



General Assembly

Distr.: General
30 September 2010

Original: English

Human Rights Council

Working Group on the Universal Periodic Review

Tenth Session

Geneva, 24 January-4 February 2011

Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1

Nepal*

The present report is a summary of 20 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to United Nations translation services.

I. Background and framework

A. Scope of international obligations

1. A joint submission by three Nepali coalitions of civil society organizations (NGO Coalitions) recommended that Nepal ratify, inter alia, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Refugees and the Convention against Transnational Organized Crime and its Protocols, the Rome Statute of the International Criminal Court, the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention against torture and other cruel, inhumane or degrading treatment or punishment, the Additional Protocols to the Geneva Conventions, and that it accept the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture.² A number of organisations called on Nepal to ratify the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.³

2. Education International (EI) further called for the ratification of the International Labour Organisation Convention No. 87 and adoption of policy measures to respect the right of workers' organisations to organize their activities, to hold meetings and to bargain collectively.⁴ Save the Children Nepal (SCN) recommended that the Government ratify immediately, inter alia, the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, the Convention against Discrimination in Education and the Convention on Technical and Vocational Education.⁵ The Unrepresented Nations and Peoples Organisation (UNPO) urged Nepal to sign and adhere to the 1967 United Nations Protocol on Refugees.⁶

B. Constitutional and legislative framework

3. The NGO Coalitions noted that the Interim Constitution contained a long list of human rights, but that in the absence of the right to an effective remedy, these rights had yet to be realized. A number of national laws directly contradicted the treaties to which Nepal is party. It recommended incorporating international legal obligations into Nepali law through the adoption of a Human Rights Act.⁷ The Asian Legal Resource Centre and Advocacy Forum (ALRC_AF) made a similar recommendation.⁸

4. A joint submission by three national human rights institutions (National Institutions) noted that in recent years the Government, Parliament and Judiciary appeared active in internalizing the provisions of international human rights instruments, and that the higher judiciary had played an active role toward eliminating discrimination.⁹ Christian Solidarity Worldwide (CSW) urged Nepal to ensure that the provisions of international treaties ratified by Nepal were fully incorporated into its new constitution.¹⁰

5. The NGO Coalitions urged measures to ensure that war crimes, crimes against humanity, genocide as well as disappearances, torture, extrajudicial killings and violence against women, and recruitment of children were crimes under domestic law.¹¹ It recommended that the Government ensure that Nepal's new Constitution is adopted through full consultation with its people.¹²

C. Institutional and human rights infrastructure

6. The National Institutions noted that many court decisions and recommendations of the National Human Rights Commission (NHRC) had not been implemented.¹³ They expressed concern at some provisions in the NHRC Bill, including on staff management and financial autonomy, and at the removal of the phrase ‘independence and autonomy’ of the NHRC.¹⁴

7. The NGO Coalitions recommended taking measures to ensure the independence and autonomy of all national human rights institutions, strengthening their capacity and performance by allocating adequate resources and continuing to consider implementing recommendations made by them.¹⁵ The National Institutions recommended that the National Women Commission and the National Dalit Commission be given equal legal status, in compliance with the Paris Principles.¹⁶

8. ECPAT International (ECPAT) called for the establishment of an independent, autonomous, constitutional institution to monitor children’s rights, independently investigate and act on complaints.¹⁷ SCN made a similar call, suggesting alternatively a special commissioner for child rights within the NHRC.¹⁸ It also called for mechanisms at village and municipality levels to safeguard and fulfill child rights.¹⁹ The National Institutions noted that a separate Government Ministry had been formed to deal with issues relating to children. Child Welfare Committees had been formed in all districts with the responsibility of coordination on issues relating to children.²⁰

D. Policy measures

9. SCN recommended that the Government continue consultations with civil society on policy reform and expedite endorsement of the Child Rights Act, Education Regulation, Child Protection Policy, minimum standards for child care homes and child policy.²¹

II. Promotion and protection of human rights on the ground

A. Cooperation with human rights mechanisms

10. ALRC_AF urged the Government to implement the recommendations of special procedures, treaty bodies and the outcomes of the UPR without fail or undue delay and implement all relevant findings of the 1990 Mallick Commission and the 2006 Rayamajhi Commission.²²

11. Nepal Dialogforum für Frieden und Menschenrechte (Dialogforum) called on the Government to support OHCHR in Nepal as an important body for human rights monitoring.²³ The International Commission of Jurists (ICJ) added that it was essential for Nepal to cooperate with international human rights mechanisms, including the OHCHR’s field office, Special Procedures and the treaty bodies.²⁴ ICJ called on Nepal to invite the relevant thematic mandates of the Human Rights Council to visit, including the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on extrajudicial, summary or arbitrary execution.²⁵

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

1. Equality and non-discrimination

12. The NGO Coalitions cited widespread discrimination against Dalits, women, Madhesi, indigenous peoples, persons with disabilities, Muslims and other religious minorities, sexual and gender minorities and other marginalized groups. These groups continued to be severely underrepresented in most of the public sector, including decision-making bodies, the civil service, the judiciary, law enforcement agencies, and local authorities.²⁶ SCN expressed deep concern at widespread discriminatory practices, more prevalent in semi-urban and rural areas, against girl children, Dalit children, children with disabilities, children with HIV and AIDS.²⁷

13. According to the NGO Coalitions, the Government had failed to take measures to eliminate caste-based discrimination and untouchability and made little effort to implement relevant recommendations of UN mechanisms, particularly regarding proportional representation in the Government, legislative bodies and the judiciary.²⁸ The National Institutions noted that Dalits constituted less than one per cent of the civil service, police and other public sector agencies,²⁹ were frequently landless and in some instances worked as bonded labourers.³⁰ Dialogforum also cited discriminatory access to traditional resources such as land, forests, water and fishing areas.³¹ The NGO Coalitions called for a separate law to eliminate caste-based discrimination and for policies, laws and programs to provide adequate areas of land to landless Dalit families.³²

14. The NGO Coalitions cited 62 existing laws with discriminatory provisions against women and another 49 containing degrading and prejudicial provisions.³³ The National Institutions noted that in general women fall among the poorer section of population.³⁴ It also stated that the Government had not met its commitment regarding the abolition of harmful traditional practices, such as witchcraft accusations, dowry deaths and child marriage.³⁵ It called for measures to discourage cultural practices violating women's rights, and to eliminate dowry.³⁶ The NGO Coalitions noted that children born to Nepali women married to a foreigner were denied citizenship, as were foreign women married to Nepali men.³⁷

15. The NGO Coalitions noted de facto discrimination against persons with disabilities in the fields of education, employment, health, housing and other areas. It called for urgent policies to provide reasonable accommodation for employment, transportation, sports and health services for persons with disabilities, and stricter measures to combat discrimination.³⁸

16. The Blue Diamond Society (BDS) noted that the Government had introduced a budget to support LGBTI programs, but indicated that this was very small.³⁹

2. Right to life, liberty and security of the person

17. ALRC_AF stated that security remained fragile in Nepal, notably in the Tarai (plains) region. In July 2009, the Government had launched the Special Security Programme to curb the violent, criminal activities of such groups, but there were allegations of torture and extra-judicial killings related to that Programme.⁴⁰ ALRC_AF also noted that between February and October 2009, it had recorded 12 cases of alleged extra-judicial executions in Tarai.⁴¹ The National Institutions drew attention to frequent killings by different armed criminal groups, especially in southern Madhesh and the eastern hills, as well as recorded cases of killing by security personnel, citing the killing of three Dalit women, including a 12 year girl, by a Nepal Army patrol in Bardia National Park in March

2010. The National Institutions called on the Government to prosecute the perpetrators and provide adequate reparation for families of the victims.⁴²

18. The NGO Coalitions stated that torture was systematically practised by the police during criminal investigations and that there was no effective redress. It called for legislation in this regard and for the impartial investigation of complaints.⁴³ SCN informed that children deprived of liberty were still more frequently tortured than adults in Nepal.⁴⁴ ALRC_AF cited information according to which close to 20 percent of detainees claimed to have been tortured.⁴⁵

19. BDS noted that many lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons still faced abuses, especially in smaller towns, and that security forces had not been proactive in protecting them. It stated that an increasing number of lesbians and gays were being harassed and charged on false charges by the army and police. BDS indicated that Nepal had made tremendous progress on sexual and gender minority rights, especially after a Supreme Court decision three years ago ordering Nepal to issue citizenship IDs to third genders according to their gender identity and to amend all discriminatory laws and policies against LGBT. However, sexual and gender minorities still faced marginalization and discrimination and the Supreme Court decision had not been implemented.⁴⁶

20. The NGO Coalitions noted that access to lawyers by detainees was very limited. It called on the Government to comply with its international obligations on conditions of detention and take measures to ensure that persons below 18 were deprived of liberty only as a last resort and separated from adults in detention.⁴⁷

21. The NGO Coalitions noted that domestic violence, trafficking, rape and sexual harassment remained largely unaddressed, mainly due to the lack of a comprehensive legal framework and ineffective enforcement of existing laws. It called for measures to ensure that violence against women and girls was prevented and allegations effectively investigated and prosecuted.⁴⁸

22. ALRC_AF noted that despite domestic violence being punishable by law, violence against women, notably from lower castes, persisted.⁴⁹

23. The International Catholic Child Bureau (BICE) noted that sexual abuse and rape frequently affected girls below the age of 18 and often occurred at home, in educational institutions or at the work place. Poverty and lack of education as well as lacking implementation, coordination and consistency among law enforcing agencies were among the root causes.⁵⁰

24. SCN further noted that complaints about rape cases could not be filed after a period of 35 days.⁵¹ It called for immediate measures, including legislation, to protect children from sexual abuse, to establish child-friendly administrative and judicial procedures for child victims and witnesses of crimes, and to ban corporal punishment.⁵²

25. The NGO Coalitions cited estimates that over 20,000 children were working as prostitutes in Kathmandu Valley.⁵³ ECPAT noted that although there were specific policies and laws tailored to protect children, the normative framework to protect children from sexual exploitation was not fully aligned with international legal standards. Child rights were undermined by political instability and a climate of impunity.⁵⁴ National policies and laws were focused on trafficking and not on preventing and combating other forms of sexual exploitation, such as child sex tourism and child pornography. ECPAT identified the lack of coordination among implementing agencies and the lack of committed financial resources as the main weaknesses.⁵⁵ It called for access to adequate care, recovery and reintegration services for child victims throughout the country.⁵⁶

26. SCN expressed grave concern at the high number of women and girls trafficked to a neighbouring country for commercial sex. It called on the Government to establish or

strengthen mechanisms to fight inter-country trafficking in persons, especially children, prosecute perpetrators, and provide protection, social rehabilitation and compensation for victims.⁵⁷

27. BICE noted that the most vulnerable children, including orphans, children belonging to marginalized groups, such as Dalits, refugee children, children in remote villages, internally displaced children and street children were also most exposed to trafficking.⁵⁸ Due to a lack of adequate protection for witnesses and victims, many children who were saved from the traffickers had been re-trafficked.⁵⁹ BICE called for effective mechanisms and policies to ensure safe migration of women for foreign employment.⁶⁰ Jubilee Campaign (JC) called for regulations to provide greater protection to trafficking victims,⁶¹ and for substantially increased law enforcement activity against trafficking of women and children.⁶²

28. BICE noted that although marriage was legally allowed from the age of 20, a third of all marriages involved girls below 16. Early pregnancy was often a threat to the health of young girls and their children.⁶³ The National Institutions also cited the practice of making offerings of a girl child in the name of gods or goddesses, and bonded labour of a girl child in payment of loans from landlords.⁶⁴ BICE called for comprehensive national research on child trafficking, violence and sexual abuse against children, and early marriage, and for strengthening of awareness-raising programs concerning social and cultural practices and beliefs which lead to discrimination, abuse, child marriage and violence against children. BICE also called for a national Child Protection Code.⁶⁵

29. The National Institutions noted that child labour was common in Nepal.⁶⁶ The NGO Coalitions noted that the number of children involved in the worst forms of child labour was increasing and that there was no Government monitoring or assistance.⁶⁷ According to BICE, children were trafficked for domestic work, forced begging, marriage, carpet weaving, sex trade and slavery.⁶⁸ SCN observed employment of children in hazardous sectors such as quarries, brick kilns, mining, road construction, transportation, restaurants and roadside hotels.⁶⁹ SCN also called for strict enforcement of the law prohibiting harmful practices that violate the rights of girls.⁷⁰ JC called on Nepal to protect children from hazardous living or working conditions.⁷¹

30. The National Institutions observed that some of the children who had been used as combatant or in other functions during the conflict were now spending their lives in the streets without work or development opportunities.⁷² The National Institutions also noted that children were frequently used in demonstrations and campaigning activities by political parties.⁷³

31. The Global Initiative to End All Corporal Punishment of Children noted that in Nepal corporal punishment was lawful in the home and there was no explicit prohibition of corporal punishment in schools. Corporal punishment was also lawful as a disciplinary measure in penal institutions and in alternative care settings.⁷⁴

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

32. The NGO Coalitions noted that after the decade-long armed conflict, victims of war crimes, crimes against humanity, extrajudicial killings, disappearances, kidnapping, torture, rape and sexual violence were still waiting for truth, justice and reparation. It added that there was no political will to bring perpetrators to justice.⁷⁵ ALRC_AF similarly expressed concern that past human rights violations by either side to the conflict, and those perpetrated since the end of conflict, had not been effectively investigated or prosecuted. It stated that the institutions of the rule of law, notably the police and prosecution, were failing to protect human rights, using the lack of political progress as a pretext.⁷⁶

33. The NGO Coalitions indicated that the police refused to investigate human rights violations, despite several court orders, and that neither the military nor the police or UCPN (Maoist party) agreed to surrender alleged perpetrators.⁷⁷ ALRC_AF cited the case of 15-year-old Maina Sunuwar, who was raped and tortured to death while in army custody in February 2004. In this case, the authorities had filed charges after sustained campaigning by human rights advocates and a Supreme Court ruling in September 2007 stating that the case should be dealt with in a civilian court. Despite the issuing of arrest warrants, the police had not arrested the suspects, and the Nepal Army had refused to hand over to the police one of the suspects, despite orders from the Prime Minister.⁷⁸

34. The ICJ noted that on 10 December 2009, Human Rights Day, family members of 30 victims of serious human rights violations had simultaneously demanded the filing of complaints in 28 police stations. The police had refused to do so, stating that they needed permission 'from above' to register such complaints.⁷⁹

35. The National Institutions noted the non-implementation of the recommendations of the high-level investigation commission of 2006, commonly referred to as Rayamajhi Commission. It also noted that most NHRC recommendations concerning prosecutions or departmental actions against human rights violators were not implemented. A significant number of court decisions on criminal matters were also not implemented. The government had withdrawn over a hundred criminal cases under court consideration in 2009, including cases of murder, rape and other serious criminal offences. This was believed to be due to nexus between crime and politics.⁸⁰

36. Amnesty International (AI) called on the Government to investigate all outstanding allegations of crimes involving violation of human rights and international humanitarian law committed by the army, the police or Maoist forces and, where there is sufficient evidence, to prosecute those responsible before competent, independent and impartial civilian court.⁸¹ AI also recommended re-assessing members of the Nepal Army currently participating in UN peace-keeping missions to ensure that they were not implicated in serious human rights violations, and reforming the vetting process to safeguard against future deployment of human rights violators.⁸²

37. CSW remarked that the judicial system in Nepal was ineffective, due to a combination of a weak government and corruption. It urged Nepal to promote the rule of law, overhaul the justice system and eliminate the use of torture.⁸³ The NGO Coalitions recommended securing the independence of the judiciary by taking urgent action to implement court orders.⁸⁴

38. The NGO Coalitions also recommended that law enforcement agencies, particularly the police, be strengthened with adequate resources and training as well as accountability mechanisms.⁸⁵ JC further called for reform and training of the security forces so that they would protect rather than harm individuals.⁸⁶

39. ALRC_AF called on Nepal to address the institutional weakness of the criminal justice system arising from political interference, corruption, a lack of resources and erosion resulting from the decade-long conflict. It noted that a weak policing system and a lack of effective accountability systems opened the door to corruption, discrimination and abuse of power.⁸⁷ All political parties had reportedly pressured the police to refrain from investigating cases in order to protect their members.⁸⁸ The National Institutions noted that corruption was widespread.⁸⁹

40. The National Institutions stated that delays in the delivery of justice had affected the right to a fair trial. Inadequate legal support services, including legal aid, and increased legal expenses had hindered access to justice. A number of judicial decisions relating to serious human rights violations had not been enforced.⁹⁰

41. Dialogforum called for the creation of inclusive local level complaint centers across Nepal to facilitate community reporting and access to legal aid for the poor and marginalized groups; and for training for officials, judges and lawyers in the application of human rights.⁹¹

42. EI added that the fate of many of those who had disappeared remained unknown. Between 50,000 and 70,000 people remained displaced due to the fear of Maoist reprisal on returning home.⁹² ALRC_AF noted that since the Comprehensive Peace Agreement and the establishment of an office of the OHCHR in Nepal, the number of new cases of disappearances had dropped dramatically. However, impunity continued for those responsible.⁹³

43. ALRC_AF noted shortcomings in the draft law on the disappearances commission, for example, including a six-month limitation for the filing of criminal complaints, and the lack of a reference to crimes against humanity and other international crimes.⁹⁴ AI called on the Government to expedite enactment of legislation on enforced disappearance and the Truth and Reconciliation Commission, incorporating recommended amendments to ensure they meet international standards of independence, transparency, and effectiveness. AI recommended the deletion of language providing for the possibility of amnesties, as truth and reconciliation procedures must not replace prosecution and punishment of those responsible for crimes involving human rights violation and full reparation to victims.⁹⁵

44. SCN called for establishment of a juvenile court and special units within the police, public prosecutor's office and judiciary to deal with children.⁹⁶

4. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

45. The European Centre for Law and Justice (ECLJ) stated that the Interim Constitution did not adequately protect religious freedom. The Interim Constitution, which established a secular state, forbade proselytizing or behaving "in a manner that may jeopardize the religion of another".⁹⁷ The Becket Fund for Religious Liberty (Becket Fund) noted that such restrictions threatened the philanthropic activity of many religious groups, and that the ban on conversion and proselytism was a violation of international law.⁹⁸ In the same vein, CSW noted that the Interim Constitution provides that "Every person shall have the right to profess, practise and preserve his or her own religion as handed down to him or her from ancient times", making the free exercise of religious beliefs contingent upon a person's descent, and excluding religious faiths which had not been present in Nepal since "ancient times."⁹⁹

46. ECLJ noted that the majority of Christians in Nepal were Dalits,¹⁰⁰ and that Hindu extremists tied to the Nepali Congress had expressed their desire to see Christians leave the country.¹⁰¹ ECLJ also cited incidents relating to the treatment of Christian refugees from a neighbouring country during burial ceremonies.¹⁰² CSW recommended that the right to own, maintain, protect and have access to sacred sites and burial grounds be included in the new constitution.¹⁰³ CSW added that in some remote areas, it was not uncommon for Christians to be accused of witchcraft and forced to leave their homes. It recommended that a statutory, multi-faith religious commission be established.¹⁰⁴ The NGO Coalitions also recommended establishing a Muslim Commission.¹⁰⁵

47. The NGO Coalitions noted that journalists faced serious problems, including intimidation, threats and physical harm, which encouraged self-censorship.¹⁰⁶ CSW¹⁰⁷ and EI¹⁰⁸ expressed similar concerns. Reporters Without Borders (RSF) expressed concern that the deteriorating state of press freedom was seriously jeopardising the process of democratisation. The authorities were failing in their duty to prevent, punish and redress the harm caused by attacks against journalists and news media.¹⁰⁹

48. Dialogforum referred to information indicating that there were 100 cases of physical attacks, threats and harassment against journalists in the first six months of 2009.¹¹⁰ Article 19 – International Centre Against Censorship (Article19) noted that in the Tarai region especially, journalists and media workers were afraid to operate freely or travel outside the district capitals.¹¹¹ RSF noted that in the south and east of the country, especially in the Tarai, armed groups terrorised journalists and had murdered the owner of an influential newspaper and radio station in March 2010.¹¹² Militants often intercepted press vehicles to destroy the newspapers they were carrying.¹¹³ Article 19 as well as a number of other organisations also cited the killing of a female journalist in January 2009, a few days after she had named a senior UCPN in a report on extortion.¹¹⁴

49. RSF noted that most of the press freedom violations were committed by non-State actors, although cases of police harassment and incidents of pressure exercised by Government officials still occurred.¹¹⁵ It called on the Government to ensure that attacks against journalists are properly investigated and end impunity.¹¹⁶ Article19 stated that very few perpetrators ever faced justice as political backers gave them protection.¹¹⁷ RSF called for political parties to publicly proclaim their support for the safety of the media and to adopt measures to put this support into practice.¹¹⁸

50. Article19 noted that under the Press and Publications Act 1991, journalists were obliged to obtain government registration, which resulted in a system open to abuse.¹¹⁹ Regulation of broadcasting was also controlled by the Ministry of Information and Communication, rather than by an independent body.¹²⁰

51. Article19 noted that the Right to Information Act had not been effectively implemented.¹²¹ The lack of freely available information had resulted in public bodies becoming more corrupt over the past three years.¹²² Article19 also observed that the Constitution and the Right to Information Act 2007 guaranteed the right to freedom of expression and freedom of information only to citizens of Nepal, contrary to international standards.¹²³

52. Article19 recommended that the new Constitution, laws and regulations adequately protect the right to freedom of expression in line with international standards.¹²⁴ The NGO Coalitions called on the Government to take immediate action to ensure full freedom of expression, association and peaceful assembly, and to take necessary measures to systematically investigate intimidation, threats, physical harm and aggression against journalists.¹²⁵

53. The NGO Coalitions stated that human rights defenders continued to be targeted. Journalists and teachers, lawyers and women's rights defenders had been the most vulnerable. Human rights defenders who challenge impunity by taking up individual cases faced significant threats and intimidation from both the police and members of the community. It called for measures to fully ensure that assaults, attacks, threats, and intimidation against human rights defenders were prevented, and properly investigated and prosecuted.¹²⁶ Similarly, EI called for ensuring a safe environment for human rights defenders and trade unionists. It also recommended that civil society organizations be involved in the follow up to the UPR process.¹²⁷

54. Article19 noted that the needs of minority and vulnerable groups were often not addressed due to a lack of consultation and an absence of representation within decision-making bodies.¹²⁸ It recommended that the Government continue to mandate representation of minority and vulnerable groups in such bodies to ensure that their voices are heard.¹²⁹ UNPO called for integration, inclusion and political representation of long-term refugees and displaced people.¹³⁰ The NGO Coalitions noted that the participation of persons with disabilities in the constitution-making process and in the public sector had yet to be realized.¹³¹

55. The National Institutions noted that despite the achievement of 32 percent female representation in the Constituent Assembly, the participation of women in the executive, legislature and judiciary and in political parties was dismal.¹³²

5. Right to work and to just and favourable conditions of work

56. EI noted that although the rights to organize and collectively bargain existed in law, the exercise of these rights was limited in practice. Despite the constitutional rights of public servants to form unions, prevailing laws barred teacher organizations from forming unions.¹³³

57. Dialogforum called on the Government to enforce labour rights, such as minimum wage legislation, with special attention to the disparity between men and women as well as traditionally disadvantaged groups.¹³⁴

6. Right to social security and to an adequate standard of living

58. National Institutions noted that poverty was a serious challenge and that access to food, healthcare, education, information, housing and employment was limited, particularly for people living in the remote hills and Madheshi communities.¹³⁵ The NGO Coalitions remarked that the lack of just, fair and reasonable food distribution had contributed to food shortage as a major rights violation.¹³⁶ FIAN observed that, while Nepal had officially committed to ensuring the Right to Food, including through certain provisions in the Constitution as well as ratification of all major international instruments recognizing the Right to Food, in practice the effective realization of the right to adequate food was lacking.¹³⁷

59. Dialogforum noted that the most affected were women and children, indigenous people, Dalits, Muslims, former bonded labourers, and people living with HIV/AIDS.¹³⁸

60. Dialogforum cited positive initiatives by the Government, such as the inclusion provisions on food sovereignty and land reform in the Interim Constitution, but stated that Government strategies to address hunger were not comprehensive.¹³⁹ Agricultural policy focused on production, but not accessibility and distribution. Food distribution often did not reach the most vulnerable and lacked transparency and monitoring.¹⁴⁰

61. The NGO Coalitions called for a strong development framework with affirmative policies for food security and the right to food.¹⁴¹ Dialogforum called for a national policy and legislative framework for the eradication of hunger.¹⁴²

62. The NGO Coalitions called for a tenancy law to protect the rights of landless people, ensuring adequate budget allocation to provide rehabilitation to landless people, and ensuring genuine land reform policy and programs.¹⁴³ Dialogforum recommended formulating an integrated land policy, accelerating the pace of land reform and identifying and restoring traditional land rights of indigenous peoples.¹⁴⁴

63. The National Institutions noted that frequent strikes, blockades to roads and transport, and forceful closures of schools, hospitals, businesses and other enterprises by various political parties and armed groups had resulted in restrictions on the enjoyment of rights.¹⁴⁵

64. Regarding the right to health, SCN noted that although basic health care was free, nearly 40 percent of the population lacked access to primary health care, and infant and under-five mortality was high.¹⁴⁶ The ICJ noted recent health tragedies such as the diarrhoea epidemic of 2009 represented Nepal's failure to discharge its obligations in respect to the rights to water, food and health.¹⁴⁷ It called for steps to ensure that worst affected areas were targeted to receive public health information, sanitation supports and water purification supplies,¹⁴⁸ and sufficient staff.¹⁴⁹ The National Institutions noted that the

NHRC had widely monitored the diarrhoea epidemic of 2009, adding that the victims had come from economically poorer sections of the population, mainly Dalits. The NHRC investigation revealed that supply of contaminated and low quality food grains had been among the major causes of this unfortunate loss.¹⁵⁰

65. The National Institutions noted that access to health care services for poor people was limited, and that it was also relatively limited for women. Health services had become unaffordable for common people. The National Institutions also drew attention to the very high maternal mortality rate, which was attributed, inter alia, to discrimination in nurturing, inadequate nutritional intake, and poor sanitation and health facilities.¹⁵¹

66. The NGO Coalitions recommended proportional distribution of resources, with a comprehensive plan to respond to diarrhea, cholera and epidemics and recognition of the special needs of women, children, Dalits, disabled persons, LGBTI persons and other marginalized groups.¹⁵²

67. BDS/SRI noted that sexual and gender minorities, which were high-risk groups for contracting HIV/AIDS and other sexually transmitted diseases, were often not welcome in hospitals or health centers.¹⁵³ SCN recommended that the Government ensure that HIV and AIDS infected mothers were not denied care of their non-infected children and that mothers were provided with additional help to ensure non-transmission.¹⁵⁴

68. EI recommended continued efforts to achieve the Millennium Development Goals within the stipulated timeframe and further strengthening of efforts to tackle poverty and enhance access of all persons, especially those living in rural areas, to basic social services such as health and education.¹⁵⁵

7. Right to education

69. The National Institutions noted that literacy rates differed between men and women and that it was particularly low among disadvantaged communities, including Dalits and the rural population.¹⁵⁶ The National Institutions stated that patriarchal attitudes undermining the equality of men and women and the lack of appropriate policy measures and programs, as well as social prejudices against female education, restrictions on mobility and early marriage resulted in lower literacy for females.¹⁵⁷

70. The ICJ also noted that girls of school age frequently stayed away from schools which had inadequate sanitation facilities.¹⁵⁸ It called on the Government to take responsibility, with the NHRC, to ensure that schools had adequate sanitary infrastructure for girls and that programmes aimed at protecting the rights of girls were introduced in the curriculum.¹⁵⁹

71. EI noted that while there had been some progress in primary-level enrolment, there were often over more than a hundred students per teacher.¹⁶⁰ In 2008, nearly half the children had repeated or dropped out in Grade 1. Only one out of 20 students entering the State education system completed education. EI added that decentralisation of education had led to the concentration of resources in towns and cities.¹⁶¹ The National Institutions noted that the standard of education is not encouraging, due to a shortage of qualified teachers, educational materials, school infrastructure and ineffective management in Government schools.¹⁶²

72. The NGO Coalitions noted that the free education scheme had failed to attract the common people as there was no easy access to schools in rural areas and as the scheme only covered school fees, but not other costs, such as books, stationary, uniforms and food. It called for further measures to eliminate the prevailing disparity between girls and boys, and between urban and rural area.¹⁶³ The NGO Coalitions recommended ensuring

accessible and free education, while preventing discrimination in schools against children with disabilities, children with HIV/AIDS and Dalit children.¹⁶⁴

8. Minorities and indigenous peoples

73. The NGO Coalitions noted that the Government officially recognized 59 groups of indigenous peoples, while many others were left out of the official schedule. As a result of discriminatory laws and practices, indigenous peoples were historically deprived of land and natural resources. Development projects, leasehold and community forest, national parks, and hydro-projects had displaced many indigenous peoples from their ancestral lands and territories. The Coalitions called for tangible measures to recognize and protect the rights of indigenous peoples to own, control, develop and use their ancestral lands, territories and natural resources. Free Prior Informed Consent should be obtained from indigenous peoples prior to executing any development project or undertaking any other activity which materially affects their lives.¹⁶⁵

74. The NGO Coalitions also called for urgent implementation of ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, and for changing existing laws and policies to give due recognition to indigenous peoples' traditions, customs and land tenure systems. The Government should consider with urgency implementing the recommendations of the Special Rapporteur and the concluding observations of the Committee on the Elimination of Racial Discrimination, and take steps to ensure the participation of indigenous peoples in the constitution-making process.¹⁶⁶ The NGO Coalitions also called on the Government to ensure the rights of indigenous peoples to maintain and develop their language, distinct cultures and religions.¹⁶⁷

75. The NGO Coalitions stated that, owing to differences in literacy rates, land ownership status, occupation, language, and educational status, indigenous women experienced a different level of social exclusion compared to non-indigenous women. It called on the Government to ensure proportional participation of indigenous women¹⁶⁸ at all decision-making levels.

9. Migrants, refugees and asylum-seekers

76. UNPO noted that there were 120,000 registered refugees in Nepal.¹⁶⁹ UNPO recommended alterations to the draft constitution to ensure protection of refugees, particularly with regards to their legal rights and ability to access basic standards of living within Nepal.¹⁷⁰

77. The International Campaign for Tibet (ICT) expressed concern at the failure of authorities to issue refugee identity certificates to all refugees who met the criteria set by the Government. Thousands of eligible refugees had been waiting for years for processing of the certificates to resume. ICT called for durable solutions for long-staying refugees.¹⁷¹ ICT expressed concern at the practice of pre-emptive detentions and the wide-scale use of security forces used to intimidate Tibetans residing in Nepal and called on Nepali officials to ensure the fair treatment of Tibetans under Nepali law.¹⁷²

78. ICT urged Nepal to uphold the principle of non-refoulement by taking adequate policy and administrative steps, including written policy instruction to immigration officials and border police, and training of Nepali police, security forces and immigration authorities about proper procedures and international human rights norms.¹⁷³

79. SCN recommended ensuring that children of refugees and asylum-seekers born in Nepal were issued with birth certificates,¹⁷⁴ and that children of internally displaced persons, refugees, asylum-seekers and their families enjoyed their right to health, education and birth registration, without prejudice and discrimination.¹⁷⁵

10. Internally displaced persons

80. Recalling that hundreds of thousands of people had been displaced during the armed conflict, the National Institutions noted that a number of them were still unable to return due to security reasons. Victims of displacement were not provided with adequate rehabilitation related support such as housing, food, healthcare and schooling of children. The majority of displaced persons did not receive compensation for damages to their properties.¹⁷⁶ The National Institutions stated that the ongoing civil disturbance in the Terai and the eastern hills in particular had also created internal displacement.¹⁷⁷

11. Right to development

81. Dialogforum called on the Government to implement the right to development.¹⁷⁸

III. Achievements, best practices, challenges and constraints

82. ECPAT noted that cooperation between the Government and NGOs was well established and instrumental with regard to child protection. It cited an innovative Youth Participation Programme led by child survivors of sexual exploitation that had opened channels for Government institutions and bodies to engage substantively and hear the observations and recommendations of affected children on action needed to combat sexual crimes against them. It called for such initiatives to be extended with Government support.¹⁷⁹

IV. Key national priorities, initiatives and commitments

N/A

V. Capacity-building and technical assistance

83. The National Institutions noted that international cooperation had significantly contributed to the protection and promotion of human rights in Nepal. OHCHR collaboration had helped in strengthening the human rights system, and cooperation from the United Nations system and the United Nations Development Program in particular had contributed to strengthening the capacity of the NHRC. The support of donor governments and international NGOs had also played an important role.¹⁸⁰ Technical support from the international community to strengthen human rights protection measures would be an asset. Support in developing indicators for various aspects of human rights would be necessary in order to use human rights monitoring tools. Training would help strengthen the capacity of human rights defenders.¹⁸¹

84. UNPO noted that refugees were not included into poverty reduction strategies and development projects by donors. The Government of Nepal should be encouraged to work within UNHCR strategies to develop capabilities to provide refugees within their territories with basic amenities, social services, aid and education, as durable solutions to long term refugee situations.¹⁸²

Notes

- ¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status)

Civil society

AI	Amnesty International*, London, UK
ALRC_AF	The Asian Legal Resource Centre*, Hong Kong, China and the Advocacy Forum, Nepal
Article19	Article 19 – International Centre Against Censorship*, London, UK
BDS	Blue Diamond Society, Kathmandu, Nepal
Becket Fund	The Becket Fund for Religious Liberty*, Washington, USA
BICE	The International Catholic Child Bureau*, Paris, France
CSW	Christian Solidarity Worldwide, Surrey, UK
Dialogforum	Joint Submission by member organizations of Nepal Dialogforum für Frieden und Menschenrechte (Dialogue-Forum for the Promotion of Peace and Human Rights in Nepal), Germany
ECLJ	European Centre for Law and Justice*, Strasbourg, France
ECPAT	ECPAT International*, Bangkok, Thailand
EI	Education International*, Brussels, Belgium
FIAN	Food-first Information and Action Network*
GIEACPC	Global Initiative to End All Corporal Punishment of Children
ICJ	International Commission of Jurists*, Geneva, Switzerland
ICT	International Campaign for Tibet, Washington, USA
JC	Jubilee Campaign*, Fairfax, USA
NGO Coalitions	Joint Submission by Nepal NGO Coalition for UPR (NNC-UPR), National Women Coalition, Human Rights Treaty Monitoring Coordination Committee (HRTMCC) and Durban Review Conference Follow-up Committee Nepal, representing together 238 civil society organizations
RSF	Reporters Without Borders*, Paris, France
SCN	Save the Children Nepal, part of International Save the Children Alliance*, London, UK
UNPO	The Unrepresented Nations and Peoples Organization, The Hague, The Netherlands

National human rights institution

National Institutions	Joint Submission by the National Human Rights Commission** (NHRC), the National Women Commission (NWC) and the National Dalit Commission (NDC)
-----------------------	--

² NGO Coalitions, para II. A., See also SCN, para I.1, and NIs, para 72.

³ See e.g. BICE, p. 2.

⁴ EI, recommendation 2.

⁵ SCN, para. I.1.

⁶ UNPO, para. D. “On Constitutional and Legal Reform” No 4.

⁷ NGO Coalitions, para. II. B.

⁸ ALRC_AF, para 5.

⁹ National Institutions, para 8.

¹⁰ CSW, para 6.

¹¹ NGO Coalitions, para. II. B.

¹² NGO Coalitions, para. II. B.

¹³ National Institutions, para. 73.

¹⁴ National Institutions, para. 74.

- 15 NGO Coalitions, para II. B., See also UNPO, para. D. “On Constitutional and Legal Reform” No 3.
- 16 National Institutions, para. 75.
- 17 ECPAT, para. 6.
- 18 SCN, para. I.2.
- 19 SCN, para. I.3
- 20 National Institutions, para. 36.
- 21 SCN, para. I.4.
- 22 ALRC_AF, para. 6.
- 23 Dialogforum, para. 6.
- 24 ICJ p. 1.
- 25 ICJ p. 4.
- 26 NGO Coalitions, para. II. C., See also Dialogforum, para. 4 and AI, para. C., p. 7, “Discrimination”.
- 27 SCN, para. II.1.
- 28 NGO Coalitions, para. III. 1. A., See also JC “Religious freedom” para. 5-6.
- 29 National Institutions, para. 50.
- 30 National Institutions, para. 51.
- 31 Dialogforum, para. 2.
- 32 NGO Coalitions, para. III. 1. A., See also JC “Religious freedom” para. 5-6.
- 33 NGO Coalitions, para. III. 7. “Discrimination and unequal treatment”, See also National Institutions para. 71.
- 34 National Institutions, para. 44.
- 35 National Institutions, para. 46, See also ECLJ, p4 and ICJ, p. 7.
- 36 NGO Coalitions, para. III. 7. “Violence against women and domestic violence”, See also AI, para. C., p. 6, “Violence. against women and girls”, See also EI, para. 14.
- 37 NGO Coalitions, para. III. 7. “Discrimination and unequal treatment”, See also National Institutions, para. 71 and EI para. 12.
- 38 NGO Coalitions, para. III. 5.
- 39 BDS, page 1.
- 40 ALRC_AF, para. 12, See also Dialogforum, para. 4.
- 41 ALRC_AF, para. 17, See also AI, para. C., p. 5, “Extrajudicial and summary executions”.
- 42 National Institutions, para. 13, 14.
- 43 NGO Coalitions, para. III. 2. “Systematic practice of torture”, See also EI para. 23-26, ALRC_AF, para. 14, AI, para. C., p. 5, “Torture and other ill-treatment” and National Institutions para. 15.
- 44 SCN, para. II.8.
- 45 ALRC_AF, para. 16.
- 46 BDS, page 1.
- 47 NGO Coalitions, para. III. 2. “Rights of Persons deprived with their Liberty”,
- 48 NGO Coalitions, para. III. 7. “Violence against women and domestic violence”, See also AI, para. C., p. 6, “Violence against women and girls”, See also EI, para. 14.
- 49 ALRC_AF, para. 20.
- 50 BICE, p. 1.
- 51 See also NGO Coalitions, para. III. 2., p. 4-5.
- 52 SCN, para. II.4.
- 53 NGO Coalitions, para. III. 6.
- 54 ECPAT, para. 1.
- 55 ECPAT, para. 3.1.
- 56 ECPAT, para. 6.
- 57 SCN, para. II.5, See also NGO Coalitions, JC and BICE p. 4.
- 58 BICE, p. 1.
- 59 BICE, p. 2.
- 60 BICE, p4.
- 61 JC, “Trafficking in Persons” para. 8.
- 62 JC, “Children’s rights” para. 4.
- 63 BICE p. 3.
- 64 National Institutions, para. 41.
- 65 BICE p3, See also EI para. 13.

- ⁶⁶ National Institutions, para. 40.
⁶⁷ NGO Coalitions, para. III. 6.
⁶⁸ BICE, p. 1.
⁶⁹ SCN, para. II.6.
⁷⁰ SCN, para. II.4.
⁷¹ JC, “Summary of Recommendations” para. 4.
⁷² National Institutions, para. 37.
⁷³ National Institutions, para. 39.
⁷⁴ GIEACPC, p. 2.
⁷⁵ NGO Coalitions, para III. 2., p4 See also AI, para. B.
⁷⁶ ALRC_AF, para. 3.
⁷⁷ NGO Coalitions, para. III. 2., p4-5 See also ALRC_AF para. 22.
⁷⁸ ALRC_AF, para. 11, See also AI, para. B., p. 4, “Impunity for human rights violations” and ICJ, p. 1.
⁷⁹ ICJ p. 2.
⁸⁰ National Institutions, para. 69.
⁸¹ AI, p. 6.
⁸² AI, p. 6, See also ICJ p. 3.
⁸³ CSW, paras. 26-29.
⁸⁴ NGO Coalitions, para. III. 2., p. 4-5.
⁸⁵ NGO Coalitions, para. III. 2., “Rule of law and public security”.
⁸⁶ JC, “Integrity of the person” para. 6.
⁸⁷ ALRC_AF, para. 7.
⁸⁸ ALRC_AF, para. 9.
⁸⁹ National Institutions, para. 22.
⁹⁰ National Institutions, para. 20.
⁹¹ Dialogforum, para. 6.
⁹² EI, para. 24, See also AI, para. C., p. 6-7, “Enforced disappearances”.
⁹³ ALRC_AF, para. 13.
⁹⁴ ALRC_AF, para. 8, See also ICJ p. 4.
⁹⁵ AI, p. 6.
⁹⁶ SCN, para. II.8.
⁹⁷ ECLJ, p. 2, See also Becket Fund, para. 2.1 and CSW, para. 14.
⁹⁸ Becket Fund, para 2.1.
⁹⁹ CSW, para. 14.
¹⁰⁰ ECLJ, p. 3.
¹⁰¹ ECLJ, p. 4.
¹⁰² ECLJ, p. 4.
¹⁰³ CSW, para. 21.
¹⁰⁴ CSW, paras. 18-19.
¹⁰⁵ NGO Coalitions, para. III. 1. C.
¹⁰⁶ NGO Coalitions, para. III. 2. “Freedom of expression, freedom of association, and peaceful assembly”.
¹⁰⁷ CSW, para. 24.
¹⁰⁸ EI, para. 19.
¹⁰⁹ RSF, p. 1.
¹¹⁰ Dialogforum, para. 5.1.3.
¹¹¹ Article19, para. 12.
¹¹² RSF, p. 1-2.
¹¹³ RSF, p. 2.
¹¹⁴ Article19, para. 14, See also AI, RSF p. 1 and EI, para. 20.
¹¹⁵ RSF, p. 2.
¹¹⁶ RSF, p. 3.
¹¹⁷ Article19, para. 13.
¹¹⁸ RSF, p. 3.
¹¹⁹ Article19, para. 9.
¹²⁰ Article19, para. 10.

- 121 Article19, para. 16, See also RSF p. 3.
 122 Article19, para. 17.
 123 Article19, para. 5, See also UNPO para. B. and C. 1. "Freedom of Assembly and Expression".
 124 Article19, para. 9, See also RSF, p. 3.
 125 NGO Coalitions, para. III. 2. "Freedom of expression, freedom of association, and peaceful assembly".
 126 NGO Coalitions, para. III. 2. "Human rights defenders" See also ALRC_AF para. 21 and NEPAL Dialogforum, para. 6.
 127 EI, recommendation 7.
 128 Article19, para. 19.
 129 Article19, para. 9.
 130 UNPO, para D. "On Constitutional and Legal Reform" No 5.
 131 NGO Coalitions, para. III. 5.
 132 National Institutions, para. 43.
 133 EI, para. 5.
 134 Dialogforum, para. 6.
 135 National Institutions, para. 76.
 136 NGO Coalitions, para III. 3. "Right to Food".
 137 FIAN, page 1.
 138 Dialogforum , para. 5.1.4.
 139 Dialogforum, para. 5.1.4.
 140 Dialogforum, para. 5.1.4.
 141 NGO Coalitions, para. III. 3. "Right to Food".
 142 Dialogforum, para. 6.
 143 NGO Coalitions, para. III. 3. "Right to Land".
 144 Dialogforum, para. 6.
 145 NIs, para. 18.
 146 SCN, para. II.3.
 147 ICJ p. 5-6.
 148 ICJ p. 6.
 149 ICJ p. 6.
 150 National Institutions, para. 25.
 151 National Institutions, paras. 27, 29.
 152 NGO Coalitions, para III. 3. "Right to Health".
 153 BDS/SRI, para. 11.
 154 SCN, para. II.1.
 155 EI, recommendations 8-9.
 156 National Institutions, para. 31.
 157 National Institutions, para. 32, See EI para. 13.
 158 ICJ p. 7.
 159 ICJ p. 8.
 160 EI, para. 15.
 161 EI, para. 16-17.
 162 NIs, para. 34.
 163 NGO Coalitions, See also SCN, para. II.9.
 164 NGO Coalitions, para. III. 6.
 165 NGO Coalitions, para. III. 4.
 166 NGO Coalitions, para. III. 4.
 167 NGO Coalitions, para. III. 4., See also EI.
 168 NGO Coalitions, para. III. 7. "Rights of indigenous women".
 169 UNPO, para. A, See also ECLJ and JC.
 170 UNPO, para. B.
 171 ICT, p. 2.
 172 ICT, p. 4.
 173 ICT, p. 3 .
 174 SCN, para. II.7.

- ¹⁷⁵ SCN, para. II.10.
¹⁷⁶ National Institutions, para. 66.
¹⁷⁷ National Institutions, para. 67.
¹⁷⁸ Dialogforum, para. 6.
¹⁷⁹ ECPAT p. 3.
¹⁸⁰ National Institutions, para. 77.
¹⁸¹ National Institutions, para. 78.
¹⁸² UNPO, p. 4.
-