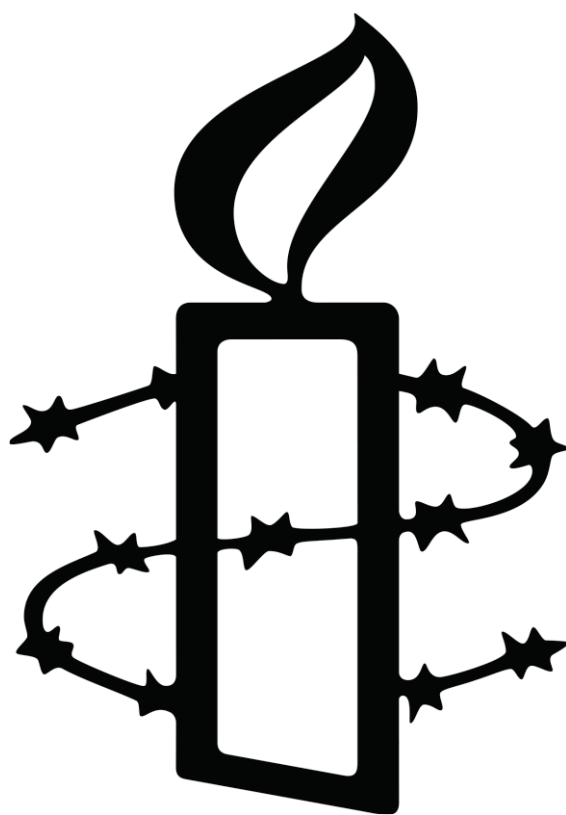




NEPAL: JUSTICE STALLED FOR CONFLICT VICTIMS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 37TH SESSION OF THE UPR WORKING GROUP, JANUARY 2021

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Nepal in January-February 2021. In it, Amnesty International evaluates the implementation of recommendations made to Nepal in its previous UPR, including in relation to transitional justice, gender and caste-based discrimination, torture and other ill-treatment, freedom of expression, association and peaceful assembly.

It also assesses the national human rights framework and the government's recent measures to limit the independence and autonomy of National Human Rights Commission, as well as the failure to timely appoint commissioners on the various constitutional commissions.

With regard to human rights situation on the ground, Amnesty International raises concerns on the series of laws that aim to limit the rights to freedom of expression and privacy, impunity for past crimes under international law and human rights violations, persistent failure to independently and effectively investigate allegations of excessive use of force and extrajudicial executions, continued reports of torture and other ill-treatment, increasing restrictions on the freedoms of expression, assembly and association, failure to address gender and caste based discriminations and violence, failure to effectively protect migrant workers from abuses, forced evictions and limited progress on ensuring the right to food.

This submission also refers to some specific human rights challenges that arise in the context of the COVID-19 pandemic.

FOLLOW UP TO THE PREVIOUS REVIEW

Nepal has made limited progress since its second UPR in November 2015. It has failed to implement important commitments¹ to enact or reform legislation to protect human rights and address persistent discrimination. Some important measures were taken to formulate laws, especially on fundamental rights, but many of the laws and draft laws like Information Technology Bill, Nepal Special Service Bill, Media Council Bill, Mass Media Bill fall short of international human rights standards². Existing laws that offer protection have also been

¹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Nepal UN Doc. A/HRC/31/9, 23 December 2015, para. 55.

² Amnesty International, *Nepal: Information Technology Bill threatens freedom of expression*, 16 January 2020, <https://www.amnesty.org/en/latest/news/2020/01/nepal-information-technology-bill-threatens-freedom-of-expression/>

poorly implemented—such as laws on migrant workers’ rights³, Dalit rights⁴, women’s rights⁵⁶, and provisions relating to torture in the Penal Code⁷.

During the second review in 2015, Nepal claimed there was significant progress on transitional justice. However, there have been no noteworthy efforts since to provide truth, justice and reparation to the victims of the conflict.

In its previous review, Nepal accepted recommendations to address and eliminate caste-based discrimination. Despite enacting legislation to outlaw caste discrimination⁸, violence and discrimination against Dalit people persist widely⁹. Despite Nepal’s commitment¹⁰ to address torture and other ill-treatment, torture remains widespread, while the law remains inadequate.

In 2015, Nepal committed to ensure the rights to freedom of expression and peaceful assembly. However, the government has cracked down on freedom of expression by arbitrarily arresting people for expressing their views online and through the media, and demonstrators continue to be arrested and assaulted by the police—including the deaths of protestors.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

ROLE OF NATIONAL STATUTORY BODIES IN THE PROTECTION OF HUMAN RIGHTS

During the second review, Nepal committed¹¹ to ensure the effective functioning of the NHRC in

³ Nepal, Foreign Employment Act, 2007, <http://ilo.org/dyn/natlex/docs/MONOGRAPH/78258/83524/F135762892/NPL78258.pdf>.

⁴ Nepal, The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, <http://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Caste-Based-Discrimination-and-Untouchability-Offence-and-Punishment-Act-2068-2011.pdf>.

⁵ Nepal, Domestic Violence (Offence and Punishment) Rules, 2010, <http://www.lawcommission.gov.np/en/archives/4354>

⁶ Nepal, National Women’s Commission Act, 2017, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106080/129936/F1054834448/NPL106080%20Npl.pdf>

⁷ Nepal, Criminal Procedure (Code) Act, 2017, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/106060/129899/F1095481449/NPL106060%20Npl.pdf>

⁸ Nepal, The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, <http://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Caste-Based-Discrimination-and-Untouchability-Offence-and-Punishment-Act-2068-2011.pdf>.

⁹ Amnesty International, *Human Rights in Asia Pacific, Review of 2019, 29 January 2019*, <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>, pp. 43-45

¹⁰ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Nepal UN Doc. A/HRC/31/9, 23 December 2015, para. 64.

¹¹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Nepal UN Doc. A/HRC/31/9, 23 December 2015, para. 112.

accordance with the Paris Principles, in particular by providing the Commission with adequate levels of funding and guarantee the independence and financial autonomy of the commission. However, there has been little action on the commission's recommendations for prosecution of cases related to crimes under international law and human rights violations¹².

In April 2016, the office of Prime Minister KP Sharma Oli summoned commissioners of the National Human Rights Commission (NHRC) for questioning about a statement they made while Nepal was under review at the Universal Periodic Review (UPR)¹³.

In April 2019, the government proposed amendments to the National Human Rights Commission Act, 2012, with measures that would undermine the independence and autonomy of the NHRC and limit its jurisdiction¹⁴. Proposals included provisions which would allow the Attorney General's discretion to bypass the Commission's recommendations for prosecutions in cases concerned with human rights violations, and limit the presence of the NHRC to the capital¹⁵. The government has also not appointed commissioners to the National Women Commission, National Dalit Commission, Inclusive Commission, Muslim Commission, and Madhesi Commission, on time, impacting their effectiveness.

HUMAN RIGHTS SITUATION ON THE GROUND

IMPUNITY FOR PAST CRIMES UNDER INTERNATIONAL LAW AND HUMAN RIGHTS VIOLATIONS

The government has failed to deliver truth, justice and reparation for thousands of victims of crimes under international law and other human rights violations committed during the decade-long armed conflict. The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), which have collected over 63,000 complaints of human rights violations and abuses committed by state security forces and armed opposition groups, failed to carry out effective and independent investigations.¹⁶ An acute shortage of resources and capacity, as well as political interference in appointments has adversely affected the work of the bodies and their ability to win trust from victim groups and civil society.

¹² National Human Rights Commission of Nepal, *Annual Report Synopsis 2018/19*, January 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual_Report_2076_English_min.pdf, pp. 4-7.

¹³ Amnesty International, *Nepal: End Intimidation of Human Rights Commission, Interference by Prime Minister Deliberate Attempt to Stifle Independence*, 15 April 2016, <https://www.amnesty.org/download/Documents/ASA3138502016ENGLISH.pdf>.

¹⁴ Amnesty International, *Human Rights in Asia Pacific, Review of 2019*, 29 January 2019, <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>, pp. 43-45

¹⁵ National Human Rights Commission of Nepal, *Annual Report Synopsis 2018/19*, January 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual_Report_2076_English_min.pdf, pp. 4-7.

¹⁶ Amnesty International, *South Asia: End appalling use of torture and other ill-treatment*, 26 June 2018, <https://www.amnesty.org/download/Documents/ASA0486672018ENGLISH.pdf>

Despite a commitment at the last review, the government has resisted amending the Commission of the Investigation on Enforced Disappearance, Truth and Reconciliation Act 2014, as ordered by the Supreme Court in 2014 and 2015 to bring it in line with international human rights law and standards.¹⁷ The law in its current form allows amnesties for serious crimes under international law. Also, no effective investigations have taken place into the hundreds of killings of demonstrators by security forces since 1990 in various parts of the country, including the Terai.¹⁸

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment persist despite Nepal's commitments to end torture and related impunity. Torture and other ill-treatment are widespread in pre-trial detention to extract "confessions" and intimidate people, with an archaic and draconian criminal investigation system. The authorities did not carry out any independent and credible investigation into several deaths in custody suspected to have resulted from torture.

The new Criminal Code, passed by Parliament in August 2017, contained provisions criminalizing torture and other ill-treatment, with a maximum of five years in prison. However, punishments are not proportionate to the gravity of a crime under international law. A separate anti-torture bill, pending in Parliament since 2014, fell short of international legal requirements.¹⁹

EXTRAJUDICIAL EXECUTIONS

There were several allegations of extrajudicial executions, which the authorities failed to adequately investigate. Police officers reportedly shot dead Tirtha Raj Ghimire in the Bhojpur district, and Kumar Poudel in the Sarlahi district, in May and June 2019, respectively. Witnesses said both men were killed during arrest. The authorities did not undertake credible investigations into dozens of alleged extrajudicial executions carried out by security forces of the members of the Madheshi community in Terai in the south and elsewhere since the first Madhesh uprising in 2007. The report of the Inquiry Commission known as the Lal Commission, established to investigate the killings, has not been published.

RESTRICTIONS ON FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION

In May 2016, a Canadian national residing in Nepal, Robert Penner, was arrested and deported for sowing "social discord" in social media. Laws like the Electronic Transactions Act 2006 have been used to arbitrarily arrest journalists for publishing stories which criticized the government and individuals for posting their opinions online. In April 2019, Arjun Giri, a Pokhara-based journalist, was charged under the Act for reporting on financial fraud. In June 2019, comedian Pranesh Gautam was arrested for posting a satirical film review on Youtube. In October 2019, music artists Durgesh Thapa and Samir Ghising were arbitrarily arrested by police, solely for the content of their songs. In 2020, at least eight people who posted opinions online were arrested for "spreading misinformation" or criticizing the government in

¹⁷ Amnesty International, *Nepal: Draft bill on transitional justice falls short of international law and standards*, 20 July 2018, <https://www.amnesty.org/en/latest/news/2018/07/nepal-draft-bill-on-transitional-justice-falls-short-of-international-law-and-standards/>.

¹⁸ Amnesty International, *Amnesty International Report 2017/2018, State of the World's Human Rights*, 22 February 2018, <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>, pp. 275-276.

¹⁹ Amnesty International, *South Asia: End appalling use of torture and other ill-treatment*, 26 June 2018, <https://www.amnesty.org/download/Documents/ASA0486672018ENGLISH.pdf>

the context of COVID-19.

A series of draft laws with provisions that threaten to severely restrict freedom of expression and right to privacy are pending before the parliament. They included the Media Council Bill, the Mass Communication Bill, the Information Technology Bill, and Nepal Special Service Bill.

Security forces continue to detain people for peaceful dissent and use unnecessary or excessive force to disperse protesters. In March 2016, five protesters were killed and 16 injured when police used firearms to disperse Madhesi protesters in Saptari district. In August 2018, 14-year-old Sunny Khuna was shot dead by the police, and dozens of others injured when police fired at locals protesting in response to the rape and murder of 13-year-old Nirmala Panta. In June 2019, Saroj Naryan Mahato was killed at a protest in the Sarlahi district, who, according to witnesses, was shot dead by the police officers, while three other protestors were seriously injured. In the same month, police also used excessive force and beat protesters in the capital, Kathmandu, as they demonstrated against the proposed “Guthi” bill. In June 2020, the police charged water cannons, batons and tear gas against the peaceful protesters in Kathmandu who were demanding accountability for the government’s COVID-19 response. The police also used excessive force to enforce its “lockdown” amid the pandemic²⁰.

DISCRIMINATION

Despite provisions in law and policy to address discrimination based on caste, Dalits continued to face discrimination, the stigma of “untouchability”, ostracization and violence. In May 2020, four Dalits were attacked and killed by a mob of villagers in Rukum (West) district. On same day, a 12-year-old Dalit girl was found hanging from a tree, after she had been forcibly married to her alleged rapist, who belonged to dominant caste.²¹ The COVID-19 lockdown compounded the discrimination faced by the Dalits. Activists reported incidents of rape, assault, denial of funeral rites and discrimination at quarantine sites²².

The provisions for statutory limitations relating to rape in the criminal code falls short of international legal standards, and continues to allow impunity for perpetrators of sexual violence and rape²³. Reports of rape, particularly against children, have increased in the recent years.

Despite constitutional provisions, LGBTI individuals continue to face discriminations and violence. Nepal has failed to adopt appropriate legal, policy and programmatic measures to ensure the constitutional provision to ensure equal rights for LGBTI people, including legislation on marriage equality.

²⁰ Amnesty International Nepal, *COVID-19 response: Governments Should Protect Migrant Workers and Other Marginalized Groups*, 3 April 2020, <https://amnestynepal.org/press-statement/covid-19-response-governments-should-protect-migrant-workers-and-other-marginalised-groups/>

²¹ Amnesty International, *Nepal: Authorities Must Deliver Justice for Dalit Killings*, 28 May 2020, <https://www.amnesty.org/en/latest/news/2020/05/nepal-authorities-must-deliver-justice-for-dalit-killings/>

²² The Office of the UN High Commissioner for Human Rights, *Nepal: Bachelet condemns Dalit killings, calls for independent investigation*, 29 May 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25913>

²³ Amnesty International Nepal, *Expert Consultation Meeting on Rape Laws in Nepal*, 10 May, 2019, <https://amnestynepal.org/activities/expert-consultation-meeting-on-rape-laws-in-nepal/>.

Nepal took an important step by criminalizing Chhaupadi (the practice of banishing menstruating women and girls to huts) in August 2017²⁴; however, the practice continues to be widespread, especially in the mid-western and far-western regions. Numerous women and girls died or were subjected to sexual violence while in Chhaupadi huts²⁵.

ABUSE OF MIGRANT WORKERS

The government has failed to deliver effective protection for migrant workers and end the culture of impunity for unlawful recruitment practices. Recruiters illegally charged migrant workers excessive fees; deceived them about the terms and conditions of their work abroad; and manipulated their consent to overseas work through the accumulation of recruitment debts. Although the government made repeated public commitments to reduce migration costs for workers and to protect them from incurring debt, it increased the burden on migrants by raising pre-departure costs. Some recruiters were directly involved in labour trafficking, which is punishable under Nepal's Human Trafficking and Transportation (Control) Act. Recruitment businesses continue to use their political influence to prevent investigation, prosecution and redress for their routine abuse and exploitation of migrants²⁶.

The government failed to respond promptly to address the rights of Nepali migrant labour workers stranded in India, Malaysia and the Gulf countries as the COVID-19 lockdowns came into force. Several stranded workers complained of being neglected by the Nepali embassies. The authorities failed to ensure adequate standards of living and protect the health and safety of several returnee migrant workers in the COVID-19 quarantine facilities. In June 2020, a woman was raped in a quarantine facility in Kailali district.

RIGHT TO ADEQUATE HOUSING

While the enactment of the Right to Housing Act 2018 is an important step towards guaranteeing the right to housing, the act falls short of Nepal's international human rights obligations.²⁷ As it is based on the ownership driven approach, the Act fails to guarantee protection from forced eviction for those living in informal settlements. Key terms, such as homelessness and security of tenure, are not defined.

Despite the act coming into force on 18 September 2018, local authorities in Nepal continued to carry out evictions without due process or provision of alternative accommodation. For example, in 2019, The Butwal Sub-Metropolis and Nagarkot municipalities in the Rupandehi and Bhaktapur districts respectively forcibly evicted dozens of families from land they had inhabited for several years, rendering many of the families

²⁴ Amnesty International, *Nepal: Authorities must proactively act to eradicate the harmful practice of banishing women and girls to insanitary and dangerous huts during their menstrual cycles*, 14 January 2019, <https://www.amnesty.org/en/latest/news/2019/01/nepal-authorities-must-proactively-act-to-eradicate-the-practice-of-chhaupadi/>.

²⁵ Amnesty International, *Human Rights in Asia Pacific, Review of 2019*, 29 January 2019, <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>, pp. 43-45

²⁶ Amnesty International, *Nepal: Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers*, 6 June 2017, <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>.

²⁷ Amnesty International, *Nepal: Adequate Housing for all: Analysis of the Right to Housing Act 2018*, 11 June 2019, <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>.

homeless.²⁸

RIGHT TO FOOD

In an important step towards realizing its goal of “zero hunger” by 2025, the Nepal government enacted the Right to Food and Food Sovereignty Act in September 2018. The Act, however, falls short of upholding the right to food in Nepal. As currently framed, the Act applies only to citizens of Nepal and, contrary to international human rights standards, provides no protection to refugees and migrants. Further, the Act does not address barriers faced by communities, including Indigenous peoples, to access resources for their subsistence.²⁹ The law also fails to impose a requirement to investigate starvation-related deaths.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF NEPAL TO:

ROLE OF NATIONAL STATUTORY BODIES IN THE PROTECTION OF HUMAN RIGHTS

- Repeal any provision in the proposed amendment of the National Human Rights Commission Act 2012, that limit the jurisdiction and financial autonomy of the commission, and guarantee that the appointment process ensures representation of civil society involved in the protection and promotion of human rights.
- Ensure the recommendations from NHRC are promptly and seriously implemented.

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

- Investigate all allegations of crimes under international law, both past and present, and where there is sufficient admissible evidence, prosecute those suspected of committing the crimes before competent, independent and impartial civilian courts, in accordance with international standards.
- Ensure the victims can access effective remedies before the courts, including full and effective reparation.
- Bring the commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 in line with international law before the commissioners commence their work, including by removing time limits that could inhibit filing of complaints, ensuring witness protection, and removing provisions that could lead to amnesties being granted to persons suspected of committing crimes under international law.

²⁸ The Himalayan Times, *Forced Eviction From Public Land Unlawful: Activists*, 25 August 2019, <https://thehimalayantimes.com/nepal/forced-eviction-from-public-land-unlawful-activists/>

²⁹ Amnesty International, *Nepal: Right to Food in Nepal: Analysis of the Right to Food and Food Sovereignty Act 2018*, 3 April 2019, <https://www.amnesty.org/download/Documents/ASA3101302019ENGLISH.pdf>.

- Promptly accede to the Rome Statute of the International Criminal Court and implement it under national law.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance

EXTRAJUDICIAL EXECUTIONS

- Ensure prompt, impartial, independent and effective investigations into all cases of unlawful killings and that all those suspected of being responsible irrespective of rank, are brought to justice in trials before ordinary civilian courts.

TORTURE AND OTHER ILL-TREATMENT

- Introduce new legislation providing appropriate criminal penalties for acts of torture and other ill treatment in line with international human rights law, including removal of existing statutory limitation on complaint duration; and establish an independent body to investigate all allegations of torture.
- Accede to the Optional Protocol to the Convention against Torture (OPCAT).

FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION

- In the draft laws such as the IT Bill, Media Council Bill, Nepal Special Services Bill, and Mass Communications Bill, remove all provisions that restrict freedom of expression through any medium, or infringe on right to privacy, and ensure laws are not used to criminalize freedom of expressions. Bring all laws, including the criminal code in line with international human rights standards, including by removing provisions that criminalize libel or defamation.
- Take immediate measures to end the practice of excessive use of force against protestors exercising their rights to freedom of expression, association and peaceful assembly.
- Ensure no person is arrested for peacefully exercising their right to freedom of expression, association or assembly and that all arrests are carried out in according with the law and in line with international human rights standards;

DISCRIMINATION

- Investigate timely and effectively caste-based discrimination and violence, and where sufficient admissible evidence exists, prosecute those suspected of such crimes.
- Ensure that police provide a safe and confidential environment for women and girls to report incidents of violence, including sexual violence, and that all such complaints are recorded and promptly, impartially and effectively investigated, and those suspected are brought to justice.
- Bring rape laws in line with international standards and remove the statutory limitation on lodging a complaint of rape with police.
- Formulate appropriate legislation to ensure marriage equality for LGBTI individuals.
- Ensure that the right to land of Indigenous peoples including Tharu is respected.

MIGRANT WORKERS' RIGHTS

- Thoroughly investigate all recruitment related abuses and where there is sufficient admissible evidence, prosecute those suspected of the crimes in fair trials.

- Take proactive measures to sign bilateral labour agreements with countries with high number of Nepali migrant workers, to ensure human rights protection to the migrant workers in Nepal and in the countries of destination.
- Ratify the International Convention on the Protection of All Migrant Workers and their Families, 1990, and ensure effective implementation of the Foreign Employment Act 2007.

RIGHT TO HOUSING

- Amend the Right to Housing law to address the underlying causes of inadequate housing and homelessness and ensure that its provisions are brought in line with Nepal's international human rights obligations such as ensuring that the law provides protection from forced evictions for all, regardless of their tenure status.
- Amend legislation in line with Nepal's international human rights obligations that clearly puts in place the safeguards against forced evictions, articulates that evictions must be carried out as a last resort and in exceptional circumstances, and guarantees that victims of forced evictions have access to effective remedy including alternative housing and adequate compensation.

RIGHT TO FOOD

- Amend Right to Food and Food Sovereignty Act 2018 to ensure that the protection is extended to non-citizens such as refugees and migrants, address the threat of starvation, including by providing immediate food and nutritional support, and include provisions for inquiries into any deaths resulting from starvation.
- Ensure that marginalized communities, such as Dalits, have access to cultivable land without discrimination, in order to ensure their right to food, housing and other rights.

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TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

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