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## Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review concerning human rights situation in Nepal

### Annexe

*Document ID: ALRC-UPR-10-002-2010: Annexe  
Hong Kong, July 5, 2010*

1. The Asian Legal Resource Centre (ALRC), a Hong Kong-based regional human rights organization with General Consultative ECOSOC status and Nepalese non-governmental organization (NGO) Advocacy Forum (AF), are jointly submitting the following annexe report as part of the United Nations (UN) Human Rights Council's (HRC) Universal Periodic Review (UPR) of Nepal, to be held during the tenth session of the Working Group on the UPR (24 January – 4 February 2011). This annexe complements the main 5-page UPR report, which covers the human rights situation since January 2007 to the present and is based on extensive documentation by the ALRC, AF and partner NGOs during this period.

### **Section 1: Normative Framework**

#### **List of International instruments ratified by Nepal:**

[Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984](#) - May 14. 1991

[Convention on the Elimination of All Forms of Discrimination against Women, 1979](#) - April 22. 1991

[Optional Protocol on the Elimination of All Forms of Discrimination against Women, 1999](#) - June 15. 2007

[Convention on the Rights of Persons with Disabilities, 2006](#) - May 07. 2010

[Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006](#) - May 07. 2010

[Convention on the Rights of the Child, 1989](#) - September 14. 1990

[Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000](#)

[Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, 2000](#)

[International Convention on the Elimination of All Forms of Racial Discrimination, 1965](#) - January 30. 1971

[International Covenant on Civil and Political Rights, 1966](#) - May 14. 1991

[Optional Protocol to the International Covenant on Civil and Political Rights, 1966](#) - May 14. 1991

[Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989](#) - March 04. 1998

[International Covenant on Economic, Social and Cultural Rights, 1966](#) - May 14. 1991

**Domestic legal framework:**

2. The following subsection on the domestic legal framework lists some of the existing provisions and problems therewith that are hindering the realisation of specific rights.

3. **Criminal investigations:** From an international human rights perspective, there is a weak legal framework in place in Nepal with regards to criminal investigations. This is manifested in:

4. *The State Cases Act of 1992:* The main problems of the State Cases Act lies in its failure to set out an effective course of action for when security forces are implicated in cases of "suspicious" deaths and other gross human rights violations. In cases of gross human rights violations, different investigative mechanisms, such as special committees, are needed, which guarantee the impartiality of the investigation. However, the State Cases Act of 1992 fails to prescribe for such mechanisms.

5. *The Local Administration Act of 1971:* The Local Administration Act permits police to use excessive force at demonstrators who are deemed to disturb public order, while failing to provide sufficient safeguards for such use of force.

6. *The Police Act of 1955:* The police acts provides immunity for CDOs and police personnel who act in "good faith while discharging duties". As they are granted immunity, they are exempt from any criminal liability, and are hence in effect enjoying impunity. Providing state actors with immunity for gross human rights violations stands in direct contravention to international human rights standards.

7. Further, the Police Act fails to set out individual criminal liability for police personnel for grave human rights violations such as: extrajudicial executions; "disappearances"; arbitrary detention; torture, or ill-treatment.

8. *The Army Act of 2006:* Similar to the Police Act, The Army Act states that any actions committed "in good faith in the course of discharging duties" shall not be considered criminal offences. Further, the army act does not set out clear criminal liability for army personnel for grave human rights violations such as torture and disappearances, but simply states that a special committee shall be formed to investigate such cases.

9. *The Public Security Act of 1989:* The Public Security Act includes a provision which allows for "preventive detention". This was frequently used during the conflict to detain alleged Maoists. This provision is susceptible to abuse of power, as it fails to elaborate on how and when a person constitutes a threat to public security, thus leaving this decision up to the judgement of the police officer in question.

10. *Commission of Inquiry Act of 1969:* The Commission of Inquiry Act sets out an appropriate framework for investigating enforced disappearances. However, the act has several shortcomings which needs to be addressed. First of all; it should include a provision guaranteeing the independence, competence and impartiality of the commissioners. Further the act should make special provisions with regards to witness

and victim protection mechanisms.

11. *Muluki Ain (Civil Code)*: The main problem with the Muluki Ain lies in its failure to make state officials liable to prosecution for the crimes of contempt of court and perjury as per Section 169 of the Muluki Ain. The Muluki Ain should be amended to this effect. In the absence of such an amendment, the Muluki Ain allows state officials to leave out information that they have obtained in their official capacity while giving their testimony in a court of law.

12. *The National Parks and Wildlife Conservation Act of 1973*: This act includes provisions which permits the use of firearms in situations where there is no immediate threat to life, including if a person tries to escape an arrest. It further states that if a person loses his life as a result of this use of force it should not be considered a punishable offence.

13. **Witness protection mechanisms**: There are still no legally enshrined provisions setting out the responsibilities for providing witness and victim protection mechanisms in Nepal. The absence of such provisions leaves victims and witnesses susceptible to pressures and threats.

14. **The 35 day limitations on reporting the crimes of torture and rape**: The Torture Compensation Act of 1996 and the Muluki Ain both include provisions setting out time limitations on making complaints to the police regarding the crimes of torture and rape. These crimes must be reported within 35 days, or are otherwise not valid for investigation by the police.

15. **The quasi-judicial powers of the Chief District Officer (CDO)**: As established in provisions of the Public Security Act, the Arms and Ammunitions Act and the Civil Rights Act, the CDO holds a mandate to detain alleged criminals for up to 7 years on suspicion of certain crimes. Mandating the CDO with such powers is problematic since the CDO lacks the legal training and expertise necessary to perform such tasks - which are commonly associated with the work of a judge.

16. **Reparation**: Although the Government reports it has distributed 1.43 billion Nepali rupees of interim financial relief to families of individuals who were killed or disappeared during the conflict, the distribution remains uneven and a comprehensive reparation policy is required.

## **Section 2: An example of blatant interference in the working of the justice mechanisms**

17. In early April 2009 a court hearing was interrupted by YCL cadres in Surkhet District, in an example of how it is at present very difficult to have any meaningful prosecutions of persons with ties to powerful groups. Parbati Thapa and Sumitra Tamata, two leaders of the All Nepal Women's Organisation (Revolutionary), along with the cadres of the Young Communist League (YCL) who gathered near the court, threatened and prevented a defense lawyer, Mr. Nanda Ram Bhandari, from appearing for his client. The party cadres locked the lawyer in a room inside the court building and accused him of defending a criminal. Bhandari is a lawyer appearing for a well-respected human rights organisation in Nepal, the Advocacy Forum.

18. The lawyer tried to reason with the party cadres informing them that it is his professional duty to represent his client and that everyone has a right to seek legal defence. The lawyer also informed the cadres that a person cannot be convicted unless tried by a competent court. Dismissing the lawyer's arguments, the cadres, shouting slogans against the lawyer, created a blockade in front of the court hall and prevented the witnesses or other persons entering the court.

19. The mob then ordered the judge to send the accused to prison. Upon receiving information about the incident, the police arrived at the scene and persuaded the mob to retreat. No case was registered against those who interfered with the court proceedings. The mob threatened the lawyer that he will face serious consequences if he continued with his legal practice of defending the accused.<sup>1</sup>

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<sup>1</sup> For more please see here: <http://www.ahrchk.net/statements/mainfile.php/2009statements/1983/>

### Section 3: The problem of torture in Nepal, including the torture of children

20. *Criminalize torture*: Despite years of national and international lobbying by human rights groups, there is still no law criminalizing torture in Nepal. This is the case despite the fact that Nepal ratified the UN Convention against Torture (CAT) in 1991. It has, however, been very slow in implementing its provisions into national law and policies. After many years, the Interim Constitution of Nepal's Article 26(2) (promulgated in January 2007) finally established torture as a criminal offence, but to date no bill providing criminal penalties for torture has been passed by the legislature. Therefore, torture functionally remains only a civil offence. Further, in 2006 a Supreme Court ruling ordered the Government of Nepal to criminalize torture, arguing that Nepal has a duty under international law to provide such legislation.

21. *Torture Compensation Act of 1996*: Despite the fact that there is no proper criminalization of torture in Nepal, the Torture Compensation Act (TCA) was passed in 1996 enabling victims of torture to seek for compensation. The bill is however flawed in several regards:

1. The definition of torture falls short of international standards - torture is defined only as a crime when it happens inside police detention facilities,
2. The TCA does not mandate for any independent investigative mechanisms for torture. In effect this entails that the police who investigate torture are sometimes also the police who tortured,
3. The TCA includes a 35 day limitation on filing torture compensation cases. This disqualifies any victim who does not file a case within 35 days of the torture itself or after release from detention.

22. Out of 81 cases filed since 2003 under the act, compensation was granted in only 17 cases, and of those only four were actually paid out. Of the 17 cases in which compensation was granted, six victims (37.5%) received the minimum amount of compensation: just Nepal Rupees (NRs) 10,000 (US \$142). Only one case received the maximum amount, NRs 100,000 (US \$1420). Many of the victims have yet to receive the money. In only 3.7 % of cases, departmental action was ordered against the perpetrators. It is not known whether this action was taken by the concerned authorities.

23. *Witness protection*: The lack of a witness protection mechanism combined with the lack of independent mechanisms to investigate allegations of torture, often results in the investigations being conducted by police officers from the same police station as the alleged perpetrators. This is evidently flawed and makes the victims, witnesses and even their lawyers very vulnerable to threats and intimidation. Furthermore, the courts do not systematically test the voluntary nature of a confession thus justifying the routine use of torture during interrogation and investigations by the police. The lack of accountability of the police and the weakness of justice institutions combine to deprive victims of protection from torture and effective avenues to seek redress including compensation and medical treatment, as court orders are typically ignored by the police.

24. *Emblematic examples of cases of torture*: The following three examples are just some of the many cases documented during the four years in question here by the ALRC and its partner organisations in Nepal. They shed light on the arbitrary nature

and widespread use of torture, as well as the difficulties faced by victims in seeking redress and the system of impunity that accompanies this grave human rights violation.

25. The perpetrators of the rape and torture to death of Maina Sunuwar still enjoy impunity: On February 17 2004, army officers abducted Maina Sunuwar. They had been searching for her mother, Devi Sunuwar, who had reportedly witnessed the gang rape and killing of her niece by security personnel earlier the same month, but did not find her, so took Maina instead. Evidence and testimonies since then have proven that Maina was raped and tortured to death in the army barracks.

26. Police officers at first refused to file a case because it concerned the military. 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 proper procedures.” This verdict was challenged by Maina's mother, supported by the Advocacy Forum. 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 Niranjan Basnet, Colonel Bobby Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun on January 31, 2008, all of whom had been promoted in the interim.

27. In a landmark 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, having been deployed on a UN peacekeeping mission, giving rise to hopes that he would be prosecuted, which would symbolically mark the beginning of the end of the era of impunity for human rights violators in Nepal.

28. On December 8, 2009, in a letter addressed to the Prime Minister, Devi Sunuwar, Maina's mother expressed her hopes that 'Major Niranjan Basnet will be arrested upon his arrival and similar steps will be taken against all other perpetrators'. However, since that day, no progress has been made in the prosecution of the perpetrators. Upon his arrival at the Tribhuvan International Airport in Kathmandu, the military police arrested Major Niranjan Basnet, committing to present him before the civilian court the next day. However, to date, this has not happened and Major Basnet, while being held under house arrest, has still not been prosecuted by a civilian court. The file held by the military court, which contains evidence that military officers tried to cover up this case, has not been provided to the civilian court. Impunity continues to reign, even in this high profile case.

29. Impunity reigns concerning custodial death of a Dalit resulting from police torture (documented by the Jagaran Media Centre and Advocacy Forum): On 23 May 2010, the police arrested Sanu Sunar, a Dalit person from Godavari, Lalitpur district from Kalimati Chowk, following a complaint filed by Mr. Bishnu Kapri, a shopkeeper from Balaju Kathmandu that Sunar robbed NRs. 25,000 from him. Following his arrest, the police called Gita, his wife, and asked her to come to the police station. She reached

the Kalimati Police Station at about 1pm and saw that three police officers were kicking and punching her husband while accusing him of theft. The police reportedly abused Gita using vulgar words when she asked them to stop beating her husband and threatened to torture her. At around midnight on the same day, the police officers informed Gita that they had taken her husband to Bir hospital in Kathmandu. When she reached the hospital, she found her husband in a serious condition – he had started vomiting blood. She reports having witnessed marks of torture on her husband's hands, legs, face and other parts of body. In the evening of 25 May, Sunar was declared dead by the doctors at the Bir hospital. According to the doctors, the cause of the death was head injuries sustained by Sunar. Once the case was made public, police officers immediately arrested the complainant, Bishnu Kapri, and charged him with the murder of Sunar. However, the victim's family and Bishnu's family affirm that the police arrested Bishnu to get away with the murder and to save the officers who killed Sunar. The police have also prevented the media and human rights activists and even Bishnu's family from meeting him in custody.

30. Police threaten a woman torture victim into not seeking remedies (documented by Advocacy Forum): Ms. Sumitra Khawas, aged 38, is a permanent resident of Pacham of Haraicha Village Development Committee (VDC) – 8, Morang district, Nepal. On 9 September 2008, she was arrested by the Haraicha local police on suspicion of murdering her husband, who had died the same day under unclear circumstances. On the same day, she was transferred at to the APO of Belbari where she was subjected to torture by three police officers namely, Police Inspector Mr. Tanka Prasad Bhattarai, the police head constable Mr. Ram Kumar Rai and female police constable Ms. Indira Khadka. During the course of torture, Sumitra was stripped naked and severely beaten, throughout which she denied the police's accusations and pleaded her innocence. After disclosing her case to the human rights lawyers, she was threatened by the police officers not to speak about the incident or face reprisals.

40. Police try to cover-up a case of torture (documented by Advocacy Forum): Sushan Limbu, 23, and Bhakta Rai, 24, were arrested, publicly humiliated and badly beaten in front of a crowd by the Area Police Post, Urlabari, Morang District on 12 July 2009. Officers 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 beatings and by threatening the human rights defenders who had taken on the case. Both victims were produced before a Chief District Officer (CDO) on 28 July 2009. Baktha Rai was charged under the Some Public (Offences and Penalties) Act, 1970<sup>2</sup> and Sushan Limbu under the Arms and Ammunition Act, 1962.<sup>3</sup> Both laws give jurisdiction to CDOs and under the latter the CDO has the power to sentence people to up to seven years' imprisonment after hearings. This removes many of the checks and balances that prevent arbitrary arrests and detention. The CDO's decision appeared to have been prepared in advance and did not take into account the lawyers' arguments or objections. Baktha Rai was released on Rs.20,000 (about USD 274) bail and Sushan Limbu was transferred to the District Branch Prison, Morang District where he has been waiting for his trial since, under the Arms and Ammunition Act, for more than eight months. Though he made an application to

<sup>2</sup> [http://ejp.icj.org/IMG/Some\\_Public\\_Act\\_1970.pdf](http://ejp.icj.org/IMG/Some_Public_Act_1970.pdf)

<sup>3</sup> <http://www.lawcommission.gov.np/index.php/en/acts-english>

the Appellate Court to review this decision, his appeal was dismissed on 11 September.

41. After the case was disclosed to the public the Home Ministry agreed to form an investigation committee under the chairmanship of Deputy Superintendent of Police Bidhya Nanda Majhi. The only outcome of this investigation was the issue of an administrative warning to four police officers. Inspector Chakra Basnet - who is said to have given orders for the beatings – has not been removed from his duties and is serving in the same police station.

42. More worryingly, the victims have reportedly been 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. Sushan Limbu fears potential retaliation from the police and the District Administration Office while he is in jail, and has therefore not filed a torture compensation case.

43. 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 has received similar threats. He did not attend the court hearing regarding his case and the Morang District Court dismissed his application on 13 September. The police also denied Limbu's right to medical treatment last year. Although the CDO directed further treatment for him and he was taken to Koshi Zonal Hospital, the police ignored the doctor's advice to have him admitted for medical care and returned him to the District Branch Prison, citing alleged security reasons. The detainee was eventually admitted in Koshi Zonal Hospital on August 2 for finger surgery.

44. *Torture of children:* Of particular concern is information indicating that children in detention are in particular being subjected to ill-treatment and torture. Despite some improvements after the introduction in 2006 of the Juvenile Justice Regulations, juvenile detainees are still more frequently subjected to torture than adults in Nepal. In particular, the percentage of torture of juveniles reported in the southern Tarai region is rapidly increasing. Eight of the nine districts with torture percentages above the national average are situated either in the Tarai region or in bordering districts (Bardiya, Dhanusha, Jhapa, Kapilvastu, Morang, Rupandehi, Surkhet and Udayapur). This trend seems to parallel areas affected by the political tensions and high levels of crime.

45. The district of Dhanusha has been consistently above the average level since at least April 2006. In the period from September to December 2009, the highest level of torture of juveniles was reported reaching a shocking 90% in this district. It is estimated that between April 2009 and March 2010, 1 in 4 arrested juveniles were tortured by the police, in comparison to 1 in 6 adults. The widespread practice of arbitrary detention, torture and other ill-treatment of juveniles in police custody is a major concern. Juveniles are held for long periods in pre-trial detention in often inadequate conditions, in clear breach of international human rights standards and Supreme Court rulings.



46. Over 90% of detained juveniles known to Advocacy Forum are male, and they report a higher torture percentage (23.1%) than female (10%).<sup>4</sup> Their age groups range from 7 to 17 years old. Certain ethnic or caste groups have been consistently found to face a greater risk of torture in detention. The Tarai ethnic groups, Dalits and indigenous groups report the highest levels of torture. The Children's Act specifically allows for scolding and minor beating by relatives or guardians where it is "in the interest of the child". The punishment for torture or cruel treatment set out in the Children's Act is one year's imprisonment and/or a fine of up to NRs. 5,000.<sup>5</sup> The perpetrator may also be "made liable to pay a reasonable amount of compensation to the child" but the Act does not specify the minimum or maximum amount.<sup>6</sup>

47. The Children's Act does not refer to torture or cruel treatment by agents of the State, and is instead intended primarily to deal with situations of child abuse carried out by parents or teachers. Article 15 of the Children's Act prohibits the "imposition of rigorous punishment", stating that "[n]otwithstanding anything contained in the existing laws, no Child shall be subjected to handcuffs and fetters, solitary confinement or be committed to live together in prison with prisoners having attained the age of majority in case a Child is convicted for any offence."<sup>7</sup> The Supreme Court of Nepal has on more than one occasion directed state authorities to build child rehabilitation homes, and also ordered that children should not be kept in police custody.<sup>8</sup> In addition to the Children's Act, the Juvenile Justice Regulations were introduced in 2006 with the specific aim to put into practice the provisions of the Children's Act. The regulations have contributed considerably to increase the responsiveness of the judiciary and other actors of the criminal justice system who are more positively engaging with the issues highlighted in this report, contributing to the gradual reduction of detention as well as torture of juveniles. However, implementation gaps remain the major challenge. Much of the necessary infrastructure, whether within the police, the courts or in terms of rehabilitation homes still has to properly be put into place across the country.

48. *Recommendations concerning the problem of torture:* In order to put a halt to the use of torture, the government of Nepal must ensure:

1. The immediate ratification of the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention.

The adoption of a law criminalizing torture, in line with accepted international standards, in order to provide a legal framework under which perpetrators of torture can be effectively prosecuted and adequate reparation granted to victims and their families.

2. The creation of an effective, well-resourced and empowered independent and impartial body in charge of conducting investigations into allegations of torture.
3. Measures are taken to ensure the protection of victims of torture and witnesses, in order to ensure successful prosecution of those responsible
4. The immediate transfer of detainees complaining of ill-treatment or torture to

<sup>4</sup> Data collected by Advocacy Forum between April 2009 and March 2010.

<sup>5</sup> Children's Act May 1992, Article 53 (3)

<sup>6</sup> Children's Act May 1992, Article 53 (3)

<sup>7</sup> Children's Act May 1992, Article 15

<sup>8</sup> Children's Act May 1992, Article 42 (2) and implied reading of Supreme Court Cases

another place of detention within a minimum period of time.

4. The strengthening of the policing system through increased training and resources concerning criminal investigations, in order to encourage police officers not to rely mostly on confessions while conducting an investigation.

5. That members of the police and others who refuse to register cases, launch investigations or do not abide by court orders concerning cases of torture are sanctioned to a level that meets international standards.

6. That particular attention is given to the high levels of torture of children, notably in the Tarai region, with all such cases being immediately and impartially investigated and those responsible brought to justice. Juveniles should, as much as possible, be kept in parental custody, and guidelines should be issued to ensure the placement of juveniles in child rehabilitation homes is practiced as an exceptional measure. At no time should juveniles be detained with adults, unless it is in their best interest.

#### Section 4: Extra-judicial killings

49. While the problem of extra-judicial killings was greater during Nepal's recent conflict period. However, the emergence of many new armed groups accompanied by the degradation of the rule of law and the confidence given to perpetrators by the country's system of impunity, have enabled an upsurge of killings, notably in the Tarai plains region of Nepal. In 2009 alone, 12 incidents of extrajudicial killings by Nepalese security forces were reported by Advocacy Forum. These incidents claimed the lives of a total of 15 people, and injured 8. The killings occurred in Banke, Dhanusha, Siraha, Saptari and Rupandehi districts. Eight of the incidents concern members of political groups operating in the Madeshi communities in southern Nepal. The security agencies claim that these killings took place following "encounters" between security forces and armed criminals - although not a single person from the security forces was injured or killed. In several cases, witnesses have stated seeing victims initially being taken into custody and later saw them being deliberately killed; or that they heard shots soon after they saw the police take away the arrested persons with their hands tied.

50. There are also longstanding concerns regarding excessive use of force by the security forces during demonstrations. Repeatedly, agencies responsible for maintaining law and order have used live ammunition directly against protestors, in violation of Nepal's domestic law and international legal standards. Most notably, this happened during the April 2006 *Jana Andolan* popular uprisings, in which 18 people died after they were shot or beaten.

51. During early 2007, a period which saw mass protests in the Tarai region, later called the *Madeshi Andolan*, there were repeated incidents where the police and APF used direct live fire without first issuing clear warnings, as required by international standards and the Local Administration Act, and without first exhausting other methods of crowd control. In addition, in most cases there did not appear to be an imminent or grave threat to life or serious injury to warrant the use of lethal force. The harsh action by the State reportedly resulted in more than 30 people being killed and 800 wounded, though there remain disputes about the exact figures.

52. Although the government has occasionally ordered investigations into the killings, these have invariably failed to lead to the prosecution of those responsible. When relatives tried to file complaints with the police, the police often refuse to register them. When the relatives appeal to the court and the court issues orders to investigate, the police still fail to do so. This pattern was seen during the armed conflict, but continues to take place, notably concerning recent so-called "encounter" killings and incidents of excessive use of force, thereby reinforcing the prevailing impunity.

53. An example of extra-judicial killings – the Bardiyia killings (documented by Advocacy Forum): On March 10, 2010, 29-year-old Amrita Sunar, 28-year-old Devisara Sunar, and her 12-year-old daughter, Chandrakala Sunar - all residents of Hariharpur Village Development Committee in Surkhet district - were shot dead by army personnel of the Jwala Battalion accompanied by forest guards in Baspani, Bardiyia National Park. The two women and the girl were part of a group of manual labourers who had entered the area in order to collect kaulo bark. On the evening of March 10, the group of labourers were attacked by a group of army personnel and

forest guards. Survivors claim that the labourers all fled in panic, but the three women did not manage to escape, and were captured by the army. The survivors later found out that the three women had all been shot dead by the army personnel. Krishna Bahadur Sunar, the father and husband of two of the victims, who was also hiding nearby, was also captured by the military, and was taken away from the site of the incident so that he could not see or hear what was happening to the women. The Nepal Army itself put out a press release on March 11 claiming that the women and the girl had been killed during an "encounter" with a group of poachers, and that arms and ammunition had been recovered from the site - a version which was later repeatedly discredited. The police prepared an initial First Information Report in conformity with the official line of the military, and registered it on March 16, 2010. Krishna Bahadur was asked to sign this first FIR while he was in detention, without knowing what it stated. On March 15, Krishna Bahadur was released from detention to perform the final rites of the victims. To this end, Krishna was given 20,000 Rs on the day of his release, and promised another 55,000 Rs on condition that Krishna should confirm the official army version of the events in communicating with the public.

54. Nevertheless, several investigations have dug up evidence and testimonies which contradict the army's version of events. There have been attempts by the army to cover up the incident by making the killings appear as having occurred during an "encounter", and hence not to let the army personnel be tried in a civilian court on criminal charges of murder and rape. An April 1 report by the National Human Rights Commission found that the army personnel were responsible of excessive use of force, resulting in the death of the three women, and suggested that army officials had been tampering with crime scene evidence, in order to make the incident appear as an "encounter" with heavily armed poachers. An April 7 report by a sub-committee of the Legislature Parliament for Women and Children also found the army personnel responsible for killing the three women.

55. Once the content of the FIR was disclosed to family members of the deceased, they were dissatisfied with the manner in which the incident was presented in this FIR, and, with the assistance of Advocacy Forum, filed a complementary FIR (reg. no. 71), on the grounds of murder and possible rape on March 28 against 17 implicated army personnel and four forest guards.

56. The police file provides that on March 21, the Bardiya District Police Office (DPO) sent a letter to the officials at Jwala Battalion requesting the names and ranks of the personnel that were involved in the incident. On March 23, DPO Bardiya received a reply from the Jwala Battalion, stating that there were 19 people deployed at the time of the incident. No details, such as names and ranks of the personnel, were mentioned in this reply.

57. Following considerable pressure from the army and the forestry department, including threats of detention and refusal to pay out promised monetary compensation, the relatives of the victims signed a statement on April 7, 2010 in which they promised to withdraw the complimentary FIR. The agreement was signed by Krishna Bahadur Sunar; Man Bahadur Sunar (older brother of Krishna); Sher Bahadur Sunar (local); Dil Bahadur Nepali (local); Tul Dev Bharati (Nepali Congress representative); Gangha Ram Sunar (Maoist representative); Ramesh Tapa (acting

forest warden); Ashok Bhandari (officer of Bardiya National Park) and Unnati Sharma (forest ranger). The agreement further specified that: the forest ward administration will withdraw the charges filed against Krishna, the families of the victims will receive the remaining amounts of the funeral reimbursement, 55.000 Rs, within a week's time, the eldest son of Devisara Sunar will be provided with a job in the Bardiya national park, the national park administration will take initiative to file for monetary compensation of the victims' families, the national park will withdraw the charge filed against the four labourers that escaped from the incident on the night of the killings, the national park will provide 750.000 Rs. for a major road construction in Telpani. The forest ward officials also reportedly asked the victims' families and the local villagers that the details of the agreement be kept secret from the public.

## Section 5: Caste-based discrimination

58. Caste-based discrimination persists in Nepal despite Nepal having ratified ICERD, Article 13 of the 2007 Interim Constitution enshrining the right to equality, Article 14 mandating the punishment of such acts and compensation to victims. Some examples of cases of discrimination and violence against Dalits are presented below in order to shed light on just some of the many ways in which this discrimination and violence affects up to 20% of the Nepalese population. This discrimination and violations remains despite the political changes that have taken place since 2005, under which it had been hoped that Dalits' rights would gain greater protection and equality would become a reality in Nepal. There remains some hope that the new Constitution will provide an opportunity to ensure progress concerning Dalits' rights, although this process remains mired in political squabbling.

*Examples of human rights violations and discrimination against Dalits:*

59. Police negligence in the investigation of the gang-rape and murder of 11-year-old Dalit girl Runchi Mahara (documented by Nepalese NGO and ALRC partner the Jagaran Media Center): 11-year-old Dalit girl Runchi Mahara was found raped and murdered on September 1 in a mango orchard; her clothes were near her naked body and there was a belt around her neck. A fact finding team was established concerning this case, which included the Feminist Dalit Organization (FEDO), Lawyers' National Campaign for Elimination of Caste Discrimination (LANCAU), the Dalit Welfare Organisation (DWO) and Nepal National Dalit Social Welfare Organization (NNDSWO), led by the Dalit NGO Federation (DNF).

60. The police were reluctant to file a First Information Report (FIR), but, under mounting pressure, eventually did so and arrested one of the suspects, Mr. Dharmesh Yadav. The police reportedly found semen and blood stains on Yadav's clothing, and his mother identified the belt that was found around Runchi's neck as being his. Despite this, he was released, no case was filed in court and 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 have been pressured to settle the case.

61. Human sacrifice of a Dalit girl (documented by the Jagaran Media Center): Manisha Harijan, an 8-year-old Dalit girl, was found dead on the morning of December 4, 2009, with her throat slit. The circumstances of the crime have led the villagers and police officers to suspect that a local non-Dalit businessman, Birendra Jayasawal, killed the girl as human sacrifice in his brick kiln to "bring good omens." The kiln's chimney had been sprinkled with water and the bricks were covered with blood. The day before the incident, Jayasawal had allegedly assured the father that Manisha would be home by the morning.

62. The police arrested Jayasawal and four other suspects and the villagers demonstrated in front of the Area Police Office-Manjhgawa demanding the punishment of those responsible. The police then transferred the suspects to the District Police Office (DPO) in Bhairhawa. The victim's family and villagers claim that they encountered resistance from the police who first refused to file the case and showed negligence in investigating it. After intense pressures on the DPO from local

human rights organisations, a case was filed on 9 December 2009, but there has been no further progress to date, according to the information received.

63. A couple have lost their jobs after entering into an inter-caste marriage (documented by the Jagaran Media Center): 23 year old Rajan Gaunle, a member of the Dalit community and a resident of Chapauli Sindhuli district, and his 23 years old wife Gita Ghimire, from the Brahmin community, lost their jobs in a community radio, Radio Sindhuligadhi, in which they had been working for two years, respectively as a program coordinator and a program presenter, following their marriage on 15 October 2009. The couple had to flee their village to get married after having received threats from Gita's relatives, and when they came back after one month, the radio station manager, Dwarika Kafle, refused to let them go back to their jobs and to broadcast the news of their marriage. The President of the radio station, Krishna Hari Ghimire, is the bride's brother and refused to accept their marriage. Gita's elder brother, Kedar Ghimire, the Sub Editor of Kantipur daily's Sindhuli branch, has reportedly been repeatedly threatening Rajan after the marriage. Their colleagues from the radio station have been barred from calling the couple and risk also losing their jobs if they do so.

64. A teacher dismissed for opposing caste-based discrimination in school (documented by the JMC): Ms. Pushpa Karki, a non-Dalit teacher at the Shree Saraswati Lower Secondary School, has been dismissed for speaking against the practice of untouchability in school. The school has prevented Dalit students from touching the statue of Goddess Saraswati and using school facilities, including taps for drinking water, that the members of the non-Dalit community use. The school administration views Dalits as being a source of pollution. Teachers at the school reportedly refuse to touch Dalits' papers and award them the lowest marks without reading the content of their papers. Dalit students are prevented from attending cooking classes required under the home science course. When Pushpa objected to these practices, she was accused of seeking popularity from a community that does not deserve to be respected. When, in August 2009, Pushpa informed the local media about the caste-based discrimination practiced at the school, she was threatened with dire consequences. In addition, some of the management committee members and the school principal pushed Pushpa around in the meeting hall, physically and mentally abusing her.

65. Dalits constitute 90 percent of the student body at the Shree Saraswati Lower Secondary School. However, most of the teachers and management committee are non-Dalits. Even though the chairperson of the school management committee, Ganesh Parki, is a Dalit, this was of little help for her. Pushpa was transferred to Narayan Secondary School in the same district, a school with a bad reputation concerning security for women. Soon afterwards, Pushpa was dismissed. She has 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 in Nepal. The Commission accepted the complaint and issued an interim stay of Pushpa's dismissal from service, directed the school to allow Pushpa to mark her attendance and to pay her the salary. The Commission has asked sought written explanations from the school management regarding the case.

## Section 6: Violence Against Women

66. In its 2007 annual report, the ALRC's sister-organisation, the Asian Human Rights Commission (AHRC), presented in detail numerous cases of rape and other grave forms of violence against women, noting with concern that while other forms of human rights violations appeared to be reducing in number following the end of the country's decade-long conflict, violence against women was widespread, being perpetrated with impunity and showed no signs of reducing.<sup>9</sup> Such violence has been perpetrated both by State actors as well as members of the Maoists, both during the conflict and since the signing of the Comprehensive Peace Agreement (CPA).

67. Survivors of sexual violence and their families claim that members of all main political parties have made interventions to get any arrested alleged perpetrators released, showing that all powerful groups in Nepal are complicit in fostering impunity concerning grave violations of women's' rights.

68. The violence and deterioration in security in the Tarai region is compounding this situation further and having a major impact on women and children. Different forms of gender based violence have been reported there, including: rape by members of armed groups, criminal gangs and individuals. In one case the victim was raped and killed as a retaliation after her husband refused to join the JTMM group.

69. Reports of gender-based violence and discriminatory practices persist to the date of writing of this submission to the UPR. 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. Religious and cultural traditions and superstitions, the lack of education and economic empowerment, as well as ignorance of the law are still strong obstacles concerning the realization of women's rights and allow the persistence of a highly patriarchal society. A 2006 survey found that 23% of the women and 22% of the men thought that 'there are at least some situations in which the husband is justified in beating his wife.'<sup>10</sup>

70. Surprisingly, data suggest that more and more women have dared denouncing cases of rape in 2009. According to the annual criminal reports of Nepal Police, recording of rape cases increased by 48% between 2008 and 2009, with 348 women reporting they had been victims of rape. This is thought to only represent the tip of the iceberg, however, as social stigma still prevents many victims of rape from making complaints. Police officers also remain reluctant to file cases of rape, especially when the victims belong to vulnerable or poor communities and/or when the perpetrator is from a more powerful group. As a result, Dalit women and women from indigenous communities are most vulnerable to rape, since crimes against them can be committed with impunity.

71. The police are also failing to provide protection to women human rights defenders that are working on cases of gender-based violence, further entrenching impunity and increasing such defenders' vulnerability. Women human rights defenders have been particularly subjected to threats and attacks in Nepal in the period in question in this

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<sup>9</sup> AHRC's 2007 annual report section on violence against women in Nepal (publication pages 165 to 170), <http://www.ahrchk.net/pub/pdf/TheStateofHRin11AsianNations2007.pdf>

<sup>10</sup> Demographic and Health survey, Ministry of Health and population and USAID, 2006



submission.

72. To redress this situation, the government must take verifiable measures to tackle the root causes of the problem and develop policies aimed at transforming the patriarchal structure of Nepal's society. The government should notably be encouraged to foster 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 women become aware of their rights and opportunities. Programmes enabling their sustainable economic empowerment should also be designed and implemented.

73. *Violations accompanying accusations of witchcraft:* The impact of superstition on the condition of women in Nepal is observable in its most horrific form in the cases of accusation of witchcraft. Women who are accused of being witches are in most of the cases beaten, stripped naked and in some documented cases have been force-fed their own excrement. The attacks often result in severe physical and psychological injury as well as social exclusion. In order to save their own lives, such women often confess to being witches and are then forced to flee their homes and villages.

74. The Women's Rehabilitation Centre (WOREC) has documented 82 cases between July 2007 and September 2009 in which women were attacked and persecuted by neighbours, having been accused of witchcraft. Among them, Janjati and Dalit women (respectively 33% and 30% of the cases) are most vulnerable to accusations of witchcraft. Some examples follow to illustrate this grave situation:

*Examples of women being accused of witchcraft and abused:*

75. Police fail to charge those who accused a Dalit woman of witchcraft, beating her and forcing her to eat human excreta (documented by the Jagaran Media Centre): Ms. Somandevi Sardar, a 60-year-old Dalit woman from Morang District, was accused of being a witch by five shamans from another district on 30 September 2009. The shamans, from Chandbela, Sunsari district, were called in to treat the victim's non-Dalit neighbour, Ms. Paltidevi Khawas, at her home in Muderitol, Morang.

76. The shamans summoned Somanidevi at midnight on 30 September and accused her of practicing witchcraft on Paltidevi Khawas and making her ill. They started to punch and kick her, breaking one of her teeth, before forcing her to eat human excreta brought from the nearby road. Her son told NGO representatives that other local civilians participated in the beating. Somandevi was admitted to Koshi Zonal Hospital, Biratnagar. However, although the victim and her family filed a case against her neighbour at the District Police Office (DPO), Morang, her husband Mangallal Khawas, son Baidanath, and other neighbours claim that the police were not helpful and instead pressured them to withdraw the case and come to an agreement with the culprits. Police have told NGO workers that they are investigating the case and have sent a notice to those named in the complaint, summoning them to the station, although no action to punish those responsible is yet known to have taken place.

77. Another women beaten and forced to eat excreta, having been accused of being a witch: 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 the 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 confess to being 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 that if he spoke in support of his wife, he would also face the same treatment.

