



SUBMISSION

for the

THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

NEPAL

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Submitted by

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Background

Nepal underwent its second Universal Periodic Review (UPR) during the 23rd session of the Working Group on the UPR in November 2015. The Government of Nepal accepted 152 and noted 43 recommendations of the total of 195 recommendations made by 73 different countries.¹

Although the country's acceptance of 152 recommendations was a welcome step, the human rights community expressed its concerns over the government's failure to accept many critical recommendations. The accepted recommendations cover a wide range of issues, including torture and other ill-treatment, statelessness and caste-based discrimination. Key among the recommendations rejected were the Optional Protocol to the Convention against Torture, International Convention for the Protection of All Persons from Enforced Disappearance and Rome Statute of the International Criminal Court².

Given its expertise, Terai Human Rights Defenders Alliance (THRD Alliance)³, in this submission, focuses on **statelessness** and **impunity and accountability**. It raises specific concerns on the government's failure to fulfil its commitment to implement the relevant recommendations made during the previous UPRs. second UPR in 2015.

Below follows commentary on the implementation of the recommendations related to these two areas:

i) Statelessness

1. Nepal promulgated a new constitution on 20 September 2015. Article 10 of the Constitution stipulates that no Nepali citizen shall be denied citizenship. Article 11 (3) stipulates that children of those parents who have received citizenship by birth before the promulgation of the Constitution will get citizenship by descent. However, in reality, many children whose parents have received such citizenship certificates by birth are not getting their citizenship certificates. The Chief District Officers (CDOs) authorized to issue citizenship certificates are refusing to issue certificates to the children of citizens by birth, saying that due to the lack of a new federal law adopted to bring the 2015 constitutional provisions into operation, they cannot provide citizenship to those people who are not entitled to citizenship under the Nepal Citizenship Act 2006 law does.
2. According to Home Ministry sources, in 2007 a citizenship distribution committee distributed 2,344,821 certificates of citizenship by descent; 170,042 citizenship certificates by birth; 100,224 citizenship certificates on the basis of marriage and 528 naturalized citizenship certificates. These were issued under the Interim Constitution provisions. The

¹ https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/a_hrc_31_9_add.1_e.pdf

² <https://kathmandupost.com/miscellaneous/2016/03/01/nepal-rejects-un-suggestions-on-tj-related-cases>

³ Terai Human Rights Defenders Alliance (also, well-known as THRD Alliance) is a non-governmental organization registered under Nepali law and is working to protect and promote human rights through research, legal intervention and advocacy. It works in close coordination with Nepal's National Human Rights Commission, and reports to international human rights organizations, including the UN Office of the High Commissioner for Human Rights.

children of those people who received citizenship by birth in 2007 are now adults, but they are not able to obtain citizenship certificates. Most of the citizens by birth are from the Madhesi community (people residing in the Terai area, the southern plains of Nepal who are culturally different from the hill regions), and are from poor and vulnerable sections of society.

3. In Nepal, citizenship documents, which are issued at the age of 16, are required to register to vote, register marriages or births, buy or sell land, appear for professional exams, open bank accounts, or gain access to credit and receive state social benefits. One cannot even buy a SIM card without a citizenship certificate. Without getting citizenship certificate one cannot avail of state facilities and enjoy rights such as pursuing technical and higher education and applying for government or non-government jobs in Nepal, and neither can one get a passport to study or to get a job abroad.
4. On 8 August 2018, the government tabled the citizenship amendment bill in parliament. It has not been passed yet. In the absence of the law, thousands of youths in Nepal have remained the victims of statelessness. On 21 June 2020, the Parliamentary State Affairs and Good Governance Committee endorsed the long-awaited citizenship bill. On 2 July 2020, the parliament session was prorogued, and the anticipated deliberations could not take place pushing the passage of the citizenship bill delay for at least five to six months—again.
5. Despite some positive provisions endorsed by the State Affairs and Good Governance Committee, these are the key concerns among others:
 - The bill stipulates that foreign women married to Nepali men shall have to wait for seven years to obtain Nepali citizenship as per the law and the Government of Nepal could revoke the permanent resident card issued to people for the period that they could not obtain their citizenship, if they are found to have acted against Nepal's independence, sovereignty, territorial integrity and national interest and therefore, this provision could render foreign women married to Nepali men stateless if they have not obtained citizenship of their country and if they cannot obtain citizenship in Nepal.
 - If Nepali citizens married to foreign citizens want to obtain Nepali citizenship, they will have to furnish evidence that they have not obtained citizenship of a foreign country or similar nationality documents of a foreign country. If the applicants had obtained foreign citizenship or nationality document before applying for Nepali citizenship, then they are required to renounce those citizenship and nationality documents.
 - Since the constitution itself discriminated between Nepali mother and Nepali father, the bill does not contain any provision that could enable Nepali mothers to independently ensure citizenship by descent for their children. If a Nepali woman marries a foreign man, then the Nepali woman cannot ensure naturalized citizenship for her husband.
 - The bill stipulates that applicants who want to obtain their citizens as 'Other' on the basis of gender identity, shall have to reveal their identity based on the recommendation provided by recognized medical doctor but this provision will

increase burden of proof on the applicant and would undermine the prestige of the applicants. This provision will be a disadvantage for those people who were born as male or female but they feel as a different gender than their biological gender and they do not want to undergo sex change operation or are unable to afford such an operation.

- Provisions relating to affidavit are good but the bill also stipulates that if an affidavit later proves to be false, then the mother or her child who had given the affidavit shall have to face punishment and if they have been punished, then in this case, citizenship issued on the basis of false affidavit shall be automatically revoked.
 - The bill proposes punishment for people who have provided recommendation letter to the applicant or who identified the applicant, or who issued the citizenship certificate to the applicant if any of the details provided by them prove to be false. The bill proposes punishment for elected representatives, people who have identified the applicant and the authority who has issued the citizenship if any details of the citizenship prove to be false. But the bill does not protect people for acting in good faith and therefore, people who are involved in the citizenship process might not help the applicant due to fear of punishment.
6. There must be a provision for compensation for those who are qualified to become citizens of this country but have not been able to obtain their Nepali citizenship due to the government's fault. Similarly, there are hundreds of children of citizens by birth who are entitled to obtain citizenship by descent but they have not been able to get their citizenship just because a new citizenship law has not been enacted. In the five years after the constitution was promulgated, the government did not pass the bill. This way, many citizens of Nepal are being deprived of their citizenship for none of their fault.

Recommendations

- ✓ Ensure that **the government of Nepal amend the citizenship bill tabled in the Parliament in line with the analysis made above and ensure the immediate passage of the law.**
- ✓ Ensure that **the government of Nepal remove the unconstitutional provision for seven-year waiting period for foreign women marrying Nepali men.**
- ✓ Ensure that **the citizenship provisions in the constitution guarantee gender equality and retain and transfer citizenship**
- ✓ Ensure that the government of Nepal do not discriminate against any persons based on the citizenship certificates.
- ✓ Ensure that **the government of Nepal provide compensation for those who are qualified to become citizens of this country but have not been able to obtain their Nepali citizenship due to the government's fault.**
- ✓ Ensure that **Nepal become a party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness**
- ✓ Ensure that **the government of Nepal** invite the relevant Special Rapporteur to study the issues of stateless persons in the country.

ii) **Accountability and Impunity**

Torture

7. THRD Alliance's analysis of the victims' experiences in seeking justice under the new Penal Code paints a bleak picture. Over the nearly past two years, no act of torture has been prosecuted since the Penal Code criminalizing torture came into force. A key reason behind no prosecution lies with the investigation at large.
8. THRD Alliance has documented nine cases of police's refusal to register First Information Reports (FIRs) filed by the victims. The torture survivors faced a complex challenge due to cumbersome procedures while seeking justice under the Penal Code, when compared with that of the Compensation relating to Torture Act. The efforts made by the mandate holders – National Human Rights Commission and Attorney General Office – have largely remained ineffective in ensuring justice to the torture survivors.
9. The statute of limitation to file a case of torture has been increased. Section 170 (2) mentions that a victim of torture can file a complaint within six months of either the date of incident or the date of release of the person from the detention or prison. However, this provision obstructed justice for the torture victims whose aftereffects were seen after six months. This contradicts with the international principle of human rights. In Prashant Kumar Pandey's Case, Human Rights Committee on 30 October 2018 gave its views⁴ that state needs to investigate the allegation of torture and provide effective remedy to the victims. It also reiterated that statute of limitation cannot be the reason to not register the case and not to investigate in the allegation of torture where claim of the victim is corroborated with other evidences.
10. Despite its criminalization in the 2018 Criminal Code, death in custody is still prevalent in Nepal. They are hardly investigated. There is no single case where criminal charges were brought against law enforcement agencies for the death in custody. Among documented 13 custodial suicides over the past five years⁵, the families of the deceased disputed the cause of death in at least five cases. In several other cases, the deceased detainee reportedly bore signs of torture or other physical abuse.

Extrajudicial Execution

11. On 7 June 2017, a number of UN Special Rapporteurs (the Special Rapporteur on extra judicial, summary or arbitrary executions; the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to freedom of peaceful assembly and of association; and the Special Rapporteur on minority issues) wrote a joint letter to the Nepal government, in which they raised the issues of extrajudicial killings and excessive use of force during the different protests in the Terai, and asked the Government of Nepal to reply within 60 days. However, as of the time of writing, the Government of Nepal has not responded to this letter⁶. More than 50 persons

⁴ <http://www.thrda.org/forwarded/news-views/un-hrcs-decision-on-prashant-pandeys-case-statute-of-limitation/>

⁵ <https://www.recordnepal.com/wire/features/deaths-in-custody/>

⁶ <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-004-2017/>

were killed in 2015 and 2016 during protests against discriminatory provisions of the constitution in the Terai.

12. The authorities have failed to ensure a fair trial for Tharu protestors who were arrested on suspicion of killing of police officials in Tikapur in 2015. More than 50 of Tharu protestors were detained and convicted on "fake" charges. In contrast the government has not punished the perpetrators in Kailali district who torched Tharu houses and shops in the immediate aftermath of the Tikapur carnage. There has been no fair investigation and prosecution in this incident⁷.
13. On 25 August 2015, the government formed a High-Level Inquiry Commission under the Chairmanship of retired Supreme Court Justice Girish Chandra Lal to probe the cases of killings, violence and vandalism during the protest in Terai/Madhes. The Commission completed its job and submitted its report to the government on 15 December 2017. At the time of writing, however, the government had not made the report public. The government has not taken any legal action against the perpetrators, despite many victims filing First Information Reports (formal complaints) to the police.

Despite several attempts of demanding the report, the government did not provide the report to the victims. The victims approached the Information Commission and the Supreme Court with the demand for the report. On 17 October 2019, the Supreme Court directed the Information Commission⁸ to respond to the victims' application. Despite the direction of the Supreme Court, the report has not been made public.

14. In 2019, THRD Alliance monitored and documented at least 6 cases of extrajudicial killings, mostly by the police. These cases are of Kumar Paudel, Saroj Narayan Singh, Dipendra Chaudhary, Suraj Pandey and Tirth Ghimire. Five of them are from Terai. None of these cases has been subjected to a prompt, thorough, impartial and independent investigation. Among them, the National Human Rights Commission (NHRC) has investigated the case of Kumar Paudel. Its investigation concluded that Mr. Poudel was killed after he was taken under police custody. The human rights institution also found that police erred while collecting information from the incident site and that doctors examining the body xx from medico-legal perspective. It recommended that the government suspend the 3 police officers involved in the incident and conduct a fresh and impartial investigation. At the time of writing, the NHRCs recommendations have not yet implemented and the three officials continue to actively serve in the Nepal Police.

For many years, Nepalese security forces have used mostly lethal weapons to open fire on protestors. Saroj Narayan Singh and Suraj Kumar Pandey were killed in two different incidents in 2019 when police opened fire on protestors. Police has not registered FIRs in either cases and instead signed agreement with the protestors and the families of the victims.

15. Advocate Sunil Ranjan Singh and Advocate Dipendra Jha among others had filed a writ of mandamus⁹ demanding a separate investigating agency to investigate cases of extrajudicial

⁷ <https://www.recordnepal.com/wire/after-years-of-media-trial-a-stunning-verdict-in-the-tikapur-case/>

⁸ <https://kathmandupost.com/national/2019/10/18/supreme-court-directs-information-commission-to-respond-to-writ-regarding-lal-commission-report>

⁹ Supreme Court, writ number # 067-WO-1043/ 2068/1/22

killings (EJKs) that occurred in the Terai region from 1 January 2008 to 1 January 2011. The petitioners argued that a separate inquiry commission independent from the security forces was necessary to investigate the EJKs as most of the EJK allegations were against the security forces. The petitioners had based their arguments on the reports of UN OHCHR (Investigating allegation of EJK in the Terai, July 2010). On 6 January 2020, the court decided to issue a writ as demanded by the petitioners to set up a separate independent mechanism excluding police, which is needed to ensure a fair and impartial investigation and justice in cases wherein law enforced agencies are suspected of being responsible.

Recommendations

- ✓ Ensure that **all cases of alleged torture, excessive use of the force and extrajudicial killings by security forces and deaths in police custody are promptly independently, impartially and thoroughly investigated to provide justice to the victims**
- ✓ Ensure that alleged **perpetrators of extra-judicial killings are prosecuted** and, where appropriate, **sanctioned** taking into account the extreme seriousness of the offence.
- ✓ Ensure that the **government of Nepal make public the report of Lal Commission** to provide justice to those who were killed during 2015/16 constitution related protests, and **duly and effectively implement the commission's recommendations.**
- ✓ Ensure that **the government of Nepal amend the Penal Code and the other relevant provisions of law to ensure the effective and impartial investigation into human rights related crimes**, including to eliminate the statute of limitations in torture cases, and to ensure that the definition of torture is in line with international law.
- ✓ Ensure that **the government of Nepal institute structural reform within the police to prevent the incidence of torture and ill-treatment, excessive use of force and extrajudicial killings**
- ✓ Ensure that the government of Nepal sign and ratify the the Optional Protocol of the Convention Against Torture.