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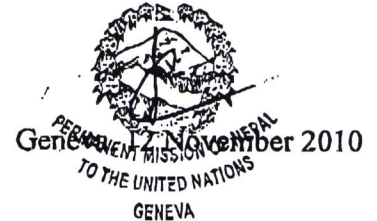


संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
**PERMANENT MISSION OF NEPAL
 TO THE UNITED NATIONS
 GENEVA**

No. G/OHCHR/ 232

The Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, Human Rights Treaties Division, and with reference to the letter of the High Commissioner dated 3 August 2010 requesting the permanent missions to share the experiences of their respective countries with regard to implementing the prohibition of incitement to hatred through national legislation, judicial practices, and different types of policies, has the honour to transmit herewith the response received from the concerned authorities of the Government of Nepal in this respect.

The Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Human Rights Treaties Division, the assurances of its highest consideration.



**Office of the High Commissioner for Human Rights
 Human Rights Treaties Division
 Palais des Nations
 CH-1211 Geneva 10.**

OHCHR REGISTRY

15 NOV. 2010

Recipients : *I. Salama*

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Experiences and good practices in Nepal with regard to implementing the prohibition of incitement to national, racial, or religious hatred

A. Relevant provisions of the Interim Constitution, 2007

- **Article 3-4:** The State of Nepal has been defined as a multi-ethnic, multi-lingual, multi-religious, multi-cultural and secular nation.
- **Article 13 (3):** The State does not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these.

Provided that special provisions can be made by law for the protection, empowerment or advancement of women, *Dalits*, indigenous ethnic tribes [*Adivasi Janajati*], *Madhesi* or farmers, labourers or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated.

- **Article 14:** While accepting Right against untouchability and racial discrimination as a fundamental right, it is guaranteed that no person is, on the ground of caste, descent, community or occupation, subjected to racial discrimination and untouchability in any form. Such a discriminatory act is liable to punishment and the victim is entitled to compensation as provided by the law. Similarly, no person is, on the ground of caste or tribe, deprived of the use of services, conveniences or utilities available to the public, or denied access to any public place, or public religious places, or prevented from performing any religious act, and no one is allowed to purport to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin, or to justify social discrimination on the basis of caste and tribe, or to disseminate ideas based on caste superiority or hatred, or to encourage caste discrimination in any form.
- **Article 23:** Every person has the right to profess, practise and preserve his or her own religion as handed down to him or her from ancient times paying due regard to social and cultural traditions.

Provided that no person is entitled to convert another person from one religion to another, and no person acts or behaves in a manner which may infringe upon the religion of others.

Similarly, every religious denomination has the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

- **Article 32:** The right to Constitutional remedy is guaranteed for the enforcement of the rights conferred in the Constitution.
- **Article 33 (d):** The responsibility of the State, among others, is to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its

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existing form of centralized and unitary structure in order to address the problems related to women, *Dalits*, indigenous tribes [*Adivasi Janajati*], *Madhesis*, oppressed and minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination.

- **Article 35: State Policies**

35 (10): The State pursues a policy which will help to uplift economically and socially backward indigenous ethnic groups [*Adivasi Janajati*], *Madhesis*, *Dalits*, as well as marginalized communities, and workers and farmers living below the poverty line by making provisions for reservations in education, health, housing, food security and employment for a certain period of time.

35 (14): The State pursues a policy of making special provision on the basis of positive discrimination for the minorities, landless, squatters, bonded labourers, persons with disability, backward communities and sections, and the victims of conflict, including women, *Dalits*, indigenous tribes [*Adivasi Janajati*], *Madhesis* and Muslims.

- **Article 107 (2):** The Supreme Court may, for the enforcement of the fundamental rights conferred by the Constitution, issue appropriate orders and writs including the writs of *habeas corpus*, *mandamus*, *certiorari*, *prohibition* and *quo warranto*.

B. Provisions in other laws

- *Muluki Ain* (The Civil Code), 1963, in Chapter *Adal* (Decency/Etiquette), has imposed restrictions on discrimination on account of caste, religion etc.
- Civil Rights Act, 1955 has provided all citizens with the right to equality and right to religious freedom.
- National Foundation for Development of Indigenous Nationalities Act, 2002 has defined the term 'indigenous nationalities' as well as made provisions as to the rights of such groups.
- Civil Service Act, 1993 and Constituent Assembly Elections Act, 2007 have made provisions for reservation in accordance with the concept of inclusive representation.
- The provision for reservation of 45% seats while recruiting through open competition in Nepal Police Service, Army Service, Health Service, Special Service etc. has been effected through the amendment in respective Acts and laws.

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C. The reinstated House of Representatives of Nepal following the success of peaceful People's movement, 2006, declared Nepal an untouchability-and-discrimination-free country on 4 June 2006.

D. Principles established by the Supreme Court

- ***Man Bahadur Bishwakarma vs. Ministry of Law, Justice and Parliamentary Affairs (N.K.P. 2049 B.S., Issue 12, Page 1010 et all D. No. 4670)***: The provision of the clarification section of Number 10 (a) of *Adal* (Decency/Etiquette) of *Muluki Ain* (Civil Code) that 'the rituals traditionally being followed at a temple or religious place shall not be deemed discriminatory' was annulled stating it to be encouraging discriminatory behavior at public places.
- ***Yogi Narharinath vs. Rt. Hon. Prime Minister Girija Prasad Koirala et all (N.K.P. 2053 B.S., Issue 1, Page 33, D.No. 6127)***: The decision of the government to provide a land in Devghat region having natural, religious and archeological importance, and surrounded by forests to international medical study centre was annulled.
- ***Kashi Dahal vs. His Majesty's Government of Nepal, Cabinet Secretariat et all (N.K.P. 2053 B.S., Issue 7, Page 582, D. No. 6231)***: An order was issued to then His Majesty's Government of Nepal¹, Department of Archeology, Lumbini Development Trust, to issue public notice with explanation as to the reason behind shifting the idols of Mayadevi temple and cutting the peepal (*Ficus religiosa*) trees.
- ***Prakash Mani Sharma vs. His Majesty's Government of Nepal, Cabinet Secretariat et all (N.K.P. 2054 B.S., Issue 6, Page 312, D.No. 6391)***: A directive order was issued to the effect that His Majesty's Government of Nepal needed to take concrete and effective steps towards keeping uniformity in all spheres by formulating policy at national level on such issues as protection of religious, cultural and historical aspects of Ranipokhari area.
- ***His Majesty's Government of Nepal vs. Charles Mendes (N.K.P. 2046 B.S., Page 648, D.No. 3855)***: The constitutional provisions have protected the rights of practicing one's own religion as handed down from ancient times and performing religious functions of such religion.

E. Some relevant conventions ratified by Nepal

¹ Nepal became federal democratic republic after the declaration to this effect by the first meeting of the Constituent Assembly on 28 May 2008. The formal name of the government has since been changed from "His Majesty's Government of Nepal" to the "Government of Nepal".

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- Slavery Convention, 1926
- Protocol amending the Slavery Convention, 1953
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Civil and Political Rights, 1966
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

F. Participation of Nepal in some relevant international conferences

- World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 2001 (*Nepal called for the end of all forms of racism, racial discrimination, xenophobia an related intolerance*)
- Global Dalits Conference, New Delhi, 2001 (*While participating actively, Nepal had expressed solidarity in movements against any form of racial or religious hatred*)
- March 21 is being observed as International Day for the Elimination of Racial Discrimination.

