



# International Covenant on Civil and Political Rights

Distr.: General  
27 May 2021

Original: English  
English, French and Spanish only

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## Human Rights Committee

### List of issues prior to submission of the third periodic report of Nepal\*

#### A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please report on any significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the Committee's previous concluding observations.<sup>1</sup> Please provide information on steps taken to implement the recommendations contained in the Committee's previous concluding observations. Indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol and report on measures taken to ensure full compliance with the Views adopted in relation to the State party, including examples of cases in which the provisions of the Covenant have been referred to or implemented by national courts.

#### B. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the previous recommendations of the Committee

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

2. Recalling the previous recommendation of the Committee (para. 7),<sup>2</sup> as well as the findings arising from the follow-up to the concluding observations, please discuss the progress made to ensure the independent and effective functioning of the National Human Rights Commission. Include information on: (a) the status of the draft bill introduced in 2018 to amend the National Human Rights Act, 2068 (2012), and its compatibility with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles); (b) how effective follow-up to the recommendations of National Human Rights Commission is ensured; and (c) reports of politically motivated appointments of National Human Rights Commissioners and any measures that have been taken to ensure fair, inclusive and transparent selection processes.

##### Anti-corruption measures (arts. 2 and 25)

3. Please provide information on the measures taken by the State party to address corruption, including within different branches of government and the judiciary. In this regard, provide information on: (a) any anti-corruption measures taken by the State party,

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\* Adopted by the Committee at its 131st session (1–16 March 2021).

<sup>1</sup> CCPR/C/NPL/CO/2.

<sup>2</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to CCPR/C/NPL/CO/2.



including the implementation of the Prevention of Corruption Act, 2059 (2002); (b) reports of delays in foreign aid reaching victims of the 2015 earthquake because of corruption among State officials; and (c) the number of complaints, investigations, prosecutions and convictions for corruption and any preventive measures that are in place. Please also clarify the current status of legal proceedings against Raj Narayan Pathak.

#### **State of emergency and derogations (art. 4)**

4. Please provide information on the measures taken in response to the coronavirus disease (COVID-19) pandemic, including whether there have been derogations from any obligations under the Covenant. Bearing in mind the Committee's general comment No. 29 (2001), provide information on whether any derogations made met the strict requirements of proportionality to the exigencies of the situation in relation to duration, geographical coverage and material scope, as well as whether other States parties have been notified through the Secretary-General, in line with article 4 of the Covenant.

#### **Fight against impunity and past human rights violations (arts. 2, 6–7 and 14)**

5. Recalling the Committee's previous recommendation (para. 5) and the findings arising from the follow-up to the concluding observations, please report on the steps taken by the State party to guarantee remedies for the grave human rights violations that took place prior to the signing of the comprehensive peace accord in 2006. Include information on: (a) the status of the implementation of the February 2015 Supreme Court decision instructing the Government to amend the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2071 (2014), in accordance with its international legal obligations and the jurisprudence of the Supreme Court; (b) the compatibility of the national legal framework governing issues relating to transitional justice, including the statutes of limitations in the National Penal (Code) Act, 2074 (2017), for grave human rights violations such as rape and torture, with the Covenant and other international standards; and (c) steps taken to ensure access to justice for victims of human rights abuses during the armed conflict and on the number of investigations, prosecutions and convictions for related crimes and the remedies provided to victims.

6. Please elaborate on whether any measures have been taken to limit political interference in the criminal justice system and to adopt guidelines for candidate vetting to prevent those accused of violations of Covenant rights from holding public office and being promoted.

#### **Non-discrimination (arts. 2 and 25)**

7. In light of the Committee's previous recommendations (paras. 8–9), please describe the legislative and other measures taken during the reporting period to combat laws and social practices that discriminate on the basis of sex, caste, sexual orientation, gender identity, ethnicity, religion, disability or indigenous status. Please include information on steps taken to collect data on minority and marginalized groups and their needs, including those facing intersectional discrimination, as well as whether there has been any progress in developing comprehensive anti-discrimination legislation at the national and subnational levels.

8. Please provide information on any steps being taken by the State party to ensure greater protection of sexual minorities and gender-diverse people from discrimination. In particular, discuss whether the State party is considering including sexual minorities under article 306 (1) (a) and (m) of the Constitution of Nepal, which explicitly defines minorities and marginalized communities.

9. Please provide information on steps taken to remove discrimination on the basis of sex from the Constitution. In particular, provide information on: (a) steps taken to ensure Nepalese women can pass on their nationality to their children on the same basis as Nepalese men; and (b) efforts to ensure that women can transfer their nationality to foreign spouses in the same manner as Nepalese men and on steps taken to pass the citizenship amendment bill, which was approved in June 2020 but has not yet been implemented.

10. Recalling the previous recommendation of the Committee (para. 9), please provide information on measures taken to eliminate all forms of caste-based discrimination. Please:

(a) discuss the compatibility with the Covenant of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011), as amended in 2018, as well as the steps that have been taken to effectively implement the law; (b) discuss the work of the National Dalit Commission and whether the resources available to it to fulfil its mandate have been increased; and (c) respond to reports indicating that the COVID-19 pandemic has exacerbated the discrimination experienced by Dalit individuals.

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

11. Bearing in mind the previous recommendations of the Committee (para. 13), please discuss the measures taken by the State party to address all forms of violence against women, including whether any specific protections are in place to address the vulnerabilities of minority groups, including sexual minorities, indigenous women and Dalit women. Please include information on: (a) whether there are plans to strengthen the legal framework, including by removing the statute of limitations for rape, introducing provisions to prohibit the sexual history of rape survivors from being introduced as evidence during trials and expanding the definition of rape in the National Penal (Code) Act, 2074 (2017), to include non-consensual sexual acts not involving penile penetration; (b) whether steps are being taken to address the fact that criminal investigations into sexual violence cases are often replaced by coercive “community interventions” that pressure victims and survivors into agreeing to end their cooperation with the criminal process; and (c) the steps being taken to address reports of shortcomings in the collection of evidence and investigations by the Nepalese police into rape cases. Please also discuss any targeted actions that have been implemented to protect women from violence during the COVID-19 pandemic.

#### **Climate change and the right to life (arts. 6 and 25)**

12. Taking into account paragraph 62 of the Committee’s general comment No. 36 (2018) and the specific geographical characteristics and location of the State party, please provide information on measures aimed at preventing and addressing, including through the regulation of the public and private sectors, the current and foreseeable future effects of climate change and environmental degradation, which represent existential threats within the State party. In particular, provide information on steps the State party is taking to: (a) protect persons in Nepal, including the most vulnerable individuals and groups, from the negative impact of climate change and natural disasters on the enjoyment of their rights; (b) mitigate the impact of changing monsoon patterns, increased seasonal drought and flooding in the State party on poverty, food production, food security and inequality; and (c) develop inclusive processes for encouraging the participation of civil society groups and the general public, including, women, persons with disabilities and persons living in rural areas, when developing and implementing legislation and policies on climate change, including the 2019 Climate Change Policy.

#### **Extrajudicial killing, torture and ill-treatment (arts. 6–7 and 10)**

13. Recalling the previous recommendation of the Committee (para. 10), please provide up-to-date information on the measures taken by the State party to prevent torture and ill-treatment. Please: (a) include information on the provisions of the National Penal (Code) Act, 2074 (2017), that criminalize torture and whether all provisions, including the 90-day statutory limit for reporting torture, are in line with the Covenant and other international standards; (b) discuss whether the State party intends to put in place dedicated anti-torture legislation; (c) provide data on the number of complaints, investigations, prosecutions and convictions for torture and ill-treatment were recorded during the reporting period, as well as the remedies provided to victims.

14. Please describe the steps taken by the State party to prevent the excessive use of force by law enforcement officials in full compliance with the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), including in places of detention, as well as during the 2019 protests following the introduction of a bill

proposing the abolition of *guthi*, the customary self-government system of the Newa indigenous peoples.

**Treatment of persons deprived of their liberty (arts. 6–7 and 9–10)**

15. In light of the previous recommendation of the Committee (para. 12), please provide additional information on the efforts being made to reduce severe overcrowding and improve the poor conditions within the prison system, including lack of access to food, clean water, bedding, lighting, recreational areas and medical care. In particular, indicate what measures are being taken to: (a) address the specific needs of women in detention with respect to sexual and reproductive health care, and to align Nepalese laws and policies on incarceration with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); (b) implement human rights-compliant alternatives to detention, including non-custodial sentences for non-violent offences such as drug use; and (c) address the risks posed by COVID-19 to detainees, including those who are most vulnerable to the virus, and discuss how many outbreaks of the virus there have been within the prison system and other places of detention and what the government response has been.

**Liberty and security of person (arts. 9–10 and 14)**

16. Recalling the previous recommendation of the Committee (para. 11), please discuss any changes made to the legal framework relating to arbitrary detention following the enactment of the National Criminal Procedure (Code) Act, 2074 (2017), as well as how such legal standards are implemented in practice. Provide information on the procedures in place to receive and investigate complaints of arbitrary detention and any data about the number of complaints made during the reporting period and their outcome.

17. Bearing in mind the Committee’s general comment No. 35 (2014), please discuss whether individuals who are caught using drugs by the police are referred to drug treatment programmes that deprive them of their liberty without their free, prior and informed consent. Please clarify whether those who enter such programmes are free to leave when they choose and, if not, what the legal basis is for depriving them of their liberty and the procedures for ensuring due process and judicial oversight.

**Elimination of slavery, servitude and trafficking in persons (arts. 2, 7–8 and 26)**

18. Recalling the previous recommendation of the Committee (para. 18), please elaborate on the steps taken to address all forms of exploitation, including for the purposes of trafficking and labour exploitation, within the State party, including cases affecting women and children. In this regard, provide information on: (a) whether the legal provisions in place, including the Human Trafficking and Transportation (Control) Act, 2064 (2007), criminalize all forms of human and organ trafficking and labour exploitation, including bonded labour; (b) the number of complaints, investigations, prosecutions and convictions for all forms of trafficking and labour exploitation, as well as details about the remedies provided to victims; and (c) any steps taken to address the vulnerability to trafficking and labour exploitation experienced by groups such as refugees without documentation, victims of the 2015 earthquake, indigenous peoples, those living in rural areas and Dalit individuals.

**Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7, 9, 12–13 and 24)**

19. Recalling the previous recommendation of the Committee (para. 14), please discuss steps taken to uphold the Covenant rights of all refugees and asylum seekers. In this regard, provide information on any progress made in adopting national refugee legislation that is in line with international standards and that is separate from the broader immigration system, including legislation respecting the principle of non-refoulement. Discuss whether there have been any efforts to register and accord protected legal status to long-staying Tibetan and other refugees in Nepal.

**Freedom of expression, association and assembly (arts. 19–22 and 25)**

20. Please discuss the steps taken by the State party to promote and protect the right to freedom of opinion and expression, including online expression. Include information on: (a) the compatibility of existing legislation, including the National Penal (Code) Act, 2074 (2017), and the Electronic Transactions Act, 2063 (2006), as well as draft provisions such as the information technology bill and the media council bill, with the Covenant; (b) reports indicating that journalists such as Arjun Giri have been charged with criminal offences and/or subjected to intimidation and harassment for covering issues relating to corruption; (c) reports indicating that entertainers and artists such as Pranesh Gautam and Samir Ghising have faced criminal charges for exercising their freedom of expression; and (d) reports indicating that Tibetans and citizens of Nepal suspected of organizing protests or gatherings have been arrested and charged with indecent behaviour for expressing their opinions on Tibetan nationalism and associated political issues.

21. Please respond to reports indicating that organizations and individuals face barriers to exercising their right to freedom of association. Include information about the legal framework governing the formation and regulation of non-governmental organizations and discuss the role of the District Administration Office in registering such organizations. Please also clarify whether essential workers are able to exercise their right to strike and which professionals are deemed essential within the State party.

**Freedom of conscience and religious belief (arts. 2, 18 and 26)**

22. Please discuss the steps taken to uphold freedom of conscience and religious belief within the State party. In this regard, respond to reports that: (a) the National Penal (Code) Act, 2074 (2017), contains provisions that criminalize religious conversion and proselytizing; (b) religious minorities have faced restrictions in establishing non-governmental organizations and holding religious festivals and events; and (c) religious minorities have experienced difficulties in purchasing and using land for burial rituals.

**Rights of the child (arts. 23–24 and 26)**

23. In light of the Committee's previous recommendation (para. 17), please provide information on any reforms that have been made to the juvenile justice system. Please: (a) respond to reports that the minimum age of criminal responsibility remains 10 years; (b) discuss any progress made in implementing the Children's Act, 2048 (1992), including those provisions for cases to be heard in independent juvenile courts and to be disposed of within 120 days; (c) respond to reports indicating that some juveniles are being held in pretrial detention facilities together with adults due to the lack of adequate juvenile detention institutions; and (d) provide information on any measures taken by the State party to reduce detention among those aged 18 years or younger and on whether any amendments to provisions of the National Penal (Code) Act, 2074 (2017), that criminalize consensual and non-exploitative sexual activity among adolescents are being considered by the State party.

**Indigenous peoples (arts. 2 and 25–27)**

24. Please discuss the steps taken by the State party to promote and protect the rights of indigenous peoples. In this regard, provide information on: (a) the extent to which the principle of free, prior and informed consent has been upheld in the development of all projects affecting indigenous peoples, including infrastructure developments programmes such as the 220 kV Marsyangdi Corridor transmission line; (b) the steps that have been taken to ensure respect for indigenous peoples' land rights, on whether the Right to Housing Act, 2075 (2018), included any protections for indigenous communities and on the status of the implementation of the Supreme Court decision of December 2018 ordering the Government to pass laws to establish the special, protected and autonomous area of the Baram people as stated in the Constitution; and (c) any targeted measures that have been taken to work with indigenous communities in order to ensure their protection from COVID-19.