

## **Submission to the Human Rights Council's Universal Periodic Review concerning the human rights situation in Nepal**

### **I. Introduction**

1. The Asian Legal Resource Centre (ALRC), a Hong Kong-based regional human rights organization with General Consultative ECOSOC status, and Nepalese non-governmental organization (NGO) the Advocacy Forum (AF), are jointly submitting the following report as part of the United Nations (UN) Human Rights Council's (HRC) Universal Periodic Review (UPR) of Nepal, to be held during the tenth session of the Working Group on the UPR (24 January – 4 February 2010). This report will cover the human rights situation since January 2007 to the present and is based on extensive documentation by the ALRC, AF and partner NGOs during this period.

### **II. Background**

2. Following country-wide popular protests, on November 21, 2006, the Government of Nepal and the Communist Party of Nepal – Maoist (Maoists) signed the Comprehensive Peace Agreement (CPA), bringing to an end a decade-long conflict in which grave and widespread human rights violations were committed by both sides. In signing the CPA, they committed to establishing democracy, peace and security. These commitments were reasserted in the 2007 Interim Constitution and, on 10 April 2008, a Constituent Assembly was elected to write a new Constitution for the country and establish stable, democratic institutions to ensure a new era of stability for Nepal.

3. However, mistrust and infighting between the various political groups have stalled the Constitution-creation process. The Constituent Assembly was unable to complete its mandate by the May 2010 deadline. Following political wrangling, an agreement has been reached to extend the term of the CA by one year. Grave concerns remain that the CA may fail to produce a Constitution by May 2011 and that the country will remain in a Constitutional limbo. This limbo has created a situation in which past human rights violations by either side to the conflict, or those perpetrated since the end of conflict, have not been effectively investigated or prosecuted. The institutions of the rule of law, notably the police and prosecution, are failing to protect human rights, using the lack of political progress as a pretext. Addressing the problem of impunity must be the prime focus of the UPR and action by the government of Nepal.

### **III. Normative framework and institutional weakness**

5. Nepal has ratified several of the key international human rights instruments, yet their implementation remains severely deficient in practice.<sup>1</sup> Domestically, while the Interim Constitution comprises many fundamental rights, the absence of the right to effective remedy leads to an implementation gap in the realization of these rights. Transitional justice Bills concerning a Truth and Reconciliation Commission (TRC) and forced disappearances both remain pending before Parliament. The government is urged to fully incorporate its international law obligations into Nepali law through the adoption of a Human Rights Act and ensure that the Constitution and implementing laws guarantee the right to effective remedy.

6. The government is urged to bring national legislation into conformity with its international obligations and implement the recommendations of Special Procedures,

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<sup>1</sup> See annexe Section 1 for the international instruments ratified and domestic implementation issues.

Treaty Bodies and the outcomes of the UPR without fail or undue delay. Furthermore, the authorities must implement all relevant findings of the 1990 Mallick Commission and the 2006 Rayamajhi Commission, both of which conducted investigations into the violent repression of democratic popular uprisings, in order to prevent further abuses.

7. Institutional weakness of the criminal justice system, arising from political interference,<sup>2</sup> corruption, a lack of resources and severe erosion resulting from the decade-long conflict, must be addressed if human rights are to have a chance of being realized in practice. High levels of inefficiency mean that thousands of cases are backlogged at different levels of the court system. Access to justice remains a major problem for many, notably those living in remote areas, far from the country's 75 District Courts. This is further compounded by a weak policing system, in which inadequate financial and human resources and a lack of effective systems of accountability, open the door to corruption, discrimination and abuses of power, as well as deference to powerful elites or institutions such as the Nepal Army or the Young Communist League (YCL).

#### **IV. Transitional injustice and impunity**

8. Nepal's legal framework contains faults and lacuna that enable *de jure* impunity for the perpetrators of human rights violations, for example by failing to criminalize specific abuses.<sup>3</sup> No member of the security forces or the Maoists have been brought to justice before civilian courts for the numerous, gross and widespread human rights violations that took place during the conflict, including torture, rape, extra-judicial killings and enforced disappearances. Nepal's *de facto* and *de jure* impunity ensures that many such violations continue to be perpetrated to date. Delays in establishing the promised system of transitional justice have only led to transitional injustice. A Truth and Reconciliation Commission (TRC) was to be established under the CPA to "investigate those accused of serious violations of human rights and crimes against humanity during the course of the armed conflict and develop an atmosphere for reconciliation in the society."<sup>4</sup> After several failed attempts, the government finally tabled two pending bills to establish a commission of inquiry into disappearances and the TRC in March 2010. However, shortcomings to the disappearances commission bill, for example, include a restrictive six-month limitation to the filing of criminal complaints, and the lack of a reference to crimes against humanity and other international crimes.

9. Impunity is being guaranteed at present by the lack of political will to implement the CPA's provisions concerning the prosecution of past crimes. Despite repeated decisions and orders by Nepal's courts, and the registration of complaints and First Information Reports (FIR), the police continue to refuse to investigate many cases of human rights violations, and the army and Maoists are failing to cooperate with any investigations that are launched or surrender alleged perpetrators to the police and courts. All of the political parties, including the Maoists, have reportedly pressured the police to not investigate cases in order to protect their members. There are no effective independent mechanisms in place to hold perpetrators to account.

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<sup>2</sup> See the case of the interruption of a court hearing by YCL cadres in annexe Section 2, paras 17-19

<sup>3</sup> See annexe Section 1, paras 2- 15, for details concerning legal provisions that provide impunity

<sup>4</sup> Section 5.2.5, Comprehensive Peace Agreement. November, 2006.

<http://www.reliefweb.int/rw/rwb.nsf/db900SID/VBOL-6VSHK8?OpenDocument>

10. Nepal Army assurances that army officers responsible for human rights violations will be excluded from United Nations peacekeeping duties or from being promoted have proven meaningless. The army command has nominated for promotion several officers suspected of being responsible for grave human rights violations, including General Toran Bahadur Singh, who was in command of the 10<sup>th</sup> Brigade at the time that one of its battalions was involved in the illegal detention, torture and disappearance of at least 49 detainees at the Maharajgunj army camp in Kathmandu in late 2003. Among the Maoists elected to the Constituent Assembly are alleged perpetrators of human rights abuses who are under police investigation.

11. In the high-profile case of the rape and torture to death while in army custody of 15-year-old Maina Sunuwar<sup>5</sup> in February 2004, the authorities have filed charges, after sustained campaigning by human rights advocates and a Supreme Court ruling in September 2007 stating that the case should be dealt with in a civilian court. The police and public prosecutor identified four army officers as suspects and murder charges were brought *in absentia*. Despite the issuing of arrest warrants, the police have not arrested the suspects. One of the suspects, Niranjana Basnet (who has recently been promoted from Captain to Major), was deployed to a UN peacekeeping mission. However, since the UN repatriated him in December 2009, the Nepal Army has refused to hand him over to the police, despite orders from the Prime Minister.

#### **V. Priority human rights issues to be considered under the UPR**

12. **Break-down of the rule of law and increased insecurity:** Despite the end of the conflict, security remains fragile in Nepal, notably in the Tarai (plains) region. Home Minister Bhim Rhawal stated on July 31, 2009 that there were 109 armed outfits operating in the country. That month, the government launched the Special Security Program (SSP) to curb the violent, criminal activities of such groups. There are allegations of increased torture and extra-judicial killings related to the SSP, however.

13. **Forced disappearances:** Prior to the signing of the CPA, Nepal had had the highest reported number of cases of forced disappearances in the world. Since the CPA and the establishment of an office of the OHCHR in Nepal, the number of new cases dropped dramatically. However, the fate of many disappeared remains unknown and impunity continues for those responsible. Under the CPA, the authorities were to establish the fate of the disappeared within 60 days. The fates of 1,311 persons still remain unknown, according to the ICRC. The government is urged to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, criminalize disappearance and investigate all cases thereof, locating victims, punishing perpetrators and providing adequate reparation to the victims or their relatives.

14. **Torture:** The Special Rapporteur on Torture stated that torture was “systematically practised” following a visit to Nepal in 2005.<sup>6</sup> However, since the end of the conflict in April 2006, the use of torture by the security forces and the Maoists has been reduced. However, its use remains widespread, especially by the police and concerning certain categories of detainees, such as juveniles, members of minority ethnic groups and the lower castes.<sup>7</sup> Most of the recommendations made by the

<sup>5</sup> See further details concerning the case of Maina Sunuwar in annexe Section 3, paras 25-28

<sup>6</sup> Mission Report by the Special Rapporteur on torture, E/CN.4/2006/6/Add.5, paras. 17, 25 and 31

<sup>7</sup> See annexe Section 3, paras 20-48 concerning torture, including torture of children

Special Rapporteur on Torture have not been implemented, as was noted in his two follow-up reports.<sup>8</sup>

15. Despite ratifying the Convention against Torture in 1991 and a 2006 Supreme Court ruling ordering the government to criminalize torture, this has still not been done. Article 26(2) of the 2007 Interim Constitution prohibits torture and calls for it to be punished under law. The 1996 Torture Compensation Act (TCA), under which victims can file a civil claim, is flawed and ineffective, as its definition of torture is not in line with the CAT, it does not provide for independent investigations and includes a 35 day time limitation for the filing of cases.<sup>9</sup>

16. There is no systematic monitoring of places of detention. The government must immediately ratify the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention. Although the National Human Rights Commission is mandated to carry out visits, it has failed to do so to an acceptable level in the period in question here. Advocacy Forum has developed a programme of regular visits to 67 places of detention in 20 districts in Nepal. From June 2008 to the end of May 2009, Advocacy Forum interviewed over 4000 detainees, of which 19.5% claimed to have been tortured. Shockingly, children are being tortured more frequently than adults. Among the juveniles interviewed, 25% percent claimed they had been tortured in detention.<sup>10</sup>

17. **Extra-judicial killings:** During the conflict, thousands of people suspected of being members or sympathisers of the Maoists were executed extra-judicially by the security forces. Hundreds of people suspected of being “enemies of the revolution” were killed by the Maoists. Ongoing political and criminal violence in Nepal’s southern Tarai region since early 2007 has seen the re-emergence of so-called “encounter” killings by the Nepal Police and Armed Police Force (APF). Between February and October 2009, Advocacy Forum recorded 12 cases of alleged extra-judicial executions in the Tarai region involving 15 victims, mostly by the police. Two cases involved members of the APF. Each of these killings is presented by the security forces as resulting from “encounters” between the police and the alleged members of armed groups. However, there is no indication that members of the police or army were killed or injured in any of these incidents.<sup>11</sup> Killings during the violent repression of popular uprisings in April 2006 and protests in the Tarai in early 2007 have not been effectively investigated or led to the prosecution of those responsible.

18. Extra-judicial killings by security forces continued to occur in 2010, with several reported cases, including for example the Bardiyā National Park army killing of three Dalit women in March 2010.<sup>12</sup> Despite the recommendations of the various commissions formed to investigate the killings and strong pressure from civil society organizations, the army refuses to meaningfully comply with the police investigations into the killings. So far, no army personnel have been held accountable for the brutal killing of the three women. The refusal to cooperate with the police investigation is

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<sup>8</sup> Follow-up to the recommendations of the Special Rapporteur on Torture, A/HRC/4/33/Add.2 and A/HRC/7/3/Add.2

<sup>9</sup> See further details about the TCA in annexe Section 3, paras 21-22

<sup>10</sup> See further details about the torture of children in annexe Section 3, paras 44-47

<sup>11</sup> See further concerning cases of extra-judicial killings in annexe Section 4, paras 49-57

<sup>12</sup> See details of the Bardiyā National Park army killings in annexe Section 4, paras 53-57

yet another example of how the army is acting with impunity, above and beyond the law and the reach of the criminal justice system in Nepal.

**19. Caste-based discrimination:** Discrimination against Dalits persists despite: Nepal having ratified ICERD; Article 13 of the 2007 Interim Constitution enshrining the right to equality; and Article 14 mandating the punishment of such acts and compensation to victims. As with other human rights violations, caste-based discrimination has not been criminalized. The drafting of a new Constitution has been welcomed as an opportunity to protect Dalits' rights and ensure equality. Discrimination affects every aspect of the life for 13 to 20% of the Nepalese population, including access to education, health, employment, etc. Examples of abuses include the suspected human sacrifice of an 8-year old Dalit girl and the rape and murder on September 1, 2009 of 11-year old Dalit girl Runchi Mahara. Concerning the latter, the police released a suspect against whom there was credible evidence as he is reportedly connected to local ruling political party members.<sup>13</sup>

**20. Violations of women's rights:** Particular attention needs to be given to violence against women as rapes and other forms of violence have continued at a high level despite the end of the conflict. Dhana Kumari Sunar, a member of the National Women's Commission, reports that every year tens of thousands of women in Nepal experience violence, 80 percent of which is domestic violence. Despite the fact that in May 2009 the Domestic Violence and Punishment Act 2065 made domestic violence punishable, violence against women persists, notably against lower-caste women. Shockingly, numerous cases of violence against women accused of witchcraft have been documented, in which they are severely beaten, stripped naked and forced to eat human excrement. The Women's Rehabilitation Centre (WOREC) documented 82 such cases between July 2007 and September 2009.<sup>14</sup>

**21. Human Rights Defenders:** Human rights defenders (HRDs) continue to face threats, attacks and obstacles in carrying out their work in favour of human rights. Their work is crucial while Nepal transitions towards a more democratic system in which human rights are respected and impunity is dismantled. The system of impunity is currently enabling attacks on defenders. Numerous HRDs have been intimidated, attacked, abducted and even killed during the last four years. Women HRDs have been particularly at risk.

**22. Conclusion:** The HRC's Universal Periodic Review of Nepal will be timely, coming just before the Constituent Assembly's delayed deadline to create a new Constitution for the country. The HRC must urge all actors in Nepal to ensure that a strong Constitution that upholds all fundamental human rights is created without any further delay. Nepal must ratify all international instruments concerning torture and forced disappearance and must immediately create legislation that, *inter alia*, criminalizes torture, forced disappearances and caste-based discrimination. Alongside steps to enable transitional justice to replace the current transitional injustice, the institutions of the rule of law, specifically the police, prosecution and judiciary, must be strengthened to ensure effective investigations and prosecutions of past and present rights abuses, including by independent mechanisms where conflicts of interest occur.

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<sup>13</sup> See further information concerning violations of Dalits' rights in annexe Section 5, paras 58-65

<sup>14</sup> See details concerning examples of violence against women in annexe Section 6, paras 66-77