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Nepal

Submission to the UN Universal Periodic Review

**Tenth session of the UPR Working Group of the
Human Rights Council**

January 2011



Executive summary

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*):¹

Under section B, Amnesty International raises concern over shortcomings in the peace process and constitutional drafting, the implementation of national legislation and policies, criminal justice and legal reform, impunity for human rights violations, the role of national statutory bodies in the protection of human rights, and cooperation with international human rights mechanisms.

In section C, we describe ongoing concerns related to the right to life, liberty and security of person; freedom of expression and association; women's rights; the right to health, and freedom from discrimination.

In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, annex section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Shortcomings in the peace process and constitutional drafting

Nepal's Comprehensive Peace Agreement of 2006 made specific commitments to respect and uphold civil, political, economic, social and cultural rights, including ending discrimination, and to pursue accountability for human rights violations. However, Nepal has made little progress in ending impunity, accounting for past violations or ensuring ongoing respect for human rights in general and access to justice in particular. Nepal's failure to enact a new constitution has put many other reforms on hold. Nepal continues to be governed under the 2007 Interim Constitution which contains protection of key human rights and provided for the establishment of a Constituent Assembly tasked with writing Nepal's new Constitution, which would seek to address rights issues, including those that are at the core of Nepal's political conflict. The Constituent Assembly is charged with determining which fundamental rights of the many recommended to them would be provided for in the new constitution, including new protections on employment, the right to health care and clean water, and the rights of groups who have suffered past discrimination. The Constituent Assembly's term expired on 28 May 2010 without it completing a draft; however, a last-minute deal, which included an extension of its mandate by another year, diverted a political crisis, although underlying tensions remain between increasingly polarized political parties.

Criminal justice and legal reform

The Nepal Law Commission is the statutory body mandated with legal review, law development and reform. Working with the Ministry of Law and Justice, the Commission has initiated several task forces aimed at revising codes of civil and criminal law and procedure and bringing Nepal's laws into conformity with international standards. In 2009, the Ministry of Law and Justice stated that it would defer requests for enactment of legislation based on the task force recommendations until the new constitution was adopted, although the Constituent Assembly has legislative powers.

Legislation criminalizing enforced disappearances and establishing a Commission of Inquiry to address the enforced disappearances that occurred during the armed conflict in Nepal from February 1996 to April 2006 has been pending since 2007. Such legislation would help victims, including families of those who disappeared, ensure that the truth is revealed, justice done and full and effective reparations provided. It would also be a step towards ensuring implementation of the Comprehensive Peace Agreement and the landmark June 2007 ruling on enforced disappearances by Nepal's Supreme Court. A draft bill criminalizing enforced disappearances was finally tabled in Parliament in late April 2010, along with another long-delayed bill to establish a truth and reconciliation commission. Parliamentarians proposed amendments to the drafts to address some of the serious shortcomings in previous drafts identified by human rights organizations. In the case of enforced disappearance desired improvements included defining enforced disappearance in accordance with internationally recognised definitions and as a crime against humanity in certain circumstances; providing for individual criminal liability, including responsibility of superiors and subordinates, consistent with internationally accepted legal standards and ensuring that punishments are proportionate to the extreme seriousness of the offense. Both bills await debate by the Statute Committee.

Implementation of national legislation and policies

National laws providing safeguards against torture and other ill-treatment fall far short of the requirement of international law and standards and remain inadequately implemented. Although the Interim Constitution establishes torture as a criminal offence, no bill providing criminal penalties for torture has been passed by the Nepalese legislature. Torture is therefore functionally still only a civil offence. The frequent failure of police to register complaints obstructs prosecution of domestic and sexual violence cases. District-level authorities are granted extraordinary powers to try and sentence detainees to lengthy prison terms in proceedings that do not meet international standards of fairness.

Impunity for human rights violations

Impunity continues for perpetrators of human rights abuses committed by all sides during the conflict; not a single case has been tried before a civilian court. According to survivors of human rights violations, including gender-based violence, police refuse to file or investigate complaints. According to Nepali human rights organizations not only are the major political parties uncooperative when it comes to seeking accountability for past abuses, politicians and their supporters and members of the army and police actively intimidate individuals pursuing prosecution of specific cases in order to protect their members. Hundreds of cases of human rights violations before the courts have been withdrawn by government prosecutors at the behest of the Home Ministry, under the administrations led both by the Unified Communist Party of Nepal-Maoist (UCPN-M) and by the present Communist Party of Nepal (Unified Marxist Leninist). In some cases, victims have reportedly been offered token compensation.

The authorities have also failed to implement court-ordered arrests of military personnel accused of human rights violations. For example, the Nepal Army refused to hand over Major Niranjan Basnet, accused of the torture and murder of 15-year-old Maina Sunuwar in 2004, despite a court order. Basnet was repatriated from the United Nations Mission in the Central African Republic and Chad in December 2009. The army failed to hand him over to the police upon his return and in a letter to the Defence Ministry requested that the case be withdrawn. In mid-July 2010, an internal inquiry by the Nepal Army declared Basnet “innocent” of the charges.

In July 2009, the Office of the High Commissioner for Human Rights (OHCHR) and human rights defenders in Nepal expressed concern about the proposed promotion of a high-ranking army officer who commanded an army battalion accused of acts of torture, arbitrary detention and enforced disappearances in Nepal in 2003-2004. The Supreme Court ordered a temporary stay on his promotion in January 2010; however, the stay was later lifted and he is now second-in-command in the Nepal Army. The OHCHR also asked leaders of the Unified Communist Party of Nepal-Maoist (UCPN-M) to instruct party members implicated in abuses to surrender to the authorities and to cooperate with investigators. However, the UCPN-M has consistently resisted such criminal investigations. The police appear to take the position that these cases, whether perpetrated by the State or by the Maoists, are “political” and therefore outside their jurisdiction to investigate.

Role of national statutory bodies in the protection of human rights

The National Human Rights Commission of Nepal (NHRC) was established in May 2000 under the Human Rights Commission Act of 1997. The Interim Constitution of Nepal 2007 made it a constitutional body and gave it a broader mandate to promote and protect human rights; however, the government has largely failed to act on its recommendations. NHRC members are appointed on the basis of political consensus, a process that could jeopardize its independence and violate the Paris Principles. The NHRC has continued to document high profile cases, such as its investigation into the March 2010 army killings of three people, including a child in Bardiya National Park. It has been criticized for failing to systematically monitor places of detention or to cooperate adequately with other human rights organizations and the OHCHR in Nepal. The

High Commissioner for Human Rights said in February 2010 that the NHRC had “not initiated investigations into nearly 75 per cent of cases referred by OHCHR”.²

Cooperation with international human rights mechanisms

The government continues to deny outstanding requests by the Working Group on Enforced or Involuntary Disappearances and by the Special Rapporteur on Human Rights Defenders to visit Nepal.

When the mandate of the Office of the High Commissioner on Human Rights Office in Nepal (OHCHR) expired on 9 June 2010, a one-year mandate extension was negotiated with the government; however, the mandate was reduced in scope. The OHCHR agreed to close its field offices outside Kathmandu. It was granted continued full access to places of detention and to interview detainees in private; but lost the important ability to conduct surprise visits.

C. Promotion and protection of human rights on the ground

A. Violations by state forces

Unnecessary or excessive use of force

Unnecessary or excessive use of force (including lethal force) by the security forces when making arrests and policing demonstrations has long been a matter of concern in Nepal, and killings of demonstrators and hundreds of injuries that occurred in 2006 and 2007 have gone unpunished. According to human rights activists in Nepal policing has improved since 2006, as evident during the national strike in May 2010 when police were reported to have shown restraint and acted to protect civilians. However, on some occasions (as described below) security personnel continue to employ unnecessary and excessive force during arrests and to quell demonstrations.

Extrajudicial and summary executions

Killings of persons suspected of being affiliated with armed groups in faked “encounters” are also reported. Between February and October 2009, the Nepal-based Advocacy Forum documented 12 incidents involving 15 victims of apparent extrajudicial executions by the security forces (mostly police operating in the south). In one such incident, on 9 April 2009, police shot and killed 18 year old Parasuram Kori. Police alleged he was among members of the leftist Terai-based armed group Janatantrik Terai Mukti Morcha (JTMM-J) who fired at a police patrol team. An investigation by human rights organizations and the National Human Rights Commission concluded that Kori was not killed in crossfire and that he had been tortured before he was killed. His mother told journalists that Kori had been forced to join the JTMM-J three days earlier.

On 10 March 2010, two women and a 12-year-old girl were killed by army personnel attached to a patrol of the Jwala Dal Battalion deployed in Bardiya National Park. The army claimed that the victims were armed poachers who had attacked the patrol and that the soldiers had acted in self-defence. The NHRC investigated the case and found that all three victims had been shot from behind (the two women were shot in the back and the young girl was shot in the back of the head). The NHRC accused the army of re-arranging the victims' bodies and tampering with evidence before the police arrived to investigate. The NHRC concluded that the victims were not armed and were very poor members of the Dalit community who had been collecting bark to sell.

² Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal; Human Rights Council, Thirteenth session, A/HRC/13/73, Page 13, para 58.

Torture and other ill-treatment

Police continue to torture and otherwise ill-treat detainees. Sushan Limbu and Bhakta Rai were tortured by police in Urlabari, Southeastern Nepal, after Limbu was arrested on a minor charge in July 2009 and Rai came looking for him. Police beat them in a jail cell before bringing them out into the street, stripping them to their underwear, assaulting them with iron rods and forcing them to crawl on their knees and elbows over stony ground. Both sustained serious injuries. Police seized video footage of the beating recorded on the mobile phone of an onlooker and warned human rights defenders off the case. Police then pressed local residents and politicians to sign a statement saying that the men were beaten by a mob. Following a successful habeas corpus petition, the men were granted access to lawyers and provided with medical care; however, the officers responsible for their torture received only a warning and were not suspended.

On 25 May 2010 Sanu Sunar, aged 46, died from injuries he sustained while in police custody at the Kalimati Police Station. Bishnu Kapri, who had accused Sunar of theft, was arrested from his home the following day. Police claimed Kapri had beaten Sanu Sunar before alerting the police. However, according to the Advocacy Forum, a human rights NGO, Sunar was tortured by policemen at the station. A medical report said Sunar had multiple contusions of different sizes and shapes on his trunk and legs, and concluded that he died of a blunt force head injury. The NHRC confirmed that Sunar died as a result of police torture and recommended legal action against police, including the senior officer at Kalimati station. The police department has suspended three junior officers; however, to Amnesty International's knowledge, no other investigative, prosecutorial or disciplinary measures have been taken.

Restrictions on freedom of assembly

Although Nepali law protects freedom of assembly, unwarranted restrictions have been imposed on the Tibetan community curtailing their right to peaceful protest, including by prohibiting and preventing demonstrations and arresting Tibetan protestors.

Arbitrary detention

Nepali law prohibits arbitrary detention; however, police often arrest individuals at the request of local government authorities (sometime on petty charges or for personal reasons) without warrants or other formal procedures and detain them without charge or trial and under poor conditions. The Public Security Act allows for up to six months preventive detention without charge of persons deemed a threat to "security, peace and order." The detention can be extended for an additional six months with written notice from the police to the Home Ministry. It has been used to detain peaceful protestors and activists from the Tibetan community without trial. In March 2010, police arrested and detained at least 34 Tibetan demonstrators in connection with the anniversary of Tibet's National Uprising in 1959, and in March 2008, when a wave of protests erupted in Tibet, hundreds of Tibetan demonstrators were detained in Nepal. Pre-emptive arrests, ID checks and house and hotel searches prior to the anniversary in March 2010 were also reported.

Violence against women and girls

Women face discrimination and violence in public and private life. There are regular reports of dowry killings, rape and other sexual violence. Women human rights defenders have been attacked for defending and promoting the rights of women, in particular Dalit women who face caste discrimination. Police often refuse to record cases of violence against women, or to provide information to women human rights defenders on the status of investigations.

Uma Singh, an investigative journalist for Radio Today FM and a member of the Women's Human Rights Defender Network, was attacked on 11 January 2009 by a group of armed men. She was severely mutilated and died on her way to hospital in Kathmandu. The NHRC denounced the killing, noting that Monika Jha, a journalist affiliated to the Kantipur Daily newspaper, had also been threatened. Several of Singh's relatives were arrested; however, police are accused by a fellow journalist of shielding the real culprits: supporters of a former Maoist minister accused of killing Singh's brother and father in 2007.

On 11 April 2009, in eastern Sunsari District, police assaulted a group of 500 women peacefully protesting police refusal to register a complaint regarding an attack on human rights defender Kara Devi Sardar by relatives angry about her support for the marriage of two young people of different castes. At least 14 women were injured by blows from police *lathis* (long wooden sticks) and gun butts; some victims also reported sexual assault by police, who attempted to rape them with the *lathis*.

Enforced disappearances

Both sides of the conflict that ended in 2006 committed enforced disappearances. Since 1999, the ICRC has collected more than 3,400 reports of persons missing in the context of the conflict; more than 1,300 remained unaccounted for. Amnesty International has documented many hundreds of these cases and has urged the government to end the delay in enacting legislation to outlaw enforced disappearances and to take immediate action to account for the missing and ensure reparations to victims, including family members of the disappeared.

Discrimination

Discrimination based on gender, caste, class, ethnicity, disability and geography continues to pose grave obstacles to the enjoyment of human rights, including access to justice. Dalits, indigenous peoples, disabled people and religious and sexual minorities face social exclusion, despite legal recognition of equal rights. Despite Nepal's declared support for UN Draft Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent (which addresses caste inequities),³ caste-based discrimination remains acute. Women continue to suffer discrimination in both public and private life, and Dalit women in particular face obstacles to securing the most basic rights, including access to justice. The problems of gender and caste discrimination in Nepal are vast; however, two court verdicts in early 2010 reflect small signs of progress in the courts' approach to caste discrimination: In March 2010, a District Court in Baitadi, western Nepal, convicted a man for physically assaulting the father of the groom during a wedding ceremony in July 2009 for practicing rituals "reserved for high-caste communities." In January 2010, the same court sentenced a man to two years in prison for his role in attacks against 12 Dalits for not following discriminatory temple rituals.

B. Abuses by armed non state actors

Public insecurity is exacerbated by a growing number of armed groups engaged in acts of violence against civilians. Over 100 armed groups operate in the Terai region, including groups affiliated with major political parties, such as the Young Communist League (YCL), the youth wing of the UCPN-M; groups with religious orientations; and criminal gangs. Armed groups have committed human rights abuses, including unlawful killings, assaults and abductions of members of the Pahadi (hill) community and bomb attacks on public places. Examples of such abuses include the killing by police in April 2009 of Parasuram Kori (see also above). His mother told a journalist that her son and two others had been abducted by the armed group Janatantrik Terai Mukti Morcha (JTMM-J) three days earlier. Two people were killed and 14 others wounded on 23 May 2009 in a bombing at the Roman Catholic Church of the Assumption at Dhobighat, Lalitpur on the outskirts of Kathmandu. A pro-Hindu group called the Nepal Defence Army claimed responsibility for the attack.

³ "Outline of the Statement by Hon'ble Jeet Bahadur Gautam Darjee, State Minister for General Administration, at the side event on Draft Principles and Guidelines on the Effective Elimination of Discrimination Based on Work and Descent Geneva, September 16, 2009," http://idsn.org/fileadmin/user_folder/pdf/New_files/UN/HRC12Nepal_statement.pdf

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Criminal justice and legal reform

- To expedite the enactment of legislation on enforced disappearance and the establishment of a truth and reconciliation commission, incorporating recommended amendments to ensure the legislation meets international standards of independence, transparency and effectiveness, including by removing time limits that could inhibit the filing of complaints, ensuring witness protection and removing any provisions for the possibility of amnesties. Truth and reconciliation procedures must not replace prosecution and punishment of those responsible for crimes involving human rights violations or full reparation to victims.

Implementation of national legislation and policies

- To introduce legislation providing criminal penalties for acts of torture and other ill-treatment;
- To withdraw powers from district-level authorities, such as the Chief District Officer, to try and sentence detainees to lengthy prison terms.

Impunity for human rights violations

- To ensure that the perpetrators of human rights violations, both past and present, are brought to justice in proceedings which meet international standards of fairness, and that surviving victims and families are provided with reparations, in accordance with international standards;
- To investigate all outstanding allegations of crimes involving violations of human rights and international humanitarian law committed by the army, the police or Maoist forces and, where there is sufficient evidence, to prosecute those responsible before competent, independent and impartial civilian courts. Cases such as the torture and murder of 15-year old Maina Sunawar by army personnel in 2004 should be prosecuted in civilian courts and without delay;
- To re-assess current members of the Nepal Army, including those participating in UN peace-keeping missions, to ensure that they are not implicated in serious human rights violations, and to reform the vetting process to safeguard against future deployment of suspected human rights violators;
- To commit to ending impunity for crimes against humanity and war crimes by ratifying the Rome Statute of the International Criminal Court.

Role of national statutory bodies in the protection of human rights

- To ensure the full independence and effective functioning of the National Human Rights Commission of Nepal, and to facilitate its full cooperation with human rights organizations and the OHCHR.

Cooperation with international human rights mechanisms

- To allow the UN Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on Human Rights Defenders to visit Nepal in line with their outstanding requests.

Extrajudicial and summary executions

- To 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

- To ensure that the right to freedom of assembly is guaranteed and in particular to remove all restrictions placed on the Tibetan community's right to peaceful protest;
- Take immediate measures to end the practice of excessive use of force and violence by state forces against those exercising their rights to freedom of expression, association and assembly.

Arbitrary detention

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

Violence against women and girls

- To ensure that the 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;
- To 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.

Appendix: Amnesty International documents for further reference⁴

Nepal: Authorities must provide justice for torture and murder of 15-year-old Maina Sunuwar, 17 February 2010, AI Index: pre01/053/2010

Nepal: Bar human rights violators from UN peacekeeping missions, 18 December 2009

Nepal: Major accused of torturing girl to death must be arrested, 8 December 2009, AI Index: pre01/007/2009

Nepal: Government fails to protect women human rights activists from violent attacks, 10 April 2009

Nepal: Overturning the legacy of war - priorities for effective human rights protection. 12 May 2008, AI index: pre01/140/2008

Nepal: Clampdown on Tibet demonstrators must stop immediately and protesters released, 24 March 2008, AI Index: PRE01/090/2008

Nepal: Need for respect for human rights in policing, 20 February 2008, AI Index: PRE01/058/2008

⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/nepal>