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International Commission of Jurists Submission to the Universal Periodic Review of Nepal  
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The International Commission of Jurists (ICJ) welcomes this opportunity to present its submission to the Universal Periodic Review (UPR) of Nepal. This review, while recognizing a few welcome steps in implementation, should take note of the persistent and longstanding failure of Nepal to meet many of its human rights obligations and a wave of fresh human rights violations in the country in the aftermath of the Comprehensive Peace Agreement (CPA) 2006.

The Human Rights Council (Council) and its Working Group on the UPR (Working Group) should address the serious violations of human rights in Nepal, including the impairment to the right to life, the right to a fair trial, freedom from torture and other ill treatment, freedoms of opinion and expression and assembly, freedom from arbitrary arrest and detention, and discrimination against women. These violations have been repeatedly noted and documented by the Office of the High Commission on Human Rights (OHCHR)<sup>i</sup> and other national and international human rights organizations. It is also essential to recall the obligation of Nepal to cooperate with international human rights mechanisms, including the OHCHR field office, Special Procedures of the Council and the treaty bodies.

**Impunity**

The ICJ raises two concerns in relation to the impunity prevalent in Nepal. First, the Government is undermining the separation of powers and the independence of the judiciary in the case of Maina Sunwar (see description of the case below), a dangerous precedent that will impact on all other attempt to prosecute serious crimes. Second, the ICJ is concerned about credible reports regarding the arbitrary use of security powers, including a pattern of alleged extrajudicial killings in the Terai region.

*Duty to investigate, prosecute and punish perpetrators of serious crimes*

De jure and de facto impunity continue due to a number of policies and strategy adopted by the Government of Nepal and the Maoist Party. Despite repeated orders<sup>ii</sup> from civilian courts, including the Supreme Court of Nepal, in relation to the duty of police to register First Information Reports (FIR), these orders are still routinely ignored.

On 10 December 2009, Human Rights Day, family members of 30 victims of serious human rights violations simultaneously demanded the filing of FIRs in 28 police stations. The police refused all of these FIRs. The authorities justified this refusal by stating that they needed permission 'from above' to register such complaints. However, the Supreme Court's *State Cases Act of Nepal* obliges the Nepal Police to register FIRs immediately if officials receive these petitions either orally or in writing. The failure of the police to register the FIRs, in addition to undermining the independence of the judiciary and administration of justice, results in the failure of Nepal to discharge its obligations to engage the criminal responsibility of persons responsible for serious human rights violations. When FIRs are registered, the police still typically fail to carry out their duty to investigate. At least 100 cases of this

type are pending in various police stations, and subject to regular monitoring by the ICJ. Police authorities openly admit in some cases that they cannot investigate and arrest Nepal Army or Maoist suspects because of threats to their own security and position.

#### *De facto and de jure amnesty for Maoist crimes*

The Maoist Party has sought and received amnesty for past crimes. Its cadres continue to commit crimes that are routinely ignored by Nepal Police due to political interference. The most prominent of these is Kali Bahadur Kham (“Bibidh”), former commander of the People’s Liberation Army (PLA) Third Division, accused of overseeing the kidnapping, torture and murder of businessman Ram Hari Shrestha in the PLA cantonment in Chitwan in April-May 2008. Maoist leaders have obstructed the police investigation.

The other emblematic example of such non-compliance of the Court order relates to the alleged murder of Arjun Lama in April 2005 by a current high-ranking Maoist leader. The ICJ has credible reports that Maoists have threatened the lawyers working on the case and challenged the state agencies regarding the arrest their cadres. Because of this, no progress has been made in this case, in spite of a Supreme Court decision ordering the investigation.

**The ICJ calls on the Working Group and the Council to recommend that the Government conduct prompt and thorough investigations into alleged cases of past human rights abuses and to bring charges against persons against whom there is evidence of criminal responsibility, including chain of command responsibility, to ensure they are brought to justice before a civilian court.**

#### **Contempt of judiciary, including Supreme Court orders**

##### *The Case of Maina Sunuwar*

The Government is refusing to abide by a September 2007 Supreme Court ruling that put squarely within the jurisdiction of civilian courts the case of the enforced disappearance, torture, and unlawful killing of 15-year-old Maina Sunuwar on 17 February 2004. Valid arrest warrants were issued by the Kavre District Court on 31 January 2008 against four alleged perpetrators, including Major Niranjan Basnet. The Nepal Army, with public support from the Minister of Defense, Bhidya Bhandari, has defied the arrest order and challenged the jurisdiction of the civilian court, claiming that it closed the matter with its September 2005 Court Martial. These proceedings, however, did not adjudicate Major Basnet’s responsibility, even for disciplinary offences.

With respect to those persons referred for Court Martial, the Court Martial issued six-month sentences, fines, and temporary suspensions of promotions as punishment for disciplinary offences. The Court Martial incredibly characterized the lethal effect of prolonged torture through simulated drowning and electrocution of a 15-year-old schoolgirl as accidental and unintended harm due to the use of incorrect procedures. The Court Martial actions do not constitute an intent to bring the perpetrators to justice. The alleged perpetrators should therefore be brought to justice in civilian courts. Such a move would not constitute ‘double jeopardy’ under international standards, including article 20 of the Rome Statute. In September 2007 the Supreme Court, taking into account Court Martial decision, ordered the matter to be brought before the civilian District Court.

**The ICJ calls on the Working Group and the Council to recommend to the Government to comply with the Supreme Court Order and recognize the jurisdiction of the civilian court and surrender Major Basnet other military officials to respective jurisdiction.**

### **Encounter killings**

Since the 2006 agreement was signed, political violence has continued and in some areas has increased, particularly in the Terai Districts. Some credible reports have shown that party youth wings and armed groups continue to resort to extortion and intimidation and have been responsible for scores of killings. In mid-2009 the government launched a “Special Security Strategy”(SSS), aimed at maintaining law and order by deploying additional security forces in half of Nepal’s districts. Half of these units are situated in the troubled Terai region, constituting Nepal’s southern plains bordering India. In October 2009, a number of human rights organizations, including OHCHR-Nepal, expressed concerns at the high number of individuals reported killed in “encounters” with security forces and at credible allegations of extrajudicial killings involving police personnel. After the implementation of the SSS, there are indications that this trend has continued and expanded.

**The ICJ calls on the Working Group and the Council to recommend to the Government that it investigate promptly all allegations of extrajudicial killing by the security forces, including in Terai District, and bring those responsible to justice in accordance with international standards of fair trial.**

### **Enforced Disappearance**

The government of Nepal has introduced a Bill to criminalise enforced disappearance in the Parliament. This legislation has not yet been adopted or subject to date. This bill would criminalise an act of enforced disappearance, and provide procedures to form a commission of inquiry on past enforced disappearances. However, the legislation does not fully comply with the international standards, best practices and the Supreme Court’s ruling of 1 June 2007.

**The ICJ calls on the Working Group and the Council to recommend that the Government**

- *Fully implement the Supreme Court decision of June 2007, that ordered the Government to establish a commission of inquiry on conflict-related enforced disappearances.*
- *Criminalize enforced disappearance and torture in accordance with international law and standards.*
- *Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to accede to the Rome Statute of the International Criminal Court (ICC).*
- *Invite the relevant thematic mandates of the Human Rights Council to visit Nepal, including the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Torture, and the Special Rapporteur on extrajudicial, summary or arbitrary execution.*

### **Transitional justice legislation**

The ICJ welcomes the Government’s step to register a Bill in the Parliament aiming to establish a truth and reconciliation commission (TRC). However, the purposed Bill is not in line with international standards.

**The ICJ calls on the Working Group and the Council to recommend that the Government ensure measures are taken to guarantee truth, justice and reparations for victims of the armed conflict, in accordance with international law and standards.**

### **Economic, Social and Cultural Rights**

The ICJ is concerned at lack of significant progress by Nepal in addressing the human rights situation in the country in respect of economic, social and cultural rights. This assessment was confirmed in 2008 in the concluding observations of the Committee on Economic, Social and Cultural Rights on Nepal's second periodic report,<sup>iii</sup> which noted that Nepal had failed to implement most of the recommendations which the Committee had made in its 2001 review. The Committee on Economic Social and Cultural Rights has repeatedly acknowledged the economic constraints which Nepal faces in the realization of the social and economic rights. However the Committee concluded:

*[T]he State party has not addressed in an effective manner the following principal subjects of concern, which continue to be relevant: The extent of poverty in Nepal, in particular in rural areas where poverty and discrimination against women are most pronounced, and the lack of disaggregated data on the incidence and depth of poverty; the continuing inequalities that exist between men and women in Nepali society, despite legislative guarantees of equality, as reflected in the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work; the large number of women and girls being trafficked for prostitution, and the absence of a demonstrably effective response from the State party with regard to this practice; the high rate of domestic violence and the absence of specific legislation in this field; the high unemployment and underemployment rates in Nepal and the lack of skills-oriented education; the problems faced by emancipated Kamaiyas, including lack of housing, land, work, and education for their children; the inadequacy of the legal minimum wage to provide an adequate standard of living for workers and their families, in particular in the agricultural sector; and the high incidence of child labour in Nepal, especially in rural areas.*

#### *Cholera Deaths and the right to health*

During the months of May through August 2009, over 400 people died of cholera or diarrhea-related deaths in the Mid West and Far West of Nepal.<sup>iv</sup> Initially, government officials took little notice of the deaths, attributing them to a "mysterious illness", but a subsequent investigation confirmed that many died as a result of cholera or other, diarrhea-related conditions which have been experienced during monsoon season.<sup>v</sup> The government took weeks to react and efforts to ensure that health posts had adequate staff only began months after the deaths had started. Even then, health workers and NGOs complained of poor coordination by government in its treatment efforts.<sup>vi</sup> This situation occurs yearly in Nepal though the number of deaths in 2009 was particularly high. Government officials and health experts agreed that the deaths resulted from: (i) inadequate access to clean food and drinking water and, (ii) insufficient medical attention made available for those who had fallen ill.<sup>vii</sup> Analysis of the disaggregated data of those who died showed that Dalits represented a dramatically disproportionate number; Dalits are less than 15 per cent of the total population in 15 affected districts but 39 percent of those affected.<sup>viii</sup>

These tragedies represent only the worst effects of deaths resulting from Nepal's failure to discharge its obligations in respect to the rights to water, food and health, including under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The disproportionate burden of these deaths has been experienced by the most disadvantaged group in Nepal, giving rise to

concern that Nepal is failing to meet its obligation to guarantee rights without discrimination, including under article 2(2) of the ICESR. From a rights perspective, there is widespread discrimination in the enjoyment of these rights, discrimination experienced by those who are already the most vulnerable.

**The ICJ Calls on the Working Group and the Council to recommend that the Government take steps to ensure that districts that have been worse affected are targeted to receive public health information, sanitation supports, water purification supplies and to ensure that sufficient staff and medical supplies are immediately in place.**

#### *Discrimination Against Women and Girls*

Women continue to experience widespread discrimination in Nepal. Among the most odious practices is that of *chhaupadi*. Chhaupadi is a tradition primarily practiced in the Mid and Far Western parts of the country, by which menstruating women are pushed into complete seclusion, away from the family as they are considered impure and ‘untouchable’. The culturally embedded practice has recently resulted in a woman’s death under circumstances in which she froze while being made to stay in a cowshed.<sup>ix</sup> More recently, a family which sought to resist the practice was subject to ostracization by its village.<sup>x</sup> These examples are symptomatic of larger societal views towards women and girls in Nepal which become manifest, *inter alia*, in the case of menstruation. Very recently, the *chhaupadi* system has been blamed for the extraordinarily high rate of uterine prolapse in women where, in one sample district, “over 60% of women are estimated to be living with the condition.”<sup>xi</sup>

Other forms of discrimination against women include the practice of making allegations of witchcraft against women of practicing witchcraft. Frequently in rural areas, this takes the form of women or girls receiving blame for an illness or death in the community. This is followed by beating and forced consumption of human excreta. For example, according to the Nepal Police, five cases of women being tortured for practicing witchcraft were registered in Nepal in the one-month period (April-May 2010).<sup>xii</sup> Girls of school age frequently stay away from schools which have inadequate sanitation/toilet facilities which, in turn, impacts on their right to education.<sup>xiii</sup> One study of school girls in Nepal found that “about 89% of survey respondents practice some form of restriction or exclusion’ during their menstrual cycle.”<sup>xiv</sup> The government appears to be doing little or nothing to bring these anti-women practices to an end.<sup>xv</sup>

The discrimination practiced against women and girls interferes with their right to family life, their right to housing, their rights to education and health and, *in extremis*, their right to life. The fact that this is perpetrated by non-state actors is, of course, irrelevant from a human rights perspective. The Government has failed to make meaningful measures to prevent and end these practices.

**The ICJ Calls on the Working Group and the Council to recommend that the Government introduce a national public education campaign, particularly focused in areas where women and girls experience most severe discrimination and that it take responsibility, in cooperation with the National Human Rights Commission, to ensure that schools have adequate sanitary infrastructure for girls and that policies and programs aimed at protecting the rights of girls are introduced in the curriculum.**

## ENDNOTES

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- <sup>i</sup>. OHCHR Report on Bhairab Nath, Bardiya killing, Maina Sunuwar and so on (see OHCHR webpage)
- <sup>ii</sup>. Maina Sunuwar V. District Police Office Kavre, Arjun Lama V. District Police Office Kavre, Sanjeev Kumar Karna V. District Police Office Dhanusha and others, Yogmaya Dahal V. District Police Office Bankey and Bhumisara Thapa V. District Police Office Banke, For details Please see Supreme Court Reporter.
- <sup>iii</sup>. E/C.12/NPL/CO/2
- <sup>iv</sup>. Nepal human rights organization INSEC monitored the developing situation and cited the figure of 464 diarrhea-related deaths: <http://www.inseconline.org/pics/1257598337.pdf>
- <sup>v</sup>. See, for example, *The Himalayan Times*, April 20, 2010: <http://www.thehimalayantimes.com/fullNews.php?headline=Editorial&NewsID=240165>
- <sup>vi</sup>. See the INSEC report and chronology at <http://www.inseconline.org/pics/1257598337.pdf> Also see: <http://ekantipur.com/kolnepalnews.php?nid=207424>
- <sup>vii</sup>. *The Himalayan Times*, April 29, 2010: <http://www.thehimalayantimes.com/fullNews.php?headline=Diarrhoea+epidemic%3A+Basics+in+combating+the+menace&NewsID=241903>
- <sup>viii</sup>. See: "Six More Die of Diarrhea" *Republica*, (Nepalgunj), August 5, 2009: [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=8283](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=8283) [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=8283](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=8283) and <http://www.inseconline.org/pics/1249390745.pdf>
- <sup>ix</sup>. "Forty-year old Belu Damai of Bhairabsthan VDC-8 in Achham died of severe winter cold while staying chhaupadi in a secluded cowshed close to the house where the rest of her family lived." (Kathmandu Post, January 5th, 2010): <http://www.ekantipur.com/2010/01/05/headlines/Woman-dies-of-cold-during-Chhaupadi/305768/>
- <sup>x</sup>. See: "Whole family ostracised for shunning Chhaupadi" (Kathmandu Post, February 3, 2010): <http://www.ekantipur.com/2010/02/03/headlines/Whole-family-ostracised-for-shunning-Chhaupadi/307614/>
- <sup>xi</sup>. "Chaupadi system blamed for high uterine prolapsed cases", *Republica* (daily newspaper), June 25, 2010 at page 2.
- <sup>xii</sup>. "Which is witch?" *Kathmandu Post*, June 25, 2010: <http://www.ekantipur.com/2010/25/25/>
- <sup>xiii</sup>. "Menstruation a bugbear for schoolgirls" *Republica* (October 28, 2009) [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=11155](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=11155)
- <sup>xiv</sup>. "Is menstrual hygiene and management an issue for adolescent school girls?: A comparative study of four schools in different settings of Nepal" Water Aid Nepal (March 2009) at ii: ([http://www.wateraid.org/documents/plugin\\_documents/wa\\_nep\\_mhm\\_rep\\_march2009.pdf](http://www.wateraid.org/documents/plugin_documents/wa_nep_mhm_rep_march2009.pdf))
- <sup>xv</sup>. See Kathmandu Post, January 17, 2010: <http://www.ekantipur.com/2010/01/17/headlines/One-more-woman-dies-in-Chhaupadi/306555/>. See also: "Action, not slogans" *Himalayan Times*, January 18, 2010 (<http://www.thehimalayantimes.com/rssReference.php?headline=Editorial&NewsID=222227>)