

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report –

Universal Periodic Review:

2nd Cycle, 23rd Session

NEPAL

I. BACKGROUND INFORMATION

Nepal is not a State party to the *1951 Convention relating to the Status of Refugees* or its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Nepal is also not a State party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

However, Nepal has acceded to a number of other international human rights instruments¹ and has been hosting large groups of refugees for over 60 years.

Tibetans first sought refuge in Nepal in 1959, when tens of thousands left Tibet following the flight of the Dalai Lama XIV to India. Although many only transited Nepal on their way to India, several thousand Tibetans remained and the Government of Nepal responded generously by providing land to settle and the right to residence. Tibetans who arrived in Nepal before 1989 and their descendants are recognized as refugees by the Government of Nepal. Today it is estimated that Nepal hosts between 12,000 and 20,000 Tibetans. However neither the Government nor UNHCR maintain updated statistics and refugee certificates have not been issued systematically to this group for many years. As no comprehensive registration exercise has been undertaken since 1993 and as a large number of Tibetan refugees were born and raised in Nepal, many Tibetans are now undocumented. According to recent estimates, it could be that as many as 3 out of 4 Tibetans do not possess up-to-date Refugee Cards.

¹ Such as: the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *Convention on the Elimination of All Forms of Discrimination against Women*; and the *Convention on the Rights of the Child*.

In 1989, Nepal suspended refugee recognition of Tibetan arrivals and instead, under the so-called *Gentlemen's Agreement*, allowed Tibetan new arrivals safe passage through Nepalese territory to India.

The second group of refugees consists of refugees from Bhutan residing in camp settings in eastern Nepal. As of 31 December 2014, the total camp population stood at 23,059 refugees. Refugees from Bhutan are also recognized by the Government of Nepal since the onset of the crisis in the early 1990s.

Lastly, so-called urban refugees and asylum-seekers also seek protection in Nepal. They come from 11 different countries and the majority of them are from Pakistan, Myanmar and Afghanistan. As of 31 December 2014, Nepal hosted 137 asylum-seekers and 431 recognized refugees awaiting a durable solution.

Nepal does not have a refugee legal framework and refugee status determination is conducted by UNHCR under its mandate for individual asylum-seekers. Nepal considers refugees and asylum-seekers as irregular migrants under the existing laws and imposes a five USD per day fine on all persons overstaying visas, irrespective of refugee status. The Government grants visa fine waivers on an occasional *ad hoc* basis for refugees departing on resettlement.

A large number of Nepalese do not have citizenship certificates.² It is estimated that up to 4.3 million Nepalese do not currently possess citizenship certificates and that women, children and marginalized communities are most negatively affected.

It is also of concern that the citizenship provisions suggested in the new draft *Constitution* would allow Nepalese parents to confer nationality on to their children only when both the father *and* mother can prove Nepalese citizenship. If adopted in their current form, these provisions will increase the risks of statelessness amongst children and are not in line with international human rights standards and Nepal's human rights obligations.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Nepal must be commended for welcoming Tibetan refugees beginning in 1959. To date Nepal continues to generously host a large number of Tibetan refugees. In addition, the Government permits Tibetan new arrivals' safe, discreet transit through its territory.

Nepal has also generously hosted large numbers of refugees from Bhutan since the early 1990s. The Government's close cooperation with UNHCR and resettlement countries enabled most of this population to find durable solutions in the form of resettlement to a third country. As of 31 January 2015, 94,565 Bhutanese refugees have been resettled to eight different countries. The Government's efforts helped make this operation a successful example of resettlement as a durable solution.

Additionally, the Government of Nepal has undertaken national campaigns to distribute citizenship certificates to large numbers of eligible Nepalese in 2007 and 2013, providing

² Nepalese without citizenship certificates cannot register births; cannot buy, sell or transfer property or open a bank account; cannot obtain a passport, register to vote or sit for higher-level examinations; and cannot obtain social security allowances, file for a change of address or obtain a mobile phone card.

them with documentation to confirm their nationality and enhancing access to their fundamental rights. These campaigns were realized through the deployment of mobile teams to each of Nepal's 75 districts. The teams distributed approximately 2.6 million citizenship certificates in 2007 and 600,000 citizenship certificates in 2013. However, as mentioned above, a significant number of individuals entitled to be recognized as citizens under the law have not yet been issued with citizenship certificates.

We also wish to commend Nepal for joining with 43 other States in the Asia Pacific in adopting a *Ministerial Declaration on the improvement of Civil Registration and Vital Statistics in the Asia Pacific* at a Ministerial Conference in November 2014.³ During the event, Nepal committed to target achieving universal civil registration by 2024 and endorsed a *Regional Action Framework* to facilitate the achievement of this goal.⁴ Birth registration and related documentation can prevent statelessness by helping children to avoid problems in proving their link to a State.⁵

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Tibetan refugees

Tibetan refugees began entering Nepal in 1959. In 1993, the Government conducted a census of the long-staying population and in 1995, issued refugee certificates to Tibetan refugees who were 16 years old or older at that time. Minor children were listed as dependents on one of their parent's cards. Today, a significant number of long-staying Tibetans are unregistered and do not possess any form of individual identification, which poses significant problems in all aspects of daily life.

In 1989, Nepal suspended recognition of Tibetan new arrivals. At that time, the Government formed the so-called *Gentlemen's Agreement*, with support from the United States of America and UNHCR, which provides for the safe and discreet transit of Tibetan new arrivals through its territory to India.

In its 2014 Concluding Observations, the Human Rights Committee remained "concerned that identity documents have not been provided to Tibetan refugees since 1995, which places the majority of the Tibetan refugee population at risk of financial penalties under the *1994 Immigration Rules* for irregular entry or presence in the State party, detention, deportation and *refoulement*. The Committee is also concerned about the lack of legislation that would ensure adequate protection against *refoulement*."⁶

³ See *Ministerial Declaration to "Get everyone in the picture" in Asia and the Pacific*, adopted by the Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific, 28 November 2014 in Bangkok, Thailand, available at: <http://getinthepicture.org/docs/Ministerial.Declaration.English.final.pdf>.

⁴ Nepal's delegation informed participant "Nepal has initiated national level representative sample survey to establish a baseline for 2015 and set the yearly target to achieve the universal registration for all by 2024", available at: http://getinthepicture.org/docs/Item4_Nepal_Eng.pdf.

⁵ UNHCR, *Child protection Issue Brief : Birth Registration*, August 2013, available at: <http://www.refworld.org/docid/523fe9214.html>.

⁶ UN Human Rights Committee's Concluding Observations, CCPR/C/NPL/CO/2, para.14, 15 April 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NPL/CO/2&Lang=En.

Recommendations:

UNHCR recommends that the Government of Nepal:

- Carry out a comprehensive census and registration exercise of long-staying Tibetans in order to issue proper identity documents to Tibetans residing in Nepal;⁷ and
- In line with the *Gentleman's Agreement*, continue to systematically allow Tibetans access to the territory to transit and refer all Tibetan new arrivals to UNHCR.

Issue 2: Refugees from Bhutan

The Government of Nepal has cooperated closely with UNHCR in the resettlement of 94,565 refugees from Bhutan since the start of the resettlement programme in late 2007. These refugees had been living in camps since the early 1990s and have now departed for their new homes in the resettlement countries of Australia, Canada, Denmark, the Netherlands, New Zealand, Norway, the United Kingdom and the United States. Just over 23,000 of them remain in two camps in eastern Nepal. With group resettlement now in its final chapter, resolving the situation of those refugees who will not be resettled has become a pressing issue.

Recommendations:

UNHCR recommends that the Government of Nepal:

- Pursue efforts with UNHCR, the Bhutanese Core Group and other relevant parties to find durable solutions for the refugees from Bhutan who will not be resettled.⁸

Issue 3: Asylum-seekers and refugees

Nepal is not party to the *1951 Convention* and its *1967 Protocol* and does not possess a national refugee protection framework, which is an obstacle in providing effective refugee protection and ensuring that refugees have the ability to enjoy their human rights. In 2007, the Supreme Court of Nepal ordered the Government to enact refugee legislation, as Nepal has been hosting many refugees for a long time, and to consider acceding to the *1951 Convention*.

In Nepal, urban refugees and asylum-seekers face risks of arrest and detention for violation of immigration regulations if they enter the country unlawfully or overstay their visas. Foreigners who irregularly enter the country or overstay their visa accrue fines at a five USD per day rate, irrespective of their refugee status. Refugees are expected to pay these fines before they may leave the country lawfully for resettlement, voluntary repatriation or otherwise.

⁷ A recommendation was made to “[p]rotect vulnerable refugee populations by allowing for registration of the refugee population in Nepal and by refraining from forcibly returning Tibetan asylum-seekers to China” during the 1st cycle UPR examination of Nepal. See: Report of the Working Group of the Universal Periodic Review: Nepal, A/HRC/17/5, 8 March 2011, para. 109.8, (recommended by the United States of America).

⁸ A recommendation was made to “[p]romote other durable solutions than resettlement in third countries for the refugees in eastern Nepal in close cooperation with UNHCR and other relevant international organizations” during the 1st cycle UPR examination of Nepal. See: Report of the Working Group of the Universal Periodic Review: Nepal, A/HRC/17/5, 8 March 2011, para. 109.9, (recommended by Netherlands).

Recommendations:

UNHCR recommends that the Government of Nepal:

- Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, and give priority to the adoption of national asylum policy or legislation in line with international standards⁹;
- Ensure the full respect of the principle of *non-refoulement*; and
- Exempt in a timely manner refugees and asylum-seekers from penalties imposed on foreigners for irregular entry or presence in Nepal.

Issue 4: Access to Citizenship

We wish to note that Nepal's *Nationality Laws* do not currently fully comply with international standards relating to the prevention and reduction of statelessness. Nepal continues to draft its *Constitution*. Under the current proposal, Nepal would amend its constitutional provision on citizenship to allow Nepalese parents to confer nationality to their children only when both the father *and* mother can prove Nepalese citizenship. If adopted in their current form, these provisions will increase the risks of statelessness for children born in Nepal and abroad to one Nepalese parent and are not in line with international human rights standards and Nepal's human rights obligations.¹⁰

Furthermore, recent research indicates that possibly up to 23 per cent of the population lacks citizenship certificates, the key document that ensures access to fundamental social, economic, and political rights. This problem especially impacts women and members of traditionally disadvantaged groups.

In 2014 UNHCR launched the *Global Action Plan to End Statelessness: 2014 - 2024* (the *Global Action Plan*),¹¹ which was developed in consultation with States, civil society and international organizations, and sets out a guiding framework comprised of 10 Actions that need to be taken to end statelessness within 10 years. Steps that States are encouraged to take include ensuring that no child is born stateless,¹² ensuring birth registration to prevent statelessness¹³ and issuing nationality documentation to those with an entitlement to it.¹⁴

In addition, Nepal is not party to the *1954 Convention* or to the *1961 Convention*.

Action 9 of the *Global Action Plan* promotes accession to the *UN Statelessness Conventions*.¹⁵ There is a global consensus on the importance of acceding to the *Statelessness*

⁹ Six recommendations were made in regards to accession to the *1951 Convention* during the 1st cycle UPR examination of Nepal. See: Report of the Working Group of the Universal Periodic Review: Nepal, A/HRC/17/5, 8 March 2011, para. 109.7 and 109.10, (recommended by Algeria, Moldova, Japan, Slovenia, Switzerland, Netherlands). In addition, a recommendation was made to “[a]dopt national legislation pertaining to refugees that includes the rights of refugees and asylum-seekers” during the 1st cycle UPR examination of Nepal. *Ibid.*, para. 109.7, (recommended by Netherlands).

¹⁰ See Concluding Observations of the Human Rights Committee (2014) and CEDAW Committee (2014) below.

¹¹ UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, at pg. 23, available at: <http://www.refworld.org/docid/545b47d64.html>

¹² *Ibid.* Action 2, pg. 9.

¹³ *Ibid.* Action 8, pg 18-20.

¹⁴ *Ibid.* Action 9, pg 21.

¹⁵ *Ibid.* pg. 23.

Conventions. The *1954 Convention* and the *1961 Convention* are key international treaties designed to ensure that every person has a nationality and that stateless people enjoy a basic set of human rights. The *Statelessness Conventions* do not stand alone, but complement a much broader range of international legal standards, in particular those contained in human rights treaties.

The *1954 Convention* establishes minimum standards of treatment for stateless persons in respect of a number of rights. These include, but are not limited to, the right to education, employment and housing. Importantly, the *1954 Convention* also guarantees stateless people a right to identity and travel documents and to administrative assistance. The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality. It requires that States establish safeguards in their nationality laws to prevent statelessness at birth and later in life.

Recommendations:

UNHCR recommends that the Government of Nepal:

- Ensure citizenship provisions in the new *Constitution* of Nepal are in line with international standards and ensure independent and equal rights to both men and women. In particular, women should have an equal and independent right to confer their nationality on their children and should also be able to acquire, transfer, and retain citizenship;¹⁶
- Ensure citizenship provisions include safeguards to grant nationality to children born to nationals abroad and who would otherwise be without any citizenship;
- Continue its efforts to ensure that all eligible citizens are issued citizenship certificates in a timely fashion;
- Continue its efforts to ensure universal civil registration, particularly universal birth registration; and
- Accede to the *1954 Convention* and the *1961 Convention*.

Human Rights Liaison Unit
Division of International Protection
UNHCR
March 2015

¹⁶ A recommendation was made (but not accepted) to “[a]ddress cases of statelessness in the new Constitution’s drafting process” during the 1st cycle UPR examination of Nepal. See: Report of the Working Group of the Universal Periodic Review: Nepal, A/HRC/17/5, 8 March 2011, para. 109.12, (recommended by Slovakia).

ANNEX
Excerpts of Concluding Observations UN Treaty Bodies:

NEPAL

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Nepal.

Committee on Economic, Social and Cultural Rights
[Concluding observations \(Nov. 2014\) E/C.12/NPL/CO/3](#)

Refugees

10. The Committee is concerned that the lack of a refugee law and of an appropriate refugee status determination procedure constitute obstacles for refugees to fully enjoy their economic, social and cultural rights, despite a 2007 Supreme Court Order to enact such legislation. It is also concerned at reports that, under the 1994 Immigration Rules, refugees and asylum-seekers are penalized by the imposition of fines per day for their over-staying in the territory of the State party. The Committee is further concerned that some Tibetan refugees remain unregistered and do not possess identification documents. The Committee regrets that the State party has not yet acceded to the 1951 Convention relating to the Status of Refugees. (art.2)

The Committee recommends that the State party adopt a refugee law in order to put in place a national refugee protection framework in compliance with the 2007 Supreme Court Order. It also recommends that the State party proceed to register all Tibetan refugees in its territory and provide them with identification documents. The Committee further recommends that State party consider ratifying the 1951 Convention relating to the Status of Refugees.

Discriminatory law

12. The Committee is concerned at the persistent inequality between men and women with regard to the rights of inheritance, land ownership and assets. The Committee is also concerned that, notwithstanding citizenship provisions in the Interim Constitution, the transmission of nationality by a Nepalese woman to her child is not always granted.

The Committee recommends that the State party take adequate measures to effectively implement its non-discrimination legislation in order to allow women to exercise their rights to inherit, to own land and assets in their name. The Committee also recommends that the State party promote awareness-raising measures in order to ensure that local administration authorities involved in granting transmission of nationality are fully informed about the legal provisions in place and effectively implement them.

Trafficking in persons including children

21. The Committee expresses concern at the high number of children who are trafficked for labour and sexual exploitation, as well as for begging, forced marriages and slavery, including in neighbouring countries. The Committee is also concerned at the ineffective application of the Human Trafficking Control Act of 2007 and the Children Act of 1992. It is

further concerned at the lack of information on investigations, prosecutions, convictions and sanctions imposed on traffickers. (art. 10)

The Committee urges the State party to effectively enforce the current legislation, by:

- (a) investigating trafficking cases, prosecuting and sanctioning the traffickers and providing rehabilitation and reparation to victims;**
- (b) sensitizing the population on measures taken to combat trafficking such as the Child Search Rescue Center in Kathmandu;**
- (c) further developing its cooperation with neighbouring countries in order to prevent and combat trafficking across borders;**
- (d) bringing its legislation in full compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, specially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.**

Human Rights Committee

[Concluding observations \(2014\) CCPR/C/NPL/CO/2](#)

Refugees

14. While commending the State party for hosting a large number of refugees and asylum-seekers in its territory, the Committee is concerned that identity documents have not been provided to Tibetan refugees since 1995, which places the majority of the Tibetan refugee population at risk of financial penalties under the 1994 Immigration Rules for irregular entry or presence in the State party, detention, deportation and *refoulement*. It also expresses concern at the restrictions imposed on Tibetan refugees' rights should the State party deem any activity to undermine the friendly relationship with its neighbour. The Committee is also concerned about the lack of legislation that would ensure adequate protection against *refoulement* (arts. 2, 7, 9, 13, 19, 26 and 27).

The State party should adopt national refugee legislation in accordance with international standards, strictly uphold the principle of *non-refoulement*, and exempt refugees and asylum-seekers from penalties under the 1994 Immigration Rules. It should undertake a comprehensive registration exercise of long-staying Tibetans to ensure that all persons have proper documentation and ensure, in law and in practice, that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights under the Covenant, including freedom of expression, assembly and association. It should also guarantee access to its territory to all Tibetans who may have a valid refugee claim and refer them to UNHCR.

Trafficking and bonded labour

18. The Committee expresses concern at the lack of effective implementation of the Human Trafficking and Transportation (Control) Act of 2007, and the persistence of trafficking for purposes of sexual exploitation, forced labour, bonded labour, domestic servitude and marriage, as well as trafficking in human organs. It is also concerned at the alleged involvement of State officials in trafficking-related crimes. The Committee is further concerned that child labour and traditional practices of bonded labour such as Haliya, Kamaiya and Kamlari are still prevalent in some regions of the State party (arts. 8 and 24).

The State party should strengthen its efforts to prevent, suppress and punish trafficking in persons, trafficking in human organs and bonded labour, including the establishment of a system of data collection and analysis to identify trends and implement effective strategies, and adoption of measures aimed at empowering vulnerable groups to eliminate their risk of exploitation. It should also ensure the effective implementation of the Human Trafficking and Transportation (Control) Act of 2007, prosecute and sanction perpetrators, including State officials complicit in trafficking-related crimes, and provide victims with adequate protection and assistance.

Birth registration and nationality

20. The Committee, while appreciating efforts made thus far, expresses concern at the low number of birth registrations, particularly in rural areas, and at difficulties faced by women in the registration process. It also regrets that the current legislation does not provide for the granting of nationality to children born in the territory who would otherwise be stateless. Moreover, while welcoming the launch of national distribution campaigns, the Committee is concerned that more than four million persons still lack citizenship certificates, which is essential for the enjoyment of rights guaranteed in the Covenant, including the right to vote. It is also concerned that women are denied equal rights as men with respect to acquiring and conferring nationality (arts. 3, 16, 24, 25 and 26).

The State party should amend the Birth, Death and Other Personal Incidents Registration Act to ensure the birth registration of all children born on its territory, and establish an efficient birth registration system that is free of charge at all stages. It should also continue to strengthen efforts to remove barriers, particularly for women and those living in rural areas, to access citizenship certificates and birth registrations. The State party should ensure that citizenship provisions of the new Constitution guarantee the equal right of women to acquire transfer and retain citizenship.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

[Concluding observations \(2012\) CRC/C/OPSC/NPL/CO/1](#)

Measures adopted to prevent offences prohibited under the Protocol

21. The Committee welcomes the numerous measures taken with the view to preventing the sale of children, child prostitution and child pornography and in particular: the programmes specifically targeting children from Dalit and Indigenous community and from marginalized and disadvantaged families, the promotion of child participation in policies and programmes, and the measures to combat illiteracy, especially among women. However, the Committee is concerned that existing laws, administrative measures, social policies and programmes are insufficient to address the root causes and contributing factors of the sale of children, child prostitution and child pornography, among them, widespread poverty, gender discrimination, unsafe migration, and the lack of a comprehensive child protection system. The Committee is especially concerned about:

- (a) The continued strong caste discrimination, particularly towards the Dalit as well as the prevailing legal and de facto discrimination of women and girls;

- (b) The difficulties encountered by single mothers, mothers married to foreigners, refugees and stateless persons to register their children at birth which greatly exposes them to becoming victims of offences under the Protocol;
- (c) The lack of priority measures targeted to groups of children who are in the most vulnerable situations, notably internally displaced and refugee children, children with disabilities as well as children living in the street, the number of which is increasing; and
- (d) The inadequate protection of victims of domestic violence under the Domestic Violence Control and Punishment Act of 2009, the lack of protection of boys from sexual abuse and the high incidence of child sexual abuse in the home and in educational facilities.

22. The Committee urges the State party to adopt a comprehensive and targeted approach which addresses the root causes of offences under the Protocol and targets children in the most vulnerable situations. In particular, the Committee urges the State party to strengthen its poverty reduction strategies and supportive social protection measures for disadvantaged and marginalized families including child-centred early intervention programmes to support parents in better performing their care and protection responsibilities towards children. The Committee further urges the State party to:

- (a) **Take active measures for the effective implementation of the prohibition of “untouchability” and in doing so involve all sectors of society so as to facilitate social and cultural change and promote the creation of an enabling environment supportive of equality among children belonging to marginalized communities;**
- (b) **Take all necessary measures to ensure that all children are registered at birth;**
- (c) **Repeal legal provisions that discriminate against girls, and take all the necessary measures to eliminate societal discrimination against them through public educational programmes, including campaigns organized in cooperation with opinion leaders, families and the media to combat the stereotyping of gender roles in line with the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/NPL/CO/4-5 para. 18 a);**
- (d) **Develop prevention programmes targeting children in the most vulnerable situations and in particular take all necessary measures to ensure that children in street situations are provided with adequate and secure shelter, health care, education and clothing. Particular focus should be placed on their protection from police brutality, physical and sexual abuse as well as substance abuse; and**
- (e) **Ensure that prevention strategies incorporate key actions to address domestic violence and child sexual abuse which are among the root causes of child sexual exploitation.**

Prosecution of offences under the Protocol

37. The Committee notes with deep concern that although thousands of children are involved in prostitution in the State party, especially in the —cabin restaurants, the dance bars and the massage parlours of the Kathmandu Valley and in the major cities of the State party, limited measures have been taken to rescue them from those prostitution places. The Committee is particularly concerned that:

- (a) The revised version of the Children’s Act currently under review still fails to define procedures and mechanisms for the identification, reporting, referral, investigation, treatment and coordination of cases of children victims of sale of children, child prostitution and child pornography;

- (b) The Nepal Police lack adequate infrastructure, capacity and power to investigate complaints lodged;
- (c) Cases of child trafficking are highly underreported due mainly to widespread lack of confidence and trust in law enforcement and judicial authorities who in many cases discourage citizens from reporting cases and encourage disputants to resolve cases privately; and
- (d) Impunity remains pervasive in the context of trafficking-related investigations and often results from high levels of corruption among officials.

38. The Committee urges the State party to strengthen the presence and capacity of law enforcement authorities to detect offences under the Protocol, arrest perpetrators and bring them to justice. The Committee also urges the State party to:

- (a) Set clear procedures in the revised Children’s Act and establish mechanisms for the identification, reporting, referral, investigation, treatment and coordination of cases of child victims of sale of children, child prostitution and child pornography;**
- (b) Take all the necessary measures to ensure that children and parents are not encouraged to solve cases privately and that perpetrators of offences under the Protocol are brought to justice;**
- (c) Adopt a zero tolerance approach towards cases where authorities may be directly involved in cases of sale of children, child prostitution and child pornography and address vigorously the issue of corruption and impunity as a matter of priority.**

Recovery and reintegration of victims

41. The Committee while noting the establishment of rehabilitation and emergency centres for child victims of trafficking, expresses concern that the lack of clear procedures and standards for the care and protection of child victims—including the provision of psychosocial support, case assessment based on the best interests’ determination, temporary and durable solutions, and follow-up until the child reaches the age of majority puts children at further risk. The Committee is particularly concerned that:

- (a) Despite the establishment of some rehabilitation centres and emergency shelters for child victims of trafficking, child-centered services remain largely unavailable and their expansion and improvement is limited due to budget constraints;
- (b) Legislation does not establish any right for child victims to receive free-of-cost medical treatment, mental health and other care; and
- (c) Reparation is only available for victims of trafficking.

42. The Committee urges the State party to take all the appropriate measures for the physical and psychological recovery and social reintegration of child victims of offences under the protocol and ensure that those measures take place in an environment which fosters the self-respect and dignity of the child. In particular, the Committee urges the State party to:

- (a) Take every necessary measure to facilitate and increase access to child-centered services, particularly for children living in remote areas as well as increase the budget allocated to these services to ensure that they are sufficiently and adequately equipped;**
- (b) Adopt clear measures guiding the rescue, repatriation, rehabilitation and reintegration of child victims and establish by law the right of child victims to receive free-of-cost medical treatment, mental health and other care;**

- (c) Ensure that all child victims of the offences covered by the Protocol be provided with access to adequate procedures to seek compensation, without discrimination, in accordance with article 9, paragraph 4 of the Protocol.

Committee on the Elimination of Discrimination against Women
Concluding observations (2011) CEDAW/C/NPL/CO/4-5

Trafficking and exploitation of prostitution

21. The Committee welcomes the adoption of the National Plan of Action against trafficking in children and women for sexual and labour exploitation. However, the Committee is concerned about the lack of specific data on trafficking of women and girls, the lack of effective implementation of the Human Trafficking and Transportation Act 2007, the persistence of sexual exploitation, in particular among the Dalit community, and the persistence of the root causes of trafficking and prostitution, including poverty.

22. The Committee urges the State party to fully implement article 6 of the Convention, through the following:

(a) Collecting and analysing data on all aspects of trafficking and prostitution, disaggregated by age, sex and country of origin, in order to identify trends;

(b) Implementing the Human Trafficking and Transportation Act 2007 to ensure that perpetrators are punished and victims adequately protected, assisted and provided shelters;

(c) Strengthening preventive measures aimed at improving the economic situation of girls and women, gainful employment and other resources to eliminate their vulnerability to traffickers;

(d) Strengthening its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of

trafficking, and improve prevention of trafficking through information exchange;

(e) Ensuring effective implementation of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;

(f) Ratifying the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; and

(g) Provision of information and training on the anti-trafficking legislation to the judiciary, law enforcement officials, including immigration and border police and social workers in all parts of the country, and undertaking awareness raising campaign among the population.

Nationality

25. While noting the State party's explanation that women are not subjected to discrimination in access to citizenship, the Committee remains deeply concerned about obstacles for women to transfer citizenship to their children and foreign husband, for married women to obtain citizenship certificates, and about the persistence of the underlying conditions obstructing

access to citizenship including poverty, geographic isolation and onerous administrative requirements.

26. The Committee strongly urges the State party to:

(a) Ensure that the new Constitution provides for equal and full citizenship rights for women, including by exerting their right to transfer citizenship to their children and foreign husband;

(b) Implement training programmes to Government officials at all levels on legal provisions related to transfer of citizenship;

(c) Carry out a second comprehensive national campaign to issue citizenship certificates, taking into consideration the hardships faced by women in securing proof of nationality;

(d) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; and

(e) Ensure that children born on the territory of Nepal who would otherwise be stateless be granted Nepali citizenship.

Female migrant workers

33. While noting the adoption of the New Foreign Employment Act in 2007, the Committee remains concerned about the situation of Nepalese women migrant workers, and in particular at the fact that a large number of Nepali women are undocumented, which increases their vulnerability to sexual exploitation, forced labour and abuse; their concentration in the informal sector; the limited initiatives to ensure pre-departure information and skills training; and the lack of institutional support both in the State party and in countries of employment to promote and protect the rights of Nepali women migrant workers.

34. The Committee urges the State party to:

(a) Investigate the cause of women's migration, create employment or self-employment opportunities for women within the country and ensure provision of loan opportunities for women;

(b) Establish mechanisms to promote safe migration procedures and protect and fulfil women's rights throughout the migration cycle;

(c) Enforce and monitor standardized and comprehensive pre-departure orientation and skill training;

(d) Sign bilateral agreements with the country of employment with adequate provisions ensuring the security of women migrant workers and establishing mechanisms in the country of destination dealing with violation of the rights of women migrant workers during employment;

(e) Provide assistance for migrant women who seek for redress;

(f) Create alternative livelihood opportunities for returnees and promote their reintegration; and

(g) Prosecute and punish the perpetrators engaged in illegal recruitment processes fuelling trafficking of women in the name of foreign employment.

Women affected by the conflict

35. While welcoming the adoption of the National Action Plan on Security Council resolutions 1325 and 1820 in October 2010, the Committee remains deeply concerned that cases of sexual violence, including rape allegedly committed by both security forces and Maoist combatants during the conflict, are not being investigated and perpetrators have not been brought to justice. The Committee is also concerned that a large number of women affected by the conflict face difficulties to access justice and the statute of limitation for filing complaints relating to rape and other sexual offences could obstruct access to justice for women victim of rape and other sexual offences during the conflict. The Committee is further concerned that many survivors of sexual violence during the conflict suffer significant post-traumatic stress disorder and other mental and physical health problems. In addition, the Committee expresses its concern about the lack of women's participation in peace and reconstruction processes.

36. The Committee urges the State party to:

(a) Prioritise the consideration of the draft laws on Truth and Reconciliation Commission and Commission of Inquiry on Disappearances and ensure that the Commissions are gender sensitive, independent and authoritative and that the Truth and Reconciliation Commission deals with sexual violence and pay particular attention to the social and security dimension of public testimony for victims of sexual violence;

(b) Investigate, prosecute and punish all acts of violence including acts of sexual violence perpetrated by the armed forces and Maoist combatants as well as by private actors through transitional and restorative justice, and ensure that, in the draft law on Truth and Reconciliation Commission, the statute of limitation for filing complaints relating to rape and other forms of sexual offences during the conflict does not preclude women's access to justice;

(c) Initiate thorough and complete investigation into the perpetration of sexual abuse during armed conflict and the post-conflict period;

Asylum-seeker and Refugee Women

41. The Committee is concerned that the State party report does not provide any information about its national policy with regard to applications from asylum seekers and nor does it contain information on the vulnerable situation of asylum seeker and refugee women and girls from neighbouring countries.

42. The Committee recommends that the State party:

(a) Provide in its next report comprehensive information on its national policy on applications from asylum-seeker and refugee women in Nepal;

(b) Provide enabling environment and gender sensitive policy in dealing with application from women asylum seekers and provide enabling environment for asylum seeker and refugee women to report acts of sexual harassment; and

(c) Pay specific attention to the vulnerability of asylum-seeker and refugee women.