



## Submission to the Human Rights Council's Universal Periodic Review concerning the human rights situation in Nepal

### I. Introduction

1. The Asian Legal Resource Centre ("ALRC"), a Hong Kong-based regional human rights organization with General Consultative ECOSOC status, has worked together with Nepalese non-governmental organizations Terai Human Rights' Defender's Alliance ("THRD Alliance") and Jagaran Media Center (JMC), to prepare the report, and submitting the following report as part of the United Nations ("UN") Human Rights Council's ("HRC") Universal Periodic Review ("UPR") of Nepal, to be held during the 23<sup>rd</sup> session of the Working Group on the UPR (2-13 November 2015) ("23<sup>rd</sup> session on the UPR"). The case links provided in the footnote of this report has been documented by the ALRC's sister organisation, the Asian Human Rights Commission (AHRC). This report will cover the human rights situation from 2011 to the present and is based on extensive monitoring and documentation by ALRC, THRD Alliance, and JMC during this period.

### II. Priority Human Rights Issues to be Considered under the UPR

#### 2. Extra-Judicial Killings ("EJKs"):

- (i) Though the government was quite positive to address the EJKs during the previous UPR recommendation number 107.15, at least four EJKs in the Terai region since 28 March 2014 indicate that there is a re-emerging trend of EJKs after a gap of several months since the last recorded case. These victims are Madhu Tajpuriya from Morang<sup>1</sup>, Chhatu Sahani from Sarlahi, Rajaram Jha from Dhanusha, and Jaya Narayan Patel from Bara. This trend of EJKs by security forces persists despite the previous recommendations of the UN Human Rights Committee<sup>2</sup> and UN OHCHR.<sup>3</sup>
- (ii) The State has persistently failed to adequately investigate EJKs. For example, while the State alleged in 2010 that investigations into the EJKs reported by OHCHR were being carried out<sup>4</sup>, the progress and outcome of these investigations (if any) have not been made known to the public. There are serious concerns about lack of transparency and independence in these investigations. In any event, the protracted nature of these investigations seriously undermines the quality of justice awarded to the victims' families. A further example is that of the cases of Madhu Tajpuriya and two earlier cases of EJK of Ram Sewak Dhobi<sup>5</sup> and Serajul Noori<sup>6</sup> where THRD Alliance had to

<sup>1</sup><http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-146-2014?searchterm=tajpuriya>.

<sup>2</sup>[http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal\\_Monthly\\_Update\\_March\\_2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal_Monthly_Update_March_2014.pdf)

<sup>3</sup><http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

<sup>5</sup><http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-116-2013?searchterm=Ram+Sewak+Dhobi>.

file a mandamus for investigations to be carried out due to police inaction. Despite the affirmative court orders, the police has failed to carry out investigations to-date.

### 3. Torture:

- (i) THRD Alliance's recent report finds that torture has largely been used as a tool to extract bribes, victimize persons from poor, vulnerable, and marginalized communities (including women and children, Dalits, Madhesis, and indigenous communities or *Janajatis*), frame individuals for crimes they did not commit, and as a show of power and intimidation. These cases include those of Madhu Tajpuriya (an elderly tea vendor beaten to death after being found inebriated), Dev Bahadur Thapa (an agricultural labourer brutally beaten by both the police and his fellow prisoners after his landowner accused him of stealing some lemons), and Vijay Kumar Yadav (a buffalo herder tortured for alleging publicly that the police abused the public and were corrupt).
- (ii) The government was positive to address in recommendation number 107.17, for all the cases of torture that ALRC and THRD Alliance have documented since 2011, no disciplinary action has been taken against any perpetrator. This is so even in the cases where victims suffered dire consequences in that they died because of torture. By failing to take adequate action (including punishment of perpetrators and reform of laws to bring them in line with the standards of international human rights law on torture), the State confirms the UN Committee Against Torture's observations in 2012 that the State "appear[s] to acquiesce in policy that shields and further encourages acts of torture."
- (iii) While the State tabled a bill purporting to criminalise torture and reform the compensation provisions previously governed by the Compensation Relating to Torture Act, 1996 ("CRT") in 2014-2015 ("Bill"), it is of grave concern that the Bill is not in compliance with Convention against Torture ("CAT") and fails to rectify several deficiencies in the current legal regime governing torture. Nepal has not fulfilled the recommendation number 106.3 made during the last UPR in 2011. For example, there is a 90 day statutory limitation for victims to file a case alleging torture set out in Section 11 of the Bill, although CAT requires that there is no such limitation imposed. Furthermore, the Bill only explicitly orders departmental action against the superiors of the perpetrator, which greatly dilutes the deterrent impact of criminalisation of torture. The Bill is itself the subject of long overdue reform (for it has been more than 23 years since the State ratified the CAT, and more than 5 years since the Supreme Court directed the government on 23 May 2009 to formulate legislation which criminalises torture), and it is imperative that comprehensive legal reform is carried out by way of this Bill without further delay. The HRC should recommend that the State engages in proper consultations with civil society in the drafting process and passes a bill in line with CAT.

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<sup>6</sup>The mandamus was obtained from the Janakpur Appellate Court on 4 October 2014. The Court directly served this order on the police force, but action has not been carried out to-date.

4. **Excessive Use of Force by Security Forces:** There are clear indications that the security forces used excessive force during protests on 12 January 2015 (scheduled by the opposition regarding constitution drafting) (“January Protests”) and from 9 to 15 February 2015 (regarding developmental concerns in Simara) (“February protests”).<sup>7</sup> We urge the HRC to recommend that impartial and independent investigations into the use of force on protestors (such as local political leaders Rajaram Jha from Dhanusha who died from his injuries, Rajram Yadav from Siraha and Ramesh Ranjan Barma from Kapilvastu from the January protests, and Naresh Patel and Pradeep Kumar Sah from the February protests) are carried out, and preventive measures against such use of force during future protests are implemented.
5. **Impunity of Security Forces:** The issues above demonstrate that the State has failed to effect necessary legal reform and/or carry out impartial and independent investigations into alleged abuses by its security forces under the existing law. In particular, ALRC and THRD Alliance draws attention to the fact that while the government has attempted to devolve responsibility for abuses to the individual policeman, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. An implicit compact that no one will be punished adequately for abuses encourages, or, at the very least, permits the individual policeman to operate with impunity.
6. **Freedom of Expression:** Dr. C.K. Raut<sup>8</sup> was charged with sedition on 8 October 2014 under Nepal’s Crime against State and Punishment Act 1989, and faces the possibility of life imprisonment. The case is still ongoing, and he has been released on bail. He called for the right to secession to be enshrined in the new constitution, when participating in a peaceful public rally in Morang district in the Terai. “The apparent attempt to silence C.K. Raut undermines the prospect of an open debate among all communities in Nepal about the country’s proposed federal structure and we urge the HRC to recommend that C.K. Raut is released immediately and unconditionally.
7. **Caste-based Discrimination:**

- I. **Non-discrimination**

The term Dalit refers to people who are religiously, culturally, socially, economically, and historically oppressed, excluded, and considered untouchables. The Dalit community lives in many regions of Nepal, practices many faiths, is multi-caste and multi-lingual, and embraces a rich multi-cultural diversity. Despite national and international provisions legislating against discrimination, Dalits are the *de facto* “untouchables” of contemporary Nepal. They are frequently denied access to public places and the right to drink water from public water taps. They are the victims of violence to prevent participation

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<sup>7</sup><http://www.humanrights.asia/news/ahrc-news/AHRC-STM-016-2015>

<sup>12</sup><http://www.humanrights.asia/campaigns/c.k.raut/case-narrative>.

in inter-caste marriage and endure an estimated 205 forms of discriminatory practice in their daily lives<sup>9</sup>.

The Jagaran Media Center (JMC) recorded 100 caste-based incidents of violence within the first 3 months of 2014. Among them, 21 cases relate to displacement due to inter-caste marriage, 11 relate to punishment for alleged witchcraft, 22 relate to misbehavior in relation to public water taps, 29 relate to discrimination in public places, while 7 concern restrictions imposed on temple entry<sup>10</sup>.

## **II. Haliya: Continuation of Slavery**

The government has aimed to abolish the Haliya system (a sort of bonded labour) and has criminalized the practice. But this tradition still prevails in the Mid-Western Development Region and the haruwa-charuwa tradition persists in the eastern Terai<sup>11</sup>. The government of Nepal does not have complete data for Haliyas, as the identification process is still incomplete<sup>12</sup>.

The Supreme Court directed the government of the Nepal to introduce a law for the rehabilitation of Haliyas. However, government has turned a deaf ear to the Court and the Haliyas demands. Furthermore, the government is citing lack of budget for completing the identification of Haliyas; in light of this, rehabilitation of Haliyas appears to be a farfetched concept.

Although it has already been over five years since the government announced the abolition of the Haliya system, Ram Parki of Dethala VDC-4 has been living a life of bonded labour for the last 26 years only because he borrowed NPR 5,000 from his landlord<sup>13</sup>.

## **III. Inter-Caste Marriage**

Inter-caste marriage is still not accepted in family and society in Nepal. Inter-caste marriage between a Dalit and a non-Dalit is still a matter of choice only for certain individuals; family members, and the society at large, seem to be strictly against such practices. The so-called high caste persons apply coercive pressure on their son/daughter to break up their relationship with a Dalit, by making the Dalit become embroiled in different criminal cases, with charges such as thieving, kidnapping, child marriage, and rape. The ALRC and Jagaran Media Center have recorded three such severe human rights violation cases in

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<sup>9</sup> Bhattachan, KB. et. Al. 2003. *Existing Practices of Caste-based Untouchability in Nepal and Strategy for a Campaign for its Elimination*. Kathmandu: ActionAID Nepal.

<sup>10</sup> Jagaran Media Center Media Watch Report, 2014.

<sup>11</sup> <http://www.ekantipur.com/2013/12/11/top-story/haliya-tradition-still-exists-in-mid--west-region/382198.html>

<sup>12</sup> HUMAN RIGHTS COUNCIL, *Twenty seventh session, Agenda Item 3, point number 4, General Debate*, A written submission to the UN Human Rights Council by the Asian Legal Resource Centre, 2014.

<sup>13</sup> <http://www.ekantipur.com/2014/02/21/national/man-serving-as-haliya-for-26-yrs-for-rs-5000/385683.html>

2014. These victims are Sangita Lama<sup>14</sup> from Chitwan, Binaya Kumar Harijan<sup>15</sup> from Kapilbastu, and Rajani Thapa Magar<sup>16</sup> from Nuwakot.

Inter-caste marriage with Dalits was prohibited in the past, through the religious apparatus, which has also been mainstreamed into policies in the still largely caste-based society. However, the trends show that such kinds of marriages have been increasing in Nepal. But not only common people, even a Nepal State Minister<sup>17</sup> has been found involved in separating inter-caste married couples. This shows that inter-caste married couples have been facing an increase in severe human rights violence<sup>18</sup>.

In order to encourage inter-caste marriage with Dalits, the government of Nepal has decided to provide monetary incentives<sup>19</sup> to the inter-caste married couples. Although the policy is praiseworthy, there are some concerns related to its implementation mechanism and impact. The government only provides incentive to the couples that married after fiscal year B.S. 2066/67 (2009). However, there are many old couples that are provisionally excluded from the incentive system, although they have been facing challenges for many years.

#### **IV. Access to Justice**

Despite the so-called incessant efforts of the government of Nepal (GoN), ending the ill practices of discrimination is still a challenge. Though the government followed up the recommendation number 106.24 to pass a bill against caste based discrimination, the GoN is making effort to achieve the desired results through the implementation of Caste Based Discrimination Act. According to the data received from the Attorney General's Office, from 2011 till August 2014, 22 cases on caste-based discrimination have been brought to the court. Some of the pertinent challenges for the effective implementation of the Act are lack of adequate capacity of law enforcement agencies, low level of awareness on untouchability and *Dalit* rights among the general populace and local authorities, especially in remote areas.

The Shiva Shankar Das<sup>20</sup> case and the Maya Sarki<sup>21</sup> case are examples of how the Dalit people have been facing barriers to justice. The government of Nepal has not fulfilled recommendation number 106.37 to remove the obstacles faced by victims trying to access justice. Dalits face a powerful combination of social

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<sup>14</sup> <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-007-2015>

<sup>15</sup> <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-120-2014/?searchterm=>

<sup>16</sup> <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-009-2015>

<sup>17</sup> State Minister Industry Dan Bahadur Chaudhary directed the District Administration Office in Kapilavastu to separate Sarita Chaudhary, 25, from her husband, Taulan Kohar, 28. The couple eloped to Mumbai, India, nine months ago, then returned to Nepal. In April, the woman was removed from her in-laws' home against her will and sent back to her parents.

<sup>18</sup> <http://www.globalpressjournal.com/asia/nepal/inter-caste-newlyweds-face-eviction-discrimination>

<sup>19</sup> Inter-caste marriage between *dalit* and non-*dalit* has been promoted by providing 100,000 rupees to the couple and records of such marriages are being updated.

<sup>20</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-021-2014/?searchterm=>

<sup>21</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-024-2014/?searchterm=>

discrimination and violence that condemns them to a life of second-class status. Perpetrators are rarely prosecuted. Dalits' limited access to justice has three main causes: widespread lack of awareness of anti-discrimination law, ingrained indifference in the authorities—who refuse to register police reports, investigate cases, or prosecute those who practice 'untouchability'—and the fear in victims of making a report when they suffer caste-based violence and discrimination. But, it is a reality that the police officials ignore or force the dismissal of cases concerning caste discrimination. Some police officers are also involved in the practice and promotion of caste based discrimination<sup>22</sup> violations.

Sometimes police officers refuse to even register the First Information Report (FIR). Government officials ignore voices of the Dalit, as Dalits are being humiliated every day in public spaces. The government was positive to address this issue brought forward through recommendation number 108.12, it has not lived its commitment. At list, 6 Dalit women of the Siraha District were beaten after an argument at a local public well<sup>23</sup>. The non Dalit villagers entered the Dalit settlement and beat the women. The same Dalit women were also previously beaten for using the public well in the village. But the Dalit women are yet to avail justice.

8. **Conclusion:** The HRC must urge all actors in Nepal to uphold fundamental human rights, and to take active measures evidencing such respect for human rights in the letter (by way of legal reform: such as the criminalisation of torture and the removal of the statutory limitation on torture) and in spirit (by way of implementing law: through explicit use of command structures in the security forces, impartial, and independent investigations into alleged abuses, and the enforcement of court judgments).

Dalits are the de facto “untouchables” of contemporary Nepal. They are still frequently denied access to public places and the right to drink water from public wells. Therefore, a 10-year strategy, focusing on overall empowerment and political participation of Dalits, and cultural vigilance and legal reforms, has to be developed and implemented strictly. The HRC must urge the government of Nepal to take measures for the effective implementation of the Caste Discrimination and Untouchability (Offence and Punishment) Act, 2011. The government must take prompt action to make sure that police personnel take the initiative to register cases regarding caste discrimination and untouchability, and to ensure no delays when taking legal action is being taken.

The principle of zero tolerance should be endorsed in the justice delivery system regarding the offence of caste based discrimination & untouchability. The state should allocate specific budget to support the entire effective justice delivery process. The Caste based Discrimination and Untouchability (Offence and Punishment) Act 2011, needs to be amended, with the provision of more than five years of imprisonment and monetary fine/compensation of at least NPR. 1,00,000.

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<sup>22</sup> <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-111-2014/?searchterm=>

<sup>23</sup> <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-027-2014/?searchterm=>