



Universal Periodic Review Submission

Nepal

March 2015

In Nepal's submission for its Universal Periodic Review in January 2011, the government emphasized the fragility of transition from conflict and a dedication to ensuring a robust democracy characterized by a "rights-based approach" in "national policies, plans, and laws."¹

Despite commitments made in 2008 to establishing a democratic constitution, accountability mechanisms consistent with international humanitarian law to provide redress for war crimes committed during the civil war, and affirmative protection of vulnerable communities, Nepal has failed to achieve real progress in many of these areas.

There is an urgent need for the state to address human rights violations and impunity, including: abuses against Tibetan refugees; denial of citizenship for children unless both parents can prove Nepali citizenship; lack of protection for migrant workers; and denial of redress for past abuses. Widespread lack of accountability for human rights abuses remains a significant problem including obstacles to accessing justice and adequate redress, particularly for women, stateless persons, Dalits, and other vulnerable communities.

Accountability for Past Abuses

During its previous UPR in 2011, Nepal accepted a number of recommendations to establish a Truth and Reconciliation Commission (TRC) and a Commission on Disappearances, as well as recommendations to ensure that there is "no amnesty for grave violations of human rights," and that "that the perpetrators of human rights violations, both past and present, are brought to justice in proceedings which meet international standards of fairness."

In spite of the May 2014 adoption of the Truth, Reconciliation and Disappearance Act, Nepal has in practice made little progress on justice for serious abuses committed by both sides during its civil war ending in 2006. At least 13,000 people were killed and over 1,300 were forcibly disappeared during the decade-long conflict. Efforts to ensure prosecutions in civilian courts for serious human rights and humanitarian law violations during the conflict remain stalled.

While Nepal has delivered interim monetary and in-kind compensation to the families of those who were "disappeared" or killed during the conflict, others, such as survivors of sexual violence or torture, have received no compensation from the state.

In spite of a January 2014 directive striking down a previous version of the law, the May 2014 Truth, Reconciliation and Disappearances Act replicated the same problematic provisions as its predecessor. The law did not define which crimes are eligible for amnesty and which are excluded, giving commissioners potentially wide discretion to make determinations. As a result, some perpetrators of torture, war crimes, and crimes against humanity could be granted amnesties, in contravention of international law.

¹ United Nations Office of the High Commissioner for Human Rights, Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/10/MPL/I. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/174/88/PDF/G1017488.pdf?OpenElement> (accessed March 9, 2015)

In March 2015, Nepal's Supreme Court ruled against the problematic provisions, and directed the government to remedy the law. In particular, the Supreme Court struck down provisions which vested the TRC with wide discretion to grant amnesties, forcing reconciliation between victim and perpetrators. The Supreme Court also vested authority with the office of the Attorney General to recommend prosecutions, removing a provision in the law that granted discretion to the Ministry of Peace to recommend prosecutions. These directives are consistent with international law, and echo recommendations made by the Office of the High Commission on Human Rights in a 2014 technical note to the government of Nepal.

In spite of victims groups and civil society protests against the lack of transparency and consultation in the appointment of commissioners to the TRC and the Disappearances Commission, the government in February 2015 set up the framework for the two commissions and appointed commissioners.

Women's Rights

On Sept. 23, 2014 Human Rights Watch released a report, [Silenced and Forgotten: Survivors of Nepal's Conflict-Era Sexual Violence](#), which documented sexual violence by both government forces and Maoist combatants during the conflict. While Nepal accepted recommendations made during its previous UPR in 2011 to "Ensure that the cases of violence against women and girls are duly investigated" and to "guarantee effective access to justice and protection for women victims of gender based violence," many of these crimes remain unpunished, with survivors isolated and unable to find ways to access justice and redress. Survivors of sexual violence committed by both sides during Nepal's civil war are excluded from any compensation under the Interim Relief Program, a temporary scheme set up to help victims until permanent reparations are made. They also have been denied access to justice through regular courts for a variety of reasons, including that Nepali criminal law has an inflexible 35-day statute of limitations on reporting rape even when it occurred in the context of the armed conflict. Despite promises by the previous government, Nepal is yet to amend its laws against sexual assault or provide any reparation for survivors of conflict-related sexual violence.

Migrants' Rights

Nepali migrants continue to go abroad for work, but the government has done little to support and protect such workers. In 2014, there were reports that hundreds of Nepali and other migrant workers in Qatar had died due to poor working conditions. Migrant workers in Qatar often live in cramped, unsanitary conditions, and many workers complain of excessive working hours and unpaid wages.

Human Rights Watch has [documented](#) discrimination and abuse against Asian domestic workers in the Middle East for several years, including a 2014 report on abuses against domestic workers, including from Nepal, in the [United Arab Emirates \(UAE\)](#). Human Rights Watch found many Nepali domestic workers had travelled to the UAE via India and were under 30 years old. Labor laws in most Gulf countries exclude domestic workers from basic protections guaranteed other workers such as a weekly rest day, limits to hours of work, and compensation in case of work-related injury. Restrictive immigration rules make it difficult for domestic workers to escape from abusive employers.

During its previous UPR in 2011, Nepal accepted the recommendation to "protect its citizens from labor exploitation at home and abroad by providing improved regulation and oversight of workplace practices." The Nepal government took some steps by suspending some unregulated recruiting agencies and calling upon the Qatar government to provide redress and end practices that facilitate trafficking and forced labor.

However, Nepal has yet to lift the travel ban on women under age 30 to the Gulf states for employment as domestic workers. While the ban may be motivated by protection concerns, it is discriminatory and risks driving women desperate for work to migrate through irregular channels, putting them at greater risk of exploitation and trafficking. The government should instead focus on improving protections in Nepal and the Gulf so women can migrate safely.

Disability Rights

Although the government has committed to implementing inclusive education in line with its international obligations under the Convention on the Rights of Persons with Disabilities (CRPD)—whereby children with

and without disabilities attend school together in their communities—it has failed to effectively implement the policy due to lack of funding, inadequate teacher training, and competing priorities.

The enrollment of children with disabilities in primary and secondary education continued to decline in 2014 and an estimated 85 percent of all out-of-school children in Nepal have disabilities. The government, however, has recently increased school scholarships for children with disabilities, developed a special curriculum for children with intellectual disabilities, and established a team tasked with developing a new national inclusive education policy.

Statelessness

Despite promises of reform and a recommendation accepted during its previous UPR in 2011 to “address cases of statelessness in the new Constitution’s drafting process,” Nepal’s citizenship laws leave an estimated 4 million people without official status and at risk of statelessness. As a result, many people, particularly women, children born out of wedlock, or children of a refugee parent, are unable to secure drivers’ licenses, passports, bank accounts, voting rights, higher education and other government welfare schemes. The flawed citizenship law makes it particularly difficult for women to secure legal proof of citizenship, especially when male family members refuse to assist them or are unavailable to do so. The law also effectively denies citizenship to children of non-Nepali fathers. Political parties in early 2015 have committed to reforming the citizenship laws, but any change remains blocked by an ongoing stalemate over constitutional reform.

Tibetan Refugees

Since the 2008 uprising in Tibet, Chinese authorities have pressured Nepal to restrict basic rights. Tibetans in Nepal are forbidden from participating in public celebrations of the Dalai Lama’s birthday or the Tibetan New Year. Buddhist religious sites and monasteries are openly under government surveillance.

A 2014 Human Rights Watch report, [“Under China’s Shadow: Mistreatment of Tibetans in Nepal,”](#) documented limitations on the fundamental freedoms of Tibetans in Nepal.

As a result of a massive security presence in Tibetan areas of China and increased cooperation between Nepalese and Chinese security forces in recent years, China has been able to stem the flow of Tibetans escaping to Nepal. In 2013, fewer than 200 Tibetans were recorded as having fled China, as compared to a pre-2008 annual average of more than 2,000.

Human Rights Watch documented how Nepal over the last few years signed several security and “intelligence-sharing” agreements with China, and implemented close monitoring in Nepal of the Tibetan community, its leaders, and real or perceived activists. The Nepal government has pledged increased cooperation with China’s People’s Armed Police border forces to “curb illegal activities at the border” and establish “an effective system of repatriation of illegal immigrants,” with no mention of protection of asylum seekers and refugees.

Tibetan refugee communities in Nepal are now facing a de facto ban on political protests, sharp restrictions on public activities promoting Tibetan culture and religion, and routine abuses by Nepali security forces. These include excessive use of force, arbitrary detention, ill-treatment in detention, threats and intimidation, intrusive surveillance, and arbitrary application of vaguely formulated and overly broad definitions of security offenses.

Nepal’s Ministry of Foreign Affairs dismissed the findings of Human Rights Watch’s report, claiming that the report drew on unsubstantiated claims. The ministry’s response did not address Nepal’s de facto ban on political protests by Tibetans, its failure to provide them with official identification documents, sharp restrictions on public activities promoting Tibetan culture and religion, and routine abuses by Nepali security forces.

International law prohibits Nepal from forcibly repatriating Tibetan refugees because they would be at risk of torture or other persecution in China. Yet partly as a result of the increasing cooperation between Nepal and China’s border security forces, there is a risk that Nepal will forcibly return some Tibetans to China.

Tibetans detained by Chinese authorities while attempting to cross the border irregularly from Nepal are routinely imprisoned and physically abused.

International Justice

Nepal should ratify and implement the Rome Statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

Recommendations:

On Accountability:

- Criminalize in domestic law the act of enforced disappearance in accordance with the definition set out in the International Convention on the Protection of All Persons from Enforced Disappearance and ensure that it is punishable with penalties commensurate with the gravity of the crime;
- Accede to the International Convention on the Protection of All Persons from Enforced Disappearance;
- Fully implement the March 2015 ruling of Nepal's Supreme Court on the Truth, Reconciliation and Disappearance Act, and in particular:
 - Prohibit amnesty for gross human rights violations or crimes under international law;
 - Ensure there are no time limits on the prosecution of serious crimes, including all crimes under international law such as enforced disappearance, torture, war crimes, and crimes against humanity;
 - Ensure that all conflict-era cases which are currently *sub judice* continue to be heard by the courts; these cases have been stalled for years in courts.
- Ensure that the composition and structure of the Truth and Reconciliation Commission and Commission on Disappearances comply with international standards. In particular, there should be a transparent and consultative appointment system that aims to ensure the impartiality of the commission members;
- Require that necessary legal and institutional measures be taken to enable and ensure the establishment, adequate resourcing, and maintenance of effective victim and witness protection mechanisms; and
- Establish and require other necessary legal, administrative, institutional, or other arrangements for an effective reparation program.
- Nepal should ratify and implement the Rome Statute in national legislation

On Women's Rights:

- Ensure that the Truth and Reconciliation Commission or any other independent commission is specifically tasked with a mandate of investigating allegations of conflict-related rape and other forms of sexual violence.
- Amend the Interim Relief Scheme to ensure that conflict-era survivors of sexual violence and torture are eligible for reparations. Develop, in consultation with local women's rights groups and women from conflict-affected communities, a reparation program that is in accordance with international standards. Such a program should include individual compensation and rehabilitative services, community based rehabilitative services to address long-term health concerns, and community-based interventions to expand services to curb domestic violence in order to assist those women who experience such violence as a consequence of rape.
- Amend the criminal laws to eliminate the 35-day rule for reporting rape and other sexual offences.
- Expand the criminal definition of sexual offences to include all forms of sexual offences with appropriate punishments based on harm.
- Incorporate command and superior responsibility for war crimes, torture, and other international crimes committed by the police and other security forces.
- Ensure women's participation in the peace process including in any truth commissions that should comply with international standards.

On Migrants' Rights:

- Lift the travel ban on women under age 30 to the Gulf states for employment as domestic workers;
- Improve monitoring and accountability of recruitment agencies in Nepal, including with respect to recruitment fees, provision of accurate information, and valid employment contracts;
- Work closely with other countries of origin to share good practices in protecting migrants' rights and to jointly pressure countries of employment for key labor and immigration reforms; and
- Ensure the presence of diplomatic missions and adequate staffing with labor attaches and social welfare officers in countries where there are significant numbers of Nepali migrants.

On Disability Rights:

- Meaningfully include disability rights activists in the process of implementing inclusive education.

On Statelessness:

- Amend the citizenship law to allow citizenship through either parent.

On Tibetan Refugees:

- Do not forcibly return Tibetans to China, including those rejected at the border or apprehended in Nepal, and strictly uphold and respect international law prohibiting refoulement.
- Immediately provide all eligible Tibetans with refugee identification certificates (RCs).
- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Adopt implementing legislation immediately after ratification.
- Enact legislation to establish a formal asylum procedure for Tibetan asylum seekers who have entered Nepal since 1989. Define and guarantee the rights and status' of refugees and asylum seekers by law in accordance with internationally recognized human rights standards.
- Protect the rights of all persons in Nepal to freedom of expression and assembly, regardless of legal status, and cease dispersing peaceful protests by Tibetans.
- Establish clear and transparent procedures to enable long- term Tibetan residents to acquire Nepali citizenship.
- Repeal restrictions on the rights of Tibetan residents to own property, work, establish and incorporate businesses, and travel freely.