



Australian Government

Department of Foreign Affairs and Trade



# DFAT Country Information Report

## Nepal

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# 1. Purpose and Scope

1.1 This Country Information Report has been prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. It provides DFAT's best judgment and assessment at time of writing and is distinct from Australian Government policy with respect to Nepal.

1.2 The report provides a general, rather than an exhaustive, country overview. It has been prepared with regard to the current caseload for decision-makers in Australia without reference to individual applications for protection visas. The report does not contain policy guidance for decision-makers.

1.3 Ministerial Direction Number 56 of 21 June 2013 under s 499 of the Migration Act 1958 states that:

Where the Department of Foreign Affairs and Trade has prepared a country information assessment expressly for protection status determination processes, and that assessment is available to the decision-maker, the decision-maker must take into account that assessment, where relevant, in making their decision. The decision-maker is not precluded from considering other relevant information about the country.

1.4 This report is based on DFAT's on-the-ground knowledge and discussions with a range of sources, including government, civil society, community groups and international organisations in Kathmandu. It takes into account relevant and credible open source reports, including those from Amnesty International, Human Rights Watch, UNDP, the United States Department of State, the International Commission of Jurists and Freedom Watch as well as reports issued by Nepali NGOs. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.

## 2. Background Information

### Recent History

2.1 Nepal was established as an independent monarchy in 1769 when Prithvi Narayan Shah, the ruler of the small principality of Gorkha, united 46 independent states to form the Gorkha Kingdom. Hereditary monarchs have ruled Nepal for most of its history.

2.2 In 1996 the Unified Communist Party of Nepal (Maoist) (UCPN-M) began a nationwide violent insurgency against the government. A ten-year civil war ensued during which at least 13,000 people were killed and over 1,300 disappeared before a peace accord was struck in 2006 following an agreement between the Maoists and an alliance of seven Nepali political parties.

2.3 In February 2005 the then-king assumed absolute power in a coup supported by the army. A people's movement in April 2006 and a joint alliance of democratic parties and the Maoists forced the king to relinquish direct rule. Parliament subsequently agreed to abolish monarchical rule, and Nepal became a republic in 2008 with the election of the first Constituent Assembly. The Maoists formed the first government, which proved to be short-lived, resigning in May 2009. A coalition government was then formed until it, too, resigned in July 2010. In September 2011, Dr Baburam Bhattaerai of the UCPN-M party formed government with the Madhesi alliance from the Terai (a region in Nepal's south). Political stalemate and questions concerning Nepal's federalist structure and how to accommodate ethnic and linguistic minorities led to the dissolution of the first Assembly in 2012.

2.4 After repeated delays, elections for the second Constituent Assembly were held in November 2013. International observers described the elections as free and fair, with a voter turnout of 78 per cent despite threats of violence by a break-away Maoist group. The Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist) or CPN (UML) were elected to govern Nepal under a coalition agreement that gave them an almost two-thirds majority in the Assembly. The UCPN-M, which had led the insurgency and had dominated the 2008 election, managed to secure only 80 of the 575 directly elected seats.

2.5 An 85 per cent majority vote by Constituent Assembly lawmakers on 16 September 2015 approved a new Constitution which was subsequently promulgated on 20 September 2015. The new Constitution was agreed upon after considerable negotiation and delays. The political stalemate surrounding the development of a new constitution had ended in June 2015 when the four major political parties agreed to proceed with negotiations, focusing on the key points of federalism, the form of government and elections, and the judiciary. The political breakthrough followed a 7.9 magnitude earthquake that struck Nepal on 25 April 2015 (and subsequent aftershocks), which killed an estimated 8,891 people and injured 22,302. Under the new Constitution, Khadga Prasad Oli of the CPN-UML was elected Prime Minister in October 2015.

### Demography

2.6 The UN Department of Economic and Social Affairs estimates that Nepal's population is 28.9 million, and includes members of approximately 125 caste and ethnic groups. Nepali (a language of Sanskrit origin written in the Devanagari script) is the national language spoken by approximately 47 per cent of the population. Around 123 languages or dialects—including Maithili (spoken by 12 per cent), Bhojpuri (six per cent), Tharu (six per cent), Tamang (five per cent), Newari (three per cent), Magar (three per cent) and Bajjika (three per cent)—are also in use. English is widely spoken in the government and business sectors.

2.7 Nepal is divided into three natural east-west geographical zones. Along its southern border is a strip of flat, fertile land known as the Terai, an extension of the vast north Indian plain, which accommodates approximately 50 per cent of the population. The central strip comprises the Middle Hills, rising to 3,400 metres and interspersed with fertile valleys, of which the Kathmandu Valley is the largest. Approximately 43 per cent of the population lives in this area. The northern strip is formed by the Himalayas, an unbroken

mountain range containing eight peaks higher than 8,000 metres, which accommodates approximately seven per cent of the population.

2.8 The capital city of Kathmandu had a population of 1.183 million in 2015 and approximately 17 per cent of the population live in urban areas. Inequalities exist across geographic regions and ecological zones, and between urban and rural areas. Ethnic and caste distinctions remain influential in Nepali society following a rise in identity-based politics and increased polarisation during and following the conflict from 1996 to 2006.

## Economic Overview

2.9 Nepal's economic growth has been adversely affected by political uncertainty and conflict. The focus on political transition and the attainment of peace has meant inadequate attention has been given to economic and other reforms that would improve the investment climate, stimulate growth and create more private sector jobs. The earthquake of April 2015 and the subsequent aftershocks had a negative impact on the economy. The 2015 political dispute in the Terai, which restricted trade and services across the Nepal/India border, also affected growth.

2.10 Nepal is among the poorest and least developed countries in the world. According to UNDP's 2015 Human Development Report, Nepal, ranked 145th out of 187 countries in the Human Development Index, with 25.2 per cent of the population living under the national poverty line and 23.7 per cent earning less than US\$1.25 per day.

2.11 Agriculture contributes approximately 34 per cent to GDP and accounts for 75 per cent of employment. Industrial activity mainly involves the processing of agricultural products, including pulses, jute, sugarcane, tobacco, and grain. The services sector – accounting for approximately 51 per cent of GDP – has been the primary source of growth since the 2000s.

2.12 Nepal has set itself an economic growth target of 7 per cent with the aim of becoming a middle-income country by 2022. Annual growth in 2015 was 3 per cent. The country's landlocked geographic location and accompanying high transportation costs, persistent power shortages, underdeveloped power, irrigation and transportation infrastructure, civil strife and labour unrest, and its susceptibility to natural disasters undercut growth; over the last decade Nepal has consistently achieved lower economic growth rates than its South Asian neighbours.

2.13 It is estimated that only 28 per cent of households have a bank account or have taken a loan from a bank. Around 28 per cent rely solely on informal income sources, and 20 per cent are financially excluded from participation in Nepal's financial sector altogether. This figure rises to an estimated 80 per cent in the hills and mountain areas.

2.14 Corruption is endemic in Nepal, which ranked 130 out of 168 countries in Transparency International's 2015 Corruption Perception Index. Patronage and obligations to social, political and economic networks are prevalent, due in part to weak rule of law and political uncertainty. Low and middle-ranking officials often engage in petty corruption to facilitate better access to government services. The 2015 Constitution established a Commission for Investigation of Abuse of Authority to investigate corruption allegations against public officials.

## Health

2.15 Article 35 of Nepal's 2015 Constitution guarantees access to basic health services as a fundamental right. The country has a variety of public and private health-care facilities. Public health facilities include sub-health posts, health posts, primary health-care centres and district hospitals. Private health facilities range from formal hospitals, nursing homes, private practitioners (especially at clinics or private pharmacies), private medical colleges and non-governmental organisations or community-run hospitals to informal practitioners such as faith healers (jhankri or shamans) and Ayurvedic practitioners.

2.16 Health expenditure was 6 per cent of GDP in 2013 (the latest available reliable data). The private share of total health expenditure was 70 per cent in 2013, of which about 85 per cent was derived from out-of-pocket payments. In 2007 the government of Nepal introduced free essential health care services for poor and vulnerable citizens attending primary health-care centres and district hospitals. In 2008 the policy was extended to all citizens. In 2009, free essential health services became available via primary health care centres and district hospitals. Under this system, no charges are levied for registration, outpatient,



emergency and inpatient services, or for essential drugs. Use of public health facilities by lower-caste, illiterate and marginalised people has increased since the introduction of the free essential services policy.

2.17 Nepal's health sector is challenged by the country's widespread poverty, limited government funding and its remote and mountainous geography which hinders the development of appropriate health infrastructure and access to health services outside of the densely populated southern plains region. Health care services are generally considered inadequate by international standards, and some facilities, particularly in Kathmandu, were damaged or destroyed by the 25 April 2015 earthquake. Hospitals in Nepal tend to be located in urban areas and provide a much wider range of medical services than rural health centres, although the quality of health care provided in large urban centres such as Kathmandu is still variable. The average Nepali spends just 5 per cent of their annual income on health-related needs.

2.18 According to the UNDP, average life expectancy at birth for both males and females in Nepal is 69.6 years, slightly above the regional average of 67 years. Disease prevalence tends to be higher in Nepal than in other South Asian countries, especially in rural areas. Malnutrition and poor sanitation are widespread. According to data compiled by the World Health Organization, non-communicable diseases (including diabetes, chronic respiratory diseases, cancers and cardiovascular diseases) account for an estimated 60 per cent of total deaths in Nepal, while communicable, maternal, perinatal and nutritional conditions are estimated to account for 30 per cent of all deaths in Nepal.

2.19 Violence against health care providers has increased throughout Nepal in recent years with media reports of physical assault against doctors and health care providers and vandalism in hospitals. Many of these incidents have been attributed to the death of a patient, accusations of negligence, mismanagement and poor service quality on the part of health care professionals or providers.

## Education

2.20 Article 21 of the 2015 Constitution guarantees every citizen the right to free education up to secondary level. Nepalis aged 25 years or older have attended an average of 3.3 years of school, and approximately 60 per cent of Nepali children leave school by grade five. The adult literacy rate for people aged 15 years or older is 57.4 per cent.

2.21 Education outcomes are highly variable in rural areas, with poverty, remoteness and poorly-funded facilities creating on-going barriers to education access, most notably for children from Dalit communities. These factors are exacerbated by practices such as child labour, early marriage and caste discrimination.

2.22 While primary education has been free and compulsory since the early 1990s, implementation has been variable due to geographic isolation and challenges associated with conflict. Parents are often required to pay examination fees, annual fees or other costs associated with textbooks, uniforms, meals and other educational materials. These fees can be difficult to pay for parents from disadvantaged backgrounds, particularly those with multiple children. A number of schools, particularly in Kathmandu, were damaged or destroyed by the 25 April 2015 earthquake.

2.23 Both public and private schools experienced attacks during the insurgency between 1996 and 2006. According to a report issued by the Governance and Social Development Resource Centre, around 28 teachers were killed and many school children and teachers abducted during the conflict. Violent attacks on schools have significantly abated in recent years.

2.24 The government does not restrict academic freedom. However, minorities, including Hindi- and Urdu-speaking Madhesi groups, have complained that Nepali is enforced as the language of education in government schools (see also 'Madhesis' below).

## Employment

2.25 The 2015 Constitution provides for the freedom to practice any occupation and the right to employment. While precise numbers are impossible to gauge because of the open border with India, every year more than 4 million Nepalis travel abroad (mostly to India, followed by countries in the Persian Gulf and Malaysia) to engage in low or no-skill and low-wage employment. Labour migration and remittances accounted for nearly 30 per cent of GDP in 2014, representing a 30 per cent increase in the share of remittances in 2011. DFAT assesses that economic migration acts as a significant driver for many millions of Nepalis to leave the country every year seeking better opportunities than those found in Nepal.

2.26 Labour laws provide for the freedom to bargain collectively, and unions generally operate without state interference. Workers in a broad range of 'essential' industries are not permitted to stage strikes, while

60 per cent of a union's membership must vote in favour of a strike in order for it to be considered legal in non-essential industries. Nepal's legal minimum age for employment is 14 years. However, Freedom House reports that over 1.6 million children under the age of 14 are engaged in various forms of labour, often under hazardous conditions, throughout Nepal.

## Political System

2.27 Nepal transitioned from a constitutional monarchy to a federal democratic republic in 2008 and operated under an interim constitution until the new Constitution came into force on 20 September 2015. The previous Constituent Assembly was transformed into a legislature under the 2015 Constitution and continues until a new federal parliament is elected. Timings for these proposed elections are yet to be determined, due in part to the on-going and considerable humanitarian and reconstruction efforts underway following the 25 April 2015 earthquake. The Constituent Assembly has 601 members who were elected through a mixed system of first-past-the-post constituency races (240 seats), proportional representation (335 seats), and appointments by the government's Council of Ministers (26 seats).

2.28 The 2015 Constitution establishes a bicameral federal parliament consisting of a House of Representatives and a National Assembly, as well as unicameral provincial parliaments. The House of Representatives will have 275 members, of which 165 will be directly elected on a first past the post system and 110 will be elected through proportional representation. The National Assembly will have 59 members, 56 of whom will be elected (eight from each province, including at least three women) and three (including at least one woman) who will be nominated by the President on the recommendation of the Federal Council of Ministers. Representation of disadvantaged and or minority groups, including women, Dalits, Madhesi and Muslims, is required in both houses.

2.29 Under the 2015 Constitution, the President of Nepal is the head of state, and has largely ceremonial powers. The President is elected by members of the Federal Parliament and the state assemblies. Nepal's first female Head of State, President Bidhya Devi Bhandari, assumed office in October 2015 under the new Constitution. The leader of the CPN-UML, Khadga Prasad Oli, was elected Prime Minister in October 2015, becoming Nepal's seventh head of government since 2008 and the first under the new constitutional arrangements. Nepal's cabinet is chosen by the Prime Minister in consultation with his/her party and any coalition partners.

2.30 The 2015 Constitution has federated Nepal into seven provinces based on ethno-linguistic identity and economic viability. This recognises the ethnic dominance of certain groups in particular regions, and aims to ensure, as much as possible, that provinces have evenly distributed economic growth prospects. On 23 January 2016, the Constituent Assembly passed an amendment to the new Constitution to implement additional changes to ethnicity representation in electoral districts, in response to concerns raised by political parties in the Terai (see 'Madhesi' below).

## Human Rights Framework

2.31 Political instability and the lack of a permanent constitution until September 2015 exacerbated human rights problems in Nepal. The United States 2015 Human Rights Report for Nepal expressed concerns about the absence of transitional justice mechanisms for conflict-era human rights violations and questioned official commitment to investigations of allegations of excessive force during protests in late 2015 about 2015 Constitution. In February 2015 Nepal's Supreme Court struck down the amnesty provisions contained in reconciliation laws passed in 2014. The laws had allowed amnesty to be granted in cases involving grave violations of human rights. The Government agreed to uphold the court's decision.

2.32 Nepal is party to: the Convention of the Elimination of all forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights and its Optional Protocols; the Convention of the Elimination of all forms of Discrimination Against Women; and the Convention on the Rights of the Child. Nepal is not a party to the 1951 Refugee Convention or its 1967 Protocol.

2.33 Also see the section on Nepal's 'National Human Rights Commission' (at 'State Protection' below).

## Security Situation

2.34 The overall security situation throughout Nepal has dramatically improved since the end of the conflict. However, poverty, unemployment, weak rule of law and a culture of impunity are causes of insecurity in Nepal. Political party interference in security processes and criminal investigations further undermining effective security and justice. Political protests and demonstrations occur regularly and can turn violent without warning. Political parties have been known to enforce strikes (bandhs) which can close down transport and business operations for extended periods, although these have occurred less frequently in recent years. There are credible allegations that groups associated with political parties have committed acts of violence, extortion, and intimidation. Violent protests and strikes over the constitution occurred in the far west, mid-west and east in August 2015.

2.35 In September 2015 protests began in the Terai and continued until early 2016. Led primarily by the Madhesi and Tharu groups, (see 'Ethnicity' below), these protests arose in part because of concerns about the demarcation of provincial boundaries under the 2015 Constitution and had a significant effect on Nepal's industry and economy as they have blockaded the East-West highway at Birgunj, the largest crossing on the border with India. Some figures suggest that only 40-50 per cent of goods and fuel were crossing into Nepal, which further added to the already difficult humanitarian situation faced by Nepal as it recovered from the 2015 earthquake. Nepal's security forces (mainly police) were heavily involved in responding to the Terai protests and police reportedly opened fire on civilians in some instances. Over 40 deaths, both civilians and police, have been reported. At the date of publication, the protests have stopped and all borders are open following an amendment to the Constitution in January 2016 to respond to the aforementioned concerns.



## 3. Refugee Convention Claims

### Race/Nationality/Ethnicity

3.1 Article 18 of the 2015 Constitution prohibits discrimination on the grounds of race, religion, caste, tribe, region and other grounds.

3.2 Nepal has at least 125 caste and ethnic groups; amongst the earliest inhabitants of the country were the Newar of the Kathmandu Valley (approximately 5 per cent of the population) and Tharu in the southern Terai region (approximately 6.6 per cent). The ancestors of the Brahmin (the Hindu priestly caste - approximately 12.2 per cent) and Chhetri (descendants of the warrior-ruler caste - approximately 16.6 per cent) came from India and represent Nepal's largest ethnic groups. Other groups trace their origins to Central Asia and Tibet, including the Gurung (2 per cent) and Magar (7.1 per cent) in the west, Rai and Limbu in the east (2.3 and 1.5 per cent respectively), and Sherpas and Bhotia in the north. Other significant ethnic/caste groups include the Tamang (5.8 per cent); Kami (4.8 per cent); Yadav (4 per cent); Rai (2.3 per cent); Damai/Dholii (1.8 per cent); Thakuri (1.6 per cent); Sarki (1.4 per cent); Teli (1.4 per cent); Chamar/Harijan/Ram (1.3 per cent); Koiri/Kushwaha (1.2 per cent); and others accounting for 21.1 per cent of the population.

3.3 In modern Nepal, Hindu castes and Buddhist and animist ethnic groups form a single caste hierarchy. However, ethnic divisions remain sensitive in Nepal. Discussion of ethnic difference or inequality was an offence punishable by jail until 1991. Efforts to restore and defend cultures and practices in opposition to Pan-Nepali identity policies began in the early 1990s through the creation of the Nepal Federation of Nationalities. There is no clear legislation criminalising hate speech, although provisions related to social justice and inclusion, including of minority communities, exist in the 2015 Constitution, and recognition of the rights of ethnic minorities have improved since the end of the civil war.

### Tibetans in Nepal

3.4 UNHCR estimates that there are currently around 20,000 Tibetans in Nepal. In 2009 the Tibetan government-in-exile reported that the majority of Tibetans lived in the Kathmandu valley (Boudhanath and Sayambunath districts and in the Jawalakhel settlement), with the second largest community found in and around Pokhara. A few thousand Tibetans also live in isolated settlements such as in Namgyaling, Mustang, and Gyalsa, close to the border with China.

3.5 Following the Dalai Lama's exile to India in 1959, the Nepali government recognised and registered Tibetans as refugees through the provision of Refugee Certificates (RCs). An RC serves as an official identity document which permits the holder to reside and travel in Nepal (but not to own property, seek employment, access higher education or travel abroad). Police generally accept RCs as valid proof of identity and residence.

3.6 Nepal ceased issuing RCs in the mid 1990s and Human Rights Watch now estimates that fewer than 25 per cent of Tibetans recorded in settlements currently hold RCs. The UNHCR estimates 60 per cent of Tibetans in Nepal are undocumented. The Government permits the 'safe passage' of Tibetans from Tibet to India under the conditions of an informal 'Gentleman's Agreement' agreed with the UNHCR. The number of Tibetans moving through Nepal has substantially decreased this decade, compared to an annual average of more than 2,200 between 1991 and 2008. DFAT was advised by credible sources in Nepal that the reduction of Tibetans entering Nepal is likely due to difficulties in leaving China, rather than conditions in Nepal.

3.7 According to Human Rights Watch, increased cooperation between Nepal and China has led to increased border security cooperation; a partially enforced ban on Tibetan public demonstrations; closer monitoring of the Tibetan community and Buddhist religious sites and monasteries, its leaders, and real or perceived activists; and increases to the number of Nepali armed police deployed in Tibetan neighbourhoods

around dates perceived by the government to be politically sensitive, such as the Dalai Lama's birthday or the Tibetan new year. Credible sources in Nepal advised DFAT that while these difficulties occurred in the period after 2008 (following the Tibetan uprising and the Beijing Olympics), in recent years Tibetans have generally been able to go about their activities without interference, particularly if they consult the local District office before undertaking public activities (such as the Dalai Lama's birthday).

3.8 DFAT assesses that many Tibetans in Nepal are marginalised and are not permitted to work or leave the country because they do not hold a refugee card. Their undocumented status means Tibetans can be vulnerable to arbitrary fines and petty corruption and can be denied access to government education, housing, freedom of movement, employment, and public and private services (such as renewal of driver's licenses, bank services, and various administrative registration requirements). However, DFAT understands that societal discrimination against Tibetans is rare, with Tibetans generally able to live alongside other Nepalis without incident because of the longstanding history of contact between Nepal and Tibet and familiarity between 'people of the Himalayas'.

### Limbus

3.9 Limbus are the descendants of Tibetan migrants who came to Nepal centuries ago. Limbus mainly reside in the regions of Taplejung, Khotang and the Arun Valley located in the extreme east of Nepal. Limbus speak a distinct language based on a mixture of the Devanagari and Tibetan alphabets. The Limbuwan movement which advocates for autonomy for the Limbu. DFAT is aware of reports of violence against Limbus but there are also allegations of Limbu violence against other community groups.

### Indians in Nepal

3.10 India and Nepal have encouraged the free movement of people and goods and close cooperation on matters of defence and foreign affairs since a Treaty of Peace and Friendship was signed between the two countries in 1950. However, the overwhelming size of India comparative to Nepal can give rise to concerns about unchecked movement of Indians into Nepal, especially in the southern section of Nepal (the Terai) that is geographically contiguous with the Indian plains and where there are deep cultural links between Nepalis and Indians. Historical concerns about India's political and economic interference in Nepal and instances of poor treatment of Nepalis in India have given rise to anti-Indian sentiment amongst some Nepalis. The Indian state of Bihar has long been used as a safe haven for criminal organisations, political parties and separatist groups from Nepal, adding to concerns about India's interference in Nepal's domestic affairs.

### Madhesis

3.11 Many of the Madhesis (the name given to the inhabitants of the Madhes or Terai region) are of Indian origin with strong socio-cultural and ethnic linkages across the border. The term 'Madhesi' refers specifically to non-tribal, caste Hindus of Indian origin that live in the Terai. Many Madhesis consider those living in the Terai who do not fit this definition (including Muslims, Tharus, Pahadis, and indigenous groups who predated Madhesi immigration) to be 'foreigners'. Less than 50 per cent of the Terai population are Madhesi, and many people from other parts of Nepal have moved to the region seeking jobs.

3.12 Madhesis comprise around 20 per cent of Nepal's population but are underrepresented in politics, public service jobs, and the military. Hindi-speaking Indian Madhesis were historically denied citizenship certificates (and therefore also land and access to government benefits) under the Citizenship Act of 1964 and the Constitution of 1990 owing to Nepali language requirements. The citizenship law was amended in 2006 to allow people born in Nepal before 1990 and those residing there permanently to acquire Nepali citizenship, but this law contained a short window period for Madhesis to claim citizenship that closed in November 2008. The 2015 Constitution seeks to address this issue.

3.13 Efforts by the government to introduce compulsory Nepali language in the region have been seen as a further attempt to discriminate against the Madhesis. Economic and political favouritism (by way of land allocations) towards the upper caste Pahadis (hill-dwelling Hindus) was introduced under the 'Panchayat' system (1962 – 1990). This, as well as allegations of economic exploitation of the resource-rich Madhes region, have exacerbated feelings of discrimination by the Madhesis resulting in decades of political activism and tension between Madhesis and members of other ethnic minorities living in the Terai region. The extent to which such sentiments are shared throughout the entire community is unclear.

3.14 A pro-Madhes autonomy group (the United Democratic Madhesi Front – UDMF) was formed in 2007. The group has signed two peace agreements with the Nepali government with the principal demand being the 'liberation' of the Terai region and the creation of a single autonomous unit called Madhes in a new

federal system for Nepal. The group has also demanded greater representation in political, military and economic affairs, often at the exclusion of other ethnic groups such as the Tharu in the western regions of the Terai.

3.15 DFAT assesses that Madhesis in the Terai experience moderate official discrimination because of ongoing difficulties in obtaining citizenship, which impacts on their ability to access government services. The 2015 Constitution was amended in early 2016 partly in response to Madhesi demands around political representation. Violence in the region remains sporadic, as is evidenced by the protests of late 2015 and early 2016, when upwards of 40 people are reported to have been killed.

### Undocumented Bhutanese in Nepal

3.16 During the 1980s, Bhutan introduced a policy of 'Bhutanisation' and by the early 1990s more than 100,000 ethnic-Nepali had fled or were forced to leave Bhutan, consequently settling into seven camps in southeast Nepal (Beldangi I, Beldangi II, Beldangi II extension, Goldhap, Khudunabari, Timai (all in Jhapa District), and Sanischare (Morang District) near the township of Damak). Since 2006, significant numbers of these Bhutanese have been settled in the United States, as well as other countries, including Australia. According to the UNHCR, approximately 20,000 (as at August 2015) Bhutanese remain in Nepal and the UNHCR is working to resettle them in third countries.

3.17 The decline in camp numbers has resulted in consolidation of the seven camps into two settlements located in Beldangi and Sanischare. Nearly all remaining Bhutanese refugees in Nepal continue to reside in these refugee camps, as opposed to an urban setting. As 'stateless' people, Nepali-Bhutanese in Nepal face difficulty accessing government services such as health and education, employment and other citizen rights, beyond those provided in the refugee camps in which they reside. They also face restrictions on their freedom of movement outside the camps.

## Religion

3.18 The 2015 Constitution states Nepal is a secular state, signalling a major departure from the Hindu monarchy. It guarantees freedom of religion. Religious tolerance is broadly practiced and there are no restrictions on the sale or distribution of religious material. Nepal celebrates public holidays for numerous religious faiths in addition to secular and political anniversaries. Nepal's 2015 Constitution prohibits one person from converting another. Religious schools requesting government funding are required to register with local district administration offices and curricula for the schools is provided by the Department of Education. Each registered religious school has one government-funded teacher.

3.19 According to the 2011 Population Census, approximately 81 per cent of Nepalis follow Hinduism, nine per cent follow Buddhism and four per cent follow Islam. Christians account for 1.4 per cent of the population. Syncretic faiths encompassing elements of Hinduism, Buddhism and traditional folk practices are widespread. Hindus and Buddhists have close links. Generally speaking, religious diversity and places of worship are respected. Catholic Masses, inter-denominational Protestant services, and Jewish services run by a Rabbi are conducted in Kathmandu, reflecting its size relative to other centres in Nepal.

### Buddhists

3.20 Buddhists officially account for only nine per cent of Nepal's total population. However, many Nepalis consider themselves both Hindu and Buddhist, often sharing temples and other rituals of worship. The largest concentration of Nepal's Buddhists are found in the eastern hills, the Kathmandu Valley, and the central Terai; Buddhists account for around 10 per cent of each region's total population. Buddha's birthplace in Lumbini (in southern Nepal) is a significant pilgrimage site for Nepalis. DFAT assesses that the long-standing place of Buddhism in Nepali society, along with the close links between Buddhists and Hindus, means Buddhists are rarely if ever at risk of societal discrimination or violence.

### Christians

3.21 Christianity was introduced into Nepal in the 18th century and modern Nepal is home to an estimated 150,000 Christians, including 8,000 Catholics. Nepal has dozens of Christian missionary hospitals, welfare organisations, and schools that have operated for decades free from government interference. Christians have a long and accepted place in Nepali society and are generally able to freely worship their religion without interference from the state or society. However, according to Freedom House, Christian groups can face difficulty registering as religious organisations and, as a result, can find it difficult

to own land. Christians can also face discrimination in obtaining senior positions in the civil service. Some core customs and values of indigenous people (for example relating to the use of alcohol, animal sacrifice, and other animistic practices) are challenged by Christian beliefs. These can, in some cases, lead to social discrimination and exclusion between indigenous communities and Christians.

3.22 Conversion to Christianity has increased from since the 1950s. More than 90 per cent of Nepal's Christians are from marginalised groups such as indigenous communities (such as Chepangs and Santal) or Dalits, for whom Christianity provides an escape from the caste system. There are also anecdotal reports of occasional social tension because of perceived over-zealous activities of (particularly foreign) missionaries to induce conversion through the provision of health, education, housing or employment opportunities to converts. However, a lack of empirical data makes it difficult to comment on such issues in any specific detail. Generally speaking, DFAT assesses that Hindu citizens who convert to Christianity are publicly and safely able to do so, although they may experience low-level societal or family discrimination.

## Muslims

3.23 Most Muslims in Nepal are Sunni but a small minority are Shia. Although Muslims are found in all districts of Nepal, they are concentrated in the Terai and western hill districts. Muslims form the largest single population group in five Terai districts - Banke, Rautahat, Kapilbastu, Parsa and Bara, as well as in five other (non-Terai) districts - Dhausha, Mahottari, Sarlahi, Sunsari and Siraha. Muslims from Kathmandu are generally economically better off than Muslims in other parts of the country. There are approximately 1,203 madrassas registered with district education offices. The government recognises Madrassas as equivalent to primary schools and Muslims in Nepal are permitted to participate in the Hajj without restriction.

3.24 In August 2013, a large group of Hindus attacked Muslims in Siraha district in the southern part of the country, setting several houses afire and causing multiple injuries. The attack was allegedly in response to reports Muslim youth had sexually harassed female Hindu pilgrims. After the attacks, community leaders met and reached an agreement designed to prevent future violence. The police initially arrested 28 individuals for participation in the attacks and for harassment, but after the community leaders' agreement, released all but one, who was charged with possession of an illegal firearm. DFAT assesses that these sorts of incidents are isolated and generally attract measured responses from authorities. Generally speaking, DFAT assesses that Hindu citizens who convert to Islam are publicly and safely able to do so, although they may experience low level societal or family discrimination.

3.25 DFAT is aware of anecdotal concerns in Nepal about the impact of increases in the number and influence of Wahhabi-influenced madrassas – although such madrassas remain relatively few in absolute numbers. These concerns can be seen, in part, as a subset of wider fears of the influence of India; with proponents of fundamentalist Islam being feared to be Indians who have crossed into Nepal through the open border. To date, DFAT is not aware of credible reports that the practice of fundamentalist strands of Islam in Nepal has caused societal discrimination or violence.

## Political Opinion (Actual or Imputed)

3.26 All Nepali citizens 18 years and older are eligible to vote. Under the 2015 Constitution seats in the Federal Parliament are reserved for women through quotas in the party-list voting, and substantial, proportional allocations made for Madhesis, Dalits, and other minority groups.

3.27 Political actors (from all major political parties and smaller identity-based groups) are key elements of Nepali society. Political affiliation, both at an organisational and individual level, is an important aspect of identity. This was a cause of instability during the conflict and in the years immediately following. Political youth wings, bandhs (strikes), demands for donations from local authorities and the private sector, and the obstruction of tender-bidding processes in line with political interests all contributed to this instability.

3.28 A diverse and competitive array of political parties operates in Nepal, though the system has faced considerable instability in recent years. Unlike the 1990 constitution, the 2015 Constitution has no limitation on parties formed along ethnic lines. Prior to the 2013 elections, the political environment suffered instability, including some violence by supporters linked to the main Maoist party on members of other parties, and on people who allegedly informed on the Maoists during the civil war. Supporters linked to the other leading parties were also accused of attacking supporters of the Maoists during 2013.

3.29 At the time of publication, the situation has significantly changed. Nepal's lively political environment provides an opportunity for diverse political parties and views, and an individual's membership of a political party, along with their ability to be identified as a member and to be politically active, is generally respected.

DFAT assesses that while violence has occurred in the aftermath of the release of the new Constitution and Maoist/and disillusioned splinter groups continue to threaten a return to bandhs and or violence, the overall risk is low.

## Groups of Interest

### Members of Castes

3.30 Nepal's caste-based system of social organisation is guided by the Hindu Varna system - a hierarchical allocation of rights, duties and obligations based on a person's inherited position (and associated 'purity' or 'impurity') in society. Caste has a direct and significant impact on a person's life experiences, including access to education, employment, residence and similar life opportunities.

3.31 Members of the upper castes continue to dominate government and business in Nepal owing to historical practices that prioritised the rights and interests of upper-caste elites. Discrimination on the grounds of caste is still widespread despite being officially outlawed since 1962. This is particularly the case in rural areas although this may be reducing over time. Among the four major caste and ethnic clusters - the Brahmins/Chhetris, the Janajatis, the Dalits and the Muslims - Hill Brahmins have a low poverty incidence of 10.3 per cent, compared to 43.6 per cent for Hill Dalits and 38.2 per cent for Terai Dalits. The poverty incidence among Hill and Terai Janajatis is 28.3 per cent and 25.9 per cent, respectively.

### Lower-Caste members (Dalits)

3.32 Dalits make up over 13 per cent of the total population in Nepal. Considered to exist outside the Hindu caste system, Dalits ('untouchables') have historically been considered 'impure' and, as a result, have been limited to socially-sanctioned roles considered demeaning to other (higher) castes.

3.33 Constitutional protections and the 2012 Caste-Based Discrimination and Untouchability (Offense and Punishment) Act criminalise any discriminatory acts on the basis of caste, as well as customs, tradition, religion or culture, including through the media. Despite these protections, Dalits continue to face exploitation, violence, and social exclusion. For example, local villagers and Hindu priests often prevent Dalits from entering temples, performing religious rites, or participating in cultural and religious festivals. In July 2014, a mob of 60 people attacked a Dalit woman (Maya Sarki) after she reported her attempted rape by an upper-caste man in Morang district. The woman was reportedly smeared with black soot and had her shoes garlanded - practices that affirmed her outcast status. A Dalit rights activist and journalist who had supported Sarki (Manoj Biswokarma) was also physically and verbally abused. The National Human Rights Commission condemned the assault and the district court subsequently fined the perpetrators.

3.34 DFAT assesses that legislative changes and societal attitudes are slowly improving the situation for Dalits in Nepal's capital and larger cities. Nonetheless, traditionally discriminatory attitudes persist, particularly in Nepal's rural areas where Dalits experience a high degree of societal discrimination. Violent incidents do occur but generally less frequently than in the past. The National Dalit Commission can face difficulty accessing adequate funding.

### Inter-caste marriages

3.35 There are no legal barriers to inter-caste marriage in Nepal and the government has provided monetary incentives of 100,000 NRs (approximately AUD1, 300) to each inter-caste couple married since 2009. According to one study that examined 123 inter-caste marriages from Banke, Parbat and Shanusha districts between December 2011 and March 2012, 80 marriages were between a Dalit male marrying a non-Dalit female and 43 were between a non-Dalit male marrying a Dalit female. The former type of union was generally more successful. However, overall, success of an inter-caste marriage depends on a range of factors including economic, educational, social and political status. The practice of downgrading one's caste as a result of inter-caste marriage still exists in remote and rural areas. Dalit families involved in such arrangements can risk even further social exclusion and non-Dalit families risk losing their status in society.

3.36 DFAT assesses that inter-caste couples can face disapproval by their families or society. Accusations of criminal activity such as theft, kidnapping, child marriage and rape can be used by the (relatively) higher-caste family to pressure the break-up of inter-caste marriages. Physical attacks and social exclusion by the families can also be imposed on couples in order to force a break-up of the relationship. Women (regardless of their Dalit or non-Dalit status) generally suffer more than men from such attacks, particularly social and familial humiliation (see section on 'Women' below).



## Non-governmental organisations

3.37 NGOs play an active role in Nepal's political landscape, having been particularly engaged in the democracy movement of the 1990s and mid-2000s. They played a significant role in disaster response to the 25 April earthquake. Over 30,000 local and international NGO and civil society organisations are currently registered with the Social Welfare Council (a public body formally responsible for broadly coordinating the activities of 'social organisations'). International NGOs are required to be registered with the Council and to submit project plans before they can operate in Nepal. Local NGOs seeking assistance from the Nepali Government, foreign governments or international organisations are required to submit project proposals for approval from the Council. The Council can reject such approvals national interest grounds. DFAT assesses that these onerous formal requirements do not impinge on the operations of NGOs and that they are generally able to establish and undertake activities in their chosen area.

3.38 People working with NGOs are generally able to do so free from harassment and intimidation, even when they are active in potentially sensitive areas – such as supporting Tibetans, Madhesi or Dalits. But they do face practical challenges such as accessing adequate funding (see section on 'Dalits') and people who work with NGOs that scrutinise state actors or examine on-going, unresolved issues from the conflict years can be at risk of harassment and intimidation.

## Media

3.39 Nepal ranks 105th out of 180 countries for press freedom, according to the 2015 Press Freedom Index compiled by Reporters Without Borders. Article 19 of the 2015 Constitution provides a right to communicate and precludes censorship. The wide variety of independent radio and print outlets operating ensures a general diversity of opinion throughout Nepal, notwithstanding specific media organisations may show bias towards particular political parties. At times this bias can be partly due to intimidation though general political alignment can also play a role.

3.40 DFAT assesses as credible claims by Freedom House that media workers frequently face physical attacks, death threats, and harassment by armed groups, security personnel, and political cadres, and that perpetrators often go unpunished.

## Women

3.41 The 2015 Constitution precludes discrimination on the basis of gender, reserves seats for women in the Federal Parliament and establishes a National Women commission to provide advice to Government.

3.42 The World Economic Forum's Global Gender Gap Report for 2014, an index that measures gender-based gaps in accessing resources and opportunities across 142 countries, ranked Nepal at 112. The male to female sex ratio at birth is 1.07 and the female fertility rate is 2.4. Women in Nepal are eligible to receive a mandatory 52 days of fully paid maternity leave from their employers.

3.43 Patriarchal attitudes and deep-rooted stereotypes, as well as traditional practices such as child marriage (although prohibited), the dowry system, son preference, witchcraft accusations and sensitivities about menstruation (at its most extreme form seen through *chaupadi*, a traditional practice now outlawed whereby women who are menstruating are sent from the house and given minimal shelter and access to food and water during menstruation), continue to exist in Nepal.

3.44 Nepali women rarely receive the same educational and employment opportunities as men. Although there has been an increase in the proportion of economically active women, their earned income is about one-third that of men. Less than six per cent of women are employed in the formal sector (compared to 21 per cent of men).

3.45 Women are often excluded from economic decisions in the home. Although more women are heading households and sustaining the rural economy, female-headed households in Nepal are less likely to own land, and where they do, these holdings are likely to be smaller than male-headed households. Approximately 8.1 per cent of land is held by women, and changes to the law in 2012 have enabled a 30 per cent discount on the registration fee when land is registered under the woman's name. Pursuing property rights through the courts can be expensive and time-consuming.

3.46 Women of the poorest castes and geographic areas have the lowest health and education development indices in Nepal. Women, particularly Dalit and indigenous women, are poorly represented in high-level decision-making positions, although women account for 29.9 per cent of national elected representatives.

## Violence against women

3.47 Nepali women and girls across society, regardless of their economic, caste or ethnic status, are vulnerable to violence in many forms, including rape, sexual abuse and trafficking. The Government is yet to investigate credible allegations of sexual violence allegedly committed during the 1996-2006 conflict but has acknowledged that women suffered rape during these years.

3.48 Nepal's laws contain a narrow definition of rape and have a 35-day limitation period for filing complaints. Penalties for marital rape are low. Police frequently fail to register complaints or investigate and prosecute rape cases, and often divert cases to settlement through informal justice mechanisms.

3.49 The 2009 Domestic Violence Act provides for monetary compensation and psychological treatment for victims, but authorities generally do not prosecute domestic violence cases. A 2012 government survey found that 48 per cent of women had reported that they had experienced violence at some time in their lives, with the majority of perpetrators being those who were closest to them, particularly intimate partners. A majority of women (61.3 per cent) were unaware of any laws that address gender-based violence (GBV) and only 24.8 per cent of women were aware of services available to survivors of GBV.

3.50 DFAT assesses as credible reports outlining women's fear of, and related actual experiences of, sexual harassment and violence on the street (including rape and other forms of physical attack such as murder and mugging) and in the home. DFAT assesses that social stigma, cultural taboos about sexual violence and the fear of retaliation by the perpetrators prevent women from reporting criminal activity. Women's fear of potential violence or attack can restrict their freedom of movement.

## Bonded labour and trafficking of women and girls

3.51 Child labour and traditional practices of bonded labour such as *Haliya* (the system whereby agricultural tillers in the western hills of Nepal are indebted to their landlords), *Kamaiya* (a system of bonded agricultural labour outlawed in 2002) and *Kamlari* (domestic work undertaken by the unmarried girls of *Kamaiya* families) are still prevalent in some remote regions of Nepal. In June 2013, the government officially abolished the *kamlari* system of bonded domestic slave labourers and under the 2015 Constitution every citizen has the right to choose his or her employment and to appropriate remuneration. Girls who suffer exploitation and abuse, including sexual violence, are vulnerable to exploitation by traffickers. Despite government efforts, bonded labour still affects some members of poor, marginalised ethnic minorities in some areas of Western Nepal. The new constitution proscribes trafficking and bonded labour.

3.52 Trafficking of young women from Nepal for prostitution in India is common. Between 5,000 and 12,000 Nepali girls and women aged 10 to 20 years of age are trafficked every year, 75 per cent of whom are below 18 years of age and the majority of whom are sold into forced prostitution or are indentured to construction workers, sometimes lured by offers of better paid work.

## Divorced women and single mothers

3.53 According to the Women's Foundation Nepal (a non-profit NGO that assists women and children victims of domestic violence, abuse and poverty), it is difficult to obtain a divorce in Nepal. Legal changes have made it possible for a woman to divorce her husband and still keep some of the property, and even to gain child custody rights. However, such court cases can be lengthy and expensive and it can take many months to obtain a divorce if the woman makes any kind of property or custody claims. Social stigma against divorced women, who can be seen to have contravened family honour, is high. Social services such as refuges are inadequate and can be difficult to access. In the past, there were barriers to children of divorced women and single mothers obtaining Nepali citizenship given the legal requirement that citizenship be attested to by fathers. Under Part 2 of the 2015 Constitution, these issues have been resolved and any child born to a Nepali citizen mother, and whose father is unidentified, shall be provided citizenship. If the father is a foreign citizen, then citizenship of the child must follow the naturalisation process.

## Women accused of witchcraft

3.54 The *Anti-Witchcraft Act* 2015 provides for jail sentences of 5 to 10 years and fines of up to AUD\$1,400 for those convicted of maltreatment of anyone on accusations of witchery.

3.55 The mistreatment and killing of women for allegedly practising witchcraft is still prevalent in Nepal. Allegations of witchcraft most often relate to the onset of sickness or death amongst people and animals. Diseases spread through epidemics are also believed to be related to black magic. Female victims are often beaten and forced to consume human excrement. Victims are usually poorly educated, economically vulnerable and from low-castes with little support around them (such as widows). Women do not often report cases because of a fear of being abandoned by their families and ostracised from their communities.

## Citizenship rights for women

3.56 Part 2 of the 2015 Constitution has introduced positive changes to the citizenship rights of women. Children's citizenship can now be conferred through a mother or father, whereas in the past citizenship had to be attested to by a husband or father, although there are practical limitations on this provision. Current laws allow foreign women married to Nepali men to immediately obtain Nepali citizenship while foreign men married to Nepali women can only become a naturalised Nepali after domiciling permanently in Nepal for fifteen years. These provisions affect Madhesis in particular as it is estimated that almost 25 per cent of Madhesis who live in Nepal's southern plains are married to Indian citizens. Legislation stemming from the constitutional changes has not been finalised. The United States 2015 Human Rights Report for Nepal noted the on-going difficulties faced by people whose citizenship was based on naturalization (rather than descent).

## Girl Children

3.57 Nepal's Civil Code prevents forced marriage and requires parental consent for marriage between 18 and 20 years of age. Marriage from 21 years of age is legal without parental consent. There is a sliding scale of punishments depending on the age of the girl children married underage, ranging from terms of imprisonment between six months and three years and fines between 1,000 and ten thousand rupees (approximately AUD 130).

3.58 Despite these provisions, early or forced marriage has continued due to a combination of lax law enforcement, religious beliefs, poverty and illiteracy. The practice is extensive in rural areas (such as the Terai region) and particularly high among minority and Dalit groups. Government sources indicate that approximately 29 per cent of girls aged 15 to 19 years are married. The international organisation PLAN reports that 41 per cent of girls aged 20 to 24 years were married before the legal age.

3.59 Customarily, girls in Nepal are discriminated against by their family members in most aspects of life including education, food and health care. The general attitude of rural and ethnic Nepalis is that since girls will have to one day leave the family and settle in their husbands' homes, investment in their education, food, health and other development is a low priority. In many cases, girls are simply looked at as a commodity to be traded for a dowry. Often, demands for gifts by the groom's family are beyond the economic capacity of the bride's family and frustrations around these negotiations can be taken out on the bride.

## Sexual Orientation and Gender Identity

3.60 The Government of Nepal does not recognise de facto and same sex partners but the new constitution has granted the right to equality to sexual minorities and allows the state to pass laws to protect, empower and advance the rights of sexual minorities. The Government has yet to implement Supreme Court orders from 2007 and 2008 abolishing all laws that discriminate against LGBTI (lesbian, gay, bisexual, transgender and intersex) people and to recognise same-sex marriage; as a result, same sex sexual activity can still technically be prosecuted however DFAT understands this law is not currently being implemented. Citizens can now obtain third-gender identity documents. Gay pride parades and transgender beauty contests have taken place in Kathmandu. In April 2014 the Ministry of Women, Children and Social Welfare assigned a focal person for sexual and gender minorities.

3.61 According to Human Rights Watch, threats and violent attacks on LGBTI rights activists have occurred. In February 2013, four transgender women were arrested under the Public Offense Act, a vaguely worded law that can result in up to 25 days in detention and a fine amounting to more than US\$300. Given its vagueness, there are reports that the Public Offense Act is used by security forces to target people based on their sexual orientation and gender identity. DFAT is also aware of reports alleging harassment of members of the Blue Diamond Society, the national LGBTI umbrella organisation. According to Human Rights Watch, the government launched an investigation into the organisation for alleged corruption, despite the fact it had passed third party audits and inspections.

3.62 DFAT assesses that LGBTI people can face harassment by the authorities and other citizens, particularly in rural areas. General community attitudes towards same sex relationships remain negative. Nonetheless, there are examples of LGBTI people being able to be open with their families, communities and employers and to live without discrimination, although their gender, caste and ethnicity can also play a role determining the extent to which this is possible.

## People with Albinism

3.63 There is very little research being done about the status of people living with albinism in Nepal. According to a local NGO (National Disabled Albino Nepal), there is no special government facility for the treatment of albinism. Some NGOs are working towards the welfare of people living with albinism through the provision of support materials including visual aids and skin creams. In general, people living with albinism in Nepal face social stigma and are discriminated against on various levels. Such persons can find it difficult to be accepted in society and to marry. Owing to the stigma associated with albinism, people living with albinism can have difficulty receiving special care or support from their family units.

## Members of the private sector or business community

3.64 There are widespread reports of threats against businesses throughout Nepal. Threats such as coercion, extortion and forced donations, as well as kidnappings or coercion to join political parties, have been identified as the most common forms of mistreatment. However, credible sources told DFAT that the most common occurrence – forced donation – was generally seen as part of ‘doing business’ in Nepal. The practice reflects the intensely political nature of Nepali society and is confronted regularly by business persons. It also reflects the inability of Nepali political parties to formally and directly raise funds to support their activities. On this basis, DFAT assesses that while businesses themselves may be targeted, individual members of the private sector are ordinarily free from harassment and intimidation.

## People with drug dependency issues

3.65 Nepal has strong legal provisions prohibiting the consumption, possession, and transport of drugs. Although Nepal is neither a significant producer of, nor a major transit route for, narcotic drugs, domestically-produced cannabis, hashish, and heroin are trafficked every year. Marijuana and its by-products have traditionally been used for medical purposes as well as cultural and religious occasions for hundreds of years in Nepal.

3.66 Drug-use in Nepal has increased significantly over the last twenty years. According to the Central Bureau of Statistics, Nepal had more than 91,000 drug users in 2014, approximately 6,330 of who were women. According to a 2006 – 2013 government survey on hard drug users in Nepal, the majority of drug users are found in the Kathmandu valley, followed by Sunsari, Kaski, Morang, Jhapa, Rupandehi, Chitawan, Banke and Parsa. Youth aged 20 to 24 years accounted for the highest proportion of drug users in Nepal and opiates and cannabis are the most commonly used drugs.

3.67 Societal attitudes towards drug users are generally negative in Nepal, particularly for female drug users. However, support groups and organisations that provide counselling, rehabilitation and employment support as well as basic services, are available. See also ‘Torture and Cruel, Inhuman or Degrading Treatment’ below.

## 4. Complementary Protection Claims

### Arbitrary Deprivation of Life

4.1 In its 2015 concluding observations on the second periodic review of Nepal, the Human Rights Council noted concerns 'at the prevailing culture of impunity for gross violations of international human rights law and serious violations of international humanitarian law committed during the 10-year conflict from 1996 to 2006, including extrajudicial killings, enforced disappearances, torture, sexual violence and arbitrary detention'. DFAT is aware of media reports that claim Nepal's army and secret intelligence agency (National Investigation Department) arrested, tortured and killed Maoist rebels during the civil war under 'Operation Mustang' launched in 2002. There were reports of up to 40 people losing their lives during protests around the 2015 Constitution, particularly in the Terai.

### Extra-Judicial Killings

4.2 In a joint submission prepared for Nepal's Universal Periodic Review in November 2015, the National Human Rights Commission, the National Dalit Commission and the National Women's Commission noted that risks to life had decreased since the end of the conflict, but that some deaths in custody had occurred as well as killings during clashes and protests. Such incidents generally took place in the Terai. In addition to the cases relating to the protests around the 2015 Constitution, the US State Department 2015 Report identified one possible instance of unlawful killing by the Nepal Police that year, although the Nepal Police and the Nepal Army claimed not to have received any reports.

### Enforced or Involuntary Disappearances

4.3 There were no reports that the Government was responsible for disappearances during 2015, but Nepal's National Human Rights Commission (NHRC) has estimated that of approximately 846 unresolved cases of disappearances committed between 1996 and 2006, approximately 606 may have involved the state. Maoists are estimated by the NHRC to be involved in 146 of these cases. As of July 2014, the International Committee of the Red Cross had identified 1,347 missing persons as a result of the conflict in Nepal. Human Rights Watch reports that the government of Nepal has not successfully prosecuted any soldiers or Maoists for their involvement in the disappearances nor publicised the names and whereabouts of those who disappeared during the armed conflict. However, Nepal's Supreme Court has ruled against the possibility of amnesty for perpetrators of serious human rights abuses during the civil war. Nepali law requires a person to be missing for 12 years in order to officially be declared deceased.

### Death Penalty

4.4 Nepal abolished the use of the death penalty for all crimes in 1997. The last execution took place in 1979.

### Torture and Cruel, Inhuman or Degrading Treatment or Punishment

4.5 Nepal ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1991. The 2015 Constitution prohibits torture. The Torture Compensation Act (1996) allows victims of torture to file complaints and seek compensation. There is a 35-day statutory limitation for filing complaints and victims of torture are required to present a medical certificate as proof that torture took place. Compensation is limited to 100,000 NRs (around AUD 1,225).



4.6 The 2015 US State Department Human Rights Report states that Nepal's laws do not provide clear guidelines for punishing offenders. Despite a large number of torture cases reported during Nepal's conflict (1996-2006), cases of torture appear to be declining, according to statistics collected by respected local NGO, Advocacy Forum.

4.7 A separate report released by the Office of the Attorney General (OAG) in 2012 indicated that 15 per cent of detention centre detainees received treatment that amounted to torture (mostly beating a detainee's soles with guard's hands, fists, or bamboo sticks or being kicked with police boots). Verbal abuse was recorded in 25 per cent of cases and 10 per cent of cases reported physical abuse. According to this report, many detainees said they felt that 'such treatment was deserved because they had not followed orders'. A credible source estimated in September 2013 that 10 per cent of Nepal's prisoners had been subject to physical or mental torture of some form. As stated above, detainees charged under the Public Offences Act or for possession of drugs reported the highest rate of torture or cruel, inhuman or degrading treatment. Myagdi, Morang and Banke were three districts in Nepal listed as cause for particular concern.

### Arbitrary Arrest and Detention

4.8 Nepali law prohibits arbitrary arrest or detention. The law requires authorities to obtain an arrest warrant and present the suspect to a court (or the Chief District Officer (CDO) - the highest civil servant in each of the country's 75 districts - see below) within 24 hours of arrest. This does not apply to cases involving suspected security and narcotics violations or cases when the crime's punishment would be more than three years' imprisonment. If the court upholds a detention, police can detain a suspect for up to 25 days in order to complete an investigation. In special cases (such as suspected terrorism), a suspect can be detained for up to six months on the approval of the Home Ministry.

4.9 Chief District Officers (CDOs) hold wide discretionary powers under the Local Administration Act (LAA), the Public Security Act and the Public Offences Act. CDOs have authority over all government offices in their districts, with the exception of courts and defence-related matters. CDOs supervise and issue orders to the police to maintain law and order and 'tranquillity' in districts. As such, they are empowered to prevent and disperse gatherings, and to approve police detentions of suspects, without judicial review.

4.10 CDOs have a central role in preventive detentions where a person is deemed to pose a threat to the sovereignty, integrity, or law and order of the country. The Public Security Act allows preventive detention of up to 90 days 'to maintain sovereignty, integrity or public tranquillity and order'. The period can be extended to up to six months on approval by the Home Ministry.

4.11 Human Rights Watch reports that Nepali authorities use short-term detentions, often under the Public Offense Act, to prevent possible protests by Tibetans or to question Tibetan activists. Most detentions last less than 24 hours, although they sometimes extend to several days.

### Corporal Punishment

4.12 Corporal punishment continues to exist in the community, homes and schools and continues to be generally accepted as a form of discipline by parents and guardians. In its annual report for 2013, UNICEF noted that media reporting about violence against children, including corporal punishment, had increased.

## 5. Other Considerations

### State Protection

5.1 Human rights groups have argued that no one has been punished for abuses during the decade-long civil war, in part because of the weakness of the judiciary and a prevailing climate of impunity. DFAT assesses reports by organisations such as the International Commission of Jurists that describe how senior government officials and members of the military have the potential to shield security forces and leaders of major political parties from investigation and prosecution of gross violations of human rights as credible. Ordinary offences by lower level officials are more likely to be investigated and prosecuted.

### Military

5.2 The President of Nepal is the Supreme Commander in Chief of the Nepal Army. The Army is composed of six Combat Divisions, located throughout Nepal. Service in the military is voluntary and the minimum age for enlistment is 18 years.

5.3 The former Maoist army was dissolved following the peace process. While the majority of cadres received 'retirement' payments, some were integrated into the national army. Of the original 30,000 Maoist People's Liberation Army combatants proposed to be integrated into the army's ranks, only approximately 1,450 were accepted, including 70 at the officer-cadet level.

5.4 According to the Nepal Army's website, 'some incidents of human rights violations did occur' during the counter-insurgency operations following the declaration of a state of emergency in November 2001. The website states that such acts were 'either unintentional mistakes in the fog of battle or [were] the criminal violations of individuals'.

5.5 A Human Rights Organisation was established within the Army following the civil war and training in human rights is provided to all individuals in the Army. Section 22 of the Army Act 2006 provides that no action should be taken against a member of the military if a person dies or suffers loss if the member of the military was acting in good faith. Complaints of human rights abuses are handled internally.

5.6 While absolute numbers change year-on-year, Nepal consistently ranks among the highest contributors to UN peacekeeping missions and provided 5332 peacekeepers in 2014, according to the UN Department of Peacekeeping Operations in August 2015. Credible sources told DFAT that anecdotal reports of Nepali peacekeepers being returned home following allegations of misbehaviour nowadays acts as an incentive to Nepali peacekeepers to discharge their professional responsibilities appropriately. Credible sources also told DFAT that overseas prosecution of Nepali military figures for human rights violations, for example by the United Kingdom in the case of Kumar Lama, have a similar restraining affect.

### Police

5.7 Nepal Police are responsible for enforcing law and order across the country. The separate Armed Police Force is responsible for combating terrorism, providing security during riots and public disturbances, assisting in natural disasters, and protecting vital infrastructure, public officials, and borders. In 2011, Nepal Police had a total of 60,070 personnel deployed across the country, including 2,058 personnel in Kathmandu. Training in human rights is provided to police officers. However, police corruption and a culture of impunity persist, particularly among low-level officers. The Police Act 1955 states that CDOs and police officers will not be liable for punishment for actions taken in good faith.

5.8 Nepal's police have been accused of extensive involvement in organised crime. Nepal police agencies are hindered by a lack of adequate transportation, training, and equipment. Law and order remains a concern, and many crimes in rural areas occur without police intervention or follow-up.

5.9 A non-government report issued in March 2013 stated that community perceptions regarding security provision by the Nepal Police had improved in 2012. Other reports recognise the active role played by police during the conflict and indicate that, as a result, public trust in the police force is generally low. Public trust in the police has improved following the effective response of the police to the April 2015 earthquake.

## Judiciary

5.10 Nepal's Constitution provides for an independent judiciary. Despite constitutional guarantees, however, many courts suffer from endemic corruption (see discussion on 'Corruption' above), and many Nepalis have only limited access to justice. According to Freedom House, suspects can frequently be kept in pre-trial detention for periods longer than any sentences they would face if tried and convicted owing to heavy case backlogs and a slow appeals process. According to the United States Department of State, appellate and district courts showed independence and impartiality in most cases. In some cases, however, Nepal's courts remain vulnerable to political pressure, bribery and intimidation. DFAT assesses that this vulnerability is more pronounced in lower level courts.

5.11 The United Nations Human Rights Council has noted concerns of 'political interference in the criminal justice system, such as the refusal by the police to register First Information Reports, pressure exerted on law enforcement officials not to investigate or prosecute certain cases, and extensive withdrawal of charges against persons accused of human rights violations, noting that not a single conflict related case has been successfully prosecuted through the criminal justice system'.

5.12 Nepal's Supreme Court acts as the court of appeal and review, and has powers of original jurisdiction. The court sits above High and District Courts. There are notable examples of the Supreme Court issuing rulings in sensitive cases against the Government. In 2013, the Supreme Court ruled that some of the 2012 reforms to the National Human Rights Commission which among other things removed the discretion of the Attorney-General to prosecute alleged breaches of human rights, were unconstitutional. Credible sources have told DFAT that they question the government's commitment to implementing court decisions it disagrees with. DFAT agrees with this assessment.

## Detention and Prison

5.13 Nepal's laws provide for medical examinations of inmates after arrest, the separation of serious offenders from moderate offenders and the separation of juveniles and adult prisoners (the minimum age for criminal liability is ten years). Prisoners and detainees have reasonable access to visitors and are able to observe their religious practices. Procedures exist for complaints to be made against prison authorities. Independent monitoring visits by human rights organisations as well as the Attorney-General and the NHRC are permitted by the government and do occur.

5.14 In practice, implementation of these provisions can vary. Credible sources have confirmed that Nepal's detention and prison facilities can be overcrowded and unsanitary and that inmates generally experience poor conditions.

## National Human Rights Institution

5.15 Nepal established a National Human Rights Commission (NHRC) in 2000. According to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the institution complies with the minimum standards as set out in the Paris Principles, such as independence guaranteed by statute or the constitution, autonomy from the executive, pluralism, a broad mandate based on universal human rights standards and adequate powers of investigation. The 2015 Constitution made the NHRC a constitutional body responsible for protecting and promoting human rights.

5.16 The NHRC has the power to conduct inquiries and investigations on its own or upon a petition or complaint. The commission can also make recommendations against officials who have a responsibility to prevent human rights violations and to file cases in court against them. It also has the power to summon witnesses; and to enter places where it has information that human rights may be violated without notice to rescue the person.

5.17 The United Nations Human Rights Council previously expressed concern about the independence of the NHRC, noting the difficulty in the NHRC implementing its recommendations and ensuring the transparency of its selection process for its Commissioners. Less than nine per cent of 386 recommendations made by the commission between 2000 and 2010 were fully implemented and more than

55 per cent have not been implemented at all. It is too early to predict whether the 2015 Constitutional protections will address these concerns.

## Truth and Reconciliation Commission

5.18 Nepal's Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act was passed in 2014. On 10 February 2015, the Nepali government announced that it had formed the Truth and Reconciliation Commission and the Commission for Investigation of Disappeared Persons. The government's interim relief program provides financial compensation and other in-kind benefits to the family members of people killed or disappeared during the conflict. However, victims of torture or sexual assault have not received compensation from the state.

5.19 International human rights organisations including Human Rights Watch, Asian Human Rights Commission and the UN Office of the High Commissioner of Human Rights have expressed serious concern about a 2012 executive ordinance that permitted amnesty (apart from rape) for crimes committed during Nepal's civil war. In late February 2015, the Supreme Court of Nepal struck down this provision.

## Internal Relocation

5.20 The 2015 Constitution guarantees the freedom for Nepalis to move and reside in any part of Nepal. However, laws can be passed to curtail this freedom in the public interest or to maintain harmonious relations between castes, tribes, religious or communities.

5.21 Relocation is a common experience for Nepalis. Millions travel each year to other countries seeking employment and other opportunities and to escape economic conditions at home. The open border arrangement with India, as per the 1950 India-Nepal Treaty of Peace and Friendship, allows large numbers of Nepalis to travel to and from India each year or reside in India on a long-term basis. In 2014, Nepal and India re-committed to this Treaty and agreed to review and update it. Large numbers of Nepalis also move within the country. The populations of major urban centres such as Kathmandu have increased substantially in recent decades, reflecting significant urbanisation and a desire to seek better employment opportunities and improved living standards.

5.22 Kathmandu in particular, but also other large urban centres such as Biratnagar and Pokhara, today reflect the significant ethnic, religious and caste diversity of Nepal and as such provide accessible opportunities for relocation within Nepal.

## Treatment of Returnees

5.23 There are few publicly available sources, Nepali Government or otherwise, addressing the treatment of returnees. DFAT discussions during meetings in Nepal similarly failed to identify any general concerns about treatment of returnees, with credible interlocutors pointing to the large, efficient moment of people in and out of Nepal each year as anecdotal evidence that there were unlikely to be any systemic concerns. On this basis, DFAT assesses that returnees are unlikely to suffer any social stigma upon their return to Nepal or to suffer adverse treatment by their Government.

## Exit and Entry Procedures

5.24 The Nepal Ministry of Home Affairs Department of Immigration is responsible for conducting entry and exit checks. There are ten formal entry and exit points, of which Kathmandu airport is the only international airport. Non-Nepali citizens (not including Indians) are required to use one of these points and must present valid passports and required visas. Nepal and India have an open border that, apart from the aforementioned points, is largely unmanned, meaning Nepalis and Indians are able to cross it at any point and without a passport. The movement of Nepalis into and out of the country is thus largely undocumented. Movement through Kathmandu airport – for Nepalis and foreigners alike – is slow and cumbersome. Significant physical security checks occur, and passports are required for international flights.

## Documentation

### National Identity Cards

5.25 Citizenship certificates are required by Nepalis to purchase or transfer land; register births, marriages, and deaths; open bank accounts, obtain micro credit loans, and register businesses; attend higher education institutions; acquire travel documents; receive state benefits for the disabled, widowed, or elderly; run for public office; and to enlist in the army, the armed police, and the civil police force. Certificates are also required in order to access formal sector employment opportunities, such as full-time permanent jobs that provide sick leave and pensions.

5.26 Lack of citizenship identification is a widespread problem in Nepal. While accurate statistics are difficult to come by, the Forum for Women, Law & Development found over 4.3 million people were without citizenship identification in Nepal in April 2013, while Human Rights Watch estimates 2.1 million people are without official status and are at risk of statelessness.

### Birth Certificates

5.27 Birth registration is governed by the 1977 Birth, Death and Other Vital Events Registration Act. A provision in the Act requiring children to be registered by male family members in 2005 was struck down by the Nepali Supreme Court but the decision has yet to be fully implemented in practice. UNICEF estimates 35 per cent of children are registered at birth. Nepal's Population Registrar estimates this figure to be only 15 per cent. Children of unmarried mothers, unknown fathers, abandoned children, and children whose paternity is denied by the fathers can face greater difficulty accessing birth registration which later extends to difficulties in obtaining citizenship certificates.

### Passports

5.28 Nepal's Department of Passports within the Ministry of Foreign Affairs in Kathmandu is responsible for issuing passports to Nepali citizens. Passports can take 12 to 16 weeks to be processed and are generally accessible to those who require them. In August 2015 the government started to issue passports with a third gender category, to bring them into line with the 2007 Supreme Court ruling regarding the recognition of minority gender identities on official documentation.

5.29 Nepal started issuing Machine Readable Passports (MRP) from 26 December 2010. All non-machine readable (hand-written) passports issued before that date expired by 24 November 2015.

### Fraudulent Documents

5.30 A black market exists for citizenship certificates and other official documents in Nepal and can be obtained with the appropriate contacts and financial resources. Government officials may 'sell' citizenship certificates and Nepalis with citizenship certificates may also provide misleading or false information in support of other people's applications. The Prevention of Corruption Act (2003) established the Committee for the Investigation of the Abuse of Authority, which has jurisdiction over cases of fraudulent identity documents involving corruption among public officials. DFAT is also aware of reports of commercial banks issuing fake bank loan papers for use in various processes, including migration applications.

5.31 A Kathmandu Post article published in February 2013 reported that traffickers can pay up to NRs 150,000 (approximately AUD1,920) for a passport while passports with visas can cost around NRs 600,000 (approximately AUD7,690) from foreign nationals on the black market.

5.32 It was relatively easy to substitute photos on old paper passports, but this has become much harder with the adoption of machine readable passports. Nepal is currently investigating the inclusion of bio-data in passports which, if implemented, would further improve document security.



## 6. Acronyms

Chief District Officer	CDO
Communist Party of Nepal (Unified Marxist-Leninist)	CPN (UML)
Gender-based violence	GBV
Lesbian, gay, bisexual, transgender and intersex	LGBTI
National Human Rights Commission	NHRC
Nepali Congress	NC
Unified Communist Party of Nepal (Maoist)	UCPN-M
United Nations Development Program	UNDP
United Democratic Madhesi Front	UDMF
United Nations High Commissioner for Human Rights	UNHCR