



EXECUTIVE SUMMARY
of the
WRITTEN INFORMATION FOR THE CONSIDERATION OF
NEPAL'S SECOND PERIODIC REPORT
BY THE HUMAN RIGHTS COMMITTEE
(CCPR/C/NPL/2)
FEBRUARY 2014

I. Background

1. On 21 February 2012 Nepal presented its second periodic report (doc. CCPR/C/NPL/2), combining the second, third and fourth periodic reports and covering the period from 1995 to 2010. In April 2013 TRIAL and six NGOs from Nepal submitted written information to the Human Rights Committee (HRC) to highlight matters that in their view should be included in the list of issues. At its 108th session held in August 2013 the HRC adopted the list of issues in relation to the second periodic report of Nepal (LOIS).
2. In relation to Articles 6, 7, 9, 10, 14, 16, 24, and 2, para. 3, of the International Covenant on Civil and Political Rights the LOIS contains, among others, questions related to the **investigation and prosecution of gross human rights violations perpetrated during the 1996-2006 conflict**; the status of the **Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance**; the **codification of torture, enforced disappearance, sexual violence, war crimes, crimes against humanity and genocide as crimes** under Nepalese law; the measures taken to create a **comprehensive reparation programme** for victims of serious human rights violations committed during the 1996–2006 conflict; the **lack of accountability for sexual violence**, victims' **access to remedies** and the measures taken to **amend the current legislation**; **post conflict violations of the right to life**, including extrajudicial execution, enforced disappearances and serious injuries inflicted by State authorities in **the Terai region**, and **measures taken to prevent such cases, investigate them, bring the perpetrators to justice and provide adequate remedies** to

victims or their relatives; the creation of a **special investigative unit** mandated to inquire into allegations of extrajudicial executions; the inclusion of **human rights law in the curriculum of law enforcement officials**; the ongoing **systematic resort to torture** by State authorities and the measures taken to grant **reparation to victims of human rights violations**; the **sanctions imposed on military personnel**; the measures taken to **address arbitrary and unlawful detention** and to ensure accountability of those responsible for such cases.

3. TRIAL (Track Impunity Always), Conflict Victims' Society for Justice (CVSJ), Forum for the Protection of People's Rights (PPR-Nepal), Himalayan Human Rights Monitors (HimRights), National Network of Families of Disappeared and Missing (NEFAD), Terai Human Rights Defenders Alliance (THRD Alliance), Terror Victims' Orphan Society of Nepal (OTV-Nepal) submit to the HRC written information for the consideration of Nepal's second report. The organizations subscribing this written information consider of the utmost importance that the HRC continues monitoring the implementation of the international obligations of Nepal towards victims of torture, sexual violence, enforced disappearance and their relatives. In this view, recommendations to improve the situation will be referred to.
4. While the subscribing organizations have several concerns in relation to the implementation of the International Covenant on Civil and Political Rights by Nepal, this report will mainly focus on matters related to **impunity and to past and ongoing gross human rights violations in Nepal**, in accordance with the particular expertise of the associations involved. The omission of other subjects does not imply by any means that the associations submitting this information find that Nepal fully complies with all its obligations under the International Covenant on Civil and Political Rights.
5. It is the view of the subscribing organizations that a number of issues remain source of deep concern in Nepal. In particular, the complete lack of accountability for past and ongoing crimes, coupled with the absence of any significant redress, hamper the victims' right to justice and favour the reoccurrence of conducts contrary to the State party's international obligations. The widespread impunity for past human rights violations as well as new episodes of arbitrary detention, torture, enforced disappearance and extrajudicial killings disclose ongoing violations of Articles 2, para. 3, 6, 7, 9, 10, 14, 16, 24 of the Covenant under both their substantive and procedural limbs.

II. The Ongoing Failure to Effectively Investigate, Judge and Sanction Those Responsible for Arbitrary Detention, Enforced Disappearance, Torture, and Rape or Other Forms of Sexual Violence

6. To date, Nepal has constantly failed to undertake effective investigations into human rights abuses and to create measures to repel and contrast the several legal and *de facto* obstacles to prosecution of those responsible. This fosters the perpetuation of the current climate of impunity. As a

consequence, **no one has been convicted in an ordinary court for serious violations of human rights or grave breaches of international humanitarian law committed during the conflict.** In particular, Police consistently refuse to register victims' criminal complaints reporting State authorities' wrongdoings. Also in those rare cases where Nepalese authorities did act and a prosecution took place, the executive power has often interfered with the judiciary withdrawing cases from court pursuant to Article 29 of the 1992 State Cases Act. The State party has undertaken no efforts to remedy to the total lack of accountability for gross human rights violations.

7. On 2 January 2014 the Supreme Court of Nepal issued its judgment on writ petitions No. 069-WS-0058 and 069-WS-0057, submitted on 23 March 2013 to challenge the constitutionality of the Executive Ordinance establishing a Commission of Investigation on Disappeared Persons, Truth and Reconciliation. The judgment declared the unconstitutionality of some sections of the Executive Ordinance and ordered the government of Nepal to undertake a series of measures aimed at bringing it in line with international human rights standards, including: the obliteration of the amnesty clause included in the Executive Ordinance; the amendment of Sections of the Executive Ordinance which provided for immunity for perpetrators of serious crimes and hindered their effective investigation and prosecution; the removal of the 35-day statutory limitation imposed on the Attorney General for launching prosecution after the Commission's issuance of its recommendations; the establishment of two different commissions, one of which exclusively dedicated to enforced disappearance and the other being mandated with competence over the remaining gross human rights violations; the criminalization of acts amounting to serious human rights violations. Nevertheless, the judgment did not tackle some problematic issues contained in the March 2013 Executive Ordinance as the Supreme Court did not provide precise guidelines for the establishment of a thorough reparations programme or of a witnesses and victims' protection programme. Above all, it did not provide specific guidance on the criteria that shall be followed to ensure the appointment of the commissioners and the independence of the Commission. Finally, the Supreme Court did not establish a deadline for the government to implement its judgment. This shortcoming could particularly affect the impact of the judgment, taking in consideration that the State party has a history of non-compliance with key Supreme Court decisions.

Please refer to paras. 7-22 of the integral version of the report for details

8. **Nepal shall ensure that criminal complaints relating to gross human rights violations are duly registered, that the allegations therein reported are promptly, effectively, impartially, independently and thoroughly investigated; and that those allegedly responsible for such**

violations are duly prosecuted, judged and, if found guilty, sanctioned. The State party shall also ensure that the executive will put an end to the policy of withdrawal of pending criminal cases.

9. **Nepal shall promptly and thoroughly implement the Supreme Court's judgment of 2 January 2014 and bring the March 2013 Executive Ordinance in line with international law. In particular, the State party shall exclude the applicability of any legal or *de facto* amnesty to those accused of gross human rights violations, criminalize torture and enforced disappearance; and grant the prosecution of those responsible for those conducts. In addition, the State party shall guarantee the full independence and transparency of the new Commission, establish a comprehensive reparations programme and a programme for the effective protection of victims and witnesses, including mechanisms of psycho-social support and special measures of protection for children, women and indigenous peoples, in accordance with their status.**

III. The Lack of Criminalization of Torture, Enforced Disappearance, War Crimes, Crimes against Humanity and Genocide, and the Failure to Investigate and Prosecute Those Responsible

10. Torture, enforced disappearance, war crimes, crimes against humanity, and genocide are not criminalized under Nepalese legislation. The only definition of torture under the current legislation is provided by the 1996 Torture Related Compensation Act (TRCA) but it is overly restrictive because it only deals with instances of torture perpetrated against detainees. Moreover, the TRCA is civil in nature and it punishes the commission of torture with a mere disciplinary sanction. Enforced disappearance is not even defined under the current legislation. Similarly, while the 2006 Army Act proscribes some offences which may amount to war crimes, crimes against humanity, and genocide, it does not define and criminalize these conducts as autonomous crimes. Since criminal complaints can be filed only in relation to crimes enlisted in Schedule 1 of the 1992 State Cases Act, victims of torture, enforced disappearance, war crimes, crimes against humanity, and genocide are prevented from triggering an investigation into the violations they suffered. Also due to this reason, no one responsible for the commission of these crimes has been brought to account to date.

Please refer to paras. 23-34 of the integral version of the report for details

11. **The State party shall ensure that torture, enforced disappearance, war crimes, crimes against humanity, and genocide are codified as autonomous criminal offences under Nepalese legislation, and that they are defined in accordance with relevant international instruments, namely, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All**

Persons from Enforced Disappearance, the 1998 Rome Statute of the International Criminal Court, the four 1949 Geneva Conventions and their Optional Protocols, the 1907 Conventions on the Laws and Customs of War and the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Moreover, Nepal shall attach to these crimes sanctions commensurate to their gravity. The State party shall amend its legislation so as to guarantee to victims of torture, enforced disappearance, war crimes, crimes against humanity, and genocide the right to file criminal complaints and ensure that State authorities launch investigation into the reported facts and prosecution of those responsible before ordinary courts.

IV. Lack of Reparations for Conflict Victims

12. Since the end of the conflict the State party has constantly proved unable to provide any form of restitution, rehabilitation, guarantees of non-repetition or satisfaction to victims of human rights violations perpetrated during the conflict. Some of these victims can only be awarded interim relief under the Interim Relief Programme established by the Ministry of Peace and Reconstruction which, however, is only provided in rare cases and consists of meagre amounts of money. Victims of torture are granted a right to compensation pursuant to the TRCA, but even in this case the maximum amount of compensation is not proportionate to the gravity of the crime. Moreover, the flawed definition of torture provided for in the TRCA and the 35-day statutory limitation for filing a complaint bar most torture victims from claiming compensation under the TRCA. Also children victims of torture, who would formally be entitled to a “reasonable compensation” pursuant to the 1992 Children’s Act, are *de facto* awarded minimum amounts, if any. As far as victims of rape are concerned, it is delegated to courts to assess whether any amount of compensation shall be awarded to victims and how much it shall be. Since forms of sexual violence other than rape are not criminalized by Nepalese legislation, victims of such crimes are not entitled to any compensation. Similarly, enforced disappearance not being codified under Nepalese criminal legislation, victims of such crimes cannot have access to compensation.

Please refer to paras. 35-42 of the integral version of the report for details

13. **Nepal shall ensure that victims of gross human rights violations obtain integral reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. The State party shall take all measures needed to stop ongoing violations and, in particular, disclose the fate and whereabouts of victims of enforced disappearance.**

V. The Lack of Measures to Prevent and Combat Rape and Other Forms of Sexual Violence

14. Forms of sexual violence other than rape are not criminalized under Nepalese legislation. Moreover, the State party failed to take steps to facilitate access to justice for victims of sexual violence who, due to the social stigma attached to the offence, are in a particularly vulnerable position and often avoid filing criminal complaints. The lack of measures designed to protect victims and witnesses during proceedings especially exposes victims to risks of mockeries, threats and reprisals. In addition, under Nepalese legislation a 35-day statutory limitation is provided for filing a complaint of rape. This concretely bars many victims who may fail to do so due to several reasons related to the very nature of the crime. Due to these legal and factual shortcomings crimes of sexual violence remain widely unpunished. In the absence of a criminal conviction, victims of rape are not entitled to compensation. In any case, they cannot obtain any other form of reparation.

Please refer to paras. 43-51 of the integral version of the report for details

15. **The State party shall criminalize forms of sexual violence other than rape, such as sexual slavery, enforced pregnancy, forced prostitution, forced sterilization, forced nudity, genital and breast mutilation, forced circumcision and ensure that those crimes are sanctioned in accordance with their gravity. Nepal shall also adopt the necessary measures to facilitate the denunciation of sexual violence and to ensure to victims access to justice and reparations. In particular, the 35-day statutory limitation for filing criminal complaints shall be amended and any reported episode of sexual violence shall be promptly, independently, impartially, thoroughly and effectively investigated. The State party shall adopt the necessary measures to guarantee to victims immediate access to health care and psychological assistance and establish educational programmes aimed at contrasting the social stigma burdening victims of such crimes.**

VI. Recent Human Rights Violations and Ongoing Failure to Bring to Account Perpetrators of Extrajudicial Killings and Enforced Disappearance in the Terai

16. State agents, and in particular the Nepal Police, still make recourse to arbitrary detention, torture, extrajudicial killings and even enforced disappearance. This is holds particularly true in remote regions and an alarming number of cases of extrajudicial killings, torture, arbitrary detention and enforced disappearance continue being registered in the region of Terai. Also perpetrators of these violations enjoy wide impunity. A number of factual hindrances to accountability add to the legal flaws affecting Nepalese legislation. In particular, the general acceptance by local communities that victims of human rights violations are indeed criminals, the social stigma attached to this perception, and the fear of retaliation from State agents prevent victims from filing criminal complaints.

Please refer to paras. 41-42 of the integral version of the report for details

17. **Nepal shall take all the necessary measures to put an end to practices of arbitrary detention, torture, extrajudicial killings and enforced disappearance, including the establishment of an independent oversight mechanism mandated to control State agents' conducts, with particular competence on the Terai. The State shall guarantee that victims have access to justice and that reported human rights violations are effectively investigated also in remote regions. Moreover, Nepal shall establish educational programmes with the aim to create awareness among the population over their fundamental rights and over the judicial remedies they can access in order to obtain redress.**

VII. Sanctions Imposed on Military Personnel

18. While Nepal claims that it has conducted military proceedings against army members responsible for human rights violations during the conflict, the conduct and outcome of those proceedings have not been made public and they have not involved at any stage the concerned victims. In any event, the members of the Nepal army who have allegedly faced military proceedings are extremely few in comparison with the number of gross human rights violations perpetrated during the conflict. Since no alternative system of reparations is designed under the 2006 Army Act no remedy can have possibly been provided to victims of torture and enforced disappearance.

Please refer to paras. 59-62 of the integral version of the report for details

19. **Nepal shall reform the 2006 Army Act so as to ensure that the ordinary justice system has exclusive jurisdiction over cases of torture and enforced disappearance. The State party shall impose to the Nepal army full cooperation in cases involving military officers and make sure that those under investigation or prosecution are suspended from service for the duration of the relevant proceedings. In addition, Nepal shall ensure that all the victims of gross human rights violations perpetrated by the Nepal army have access to integral reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.**

VIII. Rights of People Deprived of Their Liberty

20. Records kept by the Police in detention centres in Nepal are not complete, up to date, accurate, and in some cases they are even voluntarily altered. This deeply affects the rights of detainees since State authorities can easily avoid bringing them before courts within 24 hours from their arrest. This further favours periods of prolonged pre-trial detention. Moreover, quasi-judicial functions are deferred on certain crimes to administrative officers, such as Chief District Officers who, in practice, widely misuse

them with the result that pre-trial detentions often exceed the period to which persons are subsequently sentenced. In particular, the 2007 Nepal Public Security Act provides the government with the power to issue an order to keep in preventive detention for up to 12 months persons suspected of posing threats to State security, without need to charge them with a crime and excluding courts from any legal oversight function over such deprivations of liberty. Impunity for State agents involved in arbitrary detentions is widespread and no victim has obtained integral reparation for the offences suffered.

Please refer to paras. 63-66 of the integral version of the report for details and concrete examples

21. **Nepal shall ensure that prison authorities keep updated, detailed and precise detention registers, that arrested persons are visited by medical personnel upon their arrival in detention facilities and that they are granted the right to contact their relatives and legal counsels. The State shall also take measures to guarantee that no person is deprived of his or her liberty for more than 24 hours without being brought before a court of law. To this end, the 1970 Some Public (Crime and Punishment) Act shall be amended so as to reduce the discretion of the powers granted to Chief District Officers and guarantee that the judiciary only oversees the legality of detentions and has the power to uphold them. Moreover, the State party shall remove all the obstacles to criminal investigation and prosecution of cases of arbitrary detention and guarantee full reparation to victims.**

IX. Inadequate Exhumations, Identification and Return of Mortal Remains to Families

22. Nepal does not have either the necessary technical capacities or the adequate legal framework to conduct the exhumation of gravesites and identify and return the victims' mortal remains to their families. Moreover, no comprehensive mapping of potential gravesites has been compiled to date and the few exhumations conducted to date have been affected by lack of experts, equipment and resources. Moreover, relatives of victims do not receive any psychological assistance prior, during and after the exhumations.

Please refer to paras. 68-69 of the integral version of the report for details

23. **Nepal shall ensure that international standards in the field of exhumations and identification of mortal remains are followed. The State party shall create an independent team of experts mandated to conduct the mapping of the existing gravesites. A national forensic laboratory shall be established and adequately funded. It shall be ensured that evidence is correctly collected during exhumations and subsequently preserved.**

X. Lack of Protection of Victims of Human Rights Violations, Their Relatives, Witnesses and Human Rights Defenders

24. The current lack of witness and victims' protection programme in Nepal strongly discourages victims and witnesses from reporting crimes and cooperating in the course of investigations and proceedings regardless to the fact that threats and re-arrests are commonly used by security agencies as forms of reprisals. Similarly, Nepalese legislation does not provide for any form of psycho-social support for witnesses and victims of serious human rights violations.

Please refer to paras. 71-73 of the integral version of the report for details

25. **Nepal shall ensure that State authorities do not harass, threat, bribe, intimidate or in any way make pressure on witnesses and victims of gross human rights violations, criminalizing such conducts under Nepalese legislation and establishing an effective witness and victim protection programme which allows in-camera hearings and gives witnesses the possibility to testify from secure locations keeping their identities secret. In addition, the State party shall ensure that psycho-social and logistical measures of support are granted to witnesses and victims.**

XI. Non-ratification of the International Convention on the Protection of All Persons from Enforced Disappearance and the Rome Statute

26. Nepal is not a party either to the International Convention on the Protection of All Persons from Enforced Disappearance or to the Rome Statute of the International Criminal Court. Nepal is neither a party to the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Please refer to para. 74 of the integral version of the report for details

27. **Nepal shall promptly ratify the International Convention on the Protection of All Persons from Enforced Disappearance, make the relevant declarations pursuant to Articles 31 and 32 of the Convention recognizing the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications and fully align its national legislation with all obligations stemming from the Convention. Similarly, Nepal shall ratify the Rome Statute of the International Criminal Court, the Agreement on Privileges and Immunities of the Court, and the Kampala Amendments to the Rome Statute and fully align national legislation with all obligations under the Rome Statute. Finally, the State party shall ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and fully align its national legislation with the Convention.**