



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Nepal and welcome the constructive engagement of your Government during the 37th session of the UPR Working Group in January 2021.

As the final outcome report on the review of Nepal has been recently adopted by the Human Rights Council at its 47th session, I would like to take this opportunity to follow up on a number of areas raised in the two reports that my Office had prepared for the review of Nepal – the Compilation of United Nations information and the Summary of Stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, until the next cycle of the UPR. In identifying those areas, I have considered the statements and/or recommendations made by 98 delegations and the presentation made and responses provided by the delegation of Nepal. I have also considered the actions taken by the Government of Nepal to implement the 152 recommendations supported during the second cycle of the UPR. The aforementioned areas cover a range of issues, which appear in the annex to this letter.

I welcome Nepal's ratification of the Palermo Protocol and hope national laws would be amended to enforce the protocol. It has been encouraging to see the steps taken to combat gender-based violence and violence against women. I appreciate ongoing consideration of a possible technical cooperation project to implement UPR recommendations, in cooperation with my Office. I remain worried, however, by the rising incidents of caste-based discrimination and urge you to take demonstrable steps that ensure zero-tolerance for such abuse. Nepal should amend its legislation to address caste-based discrimination in private spaces.

In the past UPR cycles, Nepal has pledged its commitment to guarantee the functional and financial independence of the National Human Rights Commission (NHRC). However, I note with concern that the appointment process of the new members of the NHRC failed to meet the international standards set for such processes under the Paris Principles, thereby damaging the independence and legitimacy of the NHRC. I urge Nepal to rectify the situation in order to restore public confidence in the NHRC, which is an important institution for protecting and promoting human rights in Nepal. I also urge Nepal to address the concerns raised by the NHRC in its October 2020 report, which indicated that fewer than 14 per cent of its recommendations during the period 2000-2020 were fully implemented by the Government.

Since the first UPR review in 2011, Nepal has received several recommendations to address concerns around the transitional justice process in order to guarantee truth, justice, reparation and institutional reforms. Efforts should be made towards implementing a fair, transparent and consultative transitional justice process in line with international standards and Nepal's international commitments.

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H.E. Dr. Narayan KHADKA
Minister of Foreign Affairs
Nepal

I welcome the adoption of the National Human Rights Action Plan (2020–2025) and encourage Nepal to continue implementing it effectively in order to achieve concrete results in the areas highlighted in the annex to this letter and to facilitate preparations for the fourth cycle of the UPR. My advice to all Member States is to implement national action plans in close consultation and cooperation with all stakeholders, in particular the national human rights institution and all civil society organizations and, where necessary, with the support of international organizations, including my Office and other United Nations entities, under the leadership of the United Nations Resident Coordinator.

I also encourage Nepal to make further efforts to establish a national mechanism for comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, while linking these to the Sustainable Development Goals. To this end, I strongly recommend the use of the OHCHR practical guide on this topic, which is available at:

http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf

Please note that I am sharing my advice with all Member States as they go through the third cycle of the UPR with a view to assisting them with the implementation of the recommendations, following the review. One important measure that can positively contribute to follow-up action is voluntary mid-term reporting. Therefore, I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the UPR outcome report. In this regard, I encourage Nepal to consider submitting a mid-term report on follow-up to the third cycle of the review, by 2023

As stated by the Secretary-General in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *“The Human Rights Council’s universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council’s recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals.”*

I look forward to discussing with you ways in which my Office may assist Nepal in relation to the areas identified in this letter and its annex.

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



Michelle Bachelet
High Commissioner for Human Rights

cc: Ms. Sara Beysolow NYANTI
United Nations Resident Coordinator
Nepal

Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratifying the Optional Protocol to the 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 Rome Statute of the International Criminal Court, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization Domestic Workers Convention, 2011 (No. 189), and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

National human rights framework

- Ensuring the financial and operational independence of the National Human Rights Commission is not compromised through legislation.

Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination

- Amending the Caste-based Discrimination and Untouchability Act to extend the statute of limitations for submitting a complaint.
- Ensuring that racial and caste-based hatred constitutes an aggravating circumstance when they serve as the motivation for an offence.
- Establishing accessible and effective mechanisms for victims of discrimination to seek redress.

Development, the environment, and business and human rights

- Obtaining the free, prior and informed consent of indigenous peoples prior to the approval of any project affecting the use and development of their traditional lands and resources.
- Taking measures to guarantee that evictions of indigenous peoples are carried out in accordance with international standards.

B. Civil and political rights

Right to life, liberty and security of person

- Stopping the deprivation of liberty of persons with disabilities on the basis of actual or perceived impairment.
- Ensuring the free and informed consent of the concerned persons with disabilities before any examination or treatment.
- Conducting investigations into cases of chaining and detention in private homes, and forcible placement and treatment in psychiatric facilities.

Administration of justice, including impunity, and the rule of law

- Taking appropriate measures to ensure the independence and impartiality of the commissioners in the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission and allocating adequate resources for their operation.
- Ensuring any amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014) is based on broad consultations with victim groups and civil society.
- Removing the statute of limitations for filing cases relating to sexual violence and torture, including for the violations perpetrated during the conflict.

Fundamental freedoms

- Revising the draft national integrity and ethics policy, the draft privacy policy and the draft online media directive, and amending the Electronic Transactions Act and the National Broadcasting Regulations, in consultation with the National Human Rights Commission and civil society, to ensure that they do not restrict the activities and freedom of expression of representatives of non-governmental organizations working on women's rights.
- Decriminalizing defamation and place it within a civil code that was in accordance with international standards.

Prohibition of all forms of slavery

- Expediting the revision of the bill to amend the Human Trafficking and Transportation (Control) Act.
- Expediting the adoption of the bills on witness and victim protection and establishing witness protection schemes for women victims.
- Enhancing training on the national minimum standards for victim protection and strengthening the investigative capacity of the police human trafficking and transportation control bureau.
- Revising the 2015 guidelines that prohibited migrant women from Nepal with a child under 2 years of age from taking up employment as domestic workers abroad, and lifting the ban imposed on women workers seeking employment abroad without imposing any pre-conditions.

- Raising awareness among rural, displaced, indigenous and Dalit women and girls about the risks and criminal nature of trafficking.
- Investigating, prosecuting and punishing cases of trafficking in women and girls, corruption and the complicity of State officials, ensuring that sentences matched the seriousness of the offence.

Right to privacy and family life

- Facilitating family-based care for children and establishing a system of foster care for children who cannot stay with their families, with a view to reducing the institutionalization of children.

C. Economic, social and cultural rights

Right to social security

- Gathering sufficient resources for implementation of the protections provided for in the Contributions-based Social Security Act.
- Establishing a social security policy, along with a clear and coherent family policy, as well as effective strategies for using social safety net benefits to further children's rights.
- Providing adequate financial resources to the social security system.

Right to an adequate standard of living

- Establishing poverty indicators and an official poverty line so as to define the extent of poverty, and monitor and evaluate progress in alleviating poverty and improving the standard of living for children.
- Expediently strengthening efforts to provide adequate housing for children and their families who had been displaced by the 2015 earthquake, and ensure that they have access to sufficient food, clean drinking water, sanitation, health care and education.

Right to health

- Reducing neonatal mortality rates, including by preventing infectious diseases and ensuring care for newborns, and applying the Office of the United Nations High Commissioner for Human Rights technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age.

Right to education

- Extending compulsory education to include at least nine years of primary and secondary education.
- Taking appropriate regulatory measures to ensure that private providers of education do not undermine social cohesion or exacerbate segregation and discrimination.
- Conducting an evaluation of its national plan of action for the reintegration of conflict-affected children with a view to including all children who had been directly affected by the conflict, including regarding enrolment in school and provision of scholarships.

D. Rights of specific persons or groups

Women

- Adopting comprehensive anti-discrimination legislation that include a definition of discrimination against women, encompassing direct and indirect discrimination and multiple intersecting forms of discrimination.
- Providing communities particularly affected by gender-based violence against women with special opportunities to access the gender-based violence elimination fund.
- Bringing the definition of rape into line with the Rome Statute of the International Criminal Court.
- Enforcing the implementation of electoral quotas and the composition of State entities at the local, district and federal levels.
- Amending relevant provision in the Constitution, Citizenship Act 2006 to ensure equal rights of women to that of men to transfer citizenship to her spouse and children, protection of right to privacy of LGBTIQs.

Children

- Strengthening the enforcement of existing legislation and policies to eradicate the practice of child bonded labour.
- Reviewing current legislation relating to the criminalization of marriage below the age of 20 years and focus on marriages that took place below the age of 18 years.
- Amending relevant legislation, particularly the Birth, Death and Other Personal Event (Vital Registration) Act of 1976, the Citizenship Act of 2006 and several articles of the Constitution, to ensure full compliance with articles 7 and 8 of the Convention on the Rights of the Child.
- Establishing mechanisms, procedures and guidelines to ensure mandatory reporting of cases of child sexual abuse and exploitation.

Persons with disabilities

- Strengthening measures for the prevention of violence, abuse, exploitation and abandonment of children with disabilities.
- Adopting an effective mechanism, in accordance with the Sendai Framework for Disaster Risk Reduction 2015–2030, in order to have an accessible communication strategy and comprehensive emergency strategy and protocols for persons with disabilities in situations of disaster and risk.

Minorities and indigenous peoples

- Ensuring that domestic legislation formally recognizes all indigenous peoples in Nepal, that the right of indigenous peoples to participate in government bodies is effectively respected, and that indigenous peoples can freely choose their representatives.



- Ensuring the safety of indigenous peoples who have been subjected to threats, harassment and other arbitrary and violent acts by government agents and/or private individuals, and taking measures to prevent, investigate and punish such acts.
- Amending the Constitution to explicitly recognize the rights of indigenous women, in line with the United Nations Declaration on the Rights of Indigenous Peoples.
- Taking all necessary measures to eliminate patterns of land distribution that represent *de facto* discrimination against Dalits and other marginalized castes or ethnic groups.
- Ensuring and promoting occupational mobility for marginalized castes, including through hiring incentives, vocational training and community-based empowerment programmes.

Migrants, refugees and asylum seekers

- Adopting national legislation conforming to the standards of international instruments relating to the protection of refugees, and providing identity documents to all refugees in the territory.
- Guaranteeing all migrant women equal access to employment within and outside the country, enhancing gender-sensitive pre-departure and post-arrival orientation services, and adopting a policy and enhancing service provision for the social reintegration of Nepali migrant women who return to Nepal.