

NEPAL: The State of Human Rights in 2010

1. Introduction

The Asian Human Rights Commission (AHRC) did not witness any significant evolution in the human rights situation in Nepal in 2010, despite the fact that this year was meant to mark the end of the development of a new Constitution and the beginning of a new era of increased democracy and respect for human rights. However, the transition to a democratic and peaceful society was stalled by political deadlock and increasing questions regarding the future of the peace-process. This trend, which began in 2009, worsened further in 2010 as seen in the failure by Nepal's political parties to draft the Constitution by the May 28 deadline, or to form a new government after the resignation of the Prime Minister on June 30. These failures delayed necessary political and institutional reforms, leaving the peace process in an increasingly vulnerable position and eclipsing human-rights related issues from the political agenda.

In July, the AHRC's sister-organisation, Asian Legal Resource Center (ALRC), submitted a joint report with Nepalese partner-NGO Advocacy Forum, for consideration as part of the United Nations Human Rights Council's Universal Periodic Review system. The human rights situation in Nepal over the previous four years, which coincides with the end of the conflict in the country, will be reviewed under the Universal Periodic Review in 2011. This review will provide an opportunity for the international community to scrutinize Nepal's compliance with international human rights laws and standards. The ALRC reported on priority issues that need to be taken into consideration by the review. Of particular concern are the breakdown of the rule of law and State institutions, which has been taking place against the background of a fragile peace process, political instability and rising insecurity, fuelled by continuing impunity for grave human rights violations, while attempts to fill gaps in national legislation and ensure effective transitional justice remain stalled.

2. Key events in 2010

2.1 The failure of the Constituent Assembly and the political stalemate

Nepal's Constituent Assembly was set a deadline of May 28th 2010, two years after it held its first session, to draft a Constitution that would establish the foundations and institutions of "an independent, indivisible, sovereign, secular and inclusive democratic republic." However, ongoing mistrust between the country's political parties and the use of political brinkmanship have thus far been preventing the

completion of the drafting of a new Constitution by the Constituent Assembly within the assigned timeframe. A climate of political violence and threats, notably against journalists, as well as political manipulation of the course of justice, are creating a climate in which it is difficult to envision much-needed political progress. The political actors failed to reach an agreement on issues as crucial as the kind of relationship which should exist between the President and the Parliament, the functioning of the judiciary or the federal structure that Nepal could adopt.

The work of the Constituent Assembly was particularly hampered by the fragile nature of the peace process and a lack of trust among the political parties. In the first half of 2010, local news reports were full of stories about hostile statements made by representatives of different political parties, blaming each other for the political deadlock and the predicted failure of the CA, as well as other stories about clashes between cadres, activists or members of politically affiliated youth groups, or about abductions and killings of party cadres, especially in the Terai (plains) region, creating a climate unfavourable to cooperation and discussion. In addition, the lack of progress over the issue of rehabilitation/integration of former Maoist combatants contributed to tensions between the political parties and obstructed constructive debate and action concerning State-building efforts.

As May 28th 2010 approached (the end-date of mandate of the Constituent Assembly), the Maoist party, which held the majority in the Assembly, declared that it would not vote in favour of the extension of the CA unless Prime Minister Madhav Nepal resigned, in order to pave the way for a national unity government. The other political parties insisted that the Prime Minister should step down only if the Maoist party accepted to fully become a "civilian party," to dismantle its youth wing, the Young Communist League, and to give back the properties it had seized during the war.

In the weeks prior to May 28th, the Maoists called a nationwide indefinite bandh (general strike) to demand the resignation of the Prime Minister, which blocked the country for six days. This bandh was a very significant moment for the country, as political tensions rose to dangerous levels reviving fears of a return to violent conflict. The strike was, however, called off after six days, following international pressure, without major incident.

A constitutional and political crisis was avoided at the eleventh hour. A three-point agreement was reached between the leaders of the three main political parties: the Nepali Congress, the UCPN-Maoist and the CPN-UML. The agreement stipulated that the Prime Minister should resign to open the way for a national consensus government, which would be tasked with "taking the peace process to a meaningful conclusion" and "accomplishing the historic responsibility of completing the task of writing the constitution". At 1.51 am on May 29th, the term of the Constituent Assembly was extended for one year. Although this agreement allowed the country to avoid a crisis at that time, it did not end the political stalemate that besets the country. Major uncertainty remains concerning the CA's ability to draft a constitution by May 28th, 2011. Then-Prime Minister, Madhav Kumar Nepal, eventually resigned on June 30, 2010. Since then, up until the time of writing of this

report in mid-November 2010, sixteen rounds of Prime Ministerial elections had been held in the Parliament, although none of these have been able to successfully elect a new Prime Minister. This political stalemate has also been obstructing other areas of government, including development projects and the creation of important new laws. Significantly, at the time of writing, it remained uncertain whether the caretaker government would be able to convince the parliament to adopt the 2010-2011 budget. The failure to adopt a budget by mid-November would prevent the delivery by the State of public services, the payment of the civil servants' salaries and of State pensions, for example, further destabilizing the already precarious economic, political and social situation in the country.

As an example, when the Finance Minister, Surendra Pandey, came to the parliament on November 19, to table the bill related to the budget, some of the Maoist lawmakers physically attacked him and tried to snatch the briefcase containing the document to prevent it from passing. The week before, the Maoists had agreed that they would vote in favour of the budget but then changed their minds. On November 20, the President was forced to pass the budget through a presidential ordinance, which has since been criticized by opposition parties. Passage of the budget allowed the caretaker government to access new funds immediately, although parliament still was to vote on the bill within 60 days. The passage of the ordinance allowed the country to avoid an economic crisis and the failure of the State. This shows the levels of disagreement currently plaguing Nepal's political scene.

Already weak State institutions have been further destabilised and weakened by this political stasis. It is difficult at present to see where strong political will to tackle issues and ensure a successful peace-process will come from. The CA's inability to draft the new Constitution on time and to elect a Prime Minister have fuelled the public's growing sense of exclusion from the process and mistrust toward the political parties. As a result, the state and the political parties are considered unable to respond to the needs of the citizens for security and democratisation.

2.2 The peace process

The political stalemate also brought the country's peace process to a standstill, as the political parties could not reach an agreement on key issues. In particular, challenges linked to the future of the two armed forces that had been fighting each other during the country's decade-long conflict still need to be addressed. The demobilization or integration of former Maoist combatants within the Nepal Army and the democratisation¹ of the army have thus far proven difficult. In January

¹ Concerning the democratisation of the military, under Nepal's Interim Constitution, the control of the army has been placed under civilian control, specifically, under the Council of Ministers. The Interim Constitution asserts the army's "democratic structure and national and inclusive character shall be developed, and training shall be imparted to the army in accordance with the norms and values of democracy and human rights."

2010, 4008 "Disqualified Maoist Combatants" (which comprises those who had either been minors at the time of the cease-fire or recruited after the signing of the CPA) were sent home. They were provided with limited financial assistance and offered a rehabilitation package comprising vocational training and formal education to facilitate their re-entry into society. Reports of financial hardships faced by discharged combatants, and frustration at having been disqualified is a source of concern, as it risks making such former combatants vulnerable to recruitment by criminal or paramilitary groups. This fuels debate regarding the future of the 19,000 former Maoist fighters who remain in UN-monitored cantonments throughout the country.

Disagreements have persisted among the political parties over this issue, in particular regarding the number of combatants and the modalities and timing of their integration into the State security forces. This has resulted in this integration being delayed. Tensions further arose after the Nepal Army recruitment advertisement that sought to fill 3,464 positions within its ranks. This was followed by the Maoists' announcing that they would also start recruiting. The United Nations Mission in Nepal (UNMIN) then voiced its concerns and reiterated that recruitment by either side would constitute a breach of the peace agreement. A breakthrough seemed to have been reached under a four-point agreement was signed on September 13, 2010, between the caretaker government and the Maoists. Under this, the peace process should be completed by January 14, 2011, and both parties agreed to conclude the demobilization and rehabilitation process before that date, which would also mark the end of the UNMIN's mandate.² The possibility of bringing UNMIN's mandate and presence in the country to an end appears to be an incentive that is enabling greater cooperation between the various parties and actors in the country. UNMIN has been supporting and monitoring the peace process since January 2007. According to the four-point agreement, Maoist combatants should be brought under the supervision of a Special Committee formed to supervise, integrate and rehabilitate the combatants. The Maoists have so far agreed to submit information on individual fighters to the Special Committee. However, the AHRC remains concerned that the parties may still not be able to foster the levels of cooperation on this issue, that are required in order to resolve the issue before January 14, 2011, notably as the details of how this integration or rehabilitation of combatants have yet to be agreed upon.

Regarding the democratisation of the Nepal Army, another key issue in the peace process, it cannot be accomplished as long as the current lack of accountability of conflict-related (and post-conflict) human rights violations persists (please see below "impunity")

² According to the UN Security Council resolution, the UN, "*Decides further*, in line with the request from the Government of Nepal that UNMIN's mandate will terminate on 15 January 2011 after which date UNMIN will leave Nepal " - http://www.unmin.org.np/downloads/keydocs/SC_Resolution_1939.15Sep2010.ENG.pdf

2.3 Security Issues

Another serious challenge to the protection of human rights in Nepal has been the deteriorating security situation which persists in the Terai (plains) and the eastern hills regions. Since the end of the conflict, there has been a proliferation of armed criminal groups. Some groups are making use of the discontent of members of ethnic groups who are unsatisfied with the way the State has addressed their demands to recruit members. This is contributing to increased lawlessness and degradation of the rule of law in these regions. In 2010, the security situation of the Terai region has become increasingly precarious with growing numbers of reported cases of extortion, abduction and threats to local political actors by armed groups. The AHRC has also been informed of numerous violent clashes between organisations affiliated with different political parties, which has seriously affected everyday life in the region. Incidents of violence committed by members of the Maoist-affiliated Young Communist League have been regularly reported in particular. Between January and March alone, 62 killings were reported in the region, according to a UN Secretary General report published on April 28, 2010.³

The government has responded by augmenting the strength of the security forces deployed to the region, through the implementation of a Special Security Policy that was launched in July 2009 with the aim of curbing illegal and disruptive activities. Since that date, the media, NGOs and the UN have expressed concerns that the increased military presence has coincided with an increase in human rights violations committed by security forces.⁴ This, in turn, is further fuelling popular discontent with the State.

The inability of the state institutions to ensure security has created a vacuum of power and authority, eroding public trust concerning not only the law enforcement agencies but the State's ability to provide public services and the administration of justice. In the agitated Terai region, the virtual absence of state institutions and the rule of law, as exemplified by their inability to put an end to the violence by armed groups and rights violations by the security forces, are ensuring continuing unrest.

The resignation "en masse" of more than 1,500 Village Development Committees (VDC) Secretaries - the highest government representatives at the local level - in June and July 2010 following threats from an armed criminal group - known as Samyukta Jatiya Mukti Morcha (SJMM) - and repeated attacks and harassment, further aggravated the vacuum of power there. Although most of them have returned to

³ *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, 28 April 2010,

[URL: http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf](http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf)

⁴ For example, please see these concerns as raised in the report by local NGO Advocacy Forum AF entitled; "torture and extrajudicial executions amid widespread violence in the Terai" -

http://www.advocacyforum.org/TeraiReport_English_English.pdf.

Also, the OHCHR in Nepal also released a list of concerns in July 2010 in "investigating allegations of extrajudicial killings in the Terai" -

<http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

work following government security guarantees, the Ministry of Local Development announced in October 2010 that there were still 800 VDCs without secretaries across the country, making key governmental and services unavailable to the concerned populations. VDC Secretaries possess limited judicial powers to settle petty disputes, for example, and their absence further undermines the reach of the State and its ability to provide justice and the rule of law.

Citizens' rights to movement, to work or to education were also being undermined by the regular calling of bandhs (general strikes) or blockades. Furthermore, the freedoms of the press and of expression are being curtailed, including through the killing of journalists by armed groups. Between February and July 2010, at least three senior media figures were killed without the perpetrators being brought to justice: Jamim Shah, the chairman of the Nepalese television station and satellite network Space Time Network; Arun Singhaniya, chairperson of the Janakpur Today Media Group; and Devi Prasdd Dhital, the owner of Radio Tulsipur FM. All of them were shot dead by unidentified gunmen. In total, at least "28 incidents ranging from intimidation to murder affecting journalists, editors and media entrepreneurs" were reported between February and July 2010 according to the Office of the High Commissioner for Human Rights in Nepal.⁵ These attacks and the impunity enjoyed by the perpetrators has created a climate of fear and forced journalists to use self-censorship.

3. The ongoing issues of impunity and failure by the State to protect human rights

The effective protection of human rights requires the establishment of functioning rule of law institutions. Developing adequate legislative tools and strengthening the independence of criminal justice institutions are two pre-requisites that are urgently required, if the protection of human rights, the dismantling of the deeply rooted system of impunity, and therefore the prevention of further abuses, are to become a reality in Nepal.

3.1 Legal and normative framework

The extended political wrangling in Nepal and delays to establish a new Constitutional order, are creating a period of stasis concerning much-needed strengthening of State institutions. This is extending the impunity for all perpetrators of human rights violations committed during the conflict as well as those that have been committed since the peace process began. This stasis is also preventing the strengthening of the existing legal framework, which fails to effectively protect human rights in many ways. For years, human rights groups

⁵ *UN Human Rights urges arrest of accused in killing of journalist Birendra Sah*, Press Release - 2 May, 2010, Office of the High Commissioner for Human Rights in Nepal.

have been advocating for the adoption of legislation criminalizing torture, caste-based discrimination or enforced disappearances, which would allow the effective prosecution of persons alleged to be responsible for such crimes, therefore creating a deterrent against further abuses of this kind.

Significantly, Nepal's legislation still lacks provisions that could ensure the accountability of the country's security forces when they are involved in human rights violations. For instance, the Police Act 1955 and the Army Act 2006 grant immunity to members of the police and military for human rights abuses committed in "good faith" in the course of discharging their duties. Moreover, the Police Act does not set out individual criminal liability for police personnel involved in grave human rights violations, while the Army Act simply states that a special committee shall be formed to investigate such cases.

The criminal investigation system also requires strengthening before being able to effectively address allegations of human rights violations. The lack of provisions for the establishment of independent mechanisms to ensure the impartial and thorough investigation of allegations of human rights violations in the State Cases Act of 1992, is one lacuna that must be corrected, for example.

Concerning Nepal's international human rights legal and normative framework, the country is party to 21 human rights-related international legal instruments, but in many cases their content has still to be implemented in practice. In 2010, Nepal became part of the UN Convention on the rights of persons with disabilities, which is a welcome step in the fight against discrimination against disabled persons. However, the country has still not ratified several key instruments, including the Rome Statute concerning the International Criminal Court, or the new International Convention on the protection of All Persons from Enforced Disappearance, or the Optional Protocol of the Convention Against Torture, which provides for the establishment of a system of monitoring of places of detention. The AHRC believes that the ratification and full implementation of all three of these instruments is crucial if past and ongoing human rights violations are to be addressed effectively by the Nepalese authorities.

Prior to the establishment of an Office of the High Commissioner for Human Rights in Nepal in 2005 and the signing of the Comprehensive Peace Accord by the government of Nepal and the Maoists on November 21, 2006, Nepal had the highest number of documented cases of forced disappearance. The AHRC and other groups have also reported the endemic nature of the use of torture in the country for many years. The ratifications of the afore-mentioned instruments is therefore very important if the government is to have any credibility concerning its aims to ensure that past violations do not recur and that the country will advance into a new era in which human rights will become a reality.

The Nepalese NGO coalition report to the Universal Periodic Review clearly expressed the magnitude of the issue: "It is alarming that crimes under international law including war crimes, crimes against humanity, disappearance and torture are yet to be criminalized. The Interim Constitution provides a long list

of human rights as the fundamental rights. However, in the absence of right to effective remedy these rights are yet to be realized in practice. The parliament is yet to enact a number of pending laws. In addition, a number of national legislation is still in place which directly contradict with the treaties Nepal is party to. There is no comprehensive human rights protection legislation providing effective remedies for human rights violations."⁶

There are also concerns regarding the independence of human rights bodies. Although the National Human Rights Commission was given constitutional status under the 2007 Interim Constitution, implementing legislation has not been passed yet. A bill has been pending since October 2009, but concerns have arisen about provisions relating to staff management, the body's financial autonomy and the absence of a reference to "the independence and autonomy" of the commission. It is feared that under this Bill the Commission's independence would not be guaranteed and the body would not comply with the Paris Principles relating to the status of national human rights institutions.⁷ The National Human Rights Commission, the National Women Commission and the National Dalit Commission all have a primordial role to play in the creation policies that protect human rights. Their independence and capacity for action must therefore be guaranteed.

3.2 Stalled transitional justice

Transitional justice mechanisms are also being affected by political gamesmanship and a lack of development. In the Comprehensive Peace Accord, both parties committed to establish a Truth and Reconciliation Commission to investigate conflict-related human rights abuses, as well as a Commission on Enforced Disappearances. Both of these were also included in the 2007 Interim Constitution. However, a lack of political will to implement these provisions has ensured that little progress has been made. After a long process, both bills were eventually presented before the Parliament in April 2010, but are still to be discussed and adopted. Moreover, although both Bills have been amended several times since 2007, there are still concerns that they are not in line with international standards and best practices. Questions remain regarding the appointment of commissioners and insufficiency of witness protection mechanisms, for example.

The UN Working Group on Enforced or Involuntary Disappearances (WGEID), in a General Comment, has affirmed that: "*Acts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared.*"⁸ For the families of the

⁶ Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Human Rights Council, July 2010, URL: http://www.worecnepal.org/sites/default/files/Final%20Report_NNC-UPR_2_.pdf

⁷ Those principles can be found at: <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>

⁸ Working Group on Enforced or Involuntary Disappearances General Comment on Enforced Disappearance as a Continuous Crime: <http://www2.ohchr.org/english/issues/disappear/docs/GC-EDCC.pdf>

1,300 persons who became victims of forced disappearances during the conflict and remain missing to date,⁹ the delay to the establishment of the Commission on Enforced Disappearances contributes to their ongoing suffering. These delays can be considered as violations as of themselves. Furthermore, the delay to know the fate of the disappeared can have direct effects on family members' economic and social situations. For example, if, as is often the case, the remaining family member is a woman, she cannot inherit the family property unless the missing person has been declared dead.

3.3 A crippled criminal justice system and the uncooperative attitude of the parties entrench impunity

In 2010, the country's system of impunity remains the biggest challenge to the rule of law and the realization of human rights in Nepal. Despite having committed in the Comprehensive Peace Agreements to put an end to impunity, none of the political parties or successive governments have taken serious steps to ensure accountability concerning all violations of rights that have taken place during and since the conflict.

The fight against impunity following a period of conflict is difficult regardless of the country. However, the political infighting that has been taking place in Nepal since the beginning of the peace process has meant that no discernable progress has been made. It must be recalled that the political parties were given their mandates to negotiate peace and a new Constitution following country-wide popular protests in April 2006. These protests called for an end to conflict and human rights abuses and the establishment of a new democratic system in Nepal. However, since then, the political parties have failed to respect the desires of the people, instead allowing self-preservation and personal interests to prevail. This has led to a gulf between what was promised and what has been achieved. Perhaps the starkest indicator of this is the failure thus far of efforts to create a new Constitution for Nepal. In terms of human rights, the fact that there has been no effective action to protect rights, prevent further abuses and ensure accountability, represents a serious failure by all political actors in respecting the will of the people of Nepal.

The current period is one blighted by a lack of political will to address human rights issues. Only very strong political will can ensure that the Maoists and the Nepal Army won't interfere with criminal prosecutions, or that the policing and justice systems will be able to carry out effective investigations and prosecutions.

The non-implementation of more than 75% of the recommendations of prosecutions or sanctions of human rights violators made by the National Human Rights Commission¹⁰ towards prosecution or departmental actions has highlighted

⁹ International Committee of the Red Cross, *Nepal - ICRC Annual Report 2009*, 19 May 2010, URL: <http://www.icrc.org/Web/eng/siteeng0.nsf/html/nepal-icrc-annual-report-2009!OpenDocument>

¹⁰ *The Report of the NHRI of Nepal on the UPR Processes*, 5 July 2010, URL : http://www.nhrcnepal.org///publication/doc/reports/UPR_Report-2010.pdf

this lack of willingness. Furthermore, the Nepalese authorities have taken some symbolic actions that further bolster impunity. For example, the decision to extend the tenure of Colonel Raju Basnet who commands the Maharajgunj Barracks in which grave and massive human rights violations have allegedly been committed during the conflict, sends a clear signal that impunity is still alive and well. The decision was made despite opposition from the OHCHR's Office in Nepal.¹¹

A lack of cooperation by the former belligerent forces – the Maoists and the Nepal Army – is increasing the obstacles to any meaningful action concerning impunity. In many cases, both forces have not just been uncooperative in order to shield their members from prosecution, but have actively interfered with the course of justice to ensure impunity. Since the end of the conflict, despite orders from the courts, the police have repeatedly proven unable to arrest and detain members of the Maoists or the Nepal Army that have been accused of human rights violations.

The emblematic case of Maina Sunuwar is a sad example of this. Maina Sunuwar was a 15-year-old school girl who was forcibly disappeared on February 7, 2004, and tortured to death by members of the army. Despite clear-cut evidence pointing to the guilt of members of the military, the Nepal Army continues to shield its members and ignores rulings by the civilian justice system. Although arrest warrants against four army personnel have been pending since January 2008, no one has been prosecuted in this case. After one of the main accused in the crime, Major Nijaran Basnet, was expelled from the UN Peacekeeping mission in Chad and repatriated to Nepal in December 2009, he was immediately taken under the custody of the military police who committed to bring him before a civilian court the next day. This did not happen. On the contrary, on July 14, 2010, the army announced that Major Basnet had been found innocent by an internal army investigation as the army had been "acting against a common enemy then and functioning under TADA, therefore there is no case against Basnet," according to Major General BA Kumar Sharma, chief of the Nepal Army Legal Department. TADA, which is the Terrorist and Disruptive Activities (Control and Punishment) Act, 2002 (TADA), includes provisions that allow suspects to be taken into custody for interrogation by the Army (Section 2.1) and Section 61 of the 1959 Military Act. TADA also ensures that any offences involving army personnel cannot be tried by civilian courts. This amounts to blanket impunity for members of the military and obviously runs contrary to any possible interpretation of international human rights laws and standards. Therefore, the army believes it can justify the arbitrary arrest and torture to death of a child. The decision was immediately endorsed by the Defence Ministry.

This announcement is consistent with the attitude of the army which has repeatedly denied the alleged human rights violations and hampered the investigation into this case, including by tampering evidence, threatening the victim's family and refusing to abide by court orders. Although the army's decision contradicts a 2007 Supreme

¹¹ *UN Human Rights Office raises serious concerns with the term extension of Colonel Raju Basnet*, 22 October 2010, Office of the High Commissioner for Human Rights in Nepal, [URL:http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/October/2010_10_22_PR_Col_Raju_Basnet_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/October/2010_10_22_PR_Col_Raju_Basnet_E.pdf)

Court order for the civilian authorities to carry out investigations and prosecute the perpetrators, no further action has been taken so far by the civilian authorities in reaction to the military's announcement. This illustrates the civilian authorities' unwillingness to do what is required in order to eliminate the impunity, even in cases that have received international condemnation¹²

An example that speaks to the Maoists' unwillingness to ensure the protection and prevention of human rights and the elimination of impunity concerns Ram Hari Shrestha,¹³ a businessman from Kathmandu who was abducted on April 27, 2008, allegedly by members of the Maoists Party, and later died as a result of the severe beatings he was subjected to inside the Maoist People's Liberation Army (PLA) third division's encampment in Chitwan.

In 2008, the Chitwan District Court formally charged five Maoists cadres in relation to the case, but only one was arrested and the other four have been declared as having absconded by the police. In this case, as in a number of other cases involving the Maoists, the lack of police action and the unwillingness of the Maoist party to cooperate with the civilian authorities have ensured a lack of progress in investigations and prosecutions. Despite having launched an internal probe panel to investigate Shrestha's killing and admitted the responsibility of its cadres in the killing, the Maoist party has refused to hand them over to the police. Further, Kali Bahadur Kham, the main accused in this case was promoted within the Maoist party to the position of Central Committee member. The Nepal police's action in the case has been limited to sending two letters to the Maoist leadership.

Attention was brought back to the case when the Kathmandu District Court issued another arrest warrant against Kham relating to his involvement in another case, which ordered the police to produce him before the court within seven days. Since then, the Maoists have announced several times that they would investigate the allegations and, if they found him guilty, through their own proceedings, only then would they cooperate with the police. In September, Kham was suspended upon the recommendation of the party's disciplinary commission, but it remains uncertain whether he will ever be produced in court. Although Kham's suspension is welcomed as an initial step, the fact that the justice institutions have to wait for the Maoist party approval before being able to prosecute the case is telling about the capacity of action and the independence of justice in the country. The Maoists have suspended 300 members based on over a large number of complaints against party leaders for misconduct and irregularities. While this internal disciplinary system is welcome in of itself, it cannot be an effective or acceptable substitute for accountability under the law of the land though the State's justice delivery system.

The criminal justice system has, however, thus so far shown itself to be incapable of playing an active and effective role in protecting the rights of and ensuring remedies for victims, as well as in tackling impunity. The constitution-drafting

¹² NEPAL: *The Nepal Army has given absolution to one of Maina Sunuwar's murderers*, AHRC-STM-166-2010, 10 August 2010, URL: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-166-2010/>

¹³ NEPAL: *Police unable to arrest the murderers of Ram Hari Shrestha*, AHRC-UAC-118-2010, 20 August 2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-118-2010/>

process is an opportunity to establish strong, accessible and accountable justice institutions and to guarantee their independence. In the meanwhile, the proper functioning of the justice system is being hampered by rampant corruption, lack of financial and human resources and infrastructure, and it is now unable to equally protect the rights of all citizens. The rights to fair trial and due process are undermined by delays in the administration of justice, the geographical inaccessibility of the justice institutions in some regions, increasing legal expenses and inadequate legal support services. Political interference within the course of justice remains widespread, especially in a context of extreme politicisation, in which local political party cadres have intervened even in cases which do not have political implication at first sight.

The lack of an adequate witness protection mechanism encourages interference and leaves the victims and witnesses vulnerable to pressure and threats. In cases involving an unbalanced power relationship, such as the murder of Dalit women by Nepal Army soldiers, institutional protection by the State is required so that a fair prosecution can take place. The absence of such a mechanism in Nepal has rendered access to justice very unequal, as powerful groups or individuals can exploit the weaknesses of the policing and justice systems to the disadvantage of weaker individuals or groups, with the most marginalized faring the worst in such situations. The judicial system reproduces the inequalities existing within the society, as the protection it grants to the individuals will depend on the resources and leverage that they possess. In 2010, the consequences of the lack of effective witness protection were strongly felt in several cases, preventing victims of human rights abuses from accessing legal remedies.

For instance, in July 2010, lawyers and human rights defenders working on the case of Arjun Bahadur Lama, a school teacher who was forcibly disappeared and killed by Maoists during the conflict, were threatened by Maoist cadres after one of the main suspects in the case was refused a visa by the US embassy.¹⁴ The attitude of the chairman of the Maoist party, who publicly denounced the accusations as 'false' and accused the human rights organisations of having launched a campaign to 'defame' the Maoists, are believed to have encouraged such threats. Also in July 2010, lawyers defending the case of Ghan Shyam Mahato, a 14-year old domestic helper who had been cruelly abused by his employers, were manhandled and threatened by relatives of the perpetrators who have close links with the Maoists. They threatened to burn down their practice should the perpetrators be sent to jail.¹⁵

Human rights defenders and lawyers have been working in an increasingly insecure situation and have faced numerous threats, attacks and obstacles from relatives of perpetrators, who are sometimes affiliated to political organisations. The system of impunity is currently enabling attacks on defenders and the responsibility falls

¹⁴ *NEPAL: Progress stalled in the investigation of Arjun Lama's disappearance*, AHRC-UAU-030-2010, 9 August 2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-030-2010/>

¹⁵ *NEPAL: A child is in danger after he is tortured by the family of a policeman; his lawyers are threatened*, AHRC-UAC-104-2010, 14 July 2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-104-2010/>

upon the Nepalese State to create a climate that is favourable to the protection of the work human rights defenders. The work of defenders is crucial in Nepal's transitional phase, as they will play an essential part in the evolution of Nepal towards a democratic and egalitarian society.

The role played by a crippled policing system in the continuing impunity has also been abundantly illustrated in 2010. A lack of checks and balances mechanisms which would allow police officers to be held accountable for abuses of power and authority, have prevented the police system from performing its role in establishing the rule of law and the protection of rights. The police argue that they are placed under significant pressure by influential individuals and local political leaders who do not hesitate to interfere in the investigation process in to order to protect their interests and persons allied with them – even if these are criminals. A strong feeling of impotence often discourages them from taking any action in cases involving the Nepal Army, the Young Communist League or the political parties. It is therefore frequent for the police to refuse to file a case or to improperly investigate it when the victim belongs to a marginalized and isolated community or when the perpetrators are influential, for instance if they possess strong political connections or belong to powerful organized groups which have resisted attempts to be held accountable, such as the Nepal Army or the YCL. In numerous cases the police have pressured victims into negotiating settlements with the perpetrators. The police's lack of accountability, and the abuses they themselves commit, combine to seriously undermine their credibility and their ability to act as a strong law-enforcement agency.

In 2010, the Bardyia National Park¹⁶ killings show the extent to which a lack of political will to address impunity, the vulnerability of the police to external pressure, the resistance of the army to any attempts to hold its personnel accountable and the lack of witness protection mechanisms, result in the denial of justice to victims. In this case, two Dalit women and one child who belonged to a group of labourers who had come to Bardyia National Park to collect medicinal herbs, were shot dead on 10 March, under circumstances that remain unclear, after they had been detained by 17 members of the army. The Nepal Army claimed that the victims were poachers and were killed during an encounter, although investigations conducted by NGOs and public bodies have reached opposite conclusions. The National Human Rights Commission (NHRC) conducted an investigation in the case, and on April 1, 2010 published a report in which it found that army personnel were responsible of excessive use of force, resulting in the death of the three women. Furthermore, the report suggests that army officials had tampered with crime scene evidence, in order to make the incident appear as an "encounter" with heavily armed poachers. The NHRC report concludes that the alleged perpetrators should be prosecuted in a civilian court, on criminal charges relating to the murder and tampering with crime scene evidence. However, the government failed to implement these recommendations.

¹⁶ *NEPAL: Recipe for impunity at work in Bardyia National Park*, AHRC-STM-081-2010, 20 May 2010, URL: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/>

Furthermore, a sub-committee of the Legislature Parliament for Women and Children held an investigation into the killings. On April 7, 2010, it released a report in which the army personnel were also found to be responsible for killing the three women.

The military also allegedly pressured the police to make sure that the initial FIR would reproduce their version of events and so that the outcome of the investigation would be favourable to the army's version of events. Apparently, the military claimed that arms and ammunitions were recovered from the bodies. According to the AHRC's information, they had apparently changed the victims' clothes to make them look more like poachers (the victims were changed into trousers, but their original clothes were found at the scene).

In addition, they threatened the victim's families and witnesses until they agreed to sign an agreement in which they promised to withdraw the First Information Report they had filed against the 17 accused.

The consequences of this on-going situation has been analysed by the Office of the High Commissioner for Human Rights in Nepal in its February 2010 report, in which it states that: "persistent impunity for human rights violations has had a corrosive effect on rule of law institutions and has further damaged their credibility. Impunity has contributed directly to widespread failings in public security by sending a message that violence carries no consequences for the perpetrator."¹⁷

4. Ongoing human rights violations

4.1 The persistence of torture by the police

The use of torture remains endemic in post-conflict Nepal. At least three people are known to have been tortured to death in custody in 2010. Men and women alike, regardless of their age, are at risk of being subjected to torture in almost all police stations across Nepal. Torture continues to be routinely used as a tool to extract confessions or to punish persons who are accused of having committed a crime. Statements made by the authorities concerning plans to address the problem have failed to materialize into any concrete actions.

Of particular concern is the high incidence of the use of torture against children in Nepal. On the occasion of the UN's International Day in Support of Victims of Torture, Advocacy Forum released a report 'Torture of Juveniles in Nepal' which

¹⁷ *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, 5 February 2010, URL : <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-73.pdf>

states that 'Despite some improvement after the introduction in 2006 of the Juvenile Justice Regulations, juvenile detainees are still more frequently tortured than adults in Nepal'. Between April 2009 and March 2010 Advocacy Forum interviewed 957 juveniles in detention: 22.3% -- or almost one child out of four -- reported having been subjected to 'torture or other ill-treatment at the time of arrest and/or during detention'.¹⁸

The existing legal framework has serious lacuna concerning torture, which result in victims of torture finding themselves deprived of any available avenues though which to pursue justice. Despite Article 26 of the 2007 Interim Constitution, which prohibits the use of torture and makes provisions for the punishment of perpetrators according to law, such legislation is yet to be adopted. The lack of an implementing law offers protection to perpetrators of torture, as they cannot be prosecuted for this very serious human rights violation as a crime. The only existing legislation concerning torture, the 1996 Torture Compensation Act, only provides for compensation for victims but does not criminalize torture. Furthermore, the Act contains several flaws which hamper its proper implementation, notably a 35 day limitation on the filing of torture complaints, which has prevented several victims from seeking redress.

The lack of a witness protection mechanism combined with the lack of independent mechanisms to investigate allegations of torture often results in investigations being conducted by police officers from the same police station as the alleged perpetrators. These weaknesses account for the low number of cases in which compensation has actually been granted to the victims. Out of 81 cases filed since 2003 under the Act, compensation has been granted in only 17 cases, and of those only four were actually paid out, although in the recent years a small augmentation of the number of successful torture compensation applications has been noted. In only 3.7 % of cases has departmental action been ordered against the perpetrators, although it remains unknown whether this has actually led to action was taken by the concerned authorities.¹⁹ Of course, such administrative punishment does not meet international standards concerning the levels of punishment that should accompany such serious human rights violations.

The case of torture to death of Dal Bahadur and Bikram Gyanmi Magar, a father and his son, who died in police custody in February 2010 in Panchthar district, illustrates the ways in which police officers can obstruct investigation into torture. In this case, the police and a group of villagers that had initially "arrested" the two men and participated in beating them alongside the police, forced an agreement upon the victims' family, which gave vague promises concerning the prosecution of the perpetrators and compensation for the family. The NHRC saw its investigation obstructed by the villagers, only allowing the NHRC to visit the location once it had given assurances that none of the villagers were on the list of alleged perpetrators. The police also tried to pressure human rights NGOs into not publicizing the case. Eventually an FIR was prepared but following pressure from the police and the

¹⁸ "Torture of Juveniles in Nepal: A serious Challenge to Justice System", Advocacy Forum, <http://www.advocacyforum.org/>

¹⁹ Source: Advocacy Forum

villagers the names of the three alleged perpetrators were removed from the report.²⁰ Similarly, to cover up their responsibility in the death of Sanu Sunar, a 45 year old Dalit man who was tortured to death while in police custody in Kathmandu on 23 May 2010, the police officers from the Kalimati police station arrested Bishnu - the man who had made the complaint against the victim leading to his arrest - and charged him with Sunar's murder. They also prevented the media and human rights activists and even Bishnu's family from meeting him in custody.²¹

The absence of an independent investigation into the circumstances surrounding the custodial death of a minor in Rupendehi District further illustrate the lack of accountability of the policing system in Nepal. Dharmendra Barai (16) was arrested on July 3, 2010, regarding his alleged involvement in a bicycle collision and, although he was a minor, he was kept in detention in the same cell as an adult in Khajuriya Police Post. Under Nepalese law, juveniles are to be kept in specific separate facilities. In the afternoon following his arrest, around 20 persons came to the police station to ask for his release and the boy complained that the police had threatened to shoot him. The victim's family and relatives suspect that the boy was tortured to death, as there were several injuries on his body. Witnesses have reported that the police may have applied electric shocks to the boy during a 45-minute interrogation period that he was subjected to before he died. The investigation team set up to probe the circumstances of his death was composed exclusively of policemen under the leadership of a government official, without including any representative of the deceased's family or civil society, casting doubts over its ability to impartially investigate a case involving police officers. A group of seven prominent NGOs, including Advocacy Forum and Save the Children Norway, wrote to Nepal's Home Minister, Mr. Bhim Bahadur Rawal, on 4 Aug 2010, demanding a fair and independent investigation on the Dharmendra Barai death case. They called for the investigation committee to be restructured and include one representative from Attorney General's office, one representative from a well recognized NGO and one representative from the victim's family. Regrettably, these suggestions were ignored.

The investigation report concluded that it could not establish that torture was the cause of death, and it ignored information concerning the victim's injuries in the post-mortem report. The report limited itself to denouncing minor procedural flaws in the police's behaviour and to recommending departmental actions without specifying the nature of the sanctions or giving the names of those who should be sanctioned, and without denouncing the fact that a minor was kept in the same detention conditions as adults. Moreover, the reliability of the forensic investigation of the victim is also in doubt as it was performed by the Central Forensic Lab of Nepal Police rather than by the National Forensic Lab. The District Police Office and the District Administration Office (whose head also lead the investigation team)

²⁰ *UPDATE (Nepal): Father and son die in custody due to police torture in Panchthar district*- AHRC-UAU-011-2010- 15 March 2010- URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-011-2010>

²¹ *NEPAL: Custodial death of a Dalit from police torture in Kathmandu*, AHRC-UAC-082-2010, 8 June 2010 URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-082-2010/>

both refused to file an FIR in the case under fallacious pretexts.²² Superintendent of Police Sher Bahadur Basnet refused to file the case under the fallacious pretext that the victim's father had already filed an FIR in that DPO regarding the same case. Sub Inspector (SI) of Police Shambhu Upadhaya also pressured the father to drop the case, saying that if he did not the police would re-think their promise to recruit the victim's elder brother. The victim's father then turned to the Rupendehi District Administration Office and met with Deputy CDO (Chief District Officer) Pitamber Ghimire, who refused to register an FIR concerning the case.

Every case of custodial death should lead to an impartial investigation to ensure accountability and prevent torture and resultant deaths in custody. The lack of accountability of the police, combined with the lack of independent investigative systems and witness protection mechanisms enables the police to get away with murder without any repercussions.

The lack of accountability of the police is enabling them to ignore court orders to provide victims with medical treatment, as is shown in the case of Shivadhan Rai, an 18-year old student who was tortured in Hanumandhoka police station in Kathmandu on January 20, 2010. The police ignored an order from the District Court to provide him with a medical check-up within three days, and only brought him to the hospital seven days later, although his health had seriously deteriorate due to torture.²³

Article 24 of the Interim Constitution of Nepal mandates that an arrested person shall be presented before a judge within 24 hours following his or her arrest. However, there are many instances in which detainees are kept in illegal detention for several days after their arrest, which significantly increased their risk of being subjected to torture. Sanjaya Pulami Magar was arrested on February 12, 2010, and severely tortured by policemen belonging to the Prungbung Area Police Post. He was forced to confess to involvement in a robbery that had taken place that day. He was only brought before the judge on February 21, 2010, following pressure from local NGOs,²⁴ Having been kept in illegal detention for nine days. Prolonged illegal detention is intrinsically linked with torture as persons that have been tortured upon being arrested are then kept for days until the signs of the torture have faded, before being brought before a court.

²² *NEPAL: A teenage boy dies in police custody; foul play is suspected*, AHRC-UAC-110-2010, 23 July 2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-110-2010/> and *NEPAL: Allegations of torture to death of a minor in Rupendehi District must be independently investigated*, 27 August 2010, AHRC-UAU-034-2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-034-2010/>

²³ *NEPAL: Police denies medical treatment to a torture victim*, 2 March 2010, AHRC-UAC-018-2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-018-2010/>

²⁴ *NEPAL: Police torture a man to extract confession*, 11 March 2010, AHRC-UAC-025-2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-025-2010/>

4.2 Excessive use of force by security forces in the Terai

The AHRC is particularly concerned by reports of the excessive use of force by security forces in the Terai region of Nepal which have been witnessed following the introduction of the Special Security Plan in the region. This plan was a reaction by the government to the upsurge of armed groups and the deteriorating security situation in the Terai. In July 2010, the Office of the High Commissioner for Human Rights in Nepal released an investigation report into allegations of extra-judicial killings in the Terai, which reads "though the [Special Security] Plan incorporates a commitment to protecting human rights, credible allegations of unlawful killings have continued to surface, most of which, according to information received by OHCHR, have gone uninvestigated"²⁵. The OHCHR reports having received information about 39 such incidents (among those 37 took place in the Terai) resulting in 57 deaths between January 2008 and June 2010, while the statistics of the human rights NGOs indicate even higher numbers.

In February 2010, the AHRC called for the thorough investigation of the circumstances surrounding the killing of Omkar Gosain by Nepali police officers in Banke District on 28 December 2009. Although the police claim that the victim was killed during an encounter, witnesses have asserted that the gunshots they heard sounded "unilateral," which is unlikely in a crossfire situation in which two sides are shooting at each other. The victim was involved in the Jwala Singh Group, an armed resistance group. Local villagers had allegedly accused him of having been involved in extortion, abductions and killings and may have informed the police of the victim's whereabouts.²⁶

This case, like most of the cases of alleged extra-judicial killing in the Terai region, follows a clear pattern: the security forces receive information that a person is allegedly involved with such or such criminal group and later the police claim having killed this person during an "encounter" and spread the information in national and local media. However, in most cases, witnesses and evidence suggest that the security forces committed an extra-judicial execution that they then try to claim was an encounter. The police refusal to file a FIR is the first obstacle encountered by families seeking legal remedies; in none of these cases has an impartial and thorough investigation been lead to determine whether the killing was the result of an encounter or the unlawful use of lethal force by security forces. Impunity is provided in much the same way as it is concerning the use of torture, as there is no independent system of investigation that can be used when State agents are the alleged perpetrators of abuses. Similarly, the absence of witness protection mechanisms have created instances in which witnesses have been forced to sign blank statements or threatened not to speak with human rights organizations.

²⁵ *Investigating Allegations of Extra-Judicial Killings in the Terai - OHCHR-Nepal Summary of Concerns (July 2010)*, Office of the High Commissioner for human rights in Nepal, URL: <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

²⁶ *NEPAL: Police kill a 25-year-old man in an alleged encounter in Banke-* AHRC-UAC-014-2010- 23 February 2010 URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-014-2010/>

For example, on 15 August, 2010, in Nawalparasi District, the police allegedly beat and robbed villagers from Sekhuwana chock, severely tortured and illegally arrested one of them and handed another villager to the Indian police who later reportedly extra judicially killed him. 40-year-old farmer, Rudal Yadav, was arrested by 10 policemen, and then handed over to the Indian police, without following any legal extradition procedures. He was later shot dead in the Bihar state, India. The police claimed that the victim was shot while trying to escape from Nepal to India, but witnesses have reported that the victim had been handcuffed beforehand, and the AHRC believes that the victim's death is more likely to have been an unlawful killing. Later the same day, almost 200 policemen encircled the village and beat up villagers, injuring many of them, including four women. The police also reportedly looted cash and valuables from the villagers' houses and scattered their food. Lorik Yadav, the former head of the Village Development Council and the local leader of the Tarai Madhesh Democratic Party, was severely beaten up, arrested and had been refused access to lawyers and NGO representatives since then. Party cadres and supporters held a demonstration to demand his release.²⁷

4.3 Difficult access to the justice system for women victims of violence

Violence against women is still a major issue in Nepal, where the patriarchal structure of the society makes it very difficult for women to access the justice system. Women often found themselves deprived of any remedy against sexual and/or domestic violence or trafficking. An annex to the Nepal NGO coalition submission to the UPR²⁸ indicates that 81% of women report having faced domestic violence at the hands of their husbands. Moreover, although the incidence of some other forms of human rights violations has been decreasing since the signature of the CPA, such as forced disappearance, an increase has been noted in the cases of violence against women. In the majority of violations of women's rights, the perpetrators go unpunished as the justice system has proven inefficient in addressing these cases and as social stigma remains high for women seeking redress. The urgent need to address this issue was publicly acknowledged by the government, which launched a one-year campaign against violence against women on 25 November 2009.

In terms of legislation, progress has been made: in 2009 the domestic violence act became a law and removed the 35-day limitation on filing rape cases. Nevertheless,

²⁷ NEPAL: Police beat and rob villagers in Nawalparasi District, one villager is handed over to the Indian police and killed and another one is detained incommunicado, AHRC-UAC-146-2010, 21 September 2010 URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-146-2010/>

²⁸ From the "Situational Analysis Of Gender-Based Violence in Surkhet and Dang Districts", 2008 carried out by SAATHI, WHR, UNFPA, and IRC quoted in: Annex by Coalition of Women Network of Nepal Coordinated by Women Rehabilitation Center (WOREC) Nepal To Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Human Rights Council, July 2010, URL: <http://www.inseconline.org/pics/1278389893.pdf>

one year after it was passed, regulations for the law still need to be set therefore preventing its implementation.

Women that are victims of violence are typically encouraged to look for a settlement outside the formal framework of justice by community leaders or even the police. The policing system needs improvements in order to be able to effectively address the issue of violence against women.

Sabitri Pokhrel, a Nepalese human rights activist working as a coordinator in the national secretariat of the National Women's Rights Forum (WRF) has noted the uncooperative attitude women are confronted with when they try to register a case in the police station: "When we go to a police station to file a case of a violation of women's rights for example, the police officers often deny registering a case". Similarly, Sharmila Lungeli a women rights activist who works with Nari Bikash Sangh (Women's Development Center) reports that: "We never found a police officer willing to assist a helpless woman who desperately needed justice. When police officers are given a bribe they become ready to help the women victims, otherwise they just neglect them and seek excuses to drop their cases. Whenever we go to advocate in favour of the women victims, they treat us like mad people."

The lack of sensitivity of police officers toward the issue also remains problematic: "When victims of domestic violence go to the police station to file a case, instead of getting justice, they are shouted at by the police," says Sharmila Lungeli. Women therefore fear additional abuse if they are to go to the police station. According to Sharmila: "When we go to the police station regarding a case involving a woman, instead of dealing with the case privately, the police officers disclose the information to the public and the media which ultimately affects the victim and makes her suffer more." Similarly, Sabitri Pokhrel reports that "most of the time, the police pose unnecessary questions to women who go to register a case, mostly in cases of domestic violence. They ask questions like, why were you beaten, how were you beaten, in which part were you beaten, when you were beaten. This is a wrong way of enquiring about incidents of violence, and they make women feel more harassed. The way that the police speak to women makes them feel like victims all over again."

The delays in getting access to legal remedies further hamper the prosecutions of violence against women cases. "A strong mechanism should be established which should promptly punish the perpetrators of violations. In our country, if any incident occurs, it usually takes a week, and sometimes even more than that to simply to register a case," according to Sabitri Pokhrel. "For instance, when a woman is raped, if the police take such a long time to register the case, it is harder to get evidence of the crime. Moreover, the police often act in favour of the perpetrators, not punishing them but rather allowing their release. We have documented numerous cases on this issue. High-ranking officers or political leaders have been found giving orders not to punish the culprits and, if caught, to release them."

Instances in which police themselves have been involving in physical or sexual violence further discourage women's victims from going to a police station for help. Acting within that system, women human rights defenders, whose activities are seen as a direct challenge to the patriarchal system, are particularly exposed to threats.

The case of Muna (name changed) a 16 year old domestic servant in Kathmandu, who is deaf and unable to speak, illustrates how the policing system inadequately addresses the issue of violence against women. On 17 August, her employers reportedly accused her of having stolen a piece of jewellery and brought her to Budha police station. She was kept in police custody for 24 hours, the maximum length that people can be kept in police detention before being brought before a judicial authority. Due to the lack of evidence, she was sent back to her employers' house on 18 August. After Muna was sent back home, her employer's wife reportedly beat her using stinging nettle. She also reportedly tore off Muna's clothes, poured kerosene on her body and continued to hit her with the nettle and with other objects. The employer's wife then locked Muna in a room with her husband for 2 hours. The husband then reportedly raped Muna, who was unable to cry for help. The alleged perpetrators then took the naked victim out of the house and told the neighbours that she was a thief. The perpetrators then again took the victim to Budha Police Station where she was detained for another day.

In spite of visible external injuries, showing that the victim had been subjected to ill-treatment and was in need of medical care, the police did not take her to the hospital and she was kept in custody without being provided with food, a proper bed or any medicine. The two alleged perpetrators were allowed to walk away unpunished. When the victim tried to file a case, supported by a women rights NGO, the Women Foundation, the police first refused to register the case as a rape case and it was only after pressure from human rights defenders that a rape case was eventually registered on 21 August 2010 at Budha Police Station. The police then arrested the two alleged perpetrators but no further action has been taken yet to bring them to justice. A medical examination concluded that the victim had not raped. As its report did not mention any violence or injury on any part of the victim's body in spite of visible external injuries, it has been suspected that the doctors releasing the report had been bribed. As a result of the report, the police have investigated only into the allegations of theft and beating, but dropped the investigation in the case of rape.²⁹

²⁹ *NEPAL: Police negligence in a case of rape and beating of a 16-year-old girl*, AHRC-UAC-123-2010, 31 August 2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2010/>

4.4 Caste-based discrimination

The irregular implementation of anti-caste based discrimination legislation and the difficulties the Dalit communities are facing to access the justice system, continue to hamper the enjoyment of their fundamental rights.

Although the caste system was officially abolished in Nepal in 1963, it is still in operation in reality and condemns Dalits (members of the lower castes, also known as untouchables) to poverty, illiteracy and discrimination, including in access to education, health and employment. In some rural areas, the rest of the society still give little value to a Dalit's life which enables violent crimes, such as rape, physical assault or even murder, to be carried out with impunity.

Changes in legislation have not been able to dismantle the barriers of caste in the society, as the rule of law remains elusive in the country. The murder of Manisha Harijan illustrates the severity of the problem. According to information the AHRC has received from local NGO the Jagaran Media Center, the victim, an 8-year-old Dalit girl, was found dead on the morning of 4 December 2009, with her throat slit. The circumstances of the crime have led the villagers and the police officers to suspect that a local non-Dalit businessman killed the girl as a human sacrifice in his brick kiln, as part of a superstitious offering. The victim's family and villagers report having encountered resistance from the police, who first refused to file the case. Only after intense pressure from local human rights organisations, was the case was filed and the perpetrators arrested.³⁰

Caste-based discrimination is prohibited under national law and international standards. The 1963 Civil Code (Muluki Ain), banned untouchability and declared that every citizen is equal under the law, irrespective of caste, creed and sex. In 1971, Nepal ratified the International Convention on the Elimination of All forms of Racial Discrimination. The 1991 Constitution declared that the act of untouchability was illegal and punishable by law. As a result of these developments, the House of Representatives declared in 2006 that the country was free 'of untouchability and all kinds of discrimination.' The rights against caste discrimination and untouchability have been included as fundamental rights in the 2007 Interim Constitution. Nevertheless, those different steps, although welcomed, have had a limited effect in reality and discrimination which is inherently contained in the hierarchy of the caste system continues to affect every aspect of the life of the Dalit community in Nepal.

Article 14 of the 2007 Interim Constitution, which guarantees the protection from caste-based discrimination is hampered by the way it addresses the issue, which is included under racial discrimination, without specific emphasis being given to the situation of the Dalits. Section 14 -1 says that a discriminating act shall be punishable by law, but, since 2007 no law specifying the punishment has been

³⁰ *NEPAL: Risk of improper investigation into the murder of an 8-year-old Dalit girl, allegedly sacrificed for good omens*, 1 February 2010, AHRC-UAC-006-2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-006-2010/>

adopted. Furthermore, the article focuses only on discrimination that can take place in public places but does not include specific provisions about discrimination in private places.³¹

In January, the appointment of a chairperson and of the members of the National Dalit Commission, after a gap of six months in which the work of the commission was stalled, has been a positive development although insufficient resources still hamper the ability of this entity to more effectively raise the issue of caste-based discrimination and related violence.

In addition to the loopholes contained in the laws, the flaws of the criminal justice system have denied victims of caste-based discrimination the protection of their rights. The police regularly refuse to file cases of discrimination or violence against Dalits and to offer protection to the victims. These obstacles ultimately discourage Dalits from seeking legal redress.

For instance, two groundbreaking court verdicts condemning instances of caste-based violence are still to be implemented. The first concerns a decision issued in January 2009 by the Baitadi District Court, which condemned the main perpetrator in a case of physical assault of 12 Dalits in October 2007 to two years imprisonment and a fine of NRS 25,000. The victims were assaulted as they refused to be subjected to a discriminatory ritual in a temple. The decision was upheld by the Kanchanpur Appellate Court on August 23, 2009. The second verdict concerned a case in which the father of a groom was assaulted for having practiced "rituals reserved for high-caste communities." The main perpetrator was sentenced to one year imprisonment and a fine of NRS 5,000 by the Baitadi District Court on March 9, 2010. Both verdicts strongly condemned acts of violence committed on the basis of caste, which is outlawed in the Interim Constitution. However, neither verdicts have been implemented, in spite of the commitment of the local government officials to do so.³²

The way that the military pressured the witnesses and the families of the victims in the Bardyia National Park killings to drop their cases, also shows the vulnerability of such persons and the difficulties they have in accessing the justice system. The victims were all Dalit manual workers and as such belonged to one of the poorest, most vulnerable communities in Nepal. The army and the forest department reportedly pressured the families including threats of arbitrary detention based on fabricated charges and the refusal to pay promised monetary compensation, to

³¹ NEPAL: 'If not now maybe never'; Implementation of Anti-caste-based discrimination laws, AHRC-STM-154-2010, July 23, 2010, URL: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-154-2010/>

³² Government assurances to NDC and OHCHR to implement court verdicts on caste-based discrimination, 21 July 2010, Press Release National Dalit Commission of Nepal, United Nations Office of the High Commissioner for Human Rights, Nepal
URL:http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/July/Joint_PR_NDC_OHCHR_Baitadi_ENG.pdf

force them to drop the prosecutions, and granting impunity to the perpetrators of these killings.³³

Dalits also suffer from a range of other violations of their rights, including social and economic rights. Data provided by the National Dalit Commission shows the magnitude of the challenge: *"the analysis of Dalits' access to the national resources demonstrates the appalling condition. The literacy level is startlingly low among Dalits with the rate 33.8% in comparison to aggregate national rate 54%. The annual per capita income of Nepal is 210 US\$, where the per capita income is inconsistently less among Dalits with the level 39.6 US\$. Similarly, out of 17% of the poorest population of Nepal 80% belong to the Dalit Community and most of them are landless. Despite the entrance of societal development in the modern scientific stage, the condition of Nepalese society has become a matter of anxiety and challenge for the state since it has not yet been freed from inhumane behaviors like racial discrimination and untouchability."*³⁴

The situation of those who dare to challenge discriminatory practices is also precarious. Pushpa Karki, a non-Dalit teacher was dismissed for having defended the rights of her non-Dalit students. She had objected to the use of separate facilities for Dalit students and to the banning of Dalit students from attending certain classes, which are common practices in Saraswoti Secondary School in Kailali district. She was sacked from her job in 2008, then prevented by her colleagues from taking up a post in another school. In order to counter allegations that discriminatory practices were being used by the school, the school administration reportedly submitted a report claiming that there were no caste-based discrimination and untouchability practices in the school, forging the signatures of the Dalit students to support their claim. Pushpa Karki has since then reportedly been the victim of a series of threats and intimidation. For one and a half years (at the time of writing in December 2010), this mother of three has not received any salary. During this period, five different Chief Education Officers have been in charge of the District Education Office. None of them have taken action concerning her case, and have ordered her to look for a job herself, in a remote part of the country and refused to transfer her to nearby schools. The National Information Commission had sent several letters to the District Education Office-Kailali, ordering them to reinstate Ms. Pushpa Karki. However, in spite of the authority of the NIC, its order has not led to any action by the relevant local authorities. The DEO was eventually fined Rs. 5000.00 for not implementing the NIC decision and has appealed to the court.³⁵

³³ NEPAL: Recipe for impunity at work in Bardiya National Park, AHRC-STM-081-2010, May 20, 2010
URL: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/>

³⁴ National Dalit Commission website, URL: <http://www.ndc.gov.np/opensection.php?secid=423>

³⁵ NEPAL: Still no relief for the school teacher dismissed for defending the rights of her Dalit students, 5 October 2010, AHRC-UAU-040-2010, URL: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-040-2010/>

5. The right to food

Nepal is a land-locked country and can be divided into three geological areas; the mountainous Himalayan belt (including 8 of the 10 highest mountain peaks in the world), the hill region and the plains region. In the mountainous area, where the only 5% of the land is cultivatable people rely on livestock, collecting herbs and medical plants for food. In the hill region only 20% of the land is cultivatable and maize and potatoes are the major crops there. In the plains area, 41% of the land is used for cultivating food grain.

Nepal is one of the poorest countries in Asia and the fourteenth poorest in the world. The real GDP at producer prices grew by 4.7% according to the Economist Intelligence Unit in 2009. The failure of winter rains, followed by a light and erratic monsoon, slowed agricultural growth. Approximately 80% of the total population live in rural areas and are mostly engaged in agriculture, and more than 60 percent of the farmers are landless labourers. Those who suffer most from a lack of food are members of the lower caste community, or Dalits, indigenous people, the disabled, and some people infected by HIV/AIDS, who are the more marginalized and vulnerable social groups in terms of food security. They are identified as the being Below the Poverty Line (BPL) and are estimated to account for as much as 31% of the population.³⁶

About 6 million people, or 23% of Nepal's population, is undernourished. Fifty percent of children under the age of five are malnourished, whereas 49% have stunted growth and nearly 2% are severely malnourished. The World Global Hunger Index (GHI) 2010 has placed Nepal at 56, following India and Bangladesh in South Asia.

5.1 Key events in 2010

1. Domestic legal framework for right to food: It has proposed to include the right to food, as a fundamental right in the Constitution that is currently being drafted\.

2. Disasters affect food security: The government did not take effective action to assist the many persons affected by the flood (Laxmanpur Dam, Koshi Barrage, and Gandak barrage) as well as the farmers (Bara, Rautahat, Chitwan ,Jajarkot and Jhapa) whose crops failed as a result of the flood. Forty-three districts in Nepal face the problem of food deficiency every year. Among them Bajhang, Bajura Humla and Mugu districts – in the far north western area - suffer chronic hunger problems. This year, 138 deaths resulted from flooding and landslides, while 1600 families were displaced and 43 districts were badly affected during the monsoon season. About 40% of the population in the mountain and hill districts is faced by a severe

³⁶ UNDP, Human Development Report, 2006

food crisis. According to the Ministry of Agriculture and Cooperatives, 53% of the people living in the far western region suffer from acute hunger.

3. Food aid:³⁷ The World Food Programme planned to feed 1.6 million Nepalese persons, providing 45,000 metric tons of food to twenty-six food insecure districts under its protracted Relief and Rehabilitation Operation. The Nepal Food Corporation also distributed about 11,096 metric of rice. However, food aid from foreign agencies is not effectively reach the poor. The government of Nepal expected that more than 1.6 million people would face hunger in 2010 whereas food aid of 2010 was expected to distribute food to three million people.

5.2 Who is hungry?

The caste-based Hindu hierarchy and patriarchal societal values are strongly rooted in Nepal's economic and social structure, which causes systematic exclusion and marginalization of the majority of low caste communities and indigenous groups. The majority of natural resources, including forests, land, and water, belong to high caste groups. In addition, inadequate government policies and poor implementation of government programmes contribute to an increase in food insecurity among these groups.

The National Dalit Commission has listed 22 cultural groups under the category of Dalits. According to the 2001 census, the total Dalit population in the country is 2,973,871 (13 % of the total population of 23.2 million). The Central Development Region (CDR) has the highest Dalit population (800,151) followed by the Western Development Region (719,101).

According to the Laxmi Prasad Prasai, a member of the National Land Reform Commission, there are some 1.4 million people without land. Most of them are squatters, haliyas, freed kamaiyas (which are lower caste communities). 50% of Dalits country-wide are landless, including 92% of women, 15% of Dalits in the hill area, and 45% of Dalits in the plains area. They are more exposed to food insecurity as they are living below the poverty line.

The landless Gandarva Dalit community in Saharawi Village Development Community (VDC) has been living by the Mankhola river side in Vardiya district. The main occupation of around 43 households in this community living is playing Sarangi (a string instrument) and singing songs. As the utility of their traditional occupation is becoming extinct, the men in the community are compelled to migrate to India to seek employment whereas the women and the elderly are engaged in daily labour in the village. Some of the women have also had to migrate to India as illegal domestic workers. Furthermore, food insecurity in this community also forces children into very early marriages and are forced to migrate to India where

³⁷ For details on food aid, please visit <http://www.reliefweb.int/fts> (Table ref: R10), Compiled by OCHA on the basis of information provided by donors and appealing organizations

they become involved in child labour. The children who are left behind by parents who migrate to India suffer from health insecurity, including mental health problems.

In 1996, the National Land Reform Commission provided small pieces of land for them by the Mankhola river. However, the food they harvest from the land only lasts a month, after the two annual harvests from April to May and from November to December. One of the community members, Mr. Lok Bahadur Gandarva says that during raining season, the Mankhola River often overflows, damaging their crops.

Indigenous people are also vulnerable to food insecurity and are also discriminated against in Nepal. Water sources that supply the indigenous Kumal community in Pipaltar has been diverted to supply upper Bramin and Chhetri caste communities in adjacent villages, who developed irrigation facilities. As a result, Kumal community's harvest was drastically reduced, driving them into food insecurity and hunger. The indigenous groups find it difficult to raise the issue and make complaints with the government. They have received assistance from organisations such as Right to Food Network Dahding or FIAN Nepal, who have organized a joint meeting and made a complaint to the District Irrigation Department.

Women are more vulnerable than men to hunger in Nepal. According to local culture, they eat later than the men in the family and the amount of food available to them is determined by the amount left over by other family members. In rural areas, women have wide-ranging workloads including farming and house-work. A report commissioned by the National Women Commission revealed startling discrimination against women in terms of ownership of assets and properties. The report, which assessed the situation in 68 of 75 districts in Nepal, exposed the skewed nature of property distribution. It revealed that only 0.78% of houses were actually (legally) owned by women (about three women in 500 had houses in their names). Only 5.25% of women had land-ownership certificates in their name. Likewise, only 5.45% of women owned livestock. About 17% of women had some kind of assets in their name such as ornaments, jewellery, property, or land. Only 16% of women had a regular income. And, only 8% of the civil-service and private-sector workforce is made up of women.³⁸

Due to the low productivity of land and limited sources of income in Nepal, a large number of Nepalese persons are forced to migrate to seek employment, particularly to India. During migration, they are at a higher risk of being exposed to unsafe sexual activities and drugs resulting in increased levels of infection with HIV/AIDS. Since 2005, the number of such victims has been noticeably increasing. Approximately 70,000 people living with HIV/AIDS are facing chronic hunger in Nepal. Only 15,000 persons are officially recorded as being infected by the Ministry of Health, among them 4,000 are single women and 1,000 are children. Many of them are poor from Dalit communities, who are further socially and culturally isolated, even within their families and communities, due to their being infected with HIV/AIDS.

³⁸ National Women Commission Nepal 2008

Sexual diseases are relatively prevalent in the Dailekh District of Far Western region, where people practicing seasonal migration to India and are at heightened risk of being involved in unsafe sexual activities. HIV/AIDS and other sexual diseases are prevalent among them. After coming home, they transmit the diseases to their family members. To get medicine and food, the affected are forced to sell their land or other assets, and the widows they leave behind if they die face hunger and social discrimination.

The District Development Committee (DDC) in Achham formed a District level "HIV Victims Food Support Fund" funded under the DDC's budget in May 2009. This represents the first time that a local government in Nepal has created a policy ensuring to right to food for HIV Victims. This fund covers 75 VDCs in Achham district and was created following the intervention of human rights groups. The victims get around USD 6.5 per month in financial assistance. The Ministry of Health also distributes anti-retrovirus therapy (ART) medication free to persons with HIV/AIDS once they have registered with the District health Organization.

5.3 Food insecurity in Nepal's far western areas

The hunger situations in Humla district appeared in April after winter crops had been affected by long lasting droughts in the hilly areas of Nepal.³⁹ In Far-West Baitadi district, the villagers reportedly had to face acute food shortages during the year, notably the Dashain festival period. The northern region of the Baitadi district has been facing a food crisis for months, as the three depots of Nepal Food Corporation (NFC), the state-run food agency, at Darchula have run out of supplies. Food sold in the local markets is too expensive for people in this poverty-stricken region. Despite awareness of hunger and a lack of food in far western areas, the government has failed to provide sufficient food aid. The Nepal Food Corporation has reportedly delayed tender announcements and the government has been slow to approve the annual budget, which has resulted in these delays in aid. The Ministry of Agriculture and Cooperatives finds that the main causes of the hunger are irregular monsoons, poor irrigation facilities, unavailability of fertiliser in cultivation season, a shortage of hybrid seeds, settlements in cultivation areas and low investment in research and development.

³⁹ Interview with Dal Bahadur Rawal, a human rights defender working in Humla district

5.4 Government's response and loopholes in the food policy

The Nepal Food Corporation (NFC) was established in January 1974 with the aim of distributing food grains in emergencies such as floods, drought, heavy rain in order to prevent starvation. The distribution mechanism of the NFC is to collect grain from areas with a food surplus and donations by international agencies. The NFC is establishes depots in districts and villages to distribute this food.

However, the capacity of the NFC to supply food to remote districts is limited by high transportation costs, inadequate funds to purchase food and strict procurement rules. According the office of NFC, a buffer stock of 15,000 tons are reserved every year for domestic consumption, while 4,000 tons are for the South Asian Association for Regional Cooperation (SAARC) food bank, that could be distributed to any neighbouring country if a food crisis occurs there. The question must be raised as to why the government is concerned with food shortages in neighbouring countries when there is such a food shortage in Nepal. The Ministry of Commerce and Supply has directed the Nepal Food Corporation (NFC) to buy 25,000 metric tons of rice from India to reduce the impact of the food shortage, following which 50,000 metric tons of wheat and 25000 metric tons of rice were imported at market prices from India.

The government is being short-sighted in its distribution of food to remote areas, notably concerning the need to plan for emergencies. The corporation uses air routes to supply food to the mid western districts as there is no other means of transportation. It has to pay large amounts to transport and supply food via airways. Given the fact that the NFC delivered about 11,096 metric of rice this year, it must concentrate on building a transportation infrastructure as part of a long-term food delivery and emergency management policy.

The NFC's role is to distribute food during emergencies to vulnerable groups. However, this support often does not reach the remote areas due to poor management. According to the local human rights defenders, those living in remote areas have to spend three days to reach the headquarters to get food. The NFC is not distributing food to where it is most needed. The AHRC is aware of the difficulties posed by the remoteness of many areas of Nepal, but the NFC and government must do more to reach remote areas in times of grave food shortages. The NFC office's representative, Mr Nawa Raj Uppadhya, has explained that there are insufficient food stocks in the depots and the government has not allocated the budget to supply food through the NFC. However, the reality on the ground tells a different story. Muthura Kuwar, a social activist, claims that most of the food distribution by the NFC allegedly goes to public servants and well-off consumers in district headquarters, including the capital, Kathmandu.

Subsidized food grain distribution has depressed grain market prices for the local farmers and acted as a disincentive for higher food production. In addition, it is observed that distribution of subsidised rice by the government as well as foreign agencies is gradually changing local food culture towards a dependency for

subsidised rice, which is cheaper than locally produced traditional grain in Nepal's western region.

The Food and Agriculture Organisation of the United Nations (FAO) provided 103,111 farming households with essential seeds and fertilizers for the summer crop season in 2010. However, the distribution of the dead wheat seeds is likely to affect 37 Village Development Committee (VDC) of Baitadi District and there are concerns that this could lead to hunger there in the coming year.

Private companies are beginning to enter the agriculture sector in Nepal, which in the past was dominated by public institutions. Improved seeds and other fertility enhancement technologies produced by research institutes are now being brought in, but there is a risk that traditional skills, knowledge and practices may be lost as a result.

5.5 Domestic legal framework and policy

In the government's national Tenth Plan (2002-2007), a food nutrition security plan was included, which would be achieved through raising agricultural production and productivity, increasing incomes and reducing poverty. The National Agricultural Policy (2004) added various provisions for marginal and vulnerable groups that had less than half a hectare of land, as a way to improve food security. The government has established the National Food Security Steering Committee under the National Planning Commission and a Food Security Working Group (FSWG) in the Ministry of Agriculture and Cooperatives.

The High Level Scientific Land Reform Commission (HLSLR) announced that some 1.4 million landless people across the country require 421,770s hectares of land. The HLSLR came up with this prescription while presenting its report on Scientific Land Reform (SLR). According to the commission, there are some 492,851 hectares of land belonging to the government that are not being used productively that could be used to enable 1.4 million landless persons to have access to land and a livelihood. However the 2021 (Nepalese calendar) land use policy is still in use. To ensure food security for the majority of landless persons it is imperative that the government should implement the recommendations of the SLR.

The interim constitution (2006-2007) has recognized food sovereignty as a fundamental human right, which has been reflected in the Three Years Interim Plan (2007-2010) as food security for all citizens.

6. Conclusions and recommendations

2010 has not seen any positive evolution concerning human rights in Nepal. The focus has been on political debacles, which have blocked any efforts to strengthen the rule of law in Nepal. For there to be improvements to the human rights situation, the period of political bickering between political actors in Nepal needs to be replaced by a joint effort to strengthen the ability of the State to protect human rights and to tackle the issue of impunity. The AHRC recalls that the political parties were given their current mandate by Nepal's citizens following the country-wide popular protests in 2006. The people were demanding an end to the conflict and the repressive royal regime, which had seen widespread gross human rights violations including discrimination, disappearance and general insecurity and a lack of development. The people protested in favour of democracy, peace and human rights. The political parties have thus far failed to deliver on their promises to bring about a new Constitution and political era for the country, in which peace, democracy and human rights would flourish. The constitution-drafting process provides a historic opportunity for the country's various actors to participate in establishing a strong, democratic government with independent justice institutions, without which it will be impossible to establish the rule of law and primacy of rights in the country. Instead, the political parties have been pursuing their own narrow interests and shielding themselves and their allies from any form of accountability for past or present abuses. The AHRC therefore calls upon the political parties to desist from these fractious practices, as time is running out for the constitution-drafting process and the country is becoming more and more insecure and unstable as a result. The parties are urged to recall that they have been given a mandate by the people and therefore must engage to create a climate mutual trust that will permit the establishment of a State that is based upon sound democratic principles rather than persisting interests of the powerful few. The establishment of a truly democratic society will depend upon the ability of the state to put an end to the impunity, to guarantee the equal protection of the rights of the citizens and to establish a democratic environment that is free of fear.

All the political parties, groups and organizations, should therefore refrain from interfering with course of justice and from granting protection to human rights abusers. They must commit to fully respecting the freedom of the press and the freedom of expression, and publicly denounce and take appropriate action against members who do not abide by these requirements.

The Maoists, who have been the main political force in the country since the Constituent Assembly elections in 2008, with the largest number of seats in the body, have a corresponding responsibility to show leadership in the establishment of a democratic and peaceful Nepal. The AHRC therefore urges them to do their part to put an end to the impunity enjoyed by their cadres who have been responsible for human rights abuses. In order to enable this, the Maoists must live up to promises made as part of the Comprehensive Peace Accord and cooperate fully with

the police and the State's justice institutions. They must also ensure that the members of the Young Communist League abide by the law.

The Nepal Army is at a crossroad in its history, having to turn itself from an army operating in a country beset by internal armed conflict, into a democratic army that contributes to the establishment of a long-lasting peace. This democratisation process can only be accomplished provided the army proves its commitment to the protection of human rights and civilian oversight, by accepting to fully abide by civilian justice institutions' jurisdiction and decisions.

The police force also finds itself in a challenging position, as increasingly organized armed criminal groups are significantly increasing insecurity and therefore require a strong response by the institutions of the rule of law. However, the police must at all times guarantee the respect for human rights, as combating crime with crime will only create further instability and opposition to the State. The police must strictly act in accordance with international standards and stop resorting to the excessive use of force. The government must set up an independent system that is capable of carrying out effective investigations and prosecutions of all human rights violations attributable to State agents and groups working for them. This is an essential ingredient in any efforts to eliminate impunity.

1. Make public past reports by government commissions formed to investigate allegations of human rights violations and ensure the implementation of all of the recommendations produced by these mechanisms that remain relevant in the current context.
2. Establish an independent oversight mechanism to investigate all allegations of human rights abuses committed by the police and security forces, which has the capacity and resources to receive and act upon complaints made by members of the public. All custodial deaths, alleged encounter killings at the hands of the security forces and allegations of torture must be properly investigated as a priority.
3. Immediately enact appropriate legislation to establish an effective, independent and well-resourced witness protection system, capable of providing protection to victims and witnesses of crimes, including human rights violations attributable to State agents and members of other powerful and/or armed groups.
4. Investigate in a prompt, impartial and independent manner all allegations of intimidation, threats and attacks against victims, witnesses, lawyers and human rights defenders who are engaged in working to ensure justice and dismantle Nepal's entrenched system of impunity.
5. Ensure the timely implementation of all court decisions.
6. Enact the legislation establishing transitional justice mechanisms, in accordance with international human rights standards.
7. Strengthen the National Human Rights Commission by adopting regulations consistent with the Paris Principles and by implementing its recommendations.
8. Adopt without further delay a law criminalizing torture, in accordance with the dispositions of the interim constitution of Nepal and internationally accepted definitions of torture. The law should also allow the prosecution of those who have

allowed the act of torture to take place. The loopholes within the Torture Compensation Act should be removed, as should the 35-day limit for victims to file complaints. An independent and impartial body must be established, with effective powers and sufficient resources, in order to effectively investigate allegations of torture, as mentioned in recommendation number 2 above. At the judicial level, measures should be taken to ensure the protection of the victims of torture and of their witnesses, including the systematic transfer of detainees complaining of ill-treatment or torture to another place of detention within a limited period of time. Those who do not abide by court orders to provide torture victims with financial compensation or medical assistance should be subjected to prosecution.

9. Facilitate the access to justice of marginalized groups or communities. Complaints of caste-based discrimination must be given priority treatment and be properly investigated and prosecuted. Officers who are found to be intentionally negligent in dealing with such cases must be disciplined or discharged from duty. The National Dalit Commission should be strengthened to allow its effective intervention into reported cases of caste based discrimination.
10. Ensure the proper and immediate implementation of the Domestic Violence Act. Ensure that police officers are trained in dealing appropriately with gender-related issues and failure to act effectively in such cases must result in appropriate punishment. The National Women Commission should be strengthened to allow its effective intervention into reported cases of gender based violence.