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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 International Commission of Jurists, a non-governmental organization in special consultative status

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

[09 February 2017]

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

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Nepal: Failure to Fulfil International Obligations

Introduction

1. The International Commission of Jurists (ICJ) in this submission, highlights issues relating to the situation for human rights in Nepal, in particular: i) impunity for past human rights violations; ii) failure of transitional justice mechanisms; and iii) failure to criminalize serious crimes.

i) Impunity for past human rights violations

2. Nepal's decade long armed conflict, lasting from 1996 to 2006, ended with the signing of a Comprehensive Peace Agreement (CPA) in November 2006. During the armed conflict gross human rights violations and abuses amounting to crimes under international law, including unlawful killings, enforced disappearance, torture and sexual violence were committed by both parties to the conflict. It has been estimated that during the conflict approximately 13,000 people were killed and more than 1300 people were disappeared, their whereabouts still remains unknown.¹
3. Victims' right to truth, justice and reparation are yet to be realized. Despite several orders from the courts, Nepal police continue to refuse to register First Information Reports (FIR) for conflict era human rights violation cases.² Even in cases where the courts have issued an order to investigate, following the registering of a FIR, no further investigations have taken place.³ One of the major obstacles in combating impunity has been the lack of progress in investigating and prosecuting cases filed with the Police. Consequently, victims are largely denied their right to effective remedy.
4. Similarly, court orders, including Supreme Court orders, related to past human rights violations have largely remained unimplemented. Research has demonstrated that only 20.68% of court orders have been implemented, 24.13% of court orders have been partially implemented and 55.18% of court orders have not been implemented.⁴ Non-implementation of court orders concerning transitional justice issues remains a major obstacle to the ending of impunity for past human rights violation.
5. Impunity has further been institutionalized due to the non-implementation of National Human Rights Commission (NHRC) recommendations on past human rights violations. The NHRC has received 12026 complaints since its establishment.⁵ By 2016, it has taken a decision on 4825 complaints. The report shows that the NHRC has made 773 recommendations to the Government of Nepal. Even though the Supreme Court has clearly said that the

¹ United Nations Office of the High Commissioner for Human Rights, Nepal Conflict Report, October 2012, http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf

² Conflict Victims Committee (CVC) Bardiya, on 4 October 2013, attempted to file the FIR of six cases of extra judicial killings during the conflict. For example, on 4 October 2013 Conflict Victims Committee (CVC) Bardiya knocked the door of the District Police Office (DPO) Bardiya to register six cases of extrajudicial killing during the conflict period. Despite the mandamus order from the Appellate Court Nepalgunj, the DPO Bardiya refused to register the FIR.

³ For example, *Arjun Lama v. the District Police Office Kavre*; *Sanjeev Kumar Karna v. the District Police Office, Dhanusha*; *Bhumishara Thapa v. the District Police Office Banke*; *Bijaya Kumar Shrestha v. District Police Office, Ramechhap*.

⁴ Study Report on Execution Status of the Supreme Court and Appellate Court Orders/ judgments relating to Transitional Justice, National Judicial Academy (NJA) and International Commission of Jurists (ICJ), 2016.

⁵ 13 years of National Human Rights Commission: Recommendations of the Commissions and Implementation Status, 2000 – 2013; NHRC Annual Reports, 2014, 2015 and 2016, <http://www.nhrcnepal.org>

NHRC recommendations are mandatory to all⁶, around 40% of its recommendations remain unimplemented. Among 773 recommendations 106 (13.71%) of the recommendations have been fully implemented; 358 (46.31%) have been partially implemented with 309 (39.97%) recommendations remaining unimplemented.⁷ The recommendations which have fully or partially implemented are related to relief and/or compensation to the victims. However, none of the NHRC recommendations to the Government to take legal action against those involved in the incidents of human rights violation of conflict period have been implemented.⁸

ii) Failure of transitional justice mechanisms

6. On 10 February 2015, the Government formed two transitional justice mechanisms, i) Truth and Reconciliation Commission (TRC) and ii) Commission on Investigation of Disappeared Persons (CoID) to investigate the incidents of gross human rights violations and persons involved in the incidents during the armed conflict.⁹ The two-year mandate of both commissions expires on 9 February 2017. TRC has received 58052 complaints of human rights violation¹⁰ and the CoID has received 2864 complaints of incidents of enforced disappearance.¹¹ Stakeholder distrust of both commissions continues as the flaws in the TRC Act have been not amended as directed by the Supreme Court of Nepal on 26 February 2015.¹² Furthermore, the opaque and non-consultative approach adopted by the commissions have further entrenched this distrust. In addition, the Commissions have faced operational problems with given that the Government has not provided adequate financial and human resources.¹³ The Commissions have sought a one-year extension by writing a letter to the Government.¹⁴ If the mandate is extended without addressing the underlying concerns over the Commissions' ability to effectively address truth seeking measures the already questionable process is set to become worse.

iv) Failure to criminalize serious crimes under international law

7. Many serious crimes under international law, such as enforced disappearance, torture, crime against humanity and war crimes, are yet to be criminalized under Nepali law. The Supreme Court (SC) has, in several instances, directed the Government to reform domestic criminal law to recognize serious human rights violations as criminal offences and to remove the statute of limitation on rape cases.¹⁵ The Commission's demand to enact necessary legislation to criminalize serious crimes under Nepali and amend the TRC Act in line with the SC orders have not been implemented yet. Due to this, stakeholders, including the conflict victims, are raising serious questions about the effectiveness of the work of both commissions.
8. On 3 November 2014, the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs of Nepal tabled five bills including a Bill on the Penal Code to the Legislative-Parliament. The Penal Code Bill sets out

⁶ *Om Prakash Aryal and others v. National Human Rights Commissions and Others*, Writ no. 068-WS-0063, NKP 2073, Volume 7.

⁷ 13 years of National Human Rights Commission: Recommendations of the Commissions and Implementation Status, 2000 – 2013; NHRC Annual Reports, 2014, 2015 and 2016, <http://www.nhrcnepal.org>

⁸ Ten Years of Comprehensive Peace Agreement: Human Rights Situation, A Brief Report, National Human Rights Commission, Nepal, 20 November 2016, http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Nepal_NHRC_CPA_10Yrs_Report_Eng_2016.pdf.

⁹ Section 3, Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014.

¹⁰ See Truth and Reconciliation Commission, <http://www.trc.gov.np>

¹¹ See: Commission of Investigation on Enforced Disappeared Persons, <http://www.ciedp.gov.np/uploads/files/all%20particular.pdf>

¹² *Suman Adhikari and others v. Prime Minister and Council of Ministers*, writ No. 070-WS-0050, NKP 2071 volume 12.

¹³ *Nirupan*, Center for Legal Studies (CLS) and International Commission of Jurists (ICJ), November 2016.

¹⁴ <http://thehimalayantimes.com/nepal/truth-and-reconciliation-commission-extending-tenure-one-year/>

¹⁵ *Rabindra Dhakal on behalf of Rajendra Dhakal v. The Government of Nepal and others; Rajendra Ghimire et al v. Prime Minister and Office of the Council of Ministers and others; Raja Ram Dhakal v. Office of the Prime Minister and others and Sapana Pradhan Malla v. the Government of Nepal*.

numerous reforms to the laws contained in the National Code 1963 (*Muluki Ain*). Amongst the key reforms, it aims to criminalize enforced disappearance, torture and genocide. However, the definitions in the Bill of such crimes is flawed. Other serious crimes under international law such as war crimes and crimes against humanity remain unaddressed in these Bills. While these are significant steps on the part of the 2014 GoN to fulfill its obligations under international law, the Bills fall short of applicable international human rights standards.

Recommendations

9. The ICJ calls upon the Government of Nepal to:

End impunity for human rights violations

- a) End the current prevalence of impunity by ensuring prompt, independent and impartial investigations of persons involved in serious human rights violations committed during the armed conflict and ensure justice for the victims of said violations;

Transitional justice

- b) Amend the TRC Act, 2014, in line with the international standards and jurisprudence established by the Supreme Court of Nepal;
- c) Adopt a consultative process to address victims' concerns to allow ownership of the conflict victims over the transitional justice process in Nepal;
- d) Ensure the TRC and CoID functions in accordance with international law and standards;

Criminalization of serious crimes under international law

- e) Criminalize serious crimes, including enforced disappearance, torture, crime against humanity as well as other serious crimes under international law, in a manner that is consistent with international law.

Cooperation with Special Procedures

- f) Issue standing invitations to all thematic special procedures of the HRC, including the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Torture and Special Rapporteur on extrajudicial, summary or arbitrary executions.
