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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF NEPAL**

Submitted in March 2015

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Introduction

1. The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Nepal.
2. In this submission, the ICJ draws the attention of the HRC's Working Group on the UPR and that of the HRC itself to the Government of Nepal's (GoN) ongoing failure to implement the recommendations made during the 2011 UPR. In particular, the ICJ is concerned about the failure to implement recommendations concerning:
 - i) the establishment of credible transitional justice mechanisms;¹
 - ii) the need to reform Nepali criminal law to ensure that certain serious crimes under international law are fully criminalized domestically;²
 - iii) the ongoing need to address the countless incidents of sexual violence committed during the armed conflict;³
 - iv) the need to take steps to end impunity;⁴ and
 - v) the right to an effective remedy.⁵
3. The submission concludes with some recommendations addressing the above-mentioned concerns, as well as recommendations concerning international human rights instruments and mechanisms.

Transitional justice

4. On 10 February 2015 the GoN established two separate Commissions, the Commission on Investigation of Disappeared Persons (CoID) and the Truth and Reconciliation Commission (TRC). However, these commissions lack credibility and independence, as their membership was not selected through a transparent and independent process.⁶ Victims' groups⁷ and civil society organizations⁸ have expressed serious concerns about the membership selection process of both Commissions and seem reluctant to engage with these mechanisms. The ICJ, together with international and domestic human rights and victims' groups, had urged the GoN and the TRC Recommendation Committee (RC) to adopt a transparent and consultative appointment process.⁹ However, the RC recommended appointments exclusively on the basis of political consensus, rather than on the grounds of the concerned individuals' competence, experience, independence and impartiality.
5. On 26 February 2015, right after the establishment of the two Commissions, the Nepalese Supreme Court (SC) gave judgment in a case arising from a writ petition filed by a group of 234 conflict victims from across Nepal.¹⁰ In the ruling the SC rejected, for the second time, the amnesty provision featured in the 'Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2014' (TRC Act).¹¹ The TRC Act was a slightly modified version of the 2013 TRC Ordinance,¹² which was struck down by the SC on 2 January 2014.¹³ Once again, the SC rejected the possibility of amnesties for perpetrators of serious human rights abuses during the country's civil war.
6. As the TRC Act lacks clarity on a number of issues, the SC further held that the Commissions should use the SC's previous rulings concerning these issues as guiding principles while interpreting their respective mandates.¹⁴
7. Notwithstanding the powerfulness and authority of this judgment, the ICJ is concerned that the GoN and the Commissions will not respect the ruling. The organization's concern is based on the GoN's previous record of consistently failing to implement the orders issued by the SC. Indeed, the repeated non-

implementation of the rulings of the SC has been one of the main obstacles to the promotion and protection of human rights in Nepal. In this regard, the SC has observed that:

"This Court has issued various orders in the name of the State to bring those found guilty of serious violations of human rights to justice in order to provide a sense of justice to the victims and to end impunity. However, the continuing attitude and culture on the part of the responsible State organs to continually disregard and violate such orders not only undermines the rule of law but also makes a mockery of people's democracy".¹⁵

8. The same lack of political will on the part of the GoN is also responsible for the country's failure to implement the recommendations that arose in the context of the first cycle of the UPR. Despite Nepal's commitment during the 2011 UPR to establish the Truth and Reconciliation Commission and the Commission of Inquiry on Disappearances as stipulated in the 2006 Comprehensive Peace Agreement in accordance with international standards¹⁶ as well as the recent relevant recommendations of the UN Human Rights Committee,¹⁷ the ICJ notes that, to date, Nepal has failed to establish credible transitional justice mechanisms. This failure has been compounded by the enactment of legislation inconsistent with international laws and standards and previous jurisprudence of the SC.

Domestic criminalization of certain serious crimes under international law

9. Many serious crimes under international law are not crimes under Nepali criminal law. The SC has, in several instances, directed the GoN to reform domestic criminal law in order to ensure that enforced disappearance, torture, war crimes, crimes against humanity and other serious crimes under international law be fully criminalized domestically.¹⁸
10. On 2 November 2014, the GoN tabled a bill with a view to reforming several legal provisions featured in the General Code (*Muluki Ain*) -- among other things, if enacted, those provisions would make torture and other cruel, inhuman or degrading treatment criminal offences under Nepali domestic law. Additionally, a separate bill on torture has also been tabled in Parliament. While these are significant steps on the part of the GoN to fulfill its obligations under international law, in their current form, both bills fall short of applicable international standards in a number of respects.
11. Despite the recommendation of the 2011 UPR to "implement the 2007 SC decision to criminalize enforced disappearance and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICED),"¹⁹ and Nepal's commitment to "enact specific legislation in domestic law to criminalize the offence of torture which is fully compliant with the requirements of the CAT",²⁰ the long-standing recommendations of a range of bodies, including the Human Rights Committee,²¹ the Committee Against Torture,²² Working Group on Enforced and Involuntary Disappearances²³ and the SC, the GoN has so far failed to criminalize in domestic law enforced disappearance, torture and other serious crimes under international law.
12. The failure to ensure that the above-mentioned crimes under international law are fully criminalized domestically constitutes a major obstacle for victims and their families in their legitimate quest for justice.

Sexual violence committed during the armed conflict

13. Most instances of sexual violence are not specifically criminalized and the crime of rape is too narrowly defined in Nepali domestic law, with acts that for all intents and purposes constitute rape falling outwith the definition provided in domestic legislation.²⁴ Moreover, the fact that rape complaints can only be filed

within 35 days from the offence taking place makes it very difficult, in most cases, to bring perpetrators to justice.²⁵ On two occasions, the SC has ordered the GoN to revise the 35-day limitation period for filing rape complaints, considering it “unreasonable” and “unrealistic.”²⁶ The GoN has so far failed to comply with the SC’s order.

14. In addition, the GoN’s failure to implement the 2011 UPR recommendation to “[a]dopt effective measures to guarantee the protection of victims of gender violence, duly investigate allegations and ensure that those responsible be prosecuted and sanctioned”,²⁷ as well as the recommendation of the Human Rights Committee to “... ensure that cases of violence against women are thoroughly investigated ...”²⁸ remains a significant hurdle in obtaining justice and redress for victims of sexual violence.
15. Additionally, victims of sexual violence and other forms of gender-based violence, as well as torture survivors, are excluded from the definition of “conflict victim”.²⁹ Therefore, victims of sexual violence, other forms of gender-based violence, as well as torture, have been denied interim relief as part of the programme launched by the GoN.³⁰

Impunity for human rights violations

16. Impunity is widespread and growing due to a number of policies adopted by the GoN. The State Cases Act of Nepal obliges Nepali Police to register a First Information Report (FIR) immediately in case of any infringement of the penal law.³¹ Despite repeated orders from various courts, including the SC, in relation to the duty of the police to register FIRs,³² as well as the concern expressed by the Human Rights Committee about the lack of investigation and prosecution of perpetrators, the GoN has not taken any effective steps to investigate incidents of human rights violations.³³
17. The authorities often justified the refusal to register FIRs by stating that these cases would fall under the jurisdiction of the TRC. The SC in the recent TRC decision distinguished between the jurisdiction of the courts and the criminal justice system, and the mandate of the non-judicial reconciliation and truth-seeking mechanisms established under the TRC Act. In the judgment, the SC stated:

To determine whether or not an act is criminal is purely a judicial function, based on the examination of evidence. A quasi-judicial body like a Commission cannot make such determination. To allow for a subject that must be determined purely in a judicial manner to instead be determined by a quasi-judicial body and for the Court to submit to it and surrender its jurisdiction with regards to such provisions is not consistent with constitutional law and the accepted principles of justice. The cases within the jurisdiction of the court cannot be transferred and no other body than the courts can decide on such cases.³⁴

18. Despite the GoN’s commitment during the 2011 UPR to “tackle impunity by investigating and prosecuting human rights violations and abuses committed by State and non-State actors during and since the conflict, implementing court orders including on the Nepal Army, and ending political interference”,³⁵ and the strong recommendation of the Human Rights Committee to investigate and prosecute conflict-related serious human rights violations,³⁶ the GoN’s failure to instigate independent and thorough investigations into conflict-related cases of human rights violations and abuses has not only increased the pervasive culture of impunity but has also undermined the rule of law.

Failure to ensure an effective remedy to victims of the armed conflict

19. Most of the approximately 300,000 people³⁷ displaced during the decade long armed conflict have not yet returned to their homes. In 2007 the SC ruled that the Government had a responsibility to ensure a remedy for rights violations, including the unlawful seizure of property by non-state actors during the armed conflict.³⁸ However, since then, the GoN has failed to take any steps to implement this SC decision.
20. Notwithstanding the GoN's commitment during the 2011 UPR "to ensuring the return, registering, readaptation and reinsertion of internally displaced peoples, in all security and dignity",³⁹ and the recommendation of the Human Rights Committee to "ensure that all victims are provided with an effective remedy, including appropriate compensation, restitution and rehabilitation..."⁴⁰ and the Committee on Economic, Social and Cultural Rights' recommendation to "provide displaced families and groups with fair and adequate compensation",⁴¹ the GoN has failed to take any measurable steps to ensure the right to a full and effective remedy to those internally displaced as a result of the armed conflict.
21. In addition to the loss of homes and property from displacement, many wives of those who were forcibly disappeared during the conflict⁴² are currently facing hurdles in obtaining legal titles to their husbands' property. According to Nepali law on inheritance, a widow and her children are entitled to claim all of the deceased's property upon the death of a husband/father.⁴³ In the case of the wives and children of those who were victims of enforced disappearances, their husband's or father's property cannot be officially transferred without official proof of their husband's or father's death. The exception to this is the so-called 12-year rule, whereby someone who has been continuously missing for 12 years can be presumed dead.⁴⁴ Yet, this provision is problematic as the very presumption of death is unacceptable to many of the wives and the children of those who were forcibly disappeared during the armed conflict until the fate and whereabouts of their loved ones has been determined.
22. Despite the GoN's commitment during the 2011 UPR to "design and implement programs to ensure the respect for and protection of the rights of women and children, in particular the rehabilitation of women, children and families affected by conflict,"⁴⁵ and despite the recommendation of Committee on Economic, Social and Cultural Rights to "provide adequate and immediate assistance, in particular through special temporary measures, to alleviate the adverse impact of the conflict on women, including poverty and loss of income, social stigma, and insecurity of tenure resulting from unclear property rights due to the unknown fate of the missing spouses",⁴⁶ the GoN has not taken any measures to address the problems faced by the wives and children of the disappeared in obtaining transfer of their husbands' or fathers' property.

Recommendations

23. In light of the above-mentioned concerns, the ICJ calls upon the Working Group on the UPR and the Human Rights Council to make the following recommendations to the GoN to:

Transitional justice

- a) Ensure that the SC rulings on TRC and in relation to transitional justice, including in the *Rajendra Dhakal vs. the Government of Nepal* case, the *Liladhar Bhandari vs. the Government of Nepal* case, the *Madhab Basnet vs. the Government of Nepal* case, and the recent decision on the TRC Act are fully implemented;

- b) Ensure that the newly formed TRC and CoID duly comply with international law and standards and the jurisprudence established by the Nepalese SC while discharging their mandate;
- c) Ensure that the victims of the armed conflict and human rights activists working in the field of transitional justice will be consulted in the transitional justice process;
- d) Address the concerns raised by the armed conflict victims on the membership selection process of the TRC and CoID;
- e) Take necessary legal and institutional measures to ensure the establishment, adequate resourcing and maintenance of effective victim and witness protection mechanisms;
- f) Take necessary legal, administrative, institutional, or other arrangements for an effective reparation program for the victims of the armed conflict and their families; and
- g) Ensure that victims of torture and of sexual and other forms of gender-based violence are included among the beneficiaries of the ongoing relief and reparation programs.

Domestic criminalization of certain serious crimes under international law

- h) Ensure that all gross violations of international human rights law, including torture and enforced disappearances, as well as other serious crimes under international law, such as war crimes and crimes against humanity, are explicitly prohibited as criminal offences under domestic law and that their definition in domestic legislation is in conformity with international law.

Sexual violence committed during the armed conflict

- i) Amend the law on rape and ensure that the offence of rape is codified in a manner consistent with international law;
- j) Introduce legislation to criminalize other sexual violence offences;
- k) Remove the 35-days statute of limitation for filing complaints of rape; and
- l) Ensure that the perpetrators of crimes of sexual violence during and after the conflict be brought to justice.

Impunity for Human Rights violations

- m) Take immediate and all necessary measures to implement the court rulings on the right to effective remedy, including to ensure the instigation of prompt, thorough and independent criminal investigations into cases of human rights violations that occurred during and after the armed conflict; and
- n) End all forms of interference in the criminal justice system and undertake prompt, independent and thorough investigations into all cases of human rights violations.

Failure to ensure an effective remedy to victims of the armed conflict

- o) Ensure the right to full and effective reparation to the internally displaced peoples;

- p) Take immediate measures to address the problems faced by the wives and children of those who were forcibly disappeared when transferring their husbands' or fathers' property due to the so called "12-years rule".

International human rights instruments and mechanisms

- q) Become a party to
- the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
 - the International Convention for the Protection of All Persons from Enforced Disappearance,
 - the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,
 - the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,
 - the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,
 - the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and
 - the Rome Statute of the International Criminal Court;⁴⁷ and
- r) Issue standing invitations to all thematic special procedures of the HRC,⁴⁸ including the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Torture, Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

ENDNOTES

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- ¹ Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, paras. 106.33, 106.34, 107.25, 108.22. available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>.
- ² Ibid. paras. 106.3, 107.3, 107.17, 109.3, 109.13, 109.15, 108.17, 108.26.
- ³ Ibid. para. 106.28.
- ⁴ Ibid. paras. 106.28, 106.35, 106.36, 106.38, 108.24, 108.25, 108.30.
- ⁵ Ibid. para. 106.13, 106.55.
- ⁶ During the membership selection process, there was widespread media coverage of the fact that the former Speaker of the House of Representatives, Daman Nath Dhungana, who was approached by the political parties to lead the TRC, later refused to lead the Commission stating that he was not willing to be a 'rubber stamp' and fulfill the vested interests of the political parties. My Republica Dailly Paper, available at: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=93235.
- ⁷ On 10 February, the Conflict Victims' Common Platform (CVCP), and on 12 February, the Family Society of Fighters Disappeared by the State, issued statements raising serious concerns about the membership selection process of TRC and CoID and expressed their reluctance to engage with them.
- ⁸ On 11 February 2015, Accountability Watch Committee (AWC) issued a press release expressing concern about the membership selection process of TRC and CoID and reluctance to engage with these mechanisms because of their lack of transparency and credibility.
- ⁹ For details see, ICJ Press Release <http://www.icj.org/nepal-independence-critical-for-justice-panels/> and Open letter to the Prime Minister of Nepal by human rights groups <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/12/Nepal-TRCCommission-Advocay-Open-Letter-2014-ENG.pdf>.
- ¹⁰ *Suman Adhikari et. al v. Prime Minister and Council of Ministers and others (TRC Act Case)*, writ No. 070-WS-0050 (Registration date: 3 June 2014).
- ¹¹ The Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act was passed on 25 April 2014, approved by the President of Nepal on 9 May 2014 and published in the Official Gazette on 21 May 2014.

- ¹² On 14 March 2014, the President of Nepal approved the Ordinance that established the "Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance 2013", available at http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=18&func=stardown&id=1659&lang=ne.
- ¹³ *Advocate Madhav Kumar Basnet et. al. v. the Government of Nepal and others*, writ No. 069-WS-0057, NKP 2070 (2014) Volume 9.
- ¹⁴ *Suman Adhikari et. al v. Prime Minister and Council of Ministers and others*, writ No. 070-WS-0050 (TRC Act Case). In the judgment the SC stated, "The provisions of the Act are by themselves neither sufficient nor clear, as outlined by the analysis in the preceding paragraphs. Further, both Commissions may face complexities or confusion in the course of their work. In this circumstance, these Commissions established by the law of the land have to be aware of the Constitution, law, international human rights law and humanitarian law and the established principles of justice. In addition, the orders issued by this Court are a part of constitutional law and hold the same place as the established principles of justice. Therefore, the orders, which are in the form of the constitutional tradition, remain as the guiding principles for the functioning of the Commissions. Even the impacts or results of the acts of the Commissions cannot remain outside the purview of judicial review", page 84, para 4, available at: <http://www.supremecourt.gov.np/download/070-WS-0050.pdf>. Since the Supreme Court's decision is not available in English, the excerpt quoted above is an unofficial translation from the original version in Nepali.
- ¹⁵ *Ibid*, page 74, para. 2.
- ¹⁶ Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.34, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>.
- ¹⁷ Human Rights Committee, 110th Session, Concluding observation on the Second Periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2, para. 5 (c). The para. 5(c) states, "Create, as a matter of priority and without further delay, a transitional justice mechanism in accordance with the Supreme Court writ of mandamus of 2 January 2014 and ensure its effective and independent functioning in accordance with international law and standards, including by prohibiting amnesties for gross violations of international human rights law and serious violations of international humanitarian law".
- ¹⁸ *Rabindra Dhakal on behalf of Rajendra Dhakal v. The Government of Nepal and others*, in which the SC directed the GoN to criminalize enforced disappearance in accordance with the UN International Convention for the Protection of All Persons from Enforced Disappearance and to ensure that amnesties and pardons not be awarded to those suspected or found guilty of those crimes; *Rajendra Ghimire et al v. Prime Minister and Office of the Council of Ministers and others*, where the SC directed the GoN to criminalize torture in line with its obligations as state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and *Raja Ram Dhakal v. Office of the Prime Minister and others*, in which the SC directed the GoN to formulate national legislation for the implementation of the Four Geneva Convention.
- ¹⁹ Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 108.26, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>.
- ²⁰ Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.3 and 107.17.
- ²¹ Human Rights Committee, 110th Session, Concluding observation on the Second Periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2, paras. 5 (a). Para. 5(a) states that, "Ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited as criminal offences under domestic law".
- ²² Committee Against Torture, Thirty-fifth session (7-25 November 2005), Consideration of Reports submitted by states parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Nepal, UN Doc. CAT/C/NPL/CO/2 of 13 April 2007, para. 12. "The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention. The State party should provide information to the Committee on domestic jurisprudence referring to the definition of torture as per article 1 of the Convention".
- ²³ Report of the Working Group on Enforced or Involuntary Disappearances on its Mission to Nepal (6-14 December 2004), UN Doc. E/CN.4/2005/65/Add.1 (2005), para 58 (a). Para 58(a): "As soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance", available at: <http://www.refworld.org/pdfid/42d66e62a.pdf>.

- 24 See Chapter 14 on Rape, General Code (*Muluki Ain*) 2064, most recently amended in 2066.
- 25 See Sec. 11, Chapter 14 on Rape, General Code (*Muluki Ain*), which states: "If a suit on the matter of rape is not filed within thirty five days from the date of the cause of action, the suit shall not be entertained." Many victims do not file complaints due to fear, trauma, stigma or because of severe health consequences.
- 26 *Sapana Pradhan Malla v. Prime Minister and Council of Minister & Others*, Writ. No. 3561 (2006). The Office of the High Commissioner for Human Rights reported that, "the police refuse to file a case because there is no medical report, while the doctor refuses to do a forensic examination in the absence of a First Information Report [criminal complaint]". See Office of the High Commissioner for Human Rights, *The Nepal Conflict Report*, October 2012, at 169 available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf
- 27 Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.28, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>
- 28 Human Rights Committee, 110th Session, Concluding observation on the Second Periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2, para. 13, "The State party should ensure that all forms and manifestations of violence against women are defined and prohibited under domestic law with sanctions commensurate with the gravity of the offence, in accordance with international standards. It should establish a comprehensive national data collection system on cases of different types of violence against women to enable the State party to adopt targeted strategies and evaluate their effectiveness. It should also conduct awareness-raising campaigns on the negative effects of violence against women, inform women of their rights and existing mechanisms of protection, and facilitate complaints from victims. The State party should further ensure that cases of violence against women are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies and means of protection".
- 29 The Government of Nepal has introduced different policies, guidelines and programmes to provide interim relief to the victims of the armed conflict. But all these mechanisms have failed to address the plight of victims of sexual and other forms of gender-based violence and that of torture victims.
- 30 See for example, ICTJ, "From Relief to Reparations: Listening to the Voices of Victims" (2011) and Ruben Carranza, ICTJ, "Relief, Reparations, and the Root Causes of Conflict in Nepal" (October 2012).
- 31 Section 3 of the State Cases Act, 1992 of Nepal obliges the Nepal Police to register the FIR immediately whether the official receives such FIR either orally or in writing.
- 32 See For instance, *Devi Sunuwar v. District Police Office, Kavrepalanchok* (writ No. 0641 of 2007), *Purnimaya Lama v. District Police Office Kavrepalanchok* (Writ No. 1231 of 2004), *Jayakishor Lav v. District Pokice Office Dhanusha* (writ No. 063-wo-0681), *Yogmaya Dahal v. District Pokice Office Banke* and *Bhumisara Thapa v. District Pokice Office Banke*, For further details please see the Supreme Court Case Reporter, available at: <http://www.supremecourt.gov.np>.
- 33 Human Rights Committee, 110th Session, Concluding observation on the Second Periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2, para. 5 (a), "The lack of investigation and prosecution of perpetrators, exacerbated by political interference in the criminal justice system, such as the refusal by the police to register First Information Reports, pressure exerted on law enforcement officials not to investigate or prosecute certain cases, and extensive withdrawal of charges against persons accused of human rights violations, noting that not a single conflict related case has been successfully prosecuted through the criminal justice system".
- 34 *Suman Adhikari et. al v. Prime Minister and Council of Ministers and others*, writ No. 070-WS-0050. (TRC Act Case), page 77, para. 3 and page 79, para. 1, available at: <http://www.supremecourt.gov.np/download/070-WS-0050.pdf>.
- 35 Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.35, 106.36, 106.37, 106.38, 108.24,, 108.25, 108.30 available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>.
- 36 Human Rights Committee, 110th Session, Concluding observation on the Second Periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2, paras. 5 (b), "End all forms of political interference in the criminal justice system and undertake independent and thorough investigations into alleged conflict-related cases of human rights violations, and hold the perpetrators accountable without any further delay".
- 37 Caritas Nepal, Caravan of IDPs (2005) cited in Padma Prasad Khatiwada, Internally

Displaced Persons in Nepal: More Issues, Less Heard, Study Report (2012), p. 4.

38 *Bhoj Raj Timilsna v. the Council of Minister et al.*, Writ No. 0920 of 2006 (2063 BS);
Liladhar Bhandari & Ors. v. Government of Nepal & Ors. (Case No. 0863/2064).

39 Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal
Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.55, available at: [http://daccess-
dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement](http://daccess-
dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement)

40 Human Rights Committee, 110th Session, Concluding observation on the Second Periodic
report of Nepal, UN Doc. CCPR/C/NPL/CO/2, para. 5(d).

41 Committee on Economic, Social and Cultural Rights, 53rd Session, Concluding observation
on the third periodic report of Nepal, UN Doc. E/C.12/NPL/CO/3, para. 9(f).

42 The Working Group on Enforced and Involuntary Disappearances reported that during the
ten-year conflict in Nepal, the highest number of enforced disappearances reported was in
2002, when 277 cases were notified. See, Report of the Working Group on Enforced or
Involuntary Disappearances, UN Doc A/HRC/13/31 (2009). The Working Group on Enforced
or Involuntary Disappearances has transmitted a total of 672 cases to the Government of
Nepal and, as of 2 March 2012, it had received no further information on 458 of these
cases." See Working Group on Enforced or Involuntary Disappearances, Report of the
Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/19/58/Rev.1
(2012) as cited by Office of the High Commissioner for Human Rights, *The Nepal Conflict
Report*, (2012), p. 112.

43 General Code (*Muluki Ain*), Chapter 16 on Inheritance, section 2 provides that a surviving
widow and children have right to all of the deceased's property on the death of a
husband/father.

44 Evidence Act (1974), section 32, "Burden of proving that a person is alive: Provided that,
when the question is whether a person is alive or dead, it is proved that such person has
not been heard of for a period of twelve years by those who would naturally have heard of
him/her if he/she had been alive, the burden of proving that he/she is alive is shifted to
the person who affirms it."

45 Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal
Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 106.13 available at: [http://daccess-
dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement](http://daccess-
dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement).

46 Committee on Economic Social and Cultural Rights, 38th Session, Concluding Observations
of the Committee on Economic Social and Cultural Rights: Nepal, UN Doc.
E/C.12/NPL/CO/2 (2008), para. 36. Available at:
[http://tbinternet.ohchr.org/
_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC
.12%2fNPL%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC
.12%2fNPL%2fCO%2f2&Lang=en).

47 Despite the commitment during the 2011 UPR, Nepal has yet to become a party to those
treaties.

48 Despite the GoN's commitment during the 2011 UPR to "extend a standing invitation to UN
special procedures", Nepal has not taken any initiatives to invite and make arrangements
for interested mandates of the Human Rights Council to visit the country. See, Human
Rights Council, Seventeenth Session, *Report of the Working Group on the Universal
Periodic Review: Nepal*, UN Doc. A/HRC/17/5, para. 108.6 and 108.7.