel was to the Former Yugoslavia in 1992. Since then, Nepal has contributed more than 2,500 police officers to 21 UN missions.⁹⁸ Bangladesh and Nepal were the first countries to deploy Formed Police Units (FPUs)⁹⁹ to the African Union-UN Mission Hybrid Operation in Darfur (UNAMID), in 2007 and 2008.¹⁰⁰

Nepal is now the fifth largest police contributor to the UN DPKO with 716 police personnel working for various missions in December 2012. It held 10th position in the ranking of top ten female contributors with 32 women police serving as peacekeepers.¹⁰¹ It currently contributes two FPUs to the UN Stabilization Mission in Haiti (MINUSTAH) and UNAMID and contributes individual personnel to the United Nations Police (UNPOL).

The NP image was badly tarnished in the wake of a multimillion-dollar scandal regarding the purchase of logistics for its police personnel in Sudan in 2008. The NP had invested approximately Nepali Rs. 300 million (US \$4 million) from its welfare fund on eight armed personnel carriers and other hardware for the NP contingent in Darfur; however it only received reimbursement of Nepali Rs. 172 million (US\$ 1.98

⁹⁷ According to an interview with an DIG of the NP in December 2012 both the Panchayat regime and the RNA had previously lobbied the King to prohibit the police force from joining UN missions.

⁹⁸ Interview with Dan Bahadur Karki, DSP, UN Division, Police Headquarters, Naxal, December 2012.

⁹⁹ A FPU is defined as cohesive mobile police unit, providing support to UN operations and ensuring the safety and security of UN personnel and missions, primarily in public order management. It consists of a team of 140 police officers, which are deployed as a group, who undertake crowd control, protect UN staff and material, and escort UN personnel when they must visit insecure regions of a mission area. UNPOL Formed Police Units, available at: <http://www.un.org/en/peacekeeping/sites/police/units.shtml>, last accessed on 28 May 2014.

¹⁰⁰ UN Police Magazine, July 2009, 3rd Edition, DPKO, available at: http://www.un.org/en/peacekeeping/publications/unpolmag/unpolmag_03.pdf, last accessed on 28 Jan 2013.

¹⁰¹ UN Police Magazine, 10th Edition, UNDPKO, January 2013, available at: http://www.un.org/en/peacekeeping/publications/unpolmag/unpolmag_10.pdf, last accessed on 1 February 2013.

million) after the UN officially deemed the vehicles unsafe and failing to meet UN specifications.¹⁰²

The scandal was first reported by Kathmandu-based newspapers and a formal investigation was launched by a parliamentary committee on 2 September 2009.¹⁰³ The parliamentary probe concluded that over U.S. \$8.44 million was embezzled during the purchase of logistics including substandard APCs. It obtained names of persons directly involved in the deal and instructed the government to take legal action against the officials for misappropriations. The report was referred to the Commission for the Investigation of Abuse of Authority (CIAA)¹⁰⁴ and a case was filed against 34 police officers and two suppliers on charges of embezzling of around Nepali Rs. 290 million (US\$ 3.34 million) on 7 June 2011.

On 13 February 2012, the court convicted three former police chiefs: Om Bikram Rana, Hem Bahadur Gurung, and Ramesh Chand Thakuri and two suppliers, Michael Rider, director of the London-based Assured Risks and his local agent Shambhu Bharati. It imposed a fine of Nepali Rs. 560 million (US\$ 6.45million) and two year imprisonment to Rider for supplying obsolete APCs and a fine of Nepali Rs. 142 million (US\$ 1.63 million) and two years imprisonment to Bharati. The court also set a fine of Rs 170 million (US \$ 1.95 million) on former IGP Rana, Nepali Rs. 64.8 million (US\$ 0.74 million) on former IGP Gurung and Rs. 48.54 million (US\$ 0.55 million) on Thakuri and sentenced them to two

¹⁰² See Nita Bhalla, "Nepal vows to punish the corrupt in U.N. defence deal", available at: <http://www.trust.org/trustlaw/news/nepal-vows-to-punish-the-corrupt-in-un-defence-deal/>, last accessed on 31 January 2013. Also see 'Nepal police charged with embezzling funds for [UN] vehicles', available at: <http://www.trust.org/trustlaw/news/nepal-police-charged-with-embezzling-funds-for-un-vehicles/>, last accessed on 1 February 2013.

¹⁰³ The investigation report of the Nepal FPU (Sudan) was endorsed by the State Affairs Committee of the Parliament in September 2010.

¹⁰⁴ The CIAA is a constitutional body created to tackle corruption with the power to investigate cases against any persons holding public office and their associates who are alleged to be involved in the abuse of authority by way of corruption and/or improper conduct. See CIAA, Introduction, available at: <http://www.ciaa.gov.np/>, last accessed on 1 February 2013.

years in jail.¹⁰⁵ This scandal represents a serious blot on the reputation of the NP and brought disgrace to the country.¹⁰⁶ The convicted police officers have appealed to the SC against the verdict of the special court.

NEPAL POLICE'S SELECTION POLICY

RECRUITMENT POLICY IN THE NEPAL POLICE

The Nepal Police Rules (1992) guide the process of recruitment and promotion for the NP. Constables, assistant sub-inspectors and inspectors are appointed through an open recruitment process, while all other ranks are filled through promotion. Since 2007, 45% of the posts filled by open competition are set aside for competition between the following groups: women (20%), Adiwasi/Janjati (32%), Madhesi (28%), Dalit (15%) and Other (5%).¹⁰⁷ There are also strict age limits for aspiring NP candidates.¹⁰⁸ The NP requires any aspirants to not have been convicted of a criminal offense involving moral turpitude, not having been involved in politics and not having obtained membership of an organization with a destructive objective.

According to a publication by the NGO Saferworld, corruption in the police starts from the very first day an individual enters into the force as a trainee, with recruitment officials demanding substantial bribes from candidates before they will allow them to pass their examination to enter the police force. Estimated bribes for the post of assistant sub-inspector are said to range from Nepali Rs. 300,000 to 500,000 (approximately

¹⁰⁵ Republica, "3 ex-police chiefs get 2 yrs in jail, 31 officers cleared", 14 February 2012, available at http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=41988.

¹⁰⁶ Kathmandu Post, "Interview with Nepal Police Chief Kuber Singh Rana" 14 October 2012, available at: <http://www.ekantipur.com/the-kathmandu-post/2012/10/14/oped/monday-interview/240790.html>, last accessed on 21 May 2013.

¹⁰⁷ Selected from the following districts Accham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla.

¹⁰⁸ A candidate aspiring for the post of inspector must be between 20 years and 25 years of age and have a bachelor's degree. Candidates aspiring for the post of sub inspector must be between 18 and 24 and for the post of constables between 18 and 23.

US\$ 4,600 to 7,700), and Nepali Rs. 500,000 to 700,000 (approximately US\$ 7,700 to 10,800) for the post of Inspector.¹⁰⁹ Since then, a survey carried out in 2010 observes that three-fifth of NP personnel reported witnessing instances of nepotism, favoritism and corruption within the institution.¹¹⁰ The CIAA confirms that it receives dozens of complaints during any new recruitment in the NP, alleging corruption in the selection process.¹¹¹

Between 2008 and 2012, the state affairs committee of Parliament repeatedly urged the Government to ensure that decisions about recruitment, promotion and transfers be made on a free and fair basis and without political motive. In November 2012, the MoHA introduced a new regulatory framework regarding appointments and promotions within the NP, with the cooperation of the PSC.¹¹² The new rules prohibit the promotion of officials undergoing departmental actions and require the preparation of appraisal forms for all personnel, but fail to fully meet the requirements of the August 2012 Supreme Court judgment urging the government to put in place vetting systems to ensure anyone “involved” in human rights violations is not appointed, promoted or transferred. The police personnel will also not be entitled to promotion during the period of their suspension, reduction of promotion (for two years from the date of demotion) and one year from the last punishment if he/she faced three admonishment in the same rank. In addition, it provides for the establishment of rank specific promotion committees to make recommendations for promotions.

¹⁰⁹ Shiva K. Dhungana, “Addressing corruption in Saferworld, “Policing in Nepal. A collection of essays”, September 2007, available at: <http://www.saferworld.org.uk/downloads/pubdocs/Policing%20in%20Nepal%20%20essays%20English.pdf>, last accessed on 23 February 2013.

¹¹⁰ Nearly one third believe that they personally have been denied professional opportunities because they did not pay bribes or lacked family or friend connections. Nepal Security and Justice Baseline Survey Report – English, available at: http://www.usip.org/files/resources/Security_and_Justice_in_Nepal.pdf, last accessed on 6 March 2013.

¹¹¹ Interview with CIAA official, April 2013.

¹¹² General Principles regarding recruitment and promotion in the police service, Home Ministry, available at: http://moha.gov.np/uploads/document/file/police_20121127061212.pdf.

The work performance (40 marks), seniority (20 marks), service in remote areas (8 marks), education (10 marks), training (7.5 marks), execution of challenging tasks (5 marks), awards and decorations (2 marks), and scores provided by the promotion committee (7.5 marks) are taken into account while recommending a promotion. The committee to recommend promotion for AIG, DIG and SSP is chaired by the home secretary while the committee to recommend promotion for SP, DSP and Inspector is headed by the IGP. A body headed by the Chairman of the PSC or a representative designated by him, the Chief Secretary and Law Secretary will investigate any complaints against the recommendation for promotion made by the concerned committee sent within 15 days of the decision.¹¹³

Since the implementation of this new regulatory framework, a petition challenging the promotion of five SSPs to the rank of DIG has been raised, arguing that junior officers were promoted by bypassing the seniority requirement. In response, the SC issued a stay order against the promotions.¹¹⁴ The case remains pending at the time of writing.

FORMED POLICE UNITS

A Formed Police Unit (FPU) is a team of police officers deployed as a group, who protect UN Staff and property and escort UN personnel when they visit insecure regions of a mission area.¹¹⁵ They are deployed on UN missions under a memorandum of understanding between the UN and the police contributing country.¹¹⁶ All FPUs to be deployed to a UN peacekeeping operation must be assessed by Special Police

¹¹³ *Ibidem*.

¹¹⁴ Himalayan Times, "SC tells government to stop promotion", 24 December 2012, available at: <http://www.thehimalayantimes.com/fullNews.php?headline=SC+tells+govt+to+stop+SSPs'+promotion&NewsID=359056>, last accessed on 21 May 2013.

¹¹⁵ See UNPOL Units, available at: <http://www.un.org/en/peacekeeping/sites/police/units.shtml>, last accessed on 21 May 2013.

¹¹⁶ See "Policy Functions and Operations of Formed Police Units in United Nations Peacekeeping Operations", available at: <http://unrol.org/doc.aspx?d=2824>, last accessed on 21 May 2013.

Assessment Teams (SPATs)¹¹⁷ on operational capacity and readiness, the professional background of the unit and specific training received. Personnel aspiring for FPU missions should attend Pre-SPAT training and be on a merit list. Junior personnel and other ranks will be selected on the basis of seniority, work performance, training and educational qualification.

The MoHA introduced new selection norms and directives for the FPUs in 2007, which were revised by police headquarters in 2012.¹¹⁸ The new directives contain very specific requirements and the aim of the changes was to introduce transparency by setting criteria for the selection process, introduce competitive exams on the basis of seniority, capability, resources and equal opportunities. This includes a minimum age of 25 and more than 7 years of service. The personnel aspiring for FPU missions must fulfil the norms defined in the regulations to qualify for the competitive examinations.

A committee to supervise, monitor and control examinations is appointed by the IGP and chaired by the head of the UN section of the NP. It provides support to the board conducting examinations and recommends eligible candidates for the contingent. There is a board formed under the leadership of the regional police chief or chief of the metropolitan police circle to supervise, monitor and control the examinations at regional level. It is also tasked to investigate complaints regarding the examination. Similarly there are boards operating at the regional level for the selection for police officials with excellent performance. Candidates aspiring for selection into a FPU must have

¹¹⁷ The Special Police Assessment Teams (SPAT) evaluate FPU personnel. The SPAT assessment, which is a compulsory step prior to deployment, comprises language, firearms, crowd control and other special police function assessments. It also focuses on the verification of the professional background of FPU personnel and specific pre-deployment preparations, including training, received by the unit. See UN Police Magazine, July 2012 9th Edition, DPKO, available at: www.un.org/en/peacekeeping/publications/unpolmag/unpolmag_09.pdf, last accessed on 22 May 2013.

¹¹⁸ The UN FPU Selection policy was revised and introduced by the NP headquarters on 18 August 2012. A copy is available at http://www.nepalpolice.gov.np/images/documents/un/fpu_nirdeshika_2069.pdf, last accessed on 21 May 2013.

completed a minimum of seven years of service, should be at least 25 years of age and should be physically and mentally fit to qualify for the examination.

There are restrictions for candidates who have faced departmental action to attend examinations. There is a one year period of ineligibility for the examination from the date of the disciplinary decision. Officers whose promotion has been withheld should have come to the end of that period and demoted personnel should have completed two years of their punishment. Candidates facing grade reduction and grade suspension should complete one year after serving the punishment and personnel who have been reinstated following an action should complete three years from the date of reappointment to qualify to attend the examination for FPU contingent. Candidates who have passed the UN SAAT exam will be eligible to be nominated for FPU while their UN SAAT is valid. Candidates who fail to qualify for peacekeeping despite attending two consecutive examinations will not be allowed to attend the next examination.

A superintendent of NP leads a FPU contingent and is nominated by the IGP as per the recommendation of the selection board. The performance appraisal, training, skills and experience would be kept into account while appointing the chief of the contingent. Seniority and scores in the selection examination would be the basis of selection. Police inspectors who are assigned in logistics, liaison and operation should have at least one previous UN mission experience. According to the FPU Selection Policy (2012), junior personnel are selected after passing the selection examination based on their scores in it. Seniority, training, rewards, qualifications and discipline are also considered.

INDIVIDUAL POLICE OFFICERS

The majority of individual police officers are seconded or loaned to the DPKO for a term of six months to a year. Another, more limited way is

for the UNPOL Division to seek candidates for professional posts via the UN Careers portal, to which police officers can apply directly.¹¹⁹

Individual Police Officers (IPOs) are deployed to meet the complex nature of the mandates of the UN only after they pass the UN Preliminary Selection Assistance and Assessment Team (UN Pre-SAAT/SAAT). All IPOs must also meet minimum requirements relating to age, medical fitness, professional experience, professional integrity, language skills, mission-specific skills, computer skills, driving skills, firearms handling and shooting skills (for armed missions). Medical fitness is certified before the deployment phase.¹²⁰

Professional and higher level police posts for UN missions and UN Headquarters are also filled through the UN global vacancies system from troop contributing countries. The recruitment of these officers is done through semi-annual recruitment campaigns. Member States are approached to nominate qualified and skilled police officers who meet the requirements outlined in the circulated job openings. Today there are more than 80 contributing countries and a limited number of posts making the process highly competitive.¹²¹

To apply for a UN position through its Global Vacancy system, candidates should have completed at least one UN mission duty and should not face any departmental action over the preceding year. A board headed by the chief of the UN section of the NP recommends candidates after taking into account their qualifications and experience after which the approval of the police chief is also required before nominations are

¹¹⁹ See UNPOL Recruitment, available at: <http://www.un.org/en/peacekeeping/sites/policy/recruitment.shtml>, last accessed on 21 May 2013.

¹²⁰ Assessment of Individual Police Officers for Service in United Nations Peacekeeping Operations and Special Political Missions. Standard Operating Procedure, available at: http://www.apf.gov.np/downloads/un/SAAT_SOP_2012.pdf, last accessed on 11 May 2013.

¹²¹ UN Police Magazine, July 2012 9th Edition, DPKO, available at: http://www.un.org/en/peacekeeping/publications/unpolmag/unpolmag_09.pdf, last accessed 11 May 2013.

forwarded to the DPKO. The selection process is very competitive and so far nine NP officers have served in such positions.¹²²

Contingent commanders are responsible for recommending action against undisciplined personnel to the police headquarters. Anyone who breaches their obligations risks being repatriated and punished as per the Police Regulations (1995). If found guilty for violating the norms and mandates of the UN he/she will be barred from participating in UN missions for the rest of his/her life. Even the contingent commander can be recalled if he/she fails to discharge his/her duties.

According to the selection policy, the final names of the candidates who pass the selection examination will be sent to their respective units, the Human Rights Unit and the Legal Unit at Police Headquarters to be vetted in order to confirm that they are not facing any departmental action. However, the existence of this important measure did not stop one police official from claiming that it would be unfair to deprive any individuals from a peacekeeping role on the basis of such allegations, stating that only those who were convicted of crimes were deprived from going on missions.¹²³

The selection of individual police for the UNPOL is carried out on the basis of examinations conducted as per the UN SAAT Guidelines. The aspiring candidates should complete at least six years of police service before attending the Pre-SAAT examination, should be medically fit, should possess at least a School Leaving Certificate (passed grade 10) and have a two year old driving license. The aspiring candidate should not have faced any departmental action for at least a year up to the date of attending the examination. Any candidate against whom the institution has maintained two departmental actions in his/her personal record for committing misconduct in the given rank will not be eligible for any UN mission throughout his service period.

¹²² Interview Official at UN Section of the Nepal Police, December 2012.

¹²³ Interview with Keshab Adhikari, DIG, NP spokesperson, April 2013.

Candidates who pass the UN SAAT exam are deployed on a priority basis, while constables, head constables and women participating for the first time also get higher priority. The NP says it deploys the individual police based on the merit list prepared after the UN SAAT examination. However, in case of mission specific demands, a three-member board headed by the chief of the UN Section can recommend candidates among those who passed the UN SAAT to the police chief for nomination. The typical length of deployment for an individual police officer is one year; however the selection policy allows for a 45-day technical extension by the UN and a six-month to a year extension for officers in seniors posts.¹²⁴

PRE-DEPLOYMENT TRAINING FOR NEPAL POLICE

The NP conducts pre-deployment training for all of its FPU and UNPOL personnel at its training center based at the National Police Academy, Maharajgunj, Kathmandu, headed by an Assistant Inspector General (AIG). The training for FPU personnel lasts for 36 working days and includes modules covering human rights and gender, including issues relating to sexual exploitation, gender, women and child protection, international human rights instruments and international humanitarian law. Pre-deployment training for IPOs lasts one week. There is no specific training schedule for those who are recruited under the global vacancy scheme.

The NP maintains that all of its instructors are certified for pre-deployment training, which is based on the syllables of the UN DPKO. The US State Department, the Bureau of International Narcotics and Law Enforcement Affairs also delivered training to individual officers and FPUs as part of its International Police Peacekeeping Operations Support Program (IPPOS) in 2011. This program is now winding down,

¹²⁴ Examples of senior posts are as follows: deputy police commissioner, chief of staff, coordinator at the mission headquarters, chief of personnel, chief of training, and investigation department.

before responsibility is handed over to the NP and APF trainers who have been trained and will be continue to deliver training in the future.¹²⁵

ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS AND SELECTION OF PEACEKEEPERS

According to recent figures, the NP has taken departmental action against 4,866 personnel for breaches of discipline. Of this total, only 203 were sacked or removed, and 104 were suspended. The vast majority (4,370) received only a warning. Another issue that is worth noting is that the majority of NP personnel who face departmental action for their conduct are from the lower ranks of the institution. 4,510 of those punished holding the lowest position of constable, while only a handful of higher ranks are held to account.¹²⁶

The NP set up its Human Rights Unit on 16 January 2003 to ensure better protection and promotion of human rights. The mandate of the unit is to investigate alleged human rights abuses and recommend appropriate action against police personnel found responsible for human rights violations. The unit also maintains a human rights database that contains information on cases of human rights violations. Since its establishment, the unit has punished 586 personnel for various human rights violations. Though the police have not publicized the details, it says it has punished 295 police constables, 84 head constables, 73 assistant sub inspectors, 44 sub inspectors, 55 inspectors, 15 deputy superintendents of police and 8 superintendents for various rights violations.¹²⁷

During the armed conflict, police were involved in arbitrary arrests, torture, extrajudicial killings, disappearances, and other grave violations of human rights. Many of those alleged perpetrators continue to serve in the NP and are yet to be held accountable for their actions.

¹²⁵ E-mail U.S. Embassy official, Kathmandu, April 2013.

¹²⁶ Republica, "Police brass let off easy but lower ranks face music", 5 April 2013, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=52617, last accessed on 21 May 2013.

¹²⁷ Interview with Kesab Prasad Adhikari, NP spokesperson DIG, December 2012.

A large number of police personnel against whom action was recommended after the suppression of the People's Movement of 2006, are still serving in the NP. The Rayamajhi Commission was formed on 5 May 2006 under the chairmanship of former SC judge Krishna Jung Rayamajhi with a mandate to “investigate, recommend, advice or suggest the government to take actions or punishment against anyone responsible for the killings and suppression of the agitators during the pro-democracy activities, involved in abuse of power, misappropriation of state funds” since the February 2005 take-over by the King.¹²⁸ It produced a 1,184 page report that was submitted to Prime Minister Girija Prasad Koirala in November 2006. The Commission investigated the conduct of 296 persons and recommended action against 202 for causing damage to life and property during this period.¹²⁹ The NP says that it has punished 68 of its personnel implicated for suppressing the 2006 movement as per the commission's report.¹³⁰

The case of Kuber Singh Rana provides clear evidence that personnel under investigation for human rights abuses are not only allowed to continue to serve in the NP, but are in some cases even promoted to more senior positions. Despite being the subject of ongoing criminal investigations into the enforced disappearance and extrajudicial killings of five students in Dhanusha district in October 2003, Kuber Singh Rana was promoted from his previous post of AIG to the rank of inspector General of Police (IGP), the most senior position in the NP, on 13 September 2012.¹³¹ He retired from the service in late 2013.

¹²⁸ Nepallaw, “Rayamajhi commission gets wide mandate”, 10 May 2006, available at <http://nepallaw.blogspot.co.uk/2006/05/rayamajhi-commission-gets-wide-mandate.html>.

¹²⁹ The Commission also recommended corruption charges against three ministers (Kamal Thapa, the then Home Minister; Shrishya Shumshere Rana, the then Minister of State for Information and Communications and Tanka Dhakal, the then Minister for Local Development), and the then Chief of the RNA Pyar Jung Thapa.

¹³⁰ Interview with DIG Kesab Prasad Adhikari, NP Spokesperson, December 2012.

¹³¹ Advocacy Forum and Human Rights Watch, “Waiting for Justice. Unpunished Crimes from Nepal's Armed Conflict”, September 2008, page 77-9, available at http://www.hrw.org/sites/default/files/reports/nepal0908web_0.pdf.

This promotion clearly violated both national and international standards, which require the removal or suspension of those suspected of gross human rights violations and crimes under international law, until the completion of full investigations, with full respect for the due process rights of the suspects. This is particularly important in cases where the accused may occupy a position from which they could influence the investigation or the decision to prosecute.¹³² In November 2012, there were reports that the British Embassy in Kathmandu had informed Kuber Singh Rana that he would not be granted a visa, though the embassy did not officially confirm this.¹³³

The NP maintains that all personnel who pass the selection examination for peacekeeping deployment must obtain clearance from its human rights unit and legal department before being sent on a peacekeeping mission.¹³⁴ Candidates should not have faced any departmental action for a year before the date of attending an examination and any candidate who has faced action more than twice while serving in the same post will not be eligible to serve on mission. However, NP officials have confirmed that candidates who face more minor punishments, such as warnings, will not necessarily be deprived of participating on missions.¹³⁵ Furthermore, the NP maintains that it does not bar the deployment of any individual in the UN mission just because of human rights allegations from human rights watchdogs.¹³⁶

¹³² See Human Rights Watch, "Nepal Suspends Promotion of New Police Chief", 19 September 2012, available at: <http://www.hrw.org/news/2012/09/18/nepal-suspend-promotion-new-police-chief>, last accessed on 21 May 2013.

¹³³ The Kathmandu Post, "UK denies visa to IGP", 7 November 2012, available at: www.ekantipur.com/the-kathmandu-post/2012/11/07/top-story/uk-denies-visa-to-igp/241506.html, last accessed on 21 May 2013. Earlier, in 2007, the UK had been criticized for awarding a prestigious Chevening scholarship to Maj. Ajit Thapa, an alleged perpetrator of torture and disappearances in Bardiya District. See International Crisis Group, "Nepal Peace and Justice", Asia Report No. 184, 14 January 2010, available at: [http://www.crisisgroup.org/~media/Files/asia/south-asia/nepal/184%20nepal%20peace%20and%20justice.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/nepal/184%20nepal%20peace%20and%20justice.ashx), last accessed on 11 May 2013.

¹³⁴ Interview with Ramesh Kharel, the then Head of the UN Division of the NP, December 2012.

¹³⁵ Interview with DSP, NP, March 2013.

¹³⁶ Interview with DIG Keshab Adhikari, NP spokesperson, April 2013.

Despite these safeguards, Nepal was forced to repatriate a senior police official from its peacekeeping mission in Liberia in September 2011, after the UN was informed that DSP Basanta Kunwar was facing a claim for damages filed by a victim of torture who had been held in police custody on suspicion of theft in September 2009.

Despite having this case proceeding against him before the Kathmandu District Court, the Nepali authorities selected him to serve on the UN Mission to Liberia in July 2011. UN DPKO spokesperson, Kieran Dwyer, informed the media stating that, “A Nepalese police officer was repatriated following information that he had a case to answer in the national courts for alleged torture in his home country. The UN acted as soon as it received informal information about this police officer.”¹³⁷ In July 2012, the Kathmandu District Court directed Basanta Kunwar to pay torture survivor Arjun Gurung compensation of NRs. 30,000 (US\$ 337) but did not order any departmental action against him. Unsatisfied with the verdict, the victim has filed an appeal with the appellate court.¹³⁸ DSP Kunwar is currently serving as the head of police in Gorkha District.

NEPAL POLICE AND SEXUAL ABUSE AND EXPLOITATION

Documentation of sexual violence by state authorities remains scarce in Nepal. Many cases of gender-based violence are not reported to police due to social stigma and cases that are reported are often unsuccessful because they were filed after the expiry of the very short (35-day) statute of limitations for the lodging of complaints.

¹³⁷ Column Lynch, “Is Nepal Sending Accused Criminals to Serve in U.N. Peacekeeping Missions?,” Turtle Bay blog, 11 November 2011, available at: http://turtlebay.foreignpolicy.com/posts/2011/11/11/is_nepal_sending_accused_criminals_to_serve_in_un_peacekeeping_missions, last accessed on 21 May 2013.

¹³⁸ Interview with a member of staff at Advocacy Forum, who assisted the victim to file the case under the Torture Compensation Act (1996), March 2013.

Despite this, it is widely acknowledged that Nepali state security forces are alleged to have committed sexual violence against women and girls while searching for and interrogating Maoist suspects during the armed conflict between 1996 and 2006. According to the OHCHR, there is not enough evidence to establish that sexual violence was institutionalized or systematized; however it does “appear that implicit consent was given at higher ranks which served to encourage a culture of impunity for opportunistic sexual violence”.¹³⁹ Of the more than 100 cases documented, most violations involved rape, gang rape, attempted rape, and forced nudity.¹⁴⁰

The gang rape of Police Constable Suntali Dhama from Achham district police office, by six male colleagues on 27 September 2009 demonstrates that sexual assault by NP personnel is not a thing of the past. After she filed a complaint identifying six persons who allegedly mixed intoxicating drugs in her meal and collectively raped her at the district police office, all six were suspended. However, cases were only filed against three of them following pressure from senior police officers to safeguard the others, according to a probe report prepared by the parliamentary Women, Children and Social Welfare Committee in 2009. On 11 December 2009, Suntali Dhama complained to the parliamentary panel that none of her senior officers apart from DIG Parbati Thapa (a senior woman police official) helped her to obtain justice. The parliamentary probe that included a field visit to the district concluded that senior officers used their powers to cover up the case and protect the culprits. In December 2011, Achham District Court sentenced one of the accused to six years imprisonment and two others to two years.¹⁴¹

¹³⁹ OHCHR, “Nepal Conflict Report, October 2012, page 23, available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

¹⁴⁰ OHCHR, “Nepal Conflict Report. Executive Summary”, October 2012, available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf, last accessed on 30 January 2013.

¹⁴¹ INSEC, “Three jailed in Suntali Dhama’s rape case”, Nepal Monitor, 8 December 2011, available at: <https://nepalmonitor.org/index.php/reports/view/84>, last accessed on 21 May 2013.

On 1 July 2012, the NP introduced a new gender policy aimed at creating a more gender-sensitive and women-friendly working environment within the institution.¹⁴² The policy adopts a zero-tolerance position against any forms of violence against women either inside or outside of the institution of the NP.¹⁴³ It also commits to give high priority to any women seeking justice making either a verbal or written complaints, and aid them with swift investigative measures and necessary police services.¹⁴⁴

Despite the announcement of this new zero tolerance gender policy, violence against Nepali women by NP personnel clearly continues to be a problem. In December 2012, preliminary investigations found that police and immigration officials were involved in the sexual harassment and robbery of a Nepali woman who was returning home after working abroad.¹⁴⁵ The Home Ministry suspended them and formed a probe panel to look into the issue. Police Constable Parshu Ram Basnet was sentenced to five and a half years in prison by the Kathmandu District Court on 22 April 2013.¹⁴⁶

The Gender Policy introduced in 2012 also commits to prioritize the training of women police to prepare them for UN peacekeeping missions, along with English language proficiency, driving and firearms skills. It aims to gradually increase the number of women police staff participation in national and international training programs including for UN peacekeeping missions.¹⁴⁷ The NP peacekeeping selection policy

¹⁴² See NP Gender Policy 2069, available at: http://www.nepalpolice.gov.np/images/documents/general_documents/en_gender_policy_2069.pdf, last accessed on 1 February 2013.

¹⁴³ NP Gender Policy 2069, Section 4.1, page 7.

¹⁴⁴ NP Gender Policy 2069, Section 4.7.2, page 12.

¹⁴⁵ Kathmandu Post, "Woman robbed: Probe points to dozen airport officials' hand", available at: http://www.ekantipur.com/the-kathmandu-post/2012/12/20/related_articles/woman-robbed-probe-points-to-dozen-airport-officials-hand/243109.html, last accessed on 1 February 2013. See also, 'Stop Gender Violence Movement to Stop Gender Violence in Nepal, Sita Rai – TIA, Kathmandu', available at: <http://stopgenderviolence.org/sita-rai-tia-kathmandu/>, last accessed on 1 February 2013.

¹⁴⁶ Ibid.

¹⁴⁷ NP Gender Policy 2012, available at: http://www.nepalpolice.gov.np/images/documents/general_documents/en_gender_policy_2069.pdf, last accessed on 23 May 2013.

does not explicitly address sexual abuse and exploitation of women; however it does state that anyone who faces suspension or departmental action will not be eligible to apply for peacekeeping.¹⁴⁸

DECISIONS OF THE NHRIS/ANTI-CORRUPTION BODIES AND PEACEKEEPING DEPLOYMENT

During the armed conflict, members of the NP were involved in numerous arbitrary arrests, torture, extrajudicial killings, disappearances, and other grave violations of human rights; however many of those responsible have still not been held accountable. Moreover, the NP continues to maintain that it will not prohibit the deployment of any individual on UN mission on the basis of human rights allegations that have been made by human rights watchdogs, which includes official bodies such as the NHRC.

In contrast, NP personnel will be suspended from their position if the CIAA files a corruption case against them, until a final verdict is delivered on the case. However; the CIAA receives very few complaints; mainly from police officers regarding the unfairness of the selection process for UN peacekeeping missions. The cases are not treated seriously, as they are deemed to be largely the result of rivalry and attempts at revenge against those who have been successful.

EXISTING PRACTICES AND PROBLEMS WITH IMPLEMENTATION

1. Improvements to Peacekeeping Selection Policies

Before the introduction of the selection policy for peacekeepers in 2007, police personnel selected for UN mission were chosen on the

¹⁴⁸ UN FPU Chhanaut Nirdeshika 2069 (UN FPU Selection Directive 2012), available at: http://nepalpolice.gov.np/images/documents/un/fpu_nirdeshika_2069.pdf.

basis of favoritism. The list was based on candidates recommended by senior politicians and senior police officials, with personnel who fought bravely against the Maoists rewarded with peacekeeping duties. This has however changed considerably after the introduction of the peacekeeping selection policy in 2008.

According to one senior official at the police headquarters, the new policy of selecting candidates by conducting examinations had tied officers' hands and almost ended any room for nepotism.¹⁴⁹ However, a senior Home Ministry bureaucrat commented that while the selection process is getting fairer, it is yet to be made completely impartial.¹⁵⁰ An assistant sub inspector from a marginalized community reported that it had taken him 24 years to be selected for his first FPU deployment in 2010.¹⁵¹ A woman police officer also expressed the opinion that women need either strong political backing or relatives in a senior post to get the opportunity for deployment.¹⁵²

The selection for 38 personnel to serve on the UN Mission in Darfur in February 2013 conducted at the police headquarters caused controversy after some of the candidates were handpicked without participating in the selection examination. The selected individuals include three officers of the UN Division including the deputy chief of the unit DSP Dan Bahadur Karki. Of the proposed candidates, DSP Rajan Adhikari served at the secretariat of IGP and DSP Tek Bahadur Tamang as the personal security officer of the then Prime Minister Baburam Bhattarai. DSP Dan Bahadur Malla was the personal security officer of former Prime Minister and Maoist Chairman Pushpa Kamal Dahal. A superintendent of police and two assistant superintendents who were selected had failed the SAAT examination conducted in 2011.¹⁵³

¹⁴⁹ Interview with Rajendra Singh Bhandari, DIG, December 2012.

¹⁵⁰ Interview with MoHA official, July 2012.

¹⁵¹ Interview with Sub Inspector, Kathmandu, December 2012.

¹⁵² Interview with a female constable based in police headquarters with six years of service experience, December 2012.

¹⁵³ Naya Patrika Daily, "Preparations to send those who fail in the U.N. mission", 21 February 2013, available at: http://nayapatrika.com/index.php?option=com_content&view=article&id=9125:2013-02-22-05-58-52&catid=56:cover-story&Itemid=75,

When asked to comment, DSP Karki of the UN Section of the NP confirmed that IGP Kuber Singh Rana had himself finalized the list with names of 300 candidates forwarded by the UN Section.¹⁵⁴ He further defended the selection saying that the candidates according to SAAT guidelines can sit examinations in their mission areas. He claimed that the decision was to the benefit of the police force as the quota could lapse or go into the hands of the Armed Police Force in cases where there was no nomination from the NP.

In contrast, another DSP at the police headquarters said that the UN Division would have prior information on the date of rotation of forces and thus could have conducted examinations for the required candidates in the previous year to ensure fair results. He said the particular incident is a manifestation of how deep the favoritism, nepotism and the tendency of appeasing power centers was in practise during the selection process of peacekeepers.¹⁵⁵ Following media reports of the incident, the Home Ministry intervened and confirmed that the selected officers were not to be allowed to go on mission.¹⁵⁶

2. Greater Commitment to Human Rights Issues Needed

Many of the conflict era abuses related to the NP are yet to be addressed and impunity for perpetrators of human rights violations continue within the NP. Continuing wrongdoing by police personnel including their involvement in gender-based violence is arguably the result of failure to take action for the conflict era crimes. Human rights vetting undertaken by western governments and human rights groups drawing

last accessed on 21 May 2013. See also Kathamandu Post, "Police violates its own rules in selection for Darfur Mission", 28 February 2013, available at: <http://ekantipur.com/2013/02/28/related-article/police-violate-own-rule-in-darfur-mission-selections/367726.html>, last accessed on 21 May 2013.

¹⁵⁴ Interview with Dan Bahadur Karki, the deputy chief of the UN Division, February 2013.

¹⁵⁵ Interview DSP, name withheld, police headquarters, February 2013.

¹⁵⁶ Kantipur, "Police to revise list of officials to be sent to Darfur", 4 March 2013, available at: <http://ekantipur.com/2013/03/04/related-article/police-to-revise-list-of-officials-to-be-sent-to-darfur/367912.html>, last accessed on: 21 May 2013.

the attention of the UN to cases where alleged perpetrators have been deployed has helped to focus the attention of the NP. One official confirmed that they are adopting stricter screening in order to avoid any embarrassment.¹⁵⁷ The NP needs to work harder to prohibit personnel convicted of human rights violations and sexual exploitation and abuse from participating in peacekeeping deployments. (The policy states personnel to be deployed in the UN mission should obtain a clearance that they were not punished from the human rights unit and the legal unit before deployment.)

3. Growing Transparency

The NP stands out from the NA and the APF in that its selection policy is transparent and can be accessed through the official website of the police department. The NP also publishes a list with the names of personnel selected for the FPU through its website.¹⁵⁸ This is a very positive aspect of the NP's peacekeeping selection policy, which should be followed by other Nepali state institutions.

4. Increased Efforts to Tackle Corruption

The NP itself is responsible for the purchase of logistical equipment for its FPUs, using money from its welfare fund to purchase what is required for UN missions. Senior police officials fear that incidents like the Sudan Scandal remain possible under this system. They stress that the government should play a larger role and be involved in purchasing logistics for UN missions. The annual report of the State Affairs Committee of the Parliament observed that there was no transparency or impartiality in such purchases and urged the government to take responsibility for the purchases and seek reimbursement from the UN as appropriate.

¹⁵⁷ Interview with senior police official, May 2013.

¹⁵⁸ See NP website, available at: http://www.nepalpolice.gov.np/images/documents/un/fpu_nirdeshika_2069.pdf, last accessed on 21 May 2013.

5. Lack of Trust Towards Leadership

Many junior police officials interviewed reported that they were not optimistic that the NP peacekeeping policies could ensure a fair selection process. Moreover they believe that the institution remains heavily politicized hence only favoritism and nepotism can secure their seats on UN missions. The NP held a conference in 2012 to introduce its new selection system to the rank and file; however it is yet to prove that passing the selection examination is the only way to secure a place on a UN mission.

6. The Need for Increased Participation of Women

The percentage of women deployed in peacekeeping missions by the NP remains low; however compared to the NA and APF, there has been a significant rise in the number of women deployed on peacekeeping missions. One reason is maybe due to increasing intake of women personnel in the NP in general. In November 2012, Nepal had 70 women participating in a contingent troop of 3715, 23 women participating in an FPU of 517, and 9 among 199 Individual Police Officers.¹⁵⁹ The goal of the UN is for **20% of its police to be women** by 2014;¹⁶⁰ therefore the NP must take steps to recruit and train women police personnel to meet this goal.

¹⁵⁹ See Monthly Summary of Troop Contribution to UN Operations, page 10, available at: http://www.un.org/en/peacekeeping/contributors/2012/Nov12_4.pdf, last accessed on 1 February 2013.

¹⁶⁰ See UNPOL, Global Effort and Gender Initiatives, Increasing the number of female police officers, available at: <http://www.un.org/en/peacekeeping/sites/police/initiatives/globaleffort.shtml>, last accessed on 1 February 2013.

CHAPTER 3

VETTING IN THE ARMED POLICE FORCE

HISTORY OF THE ARMED POLICE FORCE

The Nepali Armed Police Force (APF) was established in 2001 as a new security apparatus to participate in the armed conflict.¹⁶¹ Personnel were initially drawn from the then RNA, the NP and through fresh recruitment. In 2003, the NP and APF were placed under the operational command of the RNA and deployed to fight against the Maoists.¹⁶²

The Armed Police Force Act (2001) states that the role of the APF is to maintain law and order and safeguard life, property and the independence of citizens.¹⁶³ Under the Act, the core functions of the APF are to: control an armed conflict; control an armed rebellion or separatist movement; control terrorist activities; control riots; assist with relief efforts during natural disasters; free hostages and conduct operations against serious/heinous criminal activities; provide security

¹⁶¹ See Ministry of Home Affairs, “Milestones of Armed Police Force”, available at: <http://www.apf.gov.np/index.php?c=4&lan=en>, last accessed on 21 May 2013.

¹⁶² See “Nepal Supporting Peace Processes Through a Systemic Approach”, Study Prepared for the Berghof Foundation for Peace Support by Dev Raj Dahal, September 2005, page 10, available at: http://berghof-peacesupport.org/publications/NEP_Supporting_Peace_Processes_Through_a_Systemic_Approach.pdf, last accessed on 11 May 2013.

¹⁶³ See Armed Police Force Act (2001) available at: <http://nepalconflictreport.ohchr.org/files/armed-police-force-act-2058-2001-e.pdf>.

at the international borders of Nepal; assist the NA in dealing with any external aggression to provide security for persons, buildings/structures and other places of public importance; and arrest and handover any suspects of serious crimes to local police.¹⁶⁴

During the armed conflict, the APF operated under the unified command of the army and was regularly implicated in cases of extrajudicial executions, enforced disappearances, torture and arbitrary arrest and detention. The Office of the High Commissioner for Human Rights in Nepal also held the APF responsible for excessive use of force and beatings during the Madheshi Andolan in the Terai region in 2007.¹⁶⁵

The APF currently has 25,780 personnel¹⁶⁶ organized into six combat brigades¹⁶⁷ and is overseen by an Inspector General. It has five main departments: a border security department, an operations department, an administration department, a human resources department and an academy.¹⁶⁸

HISTORY OF ARMED POLICE FORCE'S INVOLVEMENT IN UN PEACEKEEPING

The AFP has provided personnel for UN peacekeeping operations since 10 October 2002. Its personnel have served in various missions including UNGCI (Iraq), UNMIK (Kosovo), UNMIL (Liberia), UNAMSIL (Sierra Leone), MINUSTAH (Haiti), UNAMID (Darfur, Sudan), UNMIT (East Timor) and UNFICYP (Cyprus). The APF also has had two Formed

¹⁶⁴ Armed Police Force Act (2001) Ch 2 s 6(1)(a-j).

¹⁶⁵ OHCHR, 'Human rights in Nepal. One year after the Comprehensive Peace Agreement', December 2007, available at <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/CPA%20Report.pdf>.

¹⁶⁶ Nepal Security Sector Almanac, DCAF and Nepal Peace Campaign.

¹⁶⁷ Ministry of Home Affairs, Armed Police Force, Introduction, Organization, available at: <http://www.apf.gov.np/index.php?c=3&lan=en>, last accessed on 11 May 2013.

¹⁶⁸ Ministry of Home Affairs, Armed Police Force, Introduction, APF headquarters, available at <http://www.apf.gov.np/index.php?c=3&lan=en>, last accessed on 11 May 2013.

Police Units (FPUs) each comprising of 120 personnel, stationed in Liberia (UNMIL) since December 2003.¹⁶⁹

As of December 2012, the APF has provided a total of 3,721 FPU personnel and an additional 508 personnel for UN Police (UNPOL).¹⁷⁰ Currently there are 73 officers serving in five UNPOL missions: UNMIL (Liberia), MINUSTAH (Haiti), UNAMID (Darfur, Sudan), UNAMIL (Sierra Leone) and UNMISS (South Sudan) and 255 officers serving in three FPU missions, in Monrovia, Buchanan and Tubmanburg.¹⁷¹

ARMED POLICE FORCE'S SELECTION POLICY

RECRUITMENT POLICY IN THE ARMED POLICE FORCE

Section 11 of the APF Act (2001) established a Service Commission responsible for recruitment into the APF. It is headed by a representative of the PSC, who is joined by a special Government Service Official, the Secretary of the Ministry of Home Affairs, an Officer of the NA, and the IGP of the APF.¹⁷²

APF posts are filled through a mix of open competition and promotion. Constables and Assistant Sub Inspectors positions are split 25% open recruitment, 75% promotion and Inspectors are split 60% open recruitment, 40% promotion.¹⁷³ 45% of the posts filled by open

¹⁶⁹ Ministry of Home Affairs, Armed Police Force, Background s. 4 APF Involvement in UN Missions, available at <http://www.apf.gov.np/index.php?c=19&lan=en>, last accessed on 11 May 2013.

¹⁷⁰ See Armed Police Force, Current Deployment, A. UNPOL Participation Data, 1. Mission Completed and B. FPU Participation Data, 1. Mission Completed, available at: <http://www.apf.gov.np/index.php?c=29&lan=en>, last accessed on 23 May 2013.

¹⁷¹ See Armed Police Force, Current Deployment, available at: <http://www.apf.gov.np/index.php?c=29&lan=en>, last accessed on 11 May 2013.

¹⁷² See Armed Police Force Act, 2001, Chapter 3, s 11(1), available at <http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/Prevailing-Laws/Statutes---Acts/English/>.

¹⁷³ APF Rules, 2060 (2003) brought by the government as per section 36 of the Armed Police Force Act 2001, available at: [http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-\(2002\)](http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-(2002)), last accessed on 24 February 2012.

competition shall be filled by quotas of: women (20%) Adivasi/Janajati (32%) Madhesi (28%), Dalit (15%) and disadvantaged areas (Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla districts) (5%).¹⁷⁴ Candidates aspiring for the rank of Inspector should be between 21 and 24 years old and should not have any convictions by a court of law for any criminal offence involving moral turpitude, should not be involved in politics and should not be member of an organization with a “destructive objective”. Candidates for the positions of sub inspector and APF personnel (constable) should be above 18 and below 22 years of age.

No APF personnel is entitled for promotion under the following circumstances: a) if he/she is suspended, during the period of such promotion b) if his/her promotion is withheld, during the applicable period, c) if he/she is demoted to a lower post, up to the period of one year of such demotion, d) if the officer’s grade is withheld or if he/she is demoted to the lower grade during a period of up to one year of such occurrence, or e) if he/she is reprimanded, up to one year after the date of such reprimand.¹⁷⁵ Under the APF Act (2001) personnel shall not join any political organization, take part in politics, give donations to a political organization or try to influence any political institution or movement.¹⁷⁶

In reality, political intervention does occur during recruitment, promotion and transfers of APF personnel, though its officials claim that it is to a smaller degrees.¹⁷⁷ Like in the NP, there are complaints over the fairness in the recruitment process of the APF.¹⁷⁸ The APF admitted

¹⁷⁴ See Chapter 3, Article 6 fulfilment of the vacant posts in the Armed Police, APF Rules 2003, available at: [http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-\(2002\)](http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-(2002)), last accessed on 24 February 2012.

¹⁷⁵ See Armed Police Force Rules 2003, Chapter 3, article 6.3 fulfilment of vacant posts in the Armed Police, *Ibidem*.

¹⁷⁶ See Armed Police Force Act, 2001, 22 August 2001, Chapter 5, s 27(3)-(4), available at: <http://nepalconflictreport.ohchr.org/files/armed-police-force-act-2058-2001-e.pdf>, last accessed on 11 May 2013.

¹⁷⁷ Interview with DIG of the APF, April 2013.

¹⁷⁸ Interview with CIAA official, April 2013.

in August 2013 that there were “mistakes” in the intake of over 2,200 constables carried out in January 2013.¹⁷⁹ It was reported that some of them were unfit for training (some of them even were medically unfit) and upon investigation by the APF some of them had admitted that they had paid bribes to get the job. The APF formed a probe panel led by a deputy inspector general and after investigation took departmental action against 66 officers including seven superintendents of police.

The APF has said it has made changes in its examination system and syllabus to ensure fairness in the recruitment process.¹⁸⁰ In a statement it admitted mistakes in the recruitment process and noted that it had sacked 13 personnel who were recruited against the standard norms.

UN PEACEKEEPERS SELECTION POLICY

The APF conducts selection of its personnel for peacekeeping operations based on the General Principles of Selection in UN missions endorsed by the Home Ministry on 28 November 2008, which “aims to make the selection process of APF personnel in UN peacekeeping transparent, proportional, practical, efficient and scientific.”¹⁸¹

FORMED POLICE UNIT SELECTION

As previously discussed in Chapter 2, FPU are teams of police officers, which are deployed as groups to undertake crowd control, protect UN staff and property, and escort UN personnel when they visit insecure mission areas. Altogether 11 senior officers, 12 junior officers, 92 other ranks, two staff nurses and three auxiliary staff form a 120-member squad. 16 special appointments include a SP, four DSP and six

¹⁷⁹ Sasasthra Bharna Ma Aniyamitata (Irregularities in recruitment of the APF), Kantipur daily, August 11, 2013, available at: http://ekantipur.com/kantipur/news/news-detail.php?news_id=302467.

¹⁸⁰ Armed Police Force, Press Statement 10 August 2013, available at: <http://www.apf.gov.np/index.php?c=36&lan=en&id=1376223799&page=1&arc=7004>.

¹⁸¹ Preamble of the General Principles of the Selection of APF in the UN Mission, (2008), copy of which was obtained from the MoHA in October 2012.

Inspectors including a doctor. Each of the FPU teams have 12 technical appointments. FPU are rotated every six months.

According to the General Principles on Selection in the UN Mission (2008) all candidates should have completed special weaponry, warfare training or tactical training and should present a pre-medical report certifying medical fitness to be eligible for peacekeeping missions. The candidate aspiring for FPU should be older than 25 and must have completed five years of service in the force. The commanding officer for each FPU is selected based on seniority, performance and language skills required for the place of duty. Senior officers— DSP and Inspectors— should pass Pre-SPAT training and are selected based on merits.

A selection board headed by a Deputy Commander or Deputy Head of the concerned department conducts selection for FPUs. The board for selecting peacekeepers has no links with the commission that recruits APF personnel. An officer appointed by the departmental head or the brigade commander, an officer from training or operation department, a senior non-commissioned officer and a senior head constable or a senior non-commissioned officer are also on the board.

Junior officers and other ranks are recruited on the basis of a professional test covering APF, APF Act and Rules, weapons, tactics and mob control (25 marks); UN and FPU seniority (40 marks), educational qualifications (10 marks), work evaluation (10 marks), specialized training (10 marks), and field experience (5 marks). The service period in a particular post, trainings and service area will also be taken into consideration.¹⁸²

Personnel facing departmental actions are ineligible to join peacekeeping duties. Those who are admonished or face reduction of grades are ineligible for selection to UN missions for a year and those with suspension of promotion are not allowed to attend a selection process. Personnel demoted for their acts and personnel held accountable for

¹⁸² General Principles on Selection in the UN Mission, APF headquarters, p 4-6.

not abiding by orders or causing damage to the State while discharging their duty are not eligible for UN duty for one year.¹⁸³

The APF conducts selection of 240 personnel equivalent to the strength of two FPU's at a single time. Unlike in the NP, quota distribution for regional units is not defined in the selection directive. The human resources department allocates quota based in proportion of personnel at various units including headquarters, brigades, training centers and border posts among others.¹⁸⁴

The APF headquarters itself selects 22 senior posts, including two commanders, two doctors and 18 other senior officials based on seniority and performance. They should pass the Pre-SPAT exam and the SPAT exam of the UN DPKO to qualify for the mission. Under a departmental provision, the APF may nominate six people who have not passed the UN SAAT/SPAT, but have worked for several years in the APF. The selection is based on seniority and includes coaches and players of various sports who have contributed to upholding the prestige of the institution and personnel who have performed the best in rescue and relief operations and have been honoured as the finest working officers/personnel by the institution. The examination ratio for the quota system is 1:5. While selecting personnel from any rank, five senior most aspirants of the same rank will compete and one best performer will be selected for the mission.¹⁸⁵

INDIVIDUAL POLICE OFFICER SELECTION

The General Principles on Selection in the UN Mission (2008) are silent on the basis of selection of Individual Police Officers for UN missions.¹⁸⁶

¹⁸³ General Principles on Selection in the UN Mission, APF headquarters 2008, Article 3 (C) regarding disqualification of candidates in selection tests.

¹⁸⁴ See Annex 4, 2012 Quota Distribution.

¹⁸⁵ The General Principle on Selection does not explicitly make the recommendation of this ratio; however APF human resource department internal circular sent to the all its units in September 2012 states as such.

¹⁸⁶ As previously discussed in Chapter 2, IPOs refer to police personnel selected for the UN peacekeeping mission at the professional and higher level after passing the UN

The APF maintains that candidates aspiring for individual selection should have completed six years of service in the institution, should be older than 25 years of age and should have a two-year-old driving license. The candidates should have passed at least intermediate level of education and those who have returned from any Civilian Police (CIVPOL) mission can apply for their next mission after a two-year gap. The APF headquarters organizes UN Pre-SAAT examinations and successful candidates will be allowed to attend the SAAT exam by the DPKO.¹⁸⁷

According to an agreement between the NP and the APF of 11 September 2002, 70% of positions allocated to Nepal by DPKO are filled from the NP and 30 percent from the APF. The candidates are selected and dispatched to the UN mission by both forces based on the merit list prepared after the UN SAAT results are announced by the UN.

PRE-DEPLOYMENT TRAINING

APF's pre-deployment training is organized at its UN Peace Keeping Training Centre based in Kakani, Kathmandu. The training lasts for 60 days and covers mission specific requirements including command trainings, hostage rescue, VIP protection, human rights and gender among others. The pre-deployment training for individual police personnel is for 10 days.

Between November 2011 to January 2012, the U.S. State Department and the International Police Peacekeeping Operations Support Program

Pre-SAAT/SAAT. They are deployed to meet the complex nature of the mandate of the UN missions.

¹⁸⁷ The Selection Assistance and Assessment Team (SAAT) is a three-member team sent to the police contributing countries to select officers for the peacekeeping missions. Among the SAAT members, one comes from the UN Police Division, one from the mission area, and the third is one who is familiar with the contributing country's police procedures. The SAAT team tests police officers' skills in three practical fields: competency in the English Language, efficiency in driving and accuracy in firearms handlings. See UN Police Magazine, July 2012 9th Edition, DPKO, available at: www.un.org/en/peacekeeping/publications/unpolmag/unpolmag_09.pdf, last accessed on 22 May 2013.

(IPPOS) provided pre-deployment police peacekeeping training to the APF for their mission to Liberia. The U.S. Embassy vetted the human rights records of all AFP personnel before imparting training to them.¹⁸⁸

The APF has incorporated human rights and gender based violence in its trainings. According to the Annual Progress Report on the Government's three-year national action plan on human rights (2011-2012), 15,470 AFP personnel participated in various types of trainings regarding gender violence.¹⁸⁹

ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS AND SELECTION OF PEACEKEEPERS

The selection principles endorsed by the APF do not mention human rights vetting. The policy only stipulates that personnel against whom departmental action has been taken will not be eligible for participation on UN missions. The policy is also silent on barring officers under investigation from peacekeeping; however APF representatives maintain that they have strict vetting procedures, which do not allow any officer against whom allegations of serious violations are pending to participate on peacekeeping missions until the investigation is complete.¹⁹⁰

The APF leadership also argues that it conducts vetting ahead of the pre-deployment training and that the Law and Monitoring Unit and the Human Resource Administration Unit vet personnel regarding their involvement in human rights violations and identify any individuals facing departmental actions. Personnel who are proved to be responsible of involvement in human rights violations are not sent on mission. It states that lists of vetted personnel are sent to the US Embassy in Kathmandu, when personnel selected for a mission receive training from US officials under the IPPOS.

¹⁸⁸ Interview with Pradip Rai, Inspector UN Section APF, December 2012.

¹⁸⁹ Annual progress report of the three year national plan on human rights 2011-12, Office of the Prime Minister and Council of Ministers, available at <http://www.opmcm.gov.np/np/resources/index.php?c=7>.

¹⁹⁰ Interview with Narayan Babu Thapa, APF spokesperson, April 2013.

The APF's human rights unit headed by a DIG has taken actions against 54 officials for human rights violations. The APF maintains that it considers excessive use of force by its personnel as a human rights violation but the APF spokesman could not provide details of the nature of incidents in which its officers have been punished so far.¹⁹¹ Four APF personnel have been demoted, five have been suspended for promotion, five have been dismissed from service, two have seen the reduction of their grade, nine were suspended, eight received warnings, 19 have been admonished and two have seen reduction in their pay. Any candidate selected for UN mission should secure human rights clearance from the Human Rights Unit.¹⁹²

ACCOUNTABILITY FOR GENDER-BASED VIOLENCE DURING PEACEKEEPING DEPLOYMENT

APF's FPU selection policy does not make any commitment regarding gender-based violence. However, the institution maintains that any personnel who face departmental action for gender-based violence will not be eligible for any peacekeeping missions during the period of punishment. The APF Force Rules 2003 bars its personnel from polygamy or child marriage.¹⁹³

In June 2011, the APF has set up a Gender desk headed by an inspector, which receives complaints and requests regarding issues including divorce, property distribution, polygamy and physical attacks, and is responsible for trying to resolve them.¹⁹⁴ Of the 182 complaints received by December 2012, the Gender desk has forwarded 10 cases to court and negotiated a mutual agreement on 95 cases.¹⁹⁵ The Gender desk

¹⁹¹ Interview with Narayan Babu Thapa, APF spokesperson, April 2013.

¹⁹² Interview with Anjali Pokharel, DIG of the APF Human Rights Cell, December 2012.

¹⁹³ Armed Police Force Rules 2003, Article 81, available at: [http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-\(2002\)](http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-(2002)), last accessed on 24 February 2013.

¹⁹⁴ Interview with Jhuka Panthi, Inspector, Gender desk, December 2012.

¹⁹⁵ Interview with Jhuka Panthi, Inspector, Gender desk, December 2012.

has recommended action against 72 officials ranging from suspension, demotion, reduction in grade and warnings, among others.¹⁹⁶

DECISIONS OF THE NHRIS/ANTI-CORRUPTION BODIES AND PEACEKEEPING DEPLOYMENT

As stated above, the APF bars personnel who face departmental action for human rights abuses from peacekeeping missions; however allegations of human rights violations by institutions like the National Human Rights Commission (NHRC) are not deemed sufficient to disqualify any individual. According to a senior APF officer, to disqualify anyone just because of an allegation against them would be to victimize them.¹⁹⁷ The APF says it would investigate if the NHRC forwards any concerns against any officers and would take action against them accordingly. In case there is a contradiction between the findings of the NHRC and the APF's internal investigation, the APF maintains that it communicates its finding to the NHRC through the government. A spokesman of the APF says it responds to concerns by the NHRC sensitively and promptly.¹⁹⁸

If a case for corruption is filed by the Commission for the Investigation of Abuse of Authority (CIAA), the involved APF personnel is automatically suspended. In 2011/12, the CIAA filed cases against three APF personnel at the Special Court for using fake education certificates. The CIAA's duties also include closing the investigation for lack of merit/evidence, issuing warnings and taking departmental action against APF personnel involved in corruption.

¹⁹⁶ Interview with Jhuka Panthi, Inspector, Gender desk, December 2012.

¹⁹⁷ Interview with Durja Kumar Singh, AIG of the APF, December 2012.

¹⁹⁸ Interview with Narayan Babu Thapa, DIG of the APF, April 2013.

EXISTING PRACTICES AND PROBLEMS WITH IMPLEMENTATION

1. Centralization of Deployment Quotas

Though the APF maintains that it has a policy to distribute quotas proportionally, quotas for senior officers remain very centralized. The headquarters appoints at least 11 commanders, doctors and other senior officers for each FPU based on seniority. It also gets quota for other ranks, junior officers, and peons of various trades, quotas for women from the infantry and nomination of persons with outstanding contribution to UN missions.

2. Allocation of Quotas for Excellent Performance

There is no mention of such quotas in the FPU Selection Policy endorsed by the Home Ministry in 2008; however, the APF leadership allocates some seats for those who fail the UN SAAT/SPAT tests by accommodating them under the quota of best performers of the institution. Such best performers are often picked on recommendation from top politicians, bureaucrats and APF personnel.¹⁹⁹

3. Under-representation of Women

Currently, there are 1,134 women personnel in the APF. Of the senior most women officers, three deputy superintendents of police and 15 inspectors have already participated in FPUs. However, the overall participation of junior women officers is still very low. So far only 45 women (1.2%) out of the 3,721 personnel have participated at the FPU. The number of women police officers nominated for UNPOL is also very small. There is no special policy in the APF FPU Selection Directives regarding quotas for women. In its circular for recruitment

¹⁹⁹ Interview with APF personnel, December 2012.

of two FPU's for Liberia, the APF headquarters had allocated only three posts for women.

4. Improvement of Examination System

Under the existing practice, to fill one position under the quota system, five individuals of the same rank have to compete in a pool system. The five candidates are selected on the basis of seniority. Merit based exams between a larger group of candidates would be more effective rather than choosing one candidate by conducting competition between five contenders.

5. Incorporation of Human Rights and Gender Issues in the Selection Directives

The Selection Directives maintained by the APF do not outline a policy regarding the selection of individual police and do not make any commitments regarding human rights. This needs to be revised taking into account the growing number of personnel in the APF, UN policies and the APF's own policy to recruit 20 percent of women police personnel from 2014.

CHAPTER 4

OVERSIGHT MECHANISMS AND OTHER RELEVANT INSTITUTIONS

MINISTRY OF DEFENSE

The Ministry of Defense (MoD) is formally in the chain of command that links the NA with the Government. According to the Government of Nepal Allocation of Business Rules (2008), which was revised in 2012, the MoD has a total of 21 functions, including responsibility for formulating national security policy, management, mobilization, restructuring and control of the NA.²⁰⁰ The MoD also oversees military service including formalization of the promotion and transfers recommended by the NA headquarters, training, purchase and production of military logistics, oversights of military operations, development of the military academy, installations and communication.²⁰¹ It has no direct powers over promotion and transfers of NA personnel. Rather, it forwards the NA's request for transfers and promotions of army officers from the rank of colonel to lieutenant general for approval by the Cabinet. It has been

²⁰⁰ Government of Nepal (Allocation of Business) Rules (2012), 18 May 2012, available at: <http://www.lawcommission.gov.np/en/documents/func-startdown/1642/>, last accessed on 11 May 2013. The 2008 Government of Nepal (Allocation of Business) Rules is available at: <http://www.lawcommission.gov.np/en/documents/Law-Archives/old-rules/English/Government-of-Nepal-%28Allocation-of-Business%29-Rules-2064-%282008%29/>, last accessed on 11 May 2013.

²⁰¹ Functions of the MoD, available at: <http://mod.gov.np/functions.php>, last accessed on 1 March 2011.

portrayed by critics as a “post box”, responsible for merely implementing decisions made by NA headquarters.

In July 2011, the MoD had only 38 civilian staff. Since then, the Cabinet has introduced a restructuring plan for the MoD, which has increased human resource in the MoD to 98. Four divisions and 11 specialized divisions were also created. One of these is the Human Rights and Court Verdict Implementation Division, which is headed by a joint secretary.²⁰² The Human Rights section of the new division is responsible for implementing the recommendations of the NHRC, assisting in the preparation of reports to be submitted by the Government before the UN Human Rights Council sessions in Geneva, supervision of human rights-related training and maintenance of documentation about human rights violations committed by NA personnel. Despite this mandate, it has not been proactive in terms of the implementation of the NHRC’s recommendations regarding the conflict era human rights violations and stresses the need for a Truth and Reconciliation Commission to look into such cases.²⁰³ The Court Verdict Implementation Section also remains unassertive and is largely responsible for merely formalizing requests made by the NA headquarters, including in relation to personnel transfers.

MINISTRY OF HOME AFFAIRS

The Ministry of Home Affairs is responsible for the maintenance of law and order in Nepal. The NP, the APF and the National Investigation Department all fall under its jurisdiction. It is responsible for the formulation and enforcement of internal security policies, the management of prisons, the regulation of foreign citizens and for overseeing rescue and relief operations. It is also responsible for the granting of citizenship, looking after borders and refugee issues, and the

²⁰² Kathmandu Post, “Defence Ministry Revamp gets under-way”, 2 August 2011, available at: <http://www.ekantipur.com/2011/08/02/national/defence-ministry-revamp-gets-underway/338447.html>, last accessed on 27 February 2013.

²⁰³ Interview with MoD official, April 2013.

formulation, implementation, monitoring, and evaluation of policies and programs relating to internal security.²⁰⁴ It is also on the board that recommends the announcement of new vacancies for the Nepal Police force. The Home Secretary chairs the board that recommends promotions for the AIGs, DIGs and SSPs and a joint secretary is a member of the board that recommends promotions for SP, DSP and Inspectors. The Nepal government makes appointment in the ranks including inspectors and above in both the NP and the APF.²⁰⁵

In September 2012, the Ministry of Home Affairs issued a Directive barring local administrators and heads of security from meeting with INGOs, donor agencies or members of the diplomatic community, without its prior approval.²⁰⁶ It also dispatched circulars to all 75 districts prohibiting CDOs and local Police Chiefs from attending NGO programs without prior approval. Human rights defenders have also complained that the NP and the APF were instructed by the Ministry of Home Affairs not to respond to queries from human rights organizations and to inform NGOs that all queries had to be referred back to the Ministry. Human rights activists have denounced the move saying that it is an obstruction of the work of NGOs and goes against the spirit of democracy.²⁰⁷

²⁰⁴ Government of Nepal (Allocation of Business) Rules, 2012, 18 May 2012, available at: <http://www.lawcommission.gov.np/en/documents/func-startdown/1642/>, last accessed on 21 May 2013.

²⁰⁵ The authority for appointments in the NP and APF is defined in the Police Rules 1992 and the APF Rules 2002. The NP Rules can be downloaded from <http://www.lawcommission.gov.np/en/documents/law-archives/old-rules/Prevailing-Laws/Rules-and-Regulations/English/Police-Rules-2049/> and the APF Rules can be downloaded from [http://www.lawcommission.gov.np/en/documents/law-archives/old-rules/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-\(2002\)/](http://www.lawcommission.gov.np/en/documents/law-archives/old-rules/Prevailing-Laws/Rules-and-Regulations/English/Armed-Police-Force-Rules-2060-(2002)/).

²⁰⁶ A copy of the directive is available at: <http://moha.gov.np/np/2011/09/29/news/notices/85/>, last accessed on 21 May 2013.

²⁰⁷ Interview with Sushil Pyakurel, human rights activist, April 2013.

STATE AFFAIRS COMMITTEE OF THE PARLIAMENT

Nepal's Parliament has a State Affairs Committee that oversees the activities of the Government, including the Prime Minister's Office, the MoD and the Ministry of Home Affairs. It monitors the activities of security agencies—the NA, the NP, the APF and the National Investigation Department—and makes policy recommendations to the Government to strengthen the performance of these institutions. The Interim Constitution of Nepal (2007) (IC) has also mandated the Committee to provide suggestions to the Government over the work plan for the democratization of the NA.

The State Affairs Committee must submit an annual report of its work to Parliament. One of the major issues that it investigated in recent years was the multi-million dollar Sudan scandal in which top police officials were involved in misappropriation during the purchase of logistics for a NP peacekeeping mission to be deployed in Darfur.

PUBLIC SERVICE COMMISSION

The Public Service Commission (PSC) is responsible for conducting examinations for the selection of suitable candidates to civil service posts. The Military Service, the Armed Police Service and the Police Service should consult with the PSC on general principles to be followed in the course of the appointment and promotion of members in their service. A mechanism headed by either the chairperson of the PSC or a member designated by him and including the Chief Secretary and Law Secretary as members can be formed to hear complaints regarding the promotions of AIGs, DIGs and SSPs in the Nepal Police.²⁰⁸ The Armed Police Service Commission is responsible for the appointment of APF

²⁰⁸ The General Principles on Appointment and Promotion in the Nepal Police Force introduced by the government of Nepal after consultations with the Public Service Commission in 2012. Available at: http://www.moha.gov.np/uploads/document/file/police_20121127061212.pdf, last accessed on 21 May 2013.

personnel and is chaired by the chief commissioner of the PSC or a commissioner designated by him/her.

While the PSC has a role in the decisions relating to the selection and promotion of personnel in the NA, NP and APF, it has so far not been involved in the selection of peacekeepers.

NATIONAL HUMAN RIGHTS COMMISSION

The NHRC was established in 2000 under the National Human Rights Commission Act (1997). Under the IC (2007) the institution was promoted from a statutory to a constitutional body; however a new National Human Rights Commission Act was introduced in 2012, which weakened the commission's powers and independence.²⁰⁹ One example is that the NHRC Act (2012) requires that complaints regarding incidents of human rights violations must be lodged with the Commission within six months from the date on which the incident took place or within six months from the date on which a person under control of someone else got released or became public.

The Human Rights Commission Act (2012) provides for a database of violators to be maintained by the Commission and for the Commission to publicize their names. This database could be used by the concerned authorities while considering appointments or promotions of any individual in public office position or indeed for the selection of peacekeepers; however, so far this has not been done.

The NHRC has powers to make recommendations to the Government regarding necessary actions to be taken against alleged human rights violators and regarding the provision of compensation or reparation to the victims.

²⁰⁹ The NHRC Act 2012 is available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/National+Human+Rights+Commission+Act.pdf, last accessed on 21 May 2013.

Between 2000 and mid-July 2012, the NHRC submitted the outcome of its investigations into 4,006 complaints of alleged human rights violations and made 625 recommendations which included 390 related to extrajudicial killings for action to the government.²¹⁰ The government has not taken actions against the alleged perpetrators or filed cases in the court in accordance with the NHRC recommendations.

An official at the Prime Minister's Office said they had provided compensation to the victims but have not implemented the recommendation for legal action against security forces relating to conflict-era cases as those cases would be looked into by the TRC.²¹¹

A latest progress report on the status of implementation of the NHRC's recommendation was not available as officials stated that they were compiling data from various government institutions. However, a NHRC report regarding its investigations into 1,442 complaints of alleged human rights violations and implementation of 386 of its recommendations for action to the government shows a picture of government's apathy. According to the report, 34 recommendations have been fully implemented, 138 are partially implemented and 214 remain unimplemented as of November 2010.²¹²

The 2010 report by the NHRC confirmed that only 8% of its recommendations regarding cases of extrajudicial killing have been implemented, while 2% of its total recommendations for disappearances and 14% of recommendations on torture were implemented.²¹³ By July 2011, a total of 464 recommendations had been made by the NHRC, of which the Government had fully implemented 18 policy recommendations, and 121 other recommendations, but was yet to

²¹⁰ Interview with NHRC official March 2013.

²¹¹ Interview with PMO official, March 2013.

²¹² A summary of NHRC's recommendations during this period was published in November 2010. A summary report is available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Summary_28%20Nov%202010.pdf, last accessed on 21 May 2013.

²¹³ NHRC Report (2010) available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Summary_28%20Nov%202010.pdf, last accessed on 21 May 2013.

implemented the remaining 325 recommendations.²¹⁴ Most of those recommendations that remain unimplemented are for legal action to be taken against human rights violators associated with the security forces and those affiliated to various political parties.²¹⁵

Overall, the implementation of recommendations of national institutions such as the NHRC is very poor. The reason behind this is the general culture of impunity in the country. The links between crime and politics have increased according to the NHRC's summary report on the status of implementation of its recommendation made during the conflict.²¹⁶

Article 132(2) (h) of the IC gives powers to the NHRC to publicize the names of officials, persons or authorities failing to comply with or enforce the recommendations made by the NHRC; however this is a power which the NHRC has so far not used.

On 6 March 2013 the SC declared null and void two sections of the NHRC Act (2012), which gave the Attorney General final say over whether or not a case recommended by the NHRC should be filed against alleged perpetrators. The SC ruled that NHRC itself can file cases against human rights violators, without requiring the permission of the Attorney General.²¹⁷

The NHRC has expressed concerns to the Government over the promotion of security staff involved in human rights violations and has suggested that it file cases for murder against military staff at civilian courts. However, such recommendations have gone unimplemented and

²¹⁴ Interview with an official of the Office of the Prime Minister and Council of Ministers, March 2013.

²¹⁵ Interview with NHRC commissioner Gauri Pradhan, November 2012.

²¹⁶ NHRC Newsletter, "Summary Recommendations Upon Complaints in a Decade (2000-2010)", November 2010, available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Recommendation%20Book_Nep-2010.pdf, last accessed on 23 May 2013.

²¹⁷ Kathmandu Post, "NHRC can now probe, file rights cases on its own", 6 March 2013, available at: <http://www.ekantipur.com/the-kathmandu-post/2013/03/06/top-story/nhrc-can-now-probe-file-rights-cases-on-its-own/246060.html>, last accessed on 21 May 2013.

instead compensation has been given to victims rather than punishing the perpetrators through investigations and charges in civilian courts. In response to the NHRC's concerns over the need for action to be taken against officials involved in conflict-era human rights abuses, the response from the NA, via the MoD, has been that the transitional justice mechanisms once set up will look into these issues. For its part, the Government has ignored NHRC recommendations and given promotion to army officials including Maj. Gen. Toran Jung Bahadur Singh and Col. Raju Basnet, among others.

Moreover, it is clear that the NA does not use the reports published by the NHRC or the OHCHR when considering personnel for promotion or peacekeeping deployment. In July 2012, NA Spokesperson Ramindra Chhetri told the press that investigations by OHCHR (relating to the Bhairabnath battalion) were biased and that no army officer should be penalized on the basis of such allegations. In another example from July 2012, MoD Spokesperson Dwarika Prasad Acharya is quoted as saying that he was “unaware of the human rights allegations against Basnet”.²¹⁸ This is despite the fact that the NHRC had written to the Prime Minister’s Office on 13 September 2009 recommending that Raju Basnet and a number of other soldiers be held accountable for enforced disappearances at the Bhairabnath Battalion.²¹⁹

COMMISSION FOR THE INVESTIGATION OF THE ABUSE OF AUTHORITY

The CIAA is responsible for investigating misconduct or corruption by individuals holding public office; however it does not have the power to probe irregularities in constitutional bodies, the judiciary or

²¹⁸ Kantipur, “Army Requests for Basnet’s promotion”, 16 July 2012, available at: <http://www.ekantipur.com/2012/07/16/capital/army-requests-for-basnets-promotion/357228.html>, last accessed on 21 May 2013.

²¹⁹ NHRC Newsletter, “NHRC recommendations Upon Complaints in a Decade (2000-2010)”, November 2010, pages 169,170 &171, available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Recommendation%20Book_Nep-2010.pdf, last accessed on 23 May 2013.

the military. Despite this mandate, the Nepal Government appointed former bureaucrat Lokman Singh Karki; a controversial figure against whom the Rayamajhi Commission recommended action for his role in suppressing the people's movement of 2006, as the new head of the Commission on 9 May 2013.

In June 2011 the CIAA filed a case against 34 police officers for their alleged involvement in the Sudan Scandal. A Special Court in February 2012 convicted three former police chiefs—Om Bikram Rana, Hem Bahadur Gurung and Ramesh Chand Thakuri—along with the director of the London-based Assured Risks Ltd, Michael Rider, and its Nepal agent Shambhu Bharati for involvement in corruption. However, none of the political and administrative leaders who were at the Ministry of Home Affairs at the time of the deal were charged by the CIAA for embezzlement. In the full text of the final verdict, the Special Court concluded that the CIAA had not properly investigated the identity of those behind the purchase of the faulty equipment and those responsible for the financial and administration irregularities.²²⁰

Although the CIAA has no jurisdiction relating to the military, Nepal became a party to the UN Convention Against Corruption in 2011 and has endorsed a new anti-corruption strategy in July 2012, pledging to bring corruption within the NA under the ambit of the CIAA.²²¹ The CIAA says that as it is not mandated to probe corruption within the NA and that it has never received complaints from soldiers expressing their concerns over decision on deployment of peacekeeping.²²² It does however receive more than 500 complaints every year regarding

²²⁰ Kathmandu Post, "Sudan Scam: Special Court finds 'serious lapses' in CIAA investigation", 12 April, 2012, available at: <http://www.ekantipur.com/2012/04/11/top-story/sudan-scam--special-court-finds-serious-lapses-in-ciaa-investigation/352147.html>, last accessed on 21 May 2013.

²²¹ Republica, "Army corruption to come under CIAA ambit", 24 July 2012, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=38473, last accessed 21 May 2013.

²²² Interview with Ishwori Poudyal, CIAA spokesperson, 2012.

irregularities in appointment, promotion, transfer and corruption within the NP and APF.²²³

TRUTH AND RECONCILIATION COMMISSION AND THE COMMISSION ON THE INVESTIGATION OF THE ENFORCED DISAPPEARANCES

The CPA provided for the establishment of two transitional justice mechanisms: the Truth and Reconciliation Commission (TRC) and a Commission of Inquiry on Disappearances Persons, to address the concerns of the thousands of victims and their families. Legislation to enact these transitional justice mechanisms was repeatedly delayed.

After the dissolution of the Constitutional Assembly in May 2012, the Government in August 2012 forwarded an ordinance on the Investigation of Disappeared Persons and the TRC to President Ram Baran Yadav for endorsement. The proposed ordinance merged the two commissions into one, had provisions for forced reconciliation between victims and perpetrators and allowed for amnesty to be granted, including in cases involving serious breaches of international human rights.²²⁴ This ordinance was never promulgated by the President.

In mid-March 2013, as part of a wider 11-point agreement between the main political parties, a new ordinance was presented to the President and signed into law the next day. The ordinance did not comply with international standards and was strongly criticized by the UN High Commissioner for Human Rights, Navi Pillay. In a public statement released on 20 March 2013 she stated that she “deeply regrets the passing of an ordinance to establish a Truth and Reconciliation Commission in Nepal with power to recommend amnesties for serious human rights

²²³ Interview with CIAA official, April 2013.

²²⁴ See OHCHR, “Analysis of Nepal Ordinance on Investigation of Disappeared People, Truth and Reconciliation Commission”, December, 2012, available at: http://www.ohchr.org/Documents/Press/Nepal_OHCHR_Analysis_TJ_Ordinance_Dec_2012.pdf, last accessed on 21 May 2013.

violations, and strongly urged the government to rectify this and other provisions which would contravene international standards”.²²⁵ On 1 April 2013, the SC issued a stay order for the Government of Nepal not to proceed with the establishment of the new TRC while the Court considered the matter. On 2 January 2014, the SC handed down its decision, finding the Ordinance unconstitutional and requiring the Government to amend its text in order to meet international standards.

On 25 April 2014, parliamentarians voted in favour of an Act to establish two commissions, a TRC and a Commission on Enforced Disappearances. The Commissions were given the powers to recommend amnesty even to those involved in serious human rights violations. The three major political parties issued a party whip forcing parliamentarians to withdraw their proposed amendments. The Act came into force on 11 May 2014. The final text of the Act was only made public after the Act received presidential assent.

The TRC Act is in clear breach of international human rights law standards and the decision of the SC of Nepal of 2 January 2014. The main concerns are: (1) the Commissions’ excessive power to conduct mediation to reconcile victims and perpetrators even in cases of serious human rights violations (section 22) and the prohibition of any legal action in mediated cases (section 25(2)(a)); (2) the TRC’s discretionary power to recommend amnesties even for those involved in crimes under international law and gross violations of human rights (section 26); (3) the lack of criminalisation of offences that amount to crimes under international law and the grossly inadequate system of referral to prosecution mechanisms and (4) the non-recognition of victims’ right to reparation (section 2(e) and 23).²²⁶

²²⁵ OHCHR, “Pillay says Nepal commission must not grant amnesties for serious violations”, 20 March 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?IsMediaPage=true&LangID=E>, last accessed 21 May 2013.

²²⁶ Advocacy Forum, TRIAL, Redress Trust, “Paying Lip Service to Justice. The Newly Adopted TRC Act Breaches International Law and Flouts the Decision of the Supreme Court of Nepal”, June 2014, available at: <http://advocacyforum.org/downloads/pdf/TRC-Act-UN-Submission-AF-TRIAL-REDRESS-June-2014.pdf>.

It is hoped that the TRC will be a vehicle to implement the SC's decision on vetting of August 2012, by linking it to the implementation of the right to truth, i.e. for the TRC to address institutional responsibilities (as well as command responsibilities, where possible) and make general recommendations for the professionalization of these institutions. At the individual level, the Commissions should consider making recommendations for individual perpetrators of serious human rights violations to be relieved from their posts or banned of further promotions and deployment as peacekeepers.

THE JUDICIARY

The highest court in Nepal is the Supreme Court (SC), with powers to inspect, supervise and issue directives to all other subordinate courts.²²⁷ Over the years, especially after the People's Movement of 2006, the SC has played a positive role in the protection of human rights, as demonstrated in the various judgments quoted in this report. There were concerns about the independence of the judiciary following the appointment of Chief Justice, Mr Khil Raj Regmi, as Chairman of the Interim Election Government of Nepal in March 2013. The IC (2007) was amended to accommodate this change after the four major political parties - the UCPN-M, the Nepali Congress, the Communist Party of Nepal (United Marxist Leninist) (CPN-UML) and the Samyukta Loktantrik Madhesi Morcha (SLMM) struck an agreement on 14 March 2013.²²⁸

Another issue is that although no direct party nominations are allowed for judicial appointments, some of the members in the Judicial Council (which decides on appointment of all judges) - including the law minister, a legal expert nominated by the President on the recommendation of the Prime Minister and a senior advocate appointed by the Chief Justice

²²⁷ Article 100 of the Interim Constitution of Nepal, 2007.

²²⁸ President Ram Baran Yadav endorsed an ordinance for removal of constitutional difficulties in March 14, 2013. The order made by President Yadav for amendment of the constitution can be accessed in Nepali in <http://presidentofnepal.gov.np/Contents/2069-chait-2330;-2376;-2340;-html>.

on the recommendation of the Nepal Bar Association - are all in reality political appointments.

The appointment of Lokman Singh Karki as the head of the CIAA has also caused major controversy. This is on account of the fact that the Rayamajhi Commission had found evidence against him during its investigations into human rights violations during the People's Movement of 2006 and had urged the Government to declare him ineligible for any public post.²²⁹ In response, Justice Sushila Karki issued a stay order against his appointment on 22 March 2013 and demanded an explanation from the President's Office, the Chairman of the election government, and the then coordinator of the High Level Political Committee, UCPN(M) Chairman Pushpa Kamal Dahal, the CIAA and Lokman Singh Karki himself. Justice Karki accepted arguments that the IC (2007) clearly stipulates that to be eligible as the head of the anti-corruption body such as the CIAA, the appointee must have high moral character; therefore the nomination raised in the petition should be examined. In late April 2013, however, another bench comprising of Justices Girish Chandra Lal and Tarka Raj Bhatta remained silent on the constitutionality of the recommendation but lifted the stay order on the appointment on the basis that the petition was premature, as the appointment had not been confirmed.²³⁰

The major political parties were deeply divided over the nomination of Lokman Singh Karki, with one coalition partner (the CPN-UML) withdrawing its previous support for him before the nomination was made.²³¹ President Ram Baran Yadav tried to persuade the parties to put

²²⁹ The Rayamajhi Commission submitted its report to the government in 2006. The list of persons that were implicated for suppressing the people's movement by the commission can be accessed in <http://blog.com.np/2006/11/23/those-who-suppressed-nepal-democracy-movement/>. More information on Karki and charges against him also available at *Breaking Down*, The Kathmandu Post, May 2009, available at <http://ekantipur.com/the-kathmandu-post/2013/05/08/editorial/breaking-down/248538.html>.

²³⁰ Nepalnews, "Apex court vacates stay on bid to name Karki CIAA chief", 29 April 2013, available at <http://www.nepalnews.com/archive/2013/apr/apr29/news16.php>.

²³¹ In the mid-1990s, the CIAA itself in fact filed a case against Lokman Singh Karki, charging him with involvement in smuggling gold worth Rs. 7.2 million (over USD \$78,900) during his tenure at the department of customs.

the appointment on hold and expressed concern that the polarisation generated by the nomination could overshadow forthcoming elections.²³² Despite pressure against the nomination from civil society, the President endorsed the appointment on 8 May 2013. It was said that lobbying by India was one of the major reasons for Lokman Singh Karki's success in securing this top post.²³³

On 12 August 2012, the SC ordered the government to frame vetting laws regulating the promotion and transfer of government officials including those from the security apparatuses though this also has not been properly acted on.²³⁴ (The ASRs state that soldiers convicted for human rights and international humanitarian law violation by court would not be eligible for promotion whereas the Supreme Court ruling requires the exclusion of all those "involved" in human rights violations.)

OTHER RELEVANT OVERSIGHT MECHANISMS

Other constitutional bodies, such as the Parliament and the Attorney General also play important roles in ensuring that effective laws and regulations are put in place to vet civil servants and members of security forces put forward for appointment, promotion or deployment on peacekeeping missions. Officials of constitutional bodies and senior judges can be impeached by the Parliament, while lower judges can be dismissed by the Judicial Council. Between May 2012 and late 2013, any efforts to deliver accountability using these mechanisms was hampered by the absence of a functioning Parliament and delays in the appointment of heads of these constitutional bodies.

²³² Kantipur, "Karki appointment should not spoil poll process", 7 May 2013, available at: <http://www.ekantipur.com/the-kathmandu-post/2013/05/07/top-story/karki-appt-should-not-spoil-poll-process-prez/248474.html>.

²³³ Interview with an aide of the President, May 2013.

²³⁴ Advocacy Forum, "SC Directs Government to Vet Officials", 13 August 2012. Available at: <http://www.advocacyforum.org/news/2012/08/sc-directs-government-to-vet-officials.php>, last accessed on 21 May 2013.

The Attorney General (AG) is a political appointment, which serves as chief legal advisor to the Government. In January 2013, Attorney General Mukti Pradhan directed the NP and a prosecutor to stop recording statements of alleged perpetrators and halt investigations into the conflict era murder of a journalist in Dailekh district.²³⁵

There is a Law and Human Rights Promotion Department headed by a joint secretary at the Prime Minister's Office that formulates policies regarding human rights monitoring and oversees the status of implementation of the recommendations of the NHRC and judgments of the SC.

²³⁵ Kathmandu Post, "OAG orders halt to Dekendra case probe", 11 January 2013, available at: <http://www.ekantipur.com/the-kathmandu-post/2013/01/11/top-story/oag-orders-a-halt-to-dekendra-case-probe/243961.html>, last accessed on 21 May 2013.

CONCLUSIONS AND RECOMMENDATIONS

It is in Nepal's interest to put in place better vetting mechanisms for the selection of UN peacekeeping personnel to ensure that anyone who has been involved in serious human rights violations does not blemish Nepal's track record on peacekeeping.

The December 2012 UN policy on human rights screening of peacekeepers requires attestations from individual officers and certification by the state that "they have not committed, or are alleged to have committed criminal offences and/or violations of international human rights law and international humanitarian law". The NP, APF and NA have a process in place that allows for the implementation of the UN policy, though human rights and gender issues need to be incorporated more clearly into these policies and the criteria need to be amended to make clear that not only those convicted of human rights violations but also those against whom there is credible evidence of their involvement cannot be selected.

There is also a need to introduce more transparency into the selection processes. In line with the order of the Supreme Court of August 2012, the security forces need to establish vetting laws to regulate the

recruitment, promotion and transfer of personnel. It makes sense to include the selection of peacekeepers as part of any new regulations.

The NP and APF have fairly transparent systems of selection; whereas the Nepal Army remains reluctant to allow any scrutiny of its selection decisions. There is no reason why the Government of Nepal cannot introduce individual screening for each and every army/police being deployed for UN missions as provided for in the Code of Conduct for UN peacekeepers and the December 2012 UN policy on human rights screening.

Advocacy Forum recommends the following to the Government of Nepal:

1. Introduce national vetting procedures to comply with “ANNEX H: WE ARE UNITED NATIONS PEACEKEEPING PERSONNEL of the Memorandum of Understanding signed with the UN, the December 2012 UN policy for human rights screening of UN personnel and the August 2012 Supreme Court judgment;
2. Ensure verification of each and every person being deputed for UN peacekeeping duties by checking whether any criminal complaints are pending against them, whether there are any cases pending against them with the NHRC or other human rights bodies, whether they have been subject to departmental action with regard to serious human rights violations or whether the NHRC or any commissions of inquiry into serious human rights violations has recommended action against them. The process of verification should be transparent and subject to parliamentary control;
3. In line with the Supreme Court judgment, ensure the involvement of the Public Service Commission in the recruitment, promotion and transfer of personnel and put in place a mechanism that ensures the PSC has all relevant information regarding security forces personnel against whom there is credible evidence that they

have committed criminal offences and/or violations of international human rights law and international humanitarian law, even if they have not (yet) been convicted by a court.

4. Make the TRC and Disappearances Commission vehicles to implement the August 2012 Supreme Court's decision, by linking it to the implementation of the right to truth, i.e. for the TRC to address institutional responsibilities (as well as command responsibilities, where possible) and make general recommendations for the professionalization of the relevant institutions. At the individual level, the Commissions should consider making recommendations for individual perpetrators of serious human rights violations to be relieved from their posts or banned of further promotions and deployment as peacekeepers.
5. Hand over Niranjana Basnet to the NP and ensure full cooperation with the investigations into the murder of Maina Sunuwar;
6. Ensure the case against Basanta Kunwar under the Torture Compensation Act results in the victim being provided adequate redress;
7. Fully cooperate with the United Kingdom authorities to ensure Kumar Lama is brought to justice.

ANNEX

RANKS AND POSITIONS OF NEPAL POLICE AS OF AUGUST 2013²³⁶

Gazetted Ranks	No. of Position
IGP	1
Additional IGP	8
DIG	34
SSP	75
SP	130
DSP	336
Police Inspector	1,221
Non Gazetted Ranks	
Sub Inspector of Police	3,625
Assistant Sub Inspector of Police	6,648
Police Head Constable	12,555
Police Constable	39,324
Recruit	650
Auxiliary Staff	2,258
Others	351
Total Strength	67,246

²³⁶ Of the budgeted strength of 67,246 approved by the government, there are currently 58,802 police personnel serving in the institution. Nepal Police HQ, August 2013.

