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

No. GE/2010/ 276

The Permanent Mission of Nepal to the UN Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the latter's Note of October 7, 2010 containing a questionnaire from the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, has the honour to transmit the attached response received from the concerned authorities of the Government of Nepal.

The Mission has further the honour to state that the answers to a few of the questions communicated by the Independent Expert are yet to be received from the Capital and will be duly transmitted once they are received.

The Permanent Mission of Nepal in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

  
 PERMANENT MISSION OF NEPAL  
 TO THE UNITED NATIONS  
 Geneva, December 16, 2010  
 GENEVA

The Office of the United Nations High Commissioner for Human Rights, Geneva  
 Kind Attention: *The Independent Expert in the field of cultural rights*

OHCHR REGISTRY

17 DEC. 2010

Recipients :.....SPD.....  
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## RESPONSE TO THE QUESTIONNAIRE ON ACCESS TO CULTURAL HERITAGE

### I. The recognition of cultural heritage

1. Please elaborate on the classification of the types of cultural heritage in place, or under consideration in your country (or the reasons for which such classification does not exist) including:
  - a. The categories for which such classification ( e.g tangible, intangible, natural) if available, please append a list of key cultural heritage assets of your country, other than those included in the UNESCO's World Heritage list

#### The existing Categories are:

- *Cultural Heritage:*

#### I. Tangible Cultural Heritage

#### II. Intangible Heritage

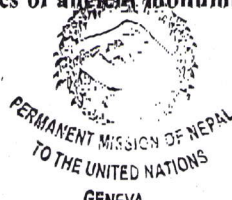
- *Natural Heritage*

- b. The procedure(s) for identifying endangered cultural heritage:  
**The endangered cultural heritage has been identified on the process of inventorying the monuments all over Nepal.**
- c. The purpose of classification ( e.g. protection , financial and / or commercial use regulations , tax, incentives, state property regime):  
**The purpose of classification of heritage is to preserve or protect them.**
- d. The procedure(s) to nominate and declare cultural heritage:  
**There are some criteria formulated by the Ancient Monument Surveying and Classification Committee for the classification of monuments which are already inventoried.**  
**Under the article No 3 of Ancient Monument Preservation Act 1956, the government can declare any important monument or the group of monuments as a Protected Monument Zone.**
- e. The stakeholders involved in the process of identification and classification:  
**The Department of Archaeology (which is the legal authority to do such things regarding the cultural properties) and Ancient Monument Surveying and Classification Committee (which is formulated under the national legislation) are the main stakeholders.**
- f. If applicable, the mechanisms to ensure stakeholders' participation:  
**Such mechanism is on the process of formulation.**

2. Please elaborate on existing legal definition(s) for the different types of cultural heritage in your country, or whether your country is considering the formulation of such legal definitions, and if not, please explain.

**The national legislation regarding cultural heritage, Ancient Monument Preservation Act 1956, has defined it as in the following:**

**"Ancient Monument" means temple, monument, house, abbey, cupola, monastery, stupa, bihar etc which have their importance above one hundred year from the point of view of history; arts, science, architectonics or art of masonry; the site of the monuments as well as the human settlement or place and remnant of ancient human settlement, relics of ancient monument, cave etc having specific value from the**



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national or international point of view irrespective of the fact that such settlements or places are adjoining with each other or are separate in the same area (Article 2(A))

**“Archaeological Object”** means the object made and used by human being in pre-historical period or handwritten genealogy, handwritten manuscript, golden inscription, copper inscription, petrography, wooden inscription, bhojapatra (document written on the bark of brick tree), tadapatra (document written on the leaf or bark of palmyra tree), paper, coin, house where historical event has occurred or where historically special personality has resided and things such as stone, wood, soil, ivory, bone, glass, cloth, paper or metal used by such person or some important portion of the house in which attractively scribed things are used, scribed or inscribed idol, temple of god or goddess, Buddhist cenotaph, statue, thankas, things used in royal palace, replica of animal, birds and any movable or immovable objects, which depict the history of any country, and objects as prescribed by the Government by a notification in the Nepal gazette from time to time (Article 2 (B))

Both the ancient monuments and archaeological objects are considered as cultural heritage by our legislation.

II. The legal and policy framework for the protection of culture heritage:

3. Please specify the legal instruments that your country has ratified on cultural heritage, the measures undertaken to implement them and any measures adopted, or under consideration to ensure access to cultural heritage in line with the International Bill of human rights and with the UNESCO Declaration on Cultural Diversity

Nepal has ratified and adopted the following conversions/ declarations for the protection of heritage:

- 1) Convention Concerning the Protection of World Cultural and Natural Heritage, 16 Nov 1972
- 2) Convention for the Safeguarding of the Intangible Cultural Heritage 2003.

4. Please give details of any existing measures (i.e. legislation, policies, plans, and /or programmes) that

a. Provide general or specific protection for various types of cultural heritage, including

I. Within the land management, zoning or planning acts; property and environment laws;

II. Within laws, policies, plans and / or programmes intended to protect specific groups or populations (e.g. those relating to discrimination against women, religious, ethnic, linguistic or cultural minorities, indigenous peoples, people of African descent, persons with disabilities, tribal peoples, peasants and others);

III. Within laws, policies and / or programmes related to tourism and the entertainment industry.

The existing legislations for the protection of various types of cultural heritage are as follows:

- 1) Ancient Monument Preservation Act, 1956
- 2) Ancient Monument Preservation Rules 1991
- 3) Town Development Act 1988
- 4) Local Self-Governance Act 1999
- 5) Guthi Corporation Act 1977
- 6) Lumbini development Trust Act 1985
- 7) Pashupati Area Development Trust Act 1987
- 8) Bylaws for the Conservation and Construction work with in the Protected Monument Zones 2007
- 9) Ancient Monument Preservation Procedure, 2007
- 10) Nepal Tourism Board Act, 1997



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- b. Ensure important data on cultural heritage is recorded (please explain the purpose of such recording and whose responsibility this is at the local, sub regional and national levels)

All of the monuments and important cultural heritage are documented by the Department of Archaeology (DoA) as a key responsible government agency in this regards. DoA is on the process for classification of all monuments that can be helpful to handover responsibilities to the local authorities and regional agencies for the monuments of their importance.

- e. safeguard vernacular, indigenous and / or minority group languages.

Ministry of Federal Affairs, Constituent Assembly, Parliamentary Affairs and Culture and other academic bodies such as Nepal Academy, Nepal Academy of Fine Arts, Nepal Academy of Music and Dance, Culture Corporation, Universities and non-governmental organisations such as Nepal Federation of Indigenous Nationalities are working in close cooperation for safeguarding vernacular, indigenous and minority group languages. Cooperation of the Social and Linguistic Departments of foreign universities is also significant.

### III. Access to cultural Heritage

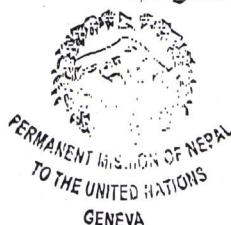
5. Please explain any legislation, policies and or special programmes in place or under consideration in your country to ensure access to culture heritage:

- a. There are no legal provisions that can limit access of any person to the culture heritage site or heritage objects. Government will take such act as "social criminal offence" and duly prosecute the offender.
- b. Some of the places can be accessed by only the religious or ethnic or caste groups due to age old traditions. Except these rare cases, every person has right to access any public place of historic, cultural or architectural importance or of natural beauty.
- c. School curriculum includes the study of cultural and natural heritages of all religions, caste and ethnic groups. These are intended to teach young students about the rich cultural diversity, value of pluralistic society as well as promoting mutual respect and harmony among them.
- d. Adopted children, persons living in foster care or institutions are free to practice the choice of their religion, custom and practises. Institutions established by religious groups practice their own religion. Persons in detention can practise their own religion within the regulation of the detention centre.
- e. Technological invention has helped in communicating the rules and laws and promoting good practices in the protection, use and conservation of heritage. It has specially helped in protecting and securing cultural heritages by finding and prosecuting the cases of illicit trade of heritage objects. Government intends to use technology in developing early warning systems, monitoring systems, recording and maintenance.

6. Please explain any legislation, policies and or special programmes in place or under consideration in your country to ensure access to cultural heritage:

Unless the concerned heritage is the property of the individuals and there is continued tradition to prevent others to access the heritage, nobody is prevented from accessing cultural heritage and use or benefit or enjoy it equally. The existence of independent judiciary system and general legal procedure ensures the right of the person or groups to access cultural heritage without discrimination on any basis such as a person is of certain sex, or ethnic group or caste or speaks a certain language or believes in a certain religion.

7. Please indicate who your country cooperates with and how, in implementing programmes on access to cultural heritage at the local, sub national and national levels, regional and international levels:



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National Human Rights Commission, National Dalit Commission (NDC), other Human Right Institutions and various NGOs at national level and UNESCO and other relevant UN Organisations at the international level are major partners in preservation, conservation, use and access of heritage properties. Partnership with the civil society and local media is also of significant importance in this regard.

#### IV. The Way Forward.

8. Has your country undertaken any assessment of the implementation of laws, policies, plans and / or programmes that addresses access to and protection of cultural heritage? If yes, does your country have examples of good practices and lessons learnt? Please explain

Prevention and punishment against discrimination based on sex or ethnic group or caste or speaking certain language or believing in certain religion includes the issue of access to and protection of cultural heritage. Separate law is enacted for this purpose.

9. Are there new or emerging issues related to cultural heritage identification classification, protection & access that need to be addressed at the national regional and international levels?

Provisions included by the Ancient Monument Preservation Act and Rules are perceived to be insufficient to include the intangible cultural heritage. Definitions of monument and cultural objects are not sufficient to include the heritage of ethnic groups and minorities. Government is, therefore, in process of preparing comprehensive Culture Policy to address such issues. We are in the process of drafting New Constitution through Constituent Assembly. These issues including the unhindered access of all in the cultural and natural heritage is in the agenda of concerned Constitution Drafting Committee.

10. In your country's view, what concrete measures should be adopted and implemented to ensure access to cultural heritage including through the use of new technologies at the regional and international levels?

Sharing of Information with the INTERPOL and other partner organisations about the illicit trade of heritage objects was proved very effective. Sharing of experience and best practices with the help of the new technology and sharing of technology itself are important for us as we need to work more in research and development of technology in all fields including heritage conservation.

