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Nepal: New Constitution fails to adequately protect women and marginalized communities

Human Rights Council adopts Universal Periodic Review outcome on Nepal

Amnesty International is concerned by several provisions of Nepal's new Constitution, adopted on 20 September 2015, which do not adequately protect the rights of women and marginalized communities, including Dalits. The provisions on citizenship discriminate against single women and same-sex couples, while the provisions on freedom of religion and expression, access to justice, preventive detention, sexual and reproductive rights, and child rights, fall far short of international human rights standards. These concerns were addressed in a number of recommendations during Nepal's UPR;¹ however, regrettably Nepal rejected recommendations to protect religious freedom and to allow women to convey their citizenship to their children and foreign spouses on an equal basis with men.²

Amnesty International also notes with concern that Nepal considers to have already implemented recommendations to guarantee gender equality and to allow broad-based participation in the constitution building process, especially in light of several discriminatory provisions in the new Constitution.³

Amnesty International is disappointed that Nepal has rejected recommendations to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴ and the Rome Statute of International Criminal Court,⁵ in the immediate term, as well as recommendations to ratify the International

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Nepal*, 23 December 2015, A/HRC/31/9, recommendations 121.2 (Colombia), 121.16 (Sweden), 122.1 (India), 122.2 (Canada), 122.3 (Nicaragua), 122.68 (Sierra Leone), 123.23 (United States of America) and 124.7 (United States of America).

² A/HRC/31/9, recommendations 123.23 (United States of America) and 124.7 (United States of America); *Report of the Working Group on the Universal Periodic Review – Nepal (Addendum)*, 24 February 2016, A/HRC/31/9/Add.1, para. 23.

³ A/HRC/31/9, recommendations 122.1 (India), 122.2 (Canada), 122.3 (Nicaragua), 122.68 (Sierra Leone).

⁴ A/HRC/31/9, recommendations 123.3-123.6 (New Zealand, Czech Republic, Montenegro, Denmark, Uruguay, Ghana, Germany, Portugal, Sweden); A/HRC/31/9/Add.1, para. 16.

⁵ A/HRC/31/9, recommendations 123.13-123.20 (Switzerland, Portugal, Germany, Ghana, Paraguay, Estonia, Costa Rica, Hungary, Czech Republic, Uruguay, Latvia); A/HRC/31/9/Add.1, para. 20.

Convention on the Protection of All Persons from Enforced Disappearance.⁶ Amnesty International considers ratification and implementation of these treaties essential, especially during the period of transitional justice in Nepal. More than 1,300 people are thought to have disappeared between 1996 and 2006 during the armed conflict in Nepal. These cases have yet to be investigated and prosecuted in fair trials. Moreover, although the Constitution defines and prohibits torture, the definition falls short of the international definition of torture and the legislature has yet to pass a bill to provide criminal penalties for torture.

Amnesty International is concerned to note that Nepal believes it has already implemented the recommendation to guarantee respect for the principles of proportionality and necessity with regard to use of force, as expressed in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁷ Between August 2015 and January 2016, over 50 people died in clashes between protestors and police in the Tarai region of Nepal. Many of these cases have been reported as cases of excessive use of force by the police. For example, on 22 January 2016, the National Human Rights Commission (NHRC) reported the deaths of three civilians in Rangeli, Morang, as a result of police use of fire arms, in contravention of international human rights norms.⁸ The government refused to investigate the incident, leaving the NHRC to conduct its own investigations,⁹ the findings of which are yet to be finalized.

We urge the government to conduct prompt, independent and impartial investigations into the killings of civilians on that occasion. If there is sufficient admissible evidence, those suspected of having used excessive force against protestors must be prosecuted in a fair trial before an ordinary civilian court.

Background

The UN Human Rights Council adopted the outcome of the Universal Periodic Review of Nepal on 16 March 2016 during its 31st session. On that occasion Amnesty International was unable to deliver the above statement due to time constraints. Amnesty International also submitted information in advance of the review in November 2015:

<https://www.amnesty.org/en/documents/asa31/2182/2015/en/>

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⁶ A/HRC/31/9, recommendations 123.10-123.11 (Argentina, Sierra Leone, France, Japan, Ghana, Paraguay); A/HRC/31/9/Add.1, para. 18.

⁷ A/HRC/31/9, recommendation 122.44 (Switzerland).

⁸ http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Nepal_Press_Release_on_Rangeli_Incident_Eng_2_2Jan2016.pdf.

⁹ <http://kathmandupost.ekantipur.com/printedition/news/2016-01-29/no-plan-to-form-probe-panel-home-minister.html>.