

NEPAL

Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/NPL/Q/2)

To be submitted for the Review of the Second Periodic Report of
NEPAL (CCPR/C/NPL/2)
At the 110th session of the Human Rights Committee
(Geneva – March 2014)

By Human Rights Treaty Monitoring Coordination Center (HRTMCC, coalition of 68 organisations, for the list of joining organisation see Annex)

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Annex: Members of Human Rights Treaty Monitoring Coordination Center (HRTMCC), Nepal

I. Introduction

a. Joining organisations

This joint report is prepared by Human Rights Treaty Monitoring Coordination Centre (HRTMCC), a coalition of human rights organizations established to monitor the implementation of the international human rights treaties ratified by Nepal. Currently, it has 68 members working in almost all areas of human rights, including civil and political rights; economic, social and cultural rights; rights of women; rights of children; Dalit rights; the rights of migrants and the rights of persons with disabilities. For the full list of 68 member organisations, please refer to the Annex.

b. Methodology

This report is prepared in cooperation with the members of the HRTMCC. Several rounds of formal and informal interactions/dialogues have been held among experts and stakeholders of human rights and legal community across the country. Contact details

c. Contact details

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II. Replies of Civil Society to the Issues identified in the Lol

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

Issue 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.*

Comments from Civil Society

The new law, "National Human Rights Commission Act, 2012" constrained independence and autonomy including finance of the NHRC, thus its compliance with the **Paris Principles is at stake**. Law is not effectively implemented, especially in investigation of cases of human rights violations by Security Agencies. NHRC recommendations are not fully respected by the state authorities. In terms of the level of implementation of the recommendations made by the Commission, out of 386 recommendations, only 34 recommendations were fully implemented¹. There is no plan to repeal the time frame to lodge complaints before the Commission. The positions of Commissioners are vacant for nearly four months resulting in backlogging of complaints.

Recommendations:

The State Party should:

- 1) Appoint independent and competent experts at NHRC as commissioners as soon as possible in conformity with the Paris Principle;
- 2) Seriously consider and take necessary action on the recommendations put forward by the NHRC;
- 3) Ensure provision not to limit the timeline to file cases of HR violations;
- 4) Monitoring mechanisms has to be established for the effective implementation of the recommendations of the commission.

Issue 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.*

Comments from Civil Society

Communication No. 1469/2006, Sharma v. Nepal

Pressure from Mrs. Yasoda Sharma, wife of Surya Prasad Sharma, the Government in April 2009 responded to the Committee stating Mrs. Sharma will be provided with "interim relief" and that the

¹ Summary Report of NHRC Recommendations upon Complaints in a Decade (2000-2010) National Human Rights

disappearance of Mr. Sharma will be investigated by an Independent Disappearance Commission to be established “*shortly*”. In a further communication to the Committee, Mrs. Sharma contested the proposed follow-up by the government, arguing that the measures proposed did not meet the requirements set out by the Human Rights Committee in its view on the case.

Following a meeting with the Secretary to the Council of Ministers on 23 November 2009 the Government provided Mrs. Sharma with NRs 100,000 (additional to an earlier NRs 100,000 “interim relief” received by many “conflict victims”), bringing the total to NRs 200,000, the amount promised by the Government to the Human Rights Committee. A bill for the establishment of an Independent Disappearances Commission was put before the Parliament in April 2010. Advocacy Forum, Nepal (AF) together with other organizations provided comments and worked with individual members of parliament to submit amendments in defining crimes, investigation and examination of case to the bill.

Recommendations:

The State Party should:

- 1) Ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established.

Issue 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.*

Comments from Civil Society

In 1996, the then CPN (Maoist), formally waged an armed conflict against the state, which lasted for ten consecutive years, and resulted in the violation of massive human rights and humanitarian law perpetrated by both the government and the Maoists. According to evidences collected by various human rights organizations in Nepal, which is not yet complete, 13,276 people were killed during this conflict of which 7,928 by the state and rest from the Maoists². Furthermore, “disappearances” of many Nepalese increased rapidly during this period and have been attributed to both sides of the conflict, resulting in a total of 933 disappeared persons so far³. In addition, Maoists abducted 85,185 persons⁴, and committed atrocities such as torture, maiming, intimidation, forced displacement, persecution and extortion.

² http://www.insec.org.np/victim/candidate_display_user.php?pageno=1

³ *ibid*

⁴ <http://www.insec.org.np/pics/1332480011.pdf>

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Till date, there is no mechanism to address the impunity for past and on-going human rights violations committed by the state security forces and non-state actors. On 2nd January 2014, the Supreme Court (SC) ordered the Government to form separate commissions on truth and reconciliation and, enforced disappearances. The SC verdict affirmed that the commissions to be formed should meet the international standards and expert opinion is required to draft legislations for the two commissions. Nevertheless, on 28th January 2014 the Government tabled the same old merged controversial Ordinance on truth and reconciliation and enforced disappearances in the parliament on the reason of 60 days' time limit.

From second Constituent Assembly (CA) election electoral vetting has started (apparent in the cases of Lalan Mandal and Bal Krishna Dhungel) but not implemented in general.

According to "A Search for Justice 2013", a study of Amnesty International, the Maoist-led government (Govt. led by Pushpa Kamal Dahal 'Prachanda') withdrew 349 cases related with murder and attempted murder on October 2008. The Government of Ex. PM. Dr. Baburam Bhattarai had reportedly prepared a list for withdrawal the cases of 130 individuals accused of involvement in serious crimes, including murder in December 2011.⁵

Recommendations:

The State Party should:

- 1) Establish Truth and Reconciliation Commission and Commission on Investigation of Disappeared Persons without further delay and in conformity with international norms and standards;
- 2) Refrain from withdrawing cases against human rights perpetrators and let the law take its natural course for rendering justice.

Issue 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.*

Comments from Civil Society

There is no domestic law that would address the incidences of war crimes, crimes against humanity and genocide. At the Universal Periodic Review (UPR) 2011, Nepal was recommended to immediately ratify the Rome Statute on ICC. The Rome Statute is yet to be ratified despite massive pressure from different quarters and commitment expressed by the highest authority and political top brasses on a number of occasions.

Recommendations:

The State Party should:

- 1) Ratify the Rome Statute on ICC without further delay;
- 2) Formulate domestic laws in line with the international human rights and humanitarian law that it has ratified.

⁵ <http://www.amnesty.org/en/library/asset/ASA31/001/2013/en/11443e06-3609--4811-87a3-c35eb315f5d1/asa310012013en.pdf>. Pp. 7-8.

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

Issue 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.*

Comments from Civil Society

There is widespread discrimination against Dalits, Women, Madhesi, indigenous peoples, persons with disabilities, Muslim and other religious minorities, sexual minorities and other marginalized groups. Grounds for discrimination include caste, ethnicity, gender and geographic regions of origin. Further these groups continue to be severely underrepresented in most of the public sector including decision-making bodies, civil service, judiciary, law enforcement agencies, and local authorities.⁶ Violence against women is deep-rooted due to patriarchal norms, values and overwhelming discriminatory laws and policies of state. Violence against women (VAW) also occurs while travelling in public transportations, at workplaces, schools, sports, clubs, colleges and hospitals. Different forms of VAW prevalent at community level include rape, sexual harassment, verbal abuse such as terms like "husband eater" and "inauspicious" used against widows as well as victims of trafficking, accusation of witchcraft and forced prostitution. During the period of 2012 total 910 incidents have been recorded by INSEC documentation in regards to VAW.⁷ The forms of violation include domestic violence, violence faced in the name of witchcraft, polygamy, lack of pre and post partum service, rape, rape attempt, sexual abuse and women trafficking. The National Women Commission (NWC) has limited resources and mandate to reach to the general public in need of service. The Commission's independence is in question due to the fact that the appointments of the commissioners are made politically.

There are legal provisions to obtain the citizenship certificate for child in the name of mother but in reality it is barely implemented. With the amended Civil Code provision, abortion constitutes part of the reproductive right of women, but this has not been effectively realized in practice. Sex selective abortion rate is increasing and at male dominated conservative family setting, women are often forced to abort if the foetus is identified as female. The State Party has claimed that it has developed a National Action Plan on CEDAW and its Optional Protocol but the implementation of the same is extremely weak. The Internally Displaced Persons (IDPs), persons with disabilities and the family of involuntarily disappeared are not getting proper compensation, even in some cases nothing at all. The SC has issued a directive to formulate a new policy regarding women with disabilities, but such policy has not been introduced till date. Legal aid is limited and functions for a limited time period. Majority of the prospective beneficiaries are not aware about such provisions.

⁶ Page 7, Nepal Report of Non-governmental Organisation on Universal Periodic Review 2010

⁷ INSEC, Page 14, Violence Against Women/Girls Assessing the Situation of Nepal in 2012

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The state mechanisms have not implemented 33 % participation of women in representation. The political representation of women that was ensured in the first Constituent Assembly has been decreased in the second Assembly indicating that the state and political parties are indifferent to comply with their commitment. A Central Level Complaint Management Unit has been established but is faced with scarcity of necessary resources. The unit lacks skilled human resources to act as per the need of sensitive cases.

Due to lack of proper monitoring mechanism, the gender responsive budget has been allegedly misused. The Gender-Based Violence Prevention Fund has not been utilized properly. Due to lengthy and non-transparent procedure of fund release, the targeted population has not adequately benefitted as envisioned. The State Party report has quoted various legal and policy provisions but most of them are not implemented properly due to which the incidences of Gender Based Violence (GBV) are still escalating in alarming rates. The victims of GBV are forced to reconcile with perpetrators, increasing impunity on such violence.

Recommendations:

The State Party should:

- 1) Upgrade the status of the NWC as a constitutional organ;
- 2) Establish effective mechanism through NWC to investigate cases of Violence against Women;
- 3) Provide the NWC with adequate resources (financial, technological and human) and make it accessible to the targeted groups;
- 4) Make NWC accessible at district level;
- 5) Make strong laws and policies to combat violence against women;
- 6) Institute fast-court to provide speedy remedy to victims of violence against women.

Issue 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.*

Comments from Civil Society

Dalits are the de facto 'untouchables' of contemporary Nepal. They are frequently denied access to public places and the right to drink water from public wells. They are the victims of violence to prevent participation in inter-caste marriage⁸.

A 10-year strategy, focusing on overall empowerment and political participation of Dalits, cultural vigilance and legal reforms, has been developed. The Dalit Commission, which has not been alleviated as a constitutional body, has a limited mandate. It has inadequate financial and human resources. The Dalit Commission focuses inside the capital city and urban centres, lacks access to the grassroots level where the caste-based discrimination is rampant. The recommendations made by the Dalit Commission are not fully implemented.

⁸ Page 7, Nepal Report of Non-governmental Organisation on Universal Periodic Review 2010

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Dalits have to get a certification to claim public social protection benefits from the Government. This provision has stigmatized this population. Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011 have been formulated to end the discrimination but questions still arise in its implementation. State mechanisms, especially police often hesitate to file a case against the perpetrators of caste-based violence and even if a case is filed, victims are forced to reconcile with the perpetrators.

Inter-caste couple are in most inhumane and troublesome situation. The State Party has declared to provide motivational allowance (NRs 100000.00) to those who adopt inter- caste marriage but due to the lengthy and hazardous procedure, such couples have rarely benefited from this provision. Underprivileged Dalit women are accused of practicing witchcraft in higher rates than the women of other communities.

Recommendations:

The State Party should:

- 1) Ensure strict implementation of Untouchability (Offense and Punishment) Act 2011;
- 2) Ensure that its officials are not biased towards Dalits (filing cases etc.) and respect the provisions of the Act;
- 3) Ensure the protection, rescue and rehabilitation of the couples who have adopted inter-caste marriage and been displaced from their places of origin;
- 4) Repel all discriminatory laws, regulations, rules, directives, policies and programs based on caste, occupation/work and descent;
- 5) Adopt the administrative, legal and institutional measures for effective implementation of all international and national obligations, policies, programs, and agreements with Dalits.

Issue 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.*

Comments from Civil Society

The Madhesi community is discriminated on the basis of colour, region, language and socio-cultural identity.⁹ This community comprises multi-ethnic, multi-castes, multi-lingual and multicultural diversity. Despite the principle of proportionate representation in all decision-making bodies and at all levels of state structure, the representation of Madhesi people is still very low. The equal right to development is also being violated due to unequal budget allocation for Terai-Madhes.

The state has failed to recognize Muslims as a religious minority because of the state's tendency to define Muslims as Islamists rather than as a community.¹⁰ As a result, Muslim people have been excluded from the public sector and they continuously suffer from various forms of discrimination with regard to participation and economic, social and cultural rights.¹¹

Though currently 59 indigenous peoples have been recognized officially, many other indigenous groups are yet to be recognized by the state, which has reinforced the marginalization of non-

⁹ Madhesi is a region-based identity in favour of Terai-Madhesi; it covers 22 districts and around 48 per cent population of country.

¹⁰ Civil Society Report to Durban Review Conference 2009

¹¹ Civil Society Report to Durban Review Conference 2009 Chapter V

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recognized indigenous peoples. Recognition of Nepali language as the official language has created obstacles to accessing education and government services, as well as public information,¹² and many indigenous languages are under threat. According to Quadrupeds of the Country Code 1963, cow slaughter is an offence punishable by up to 12 years of imprisonment. But, some indigenous peoples and others practice the ritual sacrificing of bullocks in traditional rites.

Nepal ratified the Convention on the Rights of persons with disabilities and its Optional protocol. The participation of persons with disabilities in the Constitution- making process and in the public sector has yet to be realized. De facto discrimination against persons with disabilities still occurs in the field of education, employment, health, housing, and many other areas.

Recommendations:

The State Party should:

- 1) Ensure proportional representation of ethnic minorities, deprived and marginalized communities in every state mechanism;
- 2) Adopt, enact and implement special legislation in order to eliminate the discrimination based on colour, region, religion, language and cultural identity;
- 3) Recognize the existence of the Muslim people as a community and ensure concrete and active efforts are made to promote the participation of Muslims in the public sector;
- 4) Urgently adopt the policy of providing reasonable accommodation for employment, transportation, sports, personal attendance and health services, in housing, transport, sports and cultural life, personal attendance services for persons with disabilities;
- 5) Amend the Political Party Act and specify the proportion of ethnic minorities, deprived and marginalized communities to ensure their proportionate nomination as candidates in the elections;
- 6) Recognize indigenous languages for use in state affairs alongside Nepali;
- 7) Adopt a policy of Mother tongue multi-lingual Education;
- 8) Ensure the rights of indigenous peoples to maintain and develop their language, distinct cultures and religion.

Issue 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.*

Comments from Civil Society

Despite constitutional guarantee of non-discrimination and equality on the basis of sex, children of Nepali women married to a foreigner father are denied to issue citizenship. There are 62 existing laws that have discriminatory provisions towards Women. Another 49 laws contain degrading and prejudicial provisions against women¹³. The legal provision to acquire citizenship with mother's name has still not been implemented. There is a mandatory provision to mention the name of

¹² Forum for Women, Law and Development 2009 (FWLD) "Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with Disability"

¹³ Forum for Women, Law and Development 2009 (FWLD) "Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with Disability"

father in the citizenship certificate. Although the SC has given the directives on 15 October 2010 to issue the citizenship in mother's name in the case number 8587 Sabina Damai Vs. Office of Prime Minister and Council of Minister Nepal,¹⁴ it has still not been brought into effective practice.

Recommendations:

The State Party should:

- 1) Immediately address the issue regarding difficulty to acquire citizenship in the name of mother;
- 2) Review all existing laws to determine their compatibility with the international law in order to reform domestic legislation in line with international law standards;
- 3) Ensure that the Directive by the SC on the issue is strictly implemented.

Issue 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.*

Comments from Civil Society

Sexual minorities in Nepal are being discriminated on the basis of sexual orientation and gender identity. They are denied of their citizenship and marriage, their real and exact identity is not recognised, and their access to usual socio-cultural affairs, daily ritualistic activities and public services are rejected. The government has made no effort to implement the directive of the Supreme Court, which requires formation of a task force to study the problem and enact an appropriate legislation with regard to the right of sexual minorities.¹⁵ People of sexual minorities are not able to acquire citizenship certificates easily. There is no option to choose gender for sexual minorities in the application form of passport.

Recommendations:

The State Party should:

- 1) Enact laws and formulate policies based on the SC order regarding citizenship and passport;
- 2) Ensure citizenship rights with identity of LGBTI;
- 3) Ensure LGBTI's right to participate in socio-cultural activities including right to marry according to their choice;
- 4) Ensure that sexual orientation and gender diversity are included as grounds for protection in the new constitution and in legislation;
- 5) Amend all discriminatory laws and legal provisions towards LGBTI;
- 6) Adopt affirmative action to ensure proportional participation of LGBTI in public sector

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

Issue 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*

¹⁴ Page 247, Supreme Court, Nepal Kanun Patrika(Compilation of decisions made by SC), May 2011, <http://www.supremecourt.gov.np/publication/materials/115395.pdf>

¹⁵ Sunil Babu Panta vs.The Government of Nepal,Writ No.917, December, 2007.(www.supremecourt.gov.np)

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.

Comments from Civil Society

The punishment of the perpetrators of sexual and domestic violence is not sufficient. Provision of NRS. 5000.00-25000.00 fine and imprisonment is insufficient. Muluki Ain (General Code) has clearly defined the Rape and categorized the rape cases in accordance with the age group of the victims and punishment provisions enshrined within it. It means that the punishment is high if the victims have minimum age. Similarly 12th amendment of the Muluki Ain has also included the marital rape as a crime and has kept 3 to 6 month punishment to the perpetrator¹⁶. Rape case must be reported within 35 days of its occurrence, which is not practical in many cases, even not possible in some. Nepal Country Code and Domestic Violence (Crime and Punishment) Act 2009 are not properly implemented. The existing legal provision has not identified the women who are most vulnerable such as women with disability.

Recommendations:

The State Party should:

- 1) Establish effective investigation mechanism to address Violence against Women;
- 2) End the culture of impunity often enjoyed by perpetrators;
- 3) Amend the provision of 30 days time limit to report the rape cases.

d. 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)

Issue 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*

¹⁶ Muluki Ain (Country code), Rape chapter Number 1: Imprisonment for a term ranging from Eight years to Twelve years if the minor girl is above Ten or more years of age but below Fourteen years of age
Imprisonment for a term ranging from Six years to Ten years if the minor girl is of Fourteen years of age or above below Sixteen years of age
Imprisonment for a term ranging from Five years to Eight years if the woman is of Sixteen years of age or above but below Twenty years of age
Imprisonment for a term ranging from Five years to Seven years if the woman is of Twenty years of age or above
Notwithstanding anything contained in this Number, the husband who commits a rape with his wife shall be liable to imprisonment for a term ranging from Three months to Six months

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.

Comments from Civil Society

Incidences of disobedience of court verdict by the state have occurred in several cases of extrajudicial killings and enforced disappearances i.e. not punishing the offenders. To prevent such cases and to investigate impartially, investigation committees were frequently formed, however, question rises in its impartiality on one hand while on the other will the state take actions over the findings of the committee (if made impartially). It just has been a face saving exercise in several instances. Till date, torture has not been categorized as criminal act by the domestic laws.

Recommendations:

The State Party should:

- 1) Establish independent and competent investigative committees and implement the recommendations put forward by them;
- 2) Respect the court verdicts with zero tolerance to non-compliance;
- 3) Criminalize torture by formulating new laws as per OP-CAT.

Issue 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.*

Comments from Civil Society

Nepal's legal system does not criminalize torture and there is no provision of effective redress to victims. Torture is still systematically practiced by the police during criminal investigation. This puts additional hurdles and threats to women and women are subjected to torture at their home, workplace, public transportation and anywhere. There is narrow understanding over the definition and criminal offence, especially on torture; torture from non-state actors is not taken seriously. The use of force prevails over scientific investigation. Incidences of corporal punishment have commonly occurred in educational institutions especially in schools.

Recommendations:

The State Party should:

- 1) Enact necessary domestic legislations that define torture as a punishable crime;
- 2) Ratify the Optional Protocol on CAT immediately;
- 3) Ensure that the incidents of torture will be investigated independently and impartially;
- 4) Put legislation in place to criminalize torture and to provide reparation to the victim;
- 5) Ensure that complaints of torture are impartially investigated;
- 6) Take all possible efforts to eliminate any form of torture as required by CAT.

Issue 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.*

Comments from Civil Society

There are no sanctions imposed over the military personnel. In the incidence of Maina Sunuwar, offender Niranjan Basnet of Nepal Army (State Party) received safe passage stating no guilt. Although the alleged army personnel were called back from their international missions and interrogated for their offence, no conclusion other than stating not found guilty was made. Systematic and scientific interrogations were not made in the case despite the pressure from the public. State lacks mechanism that addresses the torture inflicted upon children.

Recommendations:

The State Party should:

- 1) Enforce necessary sanctions over military personnel against such crimes;
- 2) Bring forth the crimes committed against children within the purview of the State party criminal cases;
- 3) Bring crimes committed by security personnel under the jurisdiction of civil courts.

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

Comments from Civil Society

Corporal punishment especially by parents at home is not taken as a serious offence till date, apparently due to the fact that social and cultural ties are dominant and the state intervention is extremely minimal.

Recommendations:

The State Party should:

- 1) Establish effective mechanism to investigate the cases of corporal punishment inflicted upon children.

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

Issue 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.

Comments from Civil Society

The constitution prohibits trafficking of women, men and children for purposes of sexual exploitation, forced labour, bonded labour, domestic servitude and marriage, as well as trafficking of human organs. However these issues remain acute. The Plan of Action over the issue is not working properly. Forced child labour is witnessed rampant in local stores and hotels in the cities. Traditional practices of bonded labour are still prevalent. There is no actual statistics on human trafficking, migrant workers and other seasonal migrants due to poor mechanism on monitoring of emigrants and immigrants at customs and border check points.

Recommendations:

The State Party should:

- 1) Effectively implement the National Action Plan for Children– 2005-15;
- 2) Take necessary measures to amend Human Trafficking and Transportation Control Act- 2007, especially on compensation, security and reintegration;
- 3) Initiate bi-lateral dialogues with the demand side of labor and trafficking to address the problem with joint initiative;
- 4) Strengthen Victim Witness protection system and mechanism with enactment of appropriate laws.

f. 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)

Issue 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.*

Comments from Civil Society

In practice there is lengthy legal trial procedure. There are several incidences of misuse of power and position by the security personnel making arbitrary and unlawful detention. Detainees are often deprived of their rights to notify their immediate families about their detention and the right to have access to a lawyer and doctor from the moment of arrest.

Recommendations:

The State Party should:

- 1) Take necessary measures to speed up the trial procedure ensuring the rights of the accused;
- 2) Guarantee the rights of detainees to notify their immediate families about their detention and have access to a lawyer and doctor from the moment of arrest;

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- 3) Apply scientific and uniform method of interrogation system in conformity with the principle of a fair trial.

Issue 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.*

Comments from Civil Society

There is no proper infrastructure developed to address the problem of overcrowding in prisons. Private conversation is not possible between the prisoners and his/her relatives because of open place and in many cases the security personnel interrogate private conversations. Implementation of the provision of the Prison Act- 1964 is ineffective and requires amendment.

Recommendations:

The State Party should:

- 1) Build and upgrade necessary infrastructure to meet the needs with the increasing number of prisons and jails and ensure minimum standard treatment of prisoners.

Issue 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?*

Comments from Civil Society

The Interim Constitution of Nepal, 2007¹⁷ ensures the people's rights against self-incrimination but in practice coercion/ use of force prevail that compel people to accept unmade guilt. Penal and criminal procedure codes and sentencing legislation are still in draft stage.

Recommendations:

The State Party should:

- 1) Enact Penal and Criminal Procedure Codes and sentencing legislation as a priority matter of the House.

¹⁷ Article 24 number 7 The Interim Constitution of Nepal, 2007

Issue 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.*

Comments from Civil Society

Although it is difficult to validate concrete evidences, but the bitter reality is that corruption and abuse of power is widely believed to be a routine of the day on a rampant scale within the judiciary. Independence of judiciary is at risk, apparent in the case of Khil Raj Regmi; same person serving as a head of the judiciary and the executive. Legal aid is limited especially in the course of the implementation of the court orders, as well as to render justice to the poor, disadvantaged and marginalized groups.

Recommendations:

The State Party should:

- 1) Promulgate necessary provisions to make public the properties owned by the judges and their families;
- 2) Take necessary measures in connection with effective time management to address undue delay in court proceedings;
- 3) Take necessary measures in connection with effective time management to address undue delay in court proceedings.

Issue 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.*

Comments from Civil Society

Such power delegated to the local authority violates the territory of judiciary resulting in high-handedness of the local administration over peoples' fundamental right to seek justice through legal avenues.

Recommendations:

The State Party should:

- 1) Take appropriate measures to limit the exercise of the judiciary power only to court;
- 2) The current practice of judicial power delegated to the CDO should be handed over to judicial institutions;
- 3) Provide legal training/education to CDOs concerning the doctrine of the separation of power.

Issue 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.

Comments from Civil Society

A Juvenile Justice Coordination Committee has been established but it lacks proper functioning. There are several juvenile houses meant to serve the best interest of children but in contrary, most of them are not appropriate for children. There is no provision of setting-up juvenile justice committees at regional levels. Different provisions on age of children are prevalent within various national legislations.

Recommendations:

The State Party should:

- 1) Establish independent juvenile courts at district level;
- 2) Strengthen in-camera hearing proceedings in the cases of juveniles;
- 3) Create appropriate alternatives to juvenile detention.

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

Issue 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.*

Comments from Civil Society

A large number of unregistered and undocumented refugees/asylum seekers are found in major urban centres, especially in the capital region. There is no mechanism to register the birth of a child from refugee parents in the lack of domestic legislation and a comprehensive policy governing refugee issues. Given the pretence of geopolitical reality, the State party is not fair in treating the refugees, including in finding durable solutions. As a result, in spite of the fact that they are living in the same country, refugee communities are treated very differently, depending on the kind of political and geo-strategic interests they served for the influential States. The State party is yet to ratify the 1951 Refugee Convention and 1967 Additional Protocol. Provisions for IDPs in the Comprehensive Peace Agreement (CPA) 2006 held between Government of Nepal and Communist Party of Nepal (Maoist) is far from implementation. Properties seized especially by the then rebels during the decade-long internal armed conflict are yet to be fully resituated.

Recommendations:

The State Party should:

- 1) Enact domestic laws on refugees / asylum-seekers in compliance with the 1951 Refugee Convention and consider ratification of the Refugee Convention and its Additional Protocol;
- 2) Treat all asylum-seekers and refugees in a humane, dignified and equal manner to explore durable solution irrespective of their nationalities and other associated factors;
- 3) Ensure that all seized land and property of the public be resituated as per the provision of the CPA.

h. 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)

Issue 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.*

Comments from Civil Society

There is no effective mechanism in place to safeguard the legitimate rights of the HRDs. Incidences of threat and intimidation to HRDs in connection with freely discharging their legitimate duty especially in the districts is a common phenomenon. There is strict restriction and surveillance over Tibetan refugee community for mass gathering in public places. The freedom of expression and assembly of Tibetan community is misconstrued as a move against the State party's 'one China policy' and subsequently, the State party has severely jeopardised the fundamental freedom of Tibetan refugees residing in Nepal. Informal Sector Service Center (INSEC) documentation¹⁸ shows that total 513 HRDs were victimized by perpetrator with killing, torture, assaulting and threatening within the year 2011 and 2012¹⁹. In the year 2011 as per the INSEC documentation total three HRDs, one female health worker, from Eastern Region, one male social worker and one teacher from mid region lost their lives. Instances of death of health worker, Til Maya Dahal, 48 of Myanglung VDC-8, Terhathum working as a peon on Jaljale sub health post was beaten to death by Nir Bahadur Dahal, 48 of the same place. The victim was beaten near Ojyung V.D.C 2 near Asuwariveronon on January 31, 2011. The accused was arrested on February 1 and sent to jail on remand on February 11, 2011²⁰. HRDs continue to be frequently targeted by conflicting parties for their work for protection of Human Rights in post-conflict Nepal. Journalists and teachers, lawyers and Women's Human Rights Defenders (WHRDs) have been the most vulnerable.

Recommendations:

The State Party should:

- 1) Develop effective mechanisms to protect the legitimate rights of HRDs to monitor, report and disseminate the incidences of human rights violation;

¹⁸ <http://www.insec.org.np/pics/1386577424.pdf>

¹⁹ INSEC, Situation of Human Rights Defenders in Nepal 2011-2012, page 1 (<http://insec.org.np/pics/1386577424.pdf>)

²⁰ INSEC, Situation of Human Rights Defenders in Nepal 2011-2012, page 46 (<http://insec.org.np/pics/1386577424.pdf>)

- 2) Ensure the rights of free expression and peaceful assembly of all refugees, including Tibetan community.

Issue 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.*

Comments from Civil Society

Forceful conversion of a person from one religious faith to another is a punishable offence. However, Nepalese are free to adopt or hold any religious faith with their free and informed consent. Public holidays have been announced by the government on all major days of all religions practiced in Nepal.

Recommendations:

The State Party should:

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

Issue 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.*

Comments from Civil Society

State Party has not deployed enough human resource at local level, especially Village Development Committee (VDC) Secretary are not duly available in their work place. The name of father is needed during the registration process of newly born child. The birth registration of children like orphanage, child from rape victims is not happening at all. Child's birth registration of inter-caste married couple is difficult. They are forced to leave their original place due to the threat from their relatives.

Recommendations:

The State Party should:

- 1) Ensure the deployment of sufficient civil servants at local level;
- 2) Launch awareness campaigns regarding the importance of vital registration, e.g birth registration;
- 3) Conduct the election of the local government immediately;
- 4) Install digital database system to address the hazards of manual registration of vital events;
- 5) Amend the law regarding birth registration and the mandatory provision of mentioning father's name.

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

Issue 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.

Comments from Civil Society

There is lack of dissemination of information on the Covenant and its First Optional Protocol, though it is incorporated as a subject of human rights in higher education curricula in universities and educational/training institutions. However, training manuals for security personnel followed by extensive discussions and dialogues over the issue with public and relevant stakeholders is praiseworthy.

Recommendations:

The State Party should:

- 1) Organize and promote consultations with the line agencies, media and other stakeholders;
- 2) Convene periodic meetings with NHRC and human rights groups both at central and local levels to assess the status of dissemination of the Covenant and its First Protocol.

III. Additional Information

- 1) There is no mechanism to ensure the voter registration and universal franchise of a huge number of overseas labour migrants and diaspora community.
- 2) People who are internally and temporally migrated confront with problem for exercising their voting rights since they have to return to their respective native constituencies to cast votes which is cumbersome both time and resource wise.
- 3) During the second Constituent Assembly elections-2013, a considerable section of eligible voters were deprived of their adult franchise for the reasons mentioned above.

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Tel:977-1- 5006373,5006374
Fax: 977-1-5006271
Email: ics@worecnepal.org
Website: www.worecnepal.org

CMW Committee Members

57. Forum for Women Law and Development (FWLD)

P.O.Box : 26538
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Tel: 977-1- 4242683, 4266415, Fax: 977-1-4240627
Email: fwld@fwld.wlink.com.np/
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58. Youth Action Nepal

P.O. Box No 9776
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Email: Youthactionnepal@ntc.net.np
Website: www.youthactionnepal.org.np

59. Civic Concern Nepal (CCN)

P.O. Box: 25228
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Tel: 977-01-4115908
Email: civicconcern@wlink.com.np
Website: www.civicconcernnepal.org

60. Population Watch (Pop-Watch)

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Lalitpur, Nepal
Tel: 977-1- 5531896
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Email: info@popwatch.org.np
Website: www.popwatch.org.np

61. Pravasi Nepali Coordination Committee (PNCC)

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CRPD Committee Coordinator

62. National Federation of Disabled-Nepal (NFDN)

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NEPAL – Joint Civil Society Report with CCPR Centre

Website: www.nfdn.org.np

CRPD Committee Members

63. Nepal Disabled Women Association (NDWA)

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64. Nepal Disabled Association (NDA)

Bhirikuti Mandap, Kathmandu, Nepal

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65. Nepal Disabled Human Rights Center (DHRC-Nepal)

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Email: dhrc@wlink.com.np, hseham373@gmail.com

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66. National Association of the Physical Disabled-Nepal (NAPD-Nepal)

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Chakupat-22, Lalitpur, Nepal

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Website: www.napdnepal.org.np

67. Nepal Society of the Disabled (NSD)

P.O.Box 12389

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Tel.: 977-01-4218672

Fax: 977-01-4248392

Email: info@nsd.org.np, nsd20051@yahoo.com

Website: www.nsd.org.np

68. Nepal National Federation of the Deaf and Hard Hearing (NFDH)

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