

# Chapter V

## NEPAL

*Turning into a Police State*

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### *Introduction*

The results of the second Constituent Assembly election, held on 19 November 2013, reshuffled Nepal's power equations. The Maoists, which got the highest number of votes in the first Constituent Assembly elections, clocked in third this time. The Nepali Congress (NC) won the most seats, i.e. 105 out of 240 seats, in the First-Past-the-Post system; the Communist Party of Nepal Unified Marxist-Leninist (CPN-UML) followed with 91; and the CPN Maoists only won 26 seats.

The state security agencies, which are closer to the NC and the CPN-UML, having fought a decade-long civil war against the Maoists, became more confident after these elections. The police became more visibly allied to the elite and to the politicians, and displayed more violence. In fact, 2014 was a year marked by the misuse of police power. Custodial torture was a regular phenomenon, being the only form of "investigation" in Nepal. Increasing police brutality and extrajudicial killings were witnessed in the Terai region, during the so-called attempts to "maintain peace and order in society". The violence against innocent villagers at Dho Tarap in the Dolpa district on 4 June 2014, which resulted in two deaths and many injured, is another example of police brutality and political allegiance.

Corruption within the police was exposed when Superintendent of Police (SP) and Head of Kathmandu Police, Ramesh Kharel, asked the ministers present in a program not to entertain officers who are going to visit them with suitcases for their promotion to higher posts. Instead of carrying out an investigation into the open allegation, the police headquarters decided to transfer SP Kharel and send him on a one-month official leave.

The year 2014 was notable in terms of Nepal's Supreme Court (SC) as well. The SC lacked a number of judges for almost six months. Finally, judges with questionable track records and a history of corruption were appointed, despite

huge civil society pressure. These judges were also seen visiting party offices following their appointment. Media exposing the record of corruption and scandals amongst the judges appointed was slapped with contempt of court charges. There is a growing understanding in Nepal that a judiciary cannot remain independent when judges of the apex court are bound politically and appointed despite their dubious records.

Despite huge national and international pressure against enacting a flawed bill on the Truth and Reconciliation Commission (TRC), the government passed the TRC Act, undermining the Supreme Court directive of 2 January 2014, in which the Court clearly cautioned against providing mass amnesty and directed that the Act be drafted as per international law. The TRC Act now stands against even the Interim Constitution and the Comprehensive Peace Agreement (CPA) of 2006. Conflict victims have challenged the Act in the SC. Ignoring all the protests and concerns, the government plans to start work on the TRC from 10 December 2014, stripping even the hope of justice from the conflict victims. The government's response to the hunger protest of the Adhikari parents who lost their son Krishna Prasad Adhikari in 2004, when Maoists shot him dead in broad daylight, is indicative. Nanda Prasad Adhikari (Krishna's father) died on 22 September 2014, after 11 months of hunger strike demanding justice for his son's murder. The parents are now a symbol for victims of the insurgency, who have been asking for investigation and justice. And, the Nepali state has failed its citizens who demand justice.

Nepal's human rights situation deteriorated in 2014. The police visibly turned more violent, while the nexus between the police, judiciary, and political parties became clearer. Impunity for state agents increased, as did insecurity for the poor and vulnerable. With state security agencies and justice institutions becoming more politicized and corrupt, justice remained inaccessible for common people. The fear is real: Nepal has taken a turn towards becoming a police state.

### *ICCPR, Article 7*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

### *Torture Remains a Major Tool for Investigation*

Nepal is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 26 of Nepal's Constitution also recognizes the right against torture as a fundamental right, strictly prohibiting and making legally punishable any form of physical or mental torture or cruel, inhuman or degrading treatment or punishment. A victim of torture is entitled to compensation as specified by law. Even during a state of emergency, this right cannot be suspended.

The Torture Compensation Act (TCA), 1996 is a specific legislation in this respect. The TCA prohibits torture and ill-treatment but does not criminalize it. The Act fails to provide justice to torture survivors or to punish those found guilty. The definition of torture and other provisions in the Act are not in line with the international conventions, including UNCAT. An adult member of the victim's family or his or her legal practitioner may file a petition to the district court if they think that the detainee is subjected to torture while in detention. The court has to promptly take action for ensuring medical examination of the victim within three days.

During the increasingly brutal ten-year conflict, 1996-2006, at least 13,000 people were killed, with a further 1,300 still missing. The final death toll is likely higher; government figures now report 17,000 deaths. It is estimated that both the state security and Maoist forces tortured thousands of people during the conflict.

Torture by state and non-state actors continues in Nepal despite the formal end of the conflict and subsequent political successes. Nepal's human rights situation did not improve as expected since the signing of the peace agreement in 2006. Torture and ill-treatment in government detention facilities continue, and the culture of impunity is becoming further entrenched.

Torture has been a common practice in Nepal to obtain information or maintain social order. It is widely practiced in police custody, with women and children being the most vulnerable groups in this regard. Recently, the National Human Right Commission noted that torture remains a major form of investigation in custody, with police conducting torture "without any hesitation". At the same time, monitoring by local NGOs indicates that torture is largely used to extract bribes, sanction the work of human traffickers, and as a show of power.

The most common methods of physical torture include beatings using the hands, kicking (usually while wearing boots) and using instruments such as

bamboo sticks, plastic pipes and batons. The severity of the torture does not necessarily depend on the use of instruments.

The TCA is inadequate and has failed to provide redress for torture survivors and prosecute those involved in torture. The biggest failure lies in the lack of criminal investigation into the cases of torture. Nepal's investigation process is based on confession, and the confession comes by force or torture. In terms of justice for acts of torture, victims have only the possibility of compensation, and only "departmental actions" such as reprimand, demotions, suspensions, fines, delayed promotions are foreseen for the perpetrators.

While the government has attempted to devolve responsibility for torture to the individual policeman, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. The implicit compact that no one will be prosecuted for the use of torture encourages, or, at the very least, permits the individual policeman to commit torture.

Torture only serves to undermine Nepal's justice system, and this should motivate honest policymakers to take aggressive steps aimed at rooting it out. After the failure of passing the Torture Bill during the last parliament in May 2012, the government has tabled the Bill on Torture in Parliament for discussion. This time around, the government must pass it, and the Torture Bill must be in accordance with UNCAT provisions. Torture must be criminalized and its regular practice discouraged by consistent investigation and punishment.

### *ICCPR, Article 26*

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

### ***Caste-Based Discrimination***

According to Jagaran Media Center (JMC), a partner organization of the AHRC, 2014 saw much discrimination against Dalits. The JMC recorded 100 violent caste-based related incidents in the first three months of 2014, of which 21 were displacement cases due to inter-caste marriages; 11 punishments for alleged witchcraft; 22 for disturbances at the public water tap; seven for

restricted entry into a temple; 29 for discrimination in a public place; and 10 miscellaneous.

There are several laws prohibiting caste-based discrimination and obligating the state to investigate and prosecute cases of such discrimination, such as Schedule I of the 1992 State Cases Act (obligating the state to investigate and prosecute caste-based discrimination offences); the 1963 Muluki Ain, Article 10 (amended in 2007) of which provides that any person discriminated against on the grounds of being labeled “untouchables” or denied access to public areas or utilities on the basis of caste may be punished; and the Caste-based Discrimination and Untouchables (Offence & Punishment) Act, 2011, which criminalizes acts of caste-based discrimination in public and private places, including places of worship.

In practice however, these laws are not enforced. Police officials tend to ignore caste-based discrimination-related crimes, and even use force to dismiss them. They refuse to register complaints, leaving the voices of the Dalit population, humiliated daily in public places, unheard. The three main factors that condemn Dalits to life as second-class citizens are: Dalits’ lack of awareness of anti-discrimination laws, Dalits’ fear of complaining when they suffer caste-based violence and discrimination, and the in-grained indifference of the authorities. Additionally, a large number of the members of the Dalit community are homeless and landless. They are deprived of citizenship, a long-standing unresolved issue. Many Dalits do not have the right to vote; this prevents them from participating in political life at the village level.

Dalit women face terrible conditions as victims of both gender and caste discrimination. They have no control over land, housing or money and are forced into doing the most demeaning jobs. The women of certain caste groups, such as Chamars, Badi, and Pote, women are slightly more respected, as they can participate in productive activities and thus become part of the economic chain. Upper caste women, in comparison, are generally considered as nothing but tools of sex (Read more on the section titled “Discrimination Against Women”).

Anyone who witnesses discriminatory acts can report the crime to the police. The penalty for practicing caste-based discrimination has been increased to a prison term of up to three years or a fine up to NRs. 25,000, or both, depending on the nature of the offence. However, the prevalence of discriminatory practice at the grassroots level continues to lower the dignity of the Dalit community. Government policies and plans are concerned with this reality.

Nepal's Dalit community also has to struggle against internal discrimination. Within the 25 Dalit castes there exists considerable hierarchy and discriminatory practices.

Dalits continue to be marginalized and excluded from political decision-making. In the first Constituent Assembly (CA) elections held in 2008, seven candidates from the Dalit communities were elected from 240 constituencies, making 50 Dalit members. But the numbers of Dalit lawmakers in the second CA is only two from direct elections, and the overall number has decreased to 41. In fact, the political representation of Dalits in the formal political structure seems to be linked more to the quest for power in the major political parties rather than to the representation of minorities. Party-led factionalism within Dalits is another obstacle. Dalit leaders tend to present themselves as subservient to Nepal's political leaders. As leaders of the Community, unless they stop playing victim and seek to, instead, take up issues of Dalit representation, the status quo will remain.

The Nepalese Dalit Movement, however, is a silver lining. And, Dalit rights activists from South Asian nations have formed the Asian Dalit Rights Forum, an 11-member forum in April 2014. This forum aims to coordinate activities to end racial and caste discrimination in South Asia.

The following cases reported by the AHRC, are indicative of the violence and discrimination faced by Nepal's Dalit community:

### **Shiva Shankar Das**

The parents of Shiva Shankar Das (21), who was allegedly poisoned to death, are still waiting for justice and compensation after two years. Shiva Shankar had a love affair with a 20-year-old woman from an "upper caste" community, and was allegedly poisoned by the girl's relatives on 30 January 2012. The police only registered the case after immense pressure from the Dalit civil society, Dalit NGOs, and the media, but they did not investigate the incident in detail. As of yet, they have not informed the family of any progress in their investigation; in fact, when the father tried to make inquiries, he was threatened with prison. Shiva Shankar's parents continue to knock on the doors of different organizations and the media in the hopes of obtaining justice for their son.

### **Sabita Bishwakarma**

At 8 p.m. on 17 May 2014, Bishnu Chhetri and her two daughters from Mainbagar Sriramtol publicly assaulted pregnant Sabita Bishwakarma for

drawing water from a public water tap. They accused her of being Kamini (belonging to a lower caste). The severe assault left her unconscious and she was immediately taken to the Bhairahawa Medical College. After the police were informed about the case, they took Sabita's mother-in-law and the two perpetrators into custody. Both parties were subsequently released, with the incident termed as "a normal social issue". The case was published in the local newspapers, and an attempt was made to register the case at the Area Police Office, demanding punishment as specified in the Caste Based Discrimination and Untouchables (Offense and Punishment) Act 2011. At first, the police refused to file an FIR because there was a delay in registration. After much pressure, the police facilitated a settlement in the case, at the local level, through consensus.

### **Intra-Dalit discrimination in Parbat District**

On 15 April 2014, a clash erupted between two Dalit communities at Pang VDC-2 in the Parbat District, killing one 15-year-old boy Rajesh Nepali, and injuring 15 others. At the Bratamanda, (a Hindu religious ceremony), of Chandra Bahadur BK's son Ramkrishan, members of the Kami community said that the guests of the Sarki community were of a lower class, sparking the clash.

Such intra-community discrimination amongst Dalits is widespread, with violent incidents occurring at social functions like festivals and marriages, in places of worship and in public places like public water taps and wells. While Dalit human rights defenders and intellectuals chant revolutionary slogans of social harmony, championing marriages between Dalits and non-Dalits, they have failed to fight against discriminatory practices within the Dalit communities.

### **Saptari Barmajhiya Village Development Committee Case**

In January 2014, the AHRC came to know that 32 Dalit families of Barmajhiya Village Development Committee-2 in Saptari District are living in fear of forced displacement, due to the ongoing construction of a drinking water body near their village. These Dalit families have been living in this area since their forefathers cleared the area and turned it into a community. The land however, is not registered in their names. It is feared that the local non-Dalits might have illegally registered the land in their own names. Due to the lack of education and opportunities, these families do not know where to go and how to make formal complaints.



The construction of the drinking water body began around two years ago. These 32 Dalit families are very poor; moving elsewhere and managing an alternative settlement and livelihood will be impossible for them. The area in which the Dalit villagers reside is about two acres. Suresh Chaudhary, who lives near the village, has been claiming that this land belongs to him, thus increasing the worry of the Dalit villagers that he might have registered the land under his name. Although government authorities came and measured the land on 27 December 2013, Chaudhary denied the Dalit villagers access to the land at that time.

### *ICCPR, Article 3*

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*

### *Article 26*

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

## ***Discrimination Against Women***

Article 13 of Nepal's Interim Constitution provides equality for all citizens, stating that: "All citizens are equal before the law. No person can be denied equal protection of the law because of their sex." Furthermore, Article 20 of the same Constitution can be considered a milestone: it has for the first time guaranteed every woman's right to reproductive health services in Nepal. Additionally, "No physical, mental or any other form of violence is to be inflicted on any woman. Such acts are to be punishable by law. Sons and daughters have equal rights to their ancestral property."

Providing women with special privileges has been given considerable attention, in order to ensure their participation in public life and access to equal work opportunities. It is mandatory for primary schools to have at least one female teacher. In fact, Nepal has been promoting the education of girls since 1975.

Emphasis has been put on vocational training, technical education, as well as providing incentives to girls and disadvantaged people, while focusing on programmes for women.

The Interim Constitution also provides places for women candidates in the Constituent Assembly. For election to the Constituent Assembly, at least one-third of the total number of candidates contesting the election from any organization or party must be women, for the purpose of proportional representation. In addition to the Constitutional provision, the Civil Liberties Act, 1955, the Labor Regulation 1993, the Act Relating to Children, 1992, also guarantee the right to equality. The Local Self-Governance Act, 1996, also promotes the equal rights of women.

The National Women's Commission has been set up as an institutional framework. Formed under an executive order in 2002, the Commission aims to be an impartial and autonomous body to promote women's empowerment, gender equity and social justice. It supports women's participation in mainstream development by preserving and enhancing women's rights and well-being.

## **Renuka**

Renuka (name changed to protect victim), a 16-year-old resident of Rupandehi District, set off from Asuraina VDC to Hatiban VDC, early in the morning of 2 December 2013. She was followed by Binod Yadav, the 25-year-old son of Jhinna (alias Kallu Yadav). Binod approached Renuka when there was no one around, enticing her with promises of a good job, marriage, ornaments, and clothes. Binod proceeded to abduct her.

Renuka was trafficked across the Indian border and kept locked in a house in Siddhartha Nagar for 15 days. Binod allegedly sexually abused her every day before selling her to an unidentified Indian man. She was tortured and sexually abused by this man for two more days, until she managed to escape through the ventilation system and return home.

In the meantime, Renuka's relatives filed an application before the District Police Office (DPO) Rupandehi on 5 December 2013, demanding an investigation into Renuka's abduction, her safe return, and legal action against Binod; they knew by this time that he was behind Renuka's abduction. The police called Binod to the Police Station, but released him the same evening.

Within 5-6 days of her return, Renuka visited the DPO Rupandehi and gave an oral statement against Binod, demanding legal action against him on the charge

of human trafficking, abduction, and rape, and tried to file a First Information Report (FIR). However, the police refused to register a FIR saying they would do so only if an outside settlement failed. They called the alleged perpetrator to discuss the matter.

Binod walks free while Renuka and her family feels threatened. In addition, Binod has filed an application at DPO Rupandehi stating that the victim cannot live in the village until she is divorced from her husband or goes to live in her husband's home (Renuka is legally married, but has not yet moved into her husband's home). Based on this application, the police proceeded to arrest Renuka's uncle (It was Renuka's uncle that filed the 5 December 2013 application against Binod). Renuka's uncle was released that evening following the intervention of a human rights organization.

On 20 August 2014, while speaking to lawyers from the same human rights organization, Superintendent of Police Bikram Singh Thapa, In Charge of DPO Rupandehi, said that the police are still trying to discuss the matter with both sides. If outside settlement fails, they will register an FIR and investigate the case. Renuka and her family have informed the lawyers that they have paid NRs. 50,000 to a civilian mediator to get the FIR registered. They have been visiting DPO Rupandehi on a daily basis to register an FIR but the police are still reluctant to register the case.

### *ICCPR, Article 19*

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

### *Threats to Journalists & Cyber Control*

Article 15 of Nepal's Constitution guarantees the right relating to publication, broadcasting, and the press as a fundamental right. Censorship of publication, broadcasting, or printing of any news item or audio-visual material, including electronic, is prohibited. Moreover, the Press and Publication Act, 1992, has been designed to safeguard the freedom of opinion and expression. Nepal is one of the few countries in the world, which has, through its Constitution,

guaranteed the right to information to its citizens. With the enactment of the Right to Information Act, 2007, the right to information has become a fully enforceable right, which is essential for the effective exercise of various other rights guaranteed by the Constitution, particularly the right to freedom of speech, the free expression of citizens, and the rights of the mass media.

Despite these constitutional and legal provisions however, attacks on journalists in Nepal are frequent, and the country's media rating has deteriorated. The following cases illustrate the current media environment:

On 23 January 2014, two journalists received death threats in connection with their news reporting in Mahottari. Two locals, Buddhiraj Neupane and Devraj Kafle, threatened the Editor of *Bardibas daily*, Santosh Pokhrel, and Gita Chimoriya, a reporter with *Radio Darpan* with regard to a news report about a road accident. The police arrested Neupane and Kafle after the journalists filed complaints against them with the local police administration. Political parties in the district are reported to have applied pressure on the police to release the men.

On 24 July 2014, Ramesh Rawal from the Kalikot District was forced to leave his home after receiving continuous threats from various officials. The threats were a result of his stories on corruption in government agencies for the *Karobar* economic daily in Kathmandu and the local daily *Hamro Karnali Khabar*.

In September 2014, Justice Gopal Parajuli of the Supreme Court (SC) summoned the Chairman and Managing Director and the Editor-in-Chief of *Kantipur* daily to Court, in response to two different Contempt of Court cases. The 11-page initial order charged the Publication with running an "institutional mission" to defame the Judiciary.

The order came after the newspaper's critical coverage on two issues: the nomination of some controversial judges, including Parajuli, to the country's apex court, and corruption in the Judiciary. Analysts believe that the order against Kantipur Publications is an attempt to quell any critical reporting on the Judiciary. In a contempt of court case filed by Advocate Anjani Kumar Pokhrel in May 2013, the petitioner claimed that columnist Pandey's article "Pad ra pahichan bich ko mahan antar" (Difference between post and posture) defamed the apex court. The article mentions how a Kantipur reporter was barred from entering the SC courtroom during the hearing against the nomination of Lokman Singh Karki to the post of Chief of Commission for the Investigation of Abuse of Authority, on the grounds that he was wearing a "fancy T-shirt".

The misuse of the Electronic Transactions Act (ETA) by authorities is another tactic to maintain social control. In early June 2014, Mohammad Abdul Rahman came across an article on Facebook about the Saptari District's improving security that interested him. Rahman commented, "How is it [*security*] improving when I have to pay NRs. 50,000 simply to get back my own motorbike that had been stolen?" This innocuous comment seemingly irritated the Saptari police, who arrested him for posting "negative" comments and held him in custody for 20 days. He was then brought to the Kathmandu District Court to be prosecuted under the Electronic Transactions Act (ETA) for "cyber crime".

Rahman's story gained widespread traction on social media, where many protested the liberal interpretation of the ETA by the police. People argued that the police had infringed on Rahman's freedom of expression, a right guaranteed by the Interim Constitution.

In another case, bureaucrat Raju Prasad Sah was taken into custody for his online comment, "He should be shot in the back" in relation to a widely-shared photo of Home Minister Bamdev Gautam stepping over a divider in the middle of the street while holding up traffic.

These examples raise important concerns about freedom of expression when using social media. The ETA, which was drafted to regulate electronic financial transactions, states that any person publishing material "prohibited by prevailing law or which may be contrary to public morality or decent behavior or...which may spread hate or jealousy" shall be liable to punishment.

Rahman's comment does not contravene this provision, though Sah's comment could be seen as a threat. This shows that the Act is too vague in its formulation. Furthermore, it appears that individuals are prosecuted over positions that major media houses take on a daily basis. The disparity between the free speech enjoyed by media elites in Kathmandu and individuals on the periphery, like Rahman in Saptari, is stark.

Given the recent spate of cyber crime complaints at the Central Investigation Bureau, there is an urgent need to draft a new law that specifically addresses social media. A comprehensive Act that clearly lays out the parameters of the limits to expression—like hate speech, slander and incitement to violence—must be formulated. However, this Act must not conflict with the broad provisions for free speech enshrined in the Interim Constitution.

Currently, only the Kathmandu District Court has the jurisdiction to hear cyber crime cases. As the Internet, and with it, social media, continues to

spread across the Nepali landscape, it would be wise to delegate this jurisdiction to other district courts as well. The Judiciary and the state organs need to internalize the fact that social media, albeit new, is fast becoming a public space, and an important tool, to share ideas and disseminate information.

### *ICCPR, Article 8*

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
2. *No one shall be held in servitude.*
3.
  - (a) *No one shall be required to perform forced or compulsory labour;*
  - (b) *Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;*
  - (c) *For the purpose of this paragraph the term “forced or compulsory labour” shall not include:*
    - (i) *Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;*
    - (ii) *Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;*
    - (iii) *Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
    - (iv) *Any work or service which forms part of normal civil obligations.*

## *Haliyas & Bonded Labour*

Nepal is party to various international instruments prohibiting slavery, servitude, and forced labor, including the Slavery Convention 1926, its 1953 Protocol and 1956 Supplementary Convention, and ILO Convention No. 138 on the Abolition of Forced Labor and No. 182 on Worst Forms of Child Labor. The Constitution guarantees the right against exploitation in the name of any custom, tradition, or usage against slavery, servitude, and forced labour as a fundamental right. Moreover, the Bonded Labour (Prohibition) Act, 2002, has also been enacted to address these matters.

In Nepal, the United Nations Working Group on Contemporary Forms of Slavery estimates that 300,000 to 2 million people work under the *haliya* and *kamaiya systems* as modern slaves. The *kamaiya* system primarily affects a section of the ethnic Tharu population living in five western districts; its *haliya* counterpart exists in the Dalit community, including the Musahar people. They are concentrated in the far-western hill region, and in the eastern Terai districts often under the name of *haruwa*.

In July 2000, the government outlawed the use of *kamaiya* labor and initiated rehabilitation programs. In September 2008, the *haliya* practice was banned and rehabilitation programs initiated to free people from debt bondage. Yet, both practices remain, and in fact, children's bonded-ness has increased rapidly.

Figures from the Ministry for Peace and Reconstruction indicate that 19,159 Haliyas in 11 districts of the far and mid-western regions were freed on 11 January 2011. The Ministry estimates that 37,954 Haliyas and 52,844 Khaliyas live in the far-western region alone. This data does not include Haruwa and Charuwa from the Terai. The government of Nepal does not have complete data for Haliyas, as the identification process is still incomplete.

The government has done well to address and eliminate the practice of the Kamaiya system. Issues for the Haliya, Haruwa, and Charuwa are not priorities. These communities have been working on the same land for more than 50 years but have no ownership over these lands. Neither the Squatter Problem Resolve Committee nor the Declaration for the Haliya Liberation addresses their problems. As the government has maintained silence on this situation, it has been directly and indirectly supporting this kind of slavery.

The law allows Kamaiyas from Terai and Haliyas from the hilly region to live with a landlord, but in practice, due to caste-based discrimination, Dalits are not allowed to live together with non-Dalit landlords. They live separately

in small huts. Article 2 (Kha) of Kamaiya Labour Prevention Act, 2058 states “Kamaiya labor means Bhaisawar, Gaiwar, Bardiwari, Kekwar, Haruwa, Charuwa, Hali, Gothalo, Kalmaries or any other type of practices as such.” If we follow this definition, Haliya should be freed along with Kamaiyas, but this has clearly not been the case.

On 19 June 2008, the Haliyas made 11 demands on the government and political parties. When the government did not address their demands, the Haliyas carried out an 11-day protest program in Kathmandu. As a result, the government called for a meeting on 5 September 2008, in which a five-point agreement was drafted between the government and the National Haliya Federation and endorsed on 6 September 2008 in Parliament.

The Supreme Court has directed the government to introduce a law for the rehabilitation of the Haliyas, but they have turned a deaf ear to these directions. The government cites budget constraints. It dithers even on Haliya identification, so rehabilitation seems impossible at the present time.

The Ministry for Peace and Reconstruction formed a Census Collection Team to collect data on the freed Haliyas. But, the data was not collected for over two years, and then not collected properly, resulting in slow or late rehabilitation and identification. As a result, there are Haliyas with identification, but without proper rehabilitation and relief packages; and there are Haliyas who are yet to be identified. Thus, shoddy data collection has adversely affected the Haliya population as a whole.

There have been many problems with the identification process. Freed Haliyas have been categorized into four levels: those who have neither a house nor land, those who have a house but no land, those who have land but no house, and those who have both a house and land. The monitoring team has classified Haliyas as having house and land even if they have a plastic roofed shack or a thatched roof hovel strung together on public land. Furthermore, the team identified Haliyas as having cultivatable land even when this land is not fit for any cultivation.

Landlords have been asking for repayment of their loans with interest, even after the government has waived both the loan and its interest. They have been using threats and hiring musclemen to get their money back and using outside agricultural laborers to work their lands. This move has been made in order to negate the chief source of livelihood for the freed Haliyas, who then would have no income to feed their families. They would be forced to work again for their landlords as enslaved Haliyas.



Nepal has, with the continuation of this form of slavery, been violating international conventions and mechanisms, existing domestic laws and the Interim Constitution. Article 30 of the Labor Act provided for an end to the feudal land system and announced the beginning of a scientific land reform system. It also contains specific provisions to provide land and socio-economic security management for Kamaiyas, Haliya, Haruwa, and Charuwa. Though the government “freed” the Haliyas on 6 September 2008, it was done without sufficient preparation and research. This lack of groundwork has resulted in the Haliyas being cheated twice over.

Although the Haliyas have been freed on paper for six years, they have not yet tasted this freedom. They were merely removed from the lands in which they were working and the roofs under which they were living. They have not been provided with any land, or a place to live, or alternative employment opportunities. The government has still to introduce a law against the Haliya practices, or initiate programs for Haliya liberation.

### **Increasing Human Trafficking**

Nepal's conflict from 1996-2006 resulted in major displacement of workers and their families. Many people were forced to migrate from their places of origin. Every year 300,000 new job seekers join the labor market. Due to declining economic activities within the country, the only option is foreign employment or migration. Nepal is now facing forced migration of workers on a massive scale.

Nepali men are subjected to forced labor mainly in the Middle East and, to a lesser extent, within the country. Nepali women and girls are subjected to sex trafficking in Nepal, India, and the Middle East. They are subjected to forced labor in Nepal and India, as domestic servants, beggars, factory workers, mineworkers, as well as in the adult entertainment industry. They are subjected to sex trafficking and forced labor in other Asian countries, including Malaysia, Hong Kong, and South Korea.

Numerous cases of intolerable suffering have been recorded amongst Nepali migrants. It is a bitter reality that Nepalese workers are allowed to work menial jobs in east and southeast Asia and the Gulf countries because they are cheap labor, doing whatever jobs they can get. Nepali migrant workers are divided into semi-skilled and unskilled workers. Mostly, the unskilled workers are from low class families going to the Middle East or India for family-survival. They work as industrial and farm laborers, cleaners, sweepers, watchmen or security guards. Many thousands of Nepali women in India have been smuggled, sold

into prostitution, or forcibly employed in the sex trade by criminal groups. The government and social movements, in spite of constant efforts, have not been able to eliminate these practices.

According to government statistics, more Nepalese died in Malaysia between mid-2006 and April 2014 (1,023) than in any other foreign country, and more than 10% of these deaths were classified as suicides, making Malaysia more dangerous for Nepalese than the Gulf countries. The Middle East accounted for 7,500 Nepali deaths, Saudi Arabia for 3,500, during the same period. Nepali workers in Qatar died at the rate of one a day, raising disturbing questions about construction safety—many have even questioned Qatar’s ability to host the 2022 World Cup because of this. Even if workers have insurance, companies rarely pay compensation when there is an accident. And the government offers no help. There is no one to stand up for the migrant.