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NEPAL,  
TERAI HUMAN RIGHTS DEFENDERS ALLIANCE AND UNIVERSITY OF  
PASSAU**

**SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF NEPAL**

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**Advocacy Forum** (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal. It assists victims of human rights violations, provides legal aid and takes up cases on their behalf. AF also engages with a high-level policy advocacy aimed to create effective institutions and legal and policy frameworks necessary for fair and effective delivery of justice.

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**Terai Human Rights Defenders Alliance** (also, well-known as THRD Alliance) is a non-governmental organization registered under Nepali law and is working to protect and promote human rights through research, legal intervention and advocacy. It works in close coordination with Nepal's National Human Rights Commission, and reports to international human rights organizations, including the UN Office of the High Commissioner for Human Rights.

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**Human Rights in Criminal Proceedings** (HRCP), established in 2010, is a research and advanced training center and an expert helpdesk located at the University of Passau (Germany), specializing in all branches of international protection of human rights in criminal proceedings. In addition to law reporting, interpreting and systemizing the judicature of the European Court of Human Rights (ECHR) in Strasbourg and summing precedents of the Human Rights Committee (HRC) and the UN Committee Against Torture (CAT), HRCP conceives lectures and reports, organises expert conferences and develops advanced training events in the field of human rights protection for judges, state attorneys and criminal defence lawyers. A special focal point is the support of foreign governments in their efforts of phrasing and establishing human rights standards in their national criminal proceedings.

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## Introduction

1. The International Commission of Jurists (ICJ), Advocacy Forum- Nepal (AF), Terai Human Rights Defenders Alliance (THRD Alliance) & University of Passau welcome the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Nepal.
2. In this submission, the ICJ, AF, THRD Alliance & University of Passau provide information and analysis to assist the Working Group to make recommendations to the Government of Nepal to take measures to prevent acts of torture and ill-treatment; to implement a human rights compliant legal framework for accountability and remedy and reparation for victims; and institute other measures to comply with its international obligations, including ratification of international human rights instruments.
3. During the armed conflict in Nepal from 1996 to 2006, gross human rights violations and abuses – including torture and ill-treatment, and enforced disappearance – were committed by the security forces, including the Nepal Army, and the Communist Army of Nepal (Maoist). The Comprehensive Peace Agreement (CPA) put an end to the armed conflict on 21 November 2006, with both sides agreeing to hold perpetrators of human rights violations and abuses accountable and provide remedies and reparation to victims.
4. In the years following the signing of the CPA, Nepal saw substantial improvements in its human rights legal framework and jurisprudence. This included the new, but incomplete, fundamental rights framework in the 2015 Constitution, and the *Muluki* Penal Code 2017 ('Penal Code') that criminalized torture and other ill treatment and enforced disappearance. The Supreme Court has also produced important human rights jurisprudence that has drawn upon international law and standards, and directed the government to implement its obligations under international law to take measures to prevent torture and enforced disappearance and to hold perpetrators accountable.
5. However, a lack of effective implementation of the legal framework and the above-mentioned jurisprudence has negatively affected the credibility of government institutions and poses a threat to the integrity of and public trust in the justice system. The use of torture to extract confessions continues, and not enough has been done to reform the criminal law framework and the justice sector institutions – particularly the police and prosecutors – responsible for its enforcement.

## The Use of Torture and Other Ill-Treatment

6. Although instances of torture have subsided since the end of the conflict, the use of torture and ill-treatment remains a persistent problem. The AF and THRD Alliance have documented the continued use of torture and other ill-treatment by police against detainees during the past several years.<sup>1</sup> Forms of physical abuse amounting to torture and ill treatment include slapping, kicking, punching, hair-pulling, beating with *lathis* (sticks) and butts of rifles, burning with cigarettes, and the deprivation of food and water.<sup>2</sup> Other documented forms of mistreatment included death threats, spitting in food, vulgar words, racial slurs and other forms of verbal abuse, and the threat to be beaten by co-detainees.<sup>3</sup>
7. Certain groups are particularly at risk of torture and ill-treatment, such as LGBTI persons, who are often targeted by police.<sup>4</sup> AF and other organizations have also documented the pervasive torture and ill-treatment of juvenile detainees.<sup>5</sup>
8. Poor conditions in places of detention in Nepal further contributes to the problem. International law prohibits overcrowding, a lack of hygiene and heating, and other unsanitary conditions.<sup>6</sup> However, in Nepal many detainees are kept in congested rooms without air circulation, provided unhygienic food, lack clean drinking water, and are deprived of sleep due to the unavailability of sleeping space and bedding.<sup>7</sup>

9. A number of factors contribute to the persistence of torture and ill-treatment, including a lack of police capacity, indiscipline and poor investigative practices. It remains common practice for “confessions” provided by detainees as result of torture, ill-treatment or coercion, to serve as the primary (and sometimes sole) piece of “evidence” in an investigation. Even on the rare occasions when torture or ill-treatment during interrogation is acknowledged, they are resolved through an informal resolution process and the offer of nominal *ex gratia* payment in lieu of real reparation.
10. Medical examinations, which are required by law after an arrest, are cursory, and often happen in the presence of the arresting officers. International standards require that detainees be given medical examination after arrest, and that such examinations be confidential.<sup>8</sup> However, detainees commonly report that medical examinations are conducted in the presence of the police, thereby undermining their willingness to disclose acts of torture or ill-treatment.
11. A lack of independent appointment and disciplinary mechanisms in the police is also an obstacle to deterring the use of torture and holding perpetrators accountable. During Nepal Government’s UPR submission in 2015, the government asserted that the process of establishing an independent Police Service Commission for Nepal Police was underway.<sup>9</sup> At the time of writing, however, no such commission has been formulated.
12. Transitional justice processes and interim relief measures have also failed to address the plight of victims of torture from the armed conflict period. The authorities frequently justify their unwillingness to investigate allegation of torture from those years – including the registration of First Information Report (FIR) – by stating that such cases would be looked into by transitional justice mechanisms. However, as set out below, these institutions have failed to effectively investigate the many thousands of complaints brought before them. Victims of torture from the armed conflict era were also excluded from interim relief programmes instituted by the Government in 2008.<sup>10</sup>

### ***The Penal Code Provisions Criminalizing Torture***

13. Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 14 May 1991. During Nepal’s second UPR cycle, the Working Group recommended that Nepal enact specific legislation in domestic law to criminalize the offence of torture.<sup>11</sup> Numerous other recommendations called for reform of the criminal law framework to provide accountability for acts of torture and ill treatment.<sup>12</sup>
14. Nepal subsequently criminalized torture in the new *Penal Code* 2017.<sup>13</sup> While the new provisions were welcomed, they also had serious deficiencies. These weaknesses include: a) omission of a provision on superior command responsibility that complies with international standards; b) a six-month limitation period to file complaints despite the fact that, under international law, acts of torture must not be subject to a statute of limitations.<sup>14</sup> Such a limitation period is also inconsistent with the judgments of the Supreme Court of Nepal;<sup>15</sup> and c) penalties incommensurate with the gravity of the crimes. The provisions of the code also do not have retroactive effect and so do not apply to torture committed during the armed conflict.
15. The definition of “torture” is also narrowly limited to torture inflicted while in a place of custody or detention.<sup>16</sup> In practice, in Nepal, torture or other cruel, inhuman or degrading treatment commonly occurs at the point of contact with the police, even prior to arrest and transport to a detention center.
16. Under the penal code, upon conviction, the person who commits acts of torture shall be sentenced to a term of five years’ imprisonment and fine not exceeding fifty thousand

rupees.<sup>17</sup> Depending on the circumstances of the case, such lenient punishment in torture cases may be inadequate considering the gravity of torture and the long-lasting physical and mental harm and the damages to human dignity, personality and personal integrity suffered by the victims.<sup>18</sup> International law requires sentence to be commensurate to the gravity of crimes committed.

17. Under section four of the Criminal Procedure Code, a FIR must be registered in the nearest police office, which, often, is the same police station where the alleged act of torture or ill-treatment has taken place.<sup>19</sup> This requirement therefore threatens the security of victims and witnesses and deters them from raising allegations of torture. In addition, the ICJ, AF and the THRD Alliance have documented cases in which police officers refused to register FIRs, and in which victims and their families have been subjected to pressure and threats, including being offered financial incentives, not to pursue legal action.<sup>20</sup>
18. Most concerning is the fact that not a single prosecution has been brought pursuant to these provisions since they came into effect in August 2018.<sup>21</sup> Furthermore, despite repeated inquiries, including with the Office of the Attorney General, no official statistics on the use of these new provisions appear to be available.

### ***Victims' Rights to Remedy and Reparation***

19. As a general principle across all legal systems and enshrined in article 8 of the Universal Declaration of Human Rights, every right must be accompanied by the availability of an effective remedy. Victims are entitled to obtain a legal decision on the merits of a case within a reasonable time and recognition of the violation; they are also entitled to demand that any ongoing violation be halted; and to receive full and effective reparation for the harm suffered.<sup>22</sup> They should also be provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.<sup>23</sup>
20. In the second UPR cycle, the Government of Nepal received recommendations to take steps to ensure victims of torture have access to remedy and reparations.<sup>24</sup>
21. The Constitution of Nepal guarantees victims' "right to justice including social rehabilitation and compensation." The same right has been incorporated in the Penal Code.<sup>25</sup> However, section 169 of the Penal Code mentions "reasonable compensation for the injury or pain caused to victim", without providing guidance on what "reasonable compensation" means.
22. The only other avenue for victims to seek financial compensation is by bringing an action pursuant to the *Compensation Relating to Torture Act* (1996), which contains no provision for other forms of reparation. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has criticized the law for falling short of international standards in this regard.<sup>26</sup>
23. Finally, the *Crime Victim Protection Act* 2018 requires the Government of Nepal to provide "relief, social rehabilitation, counseling, financial, physical, and social, legal aid/support for the security, and protection of the rights and interests" of victims of crimes.<sup>27</sup> However, no programs have been implemented yet. The Act includes a provision for a Victim Relief Fund.<sup>28</sup> However, the fund does not have any specific provisions for addressing the needs to provide medical, psychological and other restorative relief to torture victims and their families.

### ***Monitoring and Investigative Mechanisms***

24. In the Second UPR cycle, a number of recommendations focused on the need to establish or reform existing monitoring and investigative mechanisms to document and prosecute human rights violations, including torture and other forms of ill-treatment.<sup>29</sup> In response to a

recommendation to establish an independent mechanism to investigate complaints against the security forces, the Government disappointingly asserted that there were already adequate mechanisms in place, without offering detail on these mechanisms or their operation.<sup>30</sup>

25. In the first and second cycle of Nepal's UPR a number of countries also recommended ratification of OPCAT, which would require the establishment of a National Preventative Mechanism (NPM) for the monitoring of places of detention. However, Nepal continues to refuse to accept this recommendations.<sup>31</sup>
26. While there are a number of bodies in Nepal mandated to monitor and report upon allegations of torture and ill-treatment – including, the Nepal Police, the Office of the Attorney General, the National Human Rights Commission, the Chief Attorney's Offices (at the provincial level) and the judiciary – none of these institutions has taken a systemic or consistent approach to fulfilling these duties.
27. Internal measures within the police, such as the establishment of a police human rights cell, while welcome, have not been effective at investigation of allegations of torture. There is no functionally independent monitoring or investigative unit within the police to look into allegations of torture or ill-treatment in custody. A lack of independence by investigators tasked with collecting evidence in cases involving human rights violations by State authorities, and the vulnerability of those investigations to political interference, remain major issues at all levels of the police hierarchy. This requires structural reform within the police, including the establishment of robust internal institutions that can investigate allegations of wrongdoing, and protect decisions about appointment, transfer, promotion and disciplinary measures from inappropriate interference.
28. The Office of the Attorney General (OAG) is a constitutionally-mandated institution and the main advisory body to the government on constitutional and legal matters.<sup>32</sup> One of its duties includes monitoring custodial detention, including police custody and prisons.<sup>33</sup> While the OAG does report upon its detention monitoring activities, that reporting and the monitoring itself it is not systematic and adequately transparent.<sup>34</sup> The OAG also does not provide data on decisions not to prosecute sensitive cases, which is a common occurrence – attested to by the substantial body of litigation involving cases of refusal to prosecute.
29. Chief Attorneys also have a potentially important role to play in monitoring and preventing torture and ill-treatment. They are the highest-level law officials at the provincial level. While their mandate to enforce criminal law is constitutionally-limited, and their supervisory authority applies only to the yet to be established provincial police, they retain the authority charged with monitoring detention centers and with facilitating the execution of court decisions. Recent initiatives at the provincial level to establish guidelines for monitoring the treatment of detainees and conditions of detention are welcome, but require a more system-wide approach across provincial and federal jurisdictions.
30. The National Human Rights Commission has prepared detention monitoring guidelines,<sup>35</sup> pursuant to which its staff monitor detention centers and make recommendations to the government. It has also issued directives for improving detention conditions.<sup>36</sup> However, the NHRC's monitoring is infrequent and more focused on prisons than police custody, where torture is pervasive. Unfortunately, the NHRC has fallen short of being an effective body to ensure accountability for serious human rights violations due to many factors, including a lack of training and resources in investigation, and vulnerabilities that affect the independence and autonomy of its commissioners. The authors of this submission agree with the recommendations to bolster the capacity and independence of the NHRC.
31. Although the judiciary does not have an overall supervisory obligation to monitor places of detention, judges use Section 21 of the Administration of Justice Act, 2016 as a legal basis

upon which to inspect prison facilities at least once a year.<sup>37</sup> While important, the results of these inspections are not made public - making it difficult to analyze their effectiveness.

32. Finally, transitional justice institutions, such as the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Person, were established in February 2015; they have the mandate to investigate allegations of human rights violations, including torture and ill-treatment that occurred during the armed conflict. Unfortunately, due to a flawed legal mandate, resource and capacity limitations, and lack of political will, the commissions have not been able to carry out their work effectively,<sup>38</sup> and lack credibility in part due to the fact that their membership appointment process has not been transparent and independent.<sup>39</sup>

### **Ratification of International human rights instruments**

33. In previous cycles, a number of countries recommended that Nepal ratify 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.
34. In its second UPR, Nepal "noted" recommendations to become a party to some of these treaties. However, none of these treaties has been ratified. Ratification of the OPCAT in particular would subject the government to further obligations and a monitoring mechanism that could contribute substantially to the effective implementation of the UPR recommendations upon which this submission has focused.

### **Extending invitations to the UN Special Procedures**

35. In its second UPR cycle, Nepal "noted" the recommendations to extend invitations to special procedures of the Human Rights Council. At the time of writing, requests for country visits from a number of special procedures, including UN 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 were still pending.

### **Recommendations**

36. In light of the concerns set out above, the ICJ, AF and THRD Alliance call upon the UPR Working Group and the Human Rights Council to recommend the following to Government of Nepal.
  - a. Ensure that the law criminalizing torture is consistent with international law, through the passage of an anti-torture law, and/or through amendment to the current Penal Code, including that the:
    - i. Definition of torture in national law is in line with the CAT and other international treaty provisions;

- ii. Statutory limitation or prescription periods for the filing of complaints or cases of torture or other ill-treatment be removed;
  - iii. Penalties for torture are commensurate to the gravity of the offence;
  - iv. Definition of reparation encompasses restitution, compensation, rehabilitation (including medical and psychological care, as well as legal and social services), and guarantees of non-repetition;
  - v. Independent mechanisms for the regular monitoring of places of detention are established, or existing mechanisms adequately supported.
- b. Ensure that all allegations of torture are registered, investigated and prosecuted by an independent and impartial investigative body;
  - c. Ensure that all detainees have access to legal representation;
  - d. Collect and publicize data on allegations of torture and ill-treatment, including prosecutions and any measures, including disciplinary measures, taken against perpetrators;
  - e. Establish an independent police service commission or equivalent body to ensure fair and transparent appointment, promotion, transfer of police officers and to oversee disciplinary complaints against the police;
  - f. Establish a consistent system of documentation in each police station and at any detention facilities, in particular, concerning the entry into and release of detainees from custody, as well as the procedure during interrogations;
  - g. Systematize human rights education and training in police training programmes, including medico-legal training (based on Istanbul Protocol);
  - h. Ensure that victims are adequately involved in criminal proceedings, in accordance with international standards developed for this purpose;
  - i. Ratify OPCAT and establish a national preventative mechanism that complies with its requirements; become a party to other core human rights treaties to which Nepal is not yet a party;
  - j. Accept the requests to visit Nepal from UN special procedures, 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

<sup>1</sup> In a recent AF report, nearly 20% of detainees interviewed reported some forms of torture or ill-treatment Advocacy Forum, "Torture in Nepal in 2019- The Need for New Policies and Legal Reform" ( 26 June 2019) <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>

See also, THRD Alliance, "Torture in the Terai 2020, Torture is a crime; the state continues to commit" (June 2020), <http://www.thrda.org/wp-content/uploads/2020/06/THRD-Alliance-2020.pdf> & Advocacy Forum , "Rise of Torture In 2018, Challenges Old and New Facing Nepal" (26 June, 2019) <http://advocacyforum.org/downloads/pdf/publications/torture/june-2019-report.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



<sup>4</sup> Mitini Nepal, "National Parallel Report B +25: Issues, Achievements, Gaps and Recommendations of LBTQ of Nepal 2019" ( 2019) available <http://mitininepal.org.np/wp-content/uploads/2019/12/National-Parallel-Report-LBTQ-Mitini-Nepal.pdf>; South Asian Human Rights Association Of People Marginalized Because Of Their Sexualities And Gender Identity/Expression (SAHRA), "2018 Human Rights Violations Report," at [https://sahraasia.files.wordpress.com/2018/04/sahra-hrvr-2018\\_lowres.pdf](https://sahraasia.files.wordpress.com/2018/04/sahra-hrvr-2018_lowres.pdf)

<sup>5</sup> Advocacy Forum-Nepal, 'Torture in Nepal in 2019: The Need for New Policies and Legal Reform', June 2020', <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>

<sup>6</sup> *Valentin Baştovoi v. the Republic of Moldova* (application no. 40614/14), *European Court of Human Rights* (28 November 2017); *Rezmiveş and Others v. Romania* (applications nos. 61467/12, 39516/13, 48213/13 and 68191/13), *European Court of Human Rights* (25 April 2017); *Modârcă v. Moldova* (application no. 14437/05), *European Court of Human Rights* (10 April 2007 )

<sup>7</sup> These conditions have also been acknowledged and documented by Office of the Attorney General. Office of the Attorney General Nepal, Custody & Prison Monitoring Report (2019) "*Hirasat Tathaa Karagaar Anugaman Pratibedan, 2076*" (Nepali version).

<sup>8</sup> Principle 24, Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173, 9 December 1988; Principle 6, Medical examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials, Istanbul Protocol or the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999

<sup>9</sup> UN General Assembly, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\*" Nepal, UN Human Rights Council, (6 August 2015) para 55 and para 56.

<sup>10</sup> Advocacy Forum, "Discrimination and Irregularities. The Painful Tale of Interim Relief in Nepal" (2010) at [http://www.advocacyforum.org/downloads/pdf/publications/Discriminations\\_and\\_Irregularities\\_A\\_painful\\_tale\\_of\\_Interim\\_Relief\\_in\\_Nepal.pdf](http://www.advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_of_Interim_Relief_in_Nepal.pdf)

<sup>11</sup> Human Rights Council, Thirty-First Session, *Report of the Working Group on the Universal Periodic Review:Nepal*, UN Doc. A/HRC/31/9 ( 23 December 2015) Recommendation 121.3 Introduce legislation providing appropriate criminal penalties for acts of torture (Germany)

<sup>12</sup> Ibid.Recommendations 121.3 Establish independent procedures to ensure that all allegations of torture are investigated promptly, thoroughly, impartially and independently; that any officials responsible for torture are held accountable; and that any victims of torture have the right to remedy and reparations (Germany); Recommendation 121.4 Explicitly prohibit torture and enforced disappearances as criminal offences under Nepali law (Norway)

<sup>13</sup> Section 167(1) of the Penal Code reads: "Prohibition of torture: (1) No authority who is competent under the laws in force to investigate or prosecute any offence, implement law, take any one into control, or hold any one in custody or detention in accordance with law shall subject, or cause to be subjected, any one to physical or mental torture or to cruel, brutal, inhuman or degrading treatment."

<sup>14</sup> Principle 4 of the UN Basic Principles and Guidelines on the Right to Remedy and Reparations states that a "statute of limitations shall not apply to gross violations of international human rights law ... constituting crimes under international law [such as torture]." UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by GA resolution 60/147, on 16 Dec 2005, UN Doc. A/Res/60/147, 21 March 2006

<sup>15</sup> *Basnet and Pokharel v. Government of Nepal & Others*, 2 January 2014 (069-WS-0057).

<sup>16</sup> Section 169 (1), *Muluki Penal Code 2017*

<sup>17</sup> Section 167(2) *Muluki Penal Code 2017*

<sup>18</sup> Advocacy Forum & DKA Austria, "Torture of Juveniles in Nepal- A Continuing Challenge" Report (26 June 2018)

<sup>19</sup> Section 4, *Penal Procedure Code, 2017* Section 4 First information report or information on commission of offence to be given: A person who knows that any offence set forth in Schedule-1 has been committed or is being committed or is likely to be committed shall, as soon as possible, make a first information report in writing or give information on such offence, verbally or through electronic means, along with whatever proof or evidence which is in his or her possession or which he or she has seen or known, to the nearby police office.

<sup>20</sup> Advocacy Forum-Nepal, 'Torture in Nepal in 2019: The Need for New Policies and Legal Reform' (June 2020), available at <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

<sup>21</sup> ICJ, AF and THRD Alliance, "Nepal: Despite new criminal laws, impunity for acts of torture prevail" (26 June 2020) <https://www.icj.org/nepal-despite-new-criminal-laws-impunity-for-acts-of-torture-prevails/>

<sup>22</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, A/RES/60/147, principle 8; and International Commission of Jurists, *Practitioners' Guide 2, revised edition: The Right to a Remedy and Reparation for Gross Human Rights Violations* (2018), at

<https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>

<sup>23</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147 of 16 December 2005).

<sup>24</sup> Human Rights Council, Thirty-First Session, *Report of the Working Group on the Universal Periodic Review:Nepal*, UN Doc. A/HRC/31/9, Recommendation 121.3 – “any victims of torture have the right to remedy and reparations” (Germany)

<sup>25</sup> Section 32(2), *Muluki Penal Code*, 2017

<sup>27</sup> Section 45, *Crime Victim Protection Act*, 2018

<sup>28</sup> Section 2(d), *Crime Victim Protection Act*, 2018

<sup>29</sup> 121.26 Promptly investigate all allegations of torture, arbitrary detention, extra-judicial and summary executions and punish perpetrators (New Zealand); 122.15 Ensure the effective functioning of the National Human Rights Commission in accordance with the Paris Principles, in particular by providing the Commission with required and adequate levels of funding as well as sufficient autonomy (Republic of Korea);122.16 Ensure the independence and financial autonomy of the National Human Rights Commission (India)

<sup>30</sup> Human Rights Council, *Report of the Working Group on the UPR*, A/HRC/31/9 (23 December 2015), recommendation at para. 124.15, response at para. 131.

<sup>31</sup> Human Rights Council, *Report of the Working Group on the UPR*, A/HRC/31/9 (23 December 2015), recommendation at para. 124.15, response at para. 57.

<sup>32</sup> Article 158(1), *Constitution of Nepal* 2015

<sup>33</sup> Article 158(6) c, *Constitution of Nepal* 2015

<sup>34</sup> The reports of the OAG from the year 2017, 2018 and 2019. Office of the Attorney General Nepal, Custody & Prison Monitoring Report ( 2017) *Hirasat Tathaa Karagaar Anugaman Pratibedan, 2074*“(Nepali version);\_Office of the Attorney General Nepal, Custody & Prison Monitoring Report ( 2018) *Hirasat Tathaa Karagaar Anugaman Pratibedan, 2075*“(Nepali version); Office of the Attorney General Nepal, Custody & Prison Monitoring Report ( 2019) “ *Hirasat Tathaa Karagaar Anugaman Pratibedan, 2076*“(Nepali version

<sup>35</sup> NHRC, “Detention Guidelines- Nepal” ( November 2010) Nepali Version [https://nhrcnepal.org/nhrc\\_new/doc/newsletter/Detention%20Guideline%20Nep2067.pdf](https://nhrcnepal.org/nhrc_new/doc/newsletter/Detention%20Guideline%20Nep2067.pdf)

<sup>36</sup> NHRC, “Regional Prisons Cells monitored, Directive issued for Necessary Improvement” *Press Note* (16 February 2015) [http://nhrcnepal.org/nhrc\\_new/doc/newsletter/PR-NHRC-RO%20Jail%20monitoring%20and%20direction%20given%20for%20maintenance-Eng-16Feb2015.pdf](http://nhrcnepal.org/nhrc_new/doc/newsletter/PR-NHRC-RO%20Jail%20monitoring%20and%20direction%20given%20for%20maintenance-Eng-16Feb2015.pdf)

<sup>37</sup> It mentions “Each Court hearing appeal shall, at least once a year, inspect its subordinate courts, judicial or quasi-judicial body or the authorities by deputing its own judge”.

<sup>38</sup> International Commission of Jurists, “Nepal: extending transitional justice commissions without granting real powers betrays trust of victims” (10 February 2017) , available at

<https://www.icj.org/nepal-extending-transitional-justice-commissions-without-granting-real-powers-will-once-again-betray-trust-of-victims/>

<sup>39</sup> ICJ, Amnesty International, Human Rights Watch and TRIAL International “Nepal: recent steps undermine transitional justice”, *Press Release* (25 January 2020)