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Civil and Political Rights**

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parties under article 40 of the Covenant**

Second periodic reports of States parties

Nepal*

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List of abbreviations and acronyms

CA	Constituent Assembly
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBOs	Community-Based Organizations
CBS	Central Bureau of Statistics
CLA	Civil Liberties Act
CDO	Chief District Officer
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CPA	Comprehensive Peace Accord
CRC	Convention on the Rights of the Child
DOPM	Department of Prison Management
EC	Election Commission
GC	General Code
GON	Government of Nepal
HOR	House of Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
ILO	International Labour Organization
INGOs	International non-governmental organizations
MDGs	Millennium Development Goals
MOFA	Ministry of Foreign Affairs
MOHA	Ministry of Home Affairs
MOHP	Ministry of Health and Population
MOIC	Ministry of Information and Communications
MOLJ	Ministry of Law and Justice
MOPR	Ministry of Peace and Reconstruction
MOWCSW	Ministry of Women, Children and Social Welfare
NDC	National <i>Dalit</i> Commission
NFDIN	National Foundation for Development of Indigenous Nationalities
NGOs	Non-governmental organizations
NHRAP	National Human Rights Action Plan
NHRC	National Human Rights Commission

NIC	National Information Commission
NPA	National Plan of Action
NWC	National Women Commission
OHCHR/Nepal	Office of the High Commissioner for Human Rights in Nepal
OPMCM	Office of Prime Minister and Council of Ministers
PIL	Public interest litigation
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
TYIP	Three-Year Interim Plan
VDC	Village Development Committee

I. Introduction

1. Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the Covenant on 14 May 1991, and the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty on 4 March 1998, without any reservation. Nepal submitted the initial report under the Covenant in 1994. The present report combines the second, third and fourth periodic reports of Nepal, covering the period from 1995 to 2010.

2. Subsequent to the submission of its initial report, Nepal underwent a decade-long armed conflict (1996-2006), and ensuing political instability. The conflict resulted in the death of about 16,729 persons, displacement of about 78,689 persons, disappearance of about 1,327 persons, and devastation of public infrastructures valued at about 5 billion Rupees. The GON and the United Nations Office of the High Commissioner for Human Rights, Geneva concluded an Agreement in April 2005 to establish the Office of the High Commissioner in Nepal. On 21 November 2006, the conflict was officially ended with the Comprehensive Peace Accord (CPA). On 8 December 2006, an Agreement on Monitoring of the Management of Arms and Armies was concluded, in witness of the Personal Representative of the Secretary General of the United Nations. On 15 January 2007, the Interim Constitution of Nepal (the Constitution) was promulgated to provide for transitional government and reflect the goals of the second People's Movement in April 2006. The mandate of the Movement was for peace, change, stability, establishment of the competitive multiparty democratic system of governance, rule of law, promotion and protection of human rights, full press freedom and independence of judiciary based on democratic values and norms. Human rights remain at the centre of the peace process which in turn stands anchored in the principles of democracy, access, inclusion and participation.

3. The Constitution repealed the Constitution of the Kingdom of Nepal, 1990 (the 1990 Constitution) promulgated after the first People's Movement. It has created an interim Legislature-Parliament and provided for a transitional government. The United Nations Mission in Nepal (UNMIN) was established, vide Resolution 1740 (2007) of the United Nations Security Council, with the mandate to support the peace process. Election to the Constituent Assembly (CA) was held on 10 April 2008. The CA consists of 601 members, out of whom, 240 were elected through first-past-the-post electoral system, 325 through proportional electoral system, and 26 were nominated by the Council of Ministers. Almost a third of its members are women; and a record number of *Dalits* and people from different nationalities along with marginalized communities were elected, making the CA the most reflective and inclusive of Nepal's social diversity and plurality in its history. The resolution of the CA to end the 239-year old monarchy and declare Nepal as a Federal Democratic Republic on 28 May 2008 represents a rare peaceful transformation in the contemporary history. Now, the President is the Head of State, and the Prime Minister is the Head of Government, elected by the CA, which also serves as the Legislature-Parliament.

4. Nepal is presently engaged in building national democratic institutions to consolidate democratic gains, expedite the process of socio-economic transformation and take the peace process to meaningful conclusion including the framing of a democratic constitution by the CA. Most importantly, the transformation process firmly establishes the civil and political, and economic, social and cultural rights of the people as the bedrock of Nepal's democratic process. These historical events constituted cornerstones for sustainable peace building process in Nepal; and this report thus embraces many new political developments made to materialize the goal of peace building.

II Methodology and consultation process

5. A committee was formed by the Ministry of Home Affairs (MOHA), with cross sectoral participation, to prepare this Report upon holding consultations with a range of stakeholders. In this course, the committee held extensive discussions and dialogues with governmental institutions, national human rights institutions including the National Human Rights Commission (NHRC), and with various civil society actors including the media and non-governmental organizations (NGOs). A series of interactions were also held for deliberations on the contents of the report. The harmonized guidelines on reporting (HRI/GEN/2/Rev.6) and the guidelines for the treaty-specific document to be submitted under article 40 of ICCPR (CCPR/C/2009/1) were followed broadly. The Human Rights Committee also reviewed the general comments and concluding observations/comments on the initial report of Nepal.

III Background

6. As per the 2001 census, the population of Nepal is 23,151,423, with annual growth rate of 2.25 per cent. Senior citizens above 60 years account for about 6.5 per cent, children below 16 years, 40.93 per cent, and women, 51 per cent. The population living below the poverty line is approximately 25.4 per cent, which was 42 per cent in 2000. The average per capita income is \$ 560. The unemployment rate of male and female aged 15 and above in 2008 is 2.2 and 2.0 per cent, respectively. The work participation (labour force) rate is 77.8 per cent.¹ The literacy rate of 6 plus year population is 63.7 per cent. Average life expectancy is 63.3 years.

7. Ethnic, cultural and linguistic diversity is the most characteristic feature of Nepal as a nation. Ninety two languages are spoken as mother tongues. The Nepali language is the official language. Currently, 59 groups are recognized as indigenous nationalities (*Aadibasi Janajati*), accounting for 37.2 per cent of the population. The religious diversity is equally important feature of Nepal. As per the 2001 census, the majority of the population is *Hindu*, followed by Buddhists, *Islams*, *Kirats*, Christians, *Sikhs* and *Jains*. Significantly, Nepal is a nation with multiethnic, multilingual, multi-religious and multicultural characteristics.

IV Normative and institutional framework for the protection and promotion of human rights

8. The normative and institutional frameworks for the protection and promotion of human rights in Nepal are set out in the Constitution, relevant laws, policies and judicial decisions.

A Normative framework

The Constitution

9. The constitution is recognized as the fundamental law of the land, and any law inconsistent with it is void. It is also the fundamental and paramount source of human rights and fundamental freedoms. Constitutions promulgated at times in the past contained provisions, in one form or another, to protect human rights. However, they were either limited in scope or restrictive in nature. More so than its immediate predecessor, the 1990 Constitution, which laid primary emphasis on democracy, the Constitution's cardinal focus

¹ Source: Report of the Nepal Labour Force Survey, 2008- Central Bureau of Statistics, July 2009.

is on social and ethnic inclusion, constructive recognition of diversity and fundamental goal of social justice through inclusive, democratic and progressive restructuring of the State.

10. Presently, the Constitution with a comprehensive catalogue of fundamental rights, and provisions for their effective protection, is the basic source of human rights. It heavily incorporates almost all the rights set forth in the Universal Declaration of Human Rights (UDHR) and the ICCPR. Concretely, it provides for 21 different rights as fundamental rights,² and serves as a shield against any infringement of civil and political rights.

11. The Constitution has also obliged the State to provide a political system that fully upholds, inter alia, the universally recognized basic human rights and establishes rights of all citizens to education, health, housing, employment and food security. It also inscribes some economic, social and cultural rights in the Directive Principles and State Policies, which include provisions for positive discrimination, reservations and other forms of special support for vulnerable or marginalized groups or communities in connection with education, health, housing, food sovereignty and employment, for their empowerment, protection and development. The Constitution in Part IV contains explicit commitment of the State to the promotion of human rights and accordingly obliges the State machineries to take cognizance of human rights in their respective functions. Article 34 of the Constitution has made the protection and promotion of liberty and equality, and the establishment of a just system in all aspects of life, including economic and social advancement, as the fundamental objective of the State. Article 35 provides for State policies about raising the standards of living of the general public through development of education, health, transportation, housing, and employment of the people of all regions by ensuring equitable distribution of economic resources for balanced development of the country.

Laws

12. From the standpoint of the protection and promotion of human rights, legal structure of Nepal can be classified into general and specific laws. The Civil Liberties Act, 1954 (CLA) and the *Muluki Ain* (General Code), 1963 are important general laws. The CLA guarantees various civil and political rights. The *Muluki Ain* is a general law for both civil and criminal matters. It has repealed the traditional caste system and also attempted to end caste-based discrimination by eliminating untouchability and caste hierarchy. Its 11th and 12th Amendments have made reforms in the existing provisions particularly on property, marriage, divorce and abortion in compliance with major international instruments on women's rights.

13. Specific laws have been enacted to protect and promote other specific rights, for example, the right of the child, women's right, right against torture, and rights of persons with disabilities, right to form trade unions, right against child labour and bonded labour, freedom of press and publication.³

² The Interim Constitution of Nepal, 2007, part 3, arts 12 through 32. The fundamental rights are: right to freedom, right to equality, right against untouchability and racial discrimination, right relating to publication, broadcasting and press, right to environment and health, right to education and culture, right to employment and social security, right to property, rights of women, right to social justice, rights of the child, right to religion, right to justice, right against preventive detention, right against torture, right to information, right to privacy, right against exploitation, right relating to labour, right against exile, and right to constitutional remedies.

³ These laws include: Libel and Slander Act, 1959; Prisons Act, 1964; Some (Public Offenses and Punishment) Act, 1969; Marriage Registration Act, 1972; Nepal Treaties Act, 1990; Labour Act, 1991; Press and Publication Act, 1991; Social Welfare Act, 1992; Act Relating to Children, 1992; Trade Union Act, 1992; State Cases Act, 1992; Civil Service Act, 1993; Torture Related Compensation Act, 1996; Human Rights Commission Act, 1997; Legal Aid Act, 1997; Consumer

14. The legal framework, as culminated in the Acts and Regulations made or amended to be in sharp tune with international instruments joined by Nepal during the period covered by this Report (the list of such legislations is at annex I), basically provides for: substantive provisions, and mechanisms to promote and protect human rights; and procedures for remedies in cases of violations of human rights.

Policies

15. Nepal has pursued separate policies and programmes on human rights, with social inclusion of the marginalized or vulnerable groups or communities. The Three-Year Interim Plan, 2007/08-2009/10 (TYIP) has set Nepal's long-term vision on human rights as to build an inclusive, just and prosperous nation based on human rights culture.⁴ The human rights policies aim to ensure human rights for all, by creating a favourable environment for all to live with human dignity, developing human rights culture, alleviating poverty and ending all forms of discrimination, violence and exploitation. Importantly, it is the rights-based approach that underlies the human rights policies.

16. Major strategies pursued by Nepal include incorporating the issues of human rights in all sectoral development policies and plans, implementing special programmes for targeted groups to promote human rights, enhancing the capacity of human rights institutions, and making social service delivery easily accessible and effective through comprehensive programmes on human rights education and good governance.

17. Also in pursuance of the Vienna Declaration and Programme of Action 1993, Nepal has been implementing a periodic National Human Rights Action Plan (NHRAP) (2010-2013), formulated in collaboration with the civil society. The NHRAP covers 12 cross-cutting areas: education; health and population; legal reforms and judicial administration and management; indigenous peoples and *Dalits*; labour and employment; promotion of peace; cultural rights; environment and sustainable development; protection of human rights in Nepal Army; rights of the child, women and minorities, and social justice; peace and security, law enforcement and human rights protection; and institution building. Importantly, it has developed collective ownership for the promotion of human rights through integration of human rights programmes into development plans.

National jurisprudence

Acceptance of international human rights norms

18. Nepal's commitment to the acceptability of international human rights norms and principles is evident from the Preamble and paragraph-3 of the Constitution. The Preamble has made the competitive multi-party democratic system, civil liberty, fundamental rights, human rights, universal adult franchise, and periodic election, full freedom of press, independent judiciary, and concept of rule of law as the basic features of the Constitution. Article 156 of the Constitution is a specific provision to regulate the process of becoming a party to treaties.

Principles laid down by the judiciary

19. The Constitution recognizes the judiciary as one of the three pillars of the State, specifies its powers, lays down a framework for its independence, and determines its basic

Protection Act, 1998; Local Self-governance Act, 1999; Child Labour (Prohibition and Regulation) Act, 1999; Bonded Labour (Prohibition) Act, 2002; Nepal Citizenship Act, 2006; Human Trafficking and Transportation (Control) Act, 2007; Domestic Violence (Crime and Punishment) Act, 2009.

⁴ National Planning Commission, Government of Nepal, Three-Year Interim Plan (TYIP) (2007/08-2009/10).

features. The judiciary has played a predominant role in promoting and protecting human rights through its landmark judgments. The principles and rulings laid down in such judgments, made in relation to a wide array of human rights including economic, social and cultural rights, including the rights of the child and women, portray the human rights jurisprudence developed by the Supreme Court (SC). By exercising the judicial power, the SC declared *ultra vires* many legal provisions relating to facilities in prisons, equality and non-discrimination. In a range of areas where there were legal vacuum, such as women's rights over parental property, rights against sexual harassment and marital rape, it issued directive orders to the GON for making necessary enabling laws or streamlining laws to tune them with the guaranteed rights. These orders have brought ample change also on the elimination of various discriminatory traditions or practice. Moreover, it also contributed to the enforcement of rights including personal and civil liberty by quashing, in several cases, decisions of public authorities affecting personal liberty by putting persons in preventive detention, infringing the right to privacy and denying access to information held by public authorities.

20. The SC has also developed advanced public interest litigation (PIL) regime for the protection and promotion of public interest to seek redress in situations of violations of human rights. A wealth of jurisprudence has evolved on issues such as prisoner's rights, bonded labour, right to clean environment and custodial violence, among others. This regime has also become a mechanism to forge public participation in the dispensation of justice.

B National institutional framework

National Human Rights Institutions

21. Various national human rights institutions have been established by statutes or executive instruments to give effect to ICCPR and other relevant international instruments. The NHRC was established in 2000 as an independent statutory body. Its enabling legislation is the Human Rights Commission Act, 1997. The Constitution has upgraded it into a constitutional body consisting of one chairperson and four other members appointed for a six-year term, and the formation and mandate of which is in full conformity with the Paris Principles. In the appointments of the members of the NHRC, diversity and inclusion of women have been maintained. The main function of the NHRC is to ensure respect for, protection and promotion of, and effective implementation of, human rights. To this end, it can exercise a wide array of investigatory, supervisory, directive and recommendatory powers. Importantly, it can record any official or body defying its recommendation or direction as a violator of human rights, and issue an order for the provision of compensation to the victims. A bill to implement constitutional provisions on NHRC is being considered by parliament.

22. The National Foundation for Development of Indigenous Nationalities (NFDIN) was established as an autonomous statutory body, by the National Foundation for Development of Indigenous Nationalities Act, 2002, with main objective to ensure the overall welfare of indigenous nationalities. It has played a paramount role in empowering the indigenous nationalities for protection and promotion of their religious, linguistic, cultural and political rights. Similarly, the National Women Commission (NWC) was established as an autonomous statutory body, by the National Women Commission Act, 2007, for the protection and promotion of the rights and interests of women, including their effective inclusion in the development mainstream. It has recommendatory and investigatory powers. It consists of one chairperson and four members appointed by the GON, with inclusion from the *Dalit* and *Madhesi* communities.

23. The National Dalit Commission (NDC) was formed by an executive order of 2002, with primary objective to protect and promote the rights of the *Dalit* community and assist

the GON in *Dalit* upliftment programmes. It has carried out various important activities, including, preparation of required legal measures, working plans, publication and dissemination of various literatures on *Dalits*, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It has been implementing a Five-year Strategy focusing on overall empowerment and political participation of *Dalits*, cultural vigilance and legal reforms.

Office of the Attorney General (OAG)

24. The Attorney General as well as officials subordinate to him or her represents the GON in any courts or bodies and has important power to ensure humanitarian treatment of persons deprived of their liberty.

Human Rights Committee in Legislature-Parliament

25. The International Relations and Human Rights Committee of the Legislative-Parliament may give necessary direction and suggestion to the GON. It evaluates and monitors governmental activities on human rights. It considers and deliberates on annual reports of the NHRC and the Attorney General, and reports to the House of Legislature-Parliament. Such reports indicate whether desirable progress has been made, whether violators of human rights have been brought to justice, whether status of implementation of human rights treaties joined by Nepal is satisfactory and what sorts of policies need to be implemented in this field.⁵

National Information Commission (NIC)

26. The NIC is a statutory body established under the Right to Information Act, 2007. It hears appeals against decisions by public bodies in relation to citizens' demand to have access to information in such bodies. It is empowered to provide effective remedies on the enforcement of the right to information, by ordering for making reasonable compensation to the aggrieved party and taking departmental action against the defaulter.

Government institutions

27. A number of government institutions are also in place to give effect to human rights treaties at the domestic level. The Office of Prime Minister and Council of Ministers (OPMCM) is the lead government agency responsible for the promotion and coordination of human rights related activities, including governance reform, effective implementation of relevant human rights treaties. It is also a liaison institution for NHRC and OHCHR, among others. It coordinates and harmonizes human rights related affairs of various line agencies. It also oversees the reporting obligation of Nepal under various human rights conventions to which Nepal is party.

28. The Ministry of Home Affairs (MOHA) is basically responsible for the enforcement of law and maintenance of peace and security. It is implementing a Special Programme for Effectiveness of Peace and Security, Ending Impunity and Defending Human Rights, 2009 accompanied by a code of conduct founded on the norms of human rights, for security personnel and employees involved in the enforcement of this Programme. It operates the institutions of Nepal Police, Armed Police Force and National Intelligence Department. Both Nepal Police and Armed Police Force have central human rights units and human rights cells at their regional and local level offices. These institutions have mechanisms to examine petitions against police employees for human rights violations and publish the results of such examination.

⁵ The Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules, 2008.

29. The Ministry of Defense has a lead role in framing necessary defence policies, legislations, and democratizing the institution of Nepal Army. The Nepal Army established a Human Rights Directorate in 2006, with basic mandate to impart knowledge to the armed forces about human rights and humanitarian laws and enable them to fully carry out commitments on these areas. Moreover, there is a human rights division in each Regional Headquarters and a human rights section in each Brigade, which is planned to be extended up to the operational level.

30. Similarly, the Ministry of Peace and Reconstruction (MOPR), Ministry of Women, Children and Social Welfare (MWCSW), Ministry of Foreign Affairs (MOFA) and Ministry of Law and Justice (MOLJ) are also other important institutions to steer and deal with human rights related activities within their respective spheres.

Anti corruption bodies

31. In view of the fact that corruption is a great threat to good governance and ultimately to the enjoyment of human rights by all people without any kind of discrimination, several anti-corruption bodies have been established, with complementing mandate. The Commission for the Investigation of the Abuse of Authority (CIAA) is a constitutional body mandated to investigate and prosecute the cases of corruption and improper conduct. Similarly, the National Vigilance Center, the Special Court, OAG, Judicial Council, Revenue Investigation Department, Central Arrears Collection Office, Public Procurement Monitoring Office, Parliamentary Committees and the Office of Auditor General have served the various functions of ombudsman against corruption.

The Media

32. The media exercise full freedom of expression. The GON firmly believes that a responsible media is the nerve of any democratic polity. A good number of daily newspapers, weeklies, fortnightlies and monthlies are being published. There is also a remarkable growth of private satellite TV channels, community radios and print media. The media is active in bringing out various issues of national importance such as human rights, development and good governance, with the fundamental aim to generate dialogue and consensus on such issues. The media has been nurturing the right to information, and been instrumental in voicing against violation of human rights.

Civil society

33. The civil society has also evolved as a vibrant institution significantly contributing to the establishment of a sound democratic system. Voluntary action by citizens, in particular the PIL, has played a critical role in consistently holding the Government accountable for its actions and in resisting infringements of human rights. Such action is reinforced by the NGOs and CBOs through their diverse programmes including awareness, income generation, access to justice, environment conservation and participation in development process. Nepal has a strong tradition of NGOs and CBOs. Some 27,000 NGOs are registered in the country. The Constitution has directed the State to pursue a special policy on the operation and management of NGOs. The Association Registration Act and the Social Welfare Council Act provide legislative and institutional support for the operation of NGOs and CBOs.

C Scope of international obligations

34. Nepal strongly upholds the principles enunciated in the United Nations Charter and the rights set forth in the UDHR and the ICCPR. Nepal is also a party to almost all core

universal human rights treaties,⁶ 11 ILO Conventions,⁷ and many other human rights related treaties.⁸ It is also a party to the Four Geneva Conventions of 1949. It ratified the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 and SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002.

35. Nepal is committed to make the Human Rights Council, United Nations human rights treaty bodies including the Human Rights Committee strong and effective mechanisms. It has extended exemplary cooperation to these bodies. It continues to remain constructively engaged with the Office of the United Nations High Commissioner for Human Rights (OHCHR), which maintains a country office in Nepal since 2005. The Agreement between the GON and the OHCHR was revised in June last to reflect democratic changes and respect constitutional provisions.

V Development in the areas of concluding observations and comments⁹

Status of the Covenant within the legal system

36. According to the Nepal Treaties Act, any domestic legal provision that is inconsistent with a treaty ratified or acceded to by Nepal is not operative to the extent of such inconsistency, and the treaty provision prevails as if it were the law of Nepal. The operative definition of human rights has been adopted by the national law as the "rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the treaties joined by Nepal."¹⁰ On several occasions, the SC has issued writs and directive orders, also referring to various human rights treaties including the ICCPR, and declared domestic laws inconsistent with human rights treaties to which Nepal is a party.

⁶ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights (ICCPR); First Optional Protocol to the ICCPR; Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Optional Protocol to the CEDAW; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); Optional Protocol to the CRC on the involvement of children in armed conflict; Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; Convention on the Rights of Persons with Disabilities (CRPD); and Optional Protocol to the CRPD.

⁷ They are: Weekly Rest (Industry) Convention, 1921 (No. 14), Forced Labour Convention, 1930 (No. 29), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Equal Remuneration Convention, 1951 (No. 100), Force Labour Abolition Convention (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Wage Fixing Convention, 1970 (No. 131), Minimum Age Convention, 1973 (No. 138), Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), Worst Forms of Child Labour Convention, 1999 (No. 182), and Indigenous and Tribal Peoples Convention, 1989 (No. 169).

⁸ They include: Slavery Convention; Protocol Amending the Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; Convention on the Prevention and Punishment of the Crime of Genocide; Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others; Convention on the Political Rights of Women; International Convention on the Suppression and Punishment of the Crime of Apartheid; International Convention against Apartheid in Sports.

⁹ CCPR/C/79/Add.42, adopted at its 1982nd meetings, held on 2 November 1994.

¹⁰ The Human Rights Commission Act, 1997, sec 2.

37. Moreover, the Constitution has, by article 33, obliged the State to effectively implement the international treaties to which Nepal is a party. In pursuance of this obligation, the NHRAP aims, inter alia, to further crystallize the commitments of the GON to human rights on the grounds. These commitments have been undertaken also by joining the ICCPR. The NHRAP is firmly committed to implement the recommendations of the United Nations treaty monitoring bodies, and has directed the pertinent ministries and institutions to adopt necessary measures to ensure the compliance with treaty provisions. It has undertaken to propagate extensively the complaint procedures for remedies against violations of human rights, and include the provisions of human rights treaties joined by Nepal as the basis of or ground for such complaints. In addition, the review and revision of domestic laws in the light of the relevant treaty obligations, including those under ICCPR, is one of the bedrocks of the NHRAP.

Dissemination of the provisions of the Covenant and the Optional Protocol

38. In order to fulfil the obligation of publicity of the ICCPR's provisions and its Optional Protocols, almost all human rights-related conventions and instruments to which Nepal is a party have been translated by the MOLJ, MOFA and MOWCSW into the Nepali language for free distribution. NGOs and INGOs have also assisted towards the dissemination of the ICCPR. The translated versions of these instruments are also available in the websites of the MOLJ and the Nepal Law Commission in order to ensure that the provisions of these instruments are widely known to the members of legal profession, the judiciary and law enforcement officials, as well as to the general public. The subject of human rights has also been incorporated in curricula of higher education in universities and educational/training institutions.

39. The contents of human rights are included in training manuals for police employees at all levels. The Nepal Army has been incorporating human rights and international humanitarian law (IHL) package in all trainings (basic, career and special trainings) conducted within the Nepal Army. A separate package of the subject is also conducted at various locations of Division Headquarters and Brigade Headquarters periodically. In the period between 2006 and 2009, a total of 37354 persons were given human rights and IHL package, sensitizing all staff in basic norms.

40. The NHRAP has also undertaken to ensure incorporation of international human rights law in the professional training curricula for civil employees particularly police, Nepal Army, judicial and other law enforcement bodies.

Implementation of legislations

41. The GON is concerned about effective implementation of legislation. The MOHA has been actively engaged in effectively implementing laws in force and protection and promotion of human rights for all by maintaining law and order in the country, through optimum utilization of available physical and human resources. The GON believes that proper management of post conflict situation in the country is a prerequisite for establishing of sustainable peace and political, economic and social stability. In the absence of which, effective implementation of laws and safeguard of human rights may not be achievable.

42. Human rights cells in the MOHA and its subordinate offices have been boosted up to carry out investigation of violations of human rights and recommend necessary action, within the ambit of law. Police involvement and security activity have been beefed up to ensure that enjoyment of human rights is not undermined by violent activities launched by some armed groups in the *Terai* regions. The GON is also engaged in dialogues with such groups to resolve the problems.

43. Various national human rights institutions, government institutions and other bodies have been created to give effect to relevant legislations. The GON has received many

recommendations and orders from relevant international and national human rights institutions including the NHRC, in relation to infringements of human rights and measures to be taken to redress such infringements. It is sincerely engaged in forging required resources and measures towards full implementation of such recommendations and orders.

44. The Ministry of Peace and Reconstruction (MOPR) has supported initiatives for constructive conflict management, the promotion of participation of all sphere of society in the peace process, forging international support to sustain the peace process and ensure transitional justice to conflict victims. The MOPR has reconstructed 2,068 out of the 5,560 infrastructures damaged due to conflict. It has also provided monetary relief to the martyrs of People's Movement, families of more than 14,000 deceased, over 28,000 displaced persons, 1,302 families of the disappeared persons, and 1,320 disabled consisting of 23 persons who became disabled during the People's Movement and 1,297 who became disabled during the armed conflict.

Principle of non-discrimination and equality of rights

45. Article 14 of the Interim Constitution explicitly prohibits discrimination of any kind on the basis of caste, sex, tribe, social origin, language, religion and so on. In pursuance of this provision, human rights policies adopted by the GON have been profoundly directed and devised towards, inter alia, the elimination of discrimination, untouchability, exploitation and violence based on caste, ethnicity, gender, region, language, or religion; protection and promotion of political, economic, social and cultural rights of all peoples; and ensuring basic human rights of the marginalized or vulnerable groups or communities

46. A range of laws have also been enacted to prohibit gender and caste based discriminations. These laws also provide for the affirmative measures, which are considered inevitable for effective implementation of the principle of non-discrimination and equality of rights. Discriminatory laws of Nepal have drastically been amended during this reporting period. Based on reports received from various committees formed by relevant institutions, such legal reforms have been undertaken. Numerous legal provisions in the General Code and other legislations have been repealed or amended. The Act to Amend Some Nepal Acts to Maintain Gender Equality (the Gender Equality Act) was enacted in 2006. As an example, the women's equal right to ancestral property is now fully guaranteed by the Constitution as well as by the 12th Amendment to the General Code. The discriminatory provision under article 9 of the 1990 Constitution in relation to citizenship, which excluded women from reassigning their identity on their children, has now been repealed by a provision of citizenship under article 8 of the Constitution. A new Citizenship Act was enacted in 2006 in line with this article 8 provision.

Debt bondage

47. The *Kamaiya* system¹¹ (a form of agricultural bonded labour system) has been fully abolished in Nepal. The Bonded Labour (Prohibition) Act, 2002 prohibits the practice of *Kamaiya* system in any form. Now, the practice of debt bondage is a punishable act. Articles 29(3) and 29(4) of the Constitution have also explicitly spelt out the abolition of any practice of exploitation, slavery and serfdom.

48. The majority of the freed bonded labours have now been rehabilitated through a special scheme. A total of 4504 freed bond labour families have been rehabilitated and a

¹¹ *Kamaiya* system is an agricultural debt bondage practice. In this system, the family of the person taking debt, in the form of cash or grain, from 'the local landlord' has to freely work for him or her in lieu of interest to the date of repayment of the debt. This practice was prevalent in some districts in the Western part of Nepal.

sum of 36 million 280 thousand Rupees has been distributed to 4,544 freed bonded labours for housing.

Trafficking in persons

49. Article 29 (3) of the Constitution prohibits the trafficking in human beings in absolute terms. A new Trafficking in Person and Transportation (Control) Act, 2007, which repeals the previous Human Trafficking (Control) Act, 1986, has been enacted and implemented. This Act defines 'exploitation' as an act of keeping human being as slave. It has broadened the scope of reporting, investigation and adjudication with procedural and substantive legal provisions. It covers both cross border and internal trafficking for sexual exploitation or any other purpose, and also incorporates important provisions to provide justice to the victims, including compensation, in-camera hearing and establishment of a rehabilitation fund. It has recognized the principle of extraterritorial jurisdiction; hence trafficking of any Nepali citizen by any person or trafficking of any person by a Nepali national in any part of the world is a prosecutable crime in Nepal. In addition, the Human Trafficking and Transportation (Control) Regulation, 2008 has been enforced to carry out the provisions of the Act effectively. In the nutshell, Nepal has come out with stringent legal measures to deter, prevent and punish the crime of human trafficking in all forms. Now, trafficking in person is a serious crime to be prosecuted by the State as a party in the judicial proceedings. Moreover, the Domestic Violence (Crime and Punishment) Act, 2009 has also been enacted to end domestic violence, which is in its implementation.

Child labour

50. The Constitution in article 22 protects a range of children's rights as a fundamental right. This right incorporates the right against physical, mental or other form of exploitation, and right of minors against their employment, engagement or use in a factory, mine or similar other hazardous work or in army, police or conflict.

51. The TYIP aims to abolish all forms of exploitation, abuse, violence and discrimination against children through promotion of child-friendly environment for the physical, emotional, mental and intellectual development of, the child. The GON has implemented a 10-year National Plan of Action (2004/05-2014/15), covering areas of health, protecting children against abuse, exploitation and violence, and combating HIV/AIDS.

52. The Child Labour (Prohibition and Regulation) Act, 1999 is a specific legislative measure to curb the problem of child labour. It outlaws the engagement of a child below 14 in work as a labourer and provides for a stringent punishment. A committee of child labour prevention and a child labour prevention fund have also been established under this Act. These measures are also in tune with the Worst Forms of Child Labour Convention, 1999. Exploitation of children for pornography, sexual exploitation and trafficking is strictly outlawed, in keeping with Nepal's commitment under the two Protocols to the Convention on the Rights of the Child (CRC).

53. The GON has adopted a zero-tolerance strategy in relation to child recruitment. Efforts are directed to protect children and ensure that children recruited in armed conflict have access to rehabilitation and reintegration measures. An exodus of 4,008 non-qualified combatants, including 2,973 minors, has already been made from various cantonments, and they have been integrated into society. Recent statistics has estimated that some 19,980 children were affected by the armed conflict, 50 per cent of them were displaced and 20 per cent lost their parents; and 671 became disabled. In keeping with the CRC and its Optional Protocol of 2000, and the Paris Commitments, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, 2007, the GON has recently adopted a National Plan of Action for the Rehabilitation and Reintegration of Children Affected by

Armed Conflict. Its basic objective is to launch activities in an integrated manner for the protection of the rights and interests of the children associated with armed forces or groups and affected by the armed conflict and to rehabilitate and reunite them in the society. All activities will be carried out paying attention to the best interests of the child. It is also to note that the GON has adopted and enforced the Emergency Child Rescue Fund (Operation) Regulation, 2010 in order to provide immediate relief to, and make immediate rescue and rehabilitation of, children who are in vulnerable situation, including those who are involved in hazardous labour, victims of forced labour, of physical or mental torture and discrimination, tracking, and those living with HIV/AIDS.

Prison reform

54. The Prisons Act, 1964 and the Prisons Regulation, 1965 ensure minimum standards for prison management, keeping in view the international obligations undertaken by Nepal. The concepts of the community prison and open prison systems have recently been introduced by Nepal. The GON is working out for necessary legal reforms in prison legislation for the purpose of further institutionalizing the open and community prison system in Nepal. The NHRAP has the objective of protecting the human rights of prisoners, transforming prisons into reform homes and developing and expanding alternative forms of the sentence of imprisonment.

Discrimination against women

55. Nepal is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. It maintains that implementation of the Security Council resolutions 1325 and 1820 (2000) on Women, Peace and Security is highly important. A separate national action plan has been framed and implemented to carry out the Security Council resolutions 1325 and 1820.

56. During the reporting period, remarkable change initiatives have been taken by the State mechanisms through a range of measures. The Constitution has, by article 13 (2), prohibited any discrimination against any citizen in the application of laws including on ground of sex. Thus, any form of discrimination against women based on sex or gender has been outlawed. Similarly, the Constitution has safeguarded a bundle of the rights of women as a fundamental right, which incorporates: women's right against discrimination by virtue of sex and any kind of torture, right to reproductive health and equal right to ancestral property.

57. Nepal has identified gender mainstreaming, inclusion and equality as a priority in its national development plan. Policy and legal reforms, leadership development, social rehabilitation of women affected by the conflict, legal aid, gender awareness and advocacy are some important activities being carried out to this end. The TYIP sets the target of 33 per cent women's participation in overall State machinery. Under the Women Development Programme, women have been united against domestic violence and human trafficking, and involved in entrepreneurship and skill development income generation related activities by means of revolving fund operation. Women's cooperatives have become an effective vehicle for uniting women engaged in unorganized sectors, and conducting campaigns against various malpractices. Since 2002, the Gender Responsive Budget Initiative has been implemented.

58. The National Plans of Action on CEDAW and the Beijing Platform of Action framed in 2004 are being practically implemented. The GON has adopted temporary and special measures for full development and advancement of women. More than 150 laws provide for affirmative provisions for women in education, health and employment, and strive to secure gender justice. Several important laws have also been enacted to eliminate practices of discrimination against women, for example, National Women Commission Act,

2007, General Code (11th and 12th Amendment) Act, 2002, Gender Equality Act, 2006, and Domestic Violence (Crime and Punishment) Act, 2009. In pursuance of the recommendations of the CEDAW Committee, 65 discriminatory legal provisions have already been eliminated. A law review committee under the MWCSW is working out toward further elimination of laws perceived to be still discriminatory.

59. In addition to constitutional, legal and policy guarantees, the SC has shown its activism in cases relating to defective cultural and traditional malpractices such as *Chaupadi* subjecting women to inhumane and degrading treatment. The SC declared the practice of *Chhaupadi* (a malpractice prevalent mainly in far western part of the country, whereby women are treated as untouchables and placed in animal sheds for a defined menstrual period) as a defective and discriminatory traditional malpractice infringing upon women's human rights. It also issued a number of implementing guidelines to be implemented by the Government. A directive order was issued to the MOHP for the formation of a committee to conduct an extensive study on the impact of this practice on women's health. The MWCSW was also ordered to develop guidelines against this practice in the line of elimination of violence and discrimination against women. It is important to mention that the Supreme Court observed the importance of NGOs in carrying out awareness campaigns against this kind of discriminatory, inhumane and degrading customary practice. It is to note that several discriminatory legal provisions, for example, those relating to property, marriage, divorce, child custody and adoption have been amended in the wake of directive orders issued by the SC. In pursuance of the directive order of the SC and with a view to ending malpractices like *Chaupadi*, which can still be seen in one form or another in some parts due to deeply rooted patriarchal societal value system, the MWCSW is in the process of drafting a specific law curbing such traditional cultural malpractices.

60. In recognition of the fact that gender based violence (GBV) is immoral and a human rights violation, with costs for families, communities and the nation, a special programme was launched to celebrate the year 2010 as a year against GBV. The GON adopted a National Plan of Action for Year against Gender based Violence, 2010, which was a single policy document, and a longer-term plan would be developed based on lessons learnt from it. It aimed to address and control the problem of GBV through specific activities by relevant agencies. Importantly, it detailed a health sector response to GBV. It recognized that a concerted effort on different dimensions like health, education, legal rights, protection and security is necessary to address GBV. Working with men and boys to prevent violence and for a shift in understanding of masculinity is also essential. Importantly, a Central Level Complaint Management Unit was established in the OPMCM so that immediate action could be taken where the concerned agencies refused to register complaints or had become unresponsive.

61. Later, a Gender-Based Violence Prevention Fund (Operation) Regulation, 2010 was adopted and enforced. Now, a dedicated fund can be used to immediately rescue, provide legal aid, psychological treatment and psycho counselling services to, and rehabilitate the victims of GBV. This scheme was immediately applicable throughout the country and implemented by the district-based relief mechanism with representation of both government and non-government sector.

Accession to the Second Optional Protocol

62. Nepal acceded to the Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty on 4 March 1998. Like its predecessor 1990 Constitution, the Constitution has guaranteed the right of every person to a dignified life, and abolished the death penalty, by prohibiting the making of any law providing for the death penalty.

Independence of judiciary

63. Nepal reaffirms its initial report (CCPR/74/Add.2) for the information on independence of judiciary. The Constitution has provided for separation of Executive, Legislative and Judicial functions, and amply ensured the full independence and proper functioning of the judiciary, with making no derogation from the principles of the independence of judiciary as adopted by the 1990 Constitution. More importantly, the CA, which is in its constitution making process, has also given a serious attention and importance to the issue of the independence of judiciary.

64. The Constitutional Council is a mechanism to recommend also for the appointment of the Chief Justice of the SC, while the Judicial Council is to make recommendation and advice on the appointment of, transfer of, disciplinary action against, and dismissal of, judges and other matters of the district courts and appellate courts, and the appointment of other judges of the SC.

65. The judiciary has adopted and enforced a strategic plan since 2004 in order to execute judicial reforms. The vision of the judiciary is to maintain independent and efficient system of justice so as to ensure justice for all and through promotion of human rights, and independent and efficient system of justice. Its mission is to discharge fair and impartial justice in accordance with law and recognized principles of justice. Judicial reforms also focus on alternative dispute resolution mechanism as a vehicle for decentralization of justice and involvement of people in dispute resolution. Besides, Nepal has arbitration legislation and is in the process of enacting umbrella legislation on mediation.

Training to law enforcement officials, security forces (para 18)

66. A comprehensive system of training for law enforcement officials and security forces exists in Nepal. The Administrative Staff College, Nepal Army Academy, National Police Academy, Armed Police Training College, Nepal Judicial Service Training Center, National Judicial Academy and law colleges are primary institutions for conducting human rights trainings to law enforcement officials. Both the substantive and procedural components of human rights constitute significant part of both the pre-service and in-service training curricula of these institutions. The contents of human rights have been incorporated in training manuals for the police employees at all levels. Similarly, the Nepal Army has been incorporating human rights and international humanitarian law (IHL) package in all trainings (basic, career and special curricula) conducted with it. A separate training package, inter alia, is also conducted at various locations of Division Headquarters and Brigade Headquarters periodically. In the period between 2006 and 2009, a total of 37,354 persons were given human rights and IHL package, sensitizing all staff in basic norms.

Life expectancy of women (para 8)

67. The Constitution has safeguarded the right to environment and health as a fundamental right, entitling each person to live in a healthy environment. Each citizen has the right to free basic health services from the State, as provided in law. The GON recognizes that the enjoyment of right to health is intrinsic to the dignity of human being. The national health policy adopted by Nepal since the 1990s is governed by a commitment to provide free essential health service to all. The GON is implementing the Second Long-Term Health Plan 1997-2017 and other population and sanitation related policies.

68. The GON has implemented the free health service in primary health care institutions and district hospitals. People have free access to 40, 33 and 23 kinds of medicines at district hospitals, primary health centres and health posts, and sub-health posts, respectively. Pregnant women are entitled to free maternity service at all governmental hospitals and

private hospitals making agreement with MOHP. A transportation allowance is provided to those women who give birth at a health institution. Moreover, the poor, indigent, disabled and women volunteers are entitled to free medical service in entirety. The recently adopted Nepal Health Sector Programme-Implementation Plan II (NSHP-IP2) 2010-2015 aims to further increase the coverage of the safe motherhood programme, scale up community services delivered by female community health volunteers, leading to further demand creation for institutional delivery, and expand existing micronutrient and de-worming programmes for pregnant women and preschoolers.

69. The GON is making efforts to increase the rate of child immunization from the existing 83 per cent to 100 per cent. The achievement in the immunization service has been appreciated by the international community and development partners. Nepal is committed to the "health for all" as pledged in the Alma-Ata Declaration of 1978 and to the achievement of MDGs by 2015. Significant achievements have been made in several areas. Maternal mortality rate has gone down to 281, total fertility rate to 3.1, under five mortality rate to 61, and infant mortality rate to 48. According to the 2001 Census, the average life expectancy of women and men in Nepal was 62.2 years and 61.8 years, respectively. Now, the average life expectancy has gone up to 63.3 years, which indicates that the women's life expectancy has comparatively improved in recent years.

70. At present, no women are imprisoned for offences resulting from unwanted pregnancies. Number 28B of the Chapter on Homicide of the General Code permits termination of unwanted pregnancy of up to 12 weeks with consent of the pregnant women, and such termination has to be performed by a registered medical doctor. However, any forced abortion and feticide on the basis of amniocentesis test is strictly prohibited, and is punishable by law as a criminal offence.

Legal provisions governing state of emergency (para 15)

71. Invoking article 115 of the 1990 Constitution, a state of emergency was declared on 26 November 2001 and 1 February 2005 throughout the country, in order to meet exigencies of the situation. In accordance with clause (8) of article 115 of the 1990 Constitution, sub-clauses (a), freedom of thought and expression, (b) freedom to assemble peaceably and without arms, and (d) freedom to move and reside in any part of Nepal, of clause (2) of article 12, clause (1) of article 13 (press and publication right which provides that no news item, article or any other reading material shall be censored), article 15 (right against preventive detention), article 16 (right to information), article 17 (right to property), article 22 (right to privacy), and article 23 (the right to constitutional remedy, with the exception of the right to the remedy of habeas corpus) were suspended. These measures were not inconsistent with Nepal's other obligations under international law and did not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. The non-derogable rights as set forth in articles 6, 7, and 8 paras (1) and (2);, 11, 15, 16 and 18 of the ICCPR, which were guaranteed by the 1990 Constitution, were kept intact.

72. Like its predecessor, the Constitution in article 143 provides for emergency power. When a grave emergency arises in regard to the sovereignty or integrity of Nepal or security of any part thereof, by war, external aggression, armed rebellion or extreme economic disarray, the President may, on recommendation of the GON, declare or proclaim a state of emergency. Such proclamation is to be laid before the Legislature-Parliament for approval within one month. If it is approved by a two-third majority of the Legislature-Parliament, such proclamation may continue for a period of three months. Any orders issued by the President to meet exigencies are operative with the same force and effect as law during emergency. Some fundamental rights may be suspended during emergency. However, a range of rights are recognized as absolute and non-derogable, which cannot be suspended even in the state of emergency. These rights include: the rights to life, equality, personal liberty, justice, social justice, environment, health, education, and culture,

employment and social security, labour, religion, freedoms to form political parties and associations, rights of the child and women, rights against torture, exploitation, exile, untouchability, racial discrimination and closure or seizure of media or press, and right to constitutional remedies and the remedy of habeas corpus. The Supreme Court has extraordinary powers to issue necessary and appropriate writs to enforce such rights or settle the dispute. A person is entitled to obtain a reasonable compensation for any damage inflicted on that person from any act done by any official in contravention of law or in bad faith during public emergency. These constitutional provisions are in conformity with article 4 of the ICCPR.

Alleged unlawful practices and compensation to victims (para 16)

73. Nepal has taken a range of measures to prevent extrajudicial and summary executions, enforced or involuntary disappearances, torture and degrading treatment and illegal or arbitrary detention. The CPA, which is an integral part of the Constitution, has pledged to constitute a truth and reconciliation commission for finding out the truth about those who committed violation of human rights during armed conflict, and creating an environment of reconciliation in the society. It is also committed to carry out impartial investigation of perpetrators and to end impunity, and to ensure the right of victims and families of the disappeared persons to relief. Similarly, article 33 obliges the State to adopt a political system premised on the universally accepted basic human rights and good governance, while ending corruption and impunity, and form an inquiry commission on disappeared persons during armed conflicts and a truth and reconciliation commission.

74. During the conflict and the state of emergency, security agencies were mobilized under unified command. They were authorized to take offensive and defensive measures against the insurgents, but the acts of arbitrary executions or enforced disappearances were not permitted. In order to address the complaints of alleged disappearances and arbitrary execution, and carry out the constitutional obligation, the GON introduced bills on the constitution of two high level commissions on truth and reconciliation and disappearance in June 2010. These bills, which are being considered by the Legislature Parliament, aim to implement the CPA, constitutional provisions, and directive orders by the Supreme Court, and end impunity. Also, the GON, through the MOPR, has provided financial assistance to the families of 14,064 out of 16,719 deceased, distributed reliefs to 28,000 out of 78,689 internally displaced persons, reliefs to the families of 1302 disappeared persons and subsistence allowance to 23 persons injured during the People's Movement.

75. The Torture Related Compensation Act, 1996 has been enacted to provide for compensation against any physical or mental pain or suffering or cruel, inhumane or degrading treatment to any person held in detention for investigation or trial. The victim or his or her relative or law practitioner may file a petition in the district court, which is to decide the petition in accordance with summary procedures i.e. within ninety days. The court may order payment of compensation, and the concerned perpetrator is liable to departmental action.

76. A range of legal measures have been in place in order to ensure prompt and impartial investigations of allegations of extra-judicial and summary executions, involuntary disappearance, torture or arbitrary detention. The Local Administration Act, 1971 comprehensively provides for how, in the course of enforcement of laws, minimum force is to be exercised according to the situation. These provisions focus on the safeguarding of life and property of the people and managing peace and security rather than on provoking the security personnel to use lethal force. The organizational policy and order relating to the mobilization of police also discourages such use. Any police employee defying such order comes ipso facto under the Police Act and the domain of action by the special court. Any police employee is also liable to legal action for any criminal offence committed by him or her. Probe committees have also been formed many times to

investigate into various allegations or cases. The NHRC is also empowered to make impartial inquiry into allegations of misuse of powers by the police.

77. Under Section 62 of the Military Act, 2007, which has criminalized torture and disappearance committed by military personnel, an investigation committee¹² has been formed to investigate into allegations of corruption, theft, torture and disappearance and file cases in the military special court.¹³ This court is empowered to try and settle such cases, against which appeals may be preferred to the Supreme Court.

78. The GON is thus firmly committed to systematically investigate such cases in order to bring those suspected of having committed such acts before the courts and to ensure compensation to the victims.

Follow-up to international conferences

79. The combined fourth and fifth periodic reports to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NPL/4-5) under the title 'Progress on the Implementation of the Beijing Platform of Action' elaborates in detail Nepal's situation on women's rights issues.

Responses to the Appeals/Joint Appeals

80. Reports of Nepal under CEDAW (CEDAW/C/NPL/2-3); ICERD (CERD/C/452/Add.2); CRC (CRC/C/65/Add.30); CAT (CAT/C/33/Add.6), and ICESCR (E/C.12/NPL/2) provide an overview of the human rights situation of Nepal.

81. At the invitation of the GON, various special procedures, mandate holders visited Nepal, namely, the Working Group on Arbitrary Detention in 1996, the Special Rapporteur on extrajudicial, summary or arbitrary executions in 2000, the Working Group on Enforced or Involuntary Disappearances in 2004, the Representative of the Secretary General on the human rights of internally displaced persons in 2005, Special Rapporteur on the question of torture in 2005, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in 2008, Special Representative of the Secretary General for Children and Armed Conflict in 2008 and 2009 and Chairman of Security Council Working Group on Children and Armed Conflict in November, 2010.

82. The GON is sincerely working out towards implementation of all relevant recommendations made by these special procedures and mandate holders. It has timely responded to communications (appeals/joint appeals) sent by them.

VI Implementation of specific articles of the Covenant

Article 1- Right to self-determination

83. Nepal reaffirms its initial report under ICCPR (CCPR/74/Add.2 and the second periodic report under ICESCR (E/C.12/NPL/2, paras. 96-101). The GON affirms and respects the right to self-determination as mentioned in article 1 of the ICCPR. It believes that the essence of this right should be understood to include the following propositions: (a)

¹² This committee's composition is: Deputy Attorney General designated by the GON as the chairperson, and the chief of Law Division in the Ministry of Defense and at least *Senani* level representative in the *Prad* Department, as its members.

¹³ This court consists of three members including the chairperson who is a sitting judge of Appellate Court designated by the GON on recommendation of the Judicial Council. Other two members are the secretary at the Ministry of Defense and chief of *Prad* Department.

All peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development; (b) this right is to be exercised by the whole people of the country or by the nation as a whole; (c) the right to self-determination of the people should in no case be understood nor be construed as authorizing or encouraging any action which may lead to dismember or impair, totally or in part, the territorial integrity or political unity of a sovereign and independent state; and (d) every state has the duty to respect this right of people and to refrain from any act that may deprive the people of their right to self-determination.

84. The Constitution recognizes the supremacy of people one of the core values of the system of governance. In conformity with article 1, paragraph 2 of the ICCPR and article 55 of the United Nations Charter, the Preamble and articles 2, 3, 63, 138, 139 and 140 of the Constitution collectively embody the spirit of right to self-determination. Article 2 vests the sovereignty and sovereign authority of Nepal in the people. Article 3 defines that all the Nepalese people, having multi-ethnic, multi-lingual, multi-religious and multi-cultural characteristics with common aspirations and being united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, collectively constitute the nation. Article 138 commits to progressively restructure the State with inclusive, democratic and federal system of governance, and to end centralized and unitary structure of the State. Article 139, recognizing the principle of decentralization and devolution of powers to the local governance bodies, commits the State for establishing a system of sharing the accountabilities and revenues between the central government and the local governance bodies according to the law.

85. So far as the question of exercise of the right to self-determination in Nepal is concerned, the people have been exercising this right from time to time. The popular movement of 1990 abolished the concept of absolute monarchy by establishing a constitutional monarchy. Similarly, as a consequence of the April uprising of 2006, the traditional feudal monarchy was abolished in the country. The people of Nepal, by exercising the right to self-determination, through a resolution of the first plenary meeting of the CA dated 28 May 2008 abolished the 240-year old monarchy in the country. Moreover, the people of Nepal are currently framing a democratic constitution through their popular representative body, the CA. As a matter of fact, the whole people of Nepal, through their highest representative body, the CA, are now practically exercising the right to self-determination in relation to civil and political rights, and economic, social and cultural rights.

Article 2- Equal protection of rights

86. Legislations and judicial decisions are described in the initial report under ICCPR (CCPR/74/Add.2), the combined second and third periodic reports under CEDAW (CEDAW/C/NPL/2-3); the sixteenth periodic report under ICERD (CERD/C/452/Add.2), the second periodic report under CECSR (E/C.12/NPL/2) and the combined fourth and fifth periodic reports under CEDAW (CEDAW/C/NPL/4-5).

87. The Constitution and other legislations have respected and ensured to all individuals within its territory and subject to its jurisdiction the rights recognized in the ICCPR without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

88. The CLA, 1954 and article 13 of the Constitution affirm full commitment to the principle of equality of all citizens before the law. The State and law cannot or shall not discriminate among the citizens on the grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction. Furthermore, article 14 has guaranteed the right against untouchability and made any discrimination based on caste a punishable act. The General Code has prohibited the practice of untouchability as early as in 1965. The State Cases Act,

1992 has included the caste-based discrimination as a crime in its Schedule 1, thus making the crime to be prosecuted by the State. Likewise, article 14 of the Constitution has reiterated the provision along with a provision of compensation to a person discriminated by being treated as untouchable. However, this practice is found on the ground in some forms, negatively affecting the dignity of people belonging to the *Dalit* community. The Government policies and plans are concerned with this reality. Moreover, any discrimination based on sex is equally unacceptable. In spite of these measures, cultural practices still, on the ground, embody discriminatory treatment against women. The GON is concerned with this situation, and has revamped measures to root out the problems of discrimination based on caste and sex.

89. One of the measures adopted to mitigate the problem is the recognition of the need for special treatment to those classes or groups who are marginalized or vulnerable. Thus, the Constitution, in the proviso to article 13 (3), allows for special provisions by law for the protection, empowerment or advancement of such classes or groups including women, indigenous nationalities, children and the aged. Such special provisions may include the application of doctrine of reasonable classification, positive discrimination or mechanism for compensation to those subjected to discrimination or unequal treatment in the past. For this purpose, the GON has adopted a policy of adopting new laws.¹⁴ The Civil Service Act, 1993, Education Act, 1971, Local Self-Governance Act, 1999 and Election to the Members of Constituent Assembly Act, 2007 can be mentioned as major legislative measures to provide special treatment to women, *Dalit*, indigenous nationalities, people of backward regions and *Madhesi* (people dwelling in *Terai*) and minorities in the field of civil service, education, local governance, and representation in the CA, respectively.

90. The Social Welfare Act, 1992, Act Relating to Children, 1992, Labour Act, 1991, Gender Equality Act, 2006, Nepal Citizenship Act, 2006, and Domestic Violence (Crime and Punishment) Act, 2009 are some other important legislative measures adopted by Nepal to ensure enforcement of article 2 of the ICCPR.

91. The SC has also enunciated and reaffirmed the principle of equal protection of law in various cases including *Iman Singh Gurung vs. Military Court of Nepal Army and Others*. As per the principles laid down by the SC, the right to equal protection before the law is an absolute and unrestrained right.

Persons with Disabilities (PWDs)

92. Nepal has ratified the Convention on the Rights of PWDs, and its Optional Protocol, 2006 on 7 May 2010. The GON has been enforcing the National Policy and Plan of Action on Disabilities, 2006, which is in tune with the Extended Decade Work Plan for Asia Pacific Region PWDs 2003-2012. It focuses a range of issues and interventions. Required resources are being channelled to the Local Bodies for the development and empowerment of PWDs and their enhanced participation in development plans and programmes in all regions. The right based and inclusive approach is the bedrock of the GON's policies and plans in this field. Privileges in relation to education, health, skills-based training and transport service, among others, are some examples of positive discrimination in favour of the PWDs. A national coordination committee is a mechanism that oversees and coordinates activities in this field. The GON is also collaborating with the civil society and development partners.

93. Major policies in this respect focus, inter alia, on legislative reforms as required to ensure the rights and welfare of the PWDs, promotion of awareness on disability

¹⁴ Details about temporary special measures provided by the Nepalese legislations to promote gender equality can be traced out from the Report of Nepal to the CEDAW Committee.

prevention, free education and medical care, family and community based rehabilitation and employment.

94. As the Constitution makes disability as one of the grounds for affirmative action, any discriminatory treatment to a differently able person on the ground of inherent physical condition attached to his or her life is obviously prohibited. The Protection and Welfare of Persons with Disability Act, 1983 and Regulation, 1994 are major legal measures to implement the Convention. The GON is working out for timely improvements in the policy and legal regimes in the field of rights of PWDs. It has also framed building codes requiring public buildings to be PWD friendly.

Non-nationals

95. The fundamental rights, with some exceptions, under Part 3 of the Constitution are generally equally applicable to non-nationals. The equality or non-discrimination clause under article 13 (1) is equally applicable to non-nationals in matter of right against discrimination on the basis of caste, descent, community or profession. Similarly, the right to privacy and right against exploitation are also equally protected. The right to constitutional remedy under article 32 is also available for non-nationals.

Judiciary and other institutions for the protection and promotion of rights provided by the Covenant

96. The Section in Fair Trial below in article 14 deals in some detail with the situation of judiciary, including quasi-judicial bodies. Investigation, prosecution and adjudication are carried out by different independent and competent institutions. The police, an autonomous and independent organization under the MOHA, carry out investigative function, the Attorney General and its subordinate Offices carry out prosecution function and the regular courts, specialized tribunals and quasi-judicial bodies carry out adjudicative functions. All perpetrators, irrespective of acting in an official capacity, are equally liable to punishment in accordance with law.

97. As mentioned above, various national human rights institutions have played crucial roles in the field of protection and promotion of human rights. The NHRC, a constitutionally independent body, has very broad powers. It may, on any petition or *suo motu*, investigate violations of human rights and recommend for action, including institution of legal action in courts, against perpetrators, and also order for provision of compensation to victims. It may exercise the same powers as a court has in relation to summoning, taking deposition, making search, among others. Similarly, the NWC has also authority to promote women's equality in all aspect of national or public life. Also as a monitoring institution, it can secure governmental accountability in case of infringement of any human rights of women.

Article 3- Right to equality

98. The GON reiterates information provided in the combined second and third periodic reports submitted to the Committee on the Elimination of Discrimination against Women (CEDAW/C/NPL/2-3) and other latest reports under CEDAW, CERD, CRC, and ICESCR.

99. Nepal has adopted a range of legislative, executive and judicial measures to give effect to the right to equality. Article 13 of the Constitution has provided the right to equality as a fundamental right. All citizens are equal before law and entitled to have equal protection of law. No discrimination between or against any citizen on any ground is allowed. Discrimination in regard to remuneration and social security between men and women for the same work is also prohibited. With reference to women's rights, Article 20 can be considered as a milestone. It prohibits discrimination against women merely on the ground of sex, guarantees the right to reproductive health and reproduction and the equal

right to ancestral property for both son and daughter. Major legislative measures on gender equality are listed at annex II.

100. Various laws have been enacted or amended to enforce article 3 of the ICCPR. The Labour Act, 1991, the Immigration Act, 1992 and the Gender Equality Act, 2006 can be cited as important laws enacted to give effect to this right. The Immigration Regulation, 1994 has been amended to allow the non-tourist visa to male foreign nationals who have matrimonial relation with Nepali women. Similarly, the Act Relating to Lands, 1964 has been amended to enable daughters, daughters-in-laws and grand-daughters to inherit land tenancy rights (reserved exclusively for sons in the past). The 11th Amendment to the General Code in 2002 has brought about significant positive changes, which include: equality of sons and daughters in inheriting ancestral property; abolition of restriction imposed on a widow to obtain her deceased husband's partition share; and abolition of provision that required unmarried daughters to reach 35 to receive their partition share.

101. A range of national plans of action are being practically implemented, which include: NPA on Gender Equality and Women Empowerment, 1998; NPA on Beijing Declaration and Platform for Action, 2003; NPA on CEDAW, 2003; and NPA against Trafficking in Children and Women for Sexual and Labour Exploitation, 2004. The MWCSW, which was established in 1995 as a focal institution for implementing, evaluating and monitoring women development or empowerment programmes, has been implementing these NPAs, in collaboration with the relevant stakeholders. It also prepared a strategic document on gender and social inclusion in 2006, which has been instrumental in mainstreaming gender and promoting equality at the national level organizations.

102. The SC, through a pro-active interpretation of the principle of gender equality or gender based non-discrimination clause of the 1990 Constitution in many cases, has significantly contributed to build a jurisprudence of equality in rights of men and women. The *Lily Thapa vs. Council of Ministers, 2005*, is a milestone case, in which the SC declared various restrictive provisions on enjoyment of exclusive property rights by women as unconstitutional.

103. Various legal measures have been adopted to address the issue of violence against women has been dealt with by a number of legislative measures. The Domestic Violence (Crime and Punishment) Act, 2009, is a specific law dealing with offence within the family. Legislative measures applicable in relation to the violence against women are given at annex III. The detail situation analysis in this regard has been made in the periodic report to the CEDAW Committee.

Trafficking in women and children

104. The Constitution has prohibited trafficking as an act of exploitation. Nepal has undertaken international obligation to tackle the crime of trafficking by joining various relevant instruments, which include: SAARC Convention on Trafficking in Women and Children for Prostitution, 2002, slavery-related conventions, 1949 Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, and its 1950 Protocol, CEDAW, CRC, and ILO conventions on elimination of the worst forms of child labour and on forced or compulsory Labour. Nepal has stringent laws in this field. (*For detail, see Nepal's periodic report to the CEDAW Committee submitted in 2009*).

105. The GON has adopted a three-pronged strategy to combat trafficking. It consists of law enforcement measures, income generation schemes and educational opportunities to the children belonging to vulnerable groups. The NPA against Trafficking in Children and their Commercial Sexual Exploitation adopted in 1998 has identified six areas of major concerns to combat the trafficking. The Office of National Rapporteur on Trafficking in Women and

Children has been established in the NHRC, with responsibilities for publishing national reports on human trafficking and monitoring activities about and incidents of trafficking.

Participation of women in decision making and public services

106. In the CA election in 2008, a total of 373 female candidates contested for the 240 direct seats (first-past-the-post) against 3648 male candidates. Of them, 30 got elected. From the proportional list, 161 women were elected. Out of 26, six women were nominated as members of the CA. Altogether, the CA contains 197 female members, thus constituting 32.77 per cent of the total body (601 members). This is a remarkable achievement in the field of women's participation in political decision making process.

107. Currently, women account for only 8.55 per cent of the civil employees. They account for 2.06 per cent in the gazetted first class position, 4.07 per cent in the gazetted second class position, 6.57 per cent in the gazetted third class position, and 10.47 per cent in the non-gazetted positions. Women have also been employed in Nepal Police, Armed Police Force and Nepal Army. Currently, the strength of women in Nepal Police and Armed Police Force is 5.28 and 1.04 per cent, respectively. The Nepal Army has started recruiting women for regular military works since 2004. The participation of women in non-combatant sector e.g. medical, legal, parachute folding work has a long history. The representation of women in the justice sector is also comparatively lower. The GON is conscious about this situation. The tremendous growth of women students in law schools is expected to change this scenario in future.¹⁵

Article 4- Non-derogation of rights during public emergency

108. As mentioned above, article 143 of the Constitution provides for explicit grounds for the declaration of a state of emergency. It prohibits suspension of the right to remedy available under article 32, which provides for the right to obtain constitutional remedy, including *habeas corpus* in violation of rights by the Constitution. Non-derogation of the rights during emergency is amply protected by the Constitution.

109. The state of emergency was declared twice in Nepal during the period covered by this Report. The first emergency was declared on 26 November 2001, which was approved by the HOR on 21 February 2002. The then Government had notified the ICCPR Committee about the state of emergency on 22 February 2002. The Terrorists and Disruptive Acts (Control and Punishment) Ordinance was issued along with the proclamation of the state of emergency on 26 November 2002. This legislation was in the form of a sunset law, which ceased to exist in 2006. The second state of emergency was declared on 1 February 2005, which lasted for less than three months.

110. During the period of emergency, the SC received about 200 petitions of *habeas corpus*, and, in over 60 of them it issued orders requiring the security forces and the Government to release the detainees.

111. During both states of emergency, article 23 of the 1990 Constitution was suspended, with the exception of the right to recourse the remedy of *habeas corpus*, which guaranteed the right of constitutional remedy to enforce fundamental rights. A Special Bench of the SC, comprising five justices, however, made a significant ruling, on 29 November 2001, in relation to the suspension of article 23. The SC held that since the 1990 Constitution under article 23 had not imposed restrictions to entertain writ petitions by the SC for constitutional remedies that were lodged at the SC prior to the declaration of the state of

¹⁵ The information provided in Nepal's Report under articles 7 and 8 of CEDAW provides extensive details of women's participation in public service.

emergency, there could be no constitutional impediment in hearing such writ petitions. On another occasion, the SC laid another principle which opened a way for hearing writs on rights that were not suspended.

Article 5- Safeguard clauses

112. No provision in the Constitution or any law of Nepal allows restriction upon or derogation from fundamental human rights in the pretext that the ICCPR does not recognize such rights or that it recognizes them to a lesser extent. The fundamental rights and freedoms guaranteed by the Constitution and other statutes fully respect the letters and spirit of the ICCPR.

Article 6- Right to life

113. The CPA has explicitly recognized the right to life as the basic right of each person. Similarly, the Constitution confers on every person the right to life with dignity and liberty, and the right against death penalty. Guided by the long-standing principle of inviolability of human being, Nepal has abolished death penalty as a form of punishment. As death penalty is outlawed in the country, the question on the subject to death penalty for any offence is irrelevant. This right is essentially the foundation of human rights jurisprudence of Nepal.

114. The GON is seriously concerned about the issues of forced disappearances and violations of human rights and IHL during the period of armed conflict, in particular. The GON has recently submitted two important bills to the Legislative-Parliament, namely a Bill on Truth Finding and Reconciliation Commission, and a Bill on Disappearance of Persons. The former Bill purports to address the transitional justice issues while the latter purports to criminalize the act of disappearance and provide punishment to the offenders, also with provisions of reparation for harms to the victims.

115. A commission headed by Joint Secretary, MOHA was constituted with the responsibility to probe the reported cases of disappearance and to make public whereabouts of the allegedly missing persons. MOPR has implemented various schemes to provide relief to the affected families. In pursuance of the decision of the GON to provide relief to the families of those who died in the course of armed conflict, the MOPR is providing a sum of 100 thousand Rupees to each of 16,719 families.

116. Nepal has fully denounced the act of extrajudicial killings and has issued strict directives to all concerned agencies to protect human lives and punish those who commit or who are responsible for the commission of such acts. The Local Administration Act, 1971 prohibits disproportionate use of force by the security agency in order to prevent casualties and death of persons. It requires that the use of baton, tear gas, water cannon or blank fire must be appropriate and proportionate. Strictly, they should be used only to disperse the crowd. No use of firearms above knee is allowed in any circumstance. The Essential Commodities (Control) Authorization Act, 1961, which also authorizes use of force, has the very similar provision about use of firearms. A code of conduct has been issued for the security agencies. Information on birth rates, pregnancy and child-birth related deaths of women and female infanticide is given in paragraphs 69 through 71 of this report.

Article 7- Right to protection against torture

117. Nepal reaffirms its combined second, third, and fourth periodic reports under the Convention against Torture (CAT/C/33/Add.6) and additional information provided to the Committee against Torture.

Constitutional and legislative measures

118. Nepal is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Respecting right to dignity, the CPA clearly provides in article 7.3.1 that any person deprived of freedom in accordance with law shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Similarly, the Constitution, by article 26, has recognized the right against torture as a fundamental right. It has strictly prohibited and made legally punishable any form of physical or mental torture or cruel, inhuman or degrading treatment or punishment. A victim of torture is entitled to compensation as specified by law. Even during a state of emergency, this right cannot be suspended.

119. The Torture Related Compensation Act, 1996 is a specific legislation in this respect. An adult member of the victim's family or his or her legal practitioner may file a petition to the district court if they think that the detainee is subjected to torture while in detention. The court has to promptly take action for ensuring medical examination of the victim within three days. If the victim is to be treated for injuries caused by torture, such treatment shall be done at the Government expense. Similarly, it is mandatory to have medical examination of a person arrested before he or she is put into custody. If any official is found guilty of torturing a person, the victim is entitled to compensation as determined by the court having regard to a range of factors including the gravity of offence. Different district courts have awarded compensation to the victims of torture in many cases. In order to make torture related legislations to be further harmonized with the CAT, the GON has already given the final shape to the bill to criminalize the act of torture. The GON is also working out to establish a central fund to immediately provide compensation as provided by the Torture Related Compensation Act to the victims immediately and easily.

120. The NHRC is also empowered to investigate into any petition of alleged torture committed to a person. It conducts investigation of the petition in accordance with the Human Rights Commission Act, 1997 and the NHRC Regulation (Complaints, Action and Compensation), 2000. It is to note that if the NHRC establishes that any person has been subjected to torture, it may also order for the payment of compensation to the victim.

121. According to Section 9 of the Evidence Act, 1974, a statement obtained by any inducement, threat, torture, attempt to torture or against consent is not taken in evidence by the court. Any extra-judicial statement given by the accused confessing the crime is not taken in evidence unless it is corroborated by other independent evidence. Similarly, no person accused of any offence may be compelled to be a witness against himself or herself. As per the State Cases Act, 1992, a medical examination of the suspect is mandatory if there is an allegation of the torture made by the detainee. A victim subjected to torture during detention can make a complaint before the court.

Actions taken by security agencies to prevent torture and punish the guilty

122. The security agencies have developed training activities for their personnel to prevent torture. From the year 2002 onwards, Nepal Army, through Military Court decisions, has penalized 176 military personnel for torture, violation of human rights and humanitarian law. Sixteen military officers were found to be involved in grave violation of human rights. Those personnel who are found involved in acts of torture are prevented from participating in the United Nations Peace Keeping Missions. Similarly, the Nepal Police, from 1996 onwards, has taken action against 21 personnel found guilty of committing torture in separate incidents. It has taken action against 504 personnel in violation of other types of human rights. Those involved in serious human rights violation have been suspended from their job. Similarly, the Armed Police Force has taken action against 54 officers for violation of human rights. The Nepal Police has taken action against 562 police personnel, ranging from Constable to Additional Inspector General, from 2004 to 2010,

amongst them 21 personnel were dismissed from the job. Both Nepal Police and Armed Police Force have issued human rights protection guidelines. In the Nepal Police, the human rights cells have been extended to each district whereas the Armed Police Force has set up human rights cells in each regional command.

Article 8- Rights to protection against slavery, servitude and forced labour

123. Nepal is party to various international instruments prohibiting slavery, servitude and forced labour, including the Slavery Convention 1926, its 1953 Protocol and 1956 Supplementary Convention, and ILO Conventions No. 138 (1973) concerning Minimum Age for Admission to Employment and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

124. The Constitution guarantees the right against exploitation as a fundamental right, which incorporates the right against exploitation in the name of any custom, tradition or usage, against slavery and servitude and against forced labour. However, law may require citizens to perform compulsory services for public purposes, as provided by law.

125. Number 3 of the Chapter on Trafficking in Persons of the General Code provides that slavery, servitude and bonded labour shall be treated as a serious criminal offence, and a person that practices such acts is liable to the punishment of imprisonment for a term of three to ten years, and also to pay such compensation to the victim as determined by the court. Moreover, a specific law namely the Bonded Labour (Prohibition) Act, 2002 has also been enacted to address the matters.

126. The GON has launched the bonded labour livelihood programme since 1995. Under this with programme, the GON has distributed plots of land and funds to 21, 639 freed bonded labours so far. Further, the GON has introduced a minimum wage system in order to regulate the labour field.

127. The slavery system in Nepal was formally abolished eighty years ago. Slavery as such in an institutionalized form does not exist in Nepal. However, some slavery like practices did exist particularly in the western part, until recent past. The bonded labour system can be defined as a form of slavery like practice which has now been fully prohibited by the Constitution and law. The GON is drafting a bill prohibiting the system of *Haliya* (a practice similar to bonded labour) prevalent in some far western districts of Nepal.

Article 9- Liberty and security of person

128. The Constitution and a number of laws have protected every person's right to liberty and security. Article 24 of the Constitution has safeguarded the right relating to justice as a fundamental right. Accordingly, a person arrested has the right to be informed of the reasons for arrest, to consult, and to be defended by, a legal practitioner, to be produced before the case trying authority within 24 hours of such arrest, excluding the time necessary for the journey, and not to be detained in custody without order of such authority. Any incapable party is entitled to free legal aid, as provided in law. The Legal Aid Act, 1997 has been enacted to materialize this provision, and ensure access to justice, which constitutes an essential element of fair trial. In addition, the Constitution also provides that no person is to be held under preventive detention unless there is a sufficient ground of the existence of an immediate threat to the sovereignty, integrity or law and order situation of the county. If a person held in preventive detention contrary to law and not in good faith, the person is entitled to compensation.

129. The CLA, 1954 has protected this right in the similar fashion. Importantly, any one whose right to liberty and security as guaranteed by the CLA, 1954 is infringed has an

enforceable right to compensation. In addition, the Chapter on Court Proceedings of the General Code has various provisions relevant to the protection of this right.

130. The State Cases Act provides that a police employee of at least Assistant Sub-Inspector level may search a suspected person or place, and has to follow certain procedures to arrest the person. Such person has to be informed of the reason and asked to surrender. Women police should be used in arresting women as far as possible. The Police Act, 1955 has allowed arrest without warrant in certain circumstances, for instance to arrest a fugitive criminal. But such arrested person has to be produced before judicial authority within 24 hours.

131. It is to note that the right to legal remedy of habeas corpus is also a fundamental right and is well protected by the Constitution as a non-derogable right. Pursuant to article 107(2), the SC has jurisdiction to issue the writ of *habeas corpus* to locate the whereabouts of a person illegally detained and pass a prompt judicial order to release a person detained or imprisoned unlawfully, unreasonably or without having sufficient grounds as specified by the laws. In the nutshell, where the basic tenets of the right to liberty and security of person are infringed the aggrieved party may have recourse to this remedy from Appellate Courts and the SC, as well.

132. Section 67 of the Military Act, 2007 provides for four different types of military courts, namely General Military Court, Summary General Military Court, District Military Court, and Summary District Military Court. Pursuant to Section 68, the military courts do not exercise jurisdiction over military personnel who have committed a crime against civilian person. The jurisdiction of the Military Courts, therefore, is exclusively limited to the military persons, and the jurisdiction is exercisable only in case of violation of the military disciplines or in cases that are committed by personnel against military personnel. Pursuant to Section 119, a Special Military Court may be constituted to take cognizance of offences like corruption, torture and disappearances committed by a person who is subject to the Military Act. According to Section 101, the Military Special Court may punish the offender up to life imprisonment along with confiscation of the entire property as provided by law. However, under article 107 of the Constitution, judgments of the Special Military Court may be challenged in the SC.

Article 10- Treatment of prisoners

133. As the right to liberty of person has been constitutionally guaranteed, no liberty of any suspect, accused or convicted person can be suspended, abrogated or deprived save in accordance with law. All persons deprived of their liberty have to be treated with humanity and with respect for the inherent dignity of the human person. It is to note that article 135 of the Constitution has given important authority to the Attorney General of Nepal. Accordingly, if a complaint is made alleging that any person held in custody has not been treated humanely as required by the Constitution or such person has not been allowed to meet his or her relative or legal practitioner or if information of such matter is received from any source, the Attorney General may inquire into the matter and give necessary directive to the concerned authority to prevent such act. Similarly, the Chief District Office is required to inspect prisons in every six months. Moreover, the Judge of the Appellate Court should visit and inspect prisons under its jurisdiction at least once a year and submit its report to the SC. The NHRC may also visit prisons, and investigate violations of the rights of prisoners.

134. The Prisons Act, 1964 as well as the Prisons Regulation, 1964 is the specific law to provide for prisoner's rights and treatment of prisoners and prison management. Generally, all prisoners, contingent upon their condition of being in prison, can exercise their civil rights. All prisoners can enjoy rights to meet and communicate with their relatives and legal counsels, obtain medical treatment and care, work, study, profess religion and observe

cultural practices, use radio, television, read newspapers, enjoy sports and obtain all necessary means of dignified livelihood and shelter. The practice of forced labour of inmates is prohibited.

135. According to Section 6 of the Prison Act, accused persons are segregated from convicted persons, save in exceptional circumstances. Normally, the accused persons are kept in police detention cells during the pre-trial period of 25 days (investigation period) and then they are shifted to prisons to wait for trial. Accused juvenile persons are kept separately from adults. The practice of placing children in prisons along with adult inmates has been fully abolished. Rehabilitation centres have been established to keep accused juveniles away from adult inmates. Men and women inmates are kept in separate buildings. If the separate building is not available, they are kept in separate parts of the building. Moreover, sick or mentally disturbed detainees and convicts are separated and kept in different parts. In the case of *Advocate Chandra Kant Gnywali and Others vs. the GON*, a Special Bench of the SC has voided clause (1) of Rule 21 of the Prisons Regulation, 1963 on the ground that it was inconsistent with the equality clause of the 1990 Constitution. It was stated in the judgment that the provision relating to classification of prisoners in classes A and B on the basis of their level of education, social and economic status and provision of facilities to prisoners and their treatment on that basis was repugnant to article 13(3) of the 1990 Constitution.

136. With regard to the treatment of prisoners, the GON believes that Nepal has achieved a higher level of compliance with the United Nations Minimum Standard Rules for the Treatment of Prisoners (1957), Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988), Code of Conduct for Law Enforcement Officials (1979), Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

137. At the moment, there are a total of 73 prisons in Nepal, with 9,162 inmates, consisting of 8,368 males and 628 females. During the armed conflict, 14 district prisons were severely damaged of which reconstruction is now going on.

138. The Department of Prison Management (DOPM) is responsible for the overall management of prisons. Various commissions, committees and task forces were formed in 1948, 1951, 1960, 1973, 1987, 1990, 1993, 1997 and 2000 with a view to improving the condition of prisons, including effective protection of prisoners' right. A series of recommendations were made for prison reforms, which included schemes for repair and renovation of old detention centres and construction of new prisons. The periodic plans have outlined policy guidelines for enhancement and reforms of the criminal justice and prison management system under the rubrics of good governance and human rights. The NHRAP has incorporated prison management and reform as one of the twelve critical areas of intervention. Legal reforms, establishment of open prisons and community services, probation and parole system, provision for paralegal services and legal aid, launching of vocational training and other measures to assist social reintegration of prisoners, and further improvement of physical conditions of prisons are some important activities being carried out in this respect.

139. The DOPM has launched the prison extension programmes in *Sunsari, Parsa* and *Dhangadi* district prisons as well as in the Central Prison and the *Nakhu* Prison. A project to build a new prison with open prison system is now in the progress. A manual is being prepared to systematize the procedures of sending prisoners for community services. With a view to estimating and prioritizing the improvement of physical infrastructure, the electronic visualization of the prison situation is now being done. A prison management procedure manual is being finalized, with a view to maintain uniformity and transparency

of prison management related affairs. The DOPM is also working out on a bill to make timely amendments to the Prisons Act, 1964 with a view to furthering ensure that the penitentiary system of Nepal comprises treatment of prisoners the essential aim of which is their reformation and social rehabilitation, and juvenile offenders are accorded treatment appropriate to their age and legal status.

140. The GON is also concerned with several challenges and problems in this regard. Lack of timely reform and review of laws, weak physical infrastructures of prisons, inadequacy in basic services and facilities to prisoners, limited availability of skill developing and income-generating provisions, inadequacy in the provisions of care and protection of dependent children of prisoners, slow pace of development of means of making behavioural change of prisoners as an alternative to the sentence of imprisonment. The GON is forging public-cooperative-private partnership and collaboration with development partners to tackle these resources related constraints.

Article 11- Right to freedom from imprisonment for inability to fulfil a contractual obligation

141. Legislations in force make no provision for imprisonment of any persons on the ground of inability to fulfil a contractual obligation. The Nepalese legal system has no provision for imprisonment in cases of contractual obligations. The GON believes that imprisonment could not be a civil remedy.

Article 12- Freedom of movement

142. Article 12(3)(e) of the Constitution guarantees the freedom to move and reside in any part of Nepal as a fundamental right for all citizens. So, the right to liberty of movement is a constitutionally protected right. This right may be subject to restriction by law which is made in the interest of general public or by law imposing reasonable restriction on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities. The right to liberty of movement is also available to non-nationals who are lawfully within the territory of Nepal. However, the exercise of the right by non-nationals requires a prior permission from the concerned authority to travel to areas that are designated as restricted areas. In addition, article 31 of the Constitution guarantees the right of citizens against exile. There is no system of banishment of citizens under the laws of Nepal.

143. From 1996 to 2006, owing to the insurgency and imposition of the state of emergency, the right to movement of people was somehow circumscribed. With the conclusion of the CPA and promulgation of the Constitution, the situation has returned to normalcy, and people enjoy full freedom of movement.

Article 13- Non-expulsion of aliens

144. The GON has no policy of expulsion of any person to his or her country of origin except in exceptional circumstances. Expulsion is not made unless there is a substantial ground to believe that the non-expulsion of a person will pose a danger to national security, and such expulsion cannot be made except in accordance with decision of the competent authority in accordance with law. The specific law in this respect is the Immigration Act, 1992. Its main objective is to regulate and control the entry of foreigners into, and their stay in, and departure from Nepal. In order to enter into Nepal, a foreigner should hold a valid passport and visa. Any foreigner aggrieved from a decision of expulsion by the competent authority may file a petition with the Appellate Court for remedy.

145. Nepal has provided refuge to more than 108,344 Bhutanese refugees as well as about 20,000 Tibetan refugees on humanitarian grounds. The Tibetan refugees are scattered over 20 different districts of Nepal. Each adult refugee is issued with an identity card,

which is valid for a year and renewable. These refugees are also ensured basic human rights. More than 44,000 Bhutanese refugees have left for resettlement in countries such as USA, Australia, United Kingdom, Canada, Denmark, Netherlands, Norway and New Zealand.

146. For the purpose of repatriation of the Bhutanese refugees, both Nepal and Bhutan had agreed to form a Ministerial Joint Committee in July 1993. Verification and categorization of Bhutanese refugees was carried out by a Joint Verification Team. However, repatriation of Bhutanese refugees has not yet started.

147. At the central level, the National Unit for the Coordination of Refugee Affairs in the MOHA has been set up to plan, co-ordinate and monitor the refugee management affairs. At the field level the Refugee Co-ordination Unit at Chandragadhi, Jhapa works as an operational and implementing agency. UNHCR, other UN agencies and NGOs have been providing humanitarian and relief assistance to the Bhutanese refugees since 1991.

148. The Extradition Act, 1988 allows the Government to extradite a person who has committed an offence as stipulated in the extradition treaty with any foreign country, with the exception of political offence. The GON is reviewing the existing extradition legislation to bring it to the tune of international practices.

Article 14- Fair trial

149. The Constitution provides for structure of courts in a three-tier hierarchy- the SC, Appellate Courts and District Courts. The SC is the apex court in the judicial hierarchy. All courts and judicial bodies are under the SC and it may inspect and supervise them. It consists of one chief justice and not more than 14 judges. One who has served as a judge of the SC is qualified to be the Chief Justice of the SC. While one who has served as a judge of an Appellate Court or in an equivalent office of the Judicial Service for seven years or in a post of at least gazette first class officer of the judicial service for at least 12 years or has practiced law for at least 15 years as a law graduate advocate or senior advocate or who is a distinguished jurist having worked for at least 15 years in the judicial or legal field is qualified for appointment to the office of judge of the SC. They hold office until 65 years. The District Court and Appellate Court Judges are appointed by the Chief Justice on the recommendation of the Judicial Council. One who has done law graduate and served as a judge of a District Court or in a post of gazette first class officer of the judicial service for at least seven years or has practiced law for at least 10 years as a law graduate advocate or senior advocate or who has taught law or done research in law of justice for at least 10 years is qualified for appointment to the office of chief judge or judge of the Appellate Court. One who has done law graduate and served as in a post of gazette second class of the judicial service for at least eight years or has practiced law for at least eight years as a law graduate advocate is qualified for appointment to the office of judge of the District Court. They hold office until 63 years. Their tenure has been constitutionally guaranteed, and their remuneration, facilities and other conditions of service are provided by law.

150. The Constitution also provides that other courts, judicial bodies or tribunals may be established and constituted by law for hearing cases of special types and nature. Currently, there are over 100 judicial bodies including one SC, 16 Appellate Courts, 75 District Courts, nine other courts and tribunals (Special Court, Administrative Court, Labour Court, Revenue Tribunals, Debt Recovery Appellate Tribunal, and Debt Recovery Tribunal) and one Judgment Execution Directorate. The total number of judges in regular courts is currently 256. The Bar Council Act governs the institutional mechanism of bar associations and protects the rights and interests of law practitioners.

151. The Administration of Justice Act, 1991, provides that all cases heard by District Courts and quasi-judicial bodies fall under the appellate jurisdiction of the respective Appellate Courts. The Supreme Court has appellate jurisdictions over all cases which have

been originally tried by Appellate Courts, and may review its own judgments or final orders subject to the conditions prescribed by law.

152. The Constitution has guaranteed the right to equality before the law and ensured that no person is denied the equal protection of law, and recognized the right of human person to a fair trial by a competent court or judicial authority. Pursuant to article 100 of the Constitution, power relating to justice is vested in courts and other judicial institutions, and such power is exercised by them in accordance with the Constitution, laws and recognized principles of justice. The incorporation of the recognized principles of justice makes the door open to the applicability of the universally recognized human rights principles in Nepal. The Administration of Justice Act, 1991, CLA, 1954, Chapter on Court Proceedings of the General Code, State Cases Act, 1992, Police Act, 1955 and Evidence Act, 1974 are major legislations governing the matters pertaining to fair trial during investigation, hearing and execution of judgments. The Nepal Police is responsible for carrying out investigations of crimes except where specific laws provide otherwise. The State Cases Act is a major legislation in this regard. All persons are equal before the courts and judicial institutions.

153. A human being deprived of liberty has the right to be promptly informed of the charge against him or her, and to a fair trial by a competent court or judicial body. Any indigent person may have free legal assistance under the Legal Aid Act, 1997. In each of 75 districts, there is a district legal committee to provide such aid during pre-trial and trial phases. Various measures have been made to ensure effective implementation of the right of every person to be tried without undue delay. The number of courts and judges has been increased; and court procedures have been simplified through amendments to the Rules of District Court, Appellate Court, and Supreme Court. In addition to regular courts, a number of quasi-judicial bodies have powers to try cases of technical nature by following the procedures established by law.

154. The decisions of these bodies can be appealed in the Appellate Court. All proceedings except those to be tried in camera hearing in courts and tribunals are open to public and media. The SC has introduced a five-year judiciary strategic plan to enhance access to justice and speedy trial. Accordingly, the courts have to strictly follow the timeframe to pass judgments. According to Number 11 of the Chapter on Court Proceedings of the General Code, cases have to be disposed within one year and cases at appeal level within six months. The cases in which summary procedures are to be followed under the Summary Procedures Act have to be settled within ninety days. Number 182 of the Chapter on Court Proceedings of the GC allows compromise in civil matters, and the District Court Rules, Appellate Court Rules and Supreme Court Rules have provision of mediation. The Arbitration Act, 1999 provides for arbitral procedures for the settlement of disputes of civil and commercial nature through arbitration within specific time frame.

155. Legal aid programme has become an integral part of criminal justice system of Nepal. The GON provides a defence lawyer to represent the case before the court to an accused who is unable financially to appoint a lawyer. There are two paid lawyers in the Supreme Court and one paid lawyer in each of Appellate and District Courts.

156. According to the General Code, parties to any case except a criminal case may enter into compromise at any stage of the hearing prior to the final judgment. This provision has been widely used by parties to settle their dispute promptly. Local bodies are also empowered by the Local Self-Governance Act, 1999 to settle disputes through arbitration.

157. Section 55 of the Act Relating to Children, 1992, provides that the GON may establish a required number of juvenile courts for hearing cases of juvenile persons. Accordingly, each district court has now a juvenile bench, which consists of the judge, a lawyer of the juvenile, a psychologist, and a social worker. This bench functions as a camera court.

158. The criminal justice system of Nepal accepts the principle of 'presumption of innocent until proved guilty'. The Constitution recognizes this principle in explicit terms, by providing that every person charged with an offense is presumed innocent until proved guilty of the offense. Similarly, the Constitution guarantees that no person shall be prosecuted or punished for the same offence in a court of law more than once. In addition, everyone charged with an offence has a fundamental right not to be compelled to testify against him/herself. There is no specific legislation on witness protection as such. However, various administrative mechanisms are in place to this end. With a view to extensively reforming criminal procedure law by strengthening the principles of fair trial during investigation and prosecution, hearing and execution of judgments, the GON has submitted to the Legislature-Parliament bills of the penal and criminal procedure codes and sentencing legislation in order to make the criminal justice system to the sharp tune of the ICCPR and other relevant instruments, and international standards.

Article 15- Prohibition of ex post facto laws

159. The Constitution, in article 24 (4), provides that no person shall be punished for an act which was not punishable by law when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by laws in force at the time of the commission of the offense. So, the enactment of ex post facto laws is prohibited. It is the established practice of Nepal to enact a criminal law giving prospective effect, and normally criminal laws are not enacted giving retroactive effect. However, as an exception to this statement, a criminal law to prevent certain disruptive acts was enacted in 1986 giving retroactive effect. This law was repealed immediately after the popular movement held in 1989.

160. Despite the statement above, in criminal matters, a criminal law favourable to the offenders is applicable retroactively even where an enforceable sentence has been issued. For instance, if a person is serving a sentence and during such a period, a law is enacted reducing the sentence or decriminalizing the offence committed, such a person shall immediately enjoy such reduction or decriminalization. It is an example where the retroactivity of a criminal law favours the offenders.

161. It is worthy to mention that a criminal law enacted after the commission of a criminal offence shall be applied if the law in question is more favourable than the previous one. Such a law is considered as a beneficiary law and unless otherwise provided by such a law, the investigating officers or the courts, as the case may be, apply it in such a manner as may be more favourable to offenders.

Article 16- Right to be recognized as a person before the law

162. The Constitution under articles 12 (1) and 13 (1) (2) and (3) together protect the right of every person to be recognized everywhere as a person before the law. All children born in the territory of Nepal are required to be registered with the concerned registrar's office under the Births, Deaths, and Other Personal Events Registration Act.

Article 17- Freedom from arbitrary interference with privacy, family and home

163. Article 28 of the Constitution provides that, except as provided by law, the privacy of any person, residence, property, document, statistics, correspondence or matters relating to his or her character are inviolable. The right is enjoyable by every person. The Postal Act, 1963, has made opening of or tempering with postal materials by any employee or other person *en route* as unlawful act and punishable by law. The Telecommunications Act, 1997 has also prescribed various penalties for tapping information or divulging information to unauthorized person except as provided by law. The Electronic Transaction Act, 2008 provides for the protection of privacy of electronic data. It is to note that, in the case of

Annapurna Rana vs Gorakh Sumsher JB Rana, 1999, the SC held that the order issued by the District Court to carry out vaginal and uterus test without consent of the petitioner was an explicit violation of the right to privacy as provided by the Constitution. In order to the statutory remedial measures against the infringement of the rights of persons, writ jurisdiction of the SC is always available in this regard.

Article 18- Right to freedom of thought, conscience and religion

164. In 2006, the reinstated House of Representatives, by adopting a resolution, declared Nepal as a secular state. The Constitution provides that Nepal is a sovereign, secular, inclusive and fully democratic State. Article 23 of the Constitution protects the right to religion as a fundamental right. Accordingly, every person has the right to profess, practice and protect his or her own religion as handed down to him or her from ancient times having due regard to the existing social and cultural practices; and every religious denomination has the right to maintain its independent existence and operate and protect its religious sites and trusts in accordance with law. However, no one is entitled to coerce another person to adopt a religion. The Constitution explicitly provides that no person shall be entitled to convert another person from one religion to another. In addition, Number 1 of the Chapter on Decency of the GC criminalizes the act of subjecting any one to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice.

Article 19- Right to hold and express opinions without interference

165. The Constitution has guaranteed the right to information, in addition to freedom of expression, as a fundamental right. Accordingly, every citizen has the right to demand and receive information on any matter of public importance. However, this provision is not deemed to compel any person to provide information on any matter of which privacy is to be maintained by law.

166. In addition, the Constitution, by article 15, has ensured the right relating to publication, broadcasting and press as a fundamental right. Censorship of publication, broadcasting or printing of any news item or audio-visual material, including electronic one, is prohibited. However, this right is subject to such reasonable restriction as may, when necessary, be made by law for the protection of sovereignty and integrity of Nepal, or of public order or of public health or morale or for prevention of any act of treason, defamation, contempt of court or incitement to an offence or for the maintenance of harmonious relations between peoples of various castes, tribes or communities. Moreover, closure or seizure of newspaper, periodical or press for having printed or published any news item or material and interruption of means of communication except in accordance with law are also prohibited.

167. A specific legislation, the Press and Publication Act, 1992 has been designed to safeguard the freedom of opinion and expression; and upon the enactment of the Right to Information Act, 2007, the right to freedom has become a fully enforceable right. The NIC has been devised for the protection, promotion, and monitoring the implementation of, the right. This Act has further reinforced Nepal's commitment to promote freedom of information and the right of access to information. It is to note that during the state of emergency, an Ordinance was introduced to amend the Acts relating to media to restrict the freedom of opinion and expression, namely, the Radio Act, 1997, National News Agency Act, 1962, Press and Publication Act, 1991, Press Council Act, 1992, National Broadcasting Act, 1993, and the Libel and Slander Act, 1959. This Ordinance was, however, repealed in May 2006 on the ground that it imposed unreasonable restriction on the freedom of opinion and expression.

168. The GON believes that it has made a substantial progress in the realization of the right to information and publication and press, during the period under review. In a period

of six years from 2003 to 2009, the Ministry of Information and Communication (MOIC) has issued license to 350 F.M. radios and 30 television channels. By 2009, the Medium Wave (MW) system has covered 85 per cent of total population. Frequency Modulation (FM) system has reached 40 per cent, and the Short Wave (SW) system, approximately 90 per cent, of the population. From 2004 to 2009, a total of 410 Daily, 17 Half-weekly, 2,047 Weekly, 391 Fortnightly, 1,607 Monthly, 307 Bi-monthly, 480 Tri-monthly, 26 Quarterly, 69 Half-yearly and 82 Yearly newspapers, magazines and journals have obtained approval for publication.

Article 20- Prohibition of propaganda for war

169. Any propaganda for war and advocacy or propaganda of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited. According to article 34 (6) of the Constitution, the State is to direct its international relations towards enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independent of Nepal. Similarly, by article 35 (21) and (22), the State is to pursue a foreign policy based on the principles of the United Nations Charter, non-alignment, the *Panchsheel*, international law and the value of world peace, and also to pursue a policy of keeping on institutionalizing peace in Nepal through international norms, by promoting cooperative and harmonious relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world. No specific case has been reported during the reporting period.

Article 21- Right to peaceful assembly

170. The Constitution in article 12 (3)(b) has recognized the freedom to assemble peacefully and without arms. The exercise of this right is subject to such reasonable restrictions as may be imposed by law for the protection of the sovereignty, integrity or public peace and order of Nepal. Section 6 of the CLA, 1954 also protects the right to peaceful assembly for all citizens. During state of emergency some restriction was imposed to exercise the right to freedom to assemble peacefully. The Local Administration Act, 1971 provides some grounds to impose reasonable restriction to exercise this right.

171. It is the right of every citizen to meet with others for political purposes or for making decisions on common actions. The right of assembly in the participatory democracy, the possibility for every human being to meet by common agreement with others at a place in order to achieve a specific objective, is an essential aspect of freedom, and this freedom is protected in Nepal. However, such meeting must be peaceful.

172. In Nepal, public demonstrations are one of the ways in which citizens may express their social demands. Under the prevailing laws in Nepal, the right of assembly is regarded as a fundamental freedom. This freedom is the basis of political action through election campaigns and for civic movements and other lawful demonstrations of public support or protest.

Article 22- Freedom of associations and trade unions

173. Articles 12(3)(d) of the Constitution ensures the right to freedom of associations. The exercise of this right is subject to such reasonable restrictions as may be imposed by law for the protection of the sovereignty and integrity of Nepal, of harmonious relations between peoples of various castes, tribes, religions or communities, and of public morality, and for the prevention of violent activities. Freedom of association in Nepal has been considered as a fundamental freedom of democratic exercise. This freedom is exercised through the formation of political parties, trade unions, associations, professional organizations, NGOs and other societies. Establishment of political parties is a basic freedom of citizens of the country, and the Constitution provides for certain basic rules in

regard to the establishment, management and operation of political parties. In order for a political party to be eligible for registration as a party, its objective should not be prejudicial to the basic spirit and essence of the Preamble of the Constitution. So as to secure recognition from the Election Commission (EC) for the purposes of elections, a political party has to be registered with the EC. In addition, a political party should fulfil certain conditions in order to qualify for such registration. These conditions include that the constitution and rules of the political party must be democratic and provide for election of its office-bearers at all levels at least once in every five years, and there must be an inclusive provision that the executive committees at various levels include the members from women, *Dalit* and the excluded and marginalized sectors. The EC does not register any political party or organization if it discriminates against any citizen of Nepal in becoming its member on the basis merely of religion, caste, tribe, language or sex or if its name, objective, insignia or flag is of such a nature as to jeopardize the religious and communal unity of, or to fragment, the country or if its constitution or rules have the objective of protecting and promoting party-less or single party system.

174. Article 30 recognizes the right relating to labour as a fundamental right, which incorporates the right of appropriate labour exercise and the right of every worker and labour to form and join trade unions, and carry out collective bargaining for the protection of their interests in accordance with law. Nepal is a party to ILO Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively. It is to note that article 141 of the Constitution prohibits imposition of restriction on political parties. Persons who are committed to common political ideology or programme have the right to form and operate political parties of their choice. Any law or arrangement either imposing such restriction or allowing for participation of only a single party in an election or in the political system of, or in the conduct of governance of, the country is inconsistent with the Constitution and, ipso facto, void. The Associations Registration Act, 1997 and National Guidance Act, 1961 also provide for establishment and operation of associations for benevolent and social activities. Currently, a great number of NGOs and CBOs are working in the field of human rights, social and cultural fields.

175. The Trade Union Act, 1992 is a specific enabling legislation in this regard. It provides for three tiers of trade union. Twenty five per cent workers of an enterprise employing at least 10 persons may form an enterprise level trade union for the protection and promotion of their professional rights and interests. Fifty enterprise level unions may, by agreement, form a national level federation and ten national level federations may form a trade union federation.

176. Trade unions are recognized as autonomous corporate body with perpetual succession, and entitled to make collective bargaining. However, they have to complete certain procedures set forth in the Act to go on strike. The Second Amendment to the Civil Service Act, 1993 has also allowed civil employees to form trade unions under certain terms and conditions. Under the Essential Services Act, the GON may prohibit, by notification, the making of strike in public organizations that are responsible for delivering essential services.

Article 23- Protection of the family

177. Nepalese society and the State have protected the family as the natural and fundamental unit of society. Marriage is considered as foundation institution of the society. Men and women of marriageable age have the right to marry and found a family. For this purpose, Clause 2 of the Chapter on Marriage of the General Code has fixed 20 years as the legal age for marriage for both men and women. With parental consent, however, persons can consummate marriage at the age of 18. A marriage entered into without the free and full consent of the intending spouses is *voidable*, and the person engaged in facilitating such marriage may be punished with imprisonment and fine. The marriage is regulated by

different Chapters of the GC, the Marriage Registration Act, 1972, and the Births, Deaths, and Other Personal Events (Registration) Act, 1976.

178. Family life after marriage is well protected by law. In the case of Advocate *Mira Dhungana vs. Ministry of Law, Justice and Parliamentary Affairs*, the SC held that Clause 1 of the Chapter on Rape of the GC does not intend to give immunity to the husband for the rape committed by him to his wife. This judgment has introduced the concept of marital rape in Nepal. Accordingly, the Gender Equality Act, 2006 has now amended the said Clause 1 of the Chapter on Rape, criminalizing the sexual intercourse by one with his wife without her consent. The Chapters on Marriage and Husband and Wife of the GC provide appropriate procedures to ensure the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

179. Clause 1 (a) of the Chapter on Husband and Wife of the GC has established the grounds for divorce, which are equally applicable for both wife and husband. However, some distinctions have been made in respect of procedures. A wife seeking divorce can directly approach the district court with a petition for divorce while a husband has first to approach the concerned local body, and then proceed to the district court, along with recommendation of that body, for divorce. This provision was challenged in the case of *Chandrakanta Gyawali vs. Office of the Prime Minister and Council of Ministers, et al.* The SC has issued a directive order to the GON to make appropriate law in this regard.

180. In the case of dissolution, the law gives priority to the mother to maintain her children until they attain five provided she does not enter into a marriage. If the mother does not so wish, the father has to maintain them. After marriage, the wife is entitled to equal ownership in her husband's property. While awarding the decree of divorce, the court should also award a decree making partition share in property between the husband and the wife. The wife may, however, opt to accept partition share or to claim alimony until she enters into another marriage.

181. In relation to the same sex marriage, the Nepalese culture does not presume such marriage and believes that marriage consists only of the union of two people with different sex. The law is also silent in this regard. However, on 21 December 2007 in the case of *Blue Diamond Society v. GON*, the SC issued an order to the GON to amend laws which are discriminatory to sexual and gender minorities, issue citizenship to third gender people with their actual identity and form a seven-member committee to carry out study and research on same sex marriage. In pursuance of this order, the GON has adopted an action plan, as an integral part of the NHRAP, for the abolition of all forms of discrimination and inequality based on race, language, culture, sexual orientation and gender identity and safeguard of human rights of sexual and gender minorities. It is to note that the GON has started to issue citizenship certificate with identity of sexual orientation.

Article 24- Rights of the child

182. Nepal is party to the Convention on the Rights of the Child (CRC) and both of its Optional Protocols. In regard to the protection and promotion of the rights of the child, Nepal reaffirms its periodic report under CRC (CRC/C/65/Add.30). The CPA has committed to protect the rights of the child and prohibit the recruitment of a child below 18 in any armed forces. Similarly, the Constitution, in article 22, protects children's right as a fundamental right. A bundle of rights are incorporated in this fundamental right. Accordingly, every child has the right to identity and name. The right of every child to acquire a nationality has thus been explicitly recognized. Every child has the right against physical, mental or other form of exploitation. Such exploitation is punishable by law and the victim is entitled to compensation as determined by law. The Constitution also recognizes right of every child to nurture, basic health and social security, the right of helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street

children to special facilities from the State and the right of minors against their employment, engagement or use in a factory, mine or similar other hazardous work. Recruitment of citizens below 18 years in Nepal Army and police forces is also prohibited.

183. As mentioned above, the Births, Deaths and Other Personal Events (Registration) Act, 1976 provides legal measures to register the birth of a child. There is a provision of local registrar in each VDC and Municipality at the local level to perform this function.

184. The GON has adopted a range of policy, legal and institutional measures towards full realization of the right of every child, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth to such measures of protection as are required by his or her status as a minor on the part of the family, society and the State. The TYIP has aimed to abolish all forms of exploitation, abuse, violence and discrimination against children through the promotion of child-friendly environment for the physical, emotional, mental and intellectual development of, and protection of the rights of, the child. The GON has implemented a 10-year National Plan of Action for Children (2004/05-2014/15), covering areas of health, protecting children against abuse, exploitation and violence, and combating HIV/AIDS. In 2000, the GON formulated a policy to combat commercial sexual exploitation of women and children.

185. Nepal has a comprehensive legal regime for the protection of the rights of the child. The Act Relating to Children, 1992, as well as its Regulation, incorporates almost all the rights of the child, defined as one who is below 16, as enunciated in the CRC, and is based on a child friendly approach. At the age of 16 a child attain majority in civil matters and considered as an adult for criminal matters. However, purposed draft criminal code increased the age of an adult to 18 years. The legislation makes the family primarily responsible for ensuring the best interests of children, which include care, health, education and other basic requirements. Parents, legal guardians and teachers have obligation to provide protection and care to children and restrain from any type of torture or cruel treatment. It is also to note that in the case of *Tilottam Poudel vs. Ministry of Home Affairs*, 2001, the SC held that children have the right to organize as set forth in article 15 of the CRC. After this verdict, some 1,500 child clubs or groups are active in promoting child rights in Nepal.

186. The Act Relating to Children as well as criminal justice system of Nepal is geared towards the rehabilitation of child offenders, through various institutions including children reform homes. The minimum age of criminal responsibility in Nepal is 10 years. Based on the provision of this Act, a child below 10 years is presumed unable to violate law or commit crimes. The Act provides that children under 16 years shall be separated from adults in the police custody. Similarly, no person below 16 years can be incarcerated in prisons. The Act has made provision for reform centres where conflict affected children, children addicted to drugs and children involved in immoral activities can be rehabilitated. Juvenile justice related regulation has prescribed child-friendly procedures to be adopted while trying cases involving children. Section 19 of the Act requires courts to avoid trial of a juvenile without a lawyer to defend the child. For this purpose, the concerned court has to make necessary arrangements. Currently, all 75 district courts have juvenile benches.

187. The Child Labour (Prohibition and Regulation) Act, 1999 outlaws the engagement of a child below 14 in work as a labour and provides for a stringent punishment. A committee of child labour prevention and a child labour prevention fund have also been established under this Act. These measures are also in tune with the Worst Forms of Child Labour Convention, 1999. The GON has been implementing a national master plan to eliminate the worst forms of child labour. The priority sectors of the plan are: bonded child labour; domestic child labour; child porter; children working in mines; rag-pickers; trafficking in children for sexual exploitation, and children working in carpet factories.

188. Exploitation of children for pornography, sexual exploitation and trafficking is outlawed, in keeping with Nepal's commitment under the two Protocols to the CRC. The electronic transaction legislation prohibits publication and demonstration in electronic media including computer and internet of materials prohibited by law or contrary to public policy or decency.

189. The GON's national health policy is committed to provide free essential services to all. The Second Long-Term Health Plan 1997-2017 is being implemented. The essential health care package in child health includes immunization, integrated management of childhood illness and nutrition supplementation and education as major interventions. Significant achievements have been made in the field of child health. Infant mortality rate has gone down to 48 per thousand live births and neonatal mortality rate (less than four weeks) to 33 per thousand live births. Under-five child mortality rate has gone down to 61 per thousand live births. The immunization (BCG, DPT + HEP-B, Polio and Measles) rate of all six antigens in infants is more than 85 per cent. Nepal has successfully eliminated the neonatal tetanus and more than 9.5 million children have been given second dose of measles vaccination, which has reduced the post measles death significantly. The GON is making efforts to increase the rate of child immunization to 100 per cent. The main remaining challenge is to improve the health status of the neonates and overall nutritional status of the children.

190. The right to education has been safeguarded by the Constitution as a fundamental right. Every community has the right to basic education in its mother tongue, and every citizen to free education up to secondary level, as provided in law. The education policy aims at democratic, inclusive and egalitarian quality education for all. The GON has made education free up to secondary level. A bill to provide free and compulsory basic education is under consideration in the Legislative Parliament.

191. The GON has implemented the School Sector Reform Plan (2009-2016) in a coordinated and sector-based approach. It restructures the school education covering education from grade one to twelve, while specifying education from grade one to eight as basic education, which is the basic right of the child. The National Action Plan on Education for All (2001-2015) has identified goals of elementary child education and development programmes, based on four pillars, namely, survival, development, protection and participation. The literacy rate of 6 plus year population is 63.7 per cent. There are altogether 33,160 schools where around 7,575,880 students are studying. The net enrolment rate of primary level (grade 1-5) has increased from 91.9 per cent in 2008 to 94.5 per cent in 2010. Currently, a total of 29,089 early child development centres are engaged in imparting child education, of which 24,773 are community school and community-based and the rest are institutional school-based.

192. In order to ensure inclusiveness and gender mainstreaming in education, various programmes have been launched. These include provision of scholarship to indigent girls in *Terai* who wish to pursue technical education on auxiliary nurse midwifery; extension of day nutrition programme to 35 districts to mitigate drop-outs; provision of scholarship to 50 per cent girls at the primary level and to all school girl students in *Karnali Zone* (a remote region in the country); allocation of quota for 40,000 girl students under annual 60,000 secondary education scholarships.

Article 25- Right to political participation

193. Every citizen of Nepal has the right and opportunity without any distinctions and unreasonable restrictions to participate in the conduct of public affairs, directly or through their representatives, to vote and to be elected at genuine periodic elections, and to have access, on general terms of equality, to public service in the country. A range of measures have ensured this right.

194. At the moment, the citizens of Nepal are framing a new constitution through their representative body, the CA. The Constitution provides for the election to the CA by universal and equal suffrage. Every citizen of Nepal having attained the age of 18 is entitled to vote in accordance with law. A citizen of Nepal, who has attained the age of 25, who is not convicted of a criminal offence involving moral turpitude and not disqualified by law, and does not hold any office of profit, has the right to be elected at the election to the CA. Accordingly, election to the members of the CA was held through secret ballots, and genuinely. To achieve inclusiveness and enhance people's participation in the polity, article 63 of the Constitution has adopted a parallel electoral system in electing the 601-member CA.

195. The Election Commission is responsible to conduct, supervise, direct, control periodic elections, and prepare electoral rolls for that purpose. In order to ensure the right of every citizen to public service on general terms of equality, the Constitution has established the obligation of the State to make progressive restructuring of the State, with inclusive, democratic and federal system of governance. The CA will finally settle this constitutional mission.

196. The Local Self-Governance Act, 1999 and the Local Body Election Procedure Act, 1992, are legislative measures that provide for participation of people in the local self-governance. Periodic elections by universal and equal suffrage and secret ballot are the cardinal pillars of these legislations. The Constitution has explicitly provided that the provision of local-self governance authority is to be made based on decentralization and devolution of authority to promote public participation in the system of governance by creating atmosphere conducive to the exercise of sovereignty of people, deliver services to the people, and have institutional development of democracy, at and even from the local level. The GON is, however, facing a number of problems including poverty and illiteracy in better ensuring the enjoyment of these rights.

Article 26- Right to equality before the law

197. Article 13 of the Constitution provides that all citizens are equal before the law, and no person shall be denied the equal protection of the laws. No discrimination is to be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction, or any of them. Section 3 of the CLA, 1955 also protects the right to equality before the law and equal protection of the law.

Article 27- Right of minorities to enjoy their own culture, religion, etc.

198. Article 3 of the Constitution stipulates that having common aspiration of multiethnic, multilingual, multi religious, multicultural characteristics and having committed and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, the Nepalese people collectively constitute the nation. This constitutional stipulation is a key spirit of the social relation of the Nepalese people with each other. It implies that every ethnic group, culture, language, and territorial or regional identity commands equality in treatment and advantage.

199. All the languages spoken as the mother tongue in Nepal are constitutionally recognized as national languages. The Nepali language in the *Devnagari* script is the official language. Accordingly, each community residing in Nepal has the right to get basis education in its mother tongue, and to preserve and promote its language, script, culture, cultural civilization and heritage. Similarly, under article 23 of the Constitution each person has the right to profess, practice and preserve his or her own religion as handed down to him or her from ancient times, having due regard to the social and cultural traditional practices. Every religious denomination has the right to maintain its independent existence to operate and protect its religious sites and trusts in accordance with law. The Constitution

has explicitly directed the State to eliminate social and economic inequalities, maintain and promote plurality and diversity of cultures.

200. Recently, the GON has adopted a national culture policy with main objective to protect tangible and intangible culture and promote cultural and religious harmonization and co-existence, founded on the notion of national unity and secularism. Nepal has also ratified the Convention for the Safeguard of Intangible Cultural Heritage, 2003. Similarly, various laws have been enacted to carry out this constitutional mandate. The Nepal Academy Act, 2007, Nepal Fine Arts Academy Act, 2007 and Nepal Music and Dance Academy Act, 2007 can be cited as some legal measures to ensure protection, promotion and overall development of various disciplines of culture and cultural heritages of the multi-ethnic, multi-lingual, multi-religious and multi-cultural country.

201. The NFDIN and NDC have also played a significant role in the protection and promotion of the rights of the indigenous nationalities and *Dalits*, respectively. These institutions have been instrumental in bringing the minorities and vulnerable sections of the society in the mainstream of the governance, and forging cohesion and coexistence between communities.

VII Conclusion

202. Upon acceding to ICCPR, Nepal has adopted a range of administrative, legislative and judicial measures to ensure protection of the rights enshrined in the ICCPR. It has joined several international and regional instruments protecting civil and political rights. The GON believes that during the period under the review of this report, Nepal has been able to make some important achievements in the field of protection and promotion of human rights in general and civil and political rights in particular. In the nutshell, it has been able to adopt a holistic and multi-faceted approach for the protection and promotion of human rights against the backdrop of its diverse social and cultural ethos, development imperatives and over a decade long armed conflict. The right-based approach and human rights policy have gradually gained momentum in national development plans and policies. Human rights are core guiding principles in the governance and development plans. A legislative framework of good governance has been in place with the enactment of the Good Governance (Management and Operation) Act. The issue of human rights has been crystallized by law and practice as an integral part of the governance system of the country, founded on that peace, justice and democracy are invisible and they never thrive in isolation. Similarly, inclusive and balanced development approach, adoption of human rights and social justice as interlinked issues, consolidation of independence of judiciary as the foundation for justice and human rights, enhanced collaboration with the civil society, effective implementation of policies of zero tolerance against gender-based violence and child recruitment are some of the best practices adopted by Nepal in this field. The GON has made some significant legislative reforms. The slavery system, arbitrary arrest, incommunicado detention, ill-treatment of prisoners, practice of systematic torture and any kind of discrimination on whatsoever pretensions are made illegal and punishable by law. The GON has submitted to the Legislature-Parliament the Bills on Penal and Criminal Procedure Code, Civil Code and Civil Procedure Code and Sentencing Act, with provisions to the tune of international human rights and humanitarian law standards. The new constitution, with package of federal structure, decentralization and devolution of powers and guarantee of proportional participation of all people in the State's affairs and governance, is expected to provide a milestone for accelerating the pace of socio-economic development and consolidation of democracy, which constitute pre-conditions for a desired level of protection of civil and political rights.

203. Despite a range of measures that have been taken, people's ability to enjoy human rights is constrained by various factors, which also relate to governance and structural and

functional capabilities of the State organs. Nepal is passing through a transitional phase, which is by nature a mixture of uncertainty and instability, and a delicate and difficult period, which has also resulted in the delayed implementation of adopted measures. Various economic and social issues such as poverty and environmental degradation remain growing threats to the enjoyment of human rights. Around 25.4 per cent of people still live below the poverty line and the rate of population growth is still high. Therefore, more needs to be done in the areas of poverty alleviation and social justice, by inter alia ensuring peace, security and development. Moreover, rehabilitation of women, children and the families affected by the armed conflict is yet to be fully achieved. The State has been significantly resource constrained to honour its obligation to provide basic services to marginalized or vulnerable communities of groups, and build national institutions to institutionalize social and economic transformation within the democratic framework. Existence and practice of some forms of discriminatory cultural practices still in some communities and societies has also posed a challenge in the realization of right to equality and against discrimination, among others.

204. The GON considers the Local Bodies as the first point of contact with the people. Local Bodies, which are the vehicle of devolution, decentralization and good governance at the local level, have remained out of political leadership for long. This has adversely affected the delivery of basic services to the people effectively and efficiently. Though the GON has made alternative arrangements for the purpose of delivering services to the people through a team of dedicated officials, it still feels that there can be no substitute to elected bodies.

205. Transitional phase is a delicate and difficult period. Challenges like corruption and impunity also stare any state in this phase. Establishing the rule of law remains a supreme task as an essential foundation of any democratic society. Nepal firmly believes that a strong and inclusive democracy can help meet these challenges in a comprehensive and lasting manner. Accordingly, the GON has undertaken, and will undertake, a range of measures to address these issues. Such measures include: enhanced respect for rule of law, focusing on more effective implementation of relevant laws, of human rights treaties, and of directives and recommendations by the SC and NHRC, revamping relevant institutions and security bodies with adequate resources, and formulating commissions on disappearance and truth and reconciliation.

206. In order to address the problems and constraints, the GON has identified various activities as key national priorities and commitments, particularly: institutionalizing the rule of law, bringing the on-going peace process to a meaningful conclusion; framing a new constitution, carrying out a democratic, federal, inclusive and progressive state restructuring; rehabilitation and integration of Maoist combatants; achieving wider economic growth to expedite balanced and inclusive development; making necessary legal reforms and effective implementation of relevant laws; effective implementation of human rights action plan; institutional strengthening of national human rights institutions; support for judicial reforms and law enforcement agencies. The GON feels a need for capacity building and technical assistance in order to carry out these activities as well as to engage further with the United Nations human rights treaty mechanisms, which are crucial to ensure effective implementation of the Covenant.

Annexes

Annex I- Covenant-related legislations enacted or amended from 1994 to 2010

I Acts

1. The Torture Related Compensation Act, 1996
2. The Environment Protection Act, 1997
3. The Telecommunications Act, 1997
4. The Party Defection Act, 1997
5. The Legal Aid Act, 1997
6. The Human Rights Commission Act, 1997
7. The Consumer Protection Act, 1998
8. The Local Self-governance Act, 1999
9. The Arbitration Act, 1999
10. The Iodized Salt (Production, Sale and Distribution) Act, 1999
11. The Human Organs Transplantation (Regularization and Prohibition) Act, 1999
12. The Child Labour (Prohibition and Regulation) Act, 1999
13. The General Code (Eleventh Amendment) Act, 2001
14. The Armed Police Act, 2001
15. The Terrorist and Disruptive Activities (Control and Punishment) Act, 2002 (now not in existence)
16. The National Foundation for Development of Indigenous Nationalities Act, 2002
17. The Copyright Act, 2002
18. The Special Court Act, 2002
19. The Prevention of Corruption Act, 2002
20. The Act Relating to Political Parties, 2002
21. The Bonded Labour (Prohibition) Act, 2002
22. An Act to Amend Some Acts to Maintain Gender Equality (Gender Equality Act) 2006
23. The Senior Citizens Act, 2006
24. The Nepal Citizenship Act, 2006
25. The Electoral Rolls Act, 2006
26. The Poverty Alleviation Fund Act, 2006
27. The Good Governance (Management and Operation) Act, 2006
28. The Election Commission Act, 2007
29. The Prison Act (2nd Amendment), 2007
30. The Election (Offences and Punishment) Act, 2007

31. The Election to the Members of the Constituent Assembly Act, 2007
32. The Constituent Assembly Court Act, 2007
33. The Right to Information Act, 2007
34. The Trafficking in Person and Transportation (Control) Act, 2007
35. The Foreign Employment Act, 2007
36. The Military Act, 2007
37. The Notary Public Act, 2007
38. The Special Court (1st Amendment) Act, 2007
39. The Nepal Music and Dance Academy Act, 2007
40. The Arms and Ammunitions (2nd Amendment) Act, 2007
41. The 12th Amendment to the General Code (*Muluki Ain*), 2007
42. The National Women Commission Act, 2007
43. The Nepal Law Commission Act, 2007
44. The Non-resident Nepalese Act, 2008
45. The Electronic Transaction Act, 2008
46. The Domestic Violence (Crime and Punishment) Act, 2009
47. The Act Relating to Protection of Health Workers and Health Institutions, 2009

II Some Acts Relating To Right against Torture

1. The Police Act, 1955
2. The Prisons Act, 1964
3. Some Public (Offences and Punishment) Act, 1969
4. The Summary Procedures Act, 1972
5. The Evidence Act, 1974 (Sections 8 and 9)
6. The Public Security Act, 1989
7. The Nepal Treaties Act, 1990
8. The Act Relating to Children, 1992
9. The State Cases Act, 1992
9. The Torture Related Compensation Act, 1996
10. The Human Rights Commission Act, 1997

Annex II- List of Acts amended by Gender Equality Act, 2006 (an Act enacted to amend gender-related provisions in various Acts)

1. The General Clauses Act, 1954
2. The Private Firm Registration Act, 1958
3. The Employee Provident Fund Act, 1962
4. The Act Relating to Lands, 1964
5. The Act Relating to Remuneration, Facilities, Terms and Condition of Service of the Judges of the Supreme Court, 1969
6. The Marriage Registration Act, 1971
7. The Bonus Act, 1974
8. The Births, Deaths and Other Personal Events (Registration) Act, 1976
9. The Pension Fund Act, 1989
10. The Act Relating to Remuneration, Conditions of Service and Facilities of the Judges of Appellate and District Courts, 1992
11. The Insurance Act, 1992
12. The Working Journalists Act, 1993
13. The Act Relating to Remuneration, Conditions of Service and Facilities of the Attorney General, 1996
14. The Act Relating to Remuneration, Conditions of Service and Facilities of the Office-bearers of Constitutional Bodies, 1997
15. The Act Relating to Remuneration and Facilities of the Office-bearers and Members of Parliament, 1998
16. The National Foundation for the Development of Indigenous Nationalities Act, 2002

Annex III- List of legislative measures (amended or adopted) applicable in relation to violence against women

1. Chapter on Court Proceedings of the General Code, 1963 (Amendment). It provides for procedures on investigation, prosecution and adjudication of offences relating to violence against women.
2. Chapters on Rape, Marriage, Husband and Wife, Incest, Homicide of the General Code, 1963 (Amendment).
3. The State Cases Act, 1992 (New Enactment). It makes the crime of rape, attempt of rape, incest, polygamy, trafficking and homicide as criminal offences to be prosecuted by the State.
4. The Summary Procedures Act, 1972 (Amendment). It provides for speedy and summary proceedings in cases such as divorce, polygamy and physical assault.
5. Some (Public Offenses and Punishment) Act, 1969. It provides for special protections to women against hooliganism and street teasing and molestation.
6. The Libel and Slander Act, 1959. It provides for remedy against insult and intimidating libellous acts in verbal and written form.
7. The Legal Aid Act, 1997 (New Enactment). It ensures free legal aid also for indigent victims of violence.
8. The District Court Regulation, 2002 (New Enactment). It provides for in-camera hearing of cases such as rape and trafficking.
9. The Domestic Violence (Crime and Punishment) Act, 2009 (New Enactment). It has been enacted as a specific law to control and punish acts of domestic violence.

Annex IV- Case jurisprudence

Brief description of judgments of the Supreme Court in relation to equal protection of laws

(a) In *Dr. Chanda Bajracharya vs. HMG/N and Others*, various sections of the General Code, 1964, e.g. No 12 of Chapter on Partition, No 2 of Chapter on Inheritance, No 5 and 9 (A) of Chapter on Adoption, No 4 of Chapter on Adultery, No 9 of Chapter on Marriage, No. 2 of Chapter on Husband and Wife and No 2 of Chapter on Bestiality were challenged as being inconsistent with article 11 of the 1990 Constitution alleging them to be discriminatory. A five member special bench on 18 July 1996 instructed the Government to present within two years an appropriate Bill concerning the issue raised by the petitioner pertaining to the equality clause of the constitution. The aforementioned Gender Equality Act is an outcome of this judicial intervention;

(b) *Rina Bajracharya and others vs. RNAC and others* is a leading case which addresses the crucial issue of gender equality. Twenty eight air hostesses employed in the Royal Nepal Airlines Corporation challenged the by-law 16.1.3 of the Service Regulation of Employees of RNAC, 1974 as discriminatory and against right to equality. Regarding termination of the services of employees, the by-law provided that employees other than crew members shall retire from the service after attaining the age 60 and crew members shall retire at the age of 55. But bye-law 16.1.3 stipulated that an air-hostess shall be relieved of her services when she attained the age of 30 or completed a total period of ten years in her job in accordance with either of these two conditions which materialized first. A special bench of the SC on 8 June, 2000, among other things, held that the male crew members and air hostess are equal employees and thereby deserve equal treatment in respect of working time, remuneration and other facilities, and therefore, it is proved that the Rule 16.1.3 is discriminatory in terms of gender equality and against the constitutional provisions;

(c) In *Advocate Sapana Pradhan Malla vs. HMG/N and Others* relating to the issues of rape of prostitutes, the petitioner challenged the constitutionality of No. 7 of the chapter on Rape, of General. The impugned No. 7 provided that a rape committed on a prostitute without her consent was punishable with a maximum penalty of up to Rs. 500/- or imprisonment up to one year whereas Section 3 of the Chapter on Rape provided a more stringent punishment for an offence of rape committed on women other than prostitutes- imprisonment ranging from six to ten years in case of the rape of a women below 14 years of age and imprisonment ranging from three to five years in case of the rape of a women above 14 years. A special bench of the SC declared null and void of the said No. 7 of the Chapter on Rape of the General Code;

(d) In *Sita Sing Poudel vs. Public Service Commission and Others*, the SC with reference to state obligations arising from article 3 and 4(1) and (2) of the CEDAW and provision of article 11(3) of the Constitution (the then constitution of 1990), held that the second amendment to the Civil Service Act which reduced the probation period of women employees from one year to six months was a positive discrimination upheld in line with the constitutional schemes with this interpretation, the court held that the provision of probation period contained in Section 18 of the Nepal Health Service Act was applicable only to the women;

(e) In *Andrews Swarjman vs. Department of Immigration and Others*, the validity of Rule 14 (4) of the Foreigners Rules, 1975 was challenged as violating article 11 of the 1990 Constitution. According to the Rule, the nature and time period of the visa granted to a foreign national married to a Nepali male or female varied and was dependent on whether such a Nepalese spouse was a male or female. The SC held that by providing more facilities regarding grant of visa to a foreign national married to a Nepalese male in comparison to

those granted to a foreign national married to a Nepalese female the law had apparently made discriminatory treatment solely on the ground of sex. Thus the impugned provision made in by-law (4) of Rule 14 was found discriminatory and contrary to article 11 (1) of the 1990 Constitution;

(f) *Advocate Chandra Kant Gyawali and Others vs. HMG/N and Others* is a landmark case in which the SC used habeas corpus order to declare a discriminatory treatment in detention invalid. A special bench of the Court delivered the judgment by invalidating clause (1) of rule 21 of *the Prison Regulation, 1964*. This rule had provided for classifying prisoners in class A and class B on the basis of their level of education and social and economic status. There was greater difference in respect of daily allowances and other facilities to be provided to the prisoners belonging to class A and class B. The Court observed that as the law does not determine the quantum of punishment on the basis of the level of education of the accused rather it does so on the basis of the gravity of the offence, the prisoners should not be classified into different groups on considerations such as their level of education and social status. Every person condemned to punishment by law in accordance with the nature and severity of the crime committed by him/her must be made to undergo the same degree of punishment. Higher education or higher living standard of a convict could not be a ground for a privileged treatment under the law. The Justices further observed that the 1990 Constitution did not permit such waiver, relaxation or special privilege to the people belonging to higher social status;

(g) In *Iman Singh Gurung vs. HMG/N and Others*, the Supreme Court declared clause (d) of Section 3(1) of the Military Act, 1959 void from the date of the decision, as being contrary to article 11(1) of the 1990 Constitution. The SC held that the Constitution had restriction on the power of the Court in interfering the proceedings and decisions of the Military Court, however, it did not mean that the Military Court could do whatever it liked and wished. The judiciary could scrutinize the action and decision taken by the Military Court if such action or decision was inconsistent with the provision of the Constitution. The SC also observed that it was not reasonable to declare law *ultra vires* from the commencement of the Act so long as there had been alternative not to do so. This verdict of the SC has accepted that the parliament is a supreme law making body and the function of the Court is merely to interpret it and not to amend or enact it.

(h) In *Chandrakanta Gyawali vs. Office of the Prime Minister and Council of Ministers, et al.*, the SC issued directive order to the Government to formulate appropriate law, bearing in mind the social norms and values. The petitioner claimed that Number 9 of the Chapter on Marriage of the General Code, which permits polygamy if wife is physically or mentally disabled, was contrary to the CEDAW and the 1990 Constitution;

(i) In *Dambar Singh Dagal vs. Ilam Municipality et.al*, the SC, on March 2005, passed a verdict holding a view that people can exercise both non-suspended fundamental and legal rights even during the time of emergency. It further said that 'it should be understood that constitutional remedy under article 23 cannot be dispensed only in the case of suspended fundamental rights. Hence, it would be illogical and against the 1990 Constitution to deny constitutional remedy for non-suspended rights'. This precedent opened the door for hearing of the petitions registered under article 88, during the state of emergency. The SC thus established a jurisprudence making it clear that the state of emergency could not affect the right of citizens to constitutional remedies on petitions which were lodged either prior to the declaration of the state of emergency or had not been suspended by it;

(j) In *Dalit NGO Federation vs. HMG/N* (2 May 2005), the SC issued a directive order to the Government to declare *Chhaupadi* as a social malpractice, and to form a study committee of health workers and children to work for public awareness and to formulate law, if required. In the case of Advocate *Ramesh Thapa vs. Cabinet Secretariat* (an

unpublished decision of the SC), the SC has issued an order in the name of the Government, the Cabinet Secretariat and the Ministry of Law, Justice and Parliamentary Affairs to immediately formulate a law to put an end to the crime of accusing women of witchcraft;

(k) In *Kamanand Ram and Others vs. HMG/N and Others* (2002) the SC further interpreted the notion of the equality clause. The petitioners filed complaint against a treatment meted out by them from the so-called higher-caste people who forced them to do the menial service of disposing dead animals. Upon refusal to do so, they were subjected to a kind of social and financial boycott and utter segregation from the society. They argued that the State, by failing to provide necessary administrative support in their favor, had failed to eliminate the practice of untouchability. The SC sustained the complaint and instructed the concerned officials of the State to discharge legal obligations promptly to end such discriminatory treatment.
