



NEPAL

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 23RD SESSION OF THE UPR WORKING GROUP, 2-13 NOVEMBER 2015

FOLLOW UP TO THE PREVIOUS REVIEW

Nepal has made little progress since its first Universal Periodic Review in January 2011. It has failed to implement important commitments made in the previous review to enact or reform legislation to protect human rights and address persistent discrimination. Nepalis have waited almost a decade for a new Constitution.¹ Nepal broke its commitment to ensure that the long awaited Truth and Reconciliation Commission would not provide for amnesties for grave human rights violations,² and has failed to implement recommendations of its National Human Rights Commission (NHRC), including to take action against alleged human rights violators.³ It has also failed to implement a recommendation to criminalize torture and to reform legislation in line with the provisions of the Convention against Torture.⁴

In its previous review, Nepal accepted recommendations to address and eliminate caste-based discrimination,⁵ but although it enacted legislation outlawing caste discrimination, abuses have persisted. Trafficking in adults and children for sexual exploitation and forced labour also persist despite Nepal's acceptance of recommendations to further develop legislation against these abuses and introduce a national action plan against trafficking in 2012.⁶

¹ Unless otherwise noted all recommendations made in the context of the UPR process and cited in this document have been accepted by the Nepali Government. For example, in March 2011, Nepal accepted recommendations to promptly promulgate a new Constitution, A/HRC/17/5, 8 March 2011, Recommendation 106.1 (Republic of Korea, Egypt, China, Holy See).

² Ibid, Nepal accepted recommendation 106.34: "...ensure that the Truth and Reconciliation Commission, as well as to the Commission on Disappearances be operational within the briefest delay and that there be no amnesty for grave violations of human rights (Switzerland). Nepal was also reported to have "clearly stated" that the bills to create a TRC and Disappearances Commission "do not provide amnesty in serious violations of human rights and indicated that the government remains committed to have them cleared as expeditiously as possible", A/HRC/17/5, para 89. In fact, the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 (TRC Act), promulgated by Nepal's Constituent Assembly in May 2014, contains provisions that permit amnesty for gross violations of human rights. Nepal's Supreme Court struck down the provisions in February 2015 and ordered their amendment.

³ Ibid, Recommendation 106.25 (Canada).

⁴ Ibid, Recommendation 106.3: In the framework of the reform of the penal code and the penal procedure code, conform to the totality of the provisions of the Convention against Torture (Switzerland); criminalize torture (Denmark); enact specific legislation in domestic law to criminalize the offence of torture which is fully compliant with the requirements of the Convention against Torture (UK); criminalize torture and enforced disappearances in line with international standards (Slovenia).

⁵ Ibid, Recommendation 108.10: Take further steps to eliminate discrimination against vulnerable or marginalized groups, including on the basis of gender or caste, by enacting laws to criminalize all forms of discrimination (UK); Recommendation 108.12: That cases of caste-based discriminations be reported, investigated, perpetrators prosecuted and victims of such violence are compensated (Czech Republic). Nepal indicated its acceptance of both recommendations in the Addendum to the Report of the Working Group, A/HRC/17/5/Add.1, 1 June 2011.

⁶ A/HRC/17/5, Recommendation 108.20 (Japan). Nepal indicated its acceptance of this recommendation in the Addendum to the Report of the Working Group, A/HRC/17/5/Add.1, 1 June 2011.

During its first review, Nepal claimed that freedom of assembly was already guaranteed in the country;⁷ however, demonstrators continue to be arrested and assaulted by police for peaceful protest.

Nepal did not accept recommendations to issue a standing invitation to UN Special Procedures⁸ and since then has not granted requests for visits.

Most of the concerns raised by Amnesty International in the context of the 2011 UPR remain unaddressed, and are therefore reiterated in this submission with recommendations for action.⁹

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Shortcomings in the peace process and constitutional drafting

Persistent political disagreement over representation and greater autonomy for ethnic minority groups and Indigenous Peoples have obstructed the promulgation of a new Constitution to replace the 2007 Interim Constitution, instituted as a temporary measure at the end of the conflict.

The Interim Constitution contained protection of basic rights and provided for the establishment of a Constituent Assembly, charged with determining which rights of the many recommended to them would be provided for in the new Constitution, including the rights of groups who have suffered past discrimination. Nepal's second Constituent Assembly was formed on 21 January 2014; the first was dissolved in May 2012 after failing to draft a new Constitution. The second Constituent Assembly pledged to promulgate a new Constitution by 22 January 2015; however, that deadline also passed without an agreement.

Impunity for past human rights violations

The Comprehensive Peace Agreement of 2006 included commitments to respect and uphold human rights, including pursuing accountability for human rights violations. Nepal has made little progress in fulfilling these obligations.

To date, the authorities have failed to conduct prompt, thorough and effective investigations regarding crimes under international law committed during Nepal's armed conflict (1996-2006). No-one has been brought to justice in a civilian court.¹⁰ Impunity threatens to be further entrenched by an Act passed by the Constituent Assembly in May 2014 establishing a Truth and Reconciliation Commission (TRC) and a Commission on Investigation of Disappeared Persons ("Disappearances Commission") with provisions to recommend amnesties for crimes under international law.¹¹ The Act ignored a January 2014 Supreme Court ruling that such amnesties contravene international human rights law and the spirit of the 2007 Interim Constitution. On 26 February 2015, the Supreme Court struck down the law's amnesty

⁷ See, Nepal's 2010 National Report, A/HRC/WG.6/10/NPL/1, para 44, footnote 8. See also Nepal's acceptance of A/HRC/17/5, Recommendation 107.27: Ensure that the right to freedom of assembly is guaranteed and remove all restrictions to peaceful protests (Canada).

⁸ Ibid, Recommendation 108.6 (Spain), 108.7 (Chile), 108.8 (Brazil) and 108.9 (Maldives). Nepal did not express its support of these recommendations, but said it would extend invitations on a case-by-case basis, A/HRC/17/5/Add.1.

⁹ Nepal: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, January 2011, Amnesty International, ASA 31/001/2010, 5 July 2010.

¹⁰ Nepal: The search for justice, Amnesty International, ASA 31/001/2013, 10 January 2013; see also Nepal: Ensure Justice for Nepal's "Disappeared," Amnesty International, ASA 31/004/2013, 30 August 2013.

¹¹ Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014, Section 26 (2): "Notwithstanding whatsoever mentioned in Sub Section (1), the Commission shall not recommend for amnesty to the perpetrators involved in rape and other crimes of serious nature in which the Commission follows the investigation and does not find sufficient reasons and grounds for amnesty." Section 26(4) authorizes the Commission to recommend amnesties for "gross violations of human rights committed during the course of armed conflict" where a perpetrator submits an application stating the acts committed, accepts repentance, agrees to apologize and commits not to repeat such acts in future. Section 25(2) excludes taking legal action against perpetrators "who have reconciled with victims pursuant to section 22" or "who are recommended for amnesty pursuant to section 26" (OHCHR Technical Note, The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014).

provisions and ordered its amendment. Nepal also reneged on a commitment it made at its first review to ensure that the TRC and Disappearances Commission contained no amnesty provisions.¹²

Accountability for human rights abuses and victims' rights to justice, truth and reparation have also been undermined by the persistent failure by the police to register First Information Reports (FIRs),¹³ conduct investigations and follow court orders, including in cases of alleged extrajudicial executions, human trafficking, gender-based violence, and torture and other ill-treatment.¹⁴

Role of national statutory bodies in the protection of human rights

In 2013 the terms of the NHRC Commissioners expired and their seats were left vacant for over a year, severely hampering the operations of the NHRC.¹⁵ A new Chair was finally elected in September 2014, and Commissioners were nominated in October 2014. Commissioners are appointed on the basis of political consensus, rather than the process envisaged in the Paris Principles¹⁶ which aims at a pluralist representation of social forces involved in the in the protection and promotion of human rights. At its first review, Nepal committed to "promptly implement all recommendations put forward by the National Human Rights Commission regarding prosecutions and/or departmental actions against alleged human rights violators".¹⁷ But Nepali authorities have not acted on NHRC recommendations for prosecution.¹⁸

Cooperation with international human rights mechanisms

Nepal has failed to respond to outstanding requests by Special Procedures to visit Nepal, including the Working Group on enforced or involuntary disappearances, the Special Rapporteur on human rights defenders, and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.¹⁹

¹² A/HRC/17/5, 8 March 2011, Recommendation 106.34 accepted by Nepal: ...ensure that the Truth and Reconciliation Commission, as well as to the Commission on Disappearances be operational within the briefest delay and that there be no amnesty for grave violations of human rights (Switzerland). As noted above, Nepal told delegates during its 2011 review that that the bills to create a TRC and Disappearances Commission "do not provide amnesty in serious violations of human rights and indicated that the government remains committed to have them cleared as expeditiously as possible." A/HRC/17/5, para 89.

¹³ A First Information Report is a police record of the first information a victim or witness gives to the police about a cognizable offence and is registered in the police station where the complaint is made.

¹⁴ In July 2014, forensic evidence collected by the NHRC on the 2003 enforced disappearance and extrajudicial execution of five students in Dhanusha district confirmed the identities of the victims, who had been blindfolded and shot at close range with ammunition used only by the Nepalese Army at the time. The police had delayed their investigation for the four previous years citing a lack of evidence.

¹⁵ Nepal did not have a functioning parliament when the Commissioners' appointments lapsed in September 2013, making it difficult to hold consultations for new Commissioners. But even after the November 2013 elections, the posts remained vacant for many months. Political pressure and deal-making reportedly hampered the appointment process as well as the potential independence of Commission. (See, "Submission to the Human Rights Committee ahead of its Examination of Nepal's Second Periodic Report Under The International Covenant on Civil and Political Rights," February 2014, Redress, Advocacy Forum Association for the Prevention of Torture).

¹⁶ The Paris Principles are a set of international standards that apply to National Human Rights Institutions (NHRIs). They were adopted by the United Nations General Assembly in 1993. The Principles require NHRIs to be independent, to have a broad human rights mandate, adequate funding, and an inclusive and transparent selection and appointment process for members.

¹⁷ A/HRC/17/5, Recommendation 106.25 (Canada).

¹⁸ In July 2011 the NHRC reported that the government had failed to implement 325 of 464 recommendations made by the NHRC (see, Human Rights eBulletin, National Human Rights Commission of Nepal, Volume 6, Issue 11, May 2011, available at:

http://nhrcnepal.org/nhrc_new/doc/newsletter/E-bulletin-Vol6-11.pdf, accessed 18 March 2015). Most of these are reported to be recommendations for legal action against human rights violators. According to Anup Raj Sharma, Chairman of NHRC, the government has not implemented a single recommendations for prosecution of a human rights violation ("Longer the transition, the less attention govt pays to human rights," EKantipur.com, 15 December 2014, <http://www.ekantipur.com/2014/12/15/oped/longer-the-transition-the-less-attention-govt-pays-to-human-rights/399036.html>, accessed 13 February 2015).

¹⁹ The Special Rapporteur on human rights defenders: request made in 2003, reminders sent in 2004, 2005, 2008, 2009, 2012; the Working Group on enforced or involuntary disappearances: request for follow-up visit on 12 May 2006, reminders in 2009; on 30 June 2011 and 2 Sept. 2013; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence: request made in 2012. Other unanswered requests include the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on racism; on the right to freedom of opinion and expression; on violence against women; on Indigenous Peoples; on the right to food; on extreme poverty and human rights; on the rights to freedom of peaceful assembly and association; and on contemporary forms of slavery; and the Independent Experts on Cultural Rights and on Minority Issues.

THE HUMAN RIGHTS SITUATION ON THE GROUND

A. Violations by state forces

Extra-judicial and summary executions

At least 281 extrajudicial executions have been reported in the Terai since 2010. Family members of the victims told Amnesty International in August 2014 that the police had claimed their sons were killed in "crossfire," contrary to eyewitness testimony and available evidence.²⁰ An alleged extrajudicial killing was also reported in Kathmandu in August 2014.²¹ To date, there has been no investigation and prosecution in these cases.²²

Torture and other ill-treatment

Torture and ill-treatment of adults and children²³ persist despite Nepal's commitments to end torture and related impunity.²⁴ Victims interviewed by Amnesty International in August 2014 reported having been beaten and kicked by police following their arrest. In one case, the victim's genitals were electrocuted and he was beaten over the head with a blunt object over a period of four days.²⁵

Nepal did not uphold a commitment made at its first review to criminalize torture and reform its penal code and penal procedure code in line with the provisions of the Convention against Torture.²⁶ Although the Interim Constitution prohibits torture,²⁷ the legislature has not passed a bill providing criminal penalties for torture.

Restrictions on freedom of assembly

Nepal's Interim Constitution protects freedom of assembly, but unwarranted restrictions have been imposed on members of the Tibetan and Madhesi (Terai) communities curtailing their right to peaceful protest, including by prohibiting and preventing demonstrations and arresting protestors under the Public Offenses Act, sometimes with excessive force. Since September 2014, successive peaceful political rallies in support of Madhesi independence have been broken up by police.²⁸ Tibetans have been prohibited from publicly celebrating the Tibetan New Year and the Dalai

²⁰ Amnesty International interviews, August 2014.

²¹ "Chari' killed in crossfire: HM," Kathmandu Post, 8 August 2014, <http://www.ekantipur.com/the-kathmandu-post/2014/08/08/top-story/chari-killed-in-crossfire-hm/265918.html>, accessed 13 February 2015.

²² See the Office of the High Commissioner on Human Rights' Report, "Investigating Allegations of Extra-Judicial Killings in the Terai - OHCHR-Nepal Summary of Concerns (July 2010)", and the Terai Human Rights Defenders Alliance report, "Continuing Extra-judicial Executions in the Terai," 2014.

²³ In January, Amnesty International wrote to Nepal's Deputy Prime Minister and Minister for Home Affairs expressing concern about the reported detention and torture of a child, 16 year-old Prakash Gharti Magar of Dang district, whose leg was broken by police who arrested him following a scuffle between adolescents.

²⁴ A/HRC/17/5, Recommendation 107.2 (Germany).

²⁵ Amnesty International interviews, Nepal, August 2014.

²⁶ A/HRC/17/5, Recommendation 106.3: In the framework of the reform of the penal code and the penal procedure code, conform to the totality of the provisions of the Convention against Torture (Switzerland); criminalize torture (Denmark); enact specific legislation in domestic law to criminalize the offence of torture which is fully compliant with the requirements of the Convention against Torture (UK); criminalize torture and enforced disappearances in line with international standards (Slovenia).

²⁷ Article 26 Interim Constitution of Nepal 2063 (2007): "Right against Torture: (1) No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. (2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

²⁸ Political activist Chandra Kant Raut and hundreds of his supporters have been arrested and detained in connection with peaceful protests advocating secession for the southern plains of Nepal, known as the Terai. Raut was arrested in September 2014 after addressing a rally and charged with sedition in October 2014. He was released on bail, but has been rearrested several times since then. On 25 and 26 November 2014, the Nepal police and Central Investigation Bureau arrested more than 300 people suspected of being Madhesi activists attempting to hold a rally in Kathmandu. Some 30 individuals, including Raut, were held for up to 48 hours without charge. In January Raut suffered a broken leg when police used violence to break up a rally in Biratnagar.

Lama's birthday. During its first review, Nepal claimed that it had already removed restrictions on peaceful protests.²⁹

Security personnel continue to employ unnecessary and excessive force during arrests and to quell demonstrations.³⁰

Arbitrary detention

Police continue to arrest individuals without warrants or other formal procedures and to detain them without charge or trial and under poor conditions. Under the Public Security Act, the Chief District Officer (CDO) can order "preventive detention" without charge for persons deemed a threat to "security, peace and order" for up to 90 days, with extensions for up to six months on approval of the Home Ministry. The Public Offenses Act permits the CDO to detain people without charge for up to 25 days with extensions for crimes such as disturbing the peace, vandalism, rioting, or fighting. These powers have been used repeatedly to detain peaceful protestors.

Violence against women and girls

Dowry killings, rape and other forms of sexual violence continue to be reported despite official measures to combat abuse, including the Domestic Violence (Crime and Punishment) Act 2009, the National Strategy and Action Plan for combating gender-based violence and monitoring mechanisms such as the National Women's Commission. However, the definition and treatment of rape in Nepal's Civil Code (Muluki Ain) is inconsistent with evolving international standards.³¹

Women human rights defenders have been attacked for defending and promoting the rights of women, in particular Dalit women who face caste discrimination.³² Police have refused to record cases of violence against women, or to provide information to women human rights defenders on the status of investigations.

In the Terai, Dalit women and those from other non-dominant castes are at particular risk of rape and other forms of sexual violence, and face obstacles to justice.³³ Domestic violence and harmful practices justified by tradition or culture are also prevalent.³⁴

Enforced disappearances

More than 1,300 people are thought to have disappeared during the armed conflict in Nepal between 1996 and 2006.

²⁹ Nepal accepted A/HRC/17/5, Recommendation 107.27: Ensure that the right to freedom of assembly is guaranteed and remove all restrictions to peaceful protests (Canada), noting that it was among those recommendations that were "already implemented or in the process of implementation."

³⁰ From 31 May to 4 June 2013, the police violently dispersed a series of peaceful protests by Kamlari activists calling for accountability for the killing of a 12-year old Kamlari girl in Dang in March 2013. Police officers reportedly detained, injured and sexually assaulted protesters. In January Madhesi political activist Chandra Kant Raut's leg was broken by police who used force to break up a rally for Madhesi independence in Biratnagar.

³¹ For example, the law limits rape to non-consensual vaginal intercourse, designates a 35-day limit for lodging an FIR with the police alleging rape, and prescribes heavier penalties for rape of younger victims. Marital rape incurs a lower penalty than rape committed by a non-partner under these laws.

³² On 5 January 2014, Gyanu Dulal, a member of Women Human Rights Defenders Network, Panchthar was reportedly assaulted by police at District Police Office 5 when she went to inquire about her son's arrest. In February 2013, the organization INSEC reported that human rights defender Apsara Upreti was threatened over the phone by a local UCPN-M politician for trying to get legal support for a victim of marital rape in Kewalpur. The caller reportedly ordered her to see that the accused was released from custody and rejected the possibility of rape between a husband and wife. Also in February 2013, Domani Devi Chaudhary, an activist against domestic violence, was reportedly beaten up by local residents of Dhodana who accused her of witchcraft. Woman human rights defender Sarita Devi Chaurasiya was killed in September 2012. Her throat was reportedly slit. Police recovered her body from a mango orchard in Matiarwa VDC-2. On 28 August 2012, a campaign of harassment against members of leading women's rights organization WOREC Nepal and LGBTI rights organization Mitini Nepal began following their support of a victim of domestic violence who had recently 'come out' as a lesbian.

³³ See, Dalit Women Face Multiplied Discrimination 3 February 2014, Inter Press Service, <http://www.ipsnews.net/2014/02/dalit-women-face-multiplied-discrimination/>, accessed 13 February 2015.

³⁴ Nepal: Unnecessary burden: Gender discrimination and uterine prolapse in Nepal, Amnesty International, ASA 31/001/2014, 20 February 2014, pages 21-22.

These cases remain uninvestigated and unprosecuted.³⁵ Nepal's Constituent Assembly passed an act in May 2014 to establish a commission to investigate enforced disappearances but with the power to recommend amnesties for crimes under international law.³⁶ Nepal has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

Discrimination

Nepal is party to UN conventions that prohibit discrimination.³⁷

In its 2011 UPR, Nepal was urged to eliminate discrimination and ensure that incidents of caste-based discrimination were reported, investigated, perpetrators prosecuted and victims of such violence compensated.³⁸ Nepal responded that these concerns had been effectively addressed with the passage of the Caste-based Discrimination and Untouchability (Offence and Punishment) Bill in May 2011.³⁹

However, discrimination based on gender, caste, ethnic origin, religion and class remains endemic despite national anti-discrimination legislation and guarantees of equality and a limited form of freedom of thought, conscience and religion in the Interim Constitution.⁴⁰

Gender discrimination contributes to high incidence of uterine prolapse

Amnesty International has documented links between high numbers of women in Nepal suffering from uterine prolapse, a debilitating condition, and systemic gender discrimination.⁴¹ Higher prevalence rates have been found in regions, caste and ethnic groups where women and girls experience higher levels of gender discrimination, such as Dalits or women from the Terai.⁴²

³⁵ Nepal: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, January 2011, ASA 31/001/2010, 5 July 2010; see also OHCHR, Nepal Conflict Report: An analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006, November 2012.

³⁶ This decision that contravened previous commitments by Nepal, including a commitment made in the context of its first UPR.

³⁷ These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination.

³⁸ A/HRC/17/5/Add.1, 1 June 2011, Recommendation 108.10: Take further steps to eliminate discrimination against vulnerable or marginalized groups, including on the basis of gender or caste, by enacting laws to criminalize all forms of discrimination (UK); Recommendation 108.12: That cases of caste-based discriminations be reported, investigated, perpetrators prosecuted and victims of such violence are compensated (Czech Republic).

³⁹ Response of Nepal to Recommendation 108.12 (Czech Republic), A/HRC/17/5/Add.1, 1 June 2011.

⁴⁰ The Interim Constitution contains a significant restriction on freedom of religion in the form of a provision prohibiting individuals from converting another person from one religion to another. The 2006 Gender and Equality Act allows for the amendment of discriminatory provisions in other domestic laws, but a regulatory framework for the implementation of the Act has not been adopted, leaving the rights of marginalized groups inadequately protected. Individuals belonging to so-called "lower" castes and Dalit communities suffer social exclusion, discrimination and violence, committed with impunity. Many Dalit women face multiple forms of discrimination because of their caste, gender and class.

⁴¹ Uterine prolapse is a reproductive health condition that occurs when the pelvic muscles weaken and the uterus slips from its usual position into the vagina. In the most severe cases it can come out of the vagina. The condition causes severe pain, difficulties carrying out everyday tasks, backache, pain during sex, and can affect the bladder and bowel causing leakage of urine and faeces.

⁴² See, UNFPA, *Status of Reproductive Morbidities in Nepal*, Institute of Medicine, Kathmandu 2006 and Pradhan, S. "Unheeded Agonies - A Study on Uterine Prolapse Prevalence and its Causes in Siraha and Saptari Districts", Women's Reproductive Rights Program (WRRP), Centre for Agro-Ecology and Development (CAED), Kathmandu, Nepal, 2007. Although there has been no comprehensive study on the prevalence of uterine prolapse in Nepal and the different methodologies used in the studies which have been conducted mean the prevalence rates they found vary, the studies have shown that prevalence is higher among women from groups who experience high levels of gender discrimination. Accepted risk factors for uterine prolapse include adolescent pregnancy which is linked to early marriage; multiple pregnancies and pregnancies close together due to lack of access to contraception to lack of decision-making power over contraception; lack of rest during and immediately after pregnancy, including carrying heavy loads, which is linked to high poverty rates and women's lack of control over when they take rest; improper birthing practices used by unskilled birth attendants; and inadequate nutrition. Gender discrimination against women and girls and the violation of economic, social and cultural rights lie at the root of many of these risk factors.

In its fourth Five Year Human Rights National Action Plan, released in July 2014, Nepal committed to “adopt preventive measures to end uterine prolapse.” This is a welcome step and needs to be translated into specific measures to address underlying gender discrimination that puts women at increased risk of developing the condition, along with clear processes for monitoring and accountability.

Migration-related human rights abuses

Migration and its after-effects on the families and communities left behind continue to have human rights implications both outside and within Nepal. A local official told Amnesty International that under-age children reportedly use falsified documents showing their age to be 16 or older in order to obtain passports for work abroad.⁴³ Meanwhile, human rights defenders report that violence against women whose husbands work abroad has greatly increased due to money-related, interpersonal and family disputes.⁴⁴

Trafficking in persons

In response to recommendations during its first review that Nepal take further legislative steps and “accelerate efforts” to respond to human trafficking and protect victims,⁴⁵ Nepal stated that it believed existing laws⁴⁶ “constitute a comprehensive legal framework to protect those affected from trafficking, including women and children”,⁴⁷ and noted that since 2001, it had implemented a national action plan against the sale of women and children for sexual and labour exploitation.

In fact, incidence of trafficking in adults and children for sexual exploitation and forced labour remains high, particularly in districts with an open border with India. This is in stark contrast with prosecution rates, which local human rights defenders say remain extremely low.⁴⁸ In at least two cases known to Amnesty International, police failed to file FIRs after complaints were submitted by victims and/or their families.⁴⁹

B. Abuses by armed groups of non-state actors

Instances of violence against civilians by armed groups in Nepal’s southern Terai region have decreased substantially since 2011.⁵⁰

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Nepal to:

National legislation and policies

- Ensure that the new Constitution provides for protection of human rights in a manner fully consistent with international human rights law and standards.

Impunity for human rights violations

- Bring to justice those suspected of committing crimes under international law and provide full and effective reparation to victims, in addition to current efforts to establish the truth regarding crimes committed in the conflict;

⁴³ Amnesty International interview, Chief District Officer, Kapilbastu, August 2014.

⁴⁴ Amnesty International interviews, Nepal, August 2014.

⁴⁵ A/HRC/17/5/Add.1, 1 June 2011, Recommendation 108.20 (Japan) and 108.21 (Austria).

⁴⁶ Human Trafficking and Transportation (Control) Act, 2007, and its Regulation.

⁴⁷ A/HRC/17/5/Add.1, 1 June 2011, Government of Nepal response to Recommendations 108.20, page 6.

⁴⁸ Amnesty International interviews, Nepal, August 2014.

⁴⁹ Amnesty International interviews, Nepal, August 2014.

⁵⁰ There were estimated to be more than 100 armed groups operating in the Terai in 2009 when the government launched its Special Security Plan (SSP). With its introduction, extra-judicial killings of alleged members of armed groups rose dramatically. By 2012 the government estimated that only about twelve were still active; some 20 groups were negotiating with the government. For more see, Investigating Allegations of Extra-Judicial Killings in the Terai; OHCHR-Nepal Summary of Concerns (July 2010) <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>, accessed 19 March 2015; see also, “Talking peace in Nepal, Insight on Conflict,” 29 August 2014, <http://www.insightonconflict.org/2014/08/talking-peace-nepal/>, accessed 19 March 2015.

- Investigate all allegations of crimes under international law, both past and present, and, where there is sufficient evidence, prosecute those suspected of committing the crimes before competent, independent and impartial civilian courts, in accordance with international standards;
- Ensure that victims can access effective remedies before the courts, including full and effective reparation;
- Bring the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 in line with international law before Commissioners commence work, including by removing time limits that could inhibit the filing of complaints, ensuring witness protection, and removing provisions could lead to amnesties being granted to persons suspected of committing crimes under international law;
- Ratify the Rome Statute of the International Criminal Court to ensure that crimes under international law can never again be committed with impunity.

Criminal justice and legal reform

- Introduce new legislation providing appropriate criminal penalties for acts of torture and other ill-treatment;
- Withdraw powers from district-level authorities that permit arbitrary detention.

Role of national statutory bodies in the protection of human rights

- Ensure the effective functioning of the National Human Rights Commission of Nepal in accordance with the Paris Principles, in particular by including guarantees in the appointments process to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights.

Enforced disappearances

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, making the declarations set out in Articles 31 and 32 (recognition of the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and from other states parties), and to implement it into national law.

Cooperation with international human rights mechanisms

- Accept the requests to visit Nepal by the UN Working Group on enforced or involuntary disappearances, the Special Rapporteur on human rights defenders and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and cooperate fully with the mandate holders;
- Extend a standing invitation to UN Special Procedures.

Extrajudicial and summary executions

- Ensure prompt, impartial, independent and effective investigations into all cases of unlawful killings and that all those suspected of being responsible, irrespective of rank, are brought to justice in trials that meet international standards of fairness.

Restrictions on freedom of assembly

- Ensure that the right to freedom of assembly is protected and remove all restrictions in practice placed on the right to peaceful protest;
- Take immediate measures to end the practice of excessive use of force and violence by state forces against the members of the Tibetan and Madhesi communities and others exercising their rights to freedom of expression, association and assembly.

Arbitrary detention

- Ensure that no person is arrested for peacefully exercising their right to freedom of expression, association or assembly and that all arrests are carried out in accordance with the law and in line with human rights standards;
- Rescind or reform the Public Security Act so as to remove powers to detain persons in “preventive detention” without charge or trial.

Caste-based discrimination

- Adopt a regulatory framework for the Caste and Untouchability Act and ensure its effective implementation;
- Investigate caste-based violence and, where sufficient admissible evidence exists, prosecute those suspected of the crimes.

Violence against women and girls

- Ensure that police provide a safe and confidential environment for women and girls to report incidents of violence, including sexual violence, and that all such complaints are recorded and promptly, impartially and effectively investigated.

Human rights defenders

- Respect and protect the right of human rights defenders, especially women human rights defenders, to conduct their work without hindrance, intimidation or harassment in line with the UN Declaration on Human Rights Defenders.

Gender discrimination and uterine prolapse

- Establish a comprehensive strategy to prevent uterine prolapse, including steps to ensure that women and girls know and understand their rights and addressing the underlying gender discrimination so that women and girls can take control over their lives and make reproductive choices.

Migration-related human rights abuses

- Investigate government officials and civilians complicit in forging documents for the purposes of migrant work by children under 16 and initiate a more rigorous system of screening minors requesting passports.

Trafficking in persons

- Ratify and implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- Include trafficking in persons and related offences as crimes in the Criminal Code and ensure that the legal definition of trafficking is in line with international standards;
- Thoroughly investigate trafficking-related offences and, where there is sufficient admissible evidence, prosecute those suspected of the crimes in fair trials.