

NEPAL

NGO assessment of the follow-up actions
of the State party in implementing
UN Human Rights Committee's
recommendations

The **2nd periodic report of Nepal** on the State's compliance with the International Covenant on Civil and Political Rights (ICCPR) was **reviewed by the UN Human Rights Committee** (the Committee) at the Committee's 110th session in **March 2014**. As the result of the review, the Committee issued its **Concluding Observations (CCPR/C/NPL/CO/2)** with 17 recommendations to the State party. The Concluding Observation also states in paragraph 21 that *"In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 7 and 10"*.

The recommendations made in these three paragraphs are selected by the Committee for its follow-up procedure (**"follow-up recommendations"**), as they are **implementable within a year** and/or **require immediate attention**. Information provided by the State party on the implementation of the follow-up recommendations (**due in March 2015**) will be further assessed by the Committee, whereby grades are also given to the action / reply of the State party.

This assessment form was developed by the Centre for Civil and Political Rights (CCPR) in order to facilitate civil society assessment of the implementation of follow-up recommendations by the State party and more effectively contribute to the Committee's follow-up procedure. As of the time of the submission of this assessment, the **State party has not yet submitted its follow-up report**.

Assessment carried out and coordinated by
Human Rights Treaty Monitoring Coordination Center
(HRTMCC, coalition of 68 national organisations¹)
with the support of
Centre for Civil and Political Rights (CCPR)

Assessment submitted to the Committee
on 10 April 2015

¹ For the list of joining organisations, please see the Annex of the joint NGO report submitted by HRTMCC with support of CCPR on 5 February 2014, for the review of Nepal at 110th session of the Committee.

Summary of the NGO Grades for the follow-up Action of the State party²:

A: Action largely satisfactory; **B1:** Substantive action taken, but further action desirable; **B2:** Initial steps taken, but substantial action required;
C1: Some actions taken, but recommendations are not really implemented; **C2:** No action taken; **E:** measures taken are contrary to the recommendations

Recommendations by the Committee	NGO Grades	Summary of the NGO assessment
<p>Paragraph 5 (Impunity for gross violations committed during the conflict): <i>the State party should: ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited as criminal offences under domestic law; 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; 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; 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); and adopt guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.</i></p>	<p>C1</p>	<p>The State has not drafted any specific laws. The Anti-torture bill is submitted to the Parliament, but its adoption is not foreseen. No decisive action has been taken for the effective transitional justice system. Although the Act on Truth and Reconciliation Commission was passed by the Parliament, the Commission is not yet functional. Many concerns are also raised over the effectiveness of the Commission itself as well as unwillingness of the government. Some arrangements were made for the compensation to the victims, but no serious steps taken for their restitution and rehabilitation. There is still no law or guidelines for the vetting procedure, while existing practice appear ineffective.</p>
<p>Paragraph 7 (NHRC): <i>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; and 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.</i></p>	<p>B2</p>	<p>Appointment of the Commissioners was carried out in a relatively transparent manner. Challenges are remaining in terms of its inclusiveness and independence, as well as the implementation of the NHRC's recommendations by the State.</p>
<p>Paragraph 10 (Extrajudicial killings, torture and ill-treatment): <i>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); 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; 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); and 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.</i></p>	<p>C1</p>	<p>There is no explicit law that prohibits these acts. Extra-judicial killings are still occurring especially in the Terai region, while investigation being very slow, if conducted. The number of torture cases remains high, although arrangements were made for the compensation. While trainings appear to be conducted by different actors, investigation remain ineffective and relevant authorities / law enforcement officers still appear to lack in genuine efforts.</p>

² The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 5 (Impunity for gross violations committed during the conflict): *“The Committee is concerned at the prevailing culture of impunity for gross violations of international human rights law and serious violations of international humanitarian law committed during the 10-year conflict from 1996 to 2006, including extrajudicial killings, enforced disappearances, torture, sexual violence and arbitrary detention. In particular, it expresses concern at: (a) The lack of investigation and prosecution of perpetrators, exacerbated by political interference in the criminal justice system, such as the refusal by the police to register First Information Reports, pressure exerted on law enforcement officials not to investigate or prosecute certain cases, and extensive withdrawal of charges against persons accused of human rights violations, noting that not a single conflict related case has been successfully prosecuted through the criminal justice system; (b) The denial of effective remedies to victims, noting that only limited monetary forms of assistance have been provided to some victims or their relatives under the Interim Relief Programme, while others have been excluded, including victims of torture, rape and other forms of sexual violence; and (c) The lack of a vetting system to exclude persons accused of serious human rights violations from holding public office and the practice of promoting such individuals instead (arts. 2, 3, 6, 7, 9, 10 and 16).”...*

NGO Assessment of the Action of the State party on the Recommendations made by the Committee

Recommendation by the Committee	<i>The State party should: Ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited as criminal offences under domestic law;</i>
Actions taken by the State party (if any) and current situation	State has not drafted any specific laws addressing or prohibiting acts of gross human rights violations, extra judicial killings, enforced disappearances etc. Anti-torture bill has been submitted to the Parliament in December 2014 but its discussion or adoption is not scheduled at all. The draft anti-torture bill is prepared and being circulated among the ministries. The bill is first prepared and discussed in cabinet then each ministry comments on it and sends it back for correction and then cabinet submits it to the Legislature-Parliament. ³ There is no timeline given in its presentation in the parliament.
Other Comments	Many laws have been in circulation among the ministries and there is no guarantee of the timing of their approval.. The reason for such delay is mainly because the Government gives the priority to the Constitution making process initiated in February 2014.
Recommendation by the Committee	<i>(The State party should) 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;</i>
Actions taken by the State party (if any) and current situation	The government has not taken any action, although the Act on Truth and Reconciliation Commission was passed by the Parliament in April 2014 ⁴ . The Commission has been formed in February 11, 2015 but not yet functional. Cases of Bal Krishna Dhungel, who was convicted of murder by the Supreme Court but listed as a Constitutional Assembly Member in proportional list by the Maoists, and Prabhu Sah also being immune show that transitional justice system is not working properly and perpetrators are immune to any action. Similarly in the case of Dekendra Thapa, the eyewitness has been retracting the testimony and government has shown inactiveness in arresting the perpetrator or make an effort for extradition of those outside Nepal. ⁵
Current situation / Update of the Issue	

³ Office of Prime Minister and Council of Ministers, National Report of Nepal UPR second cycle Zero Draft, (unofficial and unpublished)

⁴ See http://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf

⁵ Tufan Neupane, Justice under threat, in Nepal Times 22-28 August 2014, <http://nepalitimes.com/article/nation/justice-for-dekendra-thapa,1619>

Recommendation by the Committee	<i>(The State party should) 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;</i>
Actions taken by the State party (if any) and current situation	<p>State changed the wording of TRC Ordinance but the provision is same as before the mandamus of the Supreme Court that gives amnesty for gross violation of human rights and serious violation of humanitarian law. The TRC has the authority to recommend amnesty to the perpetrator without consent of the victim for such amnesty. Presence of victim in the commission is sufficient. Grave crimes are stated in the TRC Ordinance but not defined. Moreover, the provisions that give power to the TRC to mediate and initiate reconciliation, power to foreclose investigations and prosecutions where mediation is carried out, power to recommend amnesty for crimes under international law and gross human rights violations and no recognition of victims' right to reparation⁶ is contrary to Supreme Court verdict. The Supreme Court in the verdict of February 26, 2015 have made the amnesty provision more victim centric and also ruled that victims are included in dialog and participate in the whole process. However, agitation against this Supreme Court verdict from UCPN (Maoist), who have also pressurized Government to null the verdict, undermines the rule of law.⁷ The Government has no intention to change this provision of the bill of TRC despite dissent from stakeholders.</p> <p>This provision of the bill of TRC has been used to defer cases in regular court and can be used for blanket amnesties.</p>
Other Comments	
Recommendation by the Committee	<i>(The State party should) 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);</i>
Actions taken by the State party (if any) and current situation	<p>As mentioned during the dialogue of the HR Committee in March 2014, the Government has made an arrangement to pay the compensation to the victim promptly. In case of restitution and rehabilitation, no serious steps have been taken. Though the parties to the Comprehensive Peace Agreement agreed to facilitate rehabilitation and restitution, there have also been a few inadequate and controversial efforts, such as provision of compensation to those who were not victims but have political connection, very slow provision of compensation to the victims, and lack of proper administration of other rehabilitation packages..</p>
Other Comments	
Recommendation by the Committee	<i>(The State party should) Adopt guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.</i>

⁶ Mandira Sharm, TRC Act breaches int'l law and decisions of the Supreme Court of Nepal available at setopati.net/opinion/1740/TRC-Act-breaches-int%27l-law-and-decisions-of-the-Supreme-Court-of-Nepal/#sthash.yHR8nIN8.dpuf.

⁷ <http://www.ekantipur.com/2015/04/03/top-story/six-maoist-parties-demand-nullification-of-scs-verdict/403632.html>

<p>Actions taken by the State party (if any) and current situation</p>	<p>There is still no law or guidelines for the vetting procedure. Nepal Police, Nepal Army and Armed Police force has some provisions of vetting adopted before the review of the HR Committee in March 2014.⁸ Vetting is focused on appointment of UN peacekeeping officials after the cases of Maj Niranjana Basnet from Congo⁹ and detention of Kumar Lama by the UK government¹⁰. Vetting has been ineffective. Cases of Kumar Lama, who was involved in UN peacekeeping, and promotion of designation Raju Basnet¹¹, who faces charges of serious allegations including torture, forced disappearance, rape and murder¹², show the lack of effective laws and appropriate implementation of existing laws.</p>
<p>Other Comments</p>	

<p style="text-align: center;">Overall NGO Grades for the follow-up Action of the State party¹³:</p> <p>A: Action largely satisfactory; B1: Substantive action taken, but further action desirable; B2: Initial steps taken, but substantial action required; C1: Some actions taken, but recommendations are not really implemented; C2: No action taken; E: measures taken are contrary to the recommendations</p>	<p>C1</p>
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⁸ Alexander Mayer-Rieckh, Building Trust and Strengthening the Rule of Law Vetting the Security Sector in Nepal, ICTJ Briefing April 2012, <http://www.ictj.org/sites/default/files/Nepal%20Building%20Trust%20and%20Strengthening%20the%20Rule%20of%20Law%20August%20final2012.pdf>.

⁹ Extrajudicial Killing of Maina Sunar: A Case Report, <http://www.inseconline.org/pics/1272358753.pdf>

¹⁰ Advocacy Forum Nepal, Vetting In Nepal Challenges and Issues, (Kathmandu: 2014), <http://www.achrweb.org/reports/DPKO-Nepal.pdf>.

¹¹ Nepal: Prosecute, Don't Promote, Notorious Army Officer, <http://www.amnestynepal.org/campaigns/ai-nepal-activities/nepal:-prosecute,-don%E2%80%99t-promote,-notorious-army-officer.html>; <http://www.nepalitimes.com/blogs/thebrief/2012/10/05/government-promotes-accused-na-officer/>

¹² <http://www.nepalitimes.com/blogs/thebrief/2012/10/05/government-promotes-accused-na-officer/>

¹³ The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 7 (National Human Rights Commission (NHRC)): *“The Committee is concerned at the introduction of restrictions to the independent and effective functioning of the NHRC through the adoption of the National Human Rights Act in 2012. While noting the Supreme Court decision of 6 March 2013 which declared various provisions of the Act null and void, the Committee regrets the lack of progress in bringing the Act in line with the Paris Principles. It also regrets the inadequate implementation of the recommendations issued by the NHRC, despite the fact that they are binding under domestic law (art. 2)” ...*

NGO Assessment of the Action of the State party on the Recommendations made by the Committee

Recommendation by the Committee	<i>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.</i>
Actions taken by the State party (if any) and current situation	<p>The government has appointed the commissioners in the NHRC in October 20, 2015 in a relatively transparent process (public call, establishment on an appointing Committee and recommendations of the nominees to the Cabinet headed by the Prime Minister). However, government is yet to pass laws for additional independence in terms of staffing, budget, organizational structure etc.</p> <p>The commissioners are working. However, the government is preparing an amendment of the NHRC Act, which undermines independence of NHRC, and has been voiced for amendment of those provisions that are contrary to the independence of NHRC. The process of the amendment is very slow. NHRC is preparing to increase its activities in all 75 districts of Nepal.</p> <p>The action has helped in functioning of the NHRC but there are many concerns regarding its independence.</p>
Other Comments	
Recommendation by the Committee	<i>(The State party) 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.</i>
Actions taken by the State party (if any) and current situation	<p>The appointment procedure has not been satisfactory as the newly formed commission is not gender balanced and does not include representatives from marginalised communities including Dalits. In terms of implementation of the recommendations of the NHRC concerning human rights violations, the government has been slow and ineffective.¹⁴ It is constitutionally/legally mandatory to make the commission inclusive but it is not being implemented.</p> <p>Most of the recommendations of the NRHC, especially those dealing with prosecutions of human rights violations transmitted the Attorney General, are not implemented by the government.</p> <p>Due to lack of implementation, the status of NHRC has been undermined.</p>
Other Comments	

Overall NGO Grades for the follow-up Action of the State party¹⁵:

A: Action largely satisfactory; **B1:** Substantive action taken, but further action desirable; **B2:** Initial steps taken, but substantial action required; **C1:** Some actions taken, but recommendations are not really implemented; **C2:** No action taken; **E:** measures taken are contrary to the recommendations

B2

¹⁴ NHRC, Annual Report of National Human Rights Commission 2070-2071 B.S. (in Nepali), Kathmandu: 2014).

¹⁵ The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 10 (Extrajudicial killings, torture and ill-treatment): *“The Committee is concerned at reports of unlawful killings in the Terai region, deaths in custody, and the official confirmation of the widespread use of torture and ill-treatment in places of police custody. It is deeply concerned at the failure of the State party to adopt legislation defining and criminalizing torture, and at the lack of concrete and comprehensive information on investigations, prosecutions, convictions, sanctions imposed on those responsible, and the impunity of law enforcement officials involved in such human rights violations (arts. 2, 6, 7, 9, 10 and 14)” ...*

NGO Assessment of the Action of the State party on the Recommendations made by the Committee

Recommendation by the Committee	<i>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).</i>
Actions taken by the State party (if any) and current situation	In Nepal, (interim) constitution prohibits capital punishment and the code of conduct of security officials stops the use of excessive force. However, there is no expressed law prohibiting extra judicial killing. Right to life is also enshrined in the (interim) constitution. ¹⁶ Despite the laws, extra judicial killing has been occurring specially in Terai region. The investigation has been slow and officials opt not to pursue the compliant until pressure from public realm rises. Similarly, torture is inflicted in the jails, statistically upon 18.4% male detainees and 5.7% female detainees. ¹⁷ Similarly in 2014, 65 instances of torture in detention has occurred. ¹⁸
Other Comments	
Recommendation by the Committee	<i>(The State party) 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.</i>
Actions taken by the State party (if any) and current situation	The government has prepared and submitted the draft anti-torture bill to the Parliament. However, the bill has not yet been passed at the Parliament. The interim constitution prohibits torture as a method of investigation, while Nepal is also a Party to CAT since 1991. With regard to the remedies, the Torture Compensation Act only stipulates the civil liability to pay the compensation, which is then paid by the State under vicarious liability. At the same time, police officials have been declining to file the cases of torture and pressure victims to retract their complaint. Against this backdrop, torture is still wide spread practice in Nepal.
Other Comments	
Recommendation by the Committee	<i>(The State party) 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).</i>
Actions taken by the State party (if any) and current situation	There are several trainings that have been carried out by different stakeholders although there is no evidence that a specific training scheme have been developed since the review of Nepal in March 2014. Government conducts its own training. Similarly, NGOs and INGOs also conduct trainings. Human Rights Units of Nepal Police, Nepal Army and APF conduct their trainings on regular basis. There have been trainings conducted by NHRC, ICRC in human rights and humanitarian law for security personnel.

¹⁶ Interim Constitution of Nepal 2007, Chapter Fundamental Rights.

¹⁷ Advocacy Forum- Nepal, Promising Developments, Persistent Problems: Trends and Patterns in Torture in Nepal during 2013, 1st edition (Kathmandu: 2014), pg. 17; INSEC Human Rights Yearbook 2015, <http://www.inseconline.org/pics/publication/1424347080.pdf>

¹⁸ Nepal Human Rights Yearbook 2015, INSEC, pg 354.

Other Comments	Security agencies monitor and investigate human rights violations by their own personnel; however victims regularly report that they do not trust it and fear repercussions when they make the case public if complaints are made
Recommendation by the Committee	<i>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.</i>
Actions taken by the State party (if any) and current situation	There are many institutions (NHRC, Nepal Police Human Rights Unit (NPHRU) ¹⁹ and in some special cases Special Investigation Committees ²⁰) conducting investigation / prosecution and making recommendation to Office of Attorney General in torture cases. However, most of the investigation effort has been very weak, while OAG rarely opt to hear the cases ²¹ , most of the recommendations of NHRC are not implemented ²² , and the NPHRU case proceedings are not transparent. ²³ Due to the creation of institutional framework, the torture instances have been decreasing but the number of torture is still high ²⁴ . There is no proper investigation procedure established yet in case of extra-judicial killings.
Other Comments	

Overall NGO Grades for the follow-up Action of the State party²⁵:	C1
A: Action largely satisfactory; B1: Substantive action taken, but further action desirable; B2: Initial steps taken, but substantial action required; C1: Some actions taken, but recommendations are not really implemented; C2: No action taken; E: measures taken are contrary to the recommendations	

¹⁹ <http://www.nepalpolice.gov.np/human-rights.html>

²⁰ Advocacy Forum Nepal, Nepal: Is the Government Unable or Unwilling to Prevent and Investigate Torture?, 1st Edition (Kathmandu: 2013), pg. 89.

²¹ Ibid.

²² http://www.nhrcnepal.org/nhrc_new/doc/newsletter/13_years_report.pdf

²³ NHRC, Annual Report of National Human Rights Commission 2070-2071 B.S. (in Nepali), Kathmandu: 2014).

²⁴ INSEC, Nepal Human Rights Yearbook 2015, <http://www.inseconline.org/pics/publication/1424347080.pdf>

²⁵ The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared



Centre for Civil and Political Rights (CCPR)
t: [+41 \(0\)22 332 25 53](tel:+41223322553) - e: info@ccprcentre.org
a: 1, rue de Varembé - CP 183 - CH-1202 Geneva
www.ccprcentre.org

Contact person for the review and follow-up of Nepal
Mr. Daisuke SHIRANE
Centre for Civil and Political Rights (CCPR)
Asia Pacific Coordinator
dshirane@ccprcentre.org