

**Economic and Social Council**

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Committee on Economic, Social and Cultural Rights**Concluding observations on the third periodic report of Nepal***

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Nepal on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NPL/3) at its 56th and 57th meetings (E/C.12/2014/SR.56-57) held on 19 and 20 November 2014, and adopted, at its 70th meeting, held on 28 November 2014, the following concluding observations.

A. Introduction

2. The Committee notes with appreciation the submission of the third periodic report and the written replies to the list of issues (E/C.12/NPL/Q/3/Add.1). The Committee also welcomes the opportunity to engage with the high level and interministerial delegation of the State party and expresses appreciation for the frank and constructive dialogue that it had.

B. Positive aspects

3. The Committee welcomes the State party's ratification of:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2010;

(b) The United Nations Convention against Transnational Organized Crime in 2006 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in 2008.

4. The Committee welcomes the adoption of following policy and legislative steps by the State party:

(a) The Prevention of Organized Crime Act in 2014;

(b) The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act in 2011;

* Adopted by the Committee at its fifty-third session (10–28 November 2014).



- (c) The Domestic Violence Act in 2009;
- (d) The Human Rights Action Plan 2014–2019;
- (e) The Multi-Sector Nutrition Plan, in 2013;
- (f) The National Strategy and Action Plan on Gender Empowerment and the Elimination of Gender-Based Violence 2012–2017;
- (g) The National Plan of Action against Human Trafficking in 2011;
- (h) The National Master Plan on the Elimination of Child Labour in 2011.

C. Principal subjects of concern and recommendations

Adoption of the constitution

5. While noting that the interim constitution adopted by the State party in 2007 included a number of guarantees on economic, social and cultural rights, the Committee is concerned that the drafting process of the new constitution has still not been finalized. The Committee is further concerned that the lack of a permanent constitutional framework creates obstacles to the full implementation of economic, social and cultural rights (art. 2).

The Committee urges the State party to complete the drafting process of the new constitution within the previously established time frame and to adopt it as expeditiously as possible. The Committee also recommends that in the new constitution, the State party:

- (a) Ensures the protection of all economic, social and cultural rights enshrined in the Covenant;**
- (b) Guarantees the constitutional status of international human rights treaties;**
- (c) Ensures that under no circumstances will the enjoyment of rights already acquired by women and disadvantaged and marginalized individuals and groups be restricted.**

Data collection

6. The Committee regrets that the State party has not provided sufficient disaggregated and detailed data to enable it to better evaluate the implementation of the rights provided for in the Covenant (art. 2).

The Committee recommends that the State party undertake progressively regular and systematic assessments against a clear set of indicators of the level of enjoyment of economic, social and cultural rights, taking into account the conceptual and methodological framework for human rights, using the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) (HRI/MC/2008/3), and including such data in its next periodic report.

Corruption

7. While noting measures taken by the State party to prevent and combat corruption, such as the Prevention of Corruption Act of 2002, the establishment of the National Vigilance Centre and other bodies, as well as plans and guidelines, the Committee is concerned that corruption negatively impacts the use of available resources to their maximum for the enjoyment of economic, social and cultural rights. The Committee is also

concerned at the lack of information on redress provided by the State party to victims (art. 2.1).

The Committee urges the State party to:

- (a) Intensify its efforts to combat corruption and reinforce good governance, by ensuring that public affairs, in law and in practice, are conducted in a transparent and accountable manner;**
- (b) Carry out awareness-raising campaigns on the economic and social costs of corruption among politicians, members of parliament, national and local government officials and the population in general, including in rural areas;**
- (c) Further sensitize and train judges, prosecutors and the police on the need for strict enforcement of its anti-corruption legislation;**
- (d) Protect from any reprisals, those who report acts of corruption.**

National Human Rights Commission

8. The Committee is concerned that the National Human Rights Commission Act of 2012 contains restrictions and limitations to the independence, mandate and powers of the National Human Rights Commission. The Committee is also concerned at the lack of financial independence of the Commission and of the power to recruit its own staff. The Committee is further concerned that the State party has not yet implemented the decision of the Supreme Court of 6 March 2013, in which it declared some provisions of the Act of 2012 null and void (art. 2).

The Committee recommends that the State party amend the National Human Rights Commission Act of 2012 to guarantee the independence, mandate and powers of the Commission, as well as the financial autonomy necessary for its functioning, in compliance with the decision of the Supreme Court of 6 March 2013 and the Paris Principles.

Rights of indigenous peoples

9. Notwithstanding the progress made by the State party in recognizing indigenous peoples, the Committee notes that the process of consideration of the claims for recognition by some indigenous peoples has not yet been completed. The Committee is also concerned at information that indigenous peoples have been deprived of their traditionally owned lands, territories and resources due to development projects carried out by the State party without seeking their free, prior and informed consent. The Committee is further concerned that, although the State party has ratified International Labour Organization (ILO) Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries, there is no legal provision that recognizes community ownership of lands by indigenous peoples (art. 1).

The Committee recommends that the State party:

- (a) Complete, as soon as possible, the process of recognition of indigenous peoples whose claims are under consideration;**
- (b) Ensure that indigenous peoples are represented through their own chosen representatives in the work of the Constituent Assembly and in the decision-making process on all issues that affect them;**
- (c) Guarantee the right of indigenous peoples to own, use and develop their ancestral lands, territories and resources, so as to enable them to fully enjoy their economic, social and cultural rights;**

- (d) Seek their free, prior and informed consent before launching any development project;
- (e) Continuously monitor the projects being developed so as to take corrective measures, if necessary;
- (f) Provide displaced families and groups with fair and adequate compensation;
- (g) Incorporate the provisions of ILO Convention No. 169 in its domestic law.

Refugees

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

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

Caste-based discrimination

11. The Committee is concerned that article 13 of the interim constitution, which guarantees the right to equality and non-discrimination, does not include provisions against discrimination on the grounds of property and birth. While noting the adoption of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, in 2011, the Committee is concerned that Dalits continue to face widespread discrimination in the enjoyment of economic, social and cultural rights, in particular access to education, health care, food, housing, employment and income-generating activities and that Dalit women are victims of multiple discrimination, as they are more vulnerable to sexual exploitation, trafficking and various forms of violence, including domestic violence. . The Committee is further concerned that the National Dalit Commission does not have adequate resources to carry out its mandate (art. 2).

The Committee urges the State party to:

- (a) Include provisions in the constitution making it unlawful for property and birth to be used as grounds for discrimination;
- (b) Take all measures for the effective implementation of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, in particular by sensitizing law enforcement officials, investigating and prosecuting those responsible for discrimination against Dalits and conducting awareness-raising campaigns on the rights of Dalits;

(c) Establish a national strategy and plan of action with time-bound objectives to eliminate discrimination and guarantee the rights of Dalits, as well as indicators to monitor compliance;

(d) Reinforce the National Dalit Commission and provide it with the necessary resources to fulfil its mandate;

(e) Take specific and targeted measures to protect the rights of Dalit women;

(f) Facilitate complaints from Dalits and ensure access to justice for discriminatory acts;

(g) Adopt strict sanctions for those found guilty of acts of discrimination against Dalit men and women.

Equality between men and women

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

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

13. The Committee is concerned at the low representation of women in decision-making positions in public and political affairs. The Committee is also concerned about the pay gap between men and women (arts. 3 and 7).

The Committee recommends that the State party increase the representation of women, including Dalit and indigenous women, in decision-making positions in public and political affairs. The Committee further recommends that the State party address obstacles to the career advancement of women through temporary special measures and the education of men and women about equal career opportunities.

Harmful traditional practices

14. The Committee is concerned that deep-rooted stereotypes and patriarchal attitudes that discriminate against women and girls continue to be prevalent in society, despite measures taken to curb them. It is particularly concerned that women and girls, in particular of Dalit origin, continue to suffer from harmful traditional practices such as forced and early marriages, accusations of *boxi* (witchcraft), *deuki* tradition (offering girls to deities to fulfil religious obligations), *jhumas* (offering young girls to Buddhist monasteries to perform religious functions), *kamlari* (offering girls for domestic work to the families of landlords) *chapaudi* (isolating menstruating girls) and *badi* (widespread practice of prostitution) (arts. 3 and 10).

The Committee urges the State party to:

(a) Effectively implement measures to eradicate harmful traditional practices;

(b) Reinforce its awareness-raising campaigns among the population and in particular in districts and social groups where such practices are prevalent, reiterating that those practices are violating human rights and that they have long-lasting negative effects;

(c) Enforce the Domestic Violence Act of 2009, investigate cases of harmful traditional practices and punish those responsible;

(d) Provide protection and rehabilitation to victims;

(e) Expedite the adoption of the bill prepared by the National Women's Commission to criminalize all kinds of harmful practices and implement the national strategy to end child marriages.

Conditions of work in the informal economy

15. The Committee is concerned that the majority of the population of the State party that is employed in the informal economy does not have guarantees with regard to wages, working hours, health and safety and social benefits. The Committee is particularly concerned about the situation of women, in particular in the agricultural sector. The Committee is further concerned that in spite of the commitment of the State Party to develop, through the Labour Employment Policy, a social security system that would extend to the informal sector, no tangible progress has been made (arts. 6, 7 and 9).

The Committee recommends that the State party:

(a) Take measures to enable workers from the informal economy to benefit from adequate wages and just and favourable working conditions, including working hours and health and safety measures;

(b) Undertake all necessary measures to comply with its commitment to extend social security to workers in the informal economy, in particular regarding maternity and old age.

In that connection, the Committee refers the State party to its general comment No. 19 (2007) on the right to social security and recommends that the State party assess the possibility of establishing a social protection floor, in line with ILO Recommendation No. 202 (2012) concerning national floors of social protection, seeking, if necessary, technical assistance from ILO.

16. The Committee is concerned at reports that more than 50,000 women work in the "entertainment" sector in the Kathmandu Valley alone and that they are stigmatized and subject to abuse (art. 7).

The Committee urges the State party to implement the 2009 directive of the Supreme Court for a five-year action plan (2012–2016) to regulate work in the "entertainment" sector and to ensure the labour and social security rights of women working in the sector and protect them from abuse. The Committee also recommends that the State party conduct awareness-raising campaigns to eliminate stigmatization against those women.

Minimum wage

17. The Committee is concerned about the difficulties faced by the State party in enforcing the legislation on the minimum wage (art. 7).

The Committee recommends that the State party take concrete measures to effectively implement its legislation on the minimum wage in all sectors.

Situation of former bonded labourers

18. The Committee is concerned that, although the traditional bonded labour system (*Kamaiya, Haliya and Kamalari*) has been formally eradicated and measures have been taken for the rehabilitation of former bonded labourers, many of them, in particular in the western part of Nepal, face obstacles to social reintegration, due to their lack of skills and lack of access to fertile land for cultivation, which leads them to return to their previous employers, by whom they are often exploited (arts. 2 and 7).

The Committee recommends that the State party increase its efforts to ensure that freed bonded labourers are entitled to full rehabilitation and integration, in particular through access to fertile lands for cultivation and to housing, food, health, education and vocational training for income-generating activities and employment.

Women migrant workers

19. The Committee is concerned that women migrating from Nepal in search of work are subject to unfair working conditions and to violence and abuse in some host countries. (arts. 3 and 7).

The Committee recommends that the State party:

- (a) Provide adequate information to women migrant workers on procedures for access to, and enjoyment of, their economic, social and cultural rights;**
- (b) Continue to sign bilateral agreements with host countries and monitor their enforcement in order to better protect the rights of women migrant workers.**

Domestic violence

20. The Committee is concerned about the prevalence of gender-based violence, including domestic and sexual violence, in particular among the Dalit and other disadvantaged groups, despite the adoption of the Domestic Violence Act in 2009, the Domestic Violence (Crime and Punishment) Regulations in 2010 and other measures. The Committee is also concerned about the lack of information on the protective measures provided to victims of domestic violence, including assistance, rehabilitation and shelters. The Committee is further concerned about the lack of information on investigations, prosecutions, convictions and sanctions against the perpetrators. The Committee regrets the lack of information on the impact of awareness-raising campaigns on the reduction of domestic violence, carried out by the State party (art. 10).

The Committee recommends that the State party:

- (a) Enforce its legislation on domestic violence;**
- (b) Investigate cases of gender-based violence, prosecute the perpetrators and punish them with adequate sanctions if they are convicted;**
- (c) Facilitate complaints from victims of gender-based violence and their access to justice, and protect them from any kind of reprisals;**
- (d) Continue to provide law enforcement officials with the necessary training on gender-based violence, including domestic and sexual violence;**
- (e) Develop protective and rehabilitation measures, including shelters and hotlines for victims;**
- (f) Increase awareness-raising campaigns on women's rights and the negative effects of gender-based violence, in particular in rural and remote areas and among disadvantaged and marginalized groups;**

(g) Expedite the adoption of the bill, presently before the parliament, which includes provisions on effective compensation to and services for victims.

Economic exploitation of children

21. The Committee is concerned that child labour remains widespread in the State party. It is also concerned about the high number of children under the minimum age that work in agriculture, quarries and mining, domestic servitude and pottery factories, despite the existence of the Child Labour Act of 2000, the Child Labour Regulations of 2006 and the National Master Plan Relating to Child Labour, 2011–2013. The Committee is further concerned about the weak enforcement of the legislation which prohibits child labour under the minimum age of 14 years and the lack of information on the impact of awareness-raising campaigns conducted by the State party (art. 10).

The Committee recommends that the State party strengthen its efforts to combat child labour, by:

(a) Taking concrete measures to enforce legislation which prohibits child labour and hold accountable those responsible for non-compliance;

(b) Increasing measures aimed at facilitating access to education for poor and disadvantaged children;

(c) Reinforcing its awareness-raising campaigns among disadvantaged families and social groups and sensitizing parents to children's rights and the lifelong negative effects of child labour;

(d) Reinforcing labour inspections in activities where children are engaged.

Trafficking in persons including children

22. The Committee expresses concern at the high number of children who are trafficked for labour and sexual exploitation, as well as for begging, forced marriages and slavery, including in neighbouring countries. The Committee is also concerned at the ineffective application of the Human Trafficking Control Act of 2007 and the Children Act of 1992. It is further concerned at the lack of information on investigations, prosecutions, convictions and the sanctions imposed on traffickers (art. 10).

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

(a) Investigating trafficking cases, prosecuting and sanctioning the traffickers and providing rehabilitation and reparation to victims;

(b) Sensitizing the population to measures taken to combat trafficking, such as the child search rescue centre in Kathmandu;

(c) Further developing its cooperation with neighbouring countries in order to prevent and combat trafficking across borders;

(d) Bringing its legislation into full compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, specially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Poverty

23. While noting the efforts to reduce poverty, the Committee is concerned that around 25 per cent of the population in the State party lives below the poverty line, in particular in the far east of the country and among the most disadvantaged groups, such as Hill and Terai Dalits, as well as women in rural and remote areas and indigenous peoples. The Committee

is also concerned about the fact that the poverty faced by those groups is exacerbated by the lack of their access to, and ownership of, land and related resources, and lack of livelihoods and income-generating activities (art. 11).

The Committee recommends that the State party:

- (a) **Adopt a human rights-based approach to poverty eradication;**
- (b) **Strengthen its efforts to reduce poverty, in particular among the most marginalized and disadvantaged groups, such as Hill and Terai Dalits, as well as women in rural and remote areas and indigenous peoples, including by expanding its programmes under the Poverty Alleviation Fund;**
- (c) **Facilitate access to, and ownership of, land for those groups and access to income-generating activities.**

The Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).

Forced evictions and right to housing

24. The Committee is concerned at the lack of a comprehensive housing policy which could enable poor, disadvantaged and marginalized persons to access housing. It is also concerned at reports of forced evictions, including in the context of development projects, without the free, prior and informed consent of those affected, reasonable notice, and adequate compensation or alternative housing provided to them (art. 11).

The Committee recommends that the State party develop a comprehensive housing policy in order to facilitate access to housing for poor, marginalized and disadvantaged persons and families. It also recommends that the State party:

- (a) **Enact legislation to determine the circumstances and safeguards under which evictions can take place and ensure that evictions are only used as a last resort;**
- (b) **Ensure that victims of forced evictions are provided with alternative housing or adequate compensation.**

The Committee refers the State party to its general comment No. 7 (1997) on the right to adequate housing: forced evictions and to the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

Right to food

25. The Committee is concerned about the significant increase in food prices that has made food less and less affordable for disadvantaged and marginalized individuals and groups, and which aggravates malnutrition in the State party. While noting the efforts made through the National Programme for Food Security and Nutrition, the Committee is concerned about the lack of a comprehensive and effective strategy to combat hunger and tackle food insecurity which is prevalent in some districts and among certain groups of population in Nepal (art. 11).

The Committee recommends that the State party:

- (a) **Adopt a comprehensive human rights-based strategy with a clear gender dimension to combat hunger and ensure food security for marginalized and disadvantaged individuals and groups;**
- (b) **Address the structural causes of poverty, hunger and malnutrition, including through measures in the fields of health and education, land reform and**

distribution, especially for the landless, tenants, smallholders and disadvantaged and marginalized individuals and groups;

(c) Strengthen the capacity of public institutions and monitoring mechanisms to deliver food aid programmes in a non-discriminatory manner.

The Committee draws the attention of the State party to its general comment No. 12 (1999) on the right to adequate food.

Maternal mortality and sexual and reproductive health

26. The Committee is concerned that, in spite of the positive interventions by the State party to improve maternity services and neonatal care, approximately 5 per cent of maternal deaths are caused by unsafe abortions or antepartum haemorrhage, owing to low awareness of the legality of abortion and the existence of safe abortion services as well as the lack of access to trained health assistants and adequate services, which leads many women, in particular those living in rural areas and from disadvantaged and marginalized groups, to seek unsafe abortions. The Committee is further concerned that uterine prolapse is common even among women under 30 years of age, resulting, inter alia, from lack of adequate sexual and reproductive health care (art. 12).

The Committee recommends that the State party:

(a) Conduct dissemination campaigns on the legality of abortion in the State party;

(b) Ensure access to sexual and reproductive health services and to safe abortion services;

(c) Provide adequate training to health assistants;

(d) Take measures to prevent uterine prolapse among women by ensuring adequate sexual and reproductive health care over their life cycle and combat poverty, which is the main cause for women not resting sufficiently after delivery.

The State party is encouraged to consider the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity produced by OHCHR (A/HRC/21/22).

Older persons

27. The Committee is concerned that older persons are not entitled to universal health care and that health care is unaffordable for many of them (arts. 9 and 12).

The Committee recommends that the State party ensure that older persons are entitled to universal health care and access to affordable health care services. The Committee also recommends that the State party disseminate information on the annual provision of Nr. 2,000 per person to help cover the health-related expenses of older persons in government hospitals.

Primary education and drop-out rates among girls

28. The Committee is concerned that primary education is not yet compulsory in law and that the State party does not guarantee free secondary schooling. It is also concerned about the high school dropout rate of girls, in particular during the transition between the primary and the secondary levels, and at the secondary level, owing, inter alia, to the unavailability of an adequate sanitary infrastructure (art. 13).

The Committee calls on the State party to adopt legislation making primary school compulsory. It further recommends that the State party:

- (a) Ensure access to schooling in rural areas and for Dalit and indigenous children in the context of its “Programme of education for all 2015”;
- (b) Make all necessary efforts to make secondary school free;
- (c) Address the high rate of school dropout of girls, including by providing adequate sanitary infrastructure in all schools;
- (d) Step up its efforts to provide mother tongue-based multilingual education through a coherent language policy framework, especially for schools with linguistically diverse populations.

Cultural rights

29. The Committee is concerned that the lack of recognition of some indigenous peoples by the State party prevents them from fully enjoying their cultural rights, which are deeply rooted in their ancestral lands, territories and resources (art. 15).

The Committee recommends that the State party take all necessary measures to ensure that all indigenous peoples fully enjoy their cultural rights.

D. Other recommendations

30. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

31. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials, judicial authorities and civil society organizations, and to inform the Committee in its next periodic report on the steps taken to implement them.

32. The Committee invites the State party to submit its common core document in accordance with the harmonized guidelines on reporting approved by the human rights treaty bodies (HRI/GEN/2/Rev.6).

33. The Committee encourages the State party to continue to engage with civil society organizations in constructive cooperation for the preparation and submission of its next periodic report.

34. The Committee requests the State party to submit its fourth periodic report in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 30 November 2019.