

N E P A L

HUMAN RIGHTS ON HOLD AS POLITICAL INFIGHTING CONTINUES

1. Political turmoil and degrading security conditions

2009 was a year of political stalemate and mistrust in Nepal, which has inhibited the peace process and progress on the drafting of a new constitution for the country to guide it into the post-conflict era. Even coalition partners that form the government are sharply polarized along political lines and interests, and this seriously hampers the functioning of democratic politics of consensus and compromise. Brinkmanship politics has in this climate become increasingly common, further alienating the political actors from one another. Within this political impasse, impunity for past human rights violations has remained and the prevention of further violations has been difficult.

a. Symbolic events fuelling tensions and mistrust among the political actors

The signature of the peace agreement and the relatively quiet climate which surrounded the 2008 elections did not appease strong tensions among the political actors. This was made particularly clear in early May of 2009 when the former Maoist Prime Minister Pushpa Kumar Dahal (also known as Prachanda) resigned after President Dr. Ram Bharan Yadav annulled a cabinet decision to sack the Commander of the Army, General Katuwal whom Prachanda accused of defying the government's orders by reinstating eight Generals retired by the Maoist administration.

It remains unclear under the interim constitution whether the President actually has the power to annul such a decision.

This naturally developed into a hot issue, as the Maoists claimed that the President's annulment was made as a result of corrupt foreign influence, and that this constituted a distinct step away from establishing civilian supremacy of the Nepal Army (NA).

In the aftermath of this event, a movie clip of Prachanda recorded in January 2008 was circulated in the local media where he spoke of how the Maoist party had increased the number of its army personnel presented for registration and verification. He further

insinuated that some of the money allocated for the cantonments would be used for preparing a new armed struggle. Unsurprisingly, this exacerbated political mistrust even further.

During the remainder of 2009, the Maoists organised hundreds of strikes calling for civilian supremacy of the NA. These protests have effectively disrupted daily life, and have also frequently turned violent, resulting in clashes between protestors and security forces. On December 20 in Kathmandu, at the onset of a nationwide general strike, a violent clash between Maoist protestors and security forces led to 75 people being injured.

Those different events have cast doubts about the willingness of the political parties to effectively establish a long-term peace and respect the rules of the democratic game. The persisting tensions directly impacted the constitution drafting process.

b. The drafting of the constitution

The absence of good will and cooperation between the political parties had a negative impact on the work of the Constituent Assembly (CA). Parties from across the political spectrum on several occasions boycotted CA sessions, delaying the work on the drafting of the new constitution further.

The deadline for the promulgation of the constitution was set to May 28, 2010, however due to the various delays and interferences during 2009, most commentators are doubtful as to whether this deadline will be kept.

Speculations abound in the media about what could happen should the CA not manage to finish the draft for the new constitution by the given date, with a new Maoist uprising being portrayed as the most prominent threat.

The federalist structure

One of the toughest political challenges in contemporary Nepal is reaching a consensus on the sensitive issue of federalism. Since the amendment of the interim constitution in 2008, the term “federalism” has been constitutionally enshrined in the road map of Nepal’s future. However, most political parties have remained vague and undecided when it comes to actually deciding how such a federalist state should be structured. The Communist Party of Nepal – Maoist (CPN-M) has been the only political party with a clear-cut model for a federal republic of Nepal; one which they have argued should be based mainly on ethnicity.

In the midst of the frustration over the uncertainty of the federal structure, the Maoists

began a series of declarations of “autonomous federal states” on December 11. This was strongly criticized by the President and Prime Minister, along with several party leaders and the national media. The CPN-M dismissed the critique, arguing that the declarations had merely been “symbolic”.

As 2009 drew to an end the Committee on State Restructuring and Redistribution of Resources had yet to submit a concept paper on the federal structure of Nepal to the CA. However, a multitude of commentators are arguing that the likely outcome is a federation drawn along ethnic lines.

Should an ethnic federation become reality, the AHRC has serious concerns as this has proven a dangerous path for many post conflict societies elsewhere; risking national disintegration and increasing ethnic antagonism.

c. Discharging and rehabilitating Maoist army personnel

The Special Committee to Supervise, Integrate and Rehabilitate Maoist Army Personnel has not made significant progress during 2009, as there are still approximately 19'000 Maoist combatants being kept in cantonments at various sites around Nepal. This is an issue that has an extremely high political standing in the country, and hence one that is imperative to solve in order for the peace process to move forward.

Significant progress has however been made with regard to the discharge of the Disqualified Maoist Combatants (DMCs). The DCMs were verified as ineligible to be integrated into the Nepali security forces by the United Nations Mission in Nepal (UNMIN) in 2007. Some 4'008 DMCs were disqualified due to either being minors, or otherwise having been recruited to the Maoist forces after the signing of the Comprehensive Peace Agreement (CPA).

In November 2009, the CPN-M (Maoist) finally announced that they would proceed with the discharge of these DMCs from their cantonments. On December 16 this announcement was confirmed by the signing of an action plan by the Government, the CPN-M and the UN Country Team for the discharge of the DMCs.

The actual discharge began on January 7, 2010 and was subsequently finished on February 8, 2010. By then, approximately 40 per cent of the 4'008 DMCs had already left the cantonments on their own accord, mainly due to disappointment and frustration with the discharge process. For many of the DMCs, the disappointment stems from being deemed “disqualified” combatants, even though they have fought for the Maoists just like the other “qualified” combatants.

Upon discharge the DMCs are vulnerable to recruitment by paramilitary or criminal groups. In order to prevent this, various UN agencies have developed a rehabilitation package that DMCs are eligible to claim within a year following their discharge from the cantonments. The rehabilitation package includes the options of vocational training; formal education; health education training, or support for a small business initiative.

However, not all DMCs are positive with regard to the rehabilitation packages. Many of them have argued that this is a humiliating option for them, as they joined the People's Liberation Army (PLA) in order to liberate their country from oppression, not to end up making handicraft items supported by UN money.

d. The deterioration of security and proliferation of armed groups

The proliferation of criminal armed groups has increased steadily in Nepal's southern plains region, known as the Terai, during recent years. The main *raison d'être* of these groups is the smuggling of various commodities and arms, feeding on political and ethnic discontent in the districts, as well as on the lack of security in the villages.

The proliferation of such groups has led to a steep increase in criminal activities in the districts, resulting in daily reports of abductions, rapes, killings, explosions of improvised explosive devices (IEDs), et cetera. Naturally, this has had a highly disruptive effect on everyday life in the Terai.

On July 31, 2009 the Nepal Home Minister Bhim Raval announced publicly that there are currently 109 armed groups in Nepal, and further stated that most of those are purely criminal elements. He claimed that this constitutes a "security nightmare" which should be dealt with sternly, by the introduction of a Special Security Plan (SSP).

The announcement by the Home Minister was based on a report produced by the Home Ministry in April 2009, entitled "Categorization of armed groups and suggestion on talks" in which the armed groups are categorised as political, religious, political criminal, religious criminal and purely criminal. The conclusion of the report is that the vast majority of the armed groups, 70 out of 109, are purely criminal.

Following the mapping of these criminal groups, the government commenced the implementation of the SSP, which increased the strength of the Nepal Police (NP) and the Armed Police Force (APF) by a total of 16'000 new recruits in the Terai and the mid-western hills, with the aim of curbing crime and disruptive activities, such as highway blockades.

2. The absence of a system successfully protecting human rights

In this report, several types of human rights violations will be presented. In only a few cases did the police actually fulfil its duties to receive a complaint, investigate a case, gave protection to the victims and prosecuted the perpetrators. When the victims do not possess enough resources to convince police officers to defend their cases they are unlikely to be allowed even to file their complaint.

a. Governmental inability and unwillingness to pass appropriate legislation

The government's weakness and instability has led to its failure to adopt proper legislation and fill the gaps in the legal system that allow many grave human rights violations to go unpunished. Several laws such as the State Cases Act, Army Act, Police Act, Evidence Act, Commission of Inquiry Act or the Public Security Act prevent the effective investigation of past human rights violations and have not been amended despite the commitment expressed during the signature of the Comprehensive Peace Agreement to bring perpetrators of human rights violations to justice.

The Comprehensive Peace Agreement also made provisions for the formation of a high level Truth and Reconciliation Commission 'to conduct investigations into those who were involved in gross violation of human rights at the time of the conflict and those who committed crimes against humanity'. Nevertheless, at the time of writing, some three years after the peace agreement, this commission still had to be established and provisions made for it in the agreement were used as an excuse for the police to refuse to file cases of conflict-related human rights violations on the basis that it fell under the jurisdiction of the TRC.

At the time of writing, the stalemate regarding a bill on enforced disappearances reflects how the mistrust between the political forces in the country, further aggravated by the lack of strong institutions to frame policy, have hampered the implementation of measures necessary for the establishment of the peace process and the realisation of human rights in the country, especially those included in the Comprehensive Peace Agreement. The Interim Constitution of Nepal mandates the government to 'provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict.' In October 2008, a bill on Enforced Disappearances (Charge and Punishment) Act 2008 was drafted,¹ and it was welcomed as a positive step toward accountability for the crime of enforced disappearance, but it also received criticism

¹ Major work of Advocacy Forum on the issue of disappearance, Advocacy Forum website, URL: <http://www.advocacy-forum.org/departments/human-rights-documentation-and-monitoring-department/index.php>

concerning the reparations or punishments included within it were falling short of international standards and as it failed to qualify systematic disappearances as a crime against humanity.² To ensure the adoption of the bill, the Maoist-led government pushed it through in an ordinance in an attempt to short-circuit the democratic process, since it avoided public and legislative debate as well as consultations with the National Human Rights Commission and national human rights NGOs³.

The Person Disappearance (Crime and Punishment) Ordinance – 2009 was eventually promulgated on February 10, 2009. Following international and internal criticism regarding both the content of the ordinance and the way it was adopted, in April 2009 the government submitted to the parliament a substitute bill in which the maximum penalty applicable for crimes of enforced disappearances was increased.⁴ Nevertheless, even with those changes, the bill is still not up to the international standards and it was denounced in a joint memorandum submitted by major international and national human rights NGOs at the end of August,⁵ which aimed at drawing the government's attention to the adjustments which would be necessary. These included the definition of systematic disappearances as a crime against humanity, the clear definition of the chain of responsibility in the crime of disappearances, measures to protect the rights of the victims and the witnesses, etc. An upgraded version of the bill was finally approved by the council of minister and sent to the Parliament in November, nevertheless the OHCHR in its latest report⁶ regrets that the definition of disappearances as a crime against humanity was still not included in the bill and that the bill kept a restrictive 6-month limitation to file a case of enforced disappearances. At the time of writing, the first ordinance had never been implemented and it remained uncertain whether the latest draft would be adopted and the Commission on Enforced Disappearances be effectively adopted.

Similarly, the government has failed to adopt legislation criminalizing acts of torture or of

2 *Major work of Advocacy Forum on the issue of disappearance, Advocacy Forum website, URL: <http://www.advocacyforum.org/departments/human-rights-documentation-and-monitoring-department/index.php> and Nepal rights groups raise issue of 'enforced disappearances, One World South Asia, 11 December 2008, URL: <http://southasia.oneworld.net/todaysheadlines/rights-groups-raise-issue-of-enforced-disappearances>*

3 *Nepal issues controversial forced disappearance ordinance, Deutsche Presse-Agentur, 6 February 2009*

4 *OHCHR-Nepal encourages disappearance law consistent with international standards, United Nations Office of the High Commissioner for Human Rights, 25 April 2009, available at: http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202009/April%202009/2009_04_25_Disappearance_Bill_E.pdf*

5 *Nepal: Joint Memorandum on the Disappearances of Persons (Crime and Punishment) Bill by Accountability Watch Committee, Advocacy Forum, INSEC, Amnesty International, the Asian Federation against Involuntary Disappearances, Human Rights Watch, International Center for Transitional Justice, International Commission of Jurists, 30 August 2009. Available at: http://www.amnestynepal.org/content/download/20090823/Nepal_DisCom_joint_memo%5BFINAL%5D.pdf*

6 *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, A/HRC/13/73, 5 February 2010, available at: http://nepal.ohchr.org/en/resources/Documents/English/reports/HRC/2010_HRC_Report_E.pdf*

caste-based violence. In this context, the difficulties faced by the Constituent Assembly to draft a new constitution are likely to further compound this problem, as these will further delay the process of creating such legislation.

b. General weakness of the state institutions

The weaknesses of state institutions are further aggravated by the incapacity of the institutions to implement already existing laws, in particular, the inability of the justice delivery institutions to provide justice to ordinary Nepali citizens. The 10-year-long conflict has inflicted long-term damage on the justice institutions, which are now plagued by corruption and unable to have effective jurisdiction over large parts of the country. This results in a situation in which human rights violations can be perpetrated with impunity.

Those living in the remote rural and mountainous areas of the country face significant difficulties in accessing the justice-delivery institutions - as only 75 District Courts are operating in the country they may be required to travel for 2-3 days to file a case and to come back for the hearings, at their own expense. Village Development Committees also have limited judicial powers to settle petty disputes. Nevertheless, following threats from the Maoists and other armed groups during and after the conflict, most of the VDCs' secretaries have fled the villages and settled in urban areas. Moreover, state institutions at the local level were also under physical attack during the conflict with destruction of infrastructure post-conflict redevelopment of the judicial system difficult.

Therefore, a majority of Nepali citizens only have limited access to justice institutions very limited hope of their case being successfully handled, due to rampant corruption and high inefficiency in the system, which results in tens of thousands of cases being backlogged at one level or another of the judicial system and in obstacles to the enjoyment of the right to due process.

Judicial institutions have seen their independence limited further since the peace agreement through frequent political interference. This prevents lawyers, judges and police officers from conducting their working properly. In April 2009, for example, Young Communist Leagues cadres in Surkhet district physically interrupted a court hearing to demand a rigorous sentence for the accused and locked his lawyer, Mr. Nanda Ram Bhandari, in his chamber. Worryingly, the police refused to file any case against those who had hampered the trial.

Such practices have degraded the system to such an extent that it is now the general public who interfere within the process of justice. In 2009, the lawyer defending a person accused of having murdered a young girl - Khyati Shrestha - saw his house surrounded by

crowds of ordinary citizens pressuring him not to take up the case.

A crippled police system further adds to the difficulties faced by victims of human rights violations who are seeking redress and protection. Inadequate financial and human resources allocated to this system and a lack of checks and balances, which would allow police officers to be held accountable for human rights violations and abuses of power and authority, have prevented the police system from ensuring the protection of the rights of citizens, as will be seen in particular in the section on torture below.

The malfunctioning criminal justice system creates several levels of discrimination and inequality. Those from the poorest and most vulnerable sections of society, including women, Dalits and indigenous people, are less likely to achieve justice, while those with resources and connections are likely to see their case successfully handled. Furthermore, among the perpetrators, those who have enough money or receive enough support from influential individuals or organisations and institutions, such as the army, the Maoists or the political parties are likely to not be prosecuted, while those without such support are likely to be severely sanctioned and are vulnerable to ill-treatment or worse by the police during interrogation and detention.

c. Continuing impunity of human rights violations

In the context of weak institutions and improper legislation, impunity for both conflict-related and post-conflict human rights violations remain a major problem. At the time of writing, not a single perpetrator of grave human rights violations committed during the conflict had been brought to justice.

In its annual report to the Human Rights Council, the head of the OHCHR-Nepal stated that ‘Despite the public and private made commitments by the Government, including those made by the Prime Minister before the General Assembly in September 2009, there has been no substantial progress in addressing impunity for conflict or post-conflict human rights violations and abuses. Both the Nepalese Army and UCPN-M continue to resist attempts to hold their personnel accountable for human rights violations and abuses and to withhold cooperation from civilian authorities responsible for investigating these cases.’⁷

The lack of progress in the prosecution of those responsible for the death of Maina Sunuwar is a telling example of the obstacles encountered in the fight for the

⁷ *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, A/HRC/13/73, 5 February 2010, available at: http://nepal.obchcr.org/en/resources/Documents/English/reports/HC/2010_HRC_Report_E.pdf*

accountability of conflict-related violations. Four military officers are accused of having illegally arrested, raped and tortured this 15-year-old girl to death on 17 February 2004. Maina's mother, with support from local NGO Advocacy Forum, has been constantly fighting for a legitimate and impartial investigation, to determine the exact circumstances of her daughter's death and see the perpetrators properly prosecuted. This case has been presented in detail in several recent AHRC annual reports.

They have faced frequent obstacles and opposition from army officers and the police who first refused to file the case because it concerned the military. The attitude of the military extended beyond a simple lack of cooperation, involving the obstruction of the inquiry and denial of Maina's initial arrest, the threatening of witnesses and the fabrication of allegations about how she had been killed, among other ploys. On 8 September 2005, following the recommendations of a Military Court of Inquiry, a Martial Court held that three military personnel were guilty of not having observed the proper procedures in a non-transparent trial which was challenged by Maina's mother supported by human rights NGOs.

Due to mounting national and international pressure – including the direct involvement of the head of the OHCHR office in Kathmandu – on September 18, 2007 the Supreme Court ordered the authorities to carry out the investigations within three months and prosecute the offenders. A case was subsequently filed against four military officers, Major Niranjana Basnet, Colonel Bobby Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun on January 31, 2008.

Nevertheless by that time, all of them had been promoted. In a statement on September 13, 2009 the District Court of Kavre ordered the Nepal Army Headquarters to immediately proceed with the suspension of Major Basnet and to submit all the files containing the statement of the people interviewed by the Military Court of Inquiry. Major Basnet was eventually repatriated from Chad on 12 December 2009, giving rise to hopes that he would be prosecuted, which would symbolically mark the end of the area of impunity for human rights violators in Nepal.

However, at the time of writing at the end of 2009, no further progress has been made in the prosecution of the perpetrators. Upon his arrival at the Tribhuvan International Airport the military police arrested Major Niranjana Basnet, committing to his presentation before the court the next day. This has not happened and Major Basnet, though under house custody, has not been prosecuted yet. More worryingly, the Defense Minister at that time Bidya Devi Bhandari publicly said that she would not allow the prosecution of Major Basnet arguing that he had already been brought before a Military Court, and that the constitution guarantees against double jeopardy.

Similarly, the file held by the Military Court which contains evidence that military officers tried to cover up this case, has not been presented before the court yet, raising concerns that the army might interfere again with the judicial process to prevent their personnel from being prosecuted by a civilian court.

Through this infamous case, it is possible to observe how impunity persists in Nepal. State institutions have shown that they are unable to prosecute members of certain organised groups and members of institutions. The police in this case considered that filing a case against army personnel did not fall under its jurisdiction. Furthermore, impunity prevails as the justice delivery institutions are unable to have the army respect district court orders. The country counts a number of organised groups that at present remain above and beyond the reach of the law and justice: the Nepal Army, the Maoists, and the political parties. These are resisting any attempts to hold their members accountable for their acts and are willing to resort to all means to ensure cases of human rights violations by their personnel do not result in prosecutions or convictions. The political turmoil in Nepal further strengthens divisions and the perception that attempts to prosecute human rights violators committed by the various groups is a direct attack on them which is being made by their adversaries.

The continuing impunity has seriously hampered the credibility of the state institutions and fosters resentments that threaten the peace process. It also sends the message that rights violations will go unpunished, which encourages further abuses.

3. Ongoing violations of civil and political rights

a. The worrying pattern of extra-judicial killings in the Terai.

While the security forces have been engaged in curbing crime and disruptive activities in the Terai region of Nepal, this has been accompanied by a worrying number of documented cases of extra-judicial killings by security forces in 2009.

Between February and October 2009, Nepali NGO Advocacy Forum (AF) documented 12 cases of extra-judicial killings in the Terai by the Nepal Police and the Armed Police Forces. The killings occurred in Banke, Dhanusha, Siraha, Saptari and Rupandehi districts. In total 15 people were killed and another eight were injured in these incidents.

The incidents were presented to the public and the media as being “encounters”, which implies mutual violence, such as for example, an exchange of fire between State agents and armed criminals. However, not a single member of the security forces were injured or killed during these supposed “encounters”.

Witnesses to the incidents have instead claimed that they resembled outright executions, frequently describing victims being taken away with their hands tied and subsequently shot. Evidence suggests that these cases should be categorized as extra-judicial killings, rather than “encounters”. Such justifications are witnessed in many countries in Asia to attempt to cover up extra-judicial killings by the authorities.

b. The ongoing fight against torture

Despite the signing of the Comprehensive Peace Agreement (CPA) in 2006, the use of torture remains endemic in Nepal. Since 2006, the Nepal Army and the Armed Police Forces have stopped taking people into custody, which accounts for a decrease in the use of torture. However, the use of torture by the police remains high: approximately 20 per cent of the nation’s detainees still report that they have been subjected to torture at some point during their period of detention. In some districts of the Terai, notably Dhanusha, Bardiya and Banke, in which armed groups are becoming more active, approximately 30 per cent of detainees reported that they had been subjected to torture, as of October 2009. The most radical increase with regards to torture in these districts was between July and October 2009, taking place after the implementation of the Special Security Plan (SSP).

The widespread use of torture by the police across the whole country reveals how the criminal justice system has become so flawed that it is now in the incapacity to provide protection to citizens and on the contrary may even increase their vulnerability.

The case of Sushan Limbu and Bhakta Rai who were arrested, publicly humiliated and badly beaten in front of a crowd by the police in Morang District on 12 July 2009 illustrates this point. The police then tried to arrange a cover-up by writing the medical report of the victims themselves and having the doctor sign it, by forcing the witnesses to delete video footage of the public beating and by threatening the human rights defenders who took on the case. Both victims were produced before a Chief District Officer on July 28. Bhakta Rai was released on bail while Sushan Limbu was charged under the Arms and Ammunition Act under which the CDO has the power to sentence people to up to seven years’ imprisonment after hearings. The CDO’s decision appeared to have been prepared in advance and did not take into account the lawyers’ arguments or objections. At the time of writing Sushan Limbu was still awaiting trial.

The police also denied Limbu’s right to medical treatment by delaying his admission to hospital to receive surgery to a finger, overlooking the doctor’s advice.

The victims were intimidated into not seeking legal remedies. After Baktha Rai was released on bail, Sushan Limbu allegedly received threatening calls claiming that he

would not be released on bail because he had told human rights activists about the police abuse. Local civilians have reportedly threatened Limbu's elder brother in relation to the case. On 2 August 2009 Baktha Rai managed to overcome police refusals to register his complaint and to file a case under the Torture Compensation Act. However he cut contact with human rights organizations shortly after, raising concerns that he may have received similar threats. He did not attend the court hearing regarding his case and the Morang District Court dismissed his application on 13 September.

This case reveals that, despite claims by politicians that they are combating torture, real political will necessary to address this issue and to hold the police accountable is still lacking. After the case was disclosed to the public the Home Ministry agreed to form an investigation committee whose only outcome was the issuance of an administrative warning to four police officers. Inspector Chakra Basnet - who is said to have ordered the beatings – has not been removed from his duties and at the time of writing at the end of 2009 was still serving in the same police station.

Article 26 of the Interim Constitution of Nepal states that torture should be punishable by law. Nevertheless, there was still no law criminalizing torture in Nepal as of the end of 2009. The emphasis is put on compensation for acts of torture, in order to elude the need for criminal sanctions against the perpetrators. Nevertheless, since the implementation of the Torture Compensation Act, 1996, 200 compensation cases were filed by victims of torture and their families. In only seven cases has the money actually been paid to the victims.⁸ Moreover the act has instituted a 35 days limitation for victims to seek compensation which has prevented many victims from accessing this remedy.

In its 2009 follow-up report, the UN Special Rapporteur on torture expressed 'concern regarding reports that suggest that torture allegations continue to frequently not be properly investigated and that perpetrators are not prosecuted or punished.'⁹ Since no mechanisms have been designed to provide assistance and protection to the victims of torture and other human rights abuses who are seeking redress, the victims are often unable to effectively seek remedies and vulnerable to threats and pressure.

8 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak- Addendum Follow-up to the recommendations made by the special Rapporteur, A/HRC/10/44/Add.5*, 17 February 2009 available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/10/44/Add.5&Lang=E>

9 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak- Addendum Follow-up to the recommendations made by the special Rapporteur, A/HRC/10/44/Add.5*, 17 February 2009 available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/10/44/Add.5&Lang=E>

2009 also showed that some dispositions incorporated in the Constitution providing guarantees against illegal arrest and detention, such as the obligation to be presented before a judge within 24 hours after arrest, are not respected. Richard Bennett, head of the Office of the High Commissioner for Human Rights in Kathmandu stated that ‘The lack of proper registration and production before a court has resulted in persons being kept in illegal detention for periods from several days up to several weeks.’¹⁰

Police investigations rely mostly on extracting confessions from suspects or witnesses. Since judges do not systematically test the voluntary nature of a confession, confessions extracted under torture may be admitted as evidence, which reinforces the use of torture as a routine way of conducting investigations.

Recommendations concerning torture in Nepal:

1. The adoption of a law criminalizing torture is required to provide a legal framework under which perpetrators of torture can be prosecuted. Torture should be defined according to accepted international standards and be prohibited in all circumstances. Complicity of torture should also be made punishable. The law should also make provisions for the establishment of an independent and impartial body in charge of conducting investigations into allegations of torture. It has been seen that the investigation of police torture was taken care of by police officers belonging to the police station in which the act of torture had been alleged: such a situation must be avoided by all means since it creates a direct conflict of interest.
2. Measures should be taken to ensure the protection of victims of torture and 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.
3. Judges and doctors should be reminded of their crucial role in the prevention of torture and of their duty to systematically ask the detainees about any torture and ill-treatment to which they may have been subjected.
4. Human and financial resources need to be invested in the criminal justice system to encourage police officers to use other methods of investigation than confessions.
5. Article 116 of the Interim Constitution mandates that court orders are to be binding to all, therefore, measures must be taken to ensure the sanctioning of those who do not abide by court orders, including for financial compensation or medical treatment to torture victims.

¹⁰ Interview of Richard Bennett by Pratibedan Baidya, INSEC, 2 July 2009, URL: <http://www.inseconline.org/index.php?type=interviews&id=3&lang=en>

c. Attacks against journalist endangered freedom of expression

Reports by international and national organisations of journalists suggest that frequent attacks and threats against journalists by Nepalese armed groups and political parties continued to curtail freedom of expression and the freedom of the press in Nepal in 2009. News reports critical of any of these groups were often followed by threats. While the government has claimed to be upholding the freedom of expression and freedom of the press, it has shown itself to be unable and unwilling to protect these fundamental freedoms that underpin a healthy democracy. The attacks have concerned both national and local media as well as individual journalists and have been conducted by members of political parties, of armed groups and sometimes by police officers themselves.

One of the cases which attracted the most attention concerned the murder of Uma Singh, a 22 year old journalist, after she had published an article in the monthly magazine *Nepali Sarokar* regarding war-time Maoist land seizures in the Terai. On January 11, 2009, it is reported that 15 men with knives entered her apartment and stabbed her to death. During the course of the investigation the police are said to have overlooked her profession as a possible motive for her murder and five persons were arrested and accused of killing her over a property issue. At the end of 2009, the circumstances surrounding her death remained unresolved. International Media Freedom concluded that her work was a major cause in her death and reported that the victim's colleagues had mentioned that two Maoist cadres linked to the abuses Singh had denounced fled the country after her murder. Moreover, one of the ethnic-Madhesi armed groups operating in the Terai region claimed to have killed the journalist. The Committee to protect journalists argued that the murder seriously affected the work of the press in the region and that in the following months several journalists left the region out of fear.¹¹

Politicians are also involved in cases of reprisals against journalist after the undesired publishing of information. Reporters Sans Frontieres has mentioned the case of Baidyanath Yadav who was attacked by supporters of the Education Minister after he had revealed information that embarrassed the minister.¹²

Often, media were attacked not only to prevent the publishing of information but also to serve a political goal of the concerned organisation.

11 *Attacks on the Press 2009: Nepal, Committee to Protect Journalists, 16 February 2010, URL: <http://www.cpj.org/2010/02/attacks-on-the-press-2009-nepal.php>*

12 *Are political activists, especially Maoists, disregarding press freedom pledges?, Reporters Sans Frontieres, 12 June 2009, URL: <http://en.rsf.org/nepal-are-political-activists-especially-12-06-2009,33392.html>*

On August 23, in Saptari District, members of the Madhes Tarai Forum intercepted a vehicle belonging to Kantipur Publications and seized 15,000 copies of three Nepali-language newspapers and subsequently burned them. The head of the Madhes Tarai Forum who had fought to make Hindi adopted as the official language in the Terai claimed responsibility for this burning.¹³

Generally speaking, the authorities' inaction allows the persistence of this harassment, the fact that some of the main political forces in the country have been behind attacks against the press casts doubts about their real ability and will to promote the freedom of expression.

The impeded justice system has failed to provide protection to the journalists that have become the victims of attacks. When those behind the attacks belong to powerful forces, the police are afraid of potential retaliation and do little to investigate the case, as was shown in Uma Singh's murder. In some cases it has been reported that the police themselves threatened journalists who were reporting cases of corruption or police torture. CPJ reports that Sanjaya Saha, the editor of daily newspaper Janapratibimba, was threatened by the police after he had published information regarding a case of bribetaking in the country.¹⁴

Cases of murders and attacks against journalists are not being investigated. In February an International Media Mission¹⁵ conducted a field visit to Nepal to assess the situation of press freedom in the country and concluded that 'the authorities are failing in their duty to prevent, punish and redress the harm caused by such attacks' since 'not one person has been convicted for a criminal act against journalists and media houses'¹⁶. Unsurprisingly the Committee to Protect Journalists ranks Nepal 8th in its Impunity Index which lists 14 nations in which murders of journalists go un-investigated and unpunished.

Instead of making the protection of freedom of the press a priority for the future of Nepalese democracy, the government has instead adopted measures which would further hamper the work of the media. In October 2009, news reports revealed that the

13 *Increase in physical attacks on journalists and news media in August*, Reporters Sans Frontieres, 27 August 2009, URL: <http://en.rsf.org/nepal-increase-in-physical-attacks-on-27-08-2009,34316.html>

14 *Attacks on the Press 2009: Nepal*, Committee to Protect Journalists, 16 February 2010, URL: <http://www.cpj.org/2010/02/attacks-on-the-press-2009-nepal.php>

15 *The International Mission comprised representatives of ARTICLE 19, the International Federation of Journalists (IFJ), International Media Support (IMS), the International Press Institute (IPI), Reporters Without Borders (RSF), UNESCO and the World Press Freedom Committee (WPFC).*

16 *Joint Statement, International Press Freedom and Freedom of Expression Mission: Rapid Response Assessment Mission to Nepal*, 8 February 2009, URL: http://www.i-m-s.dk/files/publications/Nepal%20Mission%20Statement%20_8%20Feb%2009_%20Final%20ENG.pdf

government was planning to use journalists as informants as part of the SSP. The plan was that the journalists would be paid by the government to share information on their news sources and to gather information about the activities of the opposition.¹⁷ Local and international federations of journalists immediately condemned the plan and asked for its non-implementation on the ground that it would put the journalists at even further risks of attacks and be a clear infringement of their independence.¹⁸

Article 12-3 of the 2007 Interim Constitution of Nepal guarantees the right to freedom of opinion and expression and its article 15 specifically aims at preventing any censorship of the media. The Committee to Protect Journalists recalls that in December 2008, Maoist leaders signed a 10-point agreement to address the lawless situation in which they included a clause to create a governmental bureau to investigate press freedom violations.¹⁹ A year later, this bureau has still not been established and as the repeated attacks on journalists show, the Maoists have not taken steps to suppress violations of press freedom.

Although legislative provisions are necessary to guarantee freedom of the press and freedom of expression, their implementation in reality will make this effective in practice. The protection of the freedom of the press in Nepal is therefore tightly linked to the reestablishment of the rule of law and to the strengthening of the criminal justice institutions to guarantee accountability for attacks against journalists.

4. Economic, Social and Cultural Rights

a. The right to be free from discrimination: the prevalence of caste-based discrimination in every sphere of life in Nepal

Discrimination against Dalits was outlawed in the 1960s in Nepal, but the tradition of caste-based discrimination and “untouchability” survives, particularly in rural areas. According to official estimates, Dalits comprise 13 percent of the population, but other estimates put this figure closer to 20 percent. Although Nepali laws clearly say that caste discrimination and racist behaviour are punishable, few measures have been taken to guarantee the effective implementation of this. Often, the police refuse to file cases of

17 *Nepal's journalists to double as informants?*, By Bhumika Ghimire in *UPI Asia*, 2 November 2009, URL: http://www.associatedcontent.com/article/2383240/nepals_journalists_to_double_as_informants.html?cat=9

18 *Nepal: Government Putting Journalists at Risk*, Press Release by Freedom Forum, Article 19 and Federation of Nepalis Journalists, 12 October 2009, URL: <http://www.article19.org/pdfs/press/nepal-government-putting-journalists-at-risk.pdf>

19 *Attacks on the Press 2009: Nepal*, Committee to Protect Journalists, 16 February 2010, URL: <http://www.cpj.org/2010/02/attacks-on-the-press-2009-nepal.php>

discrimination or violence against Dalits and to offer protection to the victims.

Society's reaction to inter-caste marriages reveals how the deeply entrenched the concept of caste remains in the mindset of the rural society. Marrying outside of peoples' caste challenges the orthodox concept of untouchability. In 95% of the inter-caste marriage cases, the couple and the family members of the Dalit partner had to flee from their places of domicile.

Four types of repercussions have been witnessed concerning cases of inter-caste marriage:

- ❖ *Harassment*: Inter-caste couples face violence and harassment from their community including social ostracism, economic hardship, exclusion from religious and cultural events, and often end up living in isolation from friends and neighbours;
- ❖ *Forced separation*: Parents of the non-Dalit often try to intervene to prevent inter-caste relationships. Some even go as far as to forcibly separate their child from a Dalit partner;
- ❖ *Institutional discrimination*: Inter-caste couples face discrimination from the authorities and officials. Dalits, inter-caste couples, and their children are regularly denied citizenship, even though they were born in Nepal. Without citizenship, they are unable to vote or move to another village and the children will not be able to register for school.
- ❖ *Displacement*: Inter-caste couples are also often forced to leave their villages and even flee the country;

The Asian Human Rights Commission has been informed throughout 2009 by Nepali NGO, the Jagaran Media Center, which works specifically on cases of discrimination against Dalits. It reported 21 cases of inter-caste marriage in 2009 in which violent action was taken against the couple. After the insurgency, numerous mixed couples got married, but in most of the cases the marriage did not resist pressures arising from the impossibility to be accepted by the society. Those who suffer the most from this situation are Dalit women because the break up deprives them of any means of subsistence.

In Dailekh District, Amir B.K. who had married a non-Dalit woman, Sabita Shahi, was forced to pay a fine of NRs. 60,000 (USD 820), and beaten up by neighbours and relatives of his bride. They forcibly removed Sabita and tried to murder the groom, who is now reported missing following his attempt to escape the attack by running down a cliff. Unsurprisingly, there is no report of any police rescue team reaching the village.

The local government and police can do much to encourage inter-caste marriage by protecting inter-caste couples, providing education allowances, and guaranteeing

employment. Right to inter-caste marriage should be explicitly protected in Nepal's new constitution. To encourage inter-caste marriage, the Nepalese government announced on 13 July 2009 that it will provide a grant of 100,000 rupees (approx. USD 1300) to the newly married couple within 30 days of marriage registration. Though this issue has been highly debated in the Dalit community and it has its own drawbacks, it could be hoped that this benefit would help couples who are isolated within their community and who suffer from economic hardship or forceful displacements.

Inter-caste marriage is used as a pretext to evict Dalits. In several cases, Dalits have had to leave their village because they are seen as having challenged the traditional law of society by marrying a non-Dalit, touching water and pots in local taps or not helping non-Dalits in their land and at their home.

The AHRC has been informed of seven cases of displacement in 2009. In most of the cases, negligence by the local authorities worsened the situation of the victims.

Dalits are also being denied access to Hindu temples. In 2009, JMC received 10 cases of discrimination in temples in which they were beaten whenever they tried to enter local temples, notably during Hindu festivals.

Dalit women in Bhimdutta Municipality-8 of Kanchanpur district who entered a local temple to celebrate the Teej festival (a festival where women wear red dresses and fast in order to get good husbands, if unmarried, or long lives of their husbands when married) were reportedly beaten by the non-Dalits. The women said that a group of non-Dalits including Karan Bhatta and Surendra Kunawar verbally abused and beat them, saying that Dalits were not allowed to enter the temple.

Schools remain places in which caste-based discrimination is the strongest. Dalit students are commonly being discriminated against by their classmates, other non-Dalit students and even by their non-Dalit teachers. Dalit students are asked to sit separately and are denied access and participation in the social events organized at the schools.

A non-Dalit school teacher, Pushpa Karki, lost her job when she objected to the discriminatory practices in the Shree Saraswati Lower Secondary School which counts 90% Dalit students. According to Jagaran Media Center, Dalit students had to use separate equipment and facilities, including taps for drinking water. Teachers allegedly avoid touching the papers of Dalit students and low grades tend to be assigned without much regard for the content of the work. Dalit students there have also been banned from the cooking classes, which are needed for the home science course.

Pushpa Karki's protests were allegedly rejected by the school's mostly non-Dalit management as 'popularity seeking' among an 'undeserving' class. She was also told that like her Dalit students, she would be prohibited from touching the statue of Saraswati, the Hindu goddess of knowledge due to her close association with them.

Pushpa eventually told the local media about the discrimination at the school in August. Summoned to a school meeting, she was then allegedly threatened and physically pushed around in the meeting hall. She was accused of having sought cheap publicity at the expense of the school, of becoming a spokesperson for an undeserving class, and was threatened with dire consequences unless she changed her tone. It should be noted that Ganesh Parki, the chairman of the school's management is a Dalit, however this has not helped Pushpa's case.

The teacher was transferred to Narayan Secondary School in the same district, but says that she was dismissed soon after, having been prevented from signing the attendance register. She filed a complaint with the National Information Commission (a national body that overlooks the rights and responsibilities of public institutions and servants concerning the right to information). The Commission issued a temporary stay of Pushpa's dismissal at the school, directing staff to allow her to mark her attendance and to pay her salary, and seeking written explanations from them for their actions. She also reportedly received death threats and was planning to file a complaint at the local police station at the end of 2009.

This case illustrates how those who challenge the idea of caste-based discrimination and take the defence of the victims put themselves at risk of retaliation and social stigma. Victims of caste based discrimination rarely get justice. They even often consider being discriminated against as normal. There is a need to rid Nepalese society of this deep-rooted problem.

The drafting of the new constitution is an opportunity to build a legal framework that better protects Dalit's rights. At the time of writing, the Constituent Assembly's Thematic Committees had already submitted their proposed constitutional language. These concept papers take promising steps toward crafting a constitution that protects fundamental rights that are of particular significance to Dalits and other marginalized groups in Nepal. The Fundamental Rights Committee has, for example, proposed a right against exploitation in the name of religion, which has often been a primary justification for the practice of "untouchability." The Committee has also proposed a protection of individuals' choice of spouse, to address social prohibitions on inter-caste marriages. However, much more comprehensive action and consultation with Dalit groups is needed. Dalit civil society in Nepal has expressed particular support for the proposal to include a right for the Dalit community to have inclusive and proportional participation in all state organs—a right that is essential to empowering the Dalit community in Nepal.

To ensure the effective implementation of the law, the Asian Human Rights Commission recommends that the government of Nepal must:

1. Place emphasis on the economic development of the Dalit community. The government of Nepal should formulate and implement positive discrimination and affirmative action for the Dalits.
2. Establish specific departments in the ministries of women, education, health, and agriculture and forestry, to make sure the Dalits' specific needs are taken into account in the formulation of national policies.
3. Ensure effective mechanisms for the monitoring of Nepal's justice delivery systems. Those who practice discrimination should be brought to justice and given adequate and punishment.
4. Establish a complaints mechanism, to be promoted all over the country, so that the victims of caste-based discrimination can register their complaints effectively and without obstacle or reprisals. Punishments should be clearly defined by law for those who practice discrimination. Such provisions must be publicised widely in order to ensure the prevention of further abuses. Separate courts at the regional and national levels should be established to deal cases of caste based discrimination.

b. Gender-based violence

2009 marked a year of legislative progress regarding gender-based violence in Nepal, since in May, the Domestic Violence and Punishment Act 2065 made domestic violence punishable by law.

Nevertheless, religious and cultural traditions and superstitions, the lack of education and economic empowerment, and ignorance of the law are still strong obstacles to the realization of women's rights and allow the persistence of a highly patriarchal society.

Reports of gender-based violence and discriminatory practices persisted throughout 2009 and were in general accompanied by impunity despite concerted efforts by the country's human rights activists. Dhana Kumari Sunar, a member of the National Women's Commission, reports that every year tens of thousands of women in Nepal experience violence, 80 percent of which is domestic violence. In previous annual reports on Nepal, the Asian Human Rights Commission has pointed to numerous cases of rape, torture and killings of women, in particular, which continued to be committed in high numbers despite drops in the levels of some other human rights violations following the end of the conflict. Women's rights remain under threat regardless of political developments in Nepal over recent years that have seen some positive developments, such as a significant fall in forced disappearances, for example.

Because of a lack of education and social stigma, women often remain unaware of their rights and are forced to accept the patriarchal organization of the society and other forms of gender-based discrimination and violence. A 2006 survey²⁰ found that 23% of women and 22% of the men thought that 'there are at least some situations in which the husband is justified in beating his wife'.

Documented cases of rape and accusations of witchcraft against women in Nepal reveal how the traditional, gender-biased mindset of society and the inability of public institutions to provide protection to victims allow for ongoing gender-based violence.

Data suggests that more women dared to report cases of rape in 2009. According to the annual criminal reports of the Nepal Police, the recording of rape cases increased by 48% between 2008 and 2009, with 348 women reporting that they had been victims of rape in 2009. The number of actual cases of rape is likely to be far higher, as only a low percentage of cases are thought to be reported, despite this rise. Police officers are reportedly still reluctant to file cases of rape, especially when the victim belongs to an isolated and poor community and the alleged perpetrator comes from a more powerful sector of society. As a result, Dalit women and women from indigenous communities are particularly vulnerable to rape, since such crimes against them can be committed in all impunity.

The case of 11-year old Dalit girl Runchi Mahara, who was found raped and murdered, shows how the criminal justice system of Nepal fails to address cases of violence against women, especially when the victim's family does not have the power or standing to ensure that the police investigate the case. She was found raped and murdered on 1 September 2009 in a mango orchard; her clothes were near her naked body and there was a belt around her neck. The police were reluctant to file a First Information Report (FIR), but did so and arrested one of the suspects, Mr. Dharmesh Yadav, under mounting pressure. They had reportedly found semen and blood stains in Yadav's clothing, and his mother identified the belt that was found around Runchi's neck as belonging to him. Despite this, he was released, no case was filed in court and the police have shown no signs of investigating further. Local activists have reported that local ruling political party members have been supporting the families of the accused, and that Runchi's family are being pressured to settle the case.

According to the AHRC's source, the JMC, even though these incidences of violence, notably against Dalit women, are extreme, none of the cases of rape reported to the police have been successfully dealt with in favour of the victims. More generally speaking, the

20 *Demographic and Health survey, Ministry of Health and population and USAID, 2006, Available at: <http://www.measuredhs.com/pubs/pdf/FR191/FR191.pdf>*

2009 human rights annual reports of the United States Department of State states that ‘of [rape] victims who reported the crime to the authorities, 25 percent said the government arrested and convicted the perpetrator.’²¹

The impact of superstition on the condition of women in Nepal is observable in a particularly archaic and horrific form in the cases of accusation of witchcraft. Women who are accused of being witches are in most cases stripped naked and severely beaten. Instances where women are force-fed their own excrement have also been reported. These attacks often results in severe injuries as well as strong psychological damage for the victims. To save their lives the women have to admit to being a witch and are then usually forced to flee from their villages.

The Women’s Rehabilitation Centre (WOREC) has documented 82 cases between July 2007 and September 2009 in which women were beaten by neighbours, having been accused witchcraft. Among them, Janjati and Dalit women (respectively 33% and 30% of the cases) are the most vulnerable to accusations of witchcraft.

On March 2009, 45 year old Dalit woman, Kalli Kumari BK, was accused of practicing witchcraft and was beaten and forcefully fed her own excreta by Bimala Lama, a member of the indigenous community and headmistress of the Gadhibhanjyang Primary School, in presence of other villagers. Prior to the incident, Kumari and her husband had been confined in a room in one of Bimala’s relatives’ homes for two days. There, the villagers beat Kumari and forced her to accept that she was a witch. Kumari was kicked, punched and hit with a stone by Bimala Lama, her sister and others who shouted, “*a witch should be killed like this.*” The villagers also threatened Kumari’s husband with the same treatment if he assisted his wife. Kumari filed a case at the Area Police Office - Ashrang on March 23, but the police have failed to arrest the alleged perpetrators.

The lack of concern the police has shown so far in investigating cases of gender-based violence reveals that, in spite of the implementation of women’s cells in most of Nepal’s districts, the issue is still not seen as a matter of priority.

As a result, victims are not encouraged to raise their issues because they know they will have to face social stigma, with a limited chance of actually seeing their case registered and investigated and their aggressors prosecuted.

In this context, those who fight for the realization of women’s rights and go against deeply-entrenched social taboos face many difficulties and risks, including physical

21 2009 Human Rights Report: Nepal, Bureau of Democracy, Human Rights, and Labor, US Department of State, URL: www.state.gov/g/drl/rls/brrpt/2009/sca/136091.htm

attacks and becoming social outcasts.²² Unsurprisingly, the police usually fail to provide protection and support to such human rights defenders, which further weakens their already fragile position.

In response to the many problems facing women in Nepal, the government must as a priority, ensure the rule of law is established paying particular attention to violence against women. It should ensure the education of girls and women; not only should girls be given incentives to go to school and be encouraged to carry on further studies, but awareness-raising campaigns should also be launched to help the women become aware of their rights and of the possibilities they have to defend them. Programmes fostering their economic empowerment should also be designed. Police officers and legal practitioners must also receive training regarding women's rights.

c. The problem of Bonded Labour

Traditionally, at least two types of bonded labour coexist in Nepal, known as Haliyas and Kamayias.

In 2000, the King of Nepal abolished the Kamayia system, which existed in Western Nepal and affected mostly the Tharu and Dalit communities, and 'freed' 20'000 to 30'000 people from bonded labour.²³ Unfortunately, this abolition was not accompanied by any form of rehabilitation programs and resulted in the expulsion of Kamayias from their former places of residence by landlords. This left the Kamayias with no livelihood options.²⁴ Reports of starvation of former Kamayias families have made the headlines and some NGOs have also documented cases of families who had to send their children to work for their former landlords in exchange for one or two hundred kilos of rice.²⁵ According to news reports, 10 years after the abolition of the system, 6000 ex-Kamayias are still homeless,²⁶ and more than 1,000 others are still working in bonded labour in the

22 *See Nepal's government fails to protect women human rights activists, Amnesty International, 10 April 2009, URL: <http://www.amnesty.org/en/news-and-updates/news/nepal-government-fails-protect-women-human-rights-activists-20090410>*

23 *Policy spoke in Haliya rehab wheel, The Kathmandu Post, 25 April 2009, URL: <http://www.ekantipur.com/the-kathmandu-post/2010/04/25/top-stories/Policy-spoke-in-Haliya-rehab-wheel/207593/>*

24 *The plight of the Tharu Kamayias in Nepal: a review of the social, economic and political facets, Ram B. Chbetri, Occasional Papers in Sociology and Anthropology Vol.9 2005 p.22-46, Available at: http://himalaya.socanth.cam.ac.uk/collections/journals/opsa/pdf/OPS.A_09_02.pdf*

25 *The plight of the Tharu Kamayias in Nepal: a review of the social, economic and political facets, Ram B. Chbetri, Occasional Papers in Sociology and Anthropology Vol.9 2005 p.22-46, Available at: http://himalaya.socanth.cam.ac.uk/collections/journals/opsa/pdf/OPS.A_09_02.pdf*

26 *Policy spoke in Haliya rehab wheel, The Kathmandu Post, 25 April 2009, URL: <http://www.ekantipur.com/the-kathmandu-post/2010/04/25/top-stories/Policy-spoke-in-Haliya-rehab-wheel/207593/>*

mid and far-western regions of Nepal.²⁷

Unfortunately, the government does not seem to have learned the lessons from the mismanagement of the abolition of the Kamayia system when it undertook a similar process to free the victims of the Haliya system. Under this system, a person is made to do agricultural and domestic work for years in order to pay debts, often working on a small piece of land for the purpose of reconciling debts accumulated over the years by his or her forefathers. Such bonded labour is not limited to agricultural work. Haliyas fulfil a range of duties, including making tools (such as spades, knives, and sickles) out of iron, grazing animals, sewing clothes, making utensils and pots, and so forth. The labourers are not paid a wage for their extensive work duties; often they are only provided with a small amount of food. Extreme poverty and debt in the western and far western regions of Nepal has relegated many Dalits to Haliya status.

Although the government of Nepal declared the liberation of Haliyas on 6 September 2008, a lack of proper legal mechanisms and of specifically designed rehabilitation policies has rendered the process far from effective.

The OHCHR office in Nepal reports that ‘While the steps taken by the Government are important, many Haliyas are facing new problems with their landlords, with some under threat to repay loans or to continue working in debt-bonded labour. “We have freedom of choice, a sense of dignity and pride after emancipation by the government; however, our living standard has become worse as our landlords have stopped providing work and additional support such as food, health, and construction materials, which we used to get before,” said former Haliya Dan Singh Talle of Gujallek Village, Amargadhi Municipality, Dadeldhura District.’²⁸

Indeed, most Haliyas labourers do not have formal education or technical skills which hamper their integration into the labour market.²⁹ NGO reports indicate that around 97% of Haliyas do not possess land which they could cultivate for their own benefit. The liberation of this workforce without adequate training or financial assistance to help them make a new start is likely to undermine the implementation of the government’s emancipation policy. One year after their formal liberation, most Haliyas are still working

27 *About 1,128 Kamalaris yet to be rescued in mid, far-western, The Rising Nepal, 16 May 2009, URL: http://www.gorkhapatra.org.np/detail.php?article_id=34505&cat_id=8*

28 *Emancipation of Bonded Labour in Nepal, OHCHR-Nepal Website, URL: <http://www.ohchr.org/EN/NEWS-EVENTS/Pages/BondedLabourNepal.aspx>*

29 *Labour Pain, The Kathmandu Post, 26 April 2010, URL: <http://www.ekantipur.com/the-kathmandu-post/2010/04/26/Editorial/Labour-pain/207651/>*

for their landlords.³⁰

According to data provided by the National Haliya Liberation Federation (NHLF), Dadeldhura, there are 150'000 Haliyas in the far western region of Nepal alone, but the government's District Administration Office (DAO) has only been able to ensure that 450 of the 150'000 Haliyas have actually been freed in reality.

In 2008 the government established a working committee on the Haliya situation which gave the following recommendations: the annulment of loans, the formation of a Haliya Commission, the distribution of land, the drafting of a Haliya Labour Prohibition Act, a national survey to design rehabilitation measures, free secondary education, and the elimination of discrimination against Haliya.³¹

The AHRC also recommends that any measures taken to train and support the Haliyas also be provided to the former Kamayias. In particular, land that had been promised to such persons following their liberation should be granted without delay. Ethical micro-credit programmes could be useful to get persons on their feet economically.

Conclusion

At the end of 2009, Nepal remained beset by political instability and infighting between the political parties, with the process of creating a new Constitution and establishing a post-conflict democratic Nepal in which human rights are respected, far from being realised. The longer the political turmoil prevails, the longer impunity will be enjoyed by the many perpetrators of the multitude of grave abuses that took place in the country's recent conflict-affected past. The lack of development of institutions and a normative framework to ensure the rule of law and the primacy of rights, has ensured that further violations of rights, including torture, extra-judicial killings, discrimination and widespread abuses against women and members of vulnerable sectors of society, have continued, with impunity.

There is an evident requirement for all political forces in the country to make public proclamations of renewed commitment to the strengthening of democracy and the rule of law and right, which guarantees the equal participation of all the citizens and the equal protection of their rights.

³⁰ *Policy spoke in Haliya rehab wheel*, *The Kathmandu Post*, 25 April 2009, URL: <http://www.ekantipur.com/the-kathmandu-post/2010/04/25/top-stories/Policy-spoke-in-Haliya-rehab-wheel/207593/>

³¹ *Emancipation of Bonded Labour in Nepal*.-OHCHR-Nepal website, URL: <http://www.ohchr.org/EN/NEW/SEVENTS/Pages/BondedLabourNepal.aspx>

The key to long term stability and the enjoyment and protection of rights can only come through the strengthening of the state institutions that are to protect the democratic system and human rights. The justice-delivery systems and institutions have been shown in this report to be ineffective and dysfunctional. They must be strengthened to ensure access to justice for all and for the country to be able to engage in a meaningful attempt to curb impunity, without which progress and evolution beyond the conflicted past cannot occur.

This involves fighting against the corruption that is rampant in the judiciary, effectively guaranteeing its independence from external interference, and ensuring that the military and Maoist forces and actors do not remain above the law. The jurisdiction of civilian courts must cover all of the country, both geographically and in terms of the various powerful groups that operate within it. The police system needs to be deeply transformed into a service that democratically ensures law enforcement and guarantees the protection of rights for all, independently of their caste, ethnicity, political connections, financial resources or gender. At present, the police in many ways contributes to human rights violations and impunity rather than the protection of rights.

The human rights situation in Nepal has clearly not evolved much in 2009, mainly due to the fact that political stasis is blocking and meaningful developments within the country's police, judiciary and other institutions. It is therefore imperative that the Office of the High Commissioner for Human Rights continue to have a well-resourced office in the country and that the government invite key mandates of the UN Human Rights Council's Special Procedures to visit the country in order to assist the development of its laws and institutions in line with the country's obligations under international law. Events over recent years in Nepal have given rise to much hope for a better future, but this has yet to be seen in concrete terms. It is hoped that a successful conclusion to the process of constitutional reform in 2010 will pave the way to a brighter future and all political parties are reminded that they have a key role to play in this and that history will judge them for their actions at this crucial period in the country's development.