



REFERENCE:GH/fup-120

8 August 2017

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 5, 7, and 10 of the concluding observations on the report submitted by Nepal ([CCPR/C/NPL/CO/2](#)), adopted at the 110th session in March 2014.

On 10 June 2015, the Committee received the reply of the State party. At its 115th session, held in October 2015, the Committee evaluated that information. The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented, and requested additional information on their implementation. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/115/2](#)) and was conveyed to the State party by [letter dated 10 December 2015](#).

In the absence of a response to the Committee's request, the Committee sent a [reminder](#) to the State party on 16 August 2016. Furthermore, the State party did not respond to the [invitation to a meeting with the Special Rapporteur](#) for Follow-up to Concluding Observations (sent on 21 February 2017) to discuss the matters set out above.

During its 120th session, held in March 2017, the Committee noted that, despite the reminder, the information requested from the State party had not yet been provided.

In accordance with the new assessment of follow-up replies adopted by the Committee at its 118th session (17 October-4 November 2016), States parties that fail to submit a follow-up report after reminder(s) are evaluated with a [D] grade for non-cooperation within the follow-up to concluding observations procedure and are listed as such in the Report on follow-up to concluding observations adopted by the Committee at each session.

In the light of the above, the Committee rated the State party's failure to submit a second follow-up report with a [D] grade and discontinued the follow-up procedure (see the Table on page 2 of the Report on follow-up to concluding observations, [CCPR/C/120/2](#), attached for ease of reference).

H.E. Mr. Mr. Deepak Dhital
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
Email: mission.nepal@bluewin.ch



The Committee requests the State party to provide in the context of its next periodic report information on the implementation of all its recommendations, including the additional information on the implementation of recommendations contained in paragraphs 5, 7, and 10 of the concluding observations as requested by the Committee previously (see Committee's evaluation of the first follow-up reply, [CCPR/C/115/2](#), attached for ease of reference).

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant in the context of the next periodic report due on 28 March 2018.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mauro Politi'.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

Report on follow-up to concluding observations of the Human Rights Committee, [CCPR/C/120/2](#) (page 2):

States parties evaluated with a [D] grade for failure to cooperate with the Committee within the follow-up to concluding observations procedure:¹

<i>State party</i>	<i>Concluding observations</i>	<i>Due date of follow-up report (no. of report)</i>	<i>Reminders and related actions</i>
1.			
2.			
3.			
4. Nepal ²	CCPR/C/NPL/CO/2 (26 March 2014)	1 November 2016 (2nd)	Reminder 16 August 2016 Invitation to a meeting with the Special Rapporteur sent on 21 February 2017(not responded to)
5.			

Report on follow-up to concluding observations of the Human Rights Committee, [CCPR/C/115/2](#):

Assessment of replies

Reply/action satisfactory

A Response largely satisfactory

Reply/action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information and measures required

Reply/action not satisfactory

C1 Response received but actions taken do not implement the recommendation

C2 Response received but not relevant to the recommendation

No cooperation with the Committee

¹ The follow-up procedure has been discontinued for these States parties. The information on the implementation of all the recommendations in the concluding observations adopted in respect of these States, including those recommendations selected for the follow-up procedure, should be provided in the context of their next periodic report.

² Evaluation of the first follow-up report (see [CCPR/C/115/2](#)): paragraphs 5[B2][C1][B2][C2][C2], 7[C1] and 10[C2][B2][C1][D1]. Second follow-up report not provided: Committee's evaluation: [D].

D1 No response received within the deadline, or no reply to a specific question in the report

D2 No response received after reminder(s)

The measures taken are contrary to the Committee's recommendations

E Response indicates that the measures taken are contrary to the Committee's recommendations

Nepal

Concluding observations: CCPR/C/NPL/CO/2, 26 March 2014
Follow-up paragraphs: 5, 7 and 10
First reply: Received 5 June 2015
Committee's evaluation: Additional information required on paragraphs 5[B2][C1][B2][C2][C2], 7[C1] and 10[C2][B2][C1][D1]

Paragraph 5: The State party should:

- (a) Ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited as criminal offences under domestic law;**
- (b) End all forms of political interference in the criminal justice system and undertake independent and thorough investigations into alleged conflict-related cases of human rights violations, and hold the perpetrators accountable without any further delay. The Committee stresses that transitional justice mechanisms cannot serve to dispense with the criminal prosecution of serious human rights violations;**
- (c) Create, as a matter of priority and without further delay, a transitional justice mechanism in accordance with the Supreme Court writ of mandamus of 2 January 2014 and ensure its effective and independent functioning in accordance with international law and standards, including by prohibiting amnesties for gross violations of international human rights law and serious violations of international humanitarian law;**
- (d) Ensure that all victims are provided with an effective remedy, including appropriate compensation, restitution and rehabilitation, taking into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147);**
- (e) Adopt guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.**

Summary of State party's reply:

- (a) In November 2014, a bill in accordance with the Convention against Torture, criminalizing all forms of torture and inhuman and degrading treatment was submitted to Parliament. Other bills on the Civil Code, the Civil Procedure Code, the Penal Code, the Criminal Procedure Code and sentencing legislation were also submitted to bring the legal system into line with international obligations. The Council of Ministers ordered a bill criminalizing enforced disappearances to be prepared, and a bill on the implementation of the Geneva Conventions is under consideration.
 - (b) The judiciary of Nepal is independent. To date, 7,300 police personnel and 42,267 army personnel have received training on human rights law and humanitarian law. Furthermore, 855 officials have faced departmental action in relation to violations of human rights.
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(c) The Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission were established in 2014. Both enjoy structural, functional and administrative independence. The Supreme Court has ruled that the commissions cannot recommend amnesty for serious violations of human rights.

(d) The Government has provided financial and non-financial support to victims of conflict (see CCPR/C/NPL/2 and CCPR/C/NPL/Q/2/Add.1). It will provide effective remedies in accordance with the recommendations of the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission.

(e) Acts relating to the civil service, the army and the police provide for vetting, making anyone convicted of a criminal offence involving “moral turpitude” ineligible for service (see CCPR/C/NPL/Q/2/Add.1). The Army Act and the Armed Police Force Act provide for departmental action, halting of promotion or declaration of ineligibility for those convicted of violations of human rights law or humanitarian law.

NGO information:

TRIAL: Track Impunity Always, Terai Human Rights Defenders' Alliance, Victims' Common Platform on Transitional Justice:

(a) Torture, enforced disappearance, war crimes, crimes against humanity and genocide are not autonomously defined and criminalized by the legal system of Nepal. The definition of torture in the Torture, Cruel, Inhumane and Degrading Treatment Bill does not meet that of the Convention against Torture. The draft bill includes a 90-day statute of limitation.

(b) There continues to be a lack of politically independent investigations into conflict-related human rights violations.

(c) There are serious concerns about the effectiveness and independence of the commissions.

(d) Most victims of gross human rights violations remain without access to an effective remedy and reparation.

(e) No information has been provided on any government initiative to adopt vetting guidelines.

Human Rights Treaty Monitoring Coordination Centre, Centre for Civil and Political Rights:

(a) The State party has not drafted any laws addressing or prohibiting gross violations of human rights.

(b) The Government has not taken any action.

(c) Despite the Supreme Court's ruling on the amnesty provision, the Government shows no intention of changing the provision.

(d) Efforts at rehabilitation and restitution are inadequate and controversial, and compensation is very slow in arriving.

(e) There are no laws relating to a vetting procedure.

Committee's evaluation:

(a)[B2]: The Committee welcomes the legislative measures taken to ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited under domestic law. The State party should submit additional information on (i) the definition of gross human rights violations included in the bills and whether the drafts are in full compliance with international human rights standards, including the definition of torture; (ii) the sanctions provided for such violations, including criminal sanctions; (iii) whether the drafts provide a statute of limitations for such violations; and (iv) the progress and implementation of legislative efforts.

(b)[C1]: The State party has not provided information on actions taken to end political interference in the criminal justice system or to ensure criminal prosecutions for gross human rights violations. Information is required on (i) the measures taken, since March

2014, to end all forms of political interference in the criminal justice system; and (ii) the investigations conducted, since March 2014, into cases of human rights violations. The State party should also clarify the extent to which the procedures mentioned by the State party for investigating and prosecuting the 855 officials have been used since March 2014. The Committee reiterates its recommendation.

(c)[B2]: The Committee requires information on whether the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission are already functioning and are provided with adequate financial and human resources to perform their functions. The State party should also provide further information on the application of the Supreme Court rulings prohibiting amnesties for gross violations of international human rights law and serious violations of international humanitarian law.

(d)[C2]: The State party repeats the information provided in its periodic report and its replies to the list of issues. Information is required on (i) measures taken, since March 2014, to ensure that all victims are provided with an effective remedy, including appropriate compensation, restitution and rehabilitation; (ii) the number of victims provided with an effective remedy since March 2014, including information on monetary compensation, restitution and rehabilitation; and (iii) the categories of victims entitled to access their rights to reparations under the Interim Relief Programme.

(e)[C2]: No new vetting mechanisms have been introduced by the State party. The Committee reiterates its recommendation.

Paragraph 7: The State party should amend the National Human Rights Act 2068 (2012) to bring it in line with the Paris Principles (General Assembly resolution 48/134, annex) and the Supreme Court decision of 6 March 2013 so as to ensure its independent and effective functioning. It should also amend procedures governing the appointment of Commissioners to ensure a fair, inclusive and transparent selection process, and ensure that the recommendations issued by the NHRC are effectively implemented.

Summary of State party's reply:

The National Human Rights Commission enjoys full independence, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The process for selecting the Chair and the members is based on transparency, accountability, competency, integrity and inclusion. The Government provides the budget and the Commission's financial autonomy is ensured.

NGO information:

TRIAL: Track Impunity Always, Terai Human Rights Defenders' Alliance, Victims' Common Platform on Transitional Justice:

The appointment of commissioners in 2014 was not based on predetermined, objective and publicly available criteria. No amendment to the National Human Rights Commission Act is registered before Parliament.

Human Rights Treaty Monitoring Coordination Centre, Centre for Civil and Political Rights:

The Government appointed the commissioners to the National Human Rights Commission in a relatively transparent process. It has passed laws on, inter alia, staffing, the budget and the organizational structure needed to guarantee independence.

Committee's evaluation:

[C1]: The Committee notes the election of the Chair and commissioners of the National Human Rights Commission in October 2014, and requests information on the procedures by which they were selected and on measures taken to amend the National Human Rights Act 2068 (2012).

Paragraph 10: The State party should take practical steps to prevent the excessive use

of force by law enforcement officials by ensuring that they comply with the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). It should take appropriate measures to eradicate torture and ill-treatment, including by adopting legislation defining and prohibiting torture with sanctions and remedies commensurate with the gravity of the crime, in accordance with international standards. It should also ensure that law enforcement personnel receive training on the prevention and investigation of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The State party should ensure that allegations of unlawful killings, torture and ill-treatment are effectively investigated, and that alleged perpetrators are persecuted and, if convicted, punished with appropriate sanctions, and that the victims and their families are provided with effective remedies.

Summary of State party's reply:

The State party highlights existing domestic legislation on extrajudicial killings, use of force, and torture. In 2014, Nepal Police developed the Crime Investigation Directives, the Standard Operating Procedure on Women and Children Victims Care System, and the Police Polygraph Directives. The Attorney General developed victim protection and inmate human rights monitoring manuals, a medico-legal format for crime investigation, and resources on criminal offences against women and children. Security personnel have been given training on excessive use of force.

NGO information:

TRIAL: Track Impunity Always, Terai Human Rights Defenders' Alliance, Victims' Common Platform on Transitional Justice:

Measures taken to prevent excessive use of force and to train law enforcement officials on the prevention and investigation of torture and ill-treatment remain insufficient. Excessive police force was evident at protests in January and February 2015 and during an investigation into the trafficking of illegal materials in a Tharu village. These incidents have not been investigated. The Istanbul Protocol guidelines are rarely applied.

Human Rights Treaty Monitoring Coordination Centre, Centre for Civil and Political Rights:

Although the creation of an institutional framework has seen instances of torture decline, the rate of torture remains high. There is no formal investigation procedure for extrajudicial killings.

Committee's evaluation:

[C2]: Concerning steps taken to prevent the excessive use of force by law enforcement officials, the Committee notes the information provided by the State party but regrets that this does not clearly specify the measures taken since March 2014 to implement the Committee's recommendation. The Committee reiterates its recommendation.

[B2]: Concerning measures taken to adopt legislation defining and prohibiting torture, the State party should provide information on whether the bill criminalizing all forms of torture and inhuman and degrading treatment, submitted to Parliament, is fully compliant with international human rights standards, including with the definition of torture. The State party should also provide information on the progress and implementation of the draft law.

[C1]: Concerning the training on prevention and investigation of torture and ill-treatment, information is required on the training sessions held or scheduled, and their timing and length; the integration of the Istanbul Protocol into all training programmes; and the number of law enforcement officials trained and the impact of such training.

[D1]: The Committee regrets that the State party has provided no further information on the effective investigation of alleged unlawful killings, torture and ill-treatment or on the



provision of effective remedies. The Committee reiterates its recommendation.

Recommended action: A letter should be sent reflecting the analysis of the Committee.

Next periodic report: 28 March 2018
