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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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NEPAL: Transitional justice bodies must provide participatory and meaningful closure to human rights violations committed during conflict period

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to the transitional justice process in Nepal, especially given that it does not meet international standards.

Nepal's legacy of its internal conflict continues – a result of a decade-long civil war that was launched by the Communist Party of Nepal in 1996. The conflict claimed more than 17,000 lives, and displaced an estimated 100,000 and more. The conflict ended in 2006, and the political and warring parties designed the Comprehensive Peace Agreement (CPA) 2006 to create permanent peace. Although progress has been made, challenges remain, and the country continues to experience political instability.

The transitional justice bodies, which were envisaged in the CPA, signed between the government and the then rebel forces (Maoists), came into being after nine long years, in February 2015. The formation of the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) in 2015, eight years after the signing of the CPA, marked an important milestone in Nepal's peace process. The TRC and the CIEDP have to complete their tasks by February 2017. The country's transitional justice bodies now have six months to investigate some 60,000 registered cases of human rights violations, and make recommendations for action. Moreover, the six months of time that remains for the commissions seems insufficient to investigate more than 1,400 cases of enforced disappearances.

All the cases registered during the war-era have to be investigated and action needs to be taken. While the Maoists want to “forget and forgive” all incidents and move on, action needs to be taken against perpetrators of violations in order to give closure to the proclaimed peace process. At the same time, victims must be the primary stakeholders in the search for long-term peace in a post-conflict society. For Nepal to move forward, it must heal, and for this to happen, victims of conflict may need to be taken aboard, their voices heard, and their demands met.

It must be noted that the commissions' role is not only to bring reconciliation and provide compensation to the victims, but also to prosecute, and recommend actions against serious rights violations. The international community is keenly watching progress in Nepal, and has continuously called for relevant amendments to the TRC & CIEDP Acts in accordance with the Supreme Court's (SC) decision and international rules and regulations. According to the SC verdict, amnesty cannot be provided in every case, and action needs to be taken against perpetrators of grave human rights violations. If those amendments are made, the international community will cooperate, or else Nepal is going to stand alone in the international arena.

Amending the TRC & CIEDP Acts, as per the SC verdict, could be the starting point for the government to spur on the transitional justice process. The transitional justice bodies have already dispatched draft amendments to the government, but no action has been taken so far. Both commissions are under-staffed, which could be major obstacles for the commissions to finish their tasks in the coming six months.

The law is silent on what happens to cases that the two commissions cannot process and decide on. The government should pass clear laws on that. The authenticity of the cases that have been registered must also be checked and confirmed.

The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014, has specified that the act of disappearance is a serious human rights violation, which cannot be forgiven. However, there is no law under which action can be recommended, and the act of disappearance is also not criminalised. The Government of Nepal is yet to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Torture is included as a gross violation of human rights mentioned in the Act, but Nepal has yet to enact a law

criminalizing torture. The phrase “serious crime” in the Act is another problem, since there is no explanation as to what kind of crimes constitutes “serious crime”. Without being clear on this, how can the TRC do its job?

The time period for reporting rape cases was extended from 35 days to six months by the SC, but that does not help as the TRC was formed almost nine years after the CPA was signed. Without getting rid of this provision, prosecution of the perpetrators of rape and sexual violence is impossible.

There is a provision of a special court for cases recommended for prosecution, but such a court is not in existence yet. It must be established as soon as possible.

Nepal needs to bring the peace process to a logical conclusion, particularly by allowing the transitional justice process, the TRC, and the CIEDP, to function free and fair, so that Nepal is not seen as a state that is reluctant or incapable of dealing with past atrocities. It is imperative Nepal wants to avoid more Colonel Kumar Lamas being tried in foreign courts.

Colonel Lama was arrested in London during a family visit in January 2013, on the charge of inflicting severe pain on Karam Hussain and Janak Bahadur Raut, at a time when the Maoist insurgency in Nepal was at its height, i.e. in early 2005. The Nepali Army allegedly tortured the two, after detaining them at Goringhate Barracks, where Colonel Lama was in charge. British authorities claim “universal jurisdiction” over serious human rights abuses, such as war crimes, rape, disappearance, and torture, and those crimes can be prosecuted in Britain irrespective of where they occurred.

Old Bailey Central Criminal Court has acquitted Nepali Army (NA) Colonel Kumar Lama, in one out of the two cases, for war crimes filed against him for alleged torture during the decade-long armed conflict in Nepal, while a decision is still pending in another case of torture. The 12-member jury declared him not guilty in a case filed by Karam Hussain after hearing the case for seven weeks. The verdict in the case of alleged torture of Janak Bahadur Raut has been postponed till the first week of September 2016, as the Jury failed to arrive at a conclusion.

National and international human rights organizations and victim groups have reiterated the need for prosecutions, at least for serious human rights abuses committed during the conflict period, 1996 to 2006. But the Maoists are vying for an amnesty process, in an attempt to conclude the peace process. However, this will not serve the interests of helping the Maoists wash their hands and get away easily. Countries like the United Kingdom can act upon ‘Universal Jurisdiction’, and put the perpetrators behind bars, if the route of mass amnesty is taken to cover up serious human rights abuses committed during the conflict period.

The ALRC urges that if victims are not satisfied with the truth seeking and justice process in Nepal, they may turn to foreign courts. The international laws and conventions that Nepal is party to should therefore be kept in mind before considering easy-escape options. The government must be cautious of the fact that under international human rights laws, and the principle of ‘Universal Jurisdiction’, there can be consequences if stakeholders including political parties opt for easy washing of blood from their hands.

The transitional justice process is not merely a process of registering complaints; it is about delivering justice to conflict victims and their families, which is a vital component of the peace process, which is supposed to deal cases of extrajudicial killings, disappearances, rape, and torture. Political interference in the functioning of transitional justice bodies has made everyone suspicious about the process. There are indications of little confidence in the process among conflict victims and their families.

The TRC must join the CIEDP must implement the lessons learnt to resolve problems, and adopt measures to build trust among the conflict victims, to ultimately ensure truth, justice, and reparation to conflict victims and their families. The two commissions should also provide security to victims and witnesses, increase trust in victims regarding their safety and for protection of evidence. The TRC and CIEDP must maintain their independence regardless of political pressure and the sustained interest of security forces.

The political parties have ganged up to undermine the ongoing transitional justice process, to flout the verdict of the Supreme Court of Nepal, on how those involved in crimes committed in the conflict period can be given amnesty, and to ignore the voices of conflict victims and the national and international human rights community.

The ALRC respectfully requests the HRC to urge the government of Nepal to respect victims of the decade long conflict, to respect their constitutional right to seek justice and reparation, and to stop to hijacking the transitional justice process for the gains of political parties and perpetrators of human rights violations during the conflict-era.
