

Universal Periodic Review - Recurring Human Rights Violations in Nepal

Submitted by Nepal Dialogforum für Frieden und Menschenrechte (Germany)

1. Explanation of Organization

The following information has been submitted by the German *Nepal Dialogforum für Frieden und Menschenrechte (Dialogue-Forum for the Promotion of Peace and Human Rights in Nepal)*. The forum is a network of NGO's that are either based in Germany or have a German branch, which have come together to jointly work on alleviating human rights violations in Nepal. The following organizations are the official members: Amnesty International, MISEREOR, EED, PBI, FIAN International, Südasiensbüro, and the German Adivasi Koordination.

2. Nepal and the Fight for Peace and Human Rights

While the state of Nepal faces a wide range of political difficulties the *Nepal Dialogforum für Frieden und Menschenrechte* has identified 6 key challenges confronting the state that require urgent action.

Key challenges

- *Delays in writing the new constitution;*
- *Meaningful inclusion of traditionally marginalized groups in the peace process and constituent assembly deliberations, to counteract the exacerbation of ethnic and regional tensions;*
- *Service delivery in a crisis situation that demands functional systems of governance and immediate relief for the most vulnerable groups;*
- *Discriminatory access to traditional resources such as land, forests, water and fishing areas;*
- *Profound disagreement of the major political parties over the issue of integration of former PLA (People's Liberation Army) fighters into the Nepalese Army;*
- *Lack of decisive action taken to establish a Truth and Reconciliation Commission (TRC) as well as a High-Level Commission of Inquiry on Disappeared Persons (HLCIDP), and the persistence of a deep-rooted culture of impunity.*

3. International and National Legal Framework

The Nepalese state has ratified most of the international treaties, such as *the International Covenant on Civil and Political Rights (ICCPR)*, *the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, *the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)*, *the Convention on the Rights of the Child (CRC)*, plus *the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)*, *the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)*, and *the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. Nepal adopted the *FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*. Nepal has also ratified *ILO Convention 169 concerning indigenous and tribal peoples in independent countries* and has adopted the *UN Declaration on the Rights of Indigenous Peoples*. In terms of reporting, the state report to ICCPR is overdue since 1997.

In addition Nepal's official respect for its citizens' human rights is enshrined in the country's interim constitution, which in its preamble refers to the state's duty to fulfill the fundamental human rights of its citizens. These fundamental rights are further specified in article 33 of the constitution document, which deals explicitly with the state's responsibilities to its citizens. According to section h) of article 33 the state is obligated to "pursue a policy of establishing the rights of all citizens to education, health [...] and food sovereignty". Furthermore, as per section d) of article 33 the state is

committed “to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes [Adivasi, Janajati], Madhesis, oppressed and minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination”.

Also, section r) in article 33 declares the Nepalese state’s obligation to “conduct special programs to rehabilitate the displaced” Another comment found in section 1) of article 14 mentions the issue of “untouchability” and declares it unconstitutional to discriminate against any individuals on the grounds of “caste, descent, community or occupation.” Additionally, in 2009 Nepal officially declared its support for the UN Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent.

The interim constitution also recommends that the NHRC be upgraded from a statutory body to a constitutional body.

After looking at the legal human rights framework, within which the state of Nepal exerts its power, we will now briefly consider the recent history as well as current political situation of Nepal in order to contextualize the 6 key challenges identified above.

4. Recent History and Current Political Situation

Following the abolition of its centuries-old monarchy and the end of a decade-long people’s war Nepal is going through its most important process of political transformation. The mandate of drafting a new constitution was prolonged until May 2011, to carry out an inclusive, democratic and progressive restructuring of the state and to consolidate the peace process in accordance with the Comprehensive Peace Agreement of November 22, 2006, to resolve past human rights violations and infractions of International Humanitarian Law, and to demobilize and integrate former Maoist combatants. After the historic constituent assembly election in April 2008 in which the former Maoist rebels, now called the Unified Communist Party of Nepal (Maoist), won the most seats Nepal is currently going to form its third government.

Contrary to legal obligations a systemic crisis has continued to grip the country due to security, authority and basic needs deficits, ongoing political conflicts and a culture of impunity. Over 100 armed groups operated in the south of Nepal, in the so-called Terai and committed human rights abuses. Youth party organizations especially the youth wing of the UCPN-M, the Young Communist League, are responsible for killings, assaults and abductions. Public insecurity becomes more fragile as a growing number of armed groups take violent actions against civilians.

Women, children and marginalized communities, like Dalits, ethnic minorities, persons with disabilities, religious, sexual and gender minorities and different people from the Madhesi population still face widespread discrimination and social exclusion. All these groups are demanding their due consideration and representation within the framework and writing of Nepal’s new constitution.

A high inflation rate and shortages of essential public goods have compounded the economic hardships of common people. The government is under tremendous pressure to respond to these pressing needs quickly and in tangible ways. However, political strife amongst various factions of the political elites and lack of cooperation between major parties make it very difficult to act in accordance.

Hence we can see that the current political situation in Nepal is still very delicate and that much still needs to be done in the fight for peace and Human Rights. In addition to the six key challenges listed above the *Nepal Dialogforum für Frieden und Menschenrechte* has isolated four major areas of

human rights violations in the state of Nepal, namely impunity, the inclusion of women, Dalits and ethnic groups, human rights defenders and the human right to food.

5. Human Rights Violations

5.1. Nepal's Institutional Human Rights Challenges

5.1.1. Impunity

It is a major concern that the Nepalese Government has not yet taken any step to address the persisting problem of impunity in the country. No case for a perpetrator of human rights abuses during the armed conflict was tried before a civilian court. Human rights violations after the end of the conflict also continue to go unpunished. Effective administration of justice throughout the country has not been established. The various splinter armed groups benefit from the current lack of law and order in Nepal. In 2009 human rights defenders reported hundreds of killings and abductions by state forces and armed groups. Torture and ill-treatment of detainees is still common in police custody. Excessive and unnecessary use of force by police to dispel political and rights-based demonstrations has also been reported in 2009.

Efforts to establish a Truth and Reconciliation Commission (TRC) stalled. The **TRC Bill** of 2007 is still pending. Its provisions contradict Nepal's international obligations. These include several shortcomings, among them the proposed commission's lack of independence from political influence, inadequate witness protection, and a proposal to grant it the power to recommend amnesty for serious human rights violations.

Since the June 2007 Supreme Court ruling to establish a **Commission of Inquiry on Disappeared Persons** which corresponds with recognised international standards a draft bill criminalizing enforced disappearance lapsed in June 2009 and no Commission of Inquiry into disappearances was set up and is still pending. The proposed bill failed both to employ a definition of enforced disappearance consistent with international law, and to recognize enforced disappearances as a possible crime against humanity. Both sides – Government and Maoists - of the 2006 ending conflict subjected people to enforced disappearances. According to the ICRC, more than 1300 people remained unaccounted for by the end of 2009.

Despite the claims of the Nepalese Government the National Human Rights Commission (NHRC) seems to be no longer a credible independent institution. There is information that the National Human Rights Institutions are moving to downgrade Nepal's NHRC from a full member to an observer.

Even though Nepal ratified all major human rights treaties in 1990, and even though legal provisions stipulate their adoption as national law, neither torture nor enforced disappearance remained inadequately implemented. Furthermore, several laws grant immunity for army and police personnel from prosecution for human rights violations or excessive use of force.

And there is a lack of political will or pressure from perpetrators. According to Human Rights Watch and Advocacy Forum in October 2009 all political parties have put pressure on the police not to investigate certain cases in order to protect their members. The army integration process is contested, leaving Nepal with two standing armies in barracks and having an impact on the security situation.

Lastly Amnesty International observed in its 2010 report that members of disadvantaged groups such as Dalits still frequently face injustice in cases of caste-based discrimination, which is punishable by Nepalese laws and a violation of Human Rights within the undersigned framework of ICERD. Deep-rooted prejudices, caste-based nepotism and even atrocities against Dalits, who try to assert their rights, are yet to be met with serious, inclusive and monitored efforts to enforce those laws. Particularly alarming is the continued neglect in the persecution of violations against Dalit women.

5.1.2. Inclusion of Women, Ethnic Groups and Dalits

Women are still not adequately involved in decision-making processes regarding the political future of the country. The number of female parliamentarians does not reflect their proportion in the population. Their representation in the Government falls short of the promises made by political leaders of all parties to become more inclusive gender-wise. On a similar token, the political representation of ethnic groups from different regions and Dalits so far appears to be insufficient, also with a view to their capacity to influence processes. The discrimination of women, ethnic groups and Dalits and their lack of participation in political institutions and decision-making bodies are seen as root causes of the conflict.

In May 2007, the UN Committee on Economic, Social and Cultural Rights (CESR) presented its concluding observations on the second periodic report delivered by the Government of Nepal, stating that the majority of the recommendations contained therein had not been put into practice. The main persistent problems in the country include extreme poverty, food insecurity, gender inequality, human trafficking, high unemployment, domestic violence, and child labor.

5.1.3. Human Rights Defenders

Particularly in relation to civil society organisations' efforts to bring perpetrators to justice, the situation of **Human Rights Defenders** (HRDs) is of great concern despite some very important steps that have been taken to put into practice the Local Implementation Strategy for Nepal drafted on the basis of the European Union Guidelines on Human Rights Defenders. Information provided by HRDs indicate an involvement of high-ranking military officials in threats and intimidations. Likewise, threats against victims and their families who have dared to take legal action are reportedly very common. Publishers, media workers and journalists, who write about sensitive issues like impunity or corruption, live risky furthermore. The NGO Federation of Nepalese Journalists registered in the first six months of 2009 more than 100 cases of physical attacks, threats and harassment against journalists and it receives fresh complaints every week. Because of uncertain lines of power and accountability in the country many lawyers and non-governmental organizations are left without clearly-mandated governmental bodies with whom to negotiate and demand accountability.

5.1.4. The Human Right to Food

Nepal has been facing a severe food crisis. One quarter (six million) of its population is undernourished; half of all children under five suffer from malnutrition and stunting (FAO 2006). 33 out of 75 districts are chronically food insecure according to World Food Programme. As a state party to the International Covenant on Economic, Social and Cultural Rights, under which the human right to food is most firmly enshrined, Nepal is obliged to respect, protect and fulfil the right to food for all its citizens.

More than 80 % of all working adults in Nepal depend on agriculture for their survival. However, in a growing number of districts about half of the people involved in farming, agricultural labour, share-cropping and rural service delivery are hungry. Food insecurity is pervasive in both food surplus and food deficit districts. Hunger and malnutrition in Nepal is prevailing largely due to lack of proper

distribution of resources, and missing assertion of rights. Most affected are primarily women and children, indigenous people, Dalits, Muslims, (ex)bonded labourers, people living with HIV/AIDS.

Positive initiatives by the government are the inclusion of food sovereignty and the integration of land reform provisions into the interim constitution, as well as community forestry and protected area buffer zones management. However, government strategies to address hunger are not comprehensive. Lack of coordination between the capital, regions and districts is worsening the situation. Below are a number of examples:

- non-implementation of genuine land reform
- Agricultural policy focuses on production and commercialisation, but not on accessibility and distribution
- Relief measures for disasters lack sustainable resettlement plans
- Food distribution often does not reach to the most vulnerable, and lacks proper transparency, accountability, and monitoring.

6. Recommendations:

In order to improve the situation in Nepal with regards to Human Rights, the *Nepal Dialogforum für Frieden und Menschenrechte* proposes the following policy changes to the government of Nepal:

- proceed, in an inclusive and transparent manner, with the drafting of a new constitution that takes into account fundamental rights and liberties of all Nepalese citizens, regardless of gender, caste or their ethnic, religious or regional origin;
- implement fully and without any reservation all obligations enshrined in the Comprehensive Peace Agreement (CPA), thereby ensuring the inclusive and non-partisan participation of civil society;
- adopt a national policy and legislative framework for the eradication of hunger and realization of the human right to food in Nepal including monitoring and evaluation mechanisms;
- give attention to the concluding observations of the CESCR and create an inter-departmental working group to implement its recommendations;
- give attention to the concluding observations of the CERD and to implement its recommendations as well as the UN Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent;
- create procedures for reporting and facilitating access to effective remedies to communities and groups displaced through conflict, natural disasters, wildlife preserves, freed bonded labor, infrastructure development, either judicial or administrative;
- implement genuine land reform, by formulating an integrated land policy, quicken the pace of land reform and identify and restore traditional land rights of indigenous peoples;
- enforce labor rights, e.g. enforce minimum wage legislation with special attention to disparity between men and women as well as traditionally disadvantaged groups like the Dalits;
- support the creation of inclusive local level complaint centers across Nepal to facilitate community reporting and access to legal aid for the poor and marginalized groups; and provide training for officials, judges and lawyers in the application of political, civil, economic, social and cultural rights as well as public human rights education;
- improve targeting policies and practices, ensure the proper identification of vulnerable groups, and develop a procedure to facilitate and monitor the delivery of special programs to them;

- set up a Truth and Reconciliation Commission as well as an Inquiry Commission on Disappeared Persons, as ordered by the Supreme Court of Nepal, the mandate and provisions of which correspond with international standards;
- amend existing national legislation to be in line with the provisions contained in the international human rights treaties to which Nepal is a party, including the criminalisation of gross human rights violations, and to ratify the new UN Convention for the Protection of All Person from Enforced or Involuntary Disappearances, the ICC (Rome Statute) and the Optional Protocols to ICESCR and CAT;
- to ensure that human rights defenders and other civil society organisations exercise their work freely and without threats to their lives. Special attention should be given to the local implementation strategy for Nepal designed by EU member states, corresponding to the provisions of the EU Guidelines on Human Rights Defenders;
- support the OHCHR in Nepal as an important body of human rights monitoring;
- strengthen the independence, inclusiveness and capacities of the National Human Rights Commission of Nepal by providing adequate resources and giving them a mandate to investigate all kinds of human rights violations, accessing related government documentation and assisting victims in their search for remedies;
- implement the Right to Development;
- ratify the Convention on Migrant Workers;
- ratify the Refugee Convention.
- ratify the Convention against Transnational Organized Crime and its Protocols
- ratify the Protocols to the Geneva Treaties
- ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights