



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

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List of issues prior to the submission of the third, fourth and fifth periodic reports of Nepal (CAT/C/NPL/3-5)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (CAT/C/NPL/CO/2) (para. 12)¹ and further to the State party's follow-up replies (CAT/C/NPL/CO/2/Add.1), please provide detailed information on the current status of the draft Torture Act and the draft Criminal Code and when they are expected to be adopted. Please provide further information on how these pieces of legislation will include a broader definition of torture in conformity with article 1 of the Convention and ensure that torture is criminalized and penalties are commensurate with the gravity of acts of torture.

2. Please indicate the progress made in amending the draft Disappearance of Persons (Crime and Punishment) Bill to include a definition of the term "enforced disappearance", establish a minimum and maximum penalty for the crime of enforced disappearance, ensure that the future Commission of inquiry is granted enough powers to fulfil its mandate and ensure necessary protection of witnesses and families of victims. Please indicate a timeline for its possible adoption².

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies to this list of issues will constitute the next periodic report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee and published under the symbol CAT/C/NPL/CO/2 or to the State party's follow-up replies published under CAT/C/NPL/CO/2/Add.1.

² Nepal: Joint Memorandum on the Disappearances of Persons (Crime and Punishment) Bill, 30 August 2009.

Article 2³

3. Please provide information on measures taken to ensure that all detainees are offered, in practice, fundamental legal safeguards from the outset of detention, including access to a lawyer, doctor of their own choice, contact with their families, and habeas corpus.

4. Please provide information on the right to habeas corpus under the Public Offences Act and the Arms and Ammunition Act. Kindly provide information on steps taken to bring the powers of the Chief District Officer (CDO) in conformity with international standards, more specifically on detainees' access to a lawyer, right to a defence and right to appeal the Chief District Officer's decisions.

5. What steps have been taken to ensure a strict implementation of paragraph 14 (1) of the State Cases Act, 2049 (1992) whereby arrest warrants should be provided to detainees at the time of arrest and not several days after the arrest? Please provide information on the possible amendments of the law to ensure that habeas corpus includes systematic enquiry by judges and/or prosecutors of detainees' treatment.

6. Referring to the State party's follow-up replies (para. 3), please provide information on the category of offences for which article 118 of the Civil Code requires a person to remain in custody pending trial. Please clarify the meaning of "exceptional circumstances" under which such custody is required⁴. Please provide statistics on the proportion of persons who remain in custody pending trial under article 118 of the Civil Code, and those who are released on bail pending trial.

7. In light of the Committee's previous concluding observations (para. 21(d)) in which it expressed concern about the inadequate access to medical check-up and the State party's follow-up replies (para. 14), please provide information on steps taken to improve such access in full conformity with the Istanbul Protocol, including the obligation to perform a systematic and detailed medical examination at the time of arrest and upon release, and this not only upon the detainee's request. Please indicate how the State party intends to ensure that such medical examination is performed by qualified medical personnel and not the detaining authorities. Please also indicate the amendments that the State party intends to make to ensure that such medical examination is performed without the presence of the detaining authority.

8. With reference to the Committee's previous concluding observations (para. 21(e)) and the State party's follow-up replies (para. 15), please provide statistics on the exact number and location of detention places and facilities, as well as documentation on how such facilities are designated.⁵ Please explain the measures taken to address arbitrary detention especially during the initial period of custody.

³ The issues raised under article 2 could also imply different articles of the Convention, including but not limited to article 16. As stated in general comment No. 2 (CAT/C/GC/2), paragraph 3, "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

⁴ Request for further clarification by the Rapporteur for Follow-up on Conclusions and Recommendations, Committee against Torture, 15 May 2008, p. 2.

⁵ Ibid.

9. Please provide information on all the mechanisms put in place to prevent illegal or arbitrary detention and forced disappearances⁶. Please also explain the mechanisms established to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment.

10. What steps have been taken to reintegrate the principles of independence and autonomy of the National Human Rights Commission in the draft bill which was supposed to be presented to Parliament?⁷

11. In light of the Committee's previous concluding observations (para. 22) and further to the State party's follow-up replies (para. 18), which only refer to the International Committee of the Red Cross (ICRC) and the National Human Rights Commission (NHRC), please indicate whether other mechanisms have also been provided full access to all places of detention. Please indicate whether the State party intends to establish its own national independent mechanism to systematically monitor all places of detention. Please also inform the Committee on how long it takes for the ICRC and NHRC to be granted access to detention centres and whether there are any detention facilities to which they are not granted access.

12. In light of the 2010 Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42)⁸, please indicate whether amendments to national legislation are undertaken to address perjury by Government officials for failing to tell the truth in habeas corpus proceedings.

13. Further to the State party's follow-up replies (para. 25), please provide disaggregated data on complaints, results of investigations, prosecutions and convictions of cases of violence against women in detention. Please provide information on the concrete mechanisms put in place to prevent these acts of violence against women in detention. Please also provide details on the procedures in place to report and track the cases of violence against women by law enforcement officials. What measures are being taken to amend the State Cases Act in order to extend the current 35-day statutory limitation for reporting cases of rape?⁹ Please provide more information on the 11 cases in which departmental action was taken against police officials who were found guilty of sexual harassment, including what penalties were given to these officials. Please provide data on other reported cases of gender-based violence or abuse¹⁰.

14. Please provide information on the measures the State party intends to take to amend the recently adopted Domestic Violence (Offence and Punishment) Act 2009 in order to better reflect the gravity of the crime of domestic violence. In particular, please explain the provision outlined in section 6(1)(a) to allow the victim to continue living with the author of domestic violence. Please explain the reason for setting the maximum penalty for acts of domestic violence at 6 months imprisonment (section 13(1)) as well as the statute of limitation for filing a claim of domestic violence, which is set at 90 days after the commission of the crime (section 14). What measures have been taken to ensure that

⁶ Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Nepal, 6-14 December 2004, E/CN.4/2005/65/Add.1, para. 58, and the Appendix - "His Majesty's Government's commitment on the implementation of human rights and humanitarian law" dated 26 March 2004.

⁷ Three-Year of Comprehensive Peace Accord, Summary Report 2006-2009, National Human Rights Commission, Nepal, December 2009, p. 32.

⁸ Joint study on global practices in relation to secret detention in the context of countering terrorism, A/HRC/13/42, 26 January 2010, para. 183.

⁹ Request for further clarification by the Rapporteur for Follow-up on Conclusions and Recommendations, Committee against Torture, 15 May 2008, p. 2.

¹⁰ Ibid.

sections 4(8) and 4(9) of the Domestic Violence Act, which establish a mediation procedure, are implemented in a way that respects and promotes women's rights and does not lead to perpetrators escaping punishment¹¹.

15. Despite the fact that national legislation was adopted to fight domestic violence, those violations have increased in the past three years. Please provide information on steps taken to address and stem domestic violence¹².

16. In light of the Committee's previous concluding observations (para. 32) and further to the State party's follow-up replies (paras. 29-32), please provide information on the results achieved through the establishment of strategies at the national level to address human trafficking, and in particular through the National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation (NPA). Please provide disaggregated data on complaints, results of investigations, prosecutions and convictions of cases of trafficking since the consideration of the second report of Nepal.

Article 3

17. In light of the Committee's previous concluding observations (para. 17), please provide information on measures taken to adopt national legislation prohibiting the *refoulement* of persons to a State where there are substantial grounds for believing that they would be in danger of being subjected to torture. Is the State party considering acceding to the Convention relating to the Status of Refugees and other related international legal instruments?

18. Please provide information on the cases of Tibetan refugees currently residing in Nepal who were arrested following protests in 2008, and whether any of these persons are facing deportation or expulsion from Nepal back to China.

¹¹ The quoted provisions of the Domestic Violence (Offence and Punishment) Act, 2009 are as follows:
Section 4: File complaint or petition: (8) Upon statements recorded as per sub-sections (4) or (5) of section 8, if there is reason to believe that an act of domestic violence has been committed, and if the aggrieved person so desires, the police officer or local body officer, may, within 30 days from the date of registration of the complaint, conduct reconciliation between the parties.
(9) While conducting reconciliation according to sub-section (8), as per necessity and availability, assistance may be taken from a psychologist, sociologist, social activist, a family member trusted by the aggrieved person and any other witness. The psychological and social effects on the aggrieved person, of such reconciliation as well as his right to confidentiality shall be borne in mind.
Section 6: Power to grant interim protection order: (1) If the Court has reason to believe, on the basis of preliminary investigation of the complaint, that the aggrieved person needs to be given immediate protection, it may, till the time the final decision on the complaint is made, pass the following orders in the name of the perpetrator:
(a) To allow the aggrieved person to continue living in the shared household, to provide him with food, clothes, to not cause physical injury to him and to behave with him in a civilized and dignified manner.
Section 13: Punishment: (1) Whoever commits the act of domestic violence shall be punished with a fine of three thousand rupees which may extend up to twenty-five thousand rupees; or six months of imprisonment; or both.
Section 14: Limitation Period: The complaint, for an offence committed as per this Act, shall be filed within ninety days of the commission of the crime.

¹² Three-Year of Comprehensive Peace Accord, Summary Report 2006-2009, National Human Rights Commission, Nepal, December 2009, pp. 17-18

Articles 5, 6 and 7

19. Further to the Committee's previous concluding observations (para. 18), please indicate any steps taken to ensure that domestic legislation includes provisions on universal jurisdiction for acts of torture. Has the State party exercised such jurisdiction and brought charges or initiated any proceedings to give effect to this provision of the Convention, regardless of the nationality of the perpetrator or the victim? If so, please provide details.

Article 10

20. In light of the Committee's previous concluding observations (para. 19) and further to the State party's follow-up replies (para. 8), please provide more information on the result of the regular monitoring and evaluation of training on human rights standards provided to personnel of the Nepal Army, Nepal Police and Nepal Armed Police Force. What mechanisms have been put in place by the State party to perform such monitoring?

21. Please provide information on mandatory training on the Istanbul Protocol for all professionals involved in the investigation and documentation of cases of torture, as well as practical training for judicial officials and lawyers on the prevention of torture and methods to detect and investigate acts of torture.

Article 11

22. Further to the Committee's previous concluding observations (para. 20) and the State party's follow-up replies (para. 10), please provide detailed information on the content of existing interrogation rules. Please specify whether the prohibition of torture is clearly included in all interrogation rules and procedures of the State party. Please provide information on the mechanisms put in place to ensure that, in accordance with the State Cases Act 2049 (1992), the Government Attorney is present during interrogation. What steps have been taken to ensure that all interrogation sessions are recorded and if possible filmed? In this regard, has the State party considered amending paragraph 9(2) of State Cases Act 2049 (1992), which does not make the recording of detainees' statements compulsory?

23. Please explain to the Committee how the interrogation rules, instructions and methods currently applicable in the State party to prevent torture are monitored, and by whom.

24. In light of the Committee's previous concluding observations (para. 21(c)), please indicate which specific data are systematically recorded upon registration of a detainee by the police. Please give details of the procedures in place for registration, and the content of the register at any place of detention. Please provide a copy of the prison rules and regulations, and in the absence thereof, the reasons why such document does not yet exist.

25. Further to the Committee's previous concluding observations (para. 21(g)) and the State party's follow-up replies (para. 17) which indicate an improvement in the functioning of juvenile benches, please provide information on whether juveniles are now held in separate detention facilities throughout their detention period, and subject to different rules and regulations than adults. Please specify what these rules are and what methods of investigation are applicable to juveniles. Please indicate any measures taken to fully implement the Supreme Court's ruling ordering the establishment of separate Children Correction Homes in all areas of the country. Please indicate the mechanisms put in place to address arbitrary detention of juveniles.

Articles 12 and 13

26. In light of the Committee's previous concluding observations (para. 24), please provide information on all legislative, administrative and judicial measures taken to fight impunity and ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are and have been promptly investigated, prosecuted and the perpetrators punished.

27. In light of the State party's follow-up replies (para. 9), please specify the role of the newly established Human Rights Promotion Section within the Office of the Prime Minister and Council of Ministers. How does this section act in cooperation with human rights units within the Ministry of Home Affairs, Nepal Army, Nepal Police and Nepal Armed Police Force to bring human rights violators to justice? Are these bodies in charge of investigating past and present human rights violations or are they mere monitoring bodies, responsible for bringing potential violations to the attention of a separate investigation body—ideally the competent prosecutor and judge? How do these bodies concretely coordinate and work against the prevalence of impunity? Please also indicate whether accused officials are suspended or reassigned during the investigation (para. 24).

28. In light of the Committee's previous concluding observations (paras. 24-25) and further to the State party's follow-up replies (para. 21), please provide disaggregated data on complaints, results of investigations, prosecutions and convictions of cases of torture and ill-treatment. Please provide information on the number of investigations launched at the Government's initiative. Please give details about investigations on cases where police have beaten individuals in detention facilities or in public, the result of such investigations, and whether any officials were prosecuted for those crimes. Please also include details about any deaths in custody, the results of investigations into those allegations, and whether any officials were prosecuted and convicted and any resulting sentences.

29. Please provide statistics on the number of investigations performed out of the total number of allegations of torture brought to the attention of the State party by the National Human Rights Commission in 2009¹³. In light of the Committee's previous concluding observations (para. 15), please provide detailed information on the mechanisms put in place to ensure systematic follow-up of the National Human Rights Commission's recommendations. Is there a specific authority/body assigned as a counterpart for this purpose?

30. Please indicate whether any mechanism, such as the Truth and Reconciliation Commission, has been established to investigate crimes committed during the armed conflict. If so, what are the links between such mechanism and the judiciary?¹⁴ Please also indicate how the State party cooperates with the CPN(M) in order to ensure the full implementation of the Comprehensive Peace Accord, especially with regard to the fight against impunity. Has a mechanism been put in place to ensure that all allegations of torture, killings and disappearances, which occurred during the armed conflict or as a result of the armed conflict, are being investigated?¹⁵

31. In the absence of an established Commission of Inquiry into forced disappearances, please indicate the urgent measures taken to find the whereabouts of the persons who

¹³ Three-Year of Comprehensive Peace Accord, Summary Report 2006-2009, National Human Rights Commission, Nepal, December 2009, p. 43.

¹⁴ *Ibid.*, p. 25.

¹⁵ *Ibid.*, pp. 24-31.

disappeared during the armed conflict.¹⁶ What steps have been taken by the State party to publish the names and the number of persons who have disappeared during the armed conflict?

32. Following the Government's recommendation to withdraw 349 cases of "a political nature", including against some senior CPN(M) members of the Cabinet, please provide information on steps taken to avoid the recurrence of such a measure in the future, and to ensure transparent, impartial proceedings so that individuals responsible for gross violations and international crimes do not benefit from *de facto* amnesty, as recommended by the United Nations High Commissioner for Human Rights¹⁷.

33. Please provide information on the action taken by the State party to fully implement the Supreme Court's ruling of September 2007, regarding the killing of 15 year-old Maina Sunuwar.¹⁸ Please also provide information on the implementation of the 2009 Supreme Court's ruling on Dhanusha's disappearance. Please provide information on the status of the investigation into the disappearance of 156 persons, which occurred in Bardiya district between December 2001 and January 2003. Please also provide information on the status of the investigation into the abduction and subsequent killing of a businessman at a Maoist Cantonment site in Chitwan in May 2008.¹⁹

34. Please provide information on the status of the investigation into the excessive use of force in the context of crowd control in Terai district and Kathmandu in March 2008, and in Kailali district in May 2008.²⁰ Please also provide information on the investigation into 21 deaths which occurred between 7 March and 9 April 2008, in incidents linked to the electoral process.²¹

35. Please provide information on the number of complaints by juveniles alleging torture or ill-treatment. Please also inform the Committee as to whether such complaints were investigated and the result of the investigations.

Article 14

36. In light of the Committee's previous concluding observations (para. 28), please provide information on steps taken to adopt legislation and amend the existing Compensation Relating to Torture Act of 1996 to ensure protection to victims of torture from reprisals and intimidation when they come forward to file complaints about their treatment²². Please identify any concrete measures and monitoring mechanisms put in place to protect victims and witnesses pending implementation of such legislation and amendments.

37. Please provide information on steps taken to amend the Torture Compensation Act to increase or remove the current statute of limitations (35 days) for submitting complaints

¹⁶ See Three-Year of Comprehensive Peace Accord, Summary Report 2006-2009, National Human Rights Commission, Nepal, December 2009, pp. 8-9 and 20-21.

¹⁷ Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation in Nepal, A/HRC/10/53, 3 March 2009, para. 29.

¹⁸ Ibid., para. 26.

¹⁹ Ibid., paras. 24, 25 and 27.

²⁰ Ibid., paras. 41-42

²¹ Ibid., para. 49.

²² Request for further clarification by the Rapporteur for Follow-up on Conclusions and Recommendations, Committee against Torture, 15 May 2008, p. 2; see also Advocacy Forum, *Criminalize Torture*, 26 June 2009, p. 3.

of torture. Please also indicate whether the ceiling set for compensation (NRs 100,000 or US\$ 1,300) will be removed to reflect the true gravity of the damage caused by acts of torture.

38. In light of the Committee's previous concluding observations (para. 29), please provide information on the number of persons who have received compensation as victims of acts of torture, the amount of compensation actually awarded, and the time frame within which such compensation was granted.

Article 15

39. In light of the Committee's previous concluding observations (para. 30) and further to the State party's follow-up replies (para. 27), please provide concrete information on both legislation and jurisprudence that exclude statements obtained as a result of torture from being admitted as evidence²³.

Article 16

40. Please provide information on the material, human and budgetary resources that are made available by the State party to ensure that the conditions of detention are in conformity with minimum international standards, at the least.

41. Please provide details as to the number of complaints regarding overcrowding and unsanitary conditions in police or other detention facilities, and inform the Committee as to the steps that the State party is taking to address these complaints and improve such conditions.

42. Please comment on allegations of acts of violence against human rights defenders and journalists by unknown persons. Please inform the Committee on the measures that the State party has adopted to protect these individuals and to investigate any threat or act of violence against them. Please also inform the Committee as to the steps taken in order to prevent future occurrence of such threats/acts.

43. Please identify any steps taken by the State party to safeguard the physical integrity of all persons under its jurisdiction and more specifically the affirmative action taken to protect marginalized and disadvantaged groups or castes such as the Dalits and Terai ethnic groups. Please indicate any concrete measures taken to address allegations of ill-treatment of those groups in detention, especially juveniles from those ethnic groups (the number of such allegations is significantly higher than the overall detained population).

Other issues

44. According to information before the Committee, the Crime Investigation Department (CID) within the Police is divided into branches, including the Anti-Terrorist Branch which has an internal and external terrorist section. Please provide information on the composition and mandate of this branch and its legal basis. Has there been new legislation adopted on counter-terrorism? Please provide information on any other legislative, administrative and other measures that the State party has taken to respond to

²³ Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal, A/HRC/10/53, 3 March 2009, para. 35.

threats of terrorism, and please indicate if and how these have affected human rights safeguards in law and in practice.

45. With reference to the Committee's previous concluding observations (para. 34), please indicate whether the State party intends to make the declaration under articles 21 and 22 of the Convention. Please also indicate whether the State party intends to ratify the Optional Protocol to the Convention, what steps have been taken in this respect, and the time frame for such ratification. Is the State party considering becoming a party to the Rome Statute of the International Criminal Court and, if so, within what time frame?

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

46. Please provide detailed information on relevant new developments, since the previous periodic report, within the legal and institutional frameworks within which human rights are promoted and protected at the national level, including any relevant jurisprudential decisions.

47. Please provide detailed relevant information on new political, administrative and other measures taken, since the previous periodic report, to promote and protect human rights at the national level, including any national human rights plans or programmes and the resources allocated thereto, their means, objectives and results.

48. Please provide any other information and pertinent statistical data regarding new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of Nepal's second periodic report in 1996, as well as on any events that occurred in the State party and are relevant under the Convention.