Human Rights Committee

List of issues prior to the 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 (CCPR/C/NPL/CO/2). Please provide information on steps taken to implement the recommendations contained in the Committee’s previous concluding observations (CCPR/C/NPL/CO/2). 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 and/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 (CCPR/C/NPL/CO/2, para. 7), as well as their findings during the Follow-up to Concluding Observations, please discuss progress made towards ensuring the independent and effective functioning of the National Human Rights Commission. Include information about: (a) the status of the draft bill introduced in 2018 to amend the National Human Rights Act 2068 (2012) and its compatibility with the Paris Principles; (b) how effective follow-up on the recommendations of National Human Rights Commission (NHRC) is ensured; (c) reports of politically-motivated appointments of NHRC Commissioners, and any measures that have been taken to ensure a fair, inclusive and transparent selection process.

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 about: (a) anti-corruption measures taken by the State Party, including the implementation of the Prevention of Corruption Act 2059 (2012); (b) reports of delays in foreign aid reaching victims of the 2015 earthquake because of corruption amongst State officials; (c) the number of complaints, investigations, prosecutions and

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* Adopted by the Committee at its 131st session (1 – 26 March 2021).
convictions for corruption and any preventative 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 about the measures taken in response to the coronavirus disease (COVID-19) pandemic, including whether there have been derogations from any rights under the Covenant. Bearing in mind the Committee’s general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, provide information on whether any such derogations met the strict requirements of proportionality to the exigencies of the situation, relating to duration, geographical coverage and material scope, as well as whether other States parties were notified through the Secretary-General of the United Nations, according to the provisions within 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 (CCPR/C/NPL/CO/2, para. 5) and its findings during the Follow-up to Concluding Observations, please discuss what steps the State party has taken to guarantee remedies for grave human rights violations that took place prior to the signing of the Comprehensive Peace Accord (CPA) in 2006. Include information about: (a) the status of the implementation of the February 2015 Supreme Court decision instructing the Government of Nepal to amend the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) in accordance with international legal obligations and the prior 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 2017 for grave human rights violations such as rape and torture, with the Covenant and other international standards; (c) steps taken to ensure access to justice for victims of human rights abuses during the armed conflict, including the number of investigations, prosecutions, 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/or adopt guidelines for candidate vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.

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

7. In light of the Committee’s previous recommendations (CCPR/C/NPL/CO/2, paras 8 and 9), please describe the legislative and other measures taken during the current reporting period to combat discriminatory laws and social practices based on sex, caste status, sexual orientation, gender identity, ethnicity, religion, disability and indigenous status. Please include information on steps taken to collect information on minority and marginalised 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/or 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 articles 306(1)(a) and 306(1)(m) of the Constitutional of Nepal which explicitly define minorities and marginalized communities.

9. Please provide information on steps taken to remove discrimination on the basis of sex from the Nepal Constitution of 2015. In particular, provide information on: (a) steps taken to ensure Nepali women can pass on their nationality to their children on the same basis as Nepali men; and (b) efforts to ensure women can transfer their nationality to foreign spouses in the same manner as Nepali men, including 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 (CCPR/C/NPL/CO/2, para. 9), please provide information about measures taken to eliminate all forms of caste-based discrimination. Please (a) discuss the compatibility of the Caste-based Discrimination and
Untouchability (Offence and Punishment) Act following amendments to this legislation in 2018 with the Covenant, 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 the organisation in order to fulfil its mandate have been increased; (c) respond to reports that COVID-19 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 (CCPR/C/NPL/CO/2, 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 about: (a) whether there are plans to strengthen the legal framework, including removing the statute of limitation for rape, introducing provisions to prohibit the sexual history of rape survivors being introduced as evidence during trials and expanding the definition of rape in the National Penal (Code) Act 2017 to include non-consensual sexual acts outside of penile penetration; (b) whether steps are being taken to address criminal investigations into sexual violence cases often being replaced by coercive “community interventions” that pressure victims and survivors into agreeing to end their cooperation with the criminal process; (c) the steps being taken to address reports of shortcomings in the collection of evidence and investigations by the Nepal 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 the Committee’s general comment No. 36 (2018) (para. 62) and the specific geographical characteristics and location of the State party, please provide information on measures aimed at preventing and addressing, including through 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 participation from civil society groups and the public, including, women, persons with disabilities, and rural communities, when developing and implementing legislation and policy 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 (CCPR/C/NPL/CO/2, para 10), please provide up to date information on the State party’s measures to prevent torture and ill-treatment. Please: (a) include information on the provisions within the National Penal (Code) Act 2017 that criminalise 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 dedicated anti-torture legislation in place; (c) provide data on the number of complaints, investigations, prosecutions and convictions for torture and ill-treatment 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 abolition of Guthi, the customary self-government system of the Newa indigenous peoples.
Treatment of persons deprived of their liberty (arts. 6, 7, 9 and 10)

15. In light of the previous recommendation of the Committee (CCPR/C/NPL/CO/2, para 12), please provide further information on efforts to reduce severe overcrowding and improve poor conditions within the prison system, including lack of access to food, clean water, bedding, lighting, recreational areas and medical care. In particular, indicate measures being taken to (a) address the specific needs of women in detention with respect to sexual and reproductive healthcare, and to align Nepali law, and policies on incarceration with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders; and (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 of COVID-19 to detainees, including those who are most vulnerable to the virus. In this regard, discuss how many outbreaks of the virus there has been within the prison system and/or other places of detention and what the government response has been.

Liberty and security of person (art. 9, 10 and 14)

16. Recalling the previous recommendation of the Committee (CCPR/C/NPL/CO/2, para. 11), please discuss any changes made to the legal framework relating to arbitrary detention following the enactment of the National Criminal Procedure Act 2074 (2017), as well as how such legal standards are implemented in practice. Provide information about the procedures in place to receive and investigate complaints of arbitrary detention, as well as any data about the number of complaints within the reporting period and their outcome.

17. Bearing in mind the Committee’s general comment No. 35 (2014) on liberty and security of person, please discuss whether individuals who are caught using drugs by the police are referred to drug treatment programs, which involve deprivation of their liberty without their free, prior and informed consent. Please clarify whether those who start such programs are free to leave when they choose, and if not, what the legal basis is for the deprivation 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 (CCPR/C/NPL/CO/2, para. 18), please elaborate on the steps taken to address all forms of exploitation, such as trafficking and labour exploitation, within the State party, including cases affecting women and children. In this regard, provide information about: (a) the legal provisions in place, including the Human Trafficking Control Act 2007 and whether they criminalise 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; (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 (CCPR/C/NPL/CO/2, para. 14), please discuss steps taken to uphold the Covenant rights of all refugees and asylum seekers. In this regard, provide information about any progress that has been made in adopting national refugee legislation in line with international standards 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, 20, 21, 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 about (a) the compatibility of existing legislation, including the National Penal Code Act, 201765 and the Electronic Transaction Act (ETA) 2006, as well as draft provisions, such as Information Technology Bill and Media Council Bill, with the Covenant; (b); reports that the
activities of journalists, such as Arjun Giri, have been charged with criminal offences and/or subjected to intimidation and harassment for coverage of issues relating to corruption; (c) reports that entertainers and artists, such as Pranesh Gautam and Samir Ghising, have faced criminal charges for exercising their freedom of expression; and (d) reports that Tibetans and Nepali Citizens 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 that organisations and individuals face barriers to exercising their right to freedom of association. Include information about the legal framework governing the formation and regulation of NGOs and discuss the role of the District Administration Office (DAO) in registering such organisations. Please also clarify whether essential workers are able to exercise their right to strike, including which professionals are deemed as 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) 2017 contains provisions that criminalise religious conversion and proselytising; (b) religious minorities have faced restrictions in establishing non-governmental organisations and carrying out religious festivals and events; (c) religious minorities have experienced difficulties in purchasing and/or using land for burial rituals.

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

23. In light of the Committee’s previous recommendation (CCPR/C/NPL/CO/2, 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 1992 Children’s Act, including provisions for cases to be heard in independent juvenile courts and to be disposed of within 120 days; (c) respond to reports that some juveniles are being held in pre-trial detention in the same facilities as 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 amongst those aged 18 years or younger, including whether amendments to provisions within the 2017 Penal Code that criminalise consensual and non-exploitative sexual activity amongst adolescents are being reviewed 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 about: (a) the extent to which the principle of free, prior and informed consent has been upheld in the development of all projects impacting indigenous peoples, including infrastructure developments programs such as the 220 kV Marsyangdi Corridor transmission line; (b) the steps that have been taken to ensure respect for indigenous peoples’ land rights, including whether the 2018 Right to Housing Act included any protections for indigenous communities, and the status of the implementation of the Supreme Court’s Directive Order, issued in December 2018, stating that laws should be passed to establish the Baram Special, Protected and Autonomous Area 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.