

Distr.: General  
13 May 2022  
Arabic  
Original: English

## الجمعية العامة



### مجلس حقوق الإنسان

الدورة الخمسون

13 حزيران/يونيه - 8 تموز/يوليه 2022

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### زيارة إلى نيبال

#### تقرير المقرر الخاص المعني بالفقر المدقع وحقوق الإنسان، أوليفيه دي شوتر \* \*

موجز

خطت نيبال خطوات كبيرة في الحد من الفقر المدقع، ولكن هذه الجهود تخفي زيادة في عدم المساواة في الثروة، وتباطؤاً في التقدم المحرز في مجال المساواة بين الجنسين، ووزناً لا مبرر له للتحويلات المالية وتمويل المانحين في اقتصادها. وعلى الرغم من أن دستورها التقدمي يضمن العديد من الحقوق الاجتماعية - الاقتصادية، فإن عودته لا تزال غير محققة لعدد أكبر مما يحتمل. ولا يزال الافتقار إلى الأراضي وعمالة إيسار الدين يؤثران على أشد الناس فقراً الذين كثيراً ما يظلون في فخ الديون مدى الحياة. ولا يزال التمييز الواسع النطاق ضد الداليت وقوميات الشعوب الأصلية والماديسي وغيرهم من الأقليات متفشياً. وتعاني النساء والأطفال والمهاجرون وذوو الإعاقة من معدلات غير متناسبة من الفقر، لكنهم لا يزالون مع ذلك غير مرئيين في البيانات وفي السياسات. ويتسم خليط برامج الحماية الاجتماعية في نيبال بانخفاض مستويات التغطية وارتفاع مستويات الاستبعاد القانوني وعدم القبول.

ويركز هذا التقرير على الخطوات التي يمكن أن تتخذها نيبال لضمان حقوق الفقراء، بما في ذلك وضع خطة واضحة وشاملة لمكافحة الفقر. وينبغي أن تشمل تلك الخطة سياسات لمكافحة التمييز، واستراتيجية لخلق فرص عمل لائقة، ومقترحات لقوانين داخلية لتنفيذ الوعود الدستورية المتعلقة بالحقوق الاجتماعية - الاقتصادية، وخطة لتسريع التوزيع المنصف للأراضي.

\* يعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعَمَّم باللغة التي قُدم بها فقط.

\*\* أُثِّق على نشر هذا التقرير بعد تاريخ النشر المعتاد لظروف خارجة عن إرادة الجهة المقدمّة له.



الرجاء إعادة الاستعمال

## Annex

# Report of the Special Rapporteur on extreme poverty and human rights on his visit to Nepal

## I. Introduction<sup>1</sup>

1. The Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, visited Nepal from 29 November to 9 December 2021. The purpose of the visit was to assess the extent to which the Government's policies and programmes related to poverty are consistent with its human rights obligations and to offer recommendations, with a view to eradicating multidimensional poverty and reducing inequalities, in line with Sustainable Development Goals 1 and 10. The Special Rapporteur is grateful to the Government for inviting him, facilitating his visit and engaging in constructive dialogue. The present report is submitted in accordance with Council resolution 44/13.

2. The Special Rapporteur visited Kathmandu, Surkhet, Nepalganj (Banke district), Bardiya, Rautahat, Janakpur and Dhanauji (Dhanusa district). He met with local, provincial and federal government officials, international and United Nations agencies, civil society organizations and people affected by poverty in urban and rural areas. He visited an informal urban settlement, a centre for people with disabilities and multiple communities in rural areas. He met with informal settlers in Kathmandu, with landless poor in Jhupra Khola and Dhanauji, and with women in poverty in Birendranagar and Janakpur. He met with Dalit, Madhesi and indigenous communities, including Badi, Tharu, Gandharva and Musahar communities in Karnali province and Province 2. He also met with representatives of eight government ministries, the Office of the Attorney General, the constitutional commissions responsible for the indigenous nationalities, the Tharu, the Madhesi, the Dalit and the Muslim communities, and the National Human Rights Commission. The Special Rapporteur is grateful to all who shared their time and expertise with him.

## II. Overview

3. Poverty numbers in Nepal have decreased dramatically in recent years, but this reduction in absolute poverty hides an increase in wealth inequality, a stalling in gender equality progress and an undue weight of remittances and donor funding in alleviating poverty. The lack of comprehensive, disaggregated poverty data hampers progress and monitoring efforts, both by the international community and the Government itself, and hides the compounded forms of poverty that historically marginalized communities experience in the country, including millions of stateless people who are excluded from figures and from accessing social protection and public services. The Government must develop a serious anti-poverty action plan to address these and other challenges.

4. Nepal prides itself on its unique diversity and rightly so. The country's almost 30 million inhabitants belong to at least 125 caste or ethnic groups and speak over 123 languages, scattered across a rich and highly diversified terrain. The preamble of the 2015 Constitution sets out a vision of an egalitarian society that ensures equality and social justice and combats all forms of discrimination based on class, caste, region, language, religion and gender. Beyond celebrating that diversity, however, the Government must take concrete steps to ensure that the promises of social justice, which it made to its people in the Constitution, do not remain a dead letter.

5. Since the coalition Government led by Prime Minister Deuba took office on 13 July 2021, it has made important commitments to improving well-being and human rights across the country. Officials have stated their commitment to ensuring that Nepal does more to

<sup>1</sup> The Special Rapporteur is grateful for the excellent research and analysis undertaken by Paula Fernandez-Wulff and Agathe Osinski, and to the Office of the United Nations High Commissioner for Human Rights.

continue reducing poverty, address entrenched gender inequality and put an end to the historical discrimination experienced by marginalized communities across its seven provinces. The present report addresses the most important challenges the Government faces and the priority steps it should take to fulfil the human rights of the population.

### III. Situation of poverty and inequality in Nepal

#### A. Appropriateness of data collected on poverty and inequality

6. Nepal has made great strides in the fight against poverty in recent decades. The poverty headcount decreased from 42 per cent in 1995 to 12.5 per cent in 2010.<sup>2</sup> The multidimensional poverty rate is now at 17 per cent, a decrease of 12.7 per cent since 2014.<sup>3</sup> Nepali people are justifiably optimistic about their country, including owing, among other things, to improvements in infrastructure and access to health care and education,<sup>4</sup> and Nepal was ranked 22nd among emerging economies in the Inclusive Development Index of the World Economic Forum.<sup>5</sup>

7. Under the 2010 national poverty line, set at Nrs19,262 per year per person, 6.8 million people, or 25.2 per cent of the population, would live in poverty.<sup>6</sup> However, this line is outdated and exceedingly low. Using World Bank standards applicable to lower-middle-income countries (\$3.20 per day per person (2011 purchasing power parity (ppp))), the poverty rate would be the equivalent of 13.7 million, or 50.8 per cent of the population,<sup>7</sup> which would suggest an increase, and not decrease, in poverty rates.<sup>8</sup> Moreover, the national poverty line is used to identify households who have access to subsidized food items and whose enrolment in the national health insurance programme is fully subsidized, affecting millions of people. The Special Rapporteur was therefore encouraged by the announcement that the poverty line would be updated in preparation for the upcoming graduation of Nepal from least developed country status.

8. The national poverty line in Nepal, as in other countries, is based on the cost of basic needs method, aimed at capturing basic needs in terms of food and non-food items, but this approach is silent on what an appropriate list would be for non-food items, including at what prices.<sup>9</sup> The 2021 Multidimensional Poverty Index report relies on outdated census data and glosses over indicators that have remained unchanged or that have worsened in the past eight years.<sup>10</sup> Intra-household inequalities, critical for assessing poverty among women, are not captured in either the national poverty line or the Multidimensional Poverty Index.

9. The Human Development Index value for Nepal has increased greatly and is now at 0.587. Adjusted for inequality however, the value is 0.439, indicating a loss of 25.2 per cent due to inequality.<sup>11</sup> Nepal is behind all other South Asian countries in terms of income inequality as a component of the Human Development Index.<sup>12</sup> Today, the Human Development Index for women is lower than for men and, worryingly, it has experienced a

<sup>2</sup> World Bank, "Poverty & equity brief: Nepal" (April 2022), p. 1.

<sup>3</sup> Government of Nepal, National Planning Commission, *Nepal Multidimensional Poverty Index: Analysis towards Action* (2021), p. x.

<sup>4</sup> Dhiraj Giri, Uddhab Pyakurel, and Chandra Lal Pandey, *A Survey of the Nepali People in 2020*, p. 11.

<sup>5</sup> World Economic Forum, "The Inclusive Development Index 2018: summary and data highlights", p. 2.

<sup>6</sup> World Bank, "Poverty & equity brief: Nepal", p. 2.

<sup>7</sup> *Ibid.*, p. 1.

<sup>8</sup> However, the conversion rate from \$3.20 (2011 ppp) to Nepalese rupees has not been updated since 2010, hampering the possibility of drawing final conclusions.

<sup>9</sup> See Nand Kishor Kumar, "Poverty profile and poverty measurement technique of Nepal", *Nepal Journal of Management*, vol. 12, No. 1 (August 2019).

<sup>10</sup> National Planning Commission, *Nepal Multidimensional Poverty Index: Analysis towards Action*, 2021.

<sup>11</sup> United Nations Development Programme (UNDP), *Nepal Human Development Report 2020*, pp. 17 and 19.

<sup>12</sup> *Ibid.*, p. 21.

downward trend since 2017.<sup>13</sup> Additionally, geographical disparities remain important: Sudurpaschim, Karnali and Province 2 lag significantly behind the national average.<sup>14</sup>

10. Income inequality has increased since the reporting period 1995/1996, with both the Palma ratio and the Gini coefficient rising until 2010/2011, the latest year for which the Nepal Living Standards Survey data is available. According to Oxfam, the income of the richest 10 per cent is over three times higher than that of the poorest 40 per cent, with the share of the former increasing over time.<sup>15</sup> Wealth inequality remains substantially higher than income inequality, another marker of the increasing divide between the rich and poor in Nepal.<sup>16</sup> Given the large numbers of people whose birth remains unregistered or who work informally in the country, the Government should prioritize monitoring the evolution of top incomes to prevent inequality from growing further.

11. Problematically, a quarter of the purported decline in poverty can be attributed to outward migration only; indeed, without remittances, poverty would have in fact increased in Nepal.<sup>17</sup> Remittances were 10 times greater than foreign aid and 2.5 times greater than total exports in 2017,<sup>18</sup> suggesting that much more needs to be done by the Government to meet its target of reducing the population in multidimensional poverty to 11.5 per cent by 2023/2024.<sup>19</sup>

12. Recent efforts have been made to develop a poverty database and provide households found to be below the poverty line with so-called poverty identity cards. However, only 26 districts have been surveyed since efforts began 10 years ago in September 2012.<sup>20</sup> During the Special Rapporteur's visit, the Government stated that it expected the survey covering all 77 districts to be completed by the end of 2022, yet this was the expectation for 2021 and it was not met.<sup>21</sup>

13. Poverty identification cards are a misguided policy priority that leads to misplaced public funding, maladapted public services and the stigmatization of cardholders. The "poverty identity card" overlaps with other cards and certificates and there have been complaints about misidentification of who is poor and who is not. That is an entirely expected challenge as such databases are not (and cannot realistically be) dynamic, especially when there is no adaptive mechanism for updating the data as households escape from or fall into poverty. There is no static group that can be identified as "the poor" in constant terms – not in Nepal, not anywhere in the world. Denying the dynamic nature of poverty, especially given the multiple shocks that the country has experienced in recent years, condemns data-collection efforts to failure and the public funds invested to waste.

14. While an integrated social registry has been proposed, its development has been delayed as it has been outsourced to a private firm that is yet to be contracted years after international funding was confirmed.<sup>22</sup> Accelerating public efforts to build State capacity is critical for successful collection and analysis of poverty data.

<sup>13</sup> Ibid., p. 22.

<sup>14</sup> Ibid., p. 27.

<sup>15</sup> See Oxfam International and Hami, "Fighting inequality in Nepal: the road to prosperity" (January 2019).

<sup>16</sup> Ibid.

<sup>17</sup> See Michael Lokshin, Mikhail Bontch-Osmolovski and Elena Glinskaya, *Work-related Migration and Poverty Reduction in Nepal*, (May 2007); Hiroki Uematsu, Akhmad Rizal Shidiq and Sailesh Tiwari, "Trends and drivers in poverty reduction in Nepal: a historical perspective" (September 2016); and Udaya R. Wagle and Satis Devkota, "The impact of foreign remittances on poverty in Nepal: a panel study of household survey data, 1996–2011", *World Development*, vol. 110 (October 2018).

<sup>18</sup> World Bank, *Country Economic Memorandum. Climbing Higher: Toward a Middle-income Nepal*, (May 2017), p. 3.

<sup>19</sup> National Planning Commission, *The Fifteenth Plan. Fiscal Year 2019/2020–2023/2024*, p. 634.

<sup>20</sup> Shree Ram Subedi, "After spending Rs 700 million to identify the poor, Nepal still doesn't have their database", myRepública, 12 April 2020.

<sup>21</sup> "Poor households to get ID card within this fiscal year", The Rising Nepal, 30 October 2020.

<sup>22</sup> See World Bank procurement plan, "Disclosable version of the ISR – strengthening systems for social protection and civil registration project", approved 23 September 2016.

## B. Macroeconomic conditions

15. Nepal is a largely importing country, with negative trade balances of about \$11.5 billion in 2019.<sup>23</sup> Despite having opened its economy to foreign direct investment (FDI) in the 1980s and 1990s, largely as a result of structural adjustment programmes led by the International Monetary Fund (IMF) and the World Bank,<sup>24</sup> FDI remained negligible in the following years:<sup>25</sup> it was \$185.6 million, or 0.54 per cent of gross domestic product (GDP) in 2019, comparatively lower than countries with similar economic profiles in the region.<sup>26</sup> In parallel, exports did not grow as expected but instead declined and they have been declining further in the past 10 years.<sup>27</sup> Debt, inequality and outward migration levels have continued to increase. External debt doubled between 2015/16 and 2019/20 and currently sits at 37.7 per cent of GDP, most of which is held by the World Bank and the Asian Development Bank.<sup>28</sup> Between 1985 and 1995, the income of the wealthiest 10 per cent of the population grew by 12 percentage points, while that of the poorest 50 per cent declined by 7 points.<sup>29</sup> As much as 10 per cent of the population, or at least 2.1 million individuals, work abroad.<sup>30</sup> While more research is needed on the specific impacts of structural adjustment on poverty in Nepal, economic liberalization in itself does not lead to job creation and better livelihoods for people in poverty or on low incomes. Instead, a serious anti-poverty action plan containing a sustainable jobs creation strategy should be prioritized.

16. Worryingly, when the Special Rapporteur inquired about its job creation strategy for the upcoming years, the Government referred to foreign employment and remittances only, suggesting a misguided prioritization of encouraging outward migration as a solution to unemployment, rather than strengthening decent job-creating sectors at home. Stimulating outward migration and counting on remittances prevents the country from reaping the benefits of its investment in education. Moreover, remittances fuel consumption that largely enables the growth of low-productivity, low-skilled services, which in turn favours imports and hampers exports.<sup>31</sup> Large-scale outward migration is not a sign of strength, it is a symptom of structural problems that the Government must address.

17. In addition to remittances, Nepal remains highly reliant on foreign donor support, with \$1.4 billion received in aid in 2019 alone.<sup>32</sup> Following the Special Rapporteur's mission, the IMF issued a statement committing approximately \$400 million in funding over 38 months in exchange for measures to increase revenue, strengthen financial sector regulations, improve fiscal transparency and combat corruption. While donor support remains necessary, donor-led projects should be implemented in a coherent, coordinated manner to avoid fragmentation and inconsistencies in approaches to poverty eradication.

18. Overall, the tax to GDP ratio has consistently increased since 2011, growing from 11.6 per cent to 19.8 per cent in 2019.<sup>33</sup> While this is higher than South Asian peer countries, the tax structure in Nepal includes tax incentives that benefit upper-income individuals and companies and a high ratio of indirect to direct taxes in overall revenue collection. As a result,

<sup>23</sup> See World Bank, TCdata360, 2019.

<sup>24</sup> See World Bank, Report and recommendation of the President of the International Bank for Reconstruction and Development to the Executive Directors on a proposed first structural adjustment credit in an amount equivalent to \$50 million to the Kingdom of Nepal (March 1987); and Project completion report, Nepal, second structural adjustment credit (Credit 2046-NEP) (March 1994).

<sup>25</sup> UNCTAD, *The Least Developed Countries 2000 Report: Structural adjustment, economic growth and the aid-debt service system*, p. 113.

<sup>26</sup> World Bank, TCdata360, 2019, FDI net inflows.

<sup>27</sup> Ministry of Finance, *Economic Survey 2020/21*, p. 89; and United States Agency for International Development (USAID), *Nepal Private Sector Engagement Assessment, 2020*, pp. 118–119.

<sup>28</sup> Ministry of Finance, *Debt Report 2019–20*, pp. 2–3 and 7.

<sup>29</sup> See World Inequality Database, income inequality, Nepal, 1980–2021.

<sup>30</sup> Nicolas Serrière and Centre for Economic Development and Administration, *Labour Market Transitions of Young Women and Men in Nepal*, International Labour Organization (May 2014), p. 1.

<sup>31</sup> World Bank, *Country Economic Memorandum. Climbing Higher: Toward a Middle-income Nepal*, pp. 5–6.

<sup>32</sup> See World Bank, Net official development assistance and official aid received, Nepal.

<sup>33</sup> See World Bank, Tax revenue (% of GDP) – Nepal.

the poorest quintile of households pays a higher share of income than the wealthier ones.<sup>34</sup> Efforts should continue to make the tax system less reliant on indirect taxes and fairer towards those on low incomes.

## C. Legal and institutional framework related to poverty

### Guaranteeing constitutional rights in practice

19. Nepal has one of the most progressive constitutions in the world. In addition to listing many economic and social rights and the rights of specific groups, it includes the right to social justice, stating that several marginalized groups have the right to “participate in the State bodies on the basis of inclusive principle”. These groups are identified as “the socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya”.<sup>35</sup>

20. Significant obstacles to moving from constitutional promises to the lived experiences of disadvantaged groups remain. First, while legislation implementing the fundamental rights of the Constitution has been adopted, as required, within the three years following the entry into force of the Constitution, those laws were rushed through the parliamentary approval process, often with no or limited consultation, and many by-laws must still be adopted to ensure those rights are effectively guaranteed. Until the Government does so, its promises remain unfulfilled.

21. Second, the legislative process lacks a mechanism to ensure that bills presented for adoption are screened for compatibility with the fundamental rights stipulated in the Constitution or in international human rights treaties ratified by Nepal. Nor does it include any procedure to assess the impacts of proposed legislation on disadvantaged groups, particularly those listed in the Constitution. While there are several established constitutional commissions that could perform this role, they are provided with only limited resources and the appointment of their members continues to be tainted by political considerations. Neither the Government nor the parliament have committed to providing substantiated answers to their recommendations, let alone to be guided by them. As a result, the impact of these commissions is likely to remain limited in the future.

### Effectively ending discrimination through an intersectional reservations policy

22. Challenges remain to implementing the “inclusive principle,” according to which all groups of society should be adequately represented in State bodies. Full implementation of this principle is essential for improving trust in the State among communities. Indeed, sporadic yet tragic outbursts of violence resulting from inter-caste marriages suggest that while a mainstream narrative highlights social cohesion and harmony, resistance by dominant groups is strong when historical hierarchies are questioned. Although untouchability was declared illegal more than a decade ago, with the adoption of the 2011 Caste-based Discrimination and Untouchability (Offence and Punishment) Act, caste-based discrimination persists across the country, with lingering prejudices continuing to cause significant violence within society.

23. Dalit, who constitute at least 13.6 per cent of the total population, are particularly affected by such violence and discrimination. A report on the perception of harmful practices found that 97 per cent of respondents considered that discrimination based on caste occurred in their community, with nearly half of respondents stating that Dalit would not be allowed into the house of non-Dalit in their communities.<sup>36</sup> Over half of Dalit respondents reported having experienced caste-based discrimination within the past year, including being denied

<sup>34</sup> Richard Mallett and others, “Taxation, livelihoods, governance: evidence from Nepal” (January 2016), p. 21.

<sup>35</sup> Constitution of Nepal, articles 18 (3) and 42 (1).

<sup>36</sup> United Nations Nepal, “Harmful practices in Nepal: report on community perceptions” (January 2020), p. 8.

entry into the home of “higher-caste” families or being denied access to communal water sources or village temples.<sup>37</sup>

24. Discrimination is the single most important factor in explaining why Dalit people are disproportionately affected by poverty: around 42 per cent of Dalit live below the poverty line (43.6 per cent of Hill Dalit and 38.2 per cent of Terai Dalit),<sup>38</sup> far above the national poverty rate of 25.2 per cent.<sup>39</sup> While the immediate causes of this gap are limited employment opportunities owing to occupation specialization preventing Dalit from accessing well-paid jobs, as well as lack of access to (quality) education and land that perpetuates poverty from one generation of Dalit to the next, the persistence of social discrimination is the overarching factor explaining this situation.<sup>40</sup>

25. A reservations policy has been in place since 2007 to implement the “inclusive principle”, providing that 45 per cent of positions in the federal civil service go to specific disadvantaged groups. This policy has been effective to some extent: for instance, women’s representation in the civil service increased from 11 per cent in 2007 to more than 20 per cent a decade later, a remarkable achievement in such a short period of time.<sup>41</sup> However, progress was slower for other groups. Dalit representation in the civil service was below 1 per cent prior to the introduction of the reservations policy and hovered around 2 per cent by 2018, which remains significantly below the aims set by the policy.<sup>42</sup>

26. The directive order adopted on 1 August 2021 by a Supreme Court joint bench now presents the Government with a new challenge. The justices ruled that the reservation system should be focused on needs and not on ethnicity: the judgment states that socioeconomic status rather than an individual’s caste or ethnic identity should be considered when allocating reservations. The Court also ruled that an individual could only benefit once in a lifetime from the reservations system.

27. The proper answer to that judgment, in the view of the Special Rapporteur, is not to abandon the reservations policy and replace it by a system that focuses on socioeconomic status only, but to improve it in three ways:

(a) First, intersectionality should be properly considered. To avoid, for instance, that all the positions set aside for Madhesi are captured by men, or that all positions set aside for women be captured by non-Dalit women, the reservations policy could consider the intersection of caste, ethnicity, sex, and disability – defining, for instance, the appropriate representation of Madhesi Dalit women with disabilities among the reserved positions;

(b) Secondly, an additional set-aside, separate from the current 45 per cent of reserved allocations, could be provided for candidates from a low socioeconomic background. Such a provision would be consistent with the reference in the Constitution to the prohibition of discrimination on grounds of economic condition as well as to the “indigent Khas Arya” as part of the disadvantaged groups. It would also alleviate fears that the current policy will disproportionately favour those who, within certain groups, are best positioned to seize the opportunities arising from the policy;

(c) Thirdly, however much the reservations policy can improve the representation of certain disadvantaged groups in the civil service and ensure that the composition of the administration reflects the diversity within the population, such a policy should not be seen as a substitute for investing in improving the ability of members of such groups to compete on an open basis with others. Dalit but also women, indigenous nationalities and Madhesi should benefit from improved opportunities in education and private employment and they

<sup>37</sup> Ibid., p. 9.

<sup>38</sup> Asian Development Bank, “Country poverty analysis (detailed) – Nepal”, p. 11.

<sup>39</sup> Dalit NGO Federation and others, “Caste-based discrimination and untouchability against Dalit in Nepal”, alternative report to the Committee on the Elimination of Racial Discrimination (February 2018), p. 14.

<sup>40</sup> Krishna Khanal, Frits Sollewijn Gelpke and Uddhab Prasad Pyakurel, *Dalit Representation in National Politics of Nepal* (2012), p. 12.

<sup>41</sup> See Ramesh Sunam and Krishna Shrestha, “Failing the most excluded: a critical analysis of Nepal’s affirmative action policy,” *Contributions to Nepalese Studies*, vol. 46, No. 2 (July 2019).

<sup>42</sup> See Ramesh Sunam, *Samabeshitako Bahas* (transl. *Debating Social Inclusion*) (2018).

should be effectively protected from discrimination. Inspiration could be found in the Dalit Empowerment Act adopted in Province 2, which goes beyond the 2011 Caste-based Discrimination and Untouchability (Offence and Punishment) Act precisely with that objective in mind.

#### **D. Access to land**

28. Land is considered a key asset in the agrarian society of Nepal. A productive asset and source of power, identity and dignity, land ownership offers opportunities for food production and revenue generation. It also provides the necessary collateral for contracting loans and facilitates the acquisition of citizenship certificates, paving the way for access to many public services.

29. Conversely, landlessness is both a consequence and a cause of poverty in Nepal. Landless households find it more difficult to obtain loans from banks, since they cannot use land as collateral for credit.<sup>43</sup> Without access to formal financial institutions, poor families are forced to seek access to credit from landowners to pay for dowries, weddings, medical expenses or costs related to migration.<sup>44</sup> Those costs lead them to deepen their indebtedness, increasing their dependency on their landowners and perpetuating exploitative arrangements akin to bonded labour.

30. Historical injustices related to land ownership and its unequal distribution make this a highly political topic, which the Special Rapporteur examined when visiting landless communities across three provinces. Several challenges were identified.

##### **Implementing constitutional land redistribution provisions**

31. The promises in the Constitution related to land redistribution remain unfulfilled. Fifteen years after the Comprehensive Peace Accord, redistribution remains very modest<sup>45</sup> and inequalities in access to land remain important: 75 per cent of Hill Dalit and 80 per cent of Terai Dalit are functionally landless, meaning that they either own no land or own only plots of land of a negligible size, i.e., less than 0.5 ha.<sup>46</sup> Overall, according to data provided to the Special Rapporteur by the Ministry of Land Management, Cooperatives and Poverty Alleviation, about 1.4 million families are currently landless.

32. In both rural and urban areas, this situation leads people in poverty to occupy unregistered land in informal settlements. According to the United Nations Human Settlements Programme (UN-Habitat), just under half (49.3 per cent) of the urban population in Nepal lived in inadequate housing conditions in 2018. Although some municipalities do provide basic services in informal settlements, this population generally lacks access to improved water and sanitation, electricity or sewage and garbage collection services. They also have no security of tenure.<sup>47</sup>

##### **Guaranteeing the right to housing**

33. Although the 2018 Right to Housing Act should protect the right to housing for all Nepali citizens, communities with whom the Special Rapporteur met during his mission expressed a constant fear of eviction. While the Act recognizes the right to appropriate housing, it also provides, under article 5, that any citizen may be evicted from their home for “public purpose”. Although the Land Acquisition Act (1977) guarantees reasonable

<sup>43</sup> The Government assured the Special Rapporteur that landless families can obtain loans from banks using gold or silver as collateral and that schemes exist to allow individuals to take out loans without collateral. He has not been able to verify this information.

<sup>44</sup> See Dominique Calañas and others, *Tied Hands: Fact Finding Mission Report on Harawa-Charawa: Debt, Poverty and Climate Change in Dhanusha, Nepal* (April 2021), p.28.

<sup>45</sup> The process of rehabilitation of bonded labourers has been partially carried out, but civil society organizations estimate that 25,000 *haliya* are still waiting to be rehabilitated. *Charuwa and haruwa* bonded labourers have not been rehabilitated thus far.

<sup>46</sup> See Liz Alden Wily and others, *Land Reform in Nepal: Where Is It Coming from and Where Is It Going?* (April 2009).

<sup>47</sup> See World Bank, Population living in slums (% of urban population) – Nepal.



compensation in cases of eviction, the Special Rapporteur remains unconvinced by the reasons provided by officials to justify the displacement of communities from the settlements they occupy.

34. The Special Rapporteur was assured by government officials that, in line with article 5 (2) of the Act, communities at risk of eviction would be provided with alternative housing options. But those officials also deplored the lack of cooperation of certain communities. The Special Rapporteur exhorts the Government to implement article 5 (4) (a) of the Act, which requires that consultations be held with citizens prior to eviction, and to observe the basic principles and guidelines on development-based evictions and displacement and general comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights.

35. Specifically, the Government should lay down more stringent criteria for eviction than is currently provided for under the Act and provide procedural guarantees for evictions, including full consultation with and the participation of affected communities through public hearings, as well as mediation, arbitration or adjudication by an independent body with constitutional authority in cases of disagreement over proposed alternatives.

### **Vicious circle of legal identity and land ownership**

36. Individuals who wish to acquire a land ownership certificate based on the occupation of land must provide a citizenship certificate. In turn, this requires either the father's (or husband's) citizenship certificate or proof of permanent residency, which requires showing land or a house in one's name or in the name of a family member. Without land or male relatives with citizenship, individuals become trapped in a vicious cycle: they are unable to obtain a legal identity and therefore cannot buy land in their name, which, in turn, they need to obtain citizenship.

### **Pervasiveness of bonded labour**

37. Low levels of land ownership explain the persistence of bonded labour in Nepal, despite it being illegal under the 2002 Kamaiya Labor (Prohibition) Act. The various forms of bonded labour (*kamaiya*, *haliya*, *charuwa* and *haruwa*) differ with regard to the nature of the tasks carried out or the labourer's identity. However, they are all characterized by a landlord who lends money to a tenant, who in turn pays it off with their labour. Indebtedness is often deepened by exorbitant interest rates and an inability to cope with exceptional expenses, such as those linked to health treatments. When the amount of labour performed does not suffice to repay the debt, the labourer's debt is passed on to the following generations until it is repaid.<sup>48</sup>

### **Protected areas**

38. The lack of practical protections for land users, despite the guarantees of the 1964 Lands Act, particularly affects indigenous people (*Janajati Adivasi*). National parks and other "protected areas" in Nepal cover almost one quarter of the country. Most of these areas have been established on the ancestral land of indigenous populations, many of whom were evicted and have since remained landless. By some estimates, as of 2015, about 65 per cent of ancestral lands formerly owned by indigenous peoples had been replaced with national parks and reserves,<sup>49</sup> forcing many Janajati to relocate elsewhere.

### **Climate change**

39. Climate disruptions are disproportionately harming the poorest groups, including rural mountain communities that rely on agriculture for their livelihoods. The effects of climate change in Nepal include erratic rainfall, the unpredictable onset of monsoon seasons, glacial

<sup>48</sup> Dominique Calañas and others, *Tied Hands: Fact Finding Mission Report on Harawa-Charawa*, p. 22.

<sup>49</sup> See Cultural Survival, "Observations on the human rights situation of indigenous people in Nepal in light of the UN Declaration on the Rights of Indigenous Peoples" (March 2015).

retreats, storms, landslides, and drought.<sup>50</sup> The heavy flooding and landslides that took place at the end of 2021 left vulnerable households in difficult situations; the Special Rapporteur visited villages where mud-stone houses had been destroyed and, at the time, little reconstruction had begun.

## E. Employment

40. Beyond the need to create more jobs to provide perspectives for youth, Nepal faces three major challenges in employment: the pervasiveness of informality, weak enforcement of labour protections resulting from exceedingly low public budgets in this area and a lack of minimum wage fixation and adjustment procedures. Addressing all three challenges, together with a strong job creation strategy, should ensure more equitable working conditions and increased public revenues.

41. Informal workers represent 84.6 per cent of the labour force, with women overrepresented: while 81 per cent of employed men work informally, this number rises to 91 per cent in the case of women.<sup>51</sup> Informality favours abuse and exploitation, and it is closely related to the level of educational attainment in Nepal: in non-agricultural jobs, 92.9 per cent of workers who received only an early childhood education work in the informal sector, compared to 8.4 per cent of those with tertiary education, or 23.9 per cent of workers with secondary education.<sup>52</sup> Informal workers are excluded from social insurance mechanisms and in practice lack protection by labour legislation.

42. The transition towards formalization should be encouraged by the gradual extension of social insurance schemes to workers in the informal economy, as recommended by human rights bodies<sup>53</sup> and by the International Labour Organization (ILO) in its Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which combines a punitive approach with positive incentives encouraging formalization.<sup>54</sup>

43. Nepal suffers from ineffective enforcement of labour legislation, which affects both formal and informal workers. There are 11 labour inspectors to cover the entire country, when the number ILO recommends for Nepal is 275 (or 1 per 40,000 workers in least developed countries). Once Nepal graduates from least developed country status, this number should be doubled.<sup>55</sup> Against this background, it is troubling that the budget allocation for labour inspections within the Ministry of Labour Employment and Social Security in fact decreased between 2019 and 2020, even though more inspections were conducted during this period than before.<sup>56</sup>

44. The International Covenant on Economic, Social and Cultural Rights requires that the minimum wage be determined “by reference to outside factors such as the cost of living and other prevailing economic and social conditions”.<sup>57</sup> The minimum wage was recently increased to Nrs15,000 and its coverage extended to informal workers. While Nepal is a signatory to the Minimum Wage Fixing Convention, 1970 (No. 131) and a tripartite minimum wage fixation committee is in place at the Ministry of Labour, Employment and Social Security, there is no permanent technical secretariat to collect and provide evidence to the committee and there is no agreed basis or method for fixing and adjusting the minimum wage. Addressing these issues would help ensure equitable fixing of the minimum wage and a smoother implementation of any negotiated increases.

<sup>50</sup> See Popular Gentle and Tek Narayan Maraseni, “Climate change, poverty and livelihoods: adaptation practices by rural mountain communities in Nepal,” *Environmental Science and Policy*, vol. 21 (August 2012).

<sup>51</sup> Central Bureau of Statistics, *Report on the Nepal Labour Force Survey 2017/18* (2019), p. 29.

<sup>52</sup> *Ibid.*, p. 26.

<sup>53</sup> See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 34.

<sup>54</sup> For more details on how to achieve this transition, see [A/HRC/50/38](#).

<sup>55</sup> See ILO, “International labour standards on labour inspection”.

<sup>56</sup> United States Bureau of International Labor Affairs, “Findings on the worst forms of child labor: Nepal” (2020), p. 5.

<sup>57</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 18.

## IV. Poverty among specific groups

### A. Women and girls

45. Women in Nepal exhibit higher rates of poverty and illiteracy and lower rates of participation in the labour force and land ownership than men.

46. The average gender pay gap in terms of hourly wages is 28.9 per cent, nearly double the global average of 15.6 per cent.<sup>58</sup> Moreover, female labour income share grew exponentially between 2010 and 2016 but stalled around 23 per cent thereafter.<sup>59</sup> Similarly, the female employment to population rate was 22.9 per cent, 25.4 percentage points lower than the male equivalent,<sup>60</sup> although this figure does not account for the unremunerated and unrecognized work performed by women within the household. These gender gaps are aggravated by three factors: approximately 250,000 women in Nepal work as domestic workers, where they lack coverage under the labour inspection and social security systems<sup>61</sup> and where the minimum wage does not apply. Women are overrepresented in the agricultural sector and only 19.7 per cent of homes or land is owned by women.<sup>62</sup>

47. Problematically, as of December 2020 only 41.8 per cent of the indicators needed to monitor the country's commitments on the Sustainable Development Goals related to gender were available, with gaps including unpaid care, domestic work and information and communications technology.<sup>63</sup>

48. In addition to the inequalities in access to land and employment, and those resulting from intersecting factors, such as those affecting Dalit women and girls, Nepali women are disadvantaged compared to men in many spheres of life, suffering the consequences of a historically patriarchal society. In many families, the idea that a woman's place is in the home persists and, as a result, women are often expected to focus on child-rearing and taking care of the elderly.

49. Discrimination against women and girls explains why boys are favoured in education: while 18.1 per cent of boys have never attended school, this number rises to 34.5 per cent for girls. Only 57.4 per cent of women are literate, compared with 75.1 per cent of men.<sup>64</sup> The gap is particularly wide for families in poverty: as poverty increases, a woman's chance of going to school decreases.<sup>65</sup> Girls are also overrepresented in child labour: 17 per cent of girls and 14 per cent of boys aged between 5 and 17 are likely to be involved in work.<sup>66</sup>

50. While marriage before the age of 20 is illegal, 37 per cent of girls marry before 18 and 1 in 10 girls is married before reaching 15.<sup>67</sup> Child marriage affects girls' chances of being educated: it is the main reason for girls aged between 15 and 19 dropping out of school.<sup>68</sup> Early marriage often leads to early childbearing. Many women with whom the Special Rapporteur met during his mission had several children by the time they reached the legal age for marriage, resulting in difficulties with registering the births. Data also show that about 17 per cent of women aged 15 to 19 either had children or were pregnant in 2016.<sup>69</sup>

<sup>58</sup> ILO, *Global Wage Report 2018/2019: What Lies Behind Gender Wage Gaps*, p. 24.

<sup>59</sup> World Inequality Database, female labour income share, Nepal.

<sup>60</sup> National Planning Commission, *National Review of Sustainable Development Goals* (June 2020), p. 37.

<sup>61</sup> Women in Informal Employment: Globalizing and Organizing, "Domestic workers, risk and social protection in Nepal" (October 2020), p. 2.

<sup>62</sup> See Central Bureau of Statistics, "Nepal in figures 2021".

<sup>63</sup> UN-Women, country fact sheet – Nepal, available from <https://data.unwomen.org/country/nepal>.

<sup>64</sup> See Central Bureau of Statistics, "Nepal in Figures 2021".

<sup>65</sup> Sushan Acharya, *Gender, Jobs and Education: Prospects and Realities in Nepal*, UNESCO (2015), p. 40.

<sup>66</sup> ILO and Central Bureau of Statistics, *Nepal Child Labour Report 2021*, p. 22.

<sup>67</sup> See Human Rights Watch, *Our Time to Sing and Play: Child Marriage in Nepal* (2016).

<sup>68</sup> Sushan Acharya, *Gender, Jobs and Education: Prospects and Realities in Nepal*, p. 43.

<sup>69</sup> See World Bank, Teenage mothers (% of women ages 15–19 who have children or are currently pregnant)..

51. During the mission, it was clear that many government officials were committed to gender equality. However, the urgency of guaranteeing women's rights remains vastly underestimated. Despair is mounting: suicide is the leading cause of death among women.<sup>70</sup> Other worrying figures and testimonies demonstrate that the welfare of women in poverty is not sufficiently prioritized. Among women in the lowest wealth quintile, 90.1 per cent report facing at least one obstacle when accessing health care. Among the biggest problems reported are fear of seeing a health-care provider unaccompanied (76.8 per cent), distance to a health facility (74.5 per cent) and lack of money (72.1 per cent).<sup>71</sup>

## B. Children

52. Child labour persists in Nepal. Prior to the COVID-19 pandemic, data showed a reduction in the proportion of children working in Nepal, with a decrease between 2008 and 2018 from 1.6 million to 1.1 million for a population of 7 million. However, the number is likely to have increased since then.<sup>72</sup>

53. The prevalence of child labour is particularly high in rural areas, where more than one fifth (20.4 per cent) of children are involved in work. The Special Rapporteur met with communities who are semi-bonded agricultural labourers, in which children often engage in work, such as looking after cattle and goats, cutting grass for fodder, or performing household chores for the landlord under the *charuwa* system from the age of 10.

54. Child labour is the result of poverty. When household wealth increases, the probability of child labour decreases. In the lowest quintile of the wealth distribution, one quarter of children work compared to 5 per cent in the top quintile. Data also show that over one fifth of children who work live in a household whose head is unemployed.<sup>73</sup> Combating poverty and improving the employment prospects of adults are therefore crucial for preventing child labour.

55. While article 31 of the Constitution guarantees free education up to secondary level, the Special Rapporteur met with parents and children who reported being charged illegal fees collected as "donations" and struggling to cover the costs related to school uniforms, bags, stationery or other supplies. In nearly all communities visited, these costs were prohibitive for the poorest families, who were forced to remove their children from school.

56. Beyond these hidden costs, several additional factors prevent children from receiving an education. The distance and time needed to reach school from the child's home may be prohibitive. On average, it takes children 19 minutes to reach primary schools and 38 minutes to get to secondary schools, which is in line with government standards.<sup>74</sup> However, Nepal has a very diverse geography and in some remote areas it takes children up to five hours to reach basic schools.<sup>75</sup>

57. The quality of education is also highly uneven. When children learn little in the classroom, parents' incentives to send them to school and forego their support through childcare, household chores or labour are inevitably reduced. According to the Nepal Living Standards Survey 2010/11, nearly one quarter of children dropped out of school because they were making insufficient academic progress.

58. Finally, attendance at school by girls and young women is hindered by gender-based discrimination and child marriage. Girls are more likely than boys to be out of school, and

<sup>70</sup> See USAID, Department for International Development, Support to the Safe Motherhood Programme, Nepal, "Nepal: Maternal mortality and morbidity survey 2009/09: summary of preliminary findings".

<sup>71</sup> Ministry of Health and Population, *Nepal Demographic and Health Survey 2011*, p. 144.

<sup>72</sup> See Human Rights Watch, "*I must work to eat*": Covid-19, Poverty and Child Labour in Ghana, Nepal and Uganda (2021).

<sup>73</sup> ILO and Central Bureau of Statistics, *Nepal Child Labour Report 2021*, p. 42.

<sup>74</sup> Yogendra B. Gurung, Meeta S. Pradhan and Dhanendra V. Shakya, *State of Social Inclusion in Nepal: Caste, Ethnicity and Gender. Evidence from Nepal Social Inclusion Survey 2018*, pp. 39–40.

<sup>75</sup> *Ibid.*

this is particularly true in the most disadvantaged ethnic/caste groups.<sup>76</sup> In 2019, the mean years of schooling for girls was 4.3 years, while for boys it was 5.8; moreover, while 44.2 per cent of males had at least some secondary education, that proportion was only 29.3 per cent for women between 2015 and 2019.<sup>77</sup>

59. Gender insensitivity in school and classroom practices may deter girls from continuing their education: sexual abuse and harassment by teachers and male students, bullying by male students and other negative attitudes towards female students are all factors that may lead girls to leave school early.<sup>78</sup> In a meeting with young Dalit women, the Special Rapporteur was told that despite their desire to continue their education, societal pressure led them to be married before the legal age of 20, in some cases causing them to drop out of school or preventing them from pursuing tertiary education. These testimonies are consistent with government data showing that the main reason for girls aged between 15 and 19 dropping out of school is marriage.<sup>79</sup>

60. When children drop out of school early or do not attend altogether, instead caring for younger siblings, helping with household chores or working to complement the household's revenue, they miss out on acquiring crucial skills for future employment. In communities visited by the Special Rapporteur, men and women overwhelmingly formulated requests for programmes allowing them to learn skills and improve their employment prospects. Short of such skills, many worked as daily wage labourers in agriculture or other physically demanding or hazardous jobs. Many families spoke of the difficulties of not having stable employment or regular revenues. Worryingly, only approximately 13 per cent of the population aged 16 years and above have received some form of vocational training, according to a 2018 survey.<sup>80</sup> Moreover, where vocational training does reach communities, women and marginalized groups like Dalit or Madhesi are underrepresented.<sup>81</sup>

### C. Migrants and refugees

61. Limited employment opportunities available to individuals with low educational levels are a key driver of migration. In 2018, 1,600 Nepalis left the country each day to work abroad.<sup>82</sup> While remittances provided by migrant workers contribute significantly to the country's GDP and poverty reduction efforts, the high number of Nepalis emigrating is a powerful indicator of the country's problems with regard to providing employment prospects to young job seekers.

62. Emigration from Nepal is primarily a male phenomenon, with a median age of 28 in 2018–2019.<sup>83</sup> A majority of outward migrants took up temporary, unskilled jobs in their country of destination. In many cases, the recruitment and other costs of migration are shouldered through loans, contracted informally from acquaintances or village moneylenders at very high interest rates, potentially leading to debt bondage.<sup>84</sup>

63. While Nepal is commended for its cooperation with the Office of the United Nations High Commissioner for Refugees in ensuring the resettlement of refugees from Tibet and Bhutan, refugees still do not enjoy the range of social rights to which they are entitled under international law. The Special Rapporteur refers the Government to the statement of the Committee on Economic, Social and Cultural Rights: "Duties of States towards refugees and

<sup>76</sup> United Nations Children's Fund (UNICEF), *Global Initiative on Out-of-School Children: Nepal country study* (July 2016), p. 24.

<sup>77</sup> See UNDP, Human Development Reports – Nepal.

<sup>78</sup> Sushan Acharya, *Gender, Jobs and Education: Prospects and Realities in Nepal*, p. 42.

<sup>79</sup> *Ibid.*

<sup>80</sup> Yogendra B. Gurung, *State of Social Inclusion in Nepal: Caste, Ethnicity and Gender. Evidence from Nepal Social Inclusion Survey 2018*, p. 45.

<sup>81</sup> *Ibid.*

<sup>82</sup> Subina Shrestha, "The plight of Nepal's migrant workers" Al-Jazeera, 5 February, 2018.

<sup>83</sup> Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report*, 2020, p. 32.

<sup>84</sup> Amnesty International, *Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers* (2017).

migrants under the International Covenant on Economic, Social and Cultural Rights”.<sup>85</sup> He encourages the Government to re-examine the status of refugees in Nepal in line with its international obligations: non-ratification of the Convention relating to the Status of Refugees does not exempt it from complying with the International Covenant on Economic, Social and Cultural Rights.

## D. Persons with disabilities

64. People with disabilities (58.1 per cent) are far more likely to be deprived under the multidimensional poverty index than people without disabilities (25.8 per cent).<sup>86</sup> In a study on the Tanahun district, Province 4, the difference in multidimensional poverty levels among people with and without disabilities was statistically significant for 9 of 13 indicators, namely work, voting, decision-making, sanitation, violence, food security, health-care spending, flooring and assets.<sup>87</sup>

65. The comprehensiveness and reliability of data related to people with disabilities must be improved. The official 2011 census reports a rate of individuals with a disability of 1.94 per cent in Nepal, but civil society organizations suggest that the actual number is much higher due to “a lack of understanding on how to define disability” and therefore for someone to be officially recognized as having one, as well as cultural norms and socioeconomic factors.<sup>88</sup> As a result of the data gap, there is a lack of adapted programmes for this group with few policies in place seeking to protect them from poverty.

66. People with disabilities also experience discrimination, often linked to prejudice based on superstition. While the 2017 Rights of Persons with Disabilities Act is guided by a rights-based approach in line with the Convention on the Rights of Persons with Disabilities and prohibits discrimination on grounds of disability, it requires further implementation to define more precisely the requirement of reasonable accommodation of persons with disabilities. Its classification of various disabilities should also be made more consistent with the Convention.

67. The system whereby holders of disability cards receive a disability allowance according to the severity of their disability should be improved. In particular, the conditions under which grievance redress mechanisms can be filed when such cards are either denied or a disability misclassified should be clarified. Information that is disability-friendly, particularly on official websites, should also be improved. Universal design is far from being effectively implemented in the country, even in official buildings and public transport, and significantly more resources should be invested to support schools’ efforts to provide inclusive education.

## V. Social protection

### A. Addressing exclusions and non-take-up

68. Social protection in Nepal consists of 76 programmes implemented by 11 different ministries. Political expediency and budgetary considerations have guided the design of most schemes, rather than a strategic vision of the role of social protection in combating poverty and the obligation to guarantee the right to basic income security in a life-cycle approach. The current patchwork of programmes inevitably leads to inefficiencies, overlaps and gaps. The Government should therefore prioritize endorsing and adopting the national integrated

<sup>85</sup> E/C.12/2017/1.

<sup>86</sup> Lena Morgon Banks and others, “Does disability increase the risk of poverty ‘in all its forms’? Comparing monetary and multidimensional poverty in Vietnam and Nepal”, *Oxford Development Studies*, vol. 49, No. 4 (2021).

<sup>87</sup> Ibid.

<sup>88</sup> Mukti Prakash Thapaliya, “A report on disability in Nepal 2016”, p. 5.

social protection framework to ensure coherence, assess the gaps and plan to address them in the coming years.

69. Streamlining the existing patchwork of schemes would present several advantages, including clarifying the respective roles of the federal, provincial and local levels of government in the delivery of social protection; ensuring that schemes rely on a single database (the Integrated Social Registry) to expand coverage and, where necessary, to ensure appropriate targeting; and improving the quality of information provided to intended beneficiaries. Coherence and complementarity among social protection programmes is key to their success.

70. As progress is made towards an integrated social protection framework, an intersectional analysis of vulnerabilities must lead to making certain schemes compatible, for instance the disability, single women's and widows' allowance, the child grant and social security, in order to protect those experiencing multidimensional poverty.

71. However, only a serious reorganization of its entire social protection system will ensure that Nepal can achieve its target of 60 per cent coverage, as stated in the Government's fifteenth five-year plan (2020–2024). According to ILO, only 15.9 per cent of the population is covered by at least one social protection benefit, a rate significantly lower than comparable countries of the region.<sup>89</sup> The Special Rapporteur found the following reasons behind such low coverage: lack of citizenship; lack of other necessary documents such as birth, death, disability or divorce certificates; lack of information provided in local languages; lack of timely benefit payments; incompatibilities across benefits aimed at covering different situations of vulnerability; and reported corruption hampering access to critical documentation. All these situations lead to unjust exclusions and to the non-take-up of social protection.<sup>90</sup> Addressing them comprehensively will position Nepal as a front-runner in the fight against non-take-up.

#### **Lack of citizenship and other documents**

72. Poor, socially marginalized and remote communities are often excluded from social assistance programmes, including the country's most important programmes, the old age allowance, the single women's and widows' allowance, and the child grant, because of a lack of citizenship documentation. For instance, naturalized women who marry foreign husbands can lose their Nepali citizenship and therefore become ineligible; families who move regularly between Nepal and India for work can result in women and children often lacking the necessary documentation; and births sometimes go unregistered as a result of stigma related to having an "unidentified father".

73. Women are particularly discriminated against by the social protection system. Women who are abused by their husbands and must leave the household, or those whose husbands have migrated never to return, may lack divorce papers and as a result become excluded from the single women's allowance. Some women may find themselves stateless because the husband has refused to seek a citizenship certificate for them (a situation the Special Rapporteur witnessed himself). Lack of citizenship certificates in turn means a child's birth cannot be registered, resulting in the denial of the child grant. The Government collects no official statistics on the prevalence of this phenomenon, but such circumstances can lead to situations of extreme, compounded vulnerability with no recourse to social protection.

74. While a 2015 study projected that the number of people without citizenship certificates would be 6.7 million by 2021,<sup>91</sup> the Special Rapporteur was told by the Ministry of Health and Population that this is the case for 5.4 million people, of whom women may represent up to 82 per cent.<sup>92</sup> He strongly encourages the Government to collect transparent

<sup>89</sup> See ILO, world social protection data dashboard. While a recent survey found coverage to be at 38.6 per cent, this figure includes non-governmental transfers, which are not covered in the report. See Central Bureau of Statistics and UNICEF, *Multiple Indicator Cluster Survey 2019*, p. 500.

<sup>90</sup> See [A/HRC/50/38](#).

<sup>91</sup> Sabin Shrestha and Subin Mulmi, "Acquisition of citizenship certificate in Nepal: estimation and projection", December 2015, p. 12.

<sup>92</sup> Dhiraj Giri, Uddhab Pyakurel, and Chandra Lal Pandey, *A Survey of the Nepali People in 2020*, p. 238.

data on this phenomenon as it relates to social protection and to prioritize facilitating the acquisition of citizenship documents to ensure better effectiveness of its currently existing social protection programmes.

### **Lack of information**

75. Many communities, especially in remote areas, lack information about social protection programmes, largely due to a lack of outreach by local administrations and to information often not being provided in local languages. In the same way that “enrolment assistants” exist to facilitate registration in the health insurance system (one enrolment assistant per ward for up to 1,000 households),<sup>93</sup> social workers should be deployed at the local level to ensure outreach to more remote communities and information adapted to local communities.

### **Hidden costs of accessing social protection**

76. The Special Rapporteur was informed by several communities that payments were collected by civil servants at the local level for services that should be free of charge, including education, birth registration and delivery of caste certificates. A survey report by the Commission for the Investigation of Abuse of Authority shows that over half of respondents considered corruption at the local level to have stayed the same or increased since the local elections.<sup>94</sup> Another report identified land revenue offices and rural municipalities as the most corrupt entities: 84 per cent of people surveyed in Nepal thought government corruption was a big problem and 12 per cent of public service users had paid a bribe in the previous 12 months.<sup>95</sup>

## **B. Ensuring budgetary equity**

77. Social protection represents about 4 per cent of the country’s GDP and 11 per cent of its public budget. The social security allowance makes up 43 per cent of the total social protection budget<sup>96</sup> and 21 per cent of the total social protection budget goes solely to the old age allowance.<sup>97</sup> In stark contrast, national schemes benefiting children and adolescents represent only 10 per cent of the social security allowance budget and about 4.3 per cent of the total social protection budget.<sup>98</sup> According to ILO, only 13.7 per cent of children are covered by income support programmes, compared with 81.9 per cent of older persons receiving pensions. This bias towards the elderly is likely to increase with the growing size of the elderly population: people over 60 made up 5.7 per cent of the population in 2000 but that is likely to increase to 13 per cent by 2040.<sup>99</sup> While protecting the elderly should no doubt be a priority of the Government, it appears that other vulnerable groups, in particular children, may have been overlooked in terms of the budgetary, coverage and implementational priorities of the Government.<sup>100</sup>

<sup>93</sup> ILO, *Extending Social Security to Workers in the Informal Economy: Lessons from International Experience* (2021), p. 107.

<sup>94</sup> Prithvi Man Shrestha, “Corruption thriving at the local level, surveys by anti-graft body show”, *The Kathmandu Post*, 15 January 2020.

<sup>95</sup> Transparency International, “Our work in Nepal”.

<sup>96</sup> UNICEF, “Social protection budget brief” (September 2020), p. 10.

<sup>97</sup> World Bank, *Social Protection: Review of Public Expenditure and Assessment of Social Assistance Programs* (2021), p. 21.

<sup>98</sup> *Ibid.*

<sup>99</sup> See Bandita Sijapati, “The quest for achieving universal social protection in Nepal: challenges and opportunities”, *Indian Journal of Human Development*, vol. 11, No. 1, (April 2017).

<sup>100</sup> Studies further note that investment in children is important not only from a human rights perspective, but also from an economic standpoint. Programmes targeting children, such as school feeding programmes, generate downstream economic value over four times more than the cost of the programme over the lifetime of a beneficiary child. See Rachana Manandhar Shrestha and others, “Home-grown school feeding: assessment of a pilot program in Nepal.” *BMC public health* vol. 20, No. 1 (January 2020).



78. To offset budgetary costs, the Government has recently promoted the voluntary renunciation of social security assistance benefits and the honorific recognition by local governments of those who renounce their benefits.<sup>101</sup> This practice risks stigmatizing welfare and increasing non-take-up rates among the poor. The Special Rapporteur urges the Government to reconsider this measure.

### C. Social Security Fund

79. Enrolment in the contributory social security system is aimed to become mandatory. However, a 31 per cent flat contribution (with 20 per cent coming from the employer and 11 per cent from the employee) is a regressive feature that deters enrolment by low-income workers. A clear plan for how to include informal workers in the contributory social protection system should be developed (in line with ILO Recommendation No. 204), which at the time of the Special Rapporteur's visit could not be articulated by the Government. A key component of the strategy should be to provide the right incentives for formalization of work and enrolment in the Social Security Fund, and to provide appropriate information to workers about the advantages of enrolment.

80. Lack of clear communication with businesses and other stakeholders as to how the Government plans to invest the Social Security Fund is also leading to scepticism in the business community.<sup>102</sup> There is a lack of clarity over how and why businesses already making use of other pension funds, such as the Government-owned Employees Provident Fund, are to migrate to the new Fund.<sup>103</sup> It will be important for the Government to monitor and incentivize enrolment in the Social Security Fund and exercise transparency in how funds are used.

### D. Prime Minister Employment Programme

81. The Prime Minister Employment Programme holds considerable potential: it can provide income security to unemployed individuals, help beneficiaries acquire new skills, improve infrastructure and expand employment opportunities for women while challenging gender roles.<sup>104</sup>

82. But the potential of the programme has not yet been fully tapped. In the past three years, about 250,000 workers have received employment through the programme but the average number of days was 18, well under the guaranteed minimum of 100. The World Bank youth employment transformation initiative has allowed for this number to increase to 68 days<sup>105</sup> but international financing is no substitute for domestic resource mobilization. About two thirds of local government units had complaints about implementation directives, including lack of flexibility in how funding could be used, beneficiaries experiencing difficulties in receiving benefits disbursed through banks often far from villages and the imposition of fixed wage rates that did not account for local prices.<sup>106</sup> Moreover, although the programme guarantees unemployment benefits equivalent to up to 50 days' worth of employment for those unable to obtain work under the programme (effectively the only existing unemployment insurance in Nepal), so far there is no evidence that citizens are

<sup>101</sup> Prithvi Man Shrestha, "Government mulls options to ease growing burden of social security allowances", The Kathmandu Post, 26 August 2021.

<sup>102</sup> See Nepali Times, "Nepalis insecure about new Social Security Fund", 18 July 2021, and "Govt, not employers, responsible for employees", 30 November 2018.

<sup>103</sup> Achyut Wagle, "Making a mess of social security", The Kathmandu Post, 5 July 2021.

<sup>104</sup> Olivier De Schutter, *Gender Equality and Food Security. Women's Empowerment as a Tool against Hunger*, Food and Agriculture Organization of the United Nations and Asian Development Bank (2012), pp. 55–59.

<sup>105</sup> World Bank, Youth employment transformation initiative project, implementation status and results report, 6 December 2021.

<sup>106</sup> National Planning Commission, *Prime Minister's Employment Program – Internal Evaluation Report* (2021), p. 8 (in Nepali only).

receiving this benefit, nor is there any mention of it in the National Planning Commission review of the programme.<sup>107</sup>

## VI. Recommendations

83. In addition to the recommendations set out above, the Special Rapporteur urges the Government to prioritize a number of issues.

### A. On poverty and inequality

84. Efforts to eradicate poverty must be guided by more comprehensive data gathering. While the new Nepal Living Standards Survey will update population and consumption estimates for the country, producing more accurate poverty estimates remains crucial. The Government must develop an anti-poverty action plan based on updated and disaggregated data, allowing for a granular understanding of the evolution of poverty and of income and wealth inequality for specific groups.

85. The anti-poverty plan should include:

(a) A clear strategy for increasing employment opportunities and providing vocational training, especially to women and marginalized communities, such as Dalit and Madhesi, in order to counter outward migration and its worst impacts, including debt bondage, dependence on remittances and potential exploitation abroad;

(b) Proposals for relevant by-laws implementing the socioeconomic rights promised in the Constitution. A mechanism must be introduced to ensure that the bills presented for adoption are screened for their compatibility with fundamental rights and have their impacts on particularly disadvantaged groups assessed;

(c) Intensification of efforts to combat discrimination. Access to genuinely free, high-quality education must be guaranteed, protection from discrimination in private employment should be ensured and the reservations policy should be better enforced to achieve a higher representation of disadvantaged groups. The latter policy must not be abandoned, it should instead be adapted to account for intersecting factors such as caste, gender and disability, and it should set aside seats for candidates from low socioeconomic backgrounds;

(d) Given the importance of land ownership and the persistence of bonded labour, acceleration of the implementation of constitutional promises related to land redistribution. State-based, public financing mechanisms should be developed to protect bonded labourers by absorbing and combining debts, while offering lenient opportunities for repayment over time.

### B. On specific groups affected by poverty

86. Beyond existing commitments to gender equality, more must be done to improve prospects for women. Reversing century-old patriarchal norms will take more than official discourse on women's rights. Policies encouraging girls' school attendance and facilitating women's access to health care, employment opportunities and land ownership must be urgently implemented.

87. Children should be better protected and child marriage and child labour must be effectively abolished. By combating poverty and its underlying causes, the Government can encourage families to send their children to school rather than to work.

88. Finally, more reliable data should be collected regarding people with disabilities. The Rights of Persons with Disabilities Act should be reconciled with the Convention

<sup>107</sup> Ramu Sapkota and Upasana Khadka, "Missing the plot in Nepal's job scheme", *Nepali Times*, 1 May 2021.

on the Rights of Persons with Disabilities regarding the classification of various disabilities and defining reasonable accommodation more precisely. Redress mechanisms in case of denial of disability recognition and misclassification should be ensured, including through disability-friendly information and outreach.

### **C. On social protection**

89. More labour and social protections should be afforded to both formal and informal workers, including by increasing the budget of the Ministry of Labour, Employment and Social Security currently devoted to labour inspections, increasing the number of labour inspectors from the current 11 to the recommended 275 and improving the minimum wage fixation and adjustment procedures. The Social Security Fund should be expanded to include informal workers by developing a plan in line with ILO Recommendation No. 204.

90. The social protection system should address non-take-up as an urgent priority. To achieve this, the following steps should be prioritized:

(a) Providing information related to social protection programmes in local languages to improve access to information and deploying social workers to enhance outreach;

(b) Facilitating the acquisition of critical documentation related to social protection programmes, including citizenship certificates and birth, death and divorce certificates;

(c) Improving compatibility between social protection programmes, for instance the disability, single women's and widows' allowance, the child grant and social security;

(d) monitoring and where appropriate penalizing corruption at the local level, particularly to ensure equal access to documents critical for social protection.

91. Funding should be increased for programmes aimed at addressing child poverty, which are currently underfunded compared to other social protection programmes. Beneficiaries of social protection should not be encouraged to renounce claiming benefits to which they have a right.

92. The currently flat contribution of 31 per cent to the Social Security Fund should be adapted to the needs of various economic sectors to improve enrolment levels. Enrolment in the Fund should be monitored and incentivized, communication with businesses done with clarity and transparency exercised in how funds are used.

93. Local governments should be encouraged to identify for themselves the projects for which to apply the Prime Minister Employment Programme and to use the funds available to acquire equipment so as to ensure the kind of employment proposed corresponds to local needs. Candidates registered in one municipality should be considered by other municipalities from the same district to reduce the risks of mismatches between the qualifications of candidates and the jobs proposed. The programme should include a training or skills component. Finally, women should be encouraged to apply, both by directly reaching out to them and by providing childcare services. The programme should be used as an opportunity to challenge pre-established gender roles.

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