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AND CULTURAL RIGHTS

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**Concluding observations of the Committee on Economic,
Social and Cultural Rights**

NEPAL

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Nepal on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NPL/2) at its 3rd, 4th and 5th meetings (E/C.12/2007/SR.3-5), held on 1 and 2 May 2007, and adopted, at its 26th meeting, held on 16 May 2007, the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction the second periodic report of the State party, which was submitted in a timely manner and was in general, prepared in conformity with the Committee's guidelines, as well as the written replies to the Committee's list of issues (E/C.12/Q/NPL/2).

3. The Committee appreciates, the open and constructive dialogue held with representatives of the State party and the answers to the questions raised by the Committee. Similarly, the Committee appreciates the written replies to its list of issues as well as to the specific questions raised by the Committee in its previous concluding observations. The Committee regrets however, that the information provided was, in some cases, not sufficiently detailed to advance its understanding of the level of enjoyment of the rights provided for in the Covenant.

B. Positive aspects

4. The Committee welcomes the significant progress made over the past year toward achieving peace and stability in the State party, notably the reinstatement of the House of Representatives in April 2006, the conclusion of a Comprehensive Peace Accord (CPA) between the Government and the Communist Party of Nepal-Maoist in November 2006, the measures it has subsequently taken to transform Nepal into a secular State, as well as the adoption of an Interim Constitution in January 2007 which incorporates many economic, social and cultural rights.

5. The Committee notes with satisfaction that the Interim Constitution has elevated the National Human Rights Commission to a constitutional body, and that the National Human Rights Action Plan has been renewed for a further three years.

6. The Committee welcomes the improved institutional arrangements in the State party for monitoring the implementation of the Covenant. It also welcomes the establishment of the National Women's Commission as a statutory body.

7. The Committee welcomes the measures taken by the State party to abolish discrimination on the basis of caste and feudal practices detrimental to the enjoyment of economic, social and cultural rights of traditionally marginalized groups, including the Dalit, Kamaiya, Madhesi, Tharu and others. In this regard, it welcomes the prohibition of untouchability and other discrimination on the basis of caste in the Interim Constitution and the enactment of the Bonded Labour (Prohibition) Act of 2002.

8. The Committee notes with satisfaction the measures, legislative or otherwise, taken to provide for equality between women and men, in particular the amendment of the Country Code to abolish discrimination in inheritance matters.

9. The Committee welcomes the ratification in 2002 by the State party, of the ILO Conventions No. 29 (Forced Labour Convention) and No. 182 (Convention against the Worst Forms of Child Labour) and the endorsement, on 28 August 2006, by the House of Representatives, of a resolution directing the Government of Nepal to ratify the ILO Convention No. 169 (Indigenous and Tribal Peoples Convention).

C. Factors and difficulties impeding the implementation of the Covenant

10. The Committee takes note that the State party's efforts to comply with some of its obligations under the Covenant are impeded by the consequences of the divisive and violent conflict, namely a large numbers of victims and families of victims, the large numbers of displaced persons, a severely damaged physical infrastructure that hinders the mobility of persons, goods and essential public services.

D. Principal subjects of concern

11. The Committee regrets that most of its 2001 recommendations in relation to the initial report have not been implemented, and that the State party has not addressed in an effective manner the following principal subjects of concern, which continue to be relevant:

- the extent of poverty in Nepal, in particular in rural areas where poverty and discrimination against women are most pronounced, and the lack of disaggregated data on the incidence and depth of poverty;
- the continuing inequalities that exist between men and women in Nepali society, despite legislative guarantees of equality, as reflected in the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work;
- the large number of women and girls being trafficked for prostitution, and the absence of a demonstrably effective response from the State party with regard to this practice;
- the high rate of domestic violence and the absence of specific legislation in this field;
- the high unemployment and underemployment rates in Nepal and the lack of skills-oriented education;
- the problems faced by emancipated Kamaiyas, including lack of housing, land, work, and education for their children;
- the inadequacy of the legal minimum wage to provide a n adequate standard of living for workers and their families, in particular in the agricultural sector; and
- the high incidence of child labour in Nepal, especially in rural areas.

12. The Committee notes with concern the absence of Commissioners in the National Human Rights Commission, which has created a serious gap in the protection and promotion of human rights in the State party. The Committee also notes with concern that there is no provision in the Interim Constitution dealing with the financial autonomy of the Commission.

13. The Committee notes with concern that, in spite of the provisions in the Interim Constitution prohibiting caste-based discrimination, such discrimination persists with impunity. The Committee is particularly concerned about the obstacles that victims of caste-based discrimination reportedly face in accessing justice.

14. The Committee notes with concern that in many parts of Nepal, internally displaced persons (IDPs) have not been allowed to return to their homes in safety or to fully integrate where they are currently residing. In many cases, the property and land of these persons have not been returned to them, contrary to the November 2006 Comprehensive Peace Agreement. The Committee also notes with concern that the ambiguous criteria for identifying genuine IDPs have resulted in a lack of protection against displacement and discrimination on compensation and assistance.

15. Although certain harmful traditional practices have been prohibited by law, the Committee expresses its continuing concern about the persistence of such practices that violate

the rights of women and girls as *deuki* (dedicating girls to a god or goddess), *badi* (widespread practice of prostitution among the Badi caste), *chaupadi* (isolating a woman during menstruation because she is considered to be impure), marrying child brides, and witchcraft. In this regard, the Committee regrets the lack of information contained in the State party's second periodic report about the full extent of such practices and the efforts being made to eradicate them.

16. The Committee notes with deep concern the harsh conditions of women living in rural areas, especially those whose conditions have been exacerbated by the conflict, including Tharu women who have found themselves widowed as a result of the death or disappearance of their spouses during the conflict.

17. The Committee is concerned about the reportedly high rates of unemployment and underemployment. In this regard, it regrets not having received the information requested in its list of issues about the situation, level and trends in employment, unemployment and underemployment for particular categories of workers, which is essential for an assessment of compliance with article 6 of the Covenant.

18. The Committee is concerned that, in spite of the abolition in 2002 of the system of bonded labour, there are still significant difficulties faced by the freed bonded labourers regarding their access to work and livelihood and appropriate education for their children. The Committee is also concerned that the lack of employment opportunities in the State party hinders the advancement from feudal relations to relations based on equality, particularly for ex-Kamaiyas and ex-Haliyas, many of whom have returned to the same condition of bonded labour from which they were supposedly freed.

19. The Committee is concerned that despite the efforts of the State party to abolish the worst forms of child labour, the prevalence of child labour remains high, particularly in hazardous conditions of work in agriculture and in manual crafts and in industrial work, domestic work, and ragpicking. The Committee notes with grave concern that children continue to work in conditions of bonded labour.

20. The Committee is concerned that the official minimum wage has been set at a level too low to enable workers and their families to enjoy an adequate standard of living. Furthermore, the Committee is concerned that the official minimum wage is applicable only in the formal sector and is not applied to the agricultural sector, in which three-quarters of the labour force is employed.

21. The Committee is deeply concerned that, in spite of the State party's progress made in its Ninth Development Plan to reduce poverty, there remains a high level of poverty in the State party where over 30% of the population lives under the official poverty line. The Committee also regrets the absence of detailed annual data on the incidence and depth of poverty, disaggregated by gender, caste, ethnicity and region, as requested in the list of issues prepared by the Committee in relation to the State party's second periodic report.

22. The Committee is deeply concerned that as much as a quarter of the population is undernourished. The seasonal food deficits being experienced in most of the mountain and hill

districts by the majority, who are farmers engaged in low-productivity subsistence farming on small plots of land, are exacerbated by the rigid social structures that prevent the lower castes from benefiting from communal lands and public services and from engaging in other kinds of business activities. Freed bonded labourers, often denied work by the landlords from whom they were freed and unable to claim their entitlements under the Land Reform Act and other programmes intended to help them adjust to free life, are particularly vulnerable to food insecurity.

23. The Committee is concerned that although the right to shelter is enshrined in the Interim Constitution of the State party, there is no national housing policy which particularly addresses the needs of the rural poor and the disadvantaged and marginalized individuals and groups by providing them with low-cost housing units.

24. The Committee is concerned by the denial of access of persons belonging to the lower castes to public wells, thereby directly threatening their right to an adequate standard of living and their right to the highest attainable standard of health.

25. The Committee is concerned that a significant number of the population continues to have limited or no access to health services, resulting in alarmingly high rates of maternal and infant mortality. The Committee is also concerned about the lack of information on the extent of mental health problems, particularly in relation to persons affected by the conflict.

26. The Committee is deeply concerned that the inadequate number, quality, staffing and supplies of health posts and the cost of reproductive health services continue to place women at risk, and that traditional attitudes among some castes and ethnic groups contribute to reproductive health problems of women.

27. The Committee is concerned that in practice primary education is not completely free, due to various fees charged to parents, such as for school supplies and uniforms. The Committee notes with concern that the State party has yet to adopt a policy of compulsory education. It further notes the great disparity in enrolment in primary schools between girls and boys and between the Brahmin and other castes, ethnic or indigenous groups, the high repeat and drop-out rate among pupils, and the generally low quality of education in public schools.

28. The Committee regrets the lack of clarification about the criteria used by the National Foundation for Development of Indigenous Nationalities to recognize officially, indigenous nationalities and about the implications of official recognition.

E. Suggestions and recommendations

29. The Committee encourages the State party to strengthen its cooperation with the Office of the High Commissioner for Human Rights.

30. The Committee requests the State party in its next periodic report, to provide detailed, updated information including disaggregated data on a comparative basis, on the effective measures undertaken to implement its treaty obligations. The Committee urges the State party to

ensure that, in the Constitutional process currently underway, all sectors of society, including disadvantaged and marginalized groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups, are represented in decision-making bodies at all levels. It recommends that concrete and active efforts be made to promote the participation of these groups in the Constituent Assembly, which, following the election of its members in 2007, will embark on the drafting of a new Constitution.

31. The Committee recommends that the State party establish a transparent appointment process of Commissioners in the National Human Rights Commission to enable the Commission to have full institutional capacities in accordance with the Paris Principles. In this regard, the Committee invites the attention of the State party to the Committee's General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights.

32. The Committee recommends that a thorough review of national laws be undertaken with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and multiple discrimination of women from certain groups. It urges the State party to strengthen its efforts to make widely known the prohibition of such discrimination and to improve effectively access to judicial and administrative remedies in cases of alleged violations. The Committee further recommends that special units be established to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of their economic, social and cultural rights by disadvantaged and marginalized groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups.

33. The Committee urges the State party to implement effectively, the Comprehensive Peace Agreement underlining the safe and sustainable return of all internally displaced persons (IDPs), particularly in mountain and hill districts where the environment has not been conducive to reintegration. The Committee recommends further that the State party establish an effective strategic plan including a monitoring mechanism, for the safe and dignified return, registration, rehabilitation and reintegration of IDPs.

34. The Committee urges the State party to strictly enforce the law prohibiting harmful practices that violate the rights of women and girls such as *deuki*, *badi*, *chaupadi*, marrying child brides and witchcraft. The Committee requests that the State party provide detailed information on the extent of these practices and the measures being taken to strictly enforce its laws for the protection of women and girls from such harmful practices.

35. The Committee urges the State party to adopt without delay specific legislation on domestic violence without delay defining these acts as a specific offence, and to undertake a major information campaign to raise awareness about such legislation. It further urges the State party to take measures to develop procedures and educate law enforcement officials, judges, lawyers, social workers and medical professionals to enable them to protect effectively victims of domestic violence.

36. The Committee encourages the Government to provide adequate and immediate assistance, in particular through special temporary measures, to alleviate the adverse impact of

the conflict on women, including poverty and loss of income, social stigma, and insecurity of tenure resulting from unclear property rights due to the unknown fate of the missing spouses.

37. The Committee recommends that the State party strengthen its efforts to promote labour-intensive industries and increase productivity in the agricultural sectors. The Committee also recommends that special programmes for ex-Kamaiyas and ex-Haliyas, Dalits, indigenous persons and groups, and particularly women belonging to these groups, be expanded in the rural areas as a matter of priority.

38. The Committee recommends that the State party continue to address the situation of children engaged in the worst forms of child labour, with the assistance of the International Labour Organization. The Committee recommends that measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, be strengthened and significantly expanded to cover all children working in the worst forms of child labour.

39. The Committee urges that the minimum wage be set at a sufficient level to enable workers and their families enjoy an adequate standard of living. The Committee encourages the State party to carry out periodic reviews of the minimum wage. It further requests information in the next report about the methodology for the calculation of the minimum wage.

40. While noting that Nepal is a Low Income Country and its resources are correspondingly limited, the Committee reminds the State party that it is obliged to the maximum of its available resources to comply with its Covenant obligations. In this regard, the Committee refers the State party to its recent statement on the "Evaluation of the obligation to take steps to the maximum of available resources under an Optional Protocol to the Covenant" (E/C.12/2007/1), dated 10 May 2007.

41. The Committee also recommends that specific mechanisms and procedures be established to monitor the implementation of such strategies and evaluate the progress achieved in combating effectively poverty, including among the most disadvantaged and marginalized groups.

42. The Committee recommends that the State party take urgent steps to ensure food security and access to water for all, particularly those who belong to the most disadvantaged and marginalized groups. It recommends that agricultural policies aim effectively at improving not only productivity and commercialization but also access and distribution. In this regard, the Committee urges that specific measures be implemented with a view to enhancing the participation of the lower castes in the production, distribution and consumption of food. The Committee requests the State party in its third periodic report to provide detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. In this regard, the Committee draws the attention of the State party to its General Comment No. 12 on the right to adequate food and General Comment No. 15 on the right to water.

43. The Committee recommends the immediate application of the Interim Constitution and laws prohibiting caste-based discrimination and segregation in cases of denial of access to public

water sources. It recommends that access to public wells be closely monitored by the District Development Committees or by another appropriate local body.

44. The Committee recommends that the State party adopt a national housing policy by providing low-cost housing units for the rural poor and the disadvantaged individuals and groups.

45. The Committee recommends that higher priority be accorded to reducing the rates of maternal and infant mortality and that due consideration be given to the need for integrating into the general health care system mental health services and programmes aimed at preventing and treating HIV/AIDS. The Committee stresses that the right to the highest attainable standard of health encompasses mental as well as physical health and the importance of mental health care, particularly in relation to persons affected by the conflict.

46. The Committee recommends that as part of the general improvement in the national health care system, physical and economic access to reproductive health care and contraceptives be given high priority, particularly in rural areas, and that specific measures be taken to enable women to give birth in the care of a trained health care professional.

47. The Committee calls upon the State party to introduce not only free but also compulsory education, in conformity with articles 13 and 14 of the Covenant, and to specify in its third periodic report by when it plans to achieve this, as well as concrete benchmarks through which progress can be measured. In this regard, the Committee refers the State party to its General Comment No. 11 on a national plan of action on primary education, and General Comment No. 13 on the right to education. It further urges that human rights be introduced at all levels of education, both as a subject and as a methodology of instruction, reflecting values of participation and social inclusion. The Committee stresses the value of education as a tool for national reconciliation, the eradication of harmful feudal practices, the promotion of respect for the dignity of all persons and groups, as well as the building of skills to enhance future employment prospects.

48. The Committee recommends that the State party include in its third periodic report detailed information about criteria used to recognize officially indigenous nationalities and about the implications thereof.

49. The Committee requests the State party to include a specific section in its next periodic report on the results of the measures taken to combat discrimination and enhance respect, protection and fulfilment of all economic, social and cultural rights. The Committee further requests the State party to include in its next periodic report, annual data, disaggregated by caste, ethnicity and sex, as well as specific benchmarks, to enable adequate monitoring and evaluation of the progress achieved.

50. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among government officials and judicial authorities and to inform the Committee on the steps the State party has taken to implement them in its next periodic report. The Committee also encourages the State party to

engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

51. The Committee invites the State party to update its core document in accordance with the 2006 harmonized guidelines for the preparation of a Common Core Document.

52. The Committee encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities. The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of Migrant Workers and members of their Families.

53. Finally, the Committee requests the State party to submit its third periodic report by 30 June 2011 and to include in that report, detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.
