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Cover photo: This photo was taken on the main Pulchowk Road as it passes between Patan and Jhamsikhel, Nepal. The 7.8 magnitude earthquake that took place in Nepal on 25 April 2015 caused mass destruction and killed over 8,000 people. Building structures still standing have been seriously weakened. @Private

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EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Nepal in November 2015. In this submission, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR, examines the situation of human rights on the ground and makes recommendations to the Government of Nepal on how to address some of the major human rights challenges in the country.

The Government of Nepal has failed to implement most of the recommendations it accepted in the last UPR. Among others, it did not honour its commitment to address persistent discrimination in practice and in law, failed to ensure that the long awaited Truth and Reconciliation Commission would not provide amnesties for grave human rights violations and did not criminalize torture and reform legislation in line with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International believes there is a real risk that the human rights situation will only worsen in the aftermath of the devastating earthquake that took place in April 2015, and in view of the serious shortcomings in the new draft Constitution.

Ongoing reports of human rights violations, including extra-judicial and summary executions, torture and other ill-treatment, arbitrary detention, and restrictions on the right to freedom of assembly are of significant concern.

Amnesty International also draws attention to the persistent discrimination and violence against women and girls, which contribute to the prevalence of uterine prolapse, a serious health condition suffered by thousands of Nepali women, as well as to the human rights implications of migration and trafficking of persons.

Persistent discrimination, whether based on gender, caste, class, ethnicity, disability or geography, continues to impede the enjoyment of other human rights, including access to justice. Caste-based discrimination remains acute despite legal recognition of equal rights. Political discontent over discrimination and social exclusion was a root cause of the armed conflict that raged in Nepal from 1996 to 2006, and has contributed to much political strife since.

Discussions on a new Constitution, as per the agreement in the 2006 Comprehensive Peace Accord, remained stalled for years in the midst of a political impasse between the various political parties.¹ This led to repeated political crises in the country and has posed obstacles to the functioning of bodies critical to the promotion and protection of human rights, including the National Human Rights Commission, which was stymied by the failure to appoint new Commissioners between September 2013 and October 2014.

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, Human Rights Council, Report of the Working Group on the Universal Periodic Review – Nepal, A/HRC/17/5, 8 March 2011, Recommendation 106.1 (Republic of Korea, Egypt, China and Holy See), (A/HRC/17/5).

Impunity persists for human rights violations, including enforced disappearances, a signature violation of the armed conflict. Nepal has also made little progress in investigating other conflict-era violations and bringing the perpetrators to justice.

Cooperation with international human rights mechanisms has also been decidedly weak. The Government of Nepal has rejected repeated requests to invite UN Special Procedures to visit the country, including the Working Group on Enforced or Involuntary Disappearances.

FOLLOW UP TO THE PREVIOUS REVIEW

Nepal has made little progress since its first UPR 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.² Nepal has also reneged on its commitment to ensure that the long awaited Truth and Reconciliation Commission would not provide for amnesties for grave human rights violations,³ and has failed to implement recommendations from its National Human Rights Commission (NHRC), including to take action against alleged human rights violators.⁴ It has further failed to implement a recommendation to criminalize torture and to reform legislation in line with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵

In its previous review, Nepal accepted recommendations to address and eliminate caste-based discrimination;⁶ however, despite enacting legislation to outlaw caste discrimination, such abuses persist. Trafficking in adults and children for sexual exploitation and forced labour continue despite Nepal's acceptance of recommendations to further develop legislation against these abuses and to introduce a national action plan against trafficking in 2012.⁷

During its first review, Nepal claimed that freedom of assembly was already guaranteed; however, demonstrators continue to be arrested and assaulted by police

² A/HRC/17/5, Recommendation 108.10 (United Kingdom) and 108.12 (Czech Republic), for example, were accepted.

³ A/HRC/17/5, Nepal accepted recommendation 106.34 (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, paragraph 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.

⁴ A/HRC/17/5, recommendation 106.25 (Canada).

⁵ A/HRC/17/5, Recommendation 106.3 (Switzerland, Denmark, United Kingdom, Slovenia).

⁶ A/HRC/17/5, recommendation 108.10 (UK); Recommendation 108.12 (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.

⁷ 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.

for peaceful protest.⁸

Nepal did not accept recommendations to issue a standing invitation to UN Special Procedures and has not granted requests for such visits.⁹

Most of the concerns raised by Amnesty International in the context of the 2011 UPR of Nepal remain unaddressed; these human rights concerns in addition to others are therefore reiterated in this submission with recommendations for action.¹⁰

THE NATIONAL HUMAN RIGHTS FRAMEWORK

SHORTCOMINGS IN THE PEACE PROCESS AND CONSTITUTIONAL DRAFTING

For many years persistent political disagreement, including on representation and greater autonomy for ethnic minority groups and Indigenous Peoples, obstructed the promulgation of a new Constitution to replace the 2007 Interim Constitution, which was instituted as a temporary measure at the end of the conflict in 2006.

The Interim Constitution protects basic rights and provides for the establishment of a Constituent Assembly (CA), charged with determining which rights would be provided for in the new Constitution, including the rights of groups who have suffered past discrimination. Nepal's second CA was formed on 21 January 2014, the first having been dissolved in May 2012 after failing to draft a new Constitution. The second CA pledged to promulgate a new Constitution by 22 January 2015, but that deadline also passed without an agreement being reached.

Soon after the earthquake on 25 April, however, political parties came together and made a hasty agreement on a new Constitution. The resulting draft put forward for public consultation in July 2015 had a number of major human rights shortcomings that needed to be urgently addressed. In particular, the rights of women and marginalized communities, such as Dalits, were not clearly and sufficiently protected in the draft. There were also serious concerns around citizenship, freedom of expression, access to justice, preventive detention, sexual and reproductive rights and child rights, among others.

The CA allowed for only two weeks of public consultation on the draft and exacerbated the challenges posed by such a short window with unclear communication regarding the deadline for submissions. The CA then had less than one week to process almost 39,000 submissions from individuals and organisations commenting on the draft. On 28 July, the meeting of the Citizen Relations and

⁸ See, National Report submitted by Nepal, A/HRC/WG.6/10/NPL/1, 12 November 2010, para 44, footnote 8. See also Nepal's acceptance of A/HRC/17/5, Recommendation 107.27 (Canada).

⁹ A/HRC/17/5, recommendations 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.

¹⁰ Amnesty International, *Nepal: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, January 2011* (Index: ASA 31/001/2010).

Public Opinion Collection of the CA presented its report on the public feedback¹¹ before the Constituent Assembly. Media reports state that lawmakers indicated their intention to promulgate the Consultation by mid-August 2015.

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

The Comprehensive Peace Accord 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.¹²

Impunity risks being 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 that recommend amnesties for crimes under international law.¹³ The Act ignores 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 provisions and ordered its amendment. Nepal has also reneged on a commitment made at its first review to ensure that the TRC and Disappearances Commission contain no amnesty provisions.¹⁴

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),¹⁵ conduct investigations and follow court

¹¹ The report can be found at <http://www.can.gov.np/np/ncd.html>, accessed on 30 July 2015.

¹² Amnesty International, *Nepal: The search for justice*, (Index: ASA 31/001/2013), see also Amnesty International, *Nepal: Ensure Justice for Nepal's "Disappeared"* (Index: ASA 31/004/2013).

¹³ 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 apologise 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).

¹⁴ A/HRC/17/5, recommendation 106.34 (Switzerland) 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 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.

¹⁵ A First Information Report (FIR) is a police record of the first information a victim or

orders, including in cases of alleged extrajudicial executions, human trafficking, gender-based violence, and torture and other ill-treatment.

THE DHANUSHA FIVE CASE

On 8 October 2003 in Janakpur, Dhanusha district, a group of 11 students who were picnicking together were reportedly blindfolded, beaten and arrested by a group of 25-30 army and police personnel. While being transported to police detention at the regional police office in Janakpur, the students were again severely beaten before being interrogated. Six of the men were subsequently released, but Sanjiv Kumar Karna, Durgesh Kumar Labh, Pramod Narayan Mandal, Shailendra Yadav and Jitendra Jha were not heard from again.

In 2006, FIRs were lodged covering all five disappearances, though at the time the police denied arresting the men and refused to investigate the disappearances.

The lack of an effective police investigation led Jay Kishor Lav, the father of one of the victims, to file a writ petition with the Supreme Court against the District Police Office in Dhanusha, which mandated the police to carry out an investigation, and report its findings to the court every month. Meanwhile, the case was also brought to the attention of the NHRC, which conducted its own investigation and issued a report. In September 2010 the NHRC ordered the exhumation of the site thought to be the location of the students' remains, near to where they had disappeared. The skeletal remains of five individuals were found and DNA samples were sent for forensic identification.

In July 2014, the results of the forensic evidence were released. They confirmed the identity of the men and showed that they had been blindfolded and shot at close range with ammunition belonging to arms that, at the time, were only used by the Nepalese Army. The NHRC returned the remains to the families on 22 July. During a meeting with the families of three of the victims in August 2014, Amnesty International was told that the police had delayed their investigation over the last four years because of a "lack of evidence." In that time, those suspected of the crimes had reportedly either been promoted or had retired.¹⁶ The families hope that now new evidence is available, a full and proper investigation will be conducted and those responsible for the disappearances will be brought to justice 11 years after the crimes were committed. It remains unclear, however, if the police will initiate such an investigation.

ROLE OF NATIONAL STATUTORY BODIES IN THE PROTECTION OF HUMAN RIGHTS

In 2013 the terms expired of the Commissioners serving on the National Human Rights Commission and their seats were left vacant for over a year, severely hampering the operations of the Commission.¹⁷ 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

witness gives to the police about a cognizable offence and is registered in the police station where the complaint is made.

¹⁶ Human Rights Watch, *Nepal: Suspend Promotion of New Police Chief, 18 September 2012*

<http://www.hrw.org/news/2012/09/18/nepal-suspend-promotion-new-police-chief>

¹⁷ 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, Redress, Advocacy Forum-Nepal, Association for the Prevention of Torture, "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).

process envisaged in the Principles relating to the Status of National Institutions (the Paris Principles) which aim at a pluralist representation of social forces involved in the protection and promotion of human rights.¹⁸

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.”¹⁹ However, the authorities have not acted on the Commission’s recommendations for prosecution.²⁰

COOPERATION WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS

Nepal has failed to respond to outstanding requests by the 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.²¹

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

VIOLATIONS BY STATE FORCES

EXTRA-JUDICIAL AND SUMMARY EXECUTIONS

At least 281 extrajudicial executions have been reported in the Terai since 2010. In August 2014, relatives of the victims told Amnesty International that the police claimed their sons were killed “in crossfire,” contrary to eyewitness testimony and available evidence.²² An alleged extrajudicial killing was also reported in Kathmandu in August 2014.²³ To date, there has been no investigation or

¹⁸ 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.

¹⁹ A/HRC/17/5, recommendation 106.25 (Canada).

²⁰ 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

²¹ 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 September 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; on contemporary forms of slavery; and the Independent Experts on Cultural Rights and on Minority Issues.

²² Amnesty International interviews, August 2014.

²³ Kathmandu Post, “Chari’ killed in crossfire: HM”, 8 August 2014, <http://www.ekantipur.com/the-kathmandu-post/2014/08/08/top-story/chari-killed-in-crossfire->

prosecution in these cases.²⁴

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment of adults and children²⁵ persist despite Nepal's commitments to end torture and related impunity.²⁶ 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.²⁷

Nepal has failed to uphold a commitment made at its first review to criminalize torture and to reform its penal code and penal procedure code in line with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁸ Although the Interim Constitution prohibits torture, the legislature has not passed a bill providing criminal penalties for torture.²⁹

RESTRICTIONS ON FREEDOM OF ASSEMBLY

Although the Interim Constitution protects the right to freedom of assembly, unwarranted restrictions have been imposed on members of the Tibetan and Madhesi (Terai) communities. Their right to peaceful protest has been curtailed, including by prohibiting and preventing demonstrations and arresting protestors under the Public Offenses Act, sometimes with excessive force.³⁰ During its first review, Nepal claimed that it had removed restrictions on peaceful protests.³¹

Security personnel continue to use unnecessary and excessive force during arrests or to quell demonstrations. Since September 2014, successive peaceful political rallies in support of Madhesi independence have been broken up by the police.

Political activist Chandra Kant Raut and hundreds of his supporters have faced arrest and detention in connection with peaceful protests advocating for secession for the southern plains of Nepal, 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

hm/265918.html, accessed 13 February 2015.

²⁴ 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.

²⁵ 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.

²⁶ A/HRC/17/5, recommendation 107.2 (Germany).

²⁷ Amnesty International interviews, Nepal, August 2014.

²⁸ A/HRC/17/5, recommendation 106.3 (Switzerland, Denmark, United Kingdom, Slovenia).

²⁹ 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.

³⁰ Madhesis are estimated to comprise at least 40 percent of Nepal's population.

³¹ A/HRC/17/5, Nepal accepted 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."

2014, the 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 2015 Raut suffered a broken leg when police used violence to break up a rally in Biratnagar.

Tibetans have often been prohibited from publicly celebrating the Tibetan New Year and in 2014 were not permitted to celebrate the Dalai Lama's birthday.

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 the protesters.

ARBITRARY DETENTION

Police continue to arrest individuals without warrants or other formal procedures and to detain them without charge or trial and in poor conditions. Under the Public Security Act, the Chief District Officer 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 by the Home Ministry. The Public Offences Act permits the Chief District Officer 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.

Article 28 of the draft Constitution presented for public consultation gives the government huge discretion in deciding who can be held in preventive detention. This article would allow the government to hold anyone who they believe may be an "immediate threat to the sovereignty and integrity of, or the law and order situation, in Nepal."

VIOLENCE AGAINST WOMEN AND GIRLS

Dowry killings, rape and other forms of sexual violence continue to be reported despite official measures to combat such abuse, including the Domestic Violence (Crime and Punishment) Act 2009,³² the 2010 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 the Civil Code (*Muluki Ain*)³³ is inconsistent with international standards. 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-spouse under these laws.

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 in accessing justice.³⁴ Domestic violence and harmful practices justified by tradition or

³² Domestic Violence (Crime and Punishment) Act, 2009, available at http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=18&func=filein fo&id=424&lang=en

³³ The Muluki Ain (General Code), available at http://nepalconflictreport.ohchr.org/files/docs/1963-04-12_legal_govt-of-nepal_eng.pdf

³⁴ See, Inter Press Service, Dalit Women Face Multiplied Discrimination 3 February 2014, <http://www.ipsnews.net/2014/02/dalit-women-face-multiplied-discrimination/>, accessed 13

culture are also prevalent.³⁵

Women human rights defenders have been attacked for defending and promoting the rights of women, including Dalit women who face caste discrimination.

On 5 January 2014, Gyanu Dulal, a member of the Women Human Rights Defenders Network in Panchthar, was reportedly assaulted by police officers 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 Unified Communist Party of Nepal (Maoist) 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 denied that rape of a spouse was a crime. Also in February 2013, Domani Devi Chaudhary, an activist campaigning against domestic violence, was reportedly beaten by local residents in 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 Village Development Committee 2. On 28 August 2012, a campaign of harassment began against members of leading women's rights organization WOREC Nepal and LGBTI rights organization Mitini Nepal following their support of a victim of domestic violence who had recently 'come out' as a lesbian.

Police have refused to record cases of violence against women, or to provide information to women human rights defenders on the status of investigations.

Survivors of rape and other forms of sexual violence committed by the parties to the armed conflict in Nepal have been denied compensation under the Interim Relief Program, established by the Ministry of Peace and Reconstruction between 2008 and 2009. This programme provided monetary assistance to conflict-affected persons, including relatives of people who had been killed or disappeared, and those who were injured or disabled due to the conflict. Torture victims and victims of sexual violence have not been provided with assistance.³⁶

Furthermore, following the earthquake that took place on 25 April, The UN estimated that tens of thousands were left vulnerable to an increased risk of sexual or gender based violence.³⁷

ENFORCED DISAPPEARANCES

More than 1,300 people are thought to have disappeared during the armed conflict in Nepal between 1996 and 2006. Their cases have not been investigated or

February 2015.

³⁵ Amnesty International, *Nepal: Unnecessary burden: Gender discrimination and uterine prolapse in Nepal*, (Index: ASA 31/001/2014), pages 21-22.

³⁶ For further information, see: International Center for Transitional Justice (ICTJ), *From Relief to Reparations: Listening to the Voices of the Victims*, Research Report 2011.

³⁷ UN women estimated on 1 May that among the over 8 million people affected by the earthquake approximately 40,000 women were considered at immediate risk of sexual and gender-based violence See, UN Women to address gender-based violence in the aftermath of the earthquake, 1 May 2015, <http://www.unwomen.org/en/news/stories/2015/5/un-women-to-address-gender-based-violence-in-the-aftermath-of-the-earthquake-in-nepal#sthash.x4XJxTCD.dpuf>, accessed 28 May 2015.

prosecuted.³⁸ The 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.³⁹

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

In its 2011 UPR, Nepal was urged to eliminate discrimination and ensure that incidents of caste-based discrimination were reported, investigated, the perpetrators prosecuted and the victims of such violence compensated.⁴⁰ 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 2011.⁴¹ 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.⁴²

In the aftermath of the massive earthquake that took place on 25 April and which left more than 8,800 people dead according to government figures, early reports from survivors suggested an immediate need to guard against discrimination in distribution of relief and to ensure protection of marginalized individuals and groups from discrimination and violence. Weeks after the first earthquake, the Government of Nepal and humanitarian agencies still had not adequately factored social and economic disparities into their relief operations, resulting in the risk of intensifying existing inequalities and not meeting the specific needs of those most at risk of discrimination and marginalization.

³⁸ Amnesty International, *Nepal: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, January 2011* (Index: ASA 31/001/2010); see also United Nations Office of the High Commissioner for Human Rights, *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*, October 2012.

³⁹ This decision that contravened previous commitments by Nepal, including a commitment made in the context of its first UPR.

⁴⁰ A/HRC/17/5/Add.1, recommendations 108.10 (UK) and 108.12 (Czech Republic).

⁴¹ Response of Nepal to recommendation 108.12 (Czech Republic), A/HRC/17/5/Add.1.

⁴² 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. It also contains a broad and vague prohibition against actions and behaviours which “may jeopardize the religion of others.” 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.

HIGH INCIDENCE OF UTERINE PROLAPSE LINKED TO GENDER DISCRIMINATION

Amnesty International has documented links between the high numbers of women in Nepal suffering from debilitating uterine prolapse and systemic gender discrimination⁴³ 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 and women from the Terai.⁴⁴

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 that must be translated into specific measures to address the underlying gender discrimination that puts women at increased risk of developing the condition, along with clear processes for monitoring progress and ensuring 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 within and outside 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.⁴⁵ Meanwhile, human rights defenders report that violence against women whose husbands work abroad has greatly increased due to money-related, interpersonal and family disputes.⁴⁶

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,⁴⁷ Nepal stated that it believed that the 2007 Human Trafficking and Transportation (Control) Act and its Regulation constitute a “comprehensive legal framework to protect those affected from trafficking, including women and

⁴³ 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.

⁴⁴ 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.

⁴⁵ Amnesty International interview, Chief District Officer, Kapilbastu, August 2014.

⁴⁶ Amnesty International interviews, Nepal, August 2014.

⁴⁷ A/ HRC/17/5/Add.1, recommendations 108.20 (Japan) and 108.21 (Austria).

children,”⁴⁸ and noted that since 2001, it had implemented a national action plan against the sale of women and children for sexual and labour exploitation.

However, instances of trafficking in adults and children for sexual exploitation and forced labour remain 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.⁴⁹ In at least two cases known to Amnesty International, police failed to file FIRs after complaints were submitted by victims or their families.⁵⁰

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. More than 100 armed groups were estimated to be 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, while some 20 groups were negotiating with the government.⁵¹

HUMAN RIGHTS PROTECTION IN THE POST-EARTHQUAKE SITUATION

As of 30 July, Nepal’s Home Ministry reported a total of 8,856 deaths and 22,309 people injured in the magnitude 7.8 earthquake on 25 April and its hundreds of aftershocks. Over 602,257 homes were reportedly fully destroyed in the first earthquake and a further 285,099 were partially destroyed.⁵² Over 100,000 people displaced people are living in camps. Access to even basic health services is challenging or non-existent for many and food security is fragile.

Despite the mass destruction and urgent need for relief, the Nepal government refused to waive costly and time-consuming customs duties and procedures for aid deliveries being brought into the country and declared the post-earthquake relief period over on 22 June. These decisions worsened the already serious risk of leaving the most marginalized, including, children, Dalits, Indigenous Peoples, those in very remote areas, and in some cases women, without access to desperately needed aid.

There is further concern that affected women and girls in particular face a growing risk of sexual and gender-based violence, human trafficking, child marriage, and child labour.

In the longer-term, there is a risk that the right to adequate housing, the right to livelihood, the right to recognition under law, the right to food, the right to water and sanitation, the right to education, the right to non-discrimination, the right to health, and to freedom of movement, including protection against forced relocation

⁴⁸ A/HRC/17/5/Add.1, Government of Nepal response to recommendation 108.20, page 6.

⁴⁹ Amnesty International interviews, Nepal, August 2014.

⁵⁰ Amnesty International interviews, Nepal, August 2014.

⁵¹ For further information 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.

⁵² Government of Nepal Disaster Risk Reduction Portal, <http://www.drrportal.gov.np/>, accessed 30 July 2015.

of displaced persons, will not be ensured if relief and reconstruction efforts are not grounded in human rights norms.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the Government of Nepal to:

National human rights framework

- Ensure that the new Constitution provides for protection of human rights in a manner fully consistent with international human rights law and standards.⁵³

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 during the conflict;
- 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 the Commissioners commence work, including by removing time limits that could inhibit the filing of complaints, ensuring witness protection, and removing provisions that could lead to amnesties being granted to persons suspected of committing crimes under international law;
- Reform the vetting process and reassess current members of the Nepal Army, including those participating in UN peacekeeping missions, to ensure that they are not and have not in the past been implicated in serious human rights violations;
- 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;

⁵³ For more information, please see Amnesty International, *Nepal: Submission From Amnesty International On Nepal's Draft Constitution As Part Of The Consultation Process*, July 2015 (Index ASA 31/2140/2015), available at <https://www.amnesty.org/en/documents/asa31/2140/2015/ne/>, accessed on 30 July 2015

- 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 in 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, 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 international 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.

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 such crimes;

- Put in place a comprehensive strategy, with concrete goals and timetables, to eliminate patriarchal attitudes and stereotypes that discriminate against women and girls, in line with the concluding observations of the CEDAW Committee on Nepal in 2011;
- Ensure against all forms of discrimination in access to all relief supplies in the post-earthquake reconstruction effort, participation in decisions on reconstruction, and access to effective remedies where human rights violations occur.

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;
- Bring rape laws in line with international standards and remove the 35-day limitation on lodging a complaint of rape with the police.

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 address the underlying gender discrimination linked to uterine prolapse 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 all trafficking-related offences and, where there is sufficient admissible evidence, prosecute those suspected of the crimes in fair trials;
- Take all necessary measures to prevent incidents of trafficking, particularly in the post-earthquake situation.

Human rights protection in the post-earthquake situation

- Ensure those everybody who needs relief continues to receive it, particularly the most marginalized in the country.
- Protect and promote all human rights impacted by the situation, including but not limited to the right to adequate housing, the right to livelihood, the right to recognition under law, the right to health, the right to food, the

right to water and sanitation, the right to education, the right to information, and to freedom of movement, including protection against forced relocation of displaced persons, of all those affected by the earthquake, including marginalized groups.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁵⁴

Amnesty International Press Release, *Nepal: Reconstruction must not leave behind those most affected by the earthquake*, 24 June 2015

<https://www.amnesty.org/en/latest/news/2015/06/nepal-reconstruction-must-not-leave-behind-those-most-affected-by-the-earthquake/>

Amnesty International, *Nepal: Earthquake Recovery Must Safeguard Human Rights*, June 2015 <https://www.amnesty.org/en/documents/ASA31/1753/2015/en/>

Amnesty International, *Nepal: Submission From Amnesty International on Nepal's Draft Constitution as Part of the Consultation Process*, July 2015

<https://www.amnesty.org/en/documents/asa31/2140/2015/ne/>

⁵⁴ All of these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/asia-and-the-pacific/nepal/>

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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NEPAL

BREAK THE WALLS OF IMPUNITY AND INJUSTICE

This submission to the Universal Periodic Review (UPR) of Nepal reflects Amnesty International's analysis of key human rights concerns in the country and makes recommendations to the government on how to address these issues.

The situation regarding the protection and promotion of human rights has not seen any significant improvements since Nepal's first UPR in 2011. There is a real risk that the human rights situation may only worsen in the aftermath of the devastating earthquake that took place in April 2015, and the serious shortcomings in the new draft constitution.

The Government of Nepal has failed to implement most of the UPR recommendations it accepted in 2011. It did not honour its commitment to address persistent discrimination in practice and in law, failed to ensure that the long awaited Truth and Reconciliation Commission would not provide amnesties for grave human rights violations, and did not criminalise torture in line with Nepal's international obligations. Impunity persists for past and present human rights violations, including enforced disappearances, a signature violation of the armed conflict.

Extra-judicial and summary executions, torture and other ill-treatment, arbitrary detention, restrictions on freedom of assembly, trafficking of persons and migration-related human rights abuses continue to be reported in the country.

Persistent discrimination, whether based on gender, caste, class, ethnicity, disability or geography, continues to impede the enjoyment of other human rights, including protection against violence and access to justice, and in the wake of the earthquake, access to relief.

Furthermore, the draft constitution put forward for a brief public consultation in July 2015 had a number of major human rights shortcomings which, if not addressed, will leave the rights of women and marginalised communities insufficiently protected.

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