

NEPAL

Human Rights in Abeyance

Introduction

Throughout 2013, the prolonged political transition to democracy in Nepal marginalized calls for human rights, accountability, and rule of law. Following the dissolution of the Constituent Assembly on May 28, 2012, political bargaining put concern for human rights on the backburner. Institutional reforms to curb torture, guarantee freedom of assembly and expression, and bring security forces under the rule of law have been negated in the absence of an elected parliament.

However, this has not prevented the interim government from attempting to entrench impunity, in its pushing for an ordinance establishing a commission on transitional justice entrusted with power to grant amnesty to perpetrators of human rights violations. Raising voice to demand justice has placed rights defenders, victims, and journalists at risk; a resurgence of attacks against rights defenders working against impunity has been particularly disconcerting.

In spite of the vacuum in political leadership, the Nepali people have continued to demand that impunity for human rights violations committed during the conflict be brought to an end. Notable in this regard is the ‘Occupy Baluwatar’ movement which has gathered every day since December 28, 2012, in front of the Prime Minister’s residence.

On 19 November 2013, the second Constituent Assembly elections were conducted with a record 78% turnout. Newly elected Parliamentarians face the herculean task of developing strong and stable democratic institutions, ensuring that all in Nepal benefit from the protection of the rule of law.

Shut Downs Shut Out Rights

After the dissolution of the first Constituent Assembly on 28 May 2012, Nepal found itself uncertain about its political future. Political leaders failed to reach consensus on forming an interim government and setting a date for elections. The never-ending political transition sidelined peace, security, rule of law, and human rights. Bandhs (*closures*) and violent clashes crippled daily life.

On January 25, 2013, nine political parties organized a ten days long bandh in Biratnagar, demanding resignation of the Prime Minister Bhattarai. Students unions joined the protest, bringing the country to a standstill. At least twelve people were injured in Banepa, after clashes between protesters and Young Communist Members (YCL) of UCPN-M.

On February 8, the major political parties decided to form an interim government under the Chairmanship of Chief Justice Khil Raj Regmi to conduct elections in Nepal, with no consideration for the principle of separations of powers. That the Chief Justice was placed at the head of the government provided strong leverage for the interim government to push for amnesty to those implicated on war related crimes during a decade long armed insurgency in Nepal.

The decision was followed by a daylong bandh organized by the Baidhya led Communist Party Nepal-Maoist – the hardline faction which had seceded from the Maoist party the year before – that again unsettled the entire country. Bombs were planted in Biratnagar, Morang, and Butwal that were defused by the bomb disposal unit of the Nepal army.

March 2013 witnessed other bandhs where educational institutions, markets, and transportation came to complete halt. The bandhs greatly affected lives of ordinary people. In March, during another protest in Kathmandu, against the appointment of Chief Justice Khil Raj Regmi as head of the interim government set-up conduct elections; five persons were injured in a scuffle.

More nationwide *bandhs* in April upturned life of the ordinary Nepali again. The interim government had started voter registrations across Nepal. An alliance of 33 political parties, including CPN-M, opposed voter registration. Normal life came to a halt in May once more, when Madhes parties organized a bandh in Terai demanding that the date for the second constituent assembly elections be fixed. The district administration had to impose curfew in Jumla on 11 June following a violent clash between cadres of Nepali Congress and CPN-Maoists.

After the dates for elections were postponed several times, the interim government decided to organize the second Constituent Assembly elections on 19 November. This decision led to another surge of violence and bandhs. The CPN- Maoists called for a boycott of the elections. The CPN-M and the 33 party alliances began placing hurdles during the registration of election candidates.

More bandhs in September ahead of the election affected Kathmandu and other parts of the country. Cadres of CPN-M launched a donation drive to raise funds for their anti-elections campaign, which affected businessmen and the general public. Two persons riding a motorbike shot dead one candidate, Mohammad Alaam from the CPN UML, in Bara district on 4 October.

Anti-election parties and parties that decided to contest elections then clashed all over the country. As the country approached elections, cadres of CPN-M hurled bombs at public vehicles in Kathmandu and outside Kathmandu, injuring many, even children. CPN-M cadres torched vehicles in Hetauda and even torched parked tourist buses in the tourism-dominated city of Pokhara.

To deal with threats of violence, the government unveiled a coordinated security arrangement plan involving the army, the Nepal Police, and the Armed Police Force. However, lack of transparency, chain of command, and coordination among these forces

triggered civil society to call for robust monitoring mechanisms for all cases of election related violence. The monitoring vacuum became acute as the National Human Rights Commission (NHRC), which would have been naturally called upon to play a monitoring role, saw the tenure of all its commissioners come to an end on 16 September 2013. The NHRC thus became dysfunctional; unable to play a role of human rights watchdog during elections.

It is therefore remarkable that despite the fear of violence, more than 78% Nepalese cast votes on 19 November, and elections were conducted in a relatively peaceful way. The newly elected legislative parliament now has the herculean task of bringing back human rights to the center of the political agenda and launching the institutional reforms that Nepal has been waiting for since 2006.

The slow erosion of democratic institutions had left major human rights issues unaddressed. This report now proceeds to underline some of them.

Institutionalizing Impunity

Criminal justice and rule of law reforms, required to create a system of accountability for human rights violations committed, have been pending since the end of the conflict. The dissolution of the Constituent Assembly in 2012 stalled any effort to trigger debate on institutional reforms. Since the end of the conflict, victims of human rights violations have been made to wait for justice. Successive governments took the position that their cases would be dealt using transitional justice mechanisms and refused to recognize the mandate of the regular criminal justice system to deal with the same.

Since 2008, the AHRC has documented the accumulation of political pressure, interventions impeding the functioning of justice, and attempts by political parties to water down contents of bills proposing to establish transitional justice mechanisms – all to prevent perpetrators from being held accountable. These tactics have contributed to entrench a culture of impunity, in which victims of human rights violations face tremendous obstacles to access justice and are vulnerable to retaliation if they voice their concerns. Detailed later in the report is the surge of violence against human rights activists working on impunity, especially in the first half of 2013, which directly shows how political dedication to impunity has condoned attacks and reprisals against rights defenders.

Systematic patterns of human rights violations during the decade long civil war have been well documented. A special taskforce formed by government to ascertain loss of life and property had found that 17,265 people were killed and more than 50,000 internally displaced¹. The International Committee of the Red Cross has stated that 3,198 persons have reported the disappearance of at least one of their relatives during the conflict² and that, as of 31 July 2013, 1,360 were still unaccounted for. In 2003 and 2004, Nepal was the country with the highest number of disappearances being reported to the UN Working Group on Enforced or Involuntary Disappearances. In October 2012, the UN Office of the High

¹ http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html

² <http://www.icrc.org/eng/resources/documents/report/nepal-missing-persons-report-2013-08-30.html>

Commissioner for Human Rights released a report mapping the violations of international human rights and humanitarian law which had taken place in Nepal between February 1996 and November 2006, accompanied by an online Transitional Justice Reference Archive. That report lists over 2,000 incidents of suspected extrajudicial killings, more than 2,500 cases of “torture, mutilation and other sorts of cruel and inhumane and degrading treatment”, thousands of arbitrary detentions, and over a hundred cases of sexual violence, a number likely to be underreported.

Despite this bulk of evidence, and of Nepal’s obligations under international law to investigate and bring to book perpetrators of human rights violations, successive governments’ attitude toward the legacy of injustice has been characterized by inaction at best, purposeful sabotage of all attempts for justice at worst. The Comprehensive Peace Agreement (CPA) signed between the government and the Maoists combatants in 2006 put the promise to fight against impunity at the heart of the peace and democratization process, an approach upheld by the 2007 Interim Constitution. Concerns for the victims’ right to truth and to an effective remedy formed the cradle of the reconciliation process in the CPA. The CPA included provisions in which both parties committed to publish names of persons killed or disappeared within 60 days, form a national peace and rehabilitation commission to provide relief support to conflict victims, form a high level Truth and Reconciliation Commission to investigate crimes against humanity and gross human rights violations committed during the conflict to “create the situation of reconciliation in the society”, and investigate and prosecute human rights violations. In this document, both parties explicitly commit to rights of the victims and not to protect impunity. The 2007 Interim Constitution placed the duty on the State to fulfill these commitments and to establish a Commission, which would be entrusted with the investigation of enforced disappearances.

However, those transitional justice mechanisms are yet to be established. Since 2007, different versions of two bills have been drafted without the political parties reaching an agreement on their content. Major doubts have emerged regarding the capacity of the commissions to investigate and prosecute human rights violations, as political parties called for the bills to emphasize ‘reconciliation’ over ‘justice’, opening the door for amnesty for perpetrators.

In a November 2011 agreement aimed to bring to an end a political deadlock, the three major political parties of Nepal agreed to finalize the bills within a month and set up a task force for this purpose. In January 2012, the taskforce published its conclusions. Its recommendations included removing Section 25 (2) of the draft TRC Bill, which incorporated a list of crimes for which amnesty was not permitted and instead proposed that the Commissions would grant amnesty when both victims and perpetrators agree to reconcile. In the absence of reliable victim and witness protection mechanisms, this clearly would have put the victims at great risk of pressure.

It is in this context that on the eve of the dissolution of the Constituent Assembly / Legislative Parliament of Nepal on 28 May 2012, draft bills establishing the TRC and the Commission on enforced disappearances were withdrawn. As Nepal found itself without an elected legislative authority, the government forwarded to the President for his approval a draft executive ordinance merging both commissions into a unique “Commission of Investigation into Disappeared Persons, Truth and Reconciliation”. The new draft proposed that commissioners would be appointed by political consensus, endangering the

independence of the commission. In addition, the ordinance explicitly contained an amnesty provision. The commission was not provided with the power to recommend prosecutions for the perpetrators. However, it would provide for the victims and the perpetrators to “reconcile”, granting amnesty, if the perpetrator filed an application for reconciliation, accepted the crime, and showed regret. The perpetrator would also have had to pay compensation to the victim.

In the absence of a victim and witness protection mechanism this emphasis on reconciliation would again have put victims at high risk of being pressurized and threatened. More worryingly, the adoption of the commission through ordinance without parliamentary oversight or consultation with victim groups would have negated any possibility to contest or amend the content of the bills. Not only was this ordinance clearly violating international human rights standards, it was also breaching several previous landmark rulings by the Supreme Court, notably that the Commission on Enforced Disappearances should be established as a separate entity and should be granted power to recommend prosecutions.

On 13 March 2013, the (by then) four major political parties of Nepal agreed on a revised ordinance, which would establish the commission. The President signed the ordinance into law the following day. Neither victims’ organisations, nor civil society of Nepal, or the international community were allowed to see the ordinance before it was adopted. Even officials at the National Human Rights Commission claimed that they were refused access to the final version. Although the ordinance had been revised slightly, it fell short of international standards. It contains an explicit amnesty provision.

The preamble of the ordinance emphasizes the truth-seeking purposes of the Commission. Even though the Commission is given the mandate “to end impunity”, section 23 of the bill authorizes the commissioners to grant amnesty under the only constraint that the grounds for amnesty shall be justified in writing by the commissioners. This amnesty provision does not contain any restrictions concerning which crimes can be granted amnesty and explicitly mentions that “serious crimes, including rape” fall within its scope. This position was denounced by victims’ organisations and the civil society.

The UN High Commissioner for human rights, Navi Pillay, urged the government to modify the amnesty provision: “Such amnesties would not only violate core principles under international law but would also weaken the foundation for a genuine and lasting peace in Nepal. An amnesty for those who committed serious human rights violations will deny the right of thousands of Nepalese to truth and justice. This will not provide a sustainable road to peace”.

Navi Pillay also expressed “that the text of the Ordinance was developed and passed in such a secretive manner, without consultations with civil society, victims, families of the victims or even the national human rights institutions. Past experiences elsewhere in the world have shown that without the active involvement and support of these key affected groups, mechanisms of this type may lead to further divisions and disagreements, so producing the opposite result to that intended.”³

³ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13163&LangID=E>



Donor countries have expressed their reluctance to fund the Commission until the points raised by the OHCHR are properly addressed. On 24 March, petitioners filed two writs with the Supreme Court of Nepal saying that the ordinance, as it stood, violated Nepal's interim constitution and the International Covenant on Civil and Political Rights. On 31 March the Supreme Court issued a stay order on the ordinance, de facto suspending the creation of the commission.

The new developments concerning the transitional justice institutions are just the latest chapters of a relentless fight by victims and human rights defenders to deflect government, security forces, or political parties collusion in preventing accountability for human rights violations. Even the first step of obtaining legal redress for a human rights violation, i.e. filing a complaint at the police station, has typically proven a challenge for victims, due to reluctance by the police to register cases involving the security forces or Maoists. The reluctance stems from the police receiving tremendous pressure from powerful local individuals or organisations connected to the perpetrators. It also comes from a mistaken impression that they do not possess the authority to register such cases. High profile political leaders and government officials have repeatedly asserted – with no legal basis – that conflict-related human rights violations fall under the exclusive jurisdiction of the transitional justice mechanisms.

Successive governments have, at best, failed to give clear instructions to the police to register and conduct effective investigations concerning conflict-era human rights violations. At worst the governments have wrongly asserted that it was not the police's role to deal with such cases. For instance, when the police arrested the chief suspects in relation to the murder of a journalist during the conflict in January, the Prime Minister reportedly ordered the Attorney General's Office and Police Headquarters to stop investigations into the case and, in a public intervention, deplored the arrests and reasserted that conflict-related cases should be dealt with by transitional justice mechanisms.

This is in spite of several Supreme Court orders to the contrary. In her statement following the adoption of the transitional justice ordinance, Navi Pillay summarized these concerns: "I am also concerned that the Ordinance may be used to avoid or delay criminal investigations and prosecutions of conflict-related cases. Criminal justice should be reinforced, not replaced by other transitional justice processes such as truth and reconciliation commissions."

The investigation process concerning cases that have been registered has been slow and ineffective, due to resistance from formerly belligerent parties to collaborate with investigations and problems arising from a dysfunctional and corrupt policing system, which remains subject to influential individuals and political leaders. Court orders, including by the Supreme Court, to launch investigations into violations or to arrest perpetrators have been ignored without consequence.

Fight of the Adhikari Couple

The fight for justice of Krishna Prasad Adhikari's parents made public the suffering of victims' families whose hope in seeing those that murdered their relatives' murder slowly erode as years passed with no political commitment to justice. The case exemplifies several of the forces operating to protect perpetrators: intimidation and marginalization of the voice of victims and interference from influential political leaders that neutralize power of the police.

Krishna Prasad Adhikari was a young man killed by Maoist cadres in 2004. He was falsely accused of spying for the army as part of a personal dispute. It was a land dispute that had led Nanda Prasad, the victim's father, to find himself under constant harassment from his neighbours, led by a local Maoist cadre. On 6 June 2004, Krishna Prasad Adhikari was on his way to his grandfather's house in Chitwan district when men on a motorcycle took him away. Locals reported seeing the abductors bringing Krishna back to the place where he had been abducted at 8 p.m. and gunning him down. Nanda's relatives from Chitwan have said that Krishna was first tortured by the Maoists then killed.

The police first informed Nanda that his son had been found dead as a result of a road accident. He only came to learn later, through a local Maoist cadre that his son had been "wiped out". According to Nanda, the cadre had said that the decision to wipe him out was taken as he was found to have spied against the Maoists and that his brother had enrolled in the Nepal Army. Nur, Krishna's elder brother, applied to the Maoist Village Government which had taken the place of the Village Development Committee to investigate the circumstances of his brother's death. But the Village Government refused to investigate the same. Instead, the relatives of the alleged perpetrators threatened the family that their other son would be killed too if they did not keep silent.

Nanda filed two separate complaints on 11 December 2005 to the District Police Office, Chitwan. The police typically did not conduct an investigation into the case as the perpetrators were connected to the Maoist party.

On 5 April 2009, the National Human Rights Commission decided to recommend that the government provide the family Rs. 300,000 as compensation, to rehabilitate them to their home and ensure their security. To date, they have not received the compensation. No step has been taken to return their home to them or to protect them from threat and attack.

As the investigation into their son's murder was not making any progress, the family have also applied for justice separately to the District Administration Office, Chitwan, the District Police Office, Gorkha, the Ministry of Peace and Reconstruction, and the President's Office. They have not received any response from these authorities.

The victim's family was displaced from their home and moved to the streets of Kathmandu, without them receiving the support they were entitled to as conflict victims. On January 2013, they started a hunger strike in front of the residence of the Prime Minister, Baburam Bhattarai, to protest against the lack of progress in the investigation into their son's murder. They were arrested several times by the police in their doing so, and worryingly, forcefully confined for more than a month to a mental hospital.

On 14 June 2013, the police brought them to Bir Hospital, Kathmandu, from where they were transferred to the Mental Hospital Lagankhel, Lalitpur, where they were diagnosed

with mental illness. They were forcibly bed-ridden, bringing their fight for justice temporarily to a halt. There were concerns that the Director of the Mental Hospital was coerced into reaching such a diagnosis of mental illness for the parents or colluded with the police and political interests to prevent the couple from resuming their fight for justice. They were forced to stay in the hospital for 35 days. Neither family members nor human rights activists were allowed to visit them. Following intense campaigning from human rights defenders and extensive media coverage, the hospital agreed to discharge them after consulting with the Metropolitan Police Department, Kathmandu. The hospital published a final report in which it retracted the initial diagnosis and acknowledged that after observing the old couple for five weeks they had come to the conclusion that they did not suffer from mental illness but had just been under a lot of stress in the aftermath of their son's murder.

Following the old couple's release on 19 July, the family went back to the District Administration Office, Kathmandu to resume their hunger strike. Their health deteriorated quickly and they were again forcibly admitted to the hospital on 31 July.

The NHRC met with the Home Minister on two occasions to follow up on its recommendations and to urge him to take action urgently. The first time the Minister refused, as the government had decided to put all cases dating from the conflict era on hold. But the second time he promised that a prompt investigation into the case would be conducted.

Following that decision, on 13 August, the chairperson of the UCPN-Maoist, Pushpa Kamal Dahal, held a press conference in which he warned the government against initiating an investigation into the case. He threatened that an investigation would put the peace process and the elections at risk. He stated that cases of human rights violations committed during the conflict were to be investigated by the Truth and Reconciliation Commission.

Worryingly, he blamed human rights defenders for having unnecessarily pushed this case forward. By making human rights defenders the subject of public blame, he contributed to the deterioration of the climate in which rights defenders have been working in since the beginning of the year.

Eleven persons are listed in the FIR that the family filed in 2005. On 6th September, the Chitwan District Police Office finally arrested the prime accused. Following news of his arrest, the UCPN-Maoist announced picketing of all 75 District Administration Offices in the country to protest the attempt to hold one of their cadres accountable for a human rights violation. On September 27th, the Chitwan District Police Office submitted its investigation report to the District Attorney Office and recommended jail sentence for Ram Prasad Adhikari and ten other suspects who are all at large. However, the Attorney's office directed the police to release Ram Prasad Adhikari, saying that there was a lack of evidence to continue the proceedings, and he was released on September 29th. The Adhikari couple resumed their hunger strike from 5 December from the Bir hospital bed.

As the fight of those who became known as the Adhikari couple illustrates, government and high-profile politicians have not hesitated to weight into the judicial process to grant protection to their supporters, either by intervening directly into individual cases or through more indirect formal channels. Since the signature of the Comprehensive Peace Agreement in 2006, more than 600 cases pending in the courts have been arbitrarily withdrawn



following orders by the government, causing long-term damage to the country's rule of law and criminal justice system, and eroding public confidence in the state. In none of these cases was permission taken from victims or their family members.

In 2011, a political agreement which would lead to the election of Baburam Bhattarai as Prime Minister was signed between the Maoist party and the United Democratic Madhesi Front. Both parties agreed to withdraw cases pending against those involved in the Maoist party and Madhesi ethnic movements, a withdrawal likely to include cases of rape, killings, torture, and enforced disappearances. As Nepal's human rights community made it difficult for the government to carry out these withdrawals, alternative approaches have been taken to shield government supporters from accountability. For instance the Baburam Bhattarai government recommended Balkrishna Dhungel, a Maoist lawmaker convicted of murder, for a presidential pardon in 2011, despite him having been sentenced to life imprisonment for murder, a sentence upheld by the Supreme Court.

The incapacity of the criminal justice system to bring human rights perpetrators to book has enabled persons whose involvement in human rights violations is well documented to occupy high ranking positions within the Nepal Police or the Nepal army or to stand for elections. On 27 September, the Supreme Court ruled that murder convicts could not stand for elections. However, this did not prevent Balkrishna Dhungel from being nominated to stand under the proportional representation system. The Election Commission, however, annulled his candidacy after Ram Kumari Jhakri from the CPN-UML filed a complaint indicating the court order of a criminal offense. However politicians whose participation in human rights violations are well documented have also stood for elections – this includes Agni Sapkota, the spokesperson of the Maoist party. Sapkota faces a criminal investigation for alleged involvement in the forced disappearance and murder of schoolteacher Arjun Lama during the conflict.

Defenders Under Attack

The AHRC has been very concerned with the resurgence of attacks and smear campaigns against human rights defenders in the first half of 2013. The most serious attacks were directed against rights defenders who had been working against impunity. The state showed a worrying level of apathy toward the deterioration of the climate in which human rights defenders have been working and some members of the government have themselves taken part in public condemnation of the work of activists. No attack or call for attack against the human rights defenders has been investigated.

Two coincidental events triggered the rise of attacks against human rights defenders: the arrest of five accused in the forced disappearance and murder of a journalist by Maoist leaders in 2004 on 5 January 2013 and the arrest in the United Kingdom on 3 January of a Nepal Army soldier, Colonel Lama, accused of torture during the conflict. Both cases show that the work of rights defenders had gained enough power and credibility to affect the interests of major institutional actors – in political parties and security forces – who had been providing protection to perpetrators.

Dekendra Raj Thapa was a journalist associated with Radio Nepal and several civil society organisations such as Amnesty International and the Red Cross, Dailekh. He left his



house on the early morning of 26 June 2004 to attend a programme organized by the Maoists. His wife Laxmi later learnt that Dekendra had been abducted by the Maoists and, after being held captive for several weeks, was tortured under interrogation and buried while he was still breathing.

On 16 August 2004, Laxmi found a statement, signed the District Secretary of the Maoist Party, stating that Dekendra had been 'wiped out' as he had been charged under ten accusations, including that of spying on the Maoists. On 26 June 2008, Dekendra's body was exhumed with technical assistance provided by the National Human Rights Commission (NHRC), Nepalgunj. It was found interred in a ditch at Dwari VDC-1, Dailekh. Laxmi filed a First Information Report on 28 August 2008, which listed eight Maoist cadres as perpetrators of her husband's abduction and murder. However, the police did not investigate the allegations, alternatively hiding behind the legally flawed pretext that the case would fall under the jurisdiction of the yet to be established transitional justice mechanisms or pretending that the suspects were absconding while they were seen walking freely in their villages.

On 12 December 2012, Laxmi filed a writ petition to the Appellate Court, Surkhet, asking the court to order the police to conduct an investigation in her husband's case. After the court issued a show cause notice to the Dailekh District Police Office and District Public Prosecutor's Office to carry out a prompt investigation, the police arrested Laxiram Gharti, one of the alleged perpetrators, and based on the information he provided, managed to arrest four others on 5 January 2013.

However, on 8 January 2013, it was announced that the Prime Minister of Nepal, Baburam Bhattarai had ordered the Attorney General office and the Police Headquarters to bring all investigations related to the case to an immediate end. One of the police officers in charge of the case even reportedly received threats on his life over the phone if he did not stop the investigation. In a public intervention, the Prime Minister denounced the arrest, arguing that the case would fall in the jurisdiction of the transitional justice mechanisms and denounced the work of human rights defenders as work destabilizing the peace process.

On January 26, newspapers reported that a group of twenty-two journalists based in Dailekh fled the district after being threatened by local Maoist cadres on the eve of a Prime Minister visit. They were threatened to stop covering legal developments related to this case.

Coincidentally, on 3rd January, the United Kingdom, acting under universal jurisdiction, arrested Colonel Lama, a Nepal Army officer, who had been serving in a UN Peace Keeping mission, for his involvement in the torture of suspected Maoist soldiers during the conflict. Lama was facing two charges of torture, allegedly committed while he was in charge of Gorusinghe Army Barracks in Kapilbastu in 2005.

The Maoist-led government of Nepal officially protested his arrest, terming it an attack against Nepal's sovereignty and called for his immediate release. It refused to comment on the fact that there had been no progress in the investigation and prosecution of this case since 2005. The spokesperson of the Maoist party, Agni Sapkota, publicly denounced the role of human rights defenders in the case, specifically naming one of the leading human rights activists of Nepal, Mandira Sharma, and her NGO.

Both cases triggered a series of attacks against human rights defenders, legitimized by accusations of high-profile politicians – that activists were acting against the interest and the sovereignty of Nepal and being detrimental to the peace process.

Calls to attack human rights defenders were relayed by leading Maoist newspapers and specifically targeted human rights activists that formed part of an anti-impunity network, the Accountability Watch Committee (AWC).

Media affiliated to the Maoist party, including the weekly magazine Lal Rakshak (Red Defender), the blog Krishnasenonline and various local FM radio stations, termed the work of human rights defenders as going against the peace process and called for violent action to be taken against them. An article published in the January-February 2013 edition of Lal Rakshak accused Mandira Sharma, the Chairperson of Advocacy Forum-Nepal, Subodh Pyakhurel, Chairperson of the Informal Sector Service Centre (INSEC), and Kanak Mani Dixit, a journalist and editor of several magazines of acting against the Maoists and the peace process. Three other human rights defenders were named: Sushil Pyakhurel, former member of the National Human Rights Commission and Chairperson of the Accountability Watch Committee, Charan Prasai, Coordinator of the joint forum for human rights, and Kapil Shrestha, former member of the NHRC. All the human rights defenders targeted are active members of the AWC.

The article accused the human rights defenders of having committed various crimes, and called for "People's action" against them. People's action was a term used by Maoist combatants during the civil war to refer to violent action taken to punish those seen to oppose the Maoist party. Throughout January 2013, three other newspapers and a radio station relayed this call for violent action against human rights defenders.

Worryingly, these calls for actions legitimized local grievances against human rights defenders and translated into violent action with authorities doing little to prevent or redress them. On 28 February 2013, in the jungle of Srinagar in Vidhyapur VDC-05, Surkhet district, Mr. Yadav Prasad Bastola, 32, Executive Director of the Human Rights Alliance, was assaulted and beaten with iron rods by 4 unidentified persons at around 7:30 p.m. His assailants had asked him whether he was the human rights defender who had published an article in a local newspaper earlier that week. The article had denounced impunity for the murder of a teacher in 2002 by a group of Maoist cadre – who had accused the teacher of spying against them – and asked for compensation for the teacher's family. The assailants threatened to kill Mr. Bastola and only stopped beating him upon being interrupted by the arrival of vehicles on the road. A police investigation yielded no result. No one has been held accountable for the attack. The attack on Mr. Bastola is likely to have stemmed from repeated calls for attacks against rights defenders in the media, condoned by the attitude of politicians.

Journalists, Peaceful Protestors Suffer Shrinking Democratic Space

Several times have the police attacked and harassed peaceful demonstrations, held to protest impunity and gender-based violence in what was called the "Occupy Balutawar" movement.

On 25 January around 300 protestors had gathered in front of the Nepal Rastra Bank Central Office to express solidarity with the movement from 9 a.m. in the morning. The day marked one month since the beginning of the protests against impunity for perpetrators of violence against women. At least one person, namely Ms. Bhakti Shah, was severely injured, and 32 persons, including 19 women and 13 men, were arrested when the protestors tried to wade through the restricted area abutting the official residence of the Prime Minister at around 10:30 a.m. Bhakti Shah, a transgender activist participating in the protest, was deliberately targeted by four police personnel who indiscriminately kicked and manhandled her until she was pulled away by other protestors. Those arrested were kept in the open ground of 2 number Gan (Barrack) of Nepal Police, Maharajgunj, Kathmandu, and were only released after three hours. Relatives of those victims to human rights violations, human rights activists, lawyers, and journalists were among the arrested.

On 10 June 2013, the police charged a protest movement organized by the Indigenous, Dalit, and Backward Class Coordination Struggle Committee in Biratnagar. Demands of the protestors were for financial transparency and inclusive allocation of the municipal budget for traditionally excluded groups. Five protestors and two journalists were injured in the clash. Fifty to sixty protestors were singing slogans, peaceably blocking the entrance to the City office when, without prior warning, the police charged the protestors, hitting them with lathis (sticks).

The charge commenced at office opening time in order to open the door to the municipal office. Twenty-five police officers and 60 to 70 staff of the Sub-metropolitan City Office joined the assault. Kaushal Niraula, a correspondent of Terai Television and Makalu F.M. (Biratnagar), was taking pictures of the protest and of the scuffle between the police and the demonstrators when angered staff from the city office attacked him and tried to seize his camera. He was punched on the mouth, which got cut on impact. Brahmadev Yadav, his colleague, a correspondent of Popular FM (Sunsari) and Nepal Patra (Kathmandu) tried to help him. But the police beat him on his back and on his legs, with a baton. Witnesses reported hearing orders to target and attack the journalists.

It is not only rights defenders working on impunity that have been endangered by the decay of the rule of law and the recrudescence of attacks. Human rights defenders working on caste discrimination and gender violence have also suffered from the deterioration of the political climate. One case presented in the caste-based discrimination section of this report tells the story of how a 23-year-old woman subjected to an attempted rape and a rights defender who helped her report the case were assaulted by a mob to force them to drop charges.

During its Universal Periodic Review in 2011, Nepal accepted recommendations to establish a system protecting human rights defenders and to adopt a legislation protecting their activities and establishing specific punishment for attacks against human rights defenders. However, such legislation was not adopted during the tenure of the first Constituent Assembly. Following its dissolution, these recommendations have been put on the backburner and ignored by the interim government. Even in the absence of a law addressing safety of human rights defenders, government and police apathy in investigating attacks, and the calls for attacks, are condemnable; they are factors condoning the rise of violent action against defenders.

It is essential that the work of rights defenders, journalists, and victims of human rights violations seeking justice be protected to guarantee the dynamism and strength of Nepal's new democratic institutions. Such work can play a complementary role to that of the Constituent Assembly, giving substance to the formal democratic institutions that will be established. The government of Nepal should acknowledge the positive role-played by human rights defenders in the Nepalese peace and democratization process, and commit to an attitude of zero tolerance toward any action endangering the work of human rights defenders, the right to peaceful protest, and the right to information.

Police Accountability & Torture Eradication

There is still no law criminalizing torture in Nepal and, after the Constituent Assembly dissolution, no Parliament to adopt it. There is no functioning rule of law framework to ensure that law enforcement officers, who have committed a human rights violation, can be held accountable for having done so, and no political will to allocate the resources and energy required for the creation of strong justice institutions. That the police force remains out of the reach of the law is something that has sustained high levels of police torture in Nepal, even post-conflict. Although after 2006, instances of police torture have declined, the rates of detainees reporting torture, or being subjected to inhuman, cruel, or degrading treatment have hovered around 20%. According to Nepali NGO Advocacy Forum, in 2012, 22.3% of the 3,773 detainees they interviewed reported torture. For juveniles, this rate is as high as 34.7%⁴.

Several cases documented this year speak of a pattern of abuses in which once a person has been arrested he or she is deprived of the protection of the law and exposed to abuse of power. Procedural guarantees and fundamental rights which should be protecting detainees, such as mandatory health checkups or mandatory presentation within 24 hours before a judicial authority, are trampled upon blatantly, without consequences. Extreme delays in rendering justice fear of reprisals, and no effective protection of witnesses and victims have led to a general failure of justice and a lack of fair trials. Missing victim protection – and witness protection – mechanisms expose victims to abuse and threat if they want to report torture and, as a result, most of them choose to keep silent. Collusion between the police and governmental authorities has also exposed victims of torture to further retaliations. In particular, quasi-judicial powers entrusted with the Chief District Officers have come under scrutiny by the Supreme Court for encroaching upon the concept of separation of powers.

Under the Public offences act, the Chief District Officer (CDO), a government official, has the power to remand detainees for a period of up to six months without proper judicial trial, in spite of a September 2011 Supreme Court order to review this act, found to be unconstitutional. The Committee against torture in October 2012 had also found that these provisions breached guarantees of due process. In spite of the order, no measures have been taken to strip the CDO of its judicial powers. The AHRC and its partners have documented several cases in which the CDO has colluded with the police to remand victims of torture for

⁴ Nepal: is the government unwilling or unable to prevent torture, Advocacy Forum 26 June 2013 report, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>

extended periods without proper judicial oversight, preventing victims from denouncing that they had been tortured.

Individual stories of torture victims documented throughout 2013 illustrate how little procedural guarantees and rights benefit detainees as police arbitrarily decide to ignore these guarantees and rights and openly defy court orders or break laws without consequences.

Two arbitrarily arrested, tortured, for 12 days in Kathmandu

Dudhraj Tamang and his housemate, Rabi Shrestha, were arrested on 12 September and detained in the Metropolitan Police Crime Division (MPCD), Hanumandhoka, Kathmandu. They were then kept together in a room containing a table, chairs, bamboo sticks, and plastic pipes and tortured. Rabi was blindfolded and the three police officers present in the room punched and kicked his face, his chest, his bottom, his thighs, his back with their police boots. They slapped his ears, cheeks, face and eyes several times. They forced him to stand on his head and hands and used bamboo sticks to beat the soles of his feet. The torture lasted until he could not bear the pain anymore and agreed to everything they asked. The torture then stopped and the policemen started the interrogation again.

As Rabi could not answer their questions, the policemen handcuffed him, forced his knees through his handcuffed hands and inserted a stick through his bended knees. Two policemen lifted the stick and a third policeman kicked on his bottom and back. They lifted him and let him fall down on the floor several times. Rabi became unconscious repeatedly. The torture continued until one policeman told the others to stop for fear that the victim would get killed. Then he was given some water and time to rest. However, the policemen then started to torture him again turn by turn. After the victim told them that one of his legs had been broken in a car accident, they beat more intensively the previously injured leg. They forced him to jump, a way to attenuate the appearance of blue marks due to torture. As he could not jump properly, they kicked him and beat him again using sticks. The torture continued until late into the night.

Dudhraj was tortured on the other side of the room. After he denied knowing anything about the stolen gold, a police inspector ordered his subordinates to torture him. Some policemen forced him to lie down on the floor and one of them stepped on his legs with his boots. They beat on the soles of his feet, slapped his face and made him jump. The torture continued until 11 p.m. that evening when he was brought down to the Metropolitan Police Range (MPR) with Rabi.

They were not provided with any food that night, with the exception of noodles and biscuits shared by co-detainees. Rabi reports that he could not sleep for the whole night due to the pain in his whole body.

Both men were remanded under the Public Offence Act by the Chief District Officer, Babar Mahal, and they were remanded for 7 days, charge under the Public Offence act. Until a court remanded them on September 6, the CDO remanded them several times to custody. By allowing the remand into custody without the oversight of a judicial authority, the two detainees have been exposed to further torture and abuse. The same day, in fact, they were

taken to the Bir Hospital for health checkup but the doctors there did not ask them if they had been tortured.

For the following three days they were tortured from the morning to evening. They were threatened that they would be forced to urinate in the electric heater or be charged with drug smuggling, under which they could be detained for a period of up to six months, without trial, a clear violation of international human rights law.

The fifth day after their arrest, they were taken to the MPCD again where they were tortured for three nights and four days in a row by different groups of policemen. In addition to the beatings, they were forced to stare at an electric light continuously during the night. Whenever they blinked, they were beaten. Throughout those three nights and four days, they were not given enough food to eat and, as reported by one of the victims, “were gradually losing their energy and hope to live.”

On 3 September 2013, Dudhraj and Rabi were presented before the District Administration Office, Kathmandu, asked to deposit NRs. 5,000 each and released. However, without even taking their handcuffs off, the police immediately rearrested them and brought them back to the MPR, Hanumandhoka. On 6 September, they were given an arrest warrant and a detention letter and remanded on an abduction charge the same day by the Kathmandu district court. They were brought to Bir Hospital to receive a health check-up on the 8th, but again the doctors did not ask whether they had been tortured. Only after September 6th were they given access to a lawyer.

It is worth noting that in Dudhraj's initial charge sheet, the police requested the DAO, Kathmandu, to handover the detainee if he was to be released, as another case was pending against him. However, the complaint against both men in the abduction case was filed only on 5 September 2013. The re-arrest of both men on 3 September, therefore, has no legal basis.

Due to the torture, Rabi Shrestha vomited for four days. He developed blue marks on his left eye, his bottom, his legs, and his feet. Both his ears had clotted blood. His legs became swollen; he was not able to move or to walk properly for several days. His hands and his chest remained painful for several days. He had difficulty breathing and could not sleep due to the pain. He underwent dizziness and loss of appetite for several days. For three to four days, Dudhraj Tamang vomited every time he took food and felt dizzy. The pain to his whole body and especially under his armpits was so severe that he was unable to sleep.

Threatened by police, torture victim afraid of reprisals

On 23 June 2013, Padam Bahadur Shahi, a 42-year-old ex-policeman, was arrested by three policemen following his dispute with a bus driver. On the scene of the dispute, two of the policemen punched him on the face. Then they put him on a motorcycle and took him to the Area Police Office at Kohalpur, where he was detained. After a while, Sub-Inspector Narpati Bhatt entered the cell and punched Shahi's neck, face, and chest 4 to 5 times. The police officer also kicked Shahi's knees and legs three to four times. He punched him hard on his right cheek. At the same time a detention guard, a Head Constable whose surname is Chaudhary, punched Shahi's left armpit three times, punched his neck and head five to six times, and kicked the victim's knees with his police boots nine to ten times. The kicking left red and blue bruises on his chin.

When the victim asked why they had only arrested him and why they were torturing him, one of the policemen told him not to talk anymore, adding "nothing will happen to us even if we kill you and throw your body somewhere." They, then, took him to the women detention cell, which was empty.

They handcuffed his hands and fixed them to the door. Four to five policemen including Head Constable Chaudhary tortured him. They beat his body with sticks, punching with fists and kicking with police boots. They broke one of his molars. Due to the torture, the victim's mouth was bleeding, his right cheek swollen, his right elbow injured, and skin on his right elbow scratched.

After an hour, one of the victim's friends came to the police station, accompanied by a local leader of a political party. The police brought him out of the police station, still handcuffed. They accused the victim of having broken a fan set outside the detention room and asked him to pay NRs. 2,800 as compensation. Although the victim denied having done so, the police still forced him to pay them NRs. 1,400. He was released later that day.

The following day, the victim visited Nepalgunj Zonal Hospital for his treatment. The doctor said that his right cheekbone was broken and referred him to a hospital in Kathmandu or in Lucknow, India.

As of 3 June 2013 the victim, who could not afford further treatment, remains at home. He complained to local human rights defenders of sleepless nights and said that he is now afraid each time he sees a policeman. The victim did not seek legal action, as he is afraid of reprisals from the perpetrators.

15 year old torture victim threatened with false charges

Faizan (name changed), a fifteen year old boy, was sleeping in his house in Banke district on 19 February 2013 when eight to nine policemen forcefully entered and arrested him at 3 a.m. in the morning. He was taken in a van to the District Police Office. During the journey, one of the policemen kicked Faizan's back with his police boots and beat his shoulder with a bamboo stick while questioning him about a robbery case.

In the DPO, he was detained in a cell with adults. There he met three men he knew already who had been arrested for stealing from passersby and had given his name to the police. At around noon that day, a policeman handcuffed Faizan and took him on his motorcycle to Ward Police Office, Fultekra, Nepalgunj, Banke. There, he blindfolded Faizan with a piece of cloth and Faizan just had time to see that the policeman was holding a stick in his hands. He was taken to a room where he heard different voices leading him to believe that three or four other persons were also present. He was forced to kneel down and the policeman beat his legs with the stick while interrogating him about a robbery and tried to force him to confess that he was in possession of a pistol. The torture lasted half an hour. As the pain became unbearable, Faizan, out of exhaustion, accepted all the accusations. Only then did the torture stop.

Faizan was transferred back to the DPO the same day at 5 p.m. Later that evening, two policemen brought him to the top floor of the DPO where four policemen were sitting. The

policemen handcuffed him and forced him to lie down on the floor. Two of them used the pipe of a bicycle pump to beat the sole of his feet approximately 30 times, while asking him the same questions as in the afternoon. The torture lasted for half an hour.

He was taken to a hospital for a medical checkup but the doctor did not ask him whether he had been tortured or needed medication but just verified whether he had consumed any alcohol, a routine practice in Nepal. Faizan was kept in a detention cell alongside adults for the night.

That night, at midnight, the policeman identified as David picked Faizan up from the detention cell. He caught his nipples, twisted them and pulled him up. The pain was severe, making Faizan cry. The policeman, wearing heavy boots, jumped on his stomach three times, and violently round-house kicked Faizan's waist. He slapped Faizan on his ears. He told Faizan that his legs would not heal for another year and threatened him not to tell anyone about the torture or else he would lose his job and would not leave him in peace.

On the same day, 20 February 2013, the police made public those they had arrested in relation to the case of looting passersby in a press conference. Faizan was displayed as one of the criminals arrested.

Although the Nepali law mandates that Faizan should have been provided with a detention letter immediately upon his arrival in the DPO, it was only two days after his arrest that he received a detention letter and an arrest warrant. He was brought before the court on 21st February only, i.e. two days after his arrest, despite domestic provisions that all detainees should be presented before a judicial authority within 24 hours. Faizan was therefore kept in illegal detention, which made him more vulnerable to abuses as his presence in police custody was undocumented.

Although he was initially arrested and interrogated in relation to allegations of being illegally in possession of a pistol and being involved in a robbery, the police have found no evidence of such involvement and have filed a case against him under allegations of drug smuggling. Suspects charged under the Narcotic Drugs (Control) Act 1976 can be detained, without trial for a period up to 3 months, with the permission of the court.

Faizan remained in custody of those who had tortured him and threatened him of reprisals should he share the truth of his torture with anyone. The policemen threatened to charge him with Arms and Ammunitions case if he were to speak of the torture during the hearing of the drug smuggling case.

Torture victim in the custody of torturer policemen, who stage a mock execution

On 15 February 2013, Parshuram Chaudhary was asked to present himself before the Metropolitan Police Crime Division, Hanumandhoka, Kathmandu, in relation to an investigation into a robbery which had taken place at his landlord's house the day before.

Later that day, he presented himself to the police station and was taken to the litigation section. There, three policemen tortured him. They beat him with sticks, slapped him with the palm of their hands and kicked him with their boots to force him to confess his involvement in the robbery. He was released. He was called again to Hanumandhoka

MPCD and tortured under interrogation three times, each time after a four to five day interval.

Following that incident, Assistant Sub-Inspector (ASI) Yadav started calling Parshuram Chaudhary's cell and asked him to meet him in different places where he would ask him to pay the bill covering tea and snack charges of him and other policemen. This happened on four occasions. The policeman threatened Chaudhary that he would send him to jail if he refused to pay the bill. So Chaudhary paid NRs 240 for the dumplings. In total he had to pay 375 NRs under threats from ASI Yadav.

On 2 March, Mr. Chaudhary was asked to report to the Metropolitan Police Circle (MPC), Boudha, and got detained there. At 4 p.m., two policemen took him to a room on the first floor of the police station and locked the door. He was blindfolded and handcuffed. One of them took off his police boots and using them hit Mr. Chaudhary 5 to 6 times on his face, head, and other parts of his body accusing him of theft. The soles of his feet were beaten with sticks and he was threatened that he would be shot if he did not provide information. In a mock execution, a police officer put a pistol on his temple and asked him what his last desire was.

The beating cut Mr. Chaudhary's left eyebrow and he fell unconscious. When he woke up, he found that his face was covered in blood. One policeman asked him to sign a paper without letting him see its contents. After a while, a police constable took Mr. Chaudhary to a medical practice near Boudha Stupa where a doctor applied 2 stitches to the wound and gave medicine to stop the bleeding.

Mr. Chaudhary was brought back to MPC, Boudha, and detained there. After that day, Mr Chaudary has not been taken to the hospital again, even to remove the stitches. He was tortured in a similar fashion on the three following evening. Twice was a pistol put to his head, with him being threatened with imminent death.

On 19 March 2013 he was transferred to the MPCD, Hanumandhoka. While being interrogated about the case, a policeman dressed in civil clothes punched his chest during an interrogation. They took his statement but they did not read it out loud for him. He signed the paper without knowing what was written on it. He was then brought back to MPC, Boudha, and detained there.

While in detention, the victim was also threatened that he would be falsely charged in a drug smuggling case and sent to jail for 17 years. His lawyer has reported that he has a two inch long wound on his left eyebrow covered with two stiches and several blue marks on his back. He is complaining of dizziness and being unable to sleep at night.

Repression of Peaceful Protests

It is not only the right of all Nepalese not to be tortured, which is being denied by the lack of police accountability. It is also their right to protest peacefully or to share information with the public. In the section of the report, dedicated to human rights defenders and journalists, several instances from 2013 are detailed in which the police violently repressed demonstrations or attacked journalists covering them.

A draft bill criminalizing torture the “Torture or Cruel, inhuman or degrading treatment (offence and punishment) Act, 2012” was tabled in the Parliament Secretariat on May 2012, but its contents fail to build the effective system of checks and balances needed to bring the police under the frame of the rule of law. As cases in this report show, making torture history in Nepal, will require focusing attention on developing an effective and comprehensive system of checks and balances that is able to hold police officers accountable for abuse of power.

Newly elected Parliament need to make the adoption of such legislation a priority. The last annual report of the Asian Human Rights Commission contained exhaustive comments on the changes required to bring the torture bill in conformity with international human rights standards and to ensure that it can provide an effective tool to end torture in Nepal.

These suggestions included:

- Setting up a mechanism of regular visits by independent bodies to places of detention in order to monitor the respect of human rights on their premises, inspired by the mechanisms already developed by NGOs such as Advocacy Forum.
- Making medical checkup, conducted by a professional, mandatory and free, and making illegal the presence of police officers in the room while the checkup is conducted.
- Developing a separate piece of legislation dealing exclusively with witness and victim protection. Developing a comprehensive, strong, independent, and credible victim protection mechanism is a pre-requisite to make the law work.
- Including a provision ensuring that victims, complainants, or witnesses still in custody that may be directly exposed to reprisals / further torture are transferred to another detention facility immediately.
- Developing a truly independent and professional mechanism to investigate allegations of torture. In light of the cases documented in Nepal by the AHRC and its partners in recent years, some of which are presented in this report, the absence of an investigation body mandated to investigate complaints of torture contributes to the failure of most investigations. Currently, the head of police retains control of the investigation process, even when it concerns his or her staff: an open conflict of interest. Often, the District Police Office is involved in the enquiry team, investigating their own subordinates, despite significant evidence pointing to the DPO being active in obstructing the investigation process, which includes the tampering of evidence or encouraging victims to find a negotiated settlement.
- Developing an independent complaint mechanism on the conduct of security forces, which would make the victims feel safe from harassment if they want to report a case of torture.
- Adopting penalties proportional to the gravity of the crime. At the moment, the draft bill only provides for a maximum punishment of a 5 years jail term or a NRs. 50,000



fine or both. The possibility that a perpetrator of torture may get away with a simple fine is inappropriate and the law should provide a mandatory prison sentence for anyone convicted of torture. Just a fine would prevent the law from being a deterrent. It would fail to signal the resolution of the government to ban torture. As in the CAT jurisprudence, a significant prison sentence, i.e. a minimum sentence of 6 years and a maximum sentence of 20 years imprisonment, may be considered as an appropriate punishment for acts of torture.

- Removing any statutory limitation on reporting cases of torture. At the moment, the draft bill includes a 35-day statutory limitation, which would defeat the primary purpose of the law.
- Ensuring that no provision creates loopholes, which could be exploited to absolve perpetrators of criminal liability. At the moment, section 12 of the draft bill, specifying which acts do not fall under the definition of torture, leaves room for an interpretation authorizing excessive or disproportionate use of force during arrest or demonstration for instance. Section 35, providing "protection for acting in good faith", should also be scrapped.

Legacy of Caste-based discrimination & violence remains

"My final words of advice to you are educate, agitate and organize; have faith in yourself. With justice on our side I do not see how we can lose our battle." - Ambedkar

Nepal marked the year 2013 with remarkable achievements in terms of successfully conducting the second Constituent Assembly elections. However, the election was unable to meet the expectations of the Dalit community, as few Dalit leaders were nominated this time around. Out of 1,031 candidates from 122 political parties, only the CPN Maoists nominated 9 and the CPN UML nominated 6 Dalit candidates. There were no Dalit candidates from the Nepali Congress, the party that returned with the most seats in the second Constituent Assembly elections.

This is a matter of concern for the Dalit community. There were 50 Dalit representatives in the first Constituent Assembly in 2008, which was 8.31 % of the total 601 members. According to the Census 2011, Dalits constitute 13.6 % of the population. These figures have been challenged and opposed by Dalit civil society, which holds that their population is closer to 20 percent. Traditionally, Dalits are excluded from the decision-making process and from state mechanisms. The decreased number of candidates from the Dalit community shows that political parties are not committed to changing the trend and addressing the issues of Dalits in Nepal. This is disconcerting, as the Asian Human Rights Commission has received cases of human rights violation based on caste from Nepal in 2013 on a frequent basis.

The Caste Based Discrimination and Untouchability (Offence and Punishment) Law, 2011, has not been effective in upholding the rights of the Dalit community. The Office of the High Commissioner for Human Rights (OHCHR) in Nepal and the National Dalit Commission (NDC) joined their hands together in 2008 to draft the caste-based



discrimination and untouchability bill. There was strong lobbying and advocacy from Dalit NGOs and AHRC partners such as the Jagaran Media Center (JMC) and Feminist Dalit Organization (FEDO) in Nepal. The AHRC supported this lobby nationally and internationally. However, there is serious lacuna in its implementation. The government has not given adequate attention to publicize and make arrangements for its strict implementation of the law.

The law does not address the discrimination carried out in private properties and private spaces, often a loophole for perpetrators to go scot-free. On the other hand, it is a rather soft law where culprits can walk free, merely by paying the penalty. The police often recommend victims of caste-based discrimination to manage the cases with mutual agreement with their perpetrators rather than follow the legal process. This mindset is visible in most cases when a victim of caste based discrimination approaches a police station with a complaint.

The Dalit civil society movement started in the 1940s, and is one of the oldest movements in Nepal after restoration of democracy in 1990. The National Dalit Commission was established in 2002, which paved the way for declaring Nepal an 'Untouchability Free State' in 2006. Though caste discrimination is punishable in law, it is still widely practiced in society. However, when talking about achievements, the discourse on caste discrimination is still mostly limited to inter and intra Dalit discrimination in Nepal. Often Dalit members accept caste discrimination as a legacy of their birth. This hierarchical psychological attitude, which is often embedded in Dalit minds and hearts leads to the fear of being discriminated. The Dalit civil society and leaders are divided and hardly came together to raise the matters of rights violations of Dalits.

When caste is rooted in a society like Nepal, where the social law reigns over national and international law and convention, victims need to receive greater attention for speedy justice. There is the question of safety for victims. Often, due to the negligence of state authorities and security agencies, the perpetrators of caste discrimination are not properly investigated and prosecuted. Caste incidents need urgent intervention. Better coordination among civil society and rights NGOs could ensure greater safety for victims. The government commitments need to be translated into action. The following case documented by our partner in Nepal, Jagaran Media Center, presents unfortunate lack of coordination and state negligence.

Locals of Belabari VDC of Morang District brutally attacked a Dalit woman and a journalist from the Dalit community. Maya Sarki was thrashed by a group of villagers, mostly non-Dalit women, on 21 July 2013 when she mistakenly blamed Jivan Bhetwal, a local non-Dalit man for an attempt to rape her. Manoj Bishwakarma, journalist as well as Chief Editor of *Fight Weekly* newspaper, which is locally published, was also thrashed and smeared with black soot after he helped the victim file a case at the local police station. Maya was beaten, smeared with black soot, and garlanded with used shoes and slippers before being paraded in the village.

The public crime was carried out when Maya reported that Jivan tried to sexually assault her. The police called both parties at the police station. They found that Jivan was not involved in the sexual attack as Maya claimed that she had bitten the hand of the perpetrator during the assault before he ran away. Maya apologized to Jivan.

However, the villagers, mostly relatives of Bhetwal, called her to a public place and behaved with brutality. They covered her face with black shoot and garlanded her with shoes and slippers. They blamed her for charging Jivan for assault even though she did not have any proof, just to take revenge for past family issues. Then, the frenzied mob went to the house of Manoj and smeared his face black.

When Maya and Manoj went to the local police station to file a complaint, the officers were not ready to receive their complaint. Later on, the complaint was filed. Pressure of the perpetrators and their families resulted in an agreement being reached that such actions would not be repeated again.

However, due to intense pressure from Dalit organizations like the Jagaran Media Center in Nepal, the incident was followed nationally and internationally. The police administration caught 5 alleged perpetrators, Jivan Bhetwal, Amit Bhetwal, Sewika Bhetwal, Chandrakala Bhetwal, Ambika Bhetwal and Kamala Bhetwal. The other 10 perpetrators fled the village. The District Court Morang gave their verdict to release those arrested on bail upon payment of NRs. 7,000 each.

It should be noted that according to the Caste Based Discrimination and Untouchability (Offence and Punishment) Law 2011, those who practice caste-based discrimination should be punished with a fine of NRs. 25,000 or 3 years imprisonment or both.

Maya's husband is working abroad and she has two children. Local youths have tried to rape her in the past, soon after her husband left for work abroad.

In 2013, Dalits have been found thrashed for merely entering temples. Police have usually arrived late in response to these incidents. The AHRC noticed in 2013 that beatings and injuries sustained by Dalit victims have often been undermined. The question of human dignity, when Dalits are treated less than animals has been neglected. Another example could be the case documented by a consortium of Dalit NGOs, where all Dalit villagers were beaten in Pipariya of Rautahat district merely for entering a temple of worship. Despite the law where it mentions rights of entry into a temple, non-Dalits imposed their own law to bar Dalits from entering the temple.

Dalits tried to enter a local Bramhasthan Bhagwati temple in Pipariya VDC in Rautahat district on 14 May 2013 to celebrate a marriage ceremony. When local non-Dalits, mostly from the Yadav caste learned of this, they tried to bar the Dalits from entering. The 'Rams', who belong to the Chamar caste, were barred from entering the temple. The Dalit villages reported this issue to the police, but did not receive any help. This angered the Dalits. Mostly young Dalits then decided to enter the temple again on 7 June 2013. This incident summoned reprisal from non-Dalit villagers.

An angry mob of non-Dalits entered the village armed with sticks and stones. Eighteen Dalits were injured in this incident and 65 Dalit houses were vandalized. Some of them received serious injuries, like Guru Dayal Ram who suffered grievous head injuries. Dalit youths fled the village fearing further attack. But the situation was worse than expected as Dalits own only the patch of land where their houses are built. In order to graze their cattle, use public water taps, and use the toilet, they have to go outside their houses. Non-Dalits

stopped allowing them to do so. On top of this, non-Dalit women and children were found guarding the temple preventing Dalits from entering. The situation became so tense that an entire police team was stationed at the village to provide safety to Dalits and guard against any further incident.

The injured received treatment at Anamika hospital in Gaur, the district headquarters. The victims had to live under open sky, without appropriate relief. Though the police were informed about the incident on time, they arrived only after 24 hours. The police remained unreachable throughout the 4 hour long attack, a routine police practice when it come to Dalit atrocity in Nepal. This gave enough time for most of the perpetrators to cross the border and escape to India. The police were, however, successful in arresting two persons involved on this incident, Chhotelal Yadav and Ram Dev Yadav.

Dalit organizations condemned this incident and organized a press conference in coordination with Dalit organizations in Kathmandu. They submitted a memorandum to Khil Raj Regmi, Chairperson of the Interim Government, Lila Mani Poudel, Chief Secretary, and Madhav Prasad Ghimire, Home Minister.

A joint fact finding mission was conducted with participation of heads of the Dalit NGOs in Kathmandu. The government also dispatched a monitoring mission, where members from the civil society were included. The NHRC strongly condemned the incident and demanded free and fair investigation.

These cases show what is wrong in our societies as it occurred around Nepal. Dalits and marginalized face the inequalities and difficulties during the administrative and police procedures. Being Dalit bars them from accessing justice. On the other hand, police operate in support of the influential non-Dalit locals when they come across cases of untouchability and caste discrimination. The cases detailed show how difficult it is for Dalit victims to access justice in Nepal. The police routinely neglect recording complaints made by Dalits, often mocking the victims for bringing such 'trivial' issues that could be handled at the village level. Even if the case is filed as a result of pressure and advocacy from Dalit organizations, civil society, and international human rights watchdogs, the justice process is too lengthy and expensive for the victims to cope with. Many decide to abandon seeking justice after a while.

Even the Dalit organizations and human rights organizations start shying away from such cases. The politics between Dalit organizations leading cases is often problematic for victims. There is a big question mark on coordination between Dalit organizations. Whenever Dalit organizations have joined hands, they have been able to help the victims of caste-based discrimination⁵. Often, the AHRC has found, Dalit organizations are divided and do not come up with a joint strategic ideas. Individual efforts of Dalit organizations do not bring effective outcomes. Less coordinated efforts slow the justice process, where victims of caste discrimination are further victimized.

State authorities are unsupportive when an incident of caste-based discrimination emerges. Caste is often tangled in politics. This hinders victims from getting justice, or even

⁵ <http://www.humanrights.asia/opinions/news/urgent-appeals/AHRC-UAC-038-2009>

in approaching the justice mechanisms and institutions. Victims are neglected; they receive further harassment during the complaint registration and investigation process.

Dalit organizations should forget their differences and come together to help victims of caste-based discrimination. Dalits are considered stateless citizens. And in many cases in the Terai, in fact they do not have citizenship. Dalits don't have access to state mechanisms. Laws and conventions still have not become effective despite the declaration of Nepal as an untouchability-free state. With growing incidents of caste-based discrimination being documented, the declaration of Nepal being an untouchability free state is ironical. It is akin to possessing a tooth that cannot bite.

Unless the state gives written commitment with deadlines for its implementation of the Caste Based Discrimination and Untouchability (Offence and Punishment) Law, 2011, the plight of the Dalit community will remain the same in the coming years. Law has clearly termed practice of untouchability and caste discrimination as illegal, but there is no real practice of law. Perpetrators should be booked and brought to justice promptly. The government, political leaders, and the law enforcement authorities should act responsible in order to prevent incidents of caste discriminations. The question is not just about the implementation of laws, it is about the will power of the state to implement them. If Nepal is committed to end caste-based discrimination, and provide justice to victims of caste based discrimination, the capacity and interest to uphold the rights of Dalits should be increased.

Conclusion

There is an old saying, 'Justice must not only be done, it must also be seen to be done'. The transitional period, however, continued through 2013, and stalled any progress on human rights matters in Nepal. Not justice, but more of the extended limbo was seen. The political vacuum halted everything in the country. The first Constituent Assembly was not able to deliver the constitution before its demise on May 2012. The political parties stayed divided. Parties and leaders could not come into agreement. The situation became more tense after caretaker Prime Minister Baburam Bhattarai resigned from the government. It was followed with bandhs, clashes, hurled bombs, and people killed in broad daylight. There was rise of insecurity in the country.

However, the Khil Raj Regmi led technocratic government was able to successfully conduct the second Constituent Assembly elections on 19 November. The elections were lauded peaceful by media, national and international organizations, and even political parties, right after its completion. However, UCPN-Maoists have blamed election fraud and boycotted results and meetings called by the Election Commission.

The UCPN-Maoists, along with other 15 smaller parties decided to boycott the first meeting called by the Election Commission on 3 December 2013. They have threatened to boycott the Constituent Assembly until and unless the Election Commission conducts investigations onto election frauds. The UCPN-Maoists also decided not to submit a list for proportional representatives before the Election Commission conduct investigations. Seeing their wins, UCPN-Maoists are expected to receive 54 seats through the Proportional Representation system. They have received 26 seats through the First Past the Post system. It



still makes them the third largest party in the second Constituent Assembly elections held on 19 November 2013. They have earlier demanded formation of 'Consensus Government' before they join the Constituent Assembly, which has been opposed gently by the Nepali Congress and the CPN UML, parties who have the largest seats after the second Constituent Assembly elections.

If the political stalemate continues, Nepal faces the institutionalization of impunity. The formation of Truth and Reconciliation Commission and passing the Anti-Torture bill has been pending. Victims of the insurgency period, and their families, are still awaiting justice and compensation. Human rights defenders and journalists continue to be attacked and killed in broad daylight. Police routinely practice torture during their investigations and torture victims are threatened not to report their torturers. Torture victims await justice, along with treatment and compensation. Dalits are being threatened, humiliated, beaten, and displaced.

The AHRC suggests political parties embrace democratic practices and engage in drafting a human rights friendly constitution. The police should start investigation of the conflict era war crimes. The investigations should be impartial and perpetrators should be booked according to national and international law. The victims of the conflict have waited long for the establishment of the Truth and Reconciliation Commission (TRC). It should be established without further delay. There should be strong political commitment to investigating human rights violations, and perpetrators should be booked accordingly. Otherwise Nepal faces the institutionalisation of impunity.