



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### List of issues in relation to the second periodic report of Nepal (CCPR/C/NPL/2)\*

##### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. In light of the restriction of the mandate and jurisdiction of the National Human Rights Commission (NHRC) following the enactment in 2012 of a new law governing its activity, please provide information on the measures taken to ensure the independence and autonomy (including financially) of the NHRC and its continuing compliance with the Paris Principles, as well as to ensure that its decisions/recommendations are fully implemented by State authorities. Please also indicate whether the State party plans to repeal the six-month limit within which complaints to the Commission must be lodged and to extend its competence to also investigate cases of human rights violations that have been allegedly committed by army personnel.

2. Please provide examples of the application of the Covenant by domestic courts. Please also indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol, and provide information on measures taken to ensure full compliance with the Committee's Views in communications Nos. 1469/2006, *Sharma v. Nepal*; 1761/2008, *Giri et al. v. Nepal*; 1863/2009, *Maharjan v. Nepal*; and 1870/2009, *Sobhraj v. Nepal*.

3. Please report on concrete measures taken to address impunity for past and ongoing human rights violations and investigate and prosecute human rights violations committed by both State and non-State actors. Please clarify the status of the "Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance – 2069 (2013)" after the Supreme Court issued an interim order on 2 April 2013 staying its implementation, and elaborate on the steps taken to review the Ordinance to ensure that its provisions are in full compliance with the Covenant. Please comment on the application of constitutional, statutory and regulatory immunities from accountability (including criminal accountability) of public officials, military and security forces and on the use of political interference to withdraw charges against persons accused of serious crimes amounting to human rights violations. Please also indicate whether the State party has established a vetting system to exclude persons accused of human rights violations from law enforcement bodies, the army and other relevant State bodies.

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\* Adopted by the Committee at its 108th session (8–26 July 2013).

4. Please elaborate on measures taken to ensure that war crimes, crimes against humanity and genocide are crimes under domestic law and that the criminal justice system has jurisdiction over these crimes. Please clarify whether any comprehensive reparation programme for victims of serious human rights violations committed during the 1996–2006 conflict has been established, and also report on the disparities among categories of victims entitled to access their rights to reparation under the Interim Relief Programme.

### **Non-discrimination, equality between men and women, rights of minorities and indigenous peoples (arts. 2, 3, 26 and 27)**

5. Please outline the measures taken to eradicate patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identity of women and men in all spheres of life and to eliminate harmful traditional practices, such as child marriage, the dowry system, son preference, polygamy and witchcraft accusations, as well as practices such as *chaupadi*, *jhuma*, *deuki* and *dhan-khaane*. Please report on measures taken to enforce in practice the prohibition against early marriage. Please report on the impact of positive discrimination measures adopted in respect of women, including those taken to enhance the participation and representation of women in political and public life, including in civil service, judiciary and political parties, and to increase the representation of women in decision-making positions.

6. Please provide information on measures taken to combat caste-based discrimination in practice, particularly caste-based discrimination against the Dalit community, and to ensure effective implementation of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011. Please indicate whether the National Dalit Commission has been provided with sufficient resources to effectively realize its mandate and whether legislation regulating its activity has been adopted.

7. Please indicate the measures taken to combat discrimination against ethnic and religious minorities and indigenous peoples, including the Madhesi (people dwelling in Terai), and to enhance their access to and representation in the fields of civil service, education, local governance and representation in the Constituent Assembly. Please provide relevant statistical data.

8. Please clarify whether the Covenant rights, and in particular the prohibition of discrimination, are ensured to all individuals within the State party's jurisdiction or only to citizens. Please report on concrete measures taken to ensure gender equality in access to citizenship and repeal the discriminatory provisions regarding acquisition and transmission of nationality. Please indicate how the difficulties in obtaining citizenship certificates for certain historically marginalized Nepalese, particularly in the Terai, are addressed.

9. Please outline the measures taken to protect persons from stigmatization and discrimination on the basis of their sexual orientation and gender identity, and indicate whether discriminatory laws and policies on this basis have been amended.

### **Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)**

10. Please respond to concerns that impunity for sexual and domestic violence remains widespread, police often refusing to register such complaints, and report on measures taken to prevent and combat all forms of violence against women, including domestic violence, rape and other forms of sexual abuse, ensure that such acts are effectively investigated, perpetrators are prosecuted and sanctioned and victims have access to adequate remedies, including compensation. Please also elaborate on the measures taken to respond to rape committed by both State and non-State actors and to repeal the 35-day statutory limitation

for filing a criminal complaint (FIR) of rape. Please provide statistics on the number of complaints lodged by women victims of violence, including domestic and sexual violence, of persons prosecuted and convicted, the remedies provided to victims and the number of safe shelters and any other resources allocated to assist victims of domestic violence.

**Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, 6, 7, 9, 10, 16, 19 and 21)**

11. Please respond to reports that unlawful use of force and well-documented violations of the right to life by State agents, including extrajudicial killings and enforced disappearances, remain unpunished. Please provide information on the measures taken to prevent such cases, promptly and impartially investigate them, bring the perpetrators to justice and provide adequate remedies to victims or their relatives, including in the case of alleged extrajudicial killings by state security forces, as well as serious injuries inflicted during protests, in the Terai region. Has the State party set up a special investigative unit with sufficient independence to inquire into allegations of extrajudicial killings? Please also indicate whether human rights law, including the principles on the use of force and firearms, is a standard component of curriculums for law enforcement officials.

12. Please report on measures taken to define and criminalize the offence of torture and enforced disappearance in accordance with international standards and ensure that allegations of enforced disappearances, torture and cruel, inhuman or degrading treatment or punishment are effectively and impartially investigated, perpetrators are prosecuted and punished in a manner commensurate with the gravity of such acts, and victims have access to adequate remedies, including compensation. Please also respond to reports that torture has been and continues to be systematically practised in Nepal, mainly in police custody, and to allegations of torture and ill-treatment committed by non-State actors, and outline the measures taken to address these issues.

13. Please indicate the sanctions imposed on military personnel found guilty of torture (State party report, CCPR/C/NPL/2, para. 122) and the remedies provided to victims. Please clarify whether the State party plans to set up an independent complaint mechanism on the conduct of security forces and to amend the State Cases Act of 1992 by including the crime of torture of a child specified in the Children's Act of 1992 as a scheduled offence, so that a criminal complaint (FIR) may be lodged with the police.

14. Please report on measures taken to ensure that the law explicitly prohibits corporal punishment in all settings, including the home.

**Elimination of slavery and servitude (art. 8)**

15. Please report on measures taken to combat and prevent trafficking in women, men and children for purposes of sexual exploitation, forced labour, bonded labour, domestic servitude and marriage, as well as trafficking in human organs, to prosecute and punish perpetrators and to provide victims with effective remedies, including compensation and rehabilitation. Please elaborate on measures taken to abolish, in practice, child labour and traditional practices of bonded labour such as *haliya*, which is still prevalent in some far western districts of Nepal, *kamaiya* and *kamlari*. Please provide statistics, disaggregated by sex, age, ethnic group, rural/urban areas, on: (a) the number of cases of trafficking for the purposes mentioned above and cases of child labour; (b) the investigations and prosecutions initiated and actual criminal convictions; and (c) the remedies awarded to victims. Please also outline any measures taken to investigate official complicity in trafficking.

**Right to liberty and security of person, treatment of persons deprived of their liberty, fair trial and independence of judiciary (arts. 2, 7, 9, 10, 14 and 24)**

16. Please describe the measures taken to address arbitrary and unlawful detention, including maintenance of false or inadequate custody records by police and the practice of holding detainees in unofficial places of detention, and to ensure that those responsible for such cases are duly sanctioned and victims are adequately remedied. What steps have been taken to guarantee, in practice, the rights of detained persons to notify their immediate families about their detention and to have access to a lawyer and doctor from the moment of arrest? Please also respond to reports that lengthy pretrial detention is common and provide information on non-custodial alternative measures to pretrial detention and their application in practice.

17. Please indicate the measures taken to address overcrowding in prisons and jails, their weak infrastructure and inadequacy of basic services and facilities available to prisoners, including sanitation, medical care and adequate facilities for confidential meetings with their lawyers. Has a system been established for regular and independent monitoring of places of detention? Please report on progress made with the legal reform of prison legislation, including the institutionalization of the open and community prison system in Nepal and the amendment of the Prisons Act 1964, and indicate whether the right of inmates to submit complaints to court against torture, cruel, inhuman or degrading treatment or punishment is guaranteed in practice.

18. Please provide information on the status of the draft penal and criminal procedure codes and sentencing legislation that have been submitted to the Legislature/Parliament and outline the major amendments introduced by these laws in terms of fair trial guarantees. Are there any amendments to the Evidence Act and the State Cases Act 1992 foreseen in order to give effect to the right of everyone charged with a criminal offence not to be compelled to testify against himself or to confess guilt, and to ensure that any evidence obtained as a result of coercion is inadmissible?

19. Please report on measures taken to combat corruption and abuse of power within the judiciary, ensure the independence of judiciary from any outside interference, including of political nature, and the implementation of court orders, as well as to address the delays in the administration of justice, the lack of resources, the increased legal expenses and insufficient legal aid services, especially for the poor and marginalized groups.

20. Please provide information on the judicial power granted to Chief District Officers and respond to concerns that this power is frequently misused, that procedural guarantees are lacking and the dual capacity of Chief District Officers as members of the executive and judiciary contravenes the provisions of the Covenant.

21. Please indicate whether the State party plans to review the relevant legislation with a view to raising the age of criminal responsibility currently set at 10 years. Please report on measures taken to strengthen the juvenile justice system and ensure that (a) only persons who are 18 years or above are treated, for the purposes of criminal law, as adults; (b) juvenile benches are available throughout the country; (c) juvenile offenders are segregated from adult offenders; and (d) the detention of juveniles is used as a last resort and only for as short a time as possible. Please also elaborate on any available alternative sanctions to the imprisonment of juvenile offenders and their application in practice.

**Refugees, asylum seekers and internally displaced persons (arts. 2, 7, 13, 16 and 26)**

22. Please provide information on measures taken to ensure that non-nationals, including refugees and asylum seekers, enjoy their rights under the Covenant and that protection against *non-refoulement* is guaranteed in practice. What steps are being taken to enact specific domestic legislation regulating refugee and asylum-related matters? Please respond to information that refugees and asylum seekers without visas are considered to be illegal migrants, are penalized for their stay in the country and are not permitted to exit the country for resettlement unless they obtain visa fine waivers. Please report on measures taken to ensure the safe return of internally displaced persons and facilitate their rehabilitation and reintegration, including the return of their land and property.

**Freedom of expression, right to peaceful assembly, freedom of association and freedom of conscience and religious belief (arts. 2, 18, 19, 21, 22 and 26)**

23. Please respond to reports of physical attacks, death threats, harassment and reprisals against journalists and human rights defenders by security forces, police, armed groups and youth wings of political parties, and provide information on the measures taken to protect individuals in the exercise of their freedom of expression and prosecute perpetrators of such attacks. Please comment on restrictions imposed on the freedom of expression and peaceful assembly of the Tibetan community, including arrests and detention of protesters and pressure on them to sign pledges that they will abstain from participating in future protests.

24. Please indicate how the prohibition of proselytizing in the Interim Constitution and Criminal Code is compatible with the Covenant. Please also comment on restrictions imposed on the religious freedom of religious minorities, including Tibetan Buddhists, Christians and Muslims.

**Birth registration (arts. 16, 24 and 26)**

25. Please comment on the low number of birth registrations and report on measures taken to address difficulties faced by women and other marginalized and economically disadvantaged groups in the registration process.

**Dissemination of information relating to the Covenant (art. 2)**

26. Please provide information on the steps taken to disseminate information on the Covenant and its First Optional Protocol, the submission of the second periodic report of the State party and its forthcoming examination by the Committee. Please also provide more information on the involvement of civil society, non-governmental organizations and the NHRC in the preparatory process of the report.