

EXECUTIVE SUMMARY

of the

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE ON NEPAL

(CCPR/C/NPL/CO/2)

MARCH 2015

I. Background

1. On 28 March 2014, the Human Rights Committee (hereinafter, "HRC") issued its concluding observations (CCPR/C/NPL/CO/2) on the periodic report of Nepal. In accordance with rule 71, para. 5, of the Human Rights Committee's rules of procedure, Nepal shall provide, within one year (i.e. 28 March 2015), relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 7 and 10 of the concluding observations.
2. TRIAL, together with Terai Human Rights Defenders Alliance and the Victims' Common Platform on Transitional Justice, wish to submit an alternative follow-up report to the HRC, highlighting some priority concerns related to the implementation of the HRC's recommendations. Overall, the organizations subscribing the follow-up report are persuaded that **there has not been any genuine progress in the implementation of the HRC's recommendations** and that therefore Nepal remains in breach of its international obligations pursuant to the International Covenant on Civil and Political Rights.

II. The Lack of Criminalisation of Torture, Enforced Disappearance and Other Gross Violations of International Human Rights Law

3. Despite the recommendations formulated by the HRC in March 2014, **torture and enforced disappearance continue not being codified as separate autonomous offences under Nepalese criminal legislation**. Although a **draft bill on torture** has been tabled in parliament in November 2014, it seems that its contents are **at odds with international human rights law**. In particular, the definition of torture contained therein does not comply with the one provided by the United Nations Convention against Torture, and other forms of Cruel, Inhumane or Degrading Treatment or Punishment, the sanction envisaged is not commensurate to the extreme gravity of the crime, and there is a 90-day statute of limitations to report the offence. Moreover, the current legislation **only criminalises rape as a form of sexual violence and it does not encompass male victims**. Moreover, the statute of limitations to file a criminal complaint concerning rape is of 35 days, thus concretely discouraging many victims from seeking justice. Finally, **war crimes, crimes against**

humanity and genocide continue not being autonomously defined and criminalised under Nepalese law.

For more details, see paras. 1-16 of the integral follow-up report

III. The Failure to Effectively Investigate, Judge and Sanction Those Responsible for Gross Human Rights Violations Committed during the Armed Conflict

4. Since March 2014 a **handful of people has been prosecuted and sentenced** for gross human rights violations committed during the conflict. However, the trials have been characterised by **political interferences and the sanctions eventually inflicted are not commensurate to the extreme gravity** of the crimes concerned. In the great majority of conflict-related cases **impunity remains rampant**. The situation is exacerbated by the difficulties created by the flawed legislation on torture and enforced disappearance.

For more details, see paras. 17-21 of the integral follow-up report

IV. Failure to Create an Effective and Independent Transitional Justice Mechanism

5. Despite the order issued on 2 January 2014 by the Supreme Court of Nepal to amend the 2013 Ordinance concerning transitional justice mechanisms, **without genuine and thorough consultation with civil society, on 25 April 2014, the Parliament adopted a Transitional Justice Act that basically reproduces the 2013 Ordinance**. Victims' groups filed different petitions both against certain controversial provisions of this Act and against the procedure followed to select and appoint the commissioners. The Act provides for the creation of two different commissions: the Truth and Reconciliation Commission (TRC) and the Commission to Investigate Enforced Disappeared Persons (CIEDP). The main issues of concern in relation to the TR Act can be summarised in the following points: a) flawed understanding of the notion of reconciliation and related excessive power of the commissions; b) powers to recommend amnesty for crimes under international law and gross human rights violations; c) lack of criminalisation of offences that amount to crimes under international law and inadequate prosecution system; d) non-recognition of victim's right to reparation; and e) lack of independence of the commissions. **Commissioners were appointed on 10 February 2015**. On 26 February 2015 the Supreme Court of Nepal adopted a decision on some of the pending writs, ordering to amend the wording of some sections of the TR Act. In particular, the Supreme Court's decision amended the provisions **that gave discretionary powers to the transitional justice mechanisms to recommend amnesty, and which allowed the Ministry of Peace and Reconstruction to decide whether or not to prosecute perpetrators of crimes of serious nature**. Likewise, the Supreme Court held that the victim's consent should be made mandatory for reconciliation and that cases that are pending before various courts cannot be transferred to the

Commissions. **The extent to which this decision will be implemented is yet to be seen. Another petition against the TR Act remains pending before the Supreme Court.**

6. The two Commissions have not yet started working and it is currently unknown whether the resources allocated to the Commissions will be sufficient for their mandate. Moreover, besides the Supreme Court's verdict, the process that led to the formation of these Commissions has not offered the victims' groups a sufficient and genuine space for participation; the independence of the Commissioners is not guaranteed; the provisions of the TR Act do not guarantee the autonomous and independent functioning of the Commissions; the Commissions do not have full control over the selection of their personnel; the legal framework that the Commissions will use to recommend prosecution is unclear; and the TR Act does not recognise the victims' right to receive integral reparation, nor does it provide detailed rules and concrete guarantees in terms of witnesses and victims' protection. Finally, the fate of the cases which are not currently *sub judice* in the Supreme Court, but that could be initiated in the future, remains uncertain.

For more details, see paras. 22-53 of the integral follow-up report

V. Failure to Provide All Victims of Gross Human Rights Violations during the Conflict with and Effective Remedy

7. At present, victims of gross human rights violations perpetrated during the conflict have not received integral reparation for the harm suffered and do not have an effective remedy to enforce such right. In the case of victims of rape and torture, the **application of a 35-day statute of limitation to file the claims jeopardises the possibility to obtain compensation.** In the few cases where **courts award pecuniary compensation, decisions often remain unimplemented.** All in all, existing legislation envisages **only pecuniary compensation and for a limited range of offences**, completely disregarding other forms of reparation such as restitution, rehabilitation, satisfaction and guarantees of non-repetition and leaving a large portion of the victims' universe excluded from the scope of the applicable legislation. The **interim relief programme does not encompass all conflict victims either and is not intended to provide integral reparation, but rather humanitarian aid.**

For more details, see paras. 54-63 of the integral follow-up report

VI. Failure to Adopt Guidelines for Vetting

8. Notwithstanding the recommendations formulated by the HRC in March 2014, to the knowledge of the associations subscribing the follow-up report, Nepal has not taken **any initiative to adopt guidelines for vetting** to prevent those accused of human rights violations from holding public office and being ascended.

For more details, see paras. 64-70 of the integral follow-up report

VII. Lack of Measures to Ensure an Independent and Effective Functioning of the National Human Rights Commission

9. After a 13-month vacuum, on **20 October 2014**, the **Chairperson and the Commissioners of the National Human Rights Commission were eventually appointed by the Constitutional Council**. The selection and appointment of commissioners has been subjected to criticism due to the **lack of a transparent and participatory process**. Finally, the **consistent lack of implementation of the recommendations issued by the National Human Rights Committee by the competent Nepalese authorities remains a problem** which undermines the effectiveness of the Commission.

For more details, see paras. 71-77 of the integral follow-up report

VIII. Lack of Measures to Prevent the Excessive Use of Force by Law Enforcement Officials and to Eradicate Torture, and Ill-treatment

10. Despite the fact that some efforts have been made, **the measures taken to prevent the excessive use of force and to train law enforcement officials on the prevention and investigation of torture and ill-treatment remain insufficient**. Furthermore, an analysis of the current practice shows that **the Istanbul Protocol guidelines are rarely applied**.

For more details, see paras. 78-87 of the integral follow-up report

IX. Lack of Investigation, Prosecution and Conviction of Those Responsible for Committing Unlawful Killings, Torture and Ill-treatment

11. While **past gross human rights violations, including arbitrary killings mainly committed, remain in impunity**, in the last months there has been an increase in the unlawful killings. Only in 2014, **at least five individuals have been arbitrarily killed in the region of the Terai by Nepalese security forces**. In the first three months of 2015, there has also been an increasing number of episodes of excessive use of force by the police in several protests, which resulted in dozens of protestors, most of which local political leaders, injured. The **Nepalese Police continue refusing to register initial criminal complaints when State authorities are involved in the complaint**. Despite the registration of these complaints would be a legal obligation, the refusal to do so is not sanctioned. In the rare cases where an investigation was launched and prosecution commenced, **political interference led to the withdrawal of many cases from criminal courts**. Perpetrators have not even been subjected to disciplinary action. To date, **no external oversight mechanism or special investigative unit mandated to conduct independent and impartial investigations in the Terai has been established**.

For more details, see paras. 88-94 of the integral follow-up report