



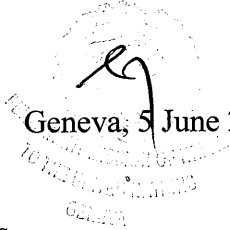
संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
GENEVA

No. G/HRC/514

The Permanent Mission of Nepal to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Secretariat of the Human Rights Committee, Office of the United Nations High Commissioner for Human Rights, and with reference to the Concluding observations on the second periodic report of Nepal adopted by the Committee on 26 March 2014, has the honour to submit herewith the updated information on the implementation of the committee's recommendations made in paragraphs 5, 7 and 10 of the Concluding Observations.

The Permanent Mission of Nepal to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Human Rights Committee, Office of the United Nations High Commissioner for Human Rights, the assurances of its highest consideration.

**The Secretariat of the Human Rights Committee
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10**


Geneva, 5 June 2015

OHCHR REGISTRY

10 JUN 2015

Recipients : HR Committee

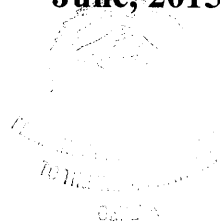
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**Updated Information on the Implementation of the Committee's
Recommendations made in paragraphs 5, 7 and 10 of the
Concluding Observations on the Second Periodic Report of Nepal,
March, 2014**

*(Submitted in accordance with rule 71, paragraph 5, of the Committee's rules
of procedure)*

**Submitted to:
The Human Rights Committee
United Nations**

**Submitted by:
The Government of Nepal
June, 2015**



The Government of Nepal (GoN) considers the Concluding Observations adopted by the Committee as fruitful outputs of the GoN's interactive dialogue with the Committee in March 2014. The Concluding Observations serve as a framework to address the gap between our commitments and achievements. It has further provided an opportunity not only for an assessment of where we stand now but also for a projection of where we could be in future; how we can strengthen the national capacity and scale up resources in order to ensure that our people are not deprived of their fundamental rights.

The GoN believes that it is important to consider the magnitude of genuine efforts that a country has been making to ensure that its people live a decent life in peace, security and with utmost human dignity. Nepal's commitment to protect and promote human rights of its people is unwavering. The GoN has been making all out efforts to fulfill its international obligations.

Immediately after receiving the Concluding Observations of the Committee, the GoN adopted a Plan of Action that clearly spells out the specific actions to be carried out by the different agencies within the stipulated time frame with monitoring indicators. Responsible ministries and government agencies have been implementing the Observations and reporting back to the Office of the Prime Minister and Council of Ministers (OPMCM). The OPMCM has been coordinating among the government ministries and agencies for the proper implementation of the Plan of Action, its periodic reporting, monitoring and follow-up.

At least five layers of government mechanism have been functional for the implementation of treaty body obligations including the Concluding Observations. The Human Rights Divisions or Sections established at various ministries have been playing a role of performing basic tasks and preparing documentations. The Human Rights Division of the OPMCM has been serving as human rights focal agency of the GoN. This is mandated to prepare plans of action, policies and reports as well as identify the issues and gaps in existing measures. A Steering Committee led by the Chief Secretary and consisting of secretaries of different ministries has been monitoring the implementation status and where necessary, supervising and facilitating work of the ministries. A regular meeting of all Secretaries of the GoN is held in the chairmanship of the Chief Secretary for addressing the problems and challenges, if any, during the implementation process. The Council of Ministers, the apex executive body, approves policies and Bills related to fulfilling the GoN's human rights commitments and to implement the Concluding Observations.

Updated implementation status on specific recommendations is as follows:

Para 5: Impunity for gross violations committed during the conflict

Recommendation 5(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.

A Bill that criminalizes all forms of torture, in-human and degrading treatment and punishment has been approved by the Cabinet and submitted to the Legislature-Parliament on 21 November 2014. The Bill includes provisions on preventive, punitive and promotional measures to end all forms of torture, in-human and degrading treatment and punishment. The GoN believes that the Bill is in line with the United Nations Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Once the Bill is passed by the Parliament, it will replace the existing Torture Related Compensation Act, 1996.

A number of Bills have been submitted to the Legislature-Parliament for consideration. They include a Bill on Civil Code, 2014 (submitted on 12 October, 2014), a Bill on Civil Procedure Code, 2014 (submitted on 12 October, 2014), a Bill on Penal Code, 2014 (submitted on 15 October, 2014), a Bill on Criminal Procedure Code, 2014 (submitted on 15 October, 2014), and a Bill on Sentencing Legislation, 2014 (submitted on 15 October, 2014). The Bills aim at reforming the legal system of Nepal in tune with the international obligations and commitments.

The Bill on Penal Code, 2014 has provisions to criminalize torture, enforced disappearances and crime against humanity, among others. Furthermore, the Council of Ministers has directed the OPMCM to prepare a Bill to criminalize enforced disappearances. The OPMCM has been working to draft the Bill. The National Committee on International Humanitarian Law chaired by the Minister of Law, Justice, Parliamentary Affairs and Constituent Assembly has forwarded a Bill related to the implementation of four Geneva Conventions to the Ministry of Defense for necessary action.

Recommendation 5(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.

The Interim Constitution of Nepal, 2007 guarantees the independence of judiciary and competent system of justice. The judiciary in Nepal is independent as the Interim Constitution has adopted the global principles and standards of judicial independence. The judiciary has the full authority to review legislative and executive action and quash it if it is found to be against the constitution. The criminal justice system of Nepal is founded on rule of law, and to a large extent adversarial model. Investigation, prosecution and adjudication of serious criminal cases are governed by the State Case Act, 1992. The authorities related to investigation and prosecution enjoy functional independence in the course of discharging duties and power under the provision of law, and the court of law is totally independent from political branches of the government.

The Supreme Court in Gopi Bahadur Bhandari vs. Office of the Prime Minister and Council of Ministers (Nepal Law Reporter, 2069, vol. 3, decision No 8789) has held that the Government cannot withdraw the criminal cases defusing or defeating the constitutional power of the prosecutors who prosecute the criminal cases following the due process of law. The Supreme Court also has clarified the lists of cases which cannot be withdrawn including the cases relating to intentional homicide, grievous violation of human rights, organized crime, crimes against women and children, genocide and crimes against humanity. The Supreme Court has quashed various decisions of the Government of Nepal to withdraw such cases. It shows that the criminal justice system of Nepal is completely free from political interference. Following the direction of Supreme Court in the above mentioned case, the GoN in September 2014 has issued separate Procedures which prohibit the withdrawal of State Cases related to criminal offence including rape, war crime, genocide, crime against

humanity, crime against women and children, among others. The GoN believes that this will considerably contribute towards promoting the rule of law in the country.

No laws of Nepal provide immunity for public office holders including the security personnel in criminal offence. The legislations of Nepal have adequate provisions to provide for fair investigation and prosecution of those involved in criminal offences without any undue pressure and prejudices. Law enforcement agencies including the government security forces have been following the policy of zero tolerance on human rights violation, and they receive training on human rights issues. Till date, over 7,300 police personnel and 42,267 army personnel have received specific training on human rights and humanitarian law. Moreover, all the basic courses run by the security forces include curriculum on human rights and humanitarian law. Till date, a total of 855 cadres/officials (622 from Nepali Police, 56 from Armed Police Force, 177 from Nepal Army) have faced departmental action in the cases of violations of human rights. The Office of the Attorney General and the National Human Rights Commission have been monitoring the conduct of law enforcement officials to protect the rights of people and to strengthen the criminal justice system. In order to prevent human rights violations by security forces, Nepal Police, Armed Police Force and Nepal Army have established a separate mechanism in the organizations. Moreover, the Investigation Committee as provisioned in Section 62(1) of the Army Act has a special provision to investigate human rights violations.

Existing criminal justice system has been used to conduct investigation and prosecution of conflict era cases. Some of these cases are *sub judice* in the court of law and one has been decided by a district court (the case of journalist Dekendra Thapa). The Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 enacted by the Legislature-Parliament in April 2014 is a landmark instrument to address the issues of past human rights violations committed by State and non-State actors, and to ensure justice and reconciliation in the society in light of national and international obligations and known pragmatic approaches taken in various national situations. In addition to this, the Supreme Court in 14 February 2015 (Suman Adhikari vs. the Office of the Prime Minister and Council of Ministers (070-WS-0050)) has interpreted the Act and paved the way to carry out the functions by the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission.

The GoN always respects and abides by the decision of the Supreme Court. Hence, with the verdict of the Supreme Court, the transitional justice mechanism established by the Act has been empowered to undertake independent and thorough investigations into alleged conflict related cases of human rights violations and to hold the perpetrators accountable. Likewise, the Supreme Court has pronounced that the conflict era cases that are already under the domain of regular criminal justice system would not be transferred to the transitional justice mechanisms.

Recommendation 5(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

As per the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014, two separate commissions, Commission on Investigation of Disappeared Persons and Truth and Reconciliation Commission, have been established. The Commissions have initiated their work independently. As set forth in the Act, both Commissions enjoy structural, functional and administrative independence as well as autonomy. As per the Sub-section (3) of Section 20 of the Act, the Commissions must abide by the universally accepted principle of justice and human rights while carrying out their activities.

Murder, abduction and hostage taking, disappearance of persons, causing mutilation or disablement, physical or mental torture, rape and sexual violence, looting, seizure, breaking or arson of private and public property, forceful eviction from house and land or displacement by any other means and any types of inhuman act committed against international human rights or humanitarian law or other crimes against humanity, are considered as serious violations of human rights as per the Section 2 of the Act. Furthermore, the Supreme Court has held that the Commission cannot recommend for amnesty in the cases of serious violation of human rights.

Recommendation 5(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)

The GoN has been providing appropriate financial and non-financial support to conflict victims under specific guidelines and policy decisions. The GoN has framed the following policies, directives, procedures and programs to address the issues of IDPs and conflict victims:

- National Policy on Internally Displaced Persons, 2007
- Directives to provide relief to the IDPs and their families, 2007
- Peace Fund Operation (Procedure) Regulation, 2009
- Terms of Reference of Local Peace Committee, 2009 and Directives of Local Peace Committee, 2010
- Development Program for Peace Operation Working Procedure, 2009, and Development Program for Peace Operation Directives, 2012
- Relief, Compensation and Financial Support Working Procedure, 2010
- Employment/Self-Employment for Conflict Victims Operation Directives, 2011
- Special Program for Conflict Affected Area Operation Directives, 2012
- Psycho-social Counseling Service Operation Directive, 2014
- National Action Plan, 2011 on the Implementation of the United Nations Security Council Resolutions 1325 and 1820

The GoN has been providing a range of schemes to accomplish the tasks to reintegrate and rehabilitate the conflict victims. The schemes include relief and rehabilitation support, employment generation training and financial support, interim relief, medical treatment and psychosocial counselling, scholarships support. These measures are also in line with the

constitutional obligations, Comprehensive Peace Accord (CPA) and the recommendation of the National Human Rights Commission (NHRC).

The GoN has established separate organizational mechanisms at the central to the grassroots levels to provide the service and to ensure the effective implementation of the policies and programs. Between fiscal year 2006/07 to 2012/13, among the 79,571 IDPs, 25,000 have received a sum of Rs. 240,144,000 as interim relief. Employment generation training has been provided for 3,030 conflict victims from 12 districts and 11,740 victims from 42 districts during the probation period and first phase respectively. As of the end of FY 2012/13, 7,996 persons with conflict-induced injury have received a sum of Rs. 369,868,000. Also, a sum of Rs. 84,377,000 has been provided as life sustaining allowance to 736 persons with more than 51 percent disability caused by conflict induced injury. The Ministry of Peace and Reconstruction has provided interim relief and rehabilitation support to conflict victims. This includes relief to the families of deceased, single women and families of the conflict victims, skills development training to conflict victims and relief/compensation based on NHRC's recommendations.

Furthermore, the government will provide effective remedy including appropriate compensation, restitution and rehabilitation as per the recommendation of the Commission on Investigation of Disappeared Persons and Truth and Reconciliation Commission. The Commissions are empowered to recommend compensation, restitution and other reparation services.

Recommendation 5(e): Adopt guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted

Civil Service Act, 1993¹, Army Act, 2006, Army Rules, 2013², Police Rules, 2014³ and Armed Police Force Rules, 2003⁴ provide some provisions for vetting those persons involved in the violation of human rights and other criminal offences. The legislations provide that any person who is convicted by the court on a criminal offence involving moral turpitude is not eligible to be recruited to the services. Also, officials convicted by the court on a criminal offence involving moral turpitude shall be expelled from the service and disqualified for any governmental service in the future. Furthermore, Police Rules, 2014 and Army Rules, 2013 have provisions for departmental action or halt promotion or declared ineligible if s/he is

¹Civil Service Act, 1993, Section 10, clause (f) bars the persons who have been convicted by the court of a criminal offence involving moral turpitude to be recruited in civil service. Chapter 9 on Punishment and Appeal: Section 59 on Punishment, Section 60 on withholding promotion, Section 61 on Removal or dismissal from service have provisions relating to vetting. Section 61, clause 2(a) provides provisions for the dismissal from service, with being disqualified for government service in the future, if he/she is convicted by a court on a criminal offence involving moral turpitude.

²Army Act, 2006 in Section 13, Clause (d) reads that any person who is convicted in the charge of human rights violation is disqualified to be army personnel. Army Rules, 2013 in Rule 7, sub-rule 1, clause 14 bars the persons convicted in the case of violation of human rights and humanitarian law.

³Police Rules, 2014, Chapter 10 on Punishment and Appeal has provisions relating to vetting. Section 119 has detailed the provision. Section 12 related schedule (c) bars the recruitment of person convicted by a court on a criminal offence involving moral turpitude. Section 12 related schedule (d) bars the recruitment of persons convicted in the case of violation of human rights and humanitarian law.

⁴Armed Police Force Rules, 2003, Chapter 10 on Punishment and Appeal has provisions relating to vetting. Section 87 (2)(b) and (c) states that any person shall be removed from the service holding disqualified for governmental service in the future, if he or she is convicted by the court of a criminal case involving moral turpitude or if he or she is proved to have committed corruption. Section 89 provides provisions for suspension from the post.

convicted in charge of violations of human rights and humanitarian law.⁵ In addition, Nepal Army and police have established a vetting system particularly to prevent the security personnel involved in violation of human rights in the deployment to peacekeeping missions of the UN. The GoN is working to adopt comprehensive guidelines for vetting system.

Para 7: National Human Rights Commission (NHRC)

Recommendation 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.

The NHRC enjoys structural, functional and financial independence in line with the Paris Principles. The constitutional mandate and jurisdiction of NHRC is not restricted by any law including National Human Rights Commission Act, 2012. The appointment process of the Chairperson and members of NHRC is governed by the Constitution and the Constitutional Council Procedure (Regulation) Act, 2010 which provides the selection process based on the principle of transparency, accountability, competency, integrity and inclusion. The persons recommended by the Constitutional Council for the Constitutional posts must face the parliamentary hearing.

The amount required as remunerations and facilities payable to the chairperson and members of the Commission and its administrative expenses is charged on consolidated fund. The NHRC is empowered to maintain necessary contact and relation with national, regional and international organizations related to human rights; and to establish, in consultation with the Ministry of Finance, its regional, sub-regional or liaison offices as it requires.

The GoN has always been supportive to the Commission for its smooth functioning. It bears all expenses of all the regional offices of the Commission. Necessary budget for the Commission is being provided by the government.

In order to keep the Commission well-equipped with competent staff, draft of Human Rights Service Bill has been approved in principle by the Cabinet. The Bill provides for the provision on the recruitment of staff in the Commission with the principle of administrative autonomy. Likewise, separate financial rules for the Commission have been approved by the Ministry of Finance for ensuring its financial autonomy.

⁵Police Rules, 2014 in rule 111 clause (c) provides provisions that any police personnel can face departmental action involving promotion or salary increase halt for at least five years if s/he fails to discharge the duty as set forth in the Rules and other prevailing laws.

Army Rules, 2013, in rule 36 (1) (h) provides provisions that any person who is convicted from the court in charge of violation of human rights and humanitarian law is ineligible for promotion. Rule 48 (1) (e) and 48 (8) provide provisions that any person convicted in charge of violation of human rights and humanitarian law is ineligible for deployment to UN Peacekeeping Missions. Rule 49 (d) provides provisions that any person convicted in charge of violation of human rights and humanitarian law is ineligible for deployment to the post of Staff Officer and Army Observer Officer. Rule 50 (e) provides provisions that any person convicted in charge of violation of human rights and humanitarian law is ineligible for deployment to the post of Army Advisor/Floating Appointment.

The GoN has been implementing the decisions and recommendations of the NHRC, and it is further committed to effectively implement the recommendations made by the Commission. As far as the Supreme Court's decision of 6 March 2013 is concerned, as per the Constitutional principle and practice, any provision of legislation declared null and void by the Supreme Court does not come into implementation. The verdict of the Supreme Court is on par with law. Despite the said practice, the Government has been working to submit the amendment Bill to the Legislature-Parliament in order to repeal the provision which is declared null and void from the text of law.

Para 10: Extrajudicial killings, torture and ill-treatment

Recommendation 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.

Murder and extrajudicial killings are serious criminal offences under the domestic legislation (General Code) of Nepal. The domestic law outlaws even judicial killings. The prevailing laws of Nepal provide mechanisms on investigation, prosecution and adjudication of cases related to murder and extrajudicial killings. Local Administration Act and some other Acts have the provision on reasonable use of force by security personnel to maintain law and order and to protect life and property of people. No laws of Nepal grant the power for excessive use of force by law enforcement officials. Any incident or casualty occurred in the course of discharging legal duty by the security personnel within legal limit cannot be termed as excessive use of force. Any security personnel who violate prevailing laws are investigated and prosecuted like general public.

The Constitution and Torture Related Compensation Act, 1996 prohibits any kind of torture for any purpose. No prevailing law of Nepal grants immunity to anyone in case of torture. The GoN is effortful to make domestic legislations more compatible with the UNCAT. A separate Bill to criminalize all forms of torture and ill treatment has been submitted to the Legislature-Parliament. Similarly, a Bill on Penal Code that provides preventive, punitive and protective measures against torture, among others, has been submitted to the Legislature-Parliament.

Nepal Police has developed Crime Investigation Directives, 2014, Standard Operating Procedure on Women and Children Victim Care System, 2014, and Nepal Police Polygraph Directives, 2014. The Office of the Attorney General has developed medicolegal format for crime investigation, Victim Protection Manual, Manual on monitoring of human rights situation of inmates in custody and prison, Resource material on criminal offence against

Children and Women, and Victim's rights handbook. The Office has forwarded a report on *Istanbul Protocol* developed through a committee to the Ministry of Law, Justice, Parliamentary Affairs and Constituent Assembly for necessary action. The Police Rules, 2013 has provisions for mandatory training on human rights and crime investigation in relation to the offence against women and children. The Rules includes provisions for the duty of police towards protection and promotion of human rights.⁶ Departmental action has been taken against 62 personnel in Police who have been involved in committing torture. Likewise, Army Act, 2006 ensures that mandatory training on human rights to all army personnel is provided.⁷ Torture is regarded as a criminal offence under the Army Act, 2006. Investigation Committee as provided in the Section 62(1) of the Act has a special provision to conduct thorough and impartial investigation into the allegation of torture and disappearances. The offence of torture is prosecuted in the Army Special Court.

In order to further improve the situation, security personnel have been provided with the training on minimum use of force. The GoN is committed to taking lawful actions against those who are indulged in criminal offences.

⁶As per the Police Rules, 2013, rules 53 (g), 55 (q), 57 (o), 59 (v), 60 (t), 62 (u), 63 (t), it is the duty of police to protect and promote human rights and to implement specific plan for the protection of rights of vulnerable people, women and children.

⁷Army Act, 2006, Section 20 (1) provides provisions that a person to be included in the organization of the Nepal Army shall be provided trainings and inductions on topics including human rights and international humanitarian law.